

**PROFESSIONAL ACCOUNTANTS (AMENDMENT) ORDINANCE 2004**

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**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**ORDINANCE NO. 23 OF 2004**

L.S.

TUNG Chee-hwa  
Chief Executive  
15 July 2004

An Ordinance to amend the Professional Accountants Ordinance and for other related purposes.

[8 September 2004]

Enacted by the Legislative Council.

**1. Short title and commencement**

(1) This Ordinance may be cited as the Professional Accountants (Amendment) Ordinance 2004.

(2) Subject to subsection (3), this Ordinance shall come into operation on 8 September 2004.

(3) (a) Sections 3 (in so far as it relates to the new definitions of “appointed member”, “Disciplinary Committee Convenor”, “Disciplinary Panels”, “Investigation Committee Convenor”, “Investigation Panels” and “lay person”), 10(b), (d) and (e), 12(a) and (b), 13(d), 26 (in so far as it relates to the reference to section 35B), 33, 35, 36(c), (d) and (e), 38 (in so far as it relates to the addition of new section 35B), 43(b) (in so far as it relates to the reference to section 35B), 45 and 46(a)(ii), (iii) and (iv) (in so far as it relates to “Disciplinary Panels”) and (c); and

(b) sections 3, 16(b) and 18 (in so far as it relates to the addition of new by-law 35B) of Schedule 1,

shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

**2. Long title amended**

The long title to the Professional Accountants Ordinance (Cap. 50) is amended by repealing “the Hong Kong Society of Accountants” and substituting “the Hong Kong Institute of Certified Public Accountants”.

### 3. Interpretation

Section 2 is amended—

- (a) by repealing the definition of “certified public accountant” and substituting—
  - “ “certified public accountant” (會計師) means a person registered as a certified public accountant by virtue of section 22;”;
- (b) by repealing the definition of “Disciplinary Panel” and substituting—
  - “ “Disciplinary Panels” (紀律小組) means the Disciplinary Panel A and Disciplinary Panel B constituted under section 33(1) and “Disciplinary Panel A” and “Disciplinary Panel B” shall be construed accordingly;”;
- (c) in the definition of “firm name”, by repealing “or public accountant” where it twice appears and substituting “(practising)”;
- (d) by repealing the definition of “Investigation Panel” and substituting—
  - “ “Investigation Panels” (調查小組) means the Investigation Panel A and Investigation Panel B constituted under section 42B(1) and “Investigation Panel A” and “Investigation Panel B” shall be construed accordingly;”;
- (e) in the definition of “practice unit”—
  - (i) by repealing paragraph (a) and substituting—
    - “(a) a firm of certified public accountants (practising) practising accountancy pursuant to this Ordinance;”;
  - (ii) in paragraph (b), by repealing “or public accountant” and substituting “(practising)”;
- (f) by repealing the definition of “professional accountant” and substituting—
  - “ “professional accountant” (專業會計師) means a person registered as a professional accountant before the relevant day;”;
- (g) in the definition of “professional indemnity insurance”—
  - (i) by repealing “a professional accountant” and substituting “a certified public accountant, a firm of certified public accountants (practising)”;
  - (ii) by adding “, firm” before “or practice”;
- (h) in the definition of “professional standards”, in paragraph (b), by repealing “and auditing practices,” and substituting “, auditing and assurance practices,”;

(i) by repealing the definition of “public accountant” and substituting—

““public accountant” (註冊核數師) means a person registered as a professional accountant by virtue of the repealed section 24(2) before the relevant day;”;

(j) by repealing the definition of “Society”;

(k) by adding—

““appointed day” (指定日期) means the day appointed by the Secretary for Financial Services and the Treasury under section 1(3) of the Professional Accountants (Amendment) Ordinance 2004 (23 of 2004);

“appointed member” (委任理事) means a member of the Council appointed by the Chief Executive under section 10(2)(e);

“certified public accountant (practising)” (執業會計師) means a certified public accountant holding a practising certificate;

“Disciplinary Committee Convenor” (紀律委員會召集人) means the Disciplinary Committee Convenor appointed under section 33(1)(a);

“Institute” (公會) means the Hong Kong Institute of Certified Public Accountants (香港會計師公會) incorporated by section 3;

“Investigation Committee Convenor” (調查委員會召集人) means the Investigation Committee Convenor appointed under section 42B(1)(a);

“lay person” (業外人士) means a person who is not—

(a) a certified public accountant; or

(b) a member of an accountancy body which is a member of the International Federation of Accountants;

“relevant day” (有關日期) means the day on which the Professional Accountants (Amendment) Ordinance 2004 (23 of 2004) comes into operation under section 1(2) of that Ordinance;

“repealed section 24(2)” (已廢除的第 24(2)條) means section 24(2) of this Ordinance repealed by the Professional Accountants (Amendment) Ordinance 2004 (23 of 2004);”.

#### **4. Part heading amended**

The heading of Part II is amended by repealing “SOCIETY OF ACCOUNTANTS” and substituting “INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS”.

#### **5. Incorporation of Institute**

Section 3(*b*) is amended by adding “(香港會計師公會) before the relevant day, and the Hong Kong Institute of Certified Public Accountants (香港會計師公會) with effect from the relevant day” after “Accountants”.

#### **6. Appointment of President and Vice-President**

Section 4(2)(*b*) is amended by repealing “section 15” and substituting “section 15(1)”.

#### **7. Objects of the Institute**

Section 7 is amended—

- (*a*) in paragraph (*a*), by repealing “or public accountants” and substituting “(practising)”;
- (*b*) in paragraph (*g*), by adding “reputation,” before “integrity”;
- (*c*) in paragraph (*h*)—
  - (i) by adding “and corporate practices” after “firms”;
  - (ii) by repealing “, and corporate practices”.

#### **8. Power of Institute to make by-laws**

Section 8 is amended—

- (*a*) in subsection (1)—
  - (i) by adding—
    - “(la) providing for the admission of persons as affiliates of the Institute and specifying the designations for such affiliates and the initials by which such affiliates may be known;”;
  - (ii) by adding—
    - “(oa) providing for and regulating the provision and retention of information, the giving of any notice and communication, the election of any person, the voting on any matter, the signature of any person, under or pursuant to this Ordinance, by electronic means;”;

- (b) in subsection (3)—
  - (i) by adding “in person or by proxy” after “accountants present”;
  - (ii) by repealing “by post”;
  - (iii) by repealing “at his registered address”.

## 9. General meetings

Section 9(4) is amended by repealing “section 26, 27, 30, 34, 35, 36 or 39” and substituting “section 18B, 26, 27, 28A, 30, 32B, 32C, 32D, 32E, 32F, 34, 35, 36, 39, 42C, 42D, 42E or 42F”.

## 10. Establishment and composition of the Council

Section 10 is amended—

- (a) in subsection (1), by repealing “the Hong Kong Society of Accountants” and substituting “the Hong Kong Institute of Certified Public Accountants”;
- (b) in subsection (2)—
  - (i) by repealing “subsections (3) and (4)” and substituting “subsection (4)”;
  - (ii) by repealing “14 members” and substituting “members”;
  - (iii) in paragraph (b), by repealing “and” at the end;
  - (iv) in paragraph (c), by repealing “12 professional accountants (not being persons entitled to be registered only under section 24(2))” and substituting “14 certified public accountants (not being persons entitled to be registered as a professional accountant by virtue of the repealed section 24(2) immediately before the relevant day)”;
  - (v) by repealing paragraph (c)(i) and (ii) and substituting—
    - “(i) not less than 6 shall be certified public accountants in full time practice as certified public accountants (practising);
    - (ii) not less than 6 shall be certified public accountants otherwise than in full time practice as certified public accountants (practising);”;
  - (vi) by adding—
    - “(d) the immediate past President of the Institute who shall, unless he is also an elected member, hold office as a member of the Council for a period from the time when he ceased to be President until the conclusion of the annual general meeting next occurring; and

- (e) 4 lay persons appointed by the Chief Executive.”;
- (c) in subsection (2A)—
- (i) in paragraph (a), by adding “(practising)” after “certified public accountant” where it first and secondly appears;
  - (ii) in paragraph (a)(iii), by repealing from “, or which” up to and including “or public accountants” and substituting “a certified public accountant (practising) or a firm of certified public accountants (practising) or a corporate practice”;
  - (iii) in paragraph (b), by repealing from “as a certified public accountant” up to and including “or public accountants” and substituting “as a certified public accountant (practising) by reason only of the fact that he is in the employment of a certified public accountant (practising) or a firm of certified public accountants (practising) or a corporate practice”;
- (d) by repealing subsection (3) and substituting—
- “(3) An appointed member shall not be appointed for a term exceeding 2 years but shall be eligible for reappointment for a further term or terms of not exceeding 2 years each.”;
- (e) in subsection (4), by repealing “subsections (2) and (3)” and substituting “subsection (2)”.

## 11. Filling vacancies in Council

Section 11(1) and (2)(b) is amended by repealing “section 15” and substituting “section 15(1)”.

## 12. Compulsory retirement of elected members

Section 12 is amended—

- (a) in subsection (1)—
- (i) by adding “subsection (1A) and” after “Subject to”;
  - (ii) by repealing “6 elected members” and substituting “7 elected members”;
- (b) by adding—
- “(1A) Subject to section 13(2), immediately before the conclusion of the first 2 annual general meetings of the Institute after the appointed day—
- (a) in the case of the first such annual general meeting, 6 elected members who have been longest in office since their last election shall retire from office; and



- (b) in the case of the second such annual general meeting, 6 elected members who have been longest in office since their last election, and one elected member from among the remaining 8 elected members who shall be selected by lot, shall retire from office.”;
- (c) in subsection (4), by repealing “only under section 24(2)” and substituting “as a professional accountant by virtue of the repealed section 24(2) immediately before the relevant day”.

### 13. Vacation of office by Council members

Section 15 is amended—

- (a) by renumbering it as section 15(1);
- (b) in subsection (1)(e), by repealing “(ii), (iii) or (iv)”;
- (c) in subsection (1)(f), in the proviso, by repealing “not less than 5” and substituting “not less than 6”;
- (d) by adding—

“(2) Subsection (1)(a), (b), (c), (d) and (e) shall apply to the immediate past President of the Institute who becomes a member of the Council pursuant to section 10(2)(d) except that no vacancy is to arise upon his vacation of office in such circumstances.

(3) An appointed member shall be deemed to have vacated his office as a member of the Council if—

- (a) he becomes bankrupt or makes an arrangement or composition with his creditors; or
- (b) he ceases to be ordinarily resident in Hong Kong.”.

### 14. Accounts

Section 16 is amended—

- (a) by repealing subsection (4) and substituting—

“(4) A copy of the signed and audited statement of accounts, together with the auditor’s report made under subsection (3), shall be submitted for approval at the annual general meeting of the Institute next following the end of the financial year to which they relate.

(4A) A summary of financial statements shall be sent to each certified public accountant with the notice of the annual general meeting.

(4B) A certified public accountant may inspect a copy of the signed and audited statement of accounts at all reasonable times at the office of the Institute and the Institute shall provide to a certified public accountant on application a copy of the signed and audited statement of accounts without charge.”;

(b) in subsection (7)—

(i) by adding a comma after “In this section”;

(ii) by adding “; and “summary of financial statements” (財務報表撮要) means a summary, approved by the Council, of the audited statement of accounts of the Institute required to be laid before the annual general meeting of the Institute” after “made up”.

## **15. Council’s power to specify professional standards**

Section 18A(1)(b) and (2)(b) is amended by repealing “and auditing practices,” and substituting “, auditing and assurance practices,”.

## **16. Section added**

The following is added—

### **“18B. Council’s power to give directions**

(1) The Council may, in connection with the discharge of any of its functions or duties or the exercise of any of its powers, give directions either generally to certified public accountants or to any one or more certified public accountants—

- (a) requiring the production or provision to the Institute by a certified public accountant of any document or information in connection with the registration of any certified public accountant or firm name, or the issue of a practising certificate;
- (b) requiring a certified public accountant to deliver up to the Institute any certificate of registration or practising certificate in the possession, custody or control of the certified public accountant if the registration to which the certificate relates has ceased or the practising certificate has been cancelled or ceased to be valid;
- (c) requiring a certified public accountant to give to the Institute an explanation of any act or omission of the certified public accountant which appears to the Council to

be conduct unbecoming of a certified public accountant, or conduct which may affect the reputation, integrity and status of the Institute or of the accountancy profession or conduct which may fall within section 34(1)(a)(iii) to (xii).

(2) A direction given under this section shall be a direction lawfully given by the Council for the purpose of section 34(1)(a)(ix).

(3) The Council may prescribe penalties of an amount not exceeding \$50,000 to be imposed for failure by a certified public accountant to comply with a direction given to him but no penalty shall be imposed on a certified public accountant unless he admits to the failure and agrees to the penalty and any penalty so imposed may be recovered by the Institute from the certified public accountant as a civil debt.

(4) Subsections (1), (2) and (3) apply mutatis mutandis in relation to a firm of certified public accountants (practising) and to a corporate practice as they apply to a certified public accountant.”.

## 17. Register of certified public accountants

Section 22 is amended—

(a) by adding—

“(1C) The register may be maintained—

(a) in a documentary form; or

(b) by recording the information required under subsection (1A) otherwise than in a documentary form, so long as the information is capable of being reproduced in a legible form.”;

(b) by repealing subsection (3) and substituting—

“(3) For the purposes of enabling any member of the public to ascertain whether he is dealing with a certified public accountant, a certified public accountant (practising), a firm of certified public accountants (practising) or a corporate practice and to ascertain the particulars of registration of such person, the register or (where the register is maintained otherwise than in a documentary form) a reproduction of the information or the relevant part of it in a legible form shall at all reasonable times be made available for public inspection without charge.”;

(c) by adding—

“(4) Any person registered as a professional accountant immediately before the relevant day shall be deemed to be registered as a certified public accountant.”.

**18. Qualifications for registration as certified public accountant**

Section 24 is amended—

(a) by repealing subsection (1)(c) and substituting—

“(c) any one of the following applies to him—

- (i) as a student registered as such with the Institute, he has passed such examinations in accountancy and other subjects as may be prescribed by the Council;
- (ii) he is a member in good standing of an accountancy body with which there is in force an agreement of mutual or reciprocal recognition between the accountancy body and the Institute and he has complied with all conditions for the recognition as may be provided in the agreement;
- (iii) he is a member in good standing of an accountancy body for which members—
  - (A) the Council has granted full exemption pursuant to subsection (1A) from all the requirements of subparagraph (i); or
  - (B) the Council has granted partial exemption pursuant to subsection (1A) from some of the requirements of subparagraph (i) and he has complied with all other requirements of that subparagraph for which no exemption was granted;
- (iv) he was registered as a professional accountant at any time before the relevant day; and”;

(b) in subsection (1A)—

- (i) by repealing “from the requirements of subsection (1)(c)” and substituting “in whole or in part from the requirements of subsection (1)(c)(i) including exemption from the requirement of registration as a student of the Institute”;
- (ii) by repealing proviso (a) and substituting—

“(a) no exemption shall be granted to such a person in respect of any examinations prescribed under subsection (1)(c)(i) unless he has satisfied the Council that he has passed such examinations of that accountancy body as the Council considers to be of equivalent standard as the examinations for which exemption is granted; and”;

(c) by repealing subsection (2).

## 19. Acceptance or refusal of registration

Section 26(2)(a) is amended by repealing “registered post” and substituting “post”.

## 20. Removal from register of certain persons

Section 27 is amended—

- (a) in subsection (2)(a), by repealing “unless notice is sent by registered post to his registered address” and substituting “unless notice is sent to him”;
- (b) in subsection (3), by repealing “registered post” and substituting “post”.

## 21. Expiry of registration and renewal

Section 28(2) is amended—

- (a) in paragraph (a)—
  - (i) by adding “(or such later day as the Council may approve either generally or in respect of any application)” after “renewal”;
  - (ii) by repealing “and” at the end;
- (b) in paragraph (b), by repealing the full stop at the end and substituting “; and”;
- (c) by adding—
  - “(c) shall not be granted unless the applicant has satisfied the Council that he has complied with the requirements for the time being prescribed by the Council for continuing professional development.”.

## 22. Registration of firm name

Section 28A is amended—

- (a) in subsection (1), by repealing “or a public accountant” and substituting “(practising)”;
- (b) in subsection (2), by repealing “or public accountants” and substituting “(practising)”;
- (c) in subsection (3)(a), by repealing “or a public accountant” and substituting “(practising)”;
- (d) in subsection (3)(b), by repealing “or public accountants” and substituting “(practising)”;

- (e) in subsection (5)—
  - (i) by repealing “or public accountants” and substituting “(practising)”;
  - (ii) by repealing “all partners of the firm are professional accountants” and substituting “all partners of the firm are certified public accountants and at least such proportion as the Council may from time to time prescribe of its partners is or are certified public accountant (practising) or certified public accountants (practising)”;
- (f) by adding—
  - “(6) For the avoidance of doubt, it is hereby declared that a person other than the holder of a current practising certificate shall not be entitled to sign an audit report on behalf of a firm of certified public accountants (practising).”.

### **23. Application for registration of a firm**

Section 28B is amended by repealing “or public accountants” and substituting “(practising)”.

### **24. Provisions of sections 22, 23, 26, 27, 28, 39 and 41 to apply to firms and firm names**

Section 28C is amended by adding “a firm and” before “a firm name”.

### **25. Qualification for registration of company as corporate practice**

Section 28D is amended—

- (a) in subsection (2)(b)(i), by repealing “professional accountant,” and substituting “certified public accountant and at least such proportion as the Council may from time to time prescribe of its members shall be a certified public accountant (practising) or certified public accountants (practising),”;
- (b) in subsection (2)(c)(i)—
  - (i) by repealing “either a public accountant or”;
  - (ii) by adding “(practising)” before “and the other”;
- (c) in subsection (2)(c)(i)(A)—
  - (i) by repealing “a public accountant or”;
  - (ii) by adding “(practising)” after “certified public accountant”;

- (d) in subsection (5)(a), by repealing “neither a certified public accountant nor a public accountant” and substituting “not a certified public accountant (practising)”;
- (e) in subsection (5)(c)(i)(A)—
  - (i) by repealing “either a public accountant or”;
  - (ii) by adding “(practising)” after “certified public accountant”;
- (f) in subsection (11)(b)(iii), by repealing “a client’s” and substituting “an”.

## **26. Provisions of sections to apply to a company**

Section 28G(1) is amended by repealing “sections 26, 28, 28A(4), 35, 37, 38, 39, 40 and 41(1)” and substituting “sections 26, 28, 28A(4), 33B, 35, 35B, 36(1A), 37, 38, 39, 40 and 41(1)”.

## **27. Requirements to practise as certified public accountant (practising)**

Section 29 is amended—

- (a) in subsection (1), by repealing “or public accountant” and substituting “(practising)”;
- (b) in subsection (3)(a)(ii), by repealing “or public accountant” and substituting “(practising)”.

## **28. Requirements for issue of a practising certificate**

Section 29A is amended—

- (a) in subsection (1), by adding “, (1B)” after “subsections (1A)”;
- (b) in subsection (1)(a), by adding “after becoming a member of an accountancy body with which there is in force an agreement of mutual or reciprocal recognition between the accountancy body and the Institute, or” after “has,”;
- (c) in subsection (1)(a)(ii), by adding “an accountancy body with which there is in force an agreement of mutual or reciprocal recognition between the accountancy body and the Institute, or” after “under the jurisdiction of”;
- (d) in subsection (1)(b), by repealing “a body” and substituting “an accountancy body with which there is in force an agreement of mutual or reciprocal recognition between the accountancy body and the Institute, or an accountancy body”;
- (e) by adding—

“(1B) A practising certificate shall not be issued to an applicant if there is in force against him an order of the Disciplinary Committee under section 35(1)(db) to that effect.”.

## 29. Practising certificates

Section 30 is amended—

(a) in subsection (2), by repealing “or public accountant” and substituting “(practising)”;

(b) by repealing subsection (4) and substituting—

“(4) Notwithstanding subsections (1) and (2), a person registered as a public accountant immediately before the relevant day is exempted from complying with the requirements of section 29A(1) and (2).”;

(c) in subsection (5), by repealing “registered post” and substituting “post”;

(d) by adding—

“(7) A practising certificate shall not be issued to, and the Council may cancel the practising certificate of, a certified public accountant who is or has become bankrupt or has entered into a voluntary arrangement with his creditors within the meaning of the Bankruptcy Ordinance (Cap. 6).

(8) Notwithstanding subsections (2) and (4), the Council may—

(a) refuse to issue a practising certificate if the applicant has failed to satisfy the Council that he has complied with the Institute’s requirements for continuing professional development; or

(b) issue a practising certificate to an applicant subject to the condition that he shall comply with the Institute’s requirements for continuing professional development within a specified period.

(9) Where the Council is of the opinion that a certified public accountant has failed to comply with any condition imposed under subsection (8) it may, after affording the certified public accountant the opportunity to make representations, suspend or cancel the practising certificate of the certified public accountant with or without refunding the fee paid for the certificate.”.



### 30. Registered office

Section 31 is amended—

- (a) in subsection (1), by repealing “Every professional accountant who practises as a certified public accountant or public accountant” and substituting “Every certified public accountant (practising)”;
- (b) in subsection (4), by repealing “Any professional accountant who practises as a certified public accountant or public accountant” and substituting “Any certified public accountant (practising) who practises”;
- (c) in subsection (5)(a)—
  - (i) by adding “(practising)” after “accountant”;
  - (ii) by repealing “a corporate practice.” and substituting—
    - “—
    - (i) a certified public accountant (practising) who practises under a firm name;
    - (ii) a firm of certified public accountants (practising);
    - and
    - (iii) a corporate practice.”;
- (d) in subsection (5), by adding—
  - “(c) In the application of subsection (2) to a certified public accountant (practising) who practises under a firm name, a firm of certified public accountants (practising) and a corporate practice, that subsection shall be construed as if the reference therein to a practising certificate were a reference to registration of the firm name, the firm and the corporate practice respectively.”.

### 31. Section heading amended

The heading of section 32 is amended—

- (a) by repealing “**professional accountants**” and substituting “**certified public accountants**”;
- (b) by repealing “**firms**” and substituting “**firm names**”.

### 32. Conduct of practice reviews

Section 32C(4) and (7) is amended by repealing “registered post” and substituting “post”.

### 33. Powers of the Practice Review Committee

Section 32D(7) is amended by repealing “Disciplinary Panel” and substituting “Disciplinary Panels”.

### 34. Section added

The following is added in Part IVA immediately after section 32H—

#### “32I. Change in composition of practice unit

(1) In this section, a reference to a change in composition of a practice unit means—

- (a) in relation to a firm of certified public accountants (practising), a change in the persons who comprise the partners of the firm, if at least one of the partners of the firm before the change is a partner of the firm after the change;
- (b) in relation to a corporate practice, a change in the persons who comprise the directors of the corporate practice;
- (c) in relation to a certified public accountant (practising) practising on his own account, the admission by him of any partner to his practice; and
- (d) in relation to any practice unit, a change in the name of the practice unit, whether or not following or in consequence of an event described in paragraph (a), (b) or (c).

(2) Where a change in composition of a practice unit occurs, a reference in this Part to a practice unit shall include the practice unit after the change in composition.

(3) The powers under this Part shall be exercisable as regards a practice unit notwithstanding a change in composition of the practice unit.

(4) No change in composition of a practice unit shall affect—

- (a) any right, obligation or liability acquired or incurred by or accrued to a practice unit under this Part before the change; or
- (b) any practice review or further practice reviews of a practice unit, and any practice review or further practice reviews may be carried out and continued as regards the practice unit notwithstanding a change or further changes in composition of the practice unit.

(5) This section applies to changes in composition of practice units whenever occurring and practice reviews whenever conducted.”.

### 35. Disciplinary Panels

Section 33 is amended—

(a) by repealing subsection (1) and substituting—

“(1) There shall be 2 Disciplinary Panels—

(a) Disciplinary Panel A shall consist of not less than 18 lay persons appointed by the Chief Executive of whom one shall be appointed by the Chief Executive to be the Disciplinary Committee Convenor and another to be his alternate;

(b) Disciplinary Panel B shall consist of not less than 12 certified public accountants appointed by the Council of whom not less than 6 shall be holders of practising certificates.

(1A) The Disciplinary Committee Convenor shall not be appointed for a term exceeding 1 year but shall be eligible for reappointment for a further term or terms of not exceeding 1 year each.

(1B) The alternate of the Disciplinary Committee Convenor shall act in place of the Disciplinary Committee Convenor if the Disciplinary Committee Convenor is precluded by illness, absence from Hong Kong or any other cause from performing his functions as such.”;

(b) in subsection (2), by repealing “the Disciplinary Panel” wherever it appears and substituting “any of the Disciplinary Panels”;

(c) in subsection (3)—

(i) in paragraph (a), by repealing from “the Disciplinary Panel, the Council” up to and including “such committee” and substituting “the Disciplinary Panels, the Council shall constitute a Disciplinary Committee to deal with the complaint by directing the Disciplinary Committee Convenor to appoint the chairman and other members of the Disciplinary Committee, and the Disciplinary Committee Convenor shall act in accordance with such direction”;

(ii) in paragraph (b), by repealing from “the person” up to and including “by its chairman.” and substituting—

“the following 5 members—

(i) a person appointed by the Disciplinary Committee Convenor from Disciplinary Panel A who shall be the chairman of the Disciplinary Committee;

(ii) 2 persons appointed by the Disciplinary Committee Convenor from Disciplinary Panel A; and

- (iii) 2 persons appointed by the Disciplinary Committee Convenor from Disciplinary Panel B of whom one shall be the holder of a practising certificate.”;
- (iii) by repealing paragraph (c) and substituting—
  - “(c) The Disciplinary Committee Convenor shall not be appointed as a member of a Disciplinary Committee.”.

### 36. Disciplinary provisions

Section 34 is amended—

- (a) in subsection (1)(a)(x), by repealing “as a professional accountant”;
- (b) in subsection (1)(b)(v)—
  - (i) by adding “conduct” after “dishonourable”;
  - (ii) by repealing “who is a professional accountant of good repute professionally”;
- (c) in subsection (1), by repealing “Disciplinary Panel” and substituting “Disciplinary Panels”;
- (d) by adding immediately after subsection (1)—
  - “(1AAA) If the Council decides not to refer the complaint to the Disciplinary Panels, the complainant who is aggrieved by the Council’s decision may request the Council to refer the complaint to the Disciplinary Panels, whereupon the Council shall, unless it is of the opinion that no prima facie case has been shown for the complaint, or that the complaint is frivolous or vexatious, refer the complaint to the Disciplinary Panels.”;
- (e) in subsection (1A), by repealing “Disciplinary Panel” and substituting “Disciplinary Panels”;
- (f) in subsection (2)—
  - (i) by repealing “subsection (1)(a)(x)” and substituting “subsection (1)(a)(x) and (b)(v)”;
  - (ii) by repealing “which would be reasonably regarded as dishonourable by accountants of good repute and competency” and substituting “, whether or not in the course of carrying out professional work or as a certified public accountant, which would reasonably be regarded as bringing or likely to bring discredit upon the certified public accountant himself, the Institute or the accountancy profession”.

### 37. Disciplinary powers of Disciplinary Committee

Section 35(1) is amended—

(a) by adding—

“(da) an order that the practising certificate issued to the certified public accountant be cancelled;

(db) an order that a practising certificate shall not be issued to the certified public accountant either permanently or for such period as the Disciplinary Committee may think fit,”;

(b) by repealing paragraph (e);

(c) by repealing from “and may in any case” up to and including “a civil debt.” and substituting—

“and the Disciplinary Committee may in any case—

(i) provide for an order to take effect on such date as the Disciplinary Committee thinks fit;

(ii) provide for an order to take effect only upon the happening or non-happening of such event within such period as may be specified by the Disciplinary Committee;

(iii) make such order as the Disciplinary Committee thinks fit with regard to the payment of costs and expenses of and incidental to the proceedings, whether of the Institute (including the costs and expenses of the Disciplinary Committee) or of any complainant or of the certified public accountant, and any costs and expenses or penalty ordered to be paid may be recovered as a civil debt.”.

### 38. Sections added

The following are added—

#### “35A. Payment of fees to members of Disciplinary Committee

The Institute may pay fees at such rates as the Council may from time to time fix and such expenses as the Council may deem fit to any members of a Disciplinary Committee for the performance by them of their duties or for any work done by them, and such fees and expenses shall for the purpose of section 35(1) form part of the costs and expenses of the Institute of and incidental to the disciplinary proceedings.

**35B. Consent order**

(1) Where a complaint that section 34(1)(a)(vi), (viii), (ix) or (x) applies to a certified public accountant is referred to the Disciplinary Committee and the Disciplinary Committee, without hearing either the complainant or the certified public accountant, is of the view that the complaint is of such a nature that if the complaint is proved, the appropriate order or orders to be made should fall within one or more of the following orders under section 35—

- (a) an order that the certified public accountant be reprimanded;
- (b) an order that the certified public accountant pay a penalty not exceeding \$50,000 to the Institute;
- (c) an order that the certified public accountant pay the costs and expenses of and incidental to the proceedings, whether of the Institute (including the costs and expenses of the Disciplinary Committee) or of the complainant,

the Disciplinary Committee may give notice to the complainant and the certified public accountant.

(2) A notice given by the Disciplinary Committee under subsection (1) shall state—

- (a) the order or orders, being order or orders no more than those referred to in subsection (1), which the Disciplinary Committee proposes to make if the certified public accountant admits to the complaint; and
- (b) the time (being not earlier than 14 days from the date when the notice was given, or such further time as the Disciplinary Committee may allow) within which each of the complainant and the certified public accountant is required to inform the Disciplinary Committee as to whether he will consent to the proposed order or orders.

(3) If the complainant and the certified public accountant consent to the proposed order or orders, the Disciplinary Committee shall make an order or orders in terms of the proposed order or orders and such order and orders shall be deemed to be an order or orders made under section 35, save that sections 38(2) and 41(1)(b)(iii) shall not apply to such order or orders.

(4) If the complainant or the certified public accountant informs the Disciplinary Committee that he does not consent to the proposed order or orders, or if the Disciplinary Committee considers that the consent of either the complainant or the certified public accountant is not forthcoming notwithstanding the notice under subsection (2)(b), the Disciplinary Committee shall inform the Council and the following shall apply—

- (a) the Disciplinary Committee shall be dissolved;
- (b) the Council shall constitute a new Disciplinary Committee to deal with the complaint with which the dissolved committee was concerned by directing the Disciplinary Committee Convenor to appoint the chairman and other members of the new Disciplinary Committee;
- (c) a person who was a member of the dissolved committee shall not be eligible for membership of the new Disciplinary Committee; and
- (d) the new Disciplinary Committee shall deal with the complaint afresh without regard to this section and, accordingly, it shall not have any regard to any proceedings of the dissolved committee, including the proposed order or orders of the dissolved committee or any failure or refusal of the complainant or the certified public accountant to consent to the proposed order or orders.”.

**39. Powers of Disciplinary Committee with regard to obtaining evidence and the conduct of proceedings**

Section 36 is amended—

- (a) by repealing subsection (1)(c);
- (b) by adding—

“(1A) Every hearing of the Disciplinary Committee shall be held in public unless the Disciplinary Committee—

- (a) on its own motion; or
- (b) on the application of—

- (i) the complainant; or
- (ii) the certified public accountant against whom the complaint is made,

determines that in the interests of justice a hearing or any part thereof shall not be held in public in which case it may hold the hearing or the part thereof (as the case may be) in private.”.

**40. Conduct of proceedings and representation**

Section 37 is amended—

- (a) in subsection (1)(a), by adding “, or, with the approval of the Disciplinary Committee, some other person appointed by the complainant to represent him” after “or his solicitor or counsel”;
- (b) in subsection (1)(c), by adding “or some other person appointed by the Investigation Committee to represent it,” after “or counsel of such member,”;

- (c) in subsection (2), by adding “, or, with the approval of the Disciplinary Committee, by some other person appointed by the certified public accountant to represent him” after “represented by counsel or a solicitor”.

#### **41. Provisions relating to orders of the Disciplinary Committee**

Section 38 is amended—

- (a) in subsection (1)—
  - (i) by repealing “paragraph (a), (b), (c) or (d) of”;
  - (ii) by repealing “registered post” and substituting “post”;
- (b) in subsection (2), by repealing “in the register by virtue of an order made under subsection (1)(b), (c) or (d)” and substituting “or an order in respect of practising certificate in the register by virtue of an order made under subsection (1)(b), (c), (d), (da) or (db)”.

#### **42. Appeals**

Section 41 is amended—

- (a) in subsection (1)(b)(iii), by repealing “paragraph (a), (b), (c) or (d) of”;
- (b) in subsection (3), by repealing from “The practice and procedure” up to and including “(Cap. 4)” and substituting “In any such appeal the Court of Appeal may exercise such powers as are vested in it by the High Court Ordinance (Cap. 4) and the practice and procedure shall be in accordance with rules of court made under that Ordinance”;
- (c) in subsection (3), in paragraph (d) of the proviso, by repealing “paragraph (a), (b), (c) or (d) of”.

#### **43. Application of disciplinary provisions to firms**

Section 41A is amended—

- (a) by adding “33B,” after “Sections”;
- (b) by repealing “34(1)(b)(iii) and (v), 35” and substituting “34(1)(b)(iii), 35, 35B, 36(1A)”;
- (c) by repealing “mutatis” and substituting “mutatis”;



- (d) by repealing “or public accountants” where it twice appears and substituting “(practising)”;
- (e) by adding “or, as the case may be, to a corporate practice” before “and so that in any proceedings against”.

#### 44. Section added

The following is added in Part V immediately after section 41A—

##### “41B. Immunity

(1) The chairman or a member of the Disciplinary Committee performing any function under or pursuant to this Part shall have the same privileges and immunities a judge of the Court of First Instance has in relation to civil proceedings in that court.

(2) A party to any hearing or any witness, counsel, solicitor or person representing a party appearing before a hearing shall have the same privileges or immunities such a party, witness, counsel, solicitor or person representing a party respectively would have had in relation to civil proceedings in the Court of First Instance.”.

#### 45. Investigation Panels

Section 42B is amended—

- (a) by repealing subsection (1) and substituting—

“(1) There shall be 2 Investigation Panels—

- (a) Investigation Panel A shall consist of not less than 18 lay persons appointed by the Chief Executive of whom one shall be appointed by the Chief Executive to be the Investigation Committee Convenor and another to be his alternate;
- (b) Investigation Panel B shall consist of not less than 12 certified public accountants appointed by the Council of whom not less than 6 shall be holders of practising certificates.

(1A) The Investigation Committee Convenor shall not be appointed for a term exceeding 1 year but shall be eligible for reappointment for a further term or terms of not exceeding 1 year each.

- (1B) The alternate of the Investigation Committee Convenor shall act in place of the Investigation Committee Convenor if the Investigation Committee Convenor is precluded by illness, absence from Hong Kong or any other cause from performing his functions as such.”;
- (b) in subsection (2), by repealing “the Investigation Panel” wherever it appears and substituting “any of the Investigation Panels”.

#### 46. Appointment of Investigation Committee

Section 42C is amended—

- (a) in subsection (1)—
- (i) by adding “the firm of certified public accountants (practising) or corporate practice,” after “accountant,”;
  - (ii) by adding “refer the matter to the Disciplinary Panels and” after “the Council may in its discretion”;
  - (iii) by repealing “and refer the matter to it,”;
  - (iv) by repealing “it under” and substituting “the Disciplinary Panels under”;
- (b) in subsection (2)(a)—
- (i) in subparagraph (i), by repealing “section 34(1)(a)(iii)” and substituting “section 34(1)(a)(iii), (xi) or (xii)”;
  - (ii) in subparagraph (ii), by repealing “or public accountants,” and substituting “(practising),”;
  - (iii) by adding—  
“(iii) section 34(1)(a) or (b), as applied by section 34(1AA), applies to a corporate practice,”;
  - (iv) by repealing “such a complaint” and substituting “a complaint”;
  - (v) by adding “or corporate practice” after “accountant or firm”;
- (c) by repealing subsection (2)(b)(i), (ii) and (iii) and substituting—
- (i) the Council shall direct the Investigation Committee Convenor to appoint the chairman and other members of the Investigation Committee and the Investigation Committee Convenor shall act in accordance with the direction;
  - (ii) the Investigation Committee shall consist of the following 5 members—

- (A) a person appointed by the Investigation Committee Convenor from Investigation Panel A who shall be the chairman of the Investigation Committee;
  - (B) 2 persons appointed by the Investigation Committee Convenor from Investigation Panel A; and
  - (C) 2 persons appointed by the Investigation Committee Convenor from Investigation Panel B of whom one shall be the holder of a practising certificate;
- (iii) the Investigation Committee Convenor shall not be appointed as a member of an Investigation Committee.”.

**47. Powers of Investigation Committee as regards its proceedings**

Section 42D(2) is repealed and the following substituted—

“(2) Subsection (1)(a) applies—

- (a) to the certified public accountant, firm of certified public accountants (practising) or corporate practice to whom the Investigation Committee’s proceedings relate and—
  - (i) where the proceedings relate to a certified public accountant, also to that accountant’s employer and former employer (if any) and to any employee or former employee of such accountant; and
  - (ii) where the proceedings relate to a firm of certified public accountants (practising) or corporate practice, also to any employee or former employee of such firm or corporate practice; and
- (b) to any certified public accountant, firm of certified public accountants (practising) or corporate practice other than those specified in paragraph (a), and any employee or former employee of such accountant, firm or corporate practice who is a certified public accountant or a student registered with the Institute.”.

**48. Section added**

The following is added in Part VA immediately after section 42G—

**“42H. Immunity**

No liability shall be incurred by any person in respect of anything done or omitted to be done by him in good faith in the performance or exercise or purported performance or exercise of any function or power under this Part.”.

**49. Offences and penalties**

Section 42 is amended—

- (a) in subsection (1)(e), by repealing “or public accountant” and substituting “(practising)”;
- (b) in subsection (1)(f), by repealing “or public accountant” and substituting “(practising)”;
- (c) in subsection (1)(g), by repealing “or public accountant” and substituting “(practising)”;
- (d) by repealing subsection (1)(h) and substituting—
  - “(h) not being a certified public accountant—
    - (i) knowingly permits the use of or uses in connection with his business, trade, calling or profession the description “professional accountant”, “certified public accountant” or “certified accountant”, or the characters “專業會計師”, “會計師” or “註冊會計師”, or any written words, initials or abbreviations of words intended to cause, or which may reasonably cause, any person to believe that the person using the same is a certified public accountant; or
    - (ii) uses after or in conjunction with his name the initials “CPA”;;
- (e) in subsection (1)(ha)—
  - (i) in subparagraph (i), by repealing “persons who are either a public accountant or a certified public accountant” and substituting “a person who is a certified public accountant (practising)”;
  - (ii) in subparagraph (ii), by repealing “or a public accountant” and substituting “(practising)”;
  - (iii) in subparagraph (iii), by repealing ““certified public accountant” or “public accountant” or uses after or otherwise in conjunction with its name the initials “C.P.A.” or “P.A.”” and substituting ““certified public accountant (practising)” or “public accountant” or uses after or otherwise in conjunction with its name the initials “CPA (practising)” or “PA””;

- (f) in subsection (1)(i)—
  - (i) by adding “or not being a practice unit the firm name of which is registered under section 28A” after “holding a practising certificate”;
  - (ii) in subparagraph (i), by repealing “or public accountant” and substituting “(practising)”;
  - (iii) in subparagraph (ii), by repealing ““certified public accountant” or “public accountant” or uses after or in conjunction with his name the initials “C.P.A.” or “P.A.” ” and substituting ““certified public accountant (practising)” or “public accountant” or uses after or in conjunction with his name the initials “CPA (practising)” or “PA””;
- (g) in subsection (1), by adding—
  - “(ia) being a certified public accountant who does not hold a practising certificate, carries on a business, trade or profession in a name or style—
    - (i) otherwise than his own name without any addition as registered under section 22(2); and
    - (ii) which includes the description “certified public accountant”, the initials “CPA” or the characters “會計師”;
- (h) in subsection (1)(l), by repealing “a professional accountant, a firm of certified public accountants or public accountants” and substituting “a certified public accountant (practising), a firm of certified public accountants (practising)”;
- (i) in subsection (1)(ii), by repealing “or public accountants” and substituting “(practising)”;
- (j) in subsection (2), by repealing “or public accountant” and substituting “(practising)”.

## 50. Construction of references to auditors

Section 43 is repealed.

## 51. Fees and expenses

Section 45 is amended by repealing “or public accountant” and substituting “(practising)”.