

立法會
Legislative Council

LC Paper No. CB(1)961/05-06
(These minutes have been seen
by the Administration)

Ref: CB1/BC/13/04

Bills Committee on Financial Reporting Council Bill

**Minutes of the eighth meeting held on
Thursday, 12 January 2006, at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon TAM Heung-man (Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon Bernard CHAN, JP
Hon CHAN Kam-lam, SBS, JP
Hon SIN Chung-kai, JP
Dr Hon Philip WONG Yu-hong, GBS
- Public officers attending** : Mr Albert LAM
Deputy Secretary for Financial Services and the Treasury
(Financial Services)
- Mr Alan LO
Principal Assistant Secretary for Financial Services and the
Treasury (Financial Services)
- Mr Jackie LIU
Assistant Secretary for Financial Services and the Treasury
(Financial Services)

Mr Gordon JONES, JP
Registrar of Companies

Mr Lawrence PENG
Senior Assistant Law Draftsman
Department of Justice

Miss Selina LAU
Government Counsel
Department of Justice

Clerk in attendance : Miss Salumi CHAN
Chief Council Secretary (1)5

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Ms Connie SZETO
Senior Council Secretary (1)4

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- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)664/05-06 — Minutes of sixth meeting held
on 6 December 2005)

The minutes of the sixth meeting held on 6 December 2005 were confirmed.

- II. Meeting with the Administration**
(LC Paper No. CB(1)420/05-06(01) — “Follow-up to the fifth meeting
on 17 November 2005”
prepared by the Legislative
Council Secretariat
- LC Paper No. CB(1)548/05-06(01) — “Follow-up to the sixth meeting
on 6 December 2005” prepared
by the Legislative Council
Secretariat

- LC Paper No. CB(1)665/05-06(01) — Paper provided by the Administration on “Follow-up actions arising from the meeting held on 6 December 2005”
- LC Paper No. CB(1)286/05-06(03) — Paper provided by the Administration on “Component Two — Audit Investigation Board”
- LC Paper No. CB(1)665/05-06(02) — Section 187 of Securities and Futures Ordinance – Part VIII
- LC Paper No. CB(1)665/05-06(03) — Clause 180 of Securities and Futures Bill – Part VIII
- LC Paper No. CB(1)665/05-06(04) — Extracts of verbatim transcript for meeting of Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000 held on 17 July 2001
- LC Paper No. CB(1)665/05-06(05) — Extracts of LC Paper No. CB(1)925/00-01(02) — Administration’s response to “Supplement to the Comparison Table for Part VIII of the Securities and Futures Bill” prepared by the Legal Service Division of the Legislative Council
- LC Paper No. CB(1)665/05-06(06) — “Follow-up to the seventh meeting on 20 December 2005” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)665/05-06(07) — Paper provided by the Administration on “Follow-up actions arising from the meeting held on 20 December 2005”

- LC Paper No. CB(1)420/05-06(02) — Paper provided by the Administration on “Component Three — Financial Reporting Review Panel and Financial Reporting Review Committee”
- LC Paper No. CB(1)665/05-06(08) — Paper provided by the Administration on “Component Four — Miscellaneous matters”
- LC Paper No. CB(1)665/05-06(09) — Paper provided by the Administration on “Component Five — Consequential and related amendments”
- LC Paper No. CB(1)166/05-06(03) — Paper provided by the Administration on “Summary of submissions and Administration’s responses”

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).
3. Mr Ronny TONG declared interest that he was involved in the Court of Appeal case “Chao Pak Ki & Another v Hong Kong Society of Accountants [2005] CACV 12/2005” referred to in footnote 5 of LC Paper No. CB(1)665/05-06(07).

Follow-up actions to be taken by the Administration

4. At the request of the Bills Committee, the Administration agreed to take the following actions:

Funding of the Financial Reporting Council (FRC)

- (a) The Administration had undertaken at the meeting held on 7 October 2005 to revert to the Bills Committee as early as practicable on the outcome of the Administration’s discussion with the Hong Kong Institute of Certified Public Accountants (HKICPA), the Securities and Futures Commission (SFC), and the Hong Kong Exchanges and Clearing Company Limited (HKEx) on whether the proposed annual budget of \$10 million and reserve fund of \$10 million would be sufficient for the effective operation of the FRC, and whether additional resources should be injected to the FRC. Apart from the points of concern expressed by members at previous meetings, the Administration was also requested to take into account the following points raised by members:
- (i) The need for the FRC to employ competent staff and experts to

undertake investigation of the Audit Investigation Board (AIB) and enquiry of the Financial Reporting Review Committees (FRRCs);

- (ii) The future workload of the AIB and FRRCs, including increase in workload arising from the surge in the number of cases; and
- (iii) The need for the FRC to meet substantial legal costs arising from litigations against its decisions.

Use of incriminating evidence in criminal proceedings

(b) Having noted the Administration's response to the concern about the proposal to abrogate the common law privilege against self-incriminating (clause 31(9)) and replace it with a statutory prohibition against the admissibility of self-incriminating evidence in criminal proceedings (clause 30(2)) (paragraph 15 of LC Paper No. CB(1)665/05-06(01)), some members raised further questions on clause 30(2). In this connection, the Administration was requested to provide a written response covering the following items:

- (i) Justifications for not applying the statutory prohibition against the admissibility of self-incriminating evidence in criminal proceedings provided in clause 30(2) to the explanations or statement in which the person concerned was charged with an offence under Part V of the Crimes Ordinance (Cap. 200), or for perjury; and
- (ii) In connection with item (i) above, the exclusion of Part V of the Crimes Ordinance and perjury cases from the application of clause 30(2) might result in a situation where the information provided by a person to the AIB, which was different from the false information provided by the same person to another body in the latter's proceedings, such as a proceeding conducted by the SFC, might be admitted as evidence against the person concerned for having given false information to the other body. The Administration was requested to clarify its policy intent in this regard and examine whether the policy intent was clearly reflected in clause 30(2).

Organizational structure of a FRRC

- (c) In order to enhance the transparency of the operation of the FRRC, the Administration undertook to consider proposing a Committee Stage amendment (CSA) requiring the FRC or a FRRC to inform the parties concerned of the change in the membership of the FRRC (paragraph 7 of LC Paper No. CB(1)665/05-06(07)).
- (d) According to the Administration, a change in the membership of a FRRC

during the course of an enquiry would not by itself constitute a breach of the principles of natural justice, and would not affect a FRRC's legal status and thus, the legality of evidence collected by it (paragraph 6 of LC Paper No. CB(1)665/05-06(07)). The Administration was requested to examine whether the drafting of the relevant provisions in the Bill was clear enough to ensure that a FRRC's legal status, or the legality of its evidence, would not otherwise be subject to grounded legal challenge in the event of a change in its membership.

- (e) Some members were of the view that the Administration's written response (paragraphs 8 to 10 of LC Paper No. CB(1)665/05-06(07)) had not fully addressed the concerns expressed at the meeting on 20 December 2005 about the operation of a FRRC in the absence of a quorum requirement. The Administration was requested to consider and respond to the further views expressed by members and/or the legal adviser to the Bills Committee, as follows:
 - (i) In the absence of a quorum requirement for FRRC meetings, it was not clear as to whether a FRRC with the participation of less than five members would meet the requirement of clause 41(1) that a FRRC was to consist of at least five members of the Financial Reporting Review Panel (FRRP); and if it would meet the requirement of clause 41(1), then a FRRC with the participation of only one member could conduct enquiries and make decisions, and the legality of the decisions made might be subject to legal challenge. The Administration was requested to clarify its policy intent in this regard and consider whether the drafting of the relevant provisions needed to be revised to clearly reflect the policy intent. In this connection, the Administration was requested to consider providing in the Bill an upper limit on the number of members of a FRRC and a quorum requirement for its meetings;
 - (ii) In connection with item (i) above, consideration should be given to appoint more than five members to a FRRC; and
 - (iii) In connection with item (i) above, the Administration had pointed out that section 51(a) of the Interpretation and General Clauses Ordinance (Cap. 1) provided that where any committee was established by or under any Ordinance, the powers of such committee should not be affected by any vacancy in the membership thereof. Given that clause 41(1) set out the minimum number of members of a FRRC, it would appear that the general principle in section 51(a) of Cap. 1 might not apply when there was a vacancy in the membership of a FRRC.

Immunity

- (f) The Administration undertook to consider proposing a CSA to clause 53 to include an additional immunity clause to the effect that a person who complied with a requirement under any provision of the Financial Reporting Council Ordinance should not incur any civil liability to any person by reason only of that compliance (paragraph 17 of LC Paper No. CB(1)665/05-06(07)).
- (g) In connection with item (f) above, the Administration was requested to consider and respond to a member's suggestion that it should be clearly set out in the Bill that the additional immunity in clause 53 should not affect the legal professional privilege in clause 55.

Checks and balances of a FRRC

- (h) The Administration undertook to consider proposing a CSA to the effect that any person who might be the subject of any criticism in a FRRC's enquiry report should be given a reasonable opportunity of being heard (paragraph 14 of LC Paper No. CB(1)420/05-06(02)).

Enquiry report of a FRRC

- (i) The Administration undertook to consider proposing a CSA to clause 47 to carve out the admissibility of FRRC's enquiry reports in criminal proceedings as evidence of the facts stated in the reports (paragraph 16 of LC Paper No. CB(1)420/05-06(02)).
- (j) Clause 48 provided that upon consideration of the FRRC's enquiry report, the FRC might secure the removal of the relevant financial non-compliance by seeking the voluntary revision of accounts by the directors of the listed entity concerned (clause 49) or mandatory revision of accounts through the application of a court order (clause 50). In this connection, the Administration was requested to provide a written response to the concerns of members, as follows:
 - (i) Given that listed entities' compliance with the FRC's request under clause 49 was voluntary and that non-compliance would not amount to an offence or other sanctions, the listed entities concerned might not comply with the FRC's request. While the FRC might apply to the court for an order under clause 50, the court's decisions in this regard were appealable. As a result, the FRC might be involved in lengthy legal proceedings, thus incurring substantial legal costs;
 - (ii) According to the Administration, the publication of FRRC's enquiry reports would exert public pressure on the listed entities concerned to rectify the relevant financial non-compliances. Moreover, listed entities were required under Appendix 16 of the

Listing Rules to comply with the International Accounting Standards and relevant accounting requirements under the Companies Ordinance (Cap. 32) in preparing their financial reports. The HKEx might, based on the published enquiry reports, take appropriate follow-up action on the listed entities for any non-compliance with the requirements in Appendix 16 of the Listing Rules. In this connection, the Administration was requested to provide information and respond to members' view, as follows:

- To provide a copy of the Appendix 16 of the Listing Rules with information on sanctions for non-compliance with the requirements stated therein; and
- In connection with item (i) above, the Administration should consider whether the FRC was provided with sufficient powers under clauses 49 and 50 to seek rectification of the relevant financial non-compliances, and the need of providing the FRC with additional power in this respect.

Comparison of powers of the AIB and a FRRC

(k) Members noted that failure to comply with an information-gathering requirement without reasonable excuse imposed by the AIB was an offence (clause 31) or might result in an application by the AIB for a court order compelling compliance or sanctioning the failure (clause 32). However, failure to co-operate with a FRRC with respect to a requirement under clause 43 was not an offence, but a FRRC might apply to the court under clause 45 for an order that the person should comply with the information-gathering requirement imposed by the FRRC. In this connection, the Administration was requested to provide a written response to the concerns of members and/or the legal adviser to the Bills Committee, as follows:

- (i) Whether it was justified to provide a FRRC with less extensive powers than the AIB;
- (ii) Given that failure to co-operate with a FRRC with respect to a requirement under clause 43 was not an offence, it might result in a situation where the parties concerned might not co-operate with the FRRC, thus undermining the effectiveness and efficiency of its enquiry work. It might also increase the resources required for completing an enquiry and involve the FRRC in lengthy legal proceedings; and
- (iii) Under the Professional Accountants Ordinance (Cap. 50), the HKICPA might initiate disciplinary proceedings against a professional accountant who had failed to comply with the

requirements of its Investigation Committee. It was however not clear in the Bill whether professional accountants failing to comply with the requirements of the AIB or a FRRC would be subject to disciplinary proceedings of the HKICPA.

Date of the next meeting

5. The Chairman reminded members that the next meeting would be held on Monday, 23 January 2006, at 8:30 am.

III. Any other business

6. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
Legislative Council Secretariat
23 February 2006

**Proceedings of the eighth meeting of the
Bills Committee on Financial Reporting Council Bill
on Thursday, 12 January 2006, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000345	Chairman	Confirmation of minutes of meeting (LC Paper No. CB(1)664/05-06)	
000346-001429	Administration Chairman Ms Emily LAU	<p>Matters arising from the sixth meeting on 6 December 2005 (LC Paper Nos. CB(1)548/05-06(01) & 665/05-06(01))</p> <p><u>Interface between investigation and disciplinary proceedings</u> (Paragraphs 2 to 4 of LC Paper No. CB(1) 665/05-06(01))</p> <p>Briefing by the Administration</p> <p><u>Composition and resource requirements of the Audit Investigation Board (AIB) and funding of the Financial Reporting Council (FRC)</u> (Paragraphs 5 to 9 of LC Paper No. CB(1) 665/05-06(01))</p> <p>(a) Briefing by the Administration</p> <p>(b) The Administration's response to members' enquiries, as follows:</p> <p>(i) On the proposed</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>number of members for the AIB upon its establishment, it was envisaged that the FRC might appoint full-time senior investigation officers of the FRC, or other consultants, agents and advisers to the AIB, who would assist the Chief Executive Officer to undertake the investigation work. Where the situation warranted, clause 22(2)(b) also allowed the FRC to appoint members of the Council as members of the AIB; and</p> <p>(ii) As regards the discussion among the Administration, the Hong Kong Institute of Certified Public Accountants (HKICPA), the Securities and Futures Commission (SFC), and the Hong Kong Exchanges and Clearing Company Limited (HKEx) on whether additional resources should be injected into the FRC, the Administration would revert to the Bills Committee on the</p>	

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		<p>outcome as early as practicable</p> <p>(c) Request for the Administration, apart from the points of concern expressed by members at previous meetings, to take into account the following points in considering whether additional resources should be injected into the FRC:</p> <p>(i) The need for the FRC to employ competent staff and experts to undertake investigation of the AIB and enquiry of the Financial Reporting Review Committees (FRRCs); and</p> <p>(ii) The future workload of the AIB and FRRCs, including increase in workload arising from the surge in the number of cases</p>	<p>The Administration to take action under paragraph 4(a)(i) and (ii) of the minutes</p>
001430-001700	Ms Emily LAU Administration Chairman	<p><u>“Reasonable opportunity of being heard” for persons under criticism by the AIB’s report</u></p> <p>The Administration’s confirmation that as undertaken in the meeting held on 6 December 2005, the Administration would consider proposing a Committee Stage Amendment (CSA) to put in place a statutory protection for</p>	

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		<p>persons who might be the subject of any criticism in an AIB's investigation report by providing them with a "reasonable opportunity of being heard" before the AIB submitted its report to the FRC (paragraph 9 of LC Paper No. CB(1)665/05-06(01))</p>	
001701-002129	<p>Chairman Administration</p>	<p><u>Powers of the AIB</u> (Paragraphs 10 to 13 of LC Paper No. CB(1)665/05-06(01))</p> <p>(a) Briefing by the Administration</p> <p>(b) The Administration's advice in response to the Chairman's enquiry that, if during the AIB's investigation, there was evidence suggesting that a case might involve commission of a criminal offence, the FRC might direct the AIB to cease investigation and refer the case to the relevant law enforcement agencies. If the criminal investigation revealed that professional misconduct might be involved, the FRC might consider undertaking investigation into the matter</p>	
002130-004419	<p>Mr Ronny TONG Administration Chairman Ms Emily LAU Assistant Legal</p>	<p>Checks and balances of the AIB (Paragraphs 14 to 18 of LC Paper No. CB(1)665/05-06(01))</p> <p>Briefing by the Administration</p>	

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	Adviser 6 (ALA6)	<p><u>Use of incriminating evidence in criminal proceedings or disciplinary proceedings</u> (Paragraph 15 of LC Paper No. CB(1)665/05-06(01))</p> <p>(a) Briefing by ALA6 on the relevant discussions of the Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000 (BC on SFB & B(A)B) on the use of incriminating evidence in criminal proceedings (LC Paper Nos. CB(1)665/05-06(02) to (05)), as follows:</p> <p>(i) Clause 180 of the SFB (which was subsequently re-numbered as section 187 after the enactment of the Securities and Futures Ordinance (Cap. 571) was similar to clause 30 of this Bill;</p> <p>(ii) The BC on SFB & B(A)B had raised concern about admissibility of self-incriminating evidence in criminal and other proceedings under the SFB, and the Administration's response was set out in LC Paper No. CB(1)665/05-06(05);</p>	

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		<p>and</p> <p>(iii) The BC on SFB & B(A)B agreed with the Administration's proposal after deliberation.</p> <p>(b) Members' request for the Administration to provide a written response to their enquiries/suggestions, as follows:</p> <p>(i) On the proposal of abrogating the common law privilege against self-incriminating (clause 31(9)) and replacing it with a statutory prohibition against the admissibility of self-incriminating evidence in criminal proceedings (clause 30(2)), what were the justifications for not applying the statutory prohibition provided in clause 30(2) to the explanations or statement in which the person concerned was charged with an offence under Part V of the Crimes Ordinance (Cap. 200), or for perjury? and</p> <p>(ii) In connection with item (i) above, the</p>	<p>The Administration to take action under paragraph 4(b)(i) and (ii) of the minutes</p>

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		<p>exclusion of Part V of the Crimes Ordinance and perjury cases from the application of clause 30(2) might result in a situation where the information provided by a person to the AIB, which was different from the false information provided by the same person to another body in the latter's proceedings, such as a proceeding conducted by the SFC, might be admitted as evidence against the person concerned for having given false information to the other body. The Administration should clarify its policy intent in this regard and examine whether the policy intent was clearly reflected in clause 30(2)</p> <p>(c) In respect of item (b)(ii) above, the Administration's advice, as follows:</p> <p>(i) A self-incriminating statement given by a person during an AIB investigation would be admissible in evidence against the person in criminal proceedings in</p>	

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		<p>which the person was charged with an offence under Part V of the Crimes Ordinance, or for perjury, in respect of the statement. In such proceedings, the statement might be used as evidence to prove that the statement had been made by the person rather than to establish the truth of its contents; and</p> <p>(ii) The present drafting of clause 30(2) provided that the self-incriminating statement given by a person was admissible in evidence against the person in criminal proceedings under Part V of the Crimes Ordinance or for perjury, in respect of the statement. This would not result in the situation mentioned in item (b)(ii) above.</p>	
004420-010849	<p>Chairman Administration Ms Emily LAU Mr Ronny TONG ALA6</p>	<p>Matters arising from the seventh meeting on 20 December 2005 (LC Paper Nos. CB(1)665/05-06(06) & (07))</p> <p><u>Organizational structure of a FRRC</u> (Paragraphs 2 to 10 of LC Paper No. CB(1)665/05-06(07))</p>	

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		<p>(a) Briefing by the Administration</p> <p>(b) Mr Ronny TONG's declaration of interest that he was involved in the Court of Appeal case "<u>Chao Pak Ki & Another v Hong Kong Society of Accountants</u> [2005] CACV 12/2005" referred to in footnote 5 of LC Paper No. CB(1)665/05-06(07)</p> <p>(c) The Administration's advice that a change in the membership of a FRRC during the course of an enquiry would not by itself constitute a breach of the principles of natural justice, and would not affect a FRRC's legal status and thus, the legality of evidence collected by it (paragraph 6 of LC Paper No. CB(1)665/05-06(07))</p> <p>(d) A member's view that during a police investigation, it was not uncommon for the investigation team to change one of its members. He agreed with the Administration's view that, as a matter of principle, a change in the membership of a FRRC during the course of an enquiry would not of itself constitute a breach of the</p>	

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		<p>principles of natural justice.</p> <p>(e) Members' view and request for the Administration to examine whether the drafting of the relevant provisions in the Bill was clear enough to ensure that a FRRC's legal status, or the legality of its evidence, would not otherwise be subject to grounded legal challenge in the event of a change in its membership</p> <p>(f) The Administration undertook to consider proposing a CSA requiring the FRC or a FRRC to inform the parties concerned of the change in the membership of the FRRC (paragraph 7 of LC Paper No. CB(1)665/05-06(07))</p> <p>(g) The Administration's advice that -</p> <p>(i) It was envisaged that the FRC would in the first place appoint suitable candidates from the Financial Reporting Review Panel (FRRP) to a FRRC. In making the appointment, the FRC would take into account all relevant considerations including the need to</p>	<p>The Administration to take action under paragraph 4(d) of the minutes</p> <p>The Administration to take action under paragraph 4(c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>avoid the appointed members from facing a conflict of interest situation;</p> <p>(ii) Section 51(a) of Cap. 1 provided that, where a committee was established by or under any Ordinance, the powers of such committee should not be affected by any vacancy in the membership thereof. The application of section 51(a) of Cap. 1 to the FRRC had not been excluded by any contrary intention from the Bill.</p> <p>(h) Members' and ALA6's views, as follows:</p> <p>(i) The Administration's written response (paragraphs 8 to 10 of LC Paper No. CB(1)665/05-06(07)) had not fully addressed the concerns expressed at the meeting on 20 December 2005 about the operation of a FRRC in the absence of a quorum requirement;</p> <p>(ii) In the absence of a quorum requirement for FRRC meetings, it was</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>not clear as to whether a FRRC with the participation of less than five members would meet the requirement of clause 41(1) that a FRRC was to consist of at least five members of the FRRP; and if it would meet the requirement of clause 41(1), then a FRRC with the participation of only one member might conduct enquiries and make decisions, and the legality of the decisions made might be subject to legal challenge. The Administration was requested to clarify its policy intent in this regard and consider whether the drafting of the relevant provisions needed to be revised to clearly reflect the policy intent; and</p> <p>(iii) Given that clause 41(1) set out the minimum number of members of a FRRC, it would appear that the general principle in section 51(a) of Cap. 1 might not apply when there was a vacancy in the membership of a FRRC</p>	<p>The Administration</p>
		<p>(i) Request for the</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>Administration to take the following actions:</p> <ul style="list-style-type: none"> (i) To consider and respond to the views expressed by members/ALA6 in item (h)(ii), (iii) above; (ii) To consider providing in the Bill an upper limit on the number of members of a FRRC and a quorum requirement for its meetings; and (iii) To consider appointing more than five members to a FRRC 	<p>to take action under paragraph 4(e)(i),(ii) and (iii) of the minutes</p>
010850-011720	<p>Chairman Administration Ms Emily LAU Mr Ronny TONG ALA6</p>	<p><u>Jurisdiction of a FRRC</u> (Paragraphs 11 to 15 of LC Paper No. CB(1)665/05-06(07))</p> <p>Briefing by the Administration</p> <p><u>Enquiry powers of a FRRC</u> (Paragraphs 16 to 18 of LC Paper No. CB(1)665/05-06(07))</p> <ul style="list-style-type: none"> (a) Briefing by the Administration (b) The Administration's undertaking to consider proposing a CSA to clause 53 to include an additional immunity clause to the effect that a person who complied with a requirement under any 	<p>The Administration to take action under paragraph 4(f) of the minutes</p>

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		<p>provision of the Financial Reporting Council Ordinance should not incur any civil liability to any person by reason only of that compliance (paragraph 17 of LC Paper No. CB(1)665/05-06(07))</p> <p>(c) Member's enquiry about the purpose for the proposed CSA referred to in item (b) above</p> <p>(d) ALA6's view that it was necessary to provide the proposed immunity under clause 53 as without the immunity, a person disclosing the information might incur civil liability for doing so if he was prohibited from disclosing the information under statutory or contractual requirements</p> <p>(e) In connection with item (b) above, a member's request for the Administration to consider and respond to his suggestion that it should be clearly set out in the Bill that the additional immunity in clause 53 should not affect the legal professional privilege in clause 55</p>	<p>The Administration to take action under paragraph 4(g) of the minutes</p>
011721-011902	Chairman Administration	<u>Check and balances of a FRRC</u> (Paragraphs 13 and 14 of LC Paper No. CB(1)420/05-06(02))	

Time marker	Speaker	Subject(s)	Action Required
		<p>(a) Briefing by the Administration</p> <p>(b) The Administration's undertaking to consider proposing a CSA to the effect that any person who might be the subject of any criticism in a FRRC's enquiry report should be given a reasonable opportunity of being heard (paragraph 14 of LC Paper No. CB(1)420/05-06(02))</p>	<p>The Administration to take action under paragraph 4(h) of the minutes</p>
011903-012754	<p>Administration Chairman Ms Emily LAU Mr Albert HO ALA6</p>	<p><u>Post-enquiry actions and enquiry report of a FRRC</u> (Paragraphs 15 to 21 of LC Paper No. CB(1)420/05-06(02))</p> <p>(a) Briefing by the Administration, as follows:</p> <p>(i) The Administration would consider proposing a CSA to clause 47 to carve out the admissibility of FRRC's enquiry reports in criminal proceedings as evidence of the facts stated in the reports (paragraph 16 of LC Paper No. CB(1)420/05-06(02));</p> <p>(ii) Clause 48 provided that upon consideration of the FRRC's enquiry report, the FRC might close or suspend the case; secure the</p>	<p>The Administration to take action under paragraph 4(i) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>removal of the relevant financial non-compliance by seeking the voluntary revision of accounts by the directors of the listed entity concerned (clause 49) or mandatory revision of accounts through the application of a court order (clause 50); or carry out such other follow-up action as the FRC considered fit; and</p> <p>(iii) Court's decisions under clause 50 were appealable</p> <p><u>Comparison of powers of the AIB and a FRRC</u> (Paragraphs 22 and 23 of LC Paper No. CB(1)420/05-06(02))</p> <p>The Administration's advice, as follows:</p> <p>(a) Failure to comply with an information-gathering requirement without reasonable excuse imposed by the AIB was an offence (clause 31) or might result in an application by the AIB for a court order compelling compliance or sanctioning the failure (clause 32); and</p> <p>(b) Failure to co-operate with a FRRC with respect to a</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>requirement under clause 43 was not an offence, but a FRRC might apply to the court under clause 45 for an order that the person should comply with the information-gathering requirement imposed by the FRRC</p> <p><u>Enquiry report of a FRRC</u></p> <p>(a) Member’s enquiry about the possible sanctions on listed entities for non-compliance with a court order applied under clause 50</p> <p>(b) A member’s advice that non-compliance with a court order might amount to a contempt of the court</p> <p>(c) ALA6’s advice that contravention of a court order might result in penalties including fines and imprisonment</p>	
012755-015613	<p>Chairman ALA6 Administration Ms Emily LAU Mr Albert HO</p>	<p><u>Comparison of powers of the AIB and a FRRC, and enquiry report of a FRRC</u></p> <p>(a) Request for the Administration to provide a written response to members’ and ALA6’s concerns, as follows:</p> <p>(i) Whether it was justified to provide a FRRC with</p>	<p>The Administration to take action under paragraph 4(k)(i) and (ii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>less extensive powers than the AIB; and</p> <p>(ii) Given that failure to comply with a FRRC requirement under clause 43 was not an offence, it might result in a situation where the parties concerned might not co-operate with the FRRC, thus undermining the effectiveness and efficiency of its enquiry work. It might also increase the resources required for completing an enquiry and involve the FRRC in lengthy legal proceedings</p> <p>(b) The Administration's response, as follows:</p> <p>(i) The Administration considered it appropriate for the enquiry powers of a FRRC to be less extensive than the investigation powers of the AIB given that the issues for a FRRC to consider would more likely involve different interpretations of accounting standards or requirement, which could be contrasted with the misconduct of</p>	

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		<p>an auditor to be investigated by the AIB;</p> <p>(ii) In view of the differences in the nature of the matters to be handled by the AIB and a FRRC, the present proposed powers for a FRRC was considered sufficient;</p> <p>(iii) The current proposal for the FRRC was similar to the modus operandi of the United Kingdom (UK) FRRP under the UK Companies Act 1985. Clause 50 was modelled on section 245B of the UK Companies Act 1985. According to the UK experience, entities had complied with the FRRP's request for revision of accounts voluntarily. It should be noted that to date the UK FRRP had succeeded in resolving all cases without recourse to court; and</p> <p>(iv) The proposed enquiry powers of a FRRC and the investigation powers of the AIB were supported by majority</p>	

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		<p>of the respondents to the public consultations conducted by the Administration in 2003 and 2005 on the establishment of the FRC</p> <p>(c) Members' concerns, as follows:</p> <p>(i) Given that listed entities' compliance with the FRC's request under clause 49 was voluntary and that non-compliance would not amount to an offence or other sanctions, the listed entities concerned might not comply with the FRC's request; and</p> <p>(ii) While the FRC might apply to the court for an order under clause 50, the court's decisions in this regard were appealable. As a result, the FRC might be involved in lengthy legal proceedings, thus incurring substantial legal costs</p> <p>(d) The Administration's response, as follows:</p> <p>(i) It was believed that the publication of FRRC's</p>	

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		<p>enquiry reports would exert public pressure on the listed entities concerned to rectify the relevant financial non-compliances; and</p> <p>(ii) Listed entities were required under Appendix 16 of the Listing Rules to comply with the International Accounting Standards and relevant accounting requirements under the Companies Ordinance (Cap. 32) in preparing their financial reports. The HKEx might, based on the published enquiry reports, take appropriate follow-up action on the listed entities for any non-compliance with the requirements in Appendix 16 of the Listing Rules.</p> <p>(e) Request for the Administration to take the following actions:</p> <p>(i) To provide a written response to the concerns in item (c) above;</p> <p>(ii) To provide a copy of the Appendix 16 of the</p>	<p>The Administration to take action under paragraph 4(j)(i) and (ii) of the minutes</p>

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		<p>Listing Rules with information on sanctions for non-compliance with the requirements stated therein;</p> <p>(iii) To consider whether the FRC was provided with sufficient powers under clauses 49 and 50 to seek rectification of the relevant financial non-compliances, and the need of providing the FRC with additional power in this respect; and</p> <p>(iv) In connection with item (c) above, the Administration was requested to take into account the need for the FRC to meet substantial legal costs arising from litigations against its decisions in considering the funding of the FRC</p> <p>(f) Request for the Administration to provide a written response to ALA6's views, as follows:</p> <p>(i) Under the Professional Accountants Ordinance (Cap. 50), the HKICPA might initiate disciplinary proceedings against a</p>	<p>The Administration to take action under paragraph 4(a)(iii) of the minutes</p> <p>The Administration to take action under paragraph 4(k)(iii) of the minutes</p>

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		<p>professional accountant who had failed to comply with the requirements of its Investigation Committee; and</p> <p>(ii) It was not clear in the Bill whether professional accountants failing to comply with the requirements of the AIB or a FRRC would be subject to disciplinary proceedings of the HKICPA</p> <p>(g) A member's suggestion that the Bills Committee should examine views expressed by deputations on the powers of the AIB and a FRRC, including the powers under clauses 49 and 50</p>	
015614-015700	Chairman Ms Emily LAU	Date of next meeting	