

LEGISLATIVE COUNCIL BRIEF

Professional Accountants Ordinance (Chapter 50)

PROFESSIONAL ACCOUNTANTS (AMENDMENT) BYLAW 2006

INTRODUCTION

A At the meeting of the Executive Council on 28 February 2006, the Council **ADVISED** and the Chief Executive **ORDERED** that the Professional Accountants (Amendment) Bylaw 2006, at **Annex A**, should be made under section 8 of the Professional Accountants Ordinance.

JUSTIFICATIONS

Powers of the Institute

2. The Hong Kong Institute of Certified Public Accountants (the Institute) is a professional body established under the Professional Accountants Ordinance (the Ordinance), with a wide range of powers and responsibilities conferred upon it for the registration and training of certified public accountants (CPAs), maintenance of accounting, auditing and assurance, and ethical standards, and regulation of the practice of the accountancy profession. Under section 8(1) of the Ordinance, the Institute may, subject to the approval of the Chief Executive in Council, make bylaws to, among others, regulate the election of elected members of the Council of the Institute (the Council) and meetings of the Institute.

Ballot for Elected Members of the Council

3. The Council is the governing body of the Institute¹. For the purpose of the election of elected members of the Council at an annual general meeting, a CPA shall be sent a ballot paper not less than 17 days prior to the meeting to cast the vote. In order to ensure that sufficient time is allowed for the counting of the ballot papers by the auditor of the Institute under bylaw 3(4A) and the preparation of the proceedings of the ensuing annual general meeting, the Institute intends to amend the Professional Accountants By-laws (the By-laws) to provide that the ballot papers must be returned to the Registrar of the Institute not less than 72 hours (instead of 48 hours, as prescribed in the pre-amended By-laws) before the annual general meeting.

Chairman of the General Meeting of the Institute

4. Bylaw 17(1) provides that the President of the Institute shall be the chairman at a general meeting of the Institute. Bylaw 17(1A) provides for the chairmanship arrangement in the absence of the President. The Institute intends to bring the provisions governing the chairmanship of the general meetings of the Institute in line with those set out in bylaw 7(1A) governing the chairmanship of the meetings of the Council. In essence, the revised arrangement is such that, in the absence of the President at a general meeting of the Institute, the longest serving Vice-President² present shall become the chairman of the meeting. If the longest serving Vice-President is absent, the other Vice-President present shall be the chairman. If both Vice-Presidents are present but neither is the longest serving Vice-President, the CPAs present at the meeting shall elect one of the Vice-Presidents as the chairman³.

¹ Section 17(1) of the Ordinance provides, among others, that the management and control of the Institute and of its property shall be vested in the Council. Under section 10 of the Ordinance, the Council shall consist of a maximum of 23 persons, 14 of whom shall be CPAs elected at an annual general meeting of the Institute. The other Council members include the Financial Secretary or his representative, the Director of Accounting Services or his representative, the immediate past President of the Institute, two co-opted members, and four lay persons appointed by the Chief Executive.

² Pursuant to bylaw 7(1A)(a), “longest serving Vice-President” means, as between the two Vice-Presidents –

- (i) the Vice-President who has in aggregate served the longest period as a Vice-President; and
- (ii) if both Vice-Presidents have in aggregate served the same period as Vice-Presidents, the Vice-President who has in aggregate served the longest period as a member of the Council.

³ Pursuant to bylaw 17(2), if, 15 minutes after the time appointed for a general meeting, neither the President nor any of the Vice-Presidents is present, the CPAs present at the meeting may elect a member of the Council who is present (or, if no member of the Council is present, a CPA who is present) to be the chairman of the meeting.

Making of the Bylaw

5. The Professional Accountants (Amendment) Bylaw 2006 (the Amendment Bylaw) was made by the Institute at its 33rd Annual General Meeting held on 16 December 2005 pursuant to section 8(3) of the Ordinance, and has been duly certified by its President pursuant to section 8(2) of the Ordinance.

THE AMENDMENT BYLAW

6. **Section 2** of the Amendments Bylaw amends bylaw 3(4) by specifying the revised time limit (i.e. not less than 72 hours before an annual general meeting) under which completed ballot papers must be returned to the Registrar of the Institute for the purpose of the election to be held at that annual general meeting. **Section 3** amends bylaw 17(1A) by providing for the revised chairmanship arrangement of the general meetings of the Institute, as modelled on bylaw 7(1A) which governs the same in respect of the meetings of the Council.

B

7. The relevant provisions of the By-laws are at **Annex B**.

LEGISLATIVE TIMETABLE

8. The legislative timetable will be as follows -

Publication in the Gazette	10 March 2006
Tabling at the Legislative Council	15 March 2006
Commencement of the Amendment Bylaw	1 July 2006

IMPLICATIONS OF THE AMENDMENT BYLAW

9. The Amendment Bylaw is in conformity with the Basic Law, including the provisions concerning human rights, and will not affect the current binding effect of the Ordinance. It has no financial, economic, civil service, environmental or sustainability implications.

PUBLIC CONSULTATION

10. The passage of the Amendment Bylaw at the 33rd Annual General Meeting of the Institute signified the support of the Institute's members (i.e. CPAs). As the general public is unlikely to be affected or interested, public consultation is not required.

PUBLICITY

11. A Legislative Council brief will be issued. A spokesman from the Institute will be available for answering any media enquiries.

ENQUIRIES

12. Enquiries on this brief should be directed to Mr. Jackie Liu, Assistant Secretary for Financial Services and the Treasury (Financial Services), at 2527 3102 or Ms. Winnie Cheung, Chief Executive and Registrar of the Institute, at 2287 7037.

Financial Services and the Treasury Bureau
8 March 2006

LEGISLATIVE COUNCIL BRIEF

PROFESSIONAL ACCOUNTANTS (AMENDMENT) BYLAW 2006

Annex A - Professional Accountants (Amendment) Bylaw 2006

Annex B - Relevant sections of the existing legislation to be amended

**PROFESSIONAL ACCOUNTANTS (AMENDMENT)
BYLAW 2006**

(Made by the Hong Kong Institute of Certified Public Accountants under section 8 of the Professional Accountants Ordinance (Cap. 50) with the approval of the Chief Executive in Council)

1. Commencement

This Bylaw shall come into operation on 1 July 2006.

2. Ballot for elected members of Council

Bylaw 3(4) of the Professional Accountants By-laws (Cap. 50 sub. leg. A) is amended by repealing “48 hours” and substituting “72 hours”.

3. Chairman of general meeting of the Institute

Bylaw 17(1A) is repealed and the following substituted –

“(1A) (a) In this paragraph, “longest serving Vice-President” (年資最長的副會長) has the same meaning as in by-law 7(1A)(a).

(b) At a general meeting of the Institute, in the absence of the President –

(i) the longest serving Vice-President who is present shall be the chairman;

(ii) if the longest serving Vice-President is not present, the other Vice-President who is present shall be the chairman; and

(iii) if both Vice-Presidents are present but neither is the longest serving Vice-President, the certified public accountants present at the meeting shall elect one of the Vice-Presidents as the chairman.”.

Made by the Hong Kong Institute of Certified Public Accountants on
16 December 2005.

President,
Hong Kong Institute of Certified
Public Accountants

Certified by the President of the Hong Kong Institute of Certified Public
Accountants on 16 December 2005.

President,
Hong Kong Institute of Certified
Public Accountants

Approved by the Chief Executive in Council on 28 February 2006.

Clerk to the Executive Council

Explanatory Note

This Bylaw amends bylaws 3 and 17 of the Professional Accountants By-laws (Cap. 50 sub. leg. A) –

- (a) to provide that at an election of certified public accountants as members of the Council of the Hong Kong Institute of Certified Public Accountants, completed ballot papers must be returned to the Registrar not less than 72 hours before the annual general meeting at which the election is to be held; and
- (b) to bring the provisions governing the chairmanship of the general meetings of the Hong Kong Institute of Certified Public Accountants into line with those governing the chairmanship of the meetings of Council of the Institute.

Chapter:	50A	PROFESSIONAL ACCOUNTANTS BY-LAWS	Gazette Number	Version Date
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Bylaw:	3	Ballot for elected members of Council	23 of 2004	08/09/2004
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(1) If a ballot is to be held under section 13(1)(b) of the Ordinance, the Registrar shall, not less than 17 days prior to the annual general meeting, send a ballot paper to each certified public accountant. (L.N. 137 of 1977; 23 of 2004 s. 55)

(2) The ballot paper shall contain-

- (a) the names of the candidates, in alphabetical order of surnames, for election as members of the Council; and
- (b) a statement of the number of vacancies in respect of elected members of the Council.

(3) A certified public accountant shall be entitled to cast one vote in respect of each vacancy. (23 of 2004 s. 55)

(4) Completed ballot papers shall be returned to the Registrar not less than 48 hours before the annual general meeting at which the election is to be held.

(4A) The auditor of the Institute shall count the number of votes cast for each candidate and shall furnish to the Council a confidential report in writing on the number of votes so cast. (L.N. 137 of 1977; 23 of 2004 s. 55)

(5) The Council shall meet before the annual general meeting to receive from the auditor of the Institute the confidential report referred to in paragraph (4A) and to eliminate the candidates receiving the lowest number of votes until the number of candidates left equals the number of vacancies, and those candidates shall be deemed to have been elected. (L.N. 137 of 1977; 23 of 2004 s. 55)

(6) If an equality of votes is found to exist between any candidates, and the addition of one vote would entitle any candidate to be declared elected, the President shall have a casting vote to determine which of such candidates shall be deemed to have been elected.

(7) The Council may permit ballot papers to be sent and votes to be cast by electronic communication subject to such terms and conditions as the Council may determine. (23 of 2004 s. 55)

(8) For the purpose of this by-law-

- (a) "ballot paper" (選票) shall be deemed to include any electronic form of the same;
- (b) "electronic address" (電子地址) means any number or address used for the purposes of electronic communication;
- (c) "electronic communication" (電子通訊) means a communication sent by electronic transmission in any form through any medium; and
- (d) a ballot paper shall be deemed to have been sent or delivered on the day on which it is transmitted from the server or other device used by the Registrar or his agent; in proving such service or delivery by the Registrar it shall be conclusive to prove that the electronic address used for the electronic communication was the last known electronic address supplied by the certified public accountant for such purpose unless the Registrar or his agent is aware that there has been a failure of delivery to such address, in which case the ballot paper shall be sent to the certified public accountant by post or such other means at the absolute discretion of the Registrar; completed ballot papers shall be considered to be returned to the Registrar upon actual receipt by the Registrar at the electronic address designated by him for such purpose. (23 of 2004 s. 55)

[cf. S. Rhodesia by-law 6]

Chapter:	50A	PROFESSIONAL ACCOUNTANTS BY-LAWS	Gazette Number	Version Date
Bylaw:	17	Chairman of general meeting of the Institute	23 of 2004	08/09/2004

Chairman of general meeting of the Institute

(23 of 2004 s. 55)

(1) The President shall be chairman at a general meeting of the Institute.

(1A) In the absence of the President, the Vice-President who is present, or if both Vice-Presidents are present, the Vice-President who has been longest in office since his last election as a member of the Council, shall be chairman at a general meeting of the Institute, and if both Vice-Presidents have been in office as members of the Council for the same period of time since their last election, the certified public accountants present at the meeting shall elect one of the Vice-Presidents as chairman of the meeting. (96 of 1994 s. 36)

(2) If, 15 minutes after the time appointed for a general meeting of the Institute, neither the President nor any of the Vice-Presidents is present, the certified public accountants present at the meeting may elect-

(a) a member of the Council who is present; or

(b) if no member of the Council is present, a certified public accountant who is present, to be chairman of the meeting.

(96 of 1994 s. 36; 23 of 2004 s. 55)