

立法會
Legislative Council

LC Paper No. CB(1)962/05-06
(These minutes have been seen
by the Administration)

Ref: CB1/BC/13/04

Bills Committee on Financial Reporting Council Bill

**Minutes of the ninth meeting held on
Monday, 23 January 2006, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon TAM Heung-man (Chairman)
Dr Hon LUI Ming-wah, SBS, JP
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, SBS, JP
Hon SIN Chung-kai, JP
Dr Hon Philip WONG Yu-hong, GBS
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

Member absent : Hon Albert HO Chun-yan

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)743/05-06 — Minutes of seventh meeting held on 20 December 2005)

The minutes of the seventh meeting held on 20 December 2005 were confirmed.

- II. Meeting with the Administration**
(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**).

Follow-up actions to be taken by the Administration

Admin 3. At the request of the Bills Committee, the Administration agreed to take the following actions:

Clause 51 – Preservation of secrecy

(a) Clause 51(1) required specified persons (as defined in clause 51(13) to include, inter alia, the Financial Reporting Council (FRC), its members and officers) to preserve the secrecy of information obtained in the course of performing their functions. Clause 51(3)(b)(ix) permitted the disclosure of information to the Official Receiver (OR) and clause 51(3)(c)(i) permitted the disclosure of information to a person who was a liquidator or provisional liquidator appointed under the Companies Ordinance (Cap. 32). In this connection, the Administration was requested to consider and respond to the views and suggestions expressed by members to the Bills Committee, as follows:

- (i) Given that OR might act as the liquidator or provisional liquidator of a company under liquidation, he would be able to get information from the FRC under the two disclosure gateways provided under clause 51(3)(b)(ix) and 51(3)(c)(i). This might put OR in a more advantageous position than other liquidators;
- (ii) The policy intent of clause 51(3)(b)(ix) and 51(3)(c)(i) was not clear and needed to be clarified. According to the Administration, clause 51(3)(b)(ix) would facilitate OR in performing his statutory duties as OR in relation to administering the insolvency regime, while clause 51(3)(c)(i) would facilitate liquidators or provisional liquidators in carrying out their duties of looking into the affairs of the company in liquidation and ascertaining whether any misfeasance, fraudulent preference, or breach of trust by companies had been committed by any of its officers. However, these purposes were not reflected in the two subclauses;
- (iii) In connection with items (i) and (ii) above, the Administration was requested to review the drafting of clause 51(3)(b)(ix) and 51(3)(c)(i), and consider the need to distinguish the two roles of OR and set out clearly that the purpose of disclosing the

information to OR under clause 51(3)(b)(ix) was for him to perform the statutory duties of OR in his capacity as OR but not for other purposes, such as the performance of the functions of a liquidator; and

- (iv) The Administration was also requested to consider how to address the concern that OR, after obtaining the information under clause 51(3)(b)(ix), might use the information to facilitate the performance of his other functions, such as those of a liquidator.
- (b) Members stressed the need to protect the identity of the persons who lodged complaints about relevant irregularities and relevant non-compliances in relation to listed entities to the FRC. In this connection, the Administration was requested to consider some members' suggestion of setting out clearly in clause 51 that the identity of the complainants should be kept confidential. It was also suggested that reference be made to the relevant provisions of the Prevention of Bribery Ordinance (Cap. 201).

Clause 52 – Avoidance of conflict of interests

- (c) Clause 52(5) provided that after a member of the FRC, the Audit Investigation Board (AIB) or a Financial Reporting Review Committee (FRRC) had disclosed the nature of any interest in any matter, he should not be present during any deliberation of the FRC, AIB, or FRRC with respect to the matter. In this connection, the Administration was requested to consider and respond to the views and suggestion expressed by members and the legal adviser to the Bills Committee, as follows:
 - (i) In the absence of a quorum requirement for the AIB and a FRRC, if some members of the AIB and a FRRC had disclosed their interest in a matter and could not participate in the deliberation with respect to that matter, it was not clear as to whether the AIB and FRRC with the participation of very limited number of members, say, only one member, would meet the requirements on the minimum number of members set out in clauses 22(2) and 41(1) (i.e. the AIB and FRRC were to consist of at least two and five members respectively); and if they would, then the AIB and FRRC with the participation of only one member might conduct enquiries and make decisions. Such an arrangement was unfair to the parties concerned and might subject the decisions made 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;
 - (ii) In connection with item (c)(i) above, the Administration was

requested to consider the following suggestions:

- To provide in the Bill a quorum requirement for the AIB and FRRC; and
 - To set out clearly in the Bill that a member of the FRC, AIB and FRRC, who had disclosed the nature of any interest in any matter and should not be present during any deliberation of the FRC, AIB, or FRRC with respect to the matter, was not counted towards the quorum for the FRC, AIB and FRRC.
- (iii) The Administration was of the view that a change in the membership of a FRRC during an enquiry would not affect the FRRC's legal status and thus, the legality of evidence collected by it, and would not constitute a breach of natural justice. The Administration was requested to re-consider whether it was fair to the parties concerned if there was a change in membership at the final stage of the AIB's investigation or a FRRC's enquiry.

Clauses 34 and 58 – Retention or destruction of documents

- (d) Clause 58 provided that a person committed an offence if he destroyed, falsified, concealed or otherwise disposed of any record or document required to be produced under Part 3 or 4 of the Bill. In response to the suggestion that a provision be added to allow the retention of evidence for a certain period of time, the Administration advised that under clause 34(4)(a), any record or document removed upon the execution of a warrant issued under the clause might be retained for a period of not exceeding six months. Clause 34(4)(b) provided that if the record or document was or might be required for criminal proceedings or any proceedings under the Financial Reporting Council Ordinance, the record or document might be retained for such longer period as might be necessary for the purpose of those proceedings. In this connection, the Administration was requested to consider and respond to the views and suggestion expressed by members and the legal adviser to the Bills Committee, as follows:
- (i) If no criminal proceedings were involved, the six-month retention period provided under clause 34(4)(a) would apply. Given the need to keep the records or documents for investigation and drafting of the investigation report, the six-month retention period might not be sufficient for the purpose. Moreover, such records or documents might be useful evidence supporting the AIB's investigation report, and might be used in the disciplinary proceedings of the Hong Kong Institute of Certified Public Accountants (HKICPA) if the cases concerned were subsequently referred to the Institute; and

- (ii) In connection with item (d)(i) above, it was suggested that a provision be added to allow the FRC and AIB to apply for the extension of the record retention period when necessary.

Clauses 49 and 50 – Revision of financial reports

- (e) Clause 49 provided that the FRC could secure the removal of the relevant financial non-compliance by requesting the directors of the listed entity concerned to cause the relevant financial report to be revised in such manner as the FRC considered necessary. Clause 50 provided that if the request under clause 49 was not complied with, the FRC could apply to the court for an order of mandatory revision of the financial report. The court's decisions in this regard were appealable. In this connection, the Administration was requested to respond to members' concerns and provide the required information, as follows:
 - (i) Given that the FRC was tasked to enquire into financial non-compliances of listed entities and did not have sanctioning power, it seemed not justified to empower the FRC to request listed entities to revise their defective financial reports;
 - (ii) According to the Administration, the compliance with the request referred to in clause 49 was voluntary and that failure to comply would not amount to an offence or other sanctions. However, this policy intent was not reflected in the clause;
 - (iii) The request for a listed entity to revise its financial report would mean that there was a relevant non-compliance in relation to the entity and the reporting accountant concerned had committed professional misconduct for having failed to prepare the reports in accordance with the relevant financial standards. Such a conclusion was against the principle of law given that no prosecution against the entity or the reporting accountant concerned had taken place;
 - (iv) In connection with item (e)(iii) above, the Administration was requested to clarify the implications of the FRC's request for a listed entity to revise its financial report on the entity and the reporting accountant concerned;
 - (v) By virtue of clause 50, the court was required to judge whether the relevant financial report had complied with the relevant financial standards and issue an order requiring revision of the relevant financial report. It was inappropriate to require the court to take such actions before any prosecution took place; and
 - (vi) In connection with items (e)(i) to (v) above, the Administration

was requested to review clauses 49 and 50. Given that clauses 49 and 50 were modelled on the relevant provisions of the UK Companies Act 1985, the Administration was also requested to provide the UK experience in this respect, including information on the compliance of listed entities with the request for revision of financial reports, any problems encountered by the UK authority in enforcing the relevant provisions, and any measures put in place to address the problems.

Follow-up action to be taken by the legal adviser to the Bills Committee

- ALA6 4. On paragraph 3(b) above, members also invited Assistant Legal Adviser 6 to provide the relevant provisions of the Prevention of Bribery Ordinance.

Date of the next meeting

5. The Chairman reminded members that the next meeting would be held on Friday, 10 February 2006, at 8:30 am.

III. Any other business

6. There being no other business, the meeting ended at 10:35 am.

Council Business Division 1
Legislative Council Secretariat
23 February 2006

**Proceedings of the ninth meeting of the
Bills Committee on Financial Reporting Council Bill
on Monday, 23 January 2006, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000220	Chairman	Confirmation of minutes of meeting (LC Paper No. CB(1)743/05-06)	
000221-002609	Chairman Administration Mr Ronny TONG Assistant Legal Adviser 6 (ALA6) Ms Emily LAU	<p><i>Part 5 (Preservation of secrecy, avoidance of conflict of interests, immunity)</i></p> <p><u>Clause 51- Preservation of secrecy</u> (Paragraphs 2 to 6 of LC Paper No. CB(1)665/05-06(08))</p> <p>(a) Briefing by the Administration, as follows:</p> <p>(i) Clause 51(1) required specified persons (as defined in clause 51(13)) to include, inter alia, the Financial Reporting Council (FRC), its members and officers) to preserve the secrecy of information obtained in the course of performing their functions;</p> <p>(ii) Clause 51(2) and (3) provided exemption to clause 51(1) and allowed the disclosure of information in</p>	

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		<p>specified circumstances; and</p> <p>(iii) Clause 51(3)(b)(ix) permitted the disclosure of information to the Official Receiver (OR) and clause 51(3)(c)(i) permitted the disclosure of information to a person who was a liquidator or provisional liquidator appointed under the Companies Ordinance (CO) (Cap. 32)</p> <p>(b) Comments by deputations in items 3.51, 7.1 to 7.3 of LC Paper No. CB(1)166/05-06(03)</p> <p>(c) Members' views, as follows:</p> <p>(i) Given that OR might act as the liquidator or provisional liquidator of a company under liquidation, he would be able to get information from the FRC under the two disclosure gateways provided under clause 51(3)(b)(ix) and 51(3)(c)(i). This might put OR in a more advantageous position than other liquidators; and</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(ii) The policy intent of clause 51(3)(b)(ix) and 51(3)(c)(i) was not clear and needed to be clarified</p> <p>(d) The Administration’s advice, as follows:</p> <p>(i) Clause 51(3)(b)(ix) would facilitate OR in performing his statutory duties as OR in relation to administering the insolvency regime;</p> <p>(ii) One of the important duties of a liquidator or provisional liquidator was to look into the affairs of the company in liquidation and ascertain whether any misfeasance, fraudulent preference, or breach of trust by companies had been committed by any of its officers. If necessary, the liquidator or provisional liquidator had to initiate proceedings accordingly. Clause 51(3)(c)(i) would enable the FRC to disclose relevant information regarding a listed entity to the liquidator or provisional liquidator to facilitate</p>	

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		<p>them in carrying out their duties in this respect; and</p> <p>(iii) Clause 51(4) prescribed the restrictions for disclosure of information under clause 51(3)(a) and (b). Hence, OR would not be put in a more advantageous position than other liquidators</p> <p>(e) Request for the Administration to consider and respond to the views and suggestions, as follows:</p> <p>(i) The views in item (c)(i) and (ii) above;</p> <p>(ii) The purposes mentioned in item (d)(i) and (ii) above were not reflected in clause 51(3)(b)(ix) and 51(3)(c)(i);</p> <p>(iii) The Administration was requested to review the drafting of clause 51(3)(b)(ix) and 51(3)(c)(i), and consider the need to distinguish the two roles of OR and set out clearly that the purpose of disclosing the information to OR under clause</p>	<p>The Administration to take action under paragraph 3(a)(i) to (iv) of the minutes</p>

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		<p>51(3)(b)(ix) was for him to perform the statutory duties of OR in his capacity as OR but not for other purposes, such as the performance of the functions of a liquidator; and</p> <p>(iv) The Administration was requested to consider how to address the concern that OR, after obtaining the information under clause 51(3)(b)(ix), might use the information to facilitate the performance of his other functions, such as those of a liquidator</p>	
002610-004429	<p>Chairman Administration Mr Ronny TONG ALA6 Ms Emily LAU</p>	<p><u>Clause 52 - Avoidance of conflict of interests</u> (Paragraphs 7 and 8 of LC Paper No. CB(1)665/05-06(08))</p> <p>(a) Briefing by the Administration</p> <p>(b) Members' view that it was important for the FRC to adopt a proper and stringent interest disclosure system to ensure that the FRC would discharge its functions impartially</p> <p>(c) Request for the Administration to consider</p>	<p>The Administration to take action under</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>and respond to members' and ALA6's views and suggestions, as follows:</p> <p>(i) Clause 52(5) provided that after a member of the FRC, the Audit Investigation Board (AIB) or a Financial Reporting Review Committee (FRRC) had disclosed the nature of any interest in any matter, he should not be present during any deliberation of the FRC, AIB, or FRRC with respect to the matter. In the absence of a quorum requirement for the AIB and a FRRC, if some members of the AIB and a FRRC had disclosed their interest in a matter and could not participate in the deliberation with respect to that matter, it was not clear as to whether the AIB and FRRC with the participation of very limited number of members, say, only one member, would meet the requirements on the minimum number of members set out in clauses 22(2) and 41(1) (i.e. the AIB and FRRC were to consist of at</p>	<p>paragraph 3(c)(i) to (iii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>least two and five members respectively); and if they would, then the AIB and FRRC with the participation of only one member might conduct enquiries and make decisions. Such an arrangement was unfair to the parties concerned and might subject the decisions made 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;</p> <p>(ii) To consider providing in the Bill a quorum requirement for the AIB and FRRC;</p> <p>(iii) To consider setting out clearly in the Bill that a member of the FRC, AIB and FRRC, who had disclosed the nature of any interest in any matter and should not be present during any deliberation of the FRC, AIB, or FRRC with respect to the matter, was not counted towards the quorum for</p>	

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		<p>the FRC, AIB and FRRC; and</p> <p>(iv) The Administration was of the view that a change in the membership of a FRRC during an enquiry would not affect the FRRC's legal status and thus, the legality of evidence collected by it, and would not constitute a breach of natural justice. The Administration was requested to re-consider whether it was fair to the parties concerned if there was a change in membership at the final stage of the AIB's investigation or a FRRC's enquiry</p> <p>(d) The Administration's advice that to avoid the possible problem referred to in item (c)(i) above, the FRC could consider appointing more members to the AIB or a FRRC, thus exceeding the minimum number of members as stipulated in clauses 22(2) and 41(1)</p> <p>(e) Comments by deputations on clause 52 and the Administration's briefing on its written response (items 7.4 to 7.9 of LC Paper No.</p>	

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		<p>CB(1)166/05-06(03))</p> <p>(f) Member’s enquiry about the views expressed by the Law Society of Hong Kong and the Hong Kong Institute of Certified Public Accountants (HKICPA) on clause 52</p> <p>(g) The Administration’s advice that the proposed declaration regime in relation to conflict of interests under clause 52 was modelled on section 379 of the Securities and Futures Ordinance (SFO) (Cap. 571). No problem had been identified in the declaration regime under SFO since the implementation of the Ordinance. The Administration welcomed members’ views on the proposed declaration regime</p> <p>(h) A member’s view that a proper declaration regime should be adopted to ensure that the FRC would discharge its functions impartially. She was pleased to note the Administration’s advice that no problem had been identified in the declaration regime under the SFO on which clause 52 was modelled</p>	
004430-011109	Ms Emily LAU Mr SIN Chung-kai Administration	<u>Clause 52 – Avoidance of conflict of interests</u>	

Time marker	Speaker	Subject(s)	Action Required
	<p>ALA6 Mr Ronny TONG</p>	<p>(a) Members' enquiries, as follows:</p> <ul style="list-style-type: none"> (i) Operation of clause 52; and (ii) How the public could come to know the conflict of interest issues involved in AIB's investigation or FRRC's enquiry, and changes in the membership of the AIB or a FRRC during an investigation or enquiry due to conflict of interests <p>(b) The Administration's advice, as follows:</p> <ul style="list-style-type: none"> (i) Clause 52(2) provided that a member of the FRC, the AIB, a FRRC or any other committee established by the Council, if, in the course of performing a function under the FRC Ordinance, was required to consider a matter in which he had an interest, he had to immediately disclose the nature of the interest to the FRC; (ii) Clause 52(4) provided that the FRC should record the particulars of 	

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		<p>any disclosure made under the clause. This would be an internal record of the FRC and would not be disclosed to the public; and</p> <p>(iii) Where appropriate, the FRC might consider including information kept for the purpose of clause 52(4) in an AIB/FRRC report to be published for public information</p> <p>(c) ALA6's view that it would be inappropriate for the FRC to disclose to the public, during the investigation/enquiry stage, information on members' interests relating to the matters under AIB's investigation or FRRC's enquiry given that the investigation/enquiry should be kept confidential</p> <p>(d) A member's enquiry on whether the parties concerned (e.g. the person under investigation) would be informed of any change in membership of the AIB or FRRC due to conflict of interests during the investigation/enquiry stage</p> <p>(e) On item (d) above, the Administration's advice that the FRC would consider a</p>	

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		<p>number of factors, such as the implications on the public and investors, in deciding whether an investigation/enquiry report should be published; and if it should be published, whether information on changes in membership of the AIB or FRRC due to conflict of interest should be included in the report</p> <p>(f) Members' enquiry on whether a change in the membership of the AIB or a FRRC during an enquiry would affect its legal status and the legality of evidence collected by it</p> <p>(g) The Administration's advice that the situation referred to in item (f) above would not affect the legal status of the AIB or a FRRC, and thus the legality of evidence collected by it. It would not constitute a breach of natural justice (paragraph 6 of LC Paper No. CB(1)665/05-06(07))</p>	
011110-012147	Chairman Administration Mr Ronny TONG	<p><u>Clause 53 - Immunity</u> (Paragraphs 9 to 11 of LC Paper No. CB(1)665/05-06(08))</p> <p>(a) Briefing by the Administration</p> <p>(b) Comments by the Office of</p>	

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		<p>the Privacy Commissioner for Personal Data (item 7.10 of LC Paper No. CB(1)166/05-06(03))</p> <p><u>Protection for the identity of the persons lodging complaints to the FRC</u></p> <p>(a) Members' enquiries, as follows:</p> <p>(i) Whether auditors or reporting accountants would have a duty to report suspected relevant irregularities and relevant non-compliances to the FRC; and</p> <p>(ii) How the FRC would protect the identity of the persons lodging complaints about relevant irregularities and relevant non-compliances</p> <p>(b) The Administration's advice, as follows:</p> <p>(i) The Bill did not impose a duty on auditors or reporting accountants to report suspected relevant irregularities and relevant non-compliances to the FRC;</p>	

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		<p>(ii) Clause 54(1) provided that if an auditor or a reporting accountant communicated in good faith to the FRC any information relating to relevant irregularities and relevant non-compliances of a listed entity, he did not incur civil liability, arising by reason only of the communication; and</p> <p>(iii) Clause 51(1) provided that, except in the performance of any function under the FRC Ordinance or for carrying into effect the provisions of the Ordinance, a specified person should not suffer or permit any person to have access to any matter relating to the affairs of any person that came to the specified person's knowledge in the performance of any function under the Ordinance; and should not communicate any such matter to any person other than the person to whom such matter related. Clause 51 should provide sufficient protection to</p>	

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		<p>the persons who lodged complaints about relevant irregularities and relevant non-compliances in relation to listed entities to the FRC</p> <p>(c) Member's view that clause 51(1) did not expressly refer to the persons lodging complaints, and member's request for the Administration to consider the suggestion of setting out clearly in clause 51 that the identity of the complainants should be kept confidential. It was also suggested that reference be made to the relevant provisions of the Prevention of Bribery Ordinance (PBO) (Cap. 201)</p> <p>(d) Request for ALA6 to provide the relevant provisions of the PBO</p>	<p>The Administration to take action under paragraph 3(b) of the minutes</p> <p>ALA6 to take action under paragraph 4 of the minutes</p>
012148-012724	Ms Emily LAU Administration ALA6	<p>(a) Members' concern that without imposing a duty on auditors and reporting accountants to report suspected relevant irregularities and relevant non-compliances relating to listed entities to the FRC, they would not report such matters to the FRC</p> <p>(b) The Administration's advice that the present proposal,</p>	

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		<p>including clause 51 (preservation of secrecy), and clause 54 (immunity in respect of communication with the FRC by auditors of listed entities) had reflected the majority views received in previous consultation conducted by the Administration on the establishment of the FRC</p>	
012725-013534	<p>Chairman Administration Clerk ALA6 Ms Emily LAU</p>	<p><u>Other miscellaneous matters</u> (Paragraphs 12 and 13 of LC Paper No. CB(1)665/05-06(08))</p> <p>(a) Briefing by the Administration</p> <p>(b) Briefing by the Clerk on the HKICPA's suggestion of adding a provision to allow the FRC to retain evidence obtained by the AIB or a FRRC for a certain period of time (item 7.13 of LC Paper No. CB(1)166/05-06(03))</p> <p>(c) The Administration's response, as follows:</p> <p>(i) Clause 58 provided that a person committed an offence if he destroyed, falsified, concealed or otherwise disposed of any record or document required to be produced under Part 3 or 4 of the Bill. The clause was not related to the period</p>	

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		<p>for retention of records or documents; and</p> <p>(ii) Under clause 34(4)(a), any record or document removed upon the execution of a warrant issued under the clause might be retained for a period of not exceeding six months. Clause 34(4)(b) provided that if the record or document was or might be required for criminal proceedings or any proceedings under the FRC Ordinance, the record or document might be retained for such longer period as might be necessary for the purpose of those proceedings</p> <p>(d) Request for the Administration to consider and respond to the views and suggestion expressed by members and ALA6, as follows:</p> <p>(i) If no criminal proceedings were involved, the six-month retention period provided under clause 34(4)(a) would apply. Given the need to keep the records or documents for</p>	<p>The Administration to take action under paragraph 3(d)(i) and (ii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>investigation and drafting of the investigation report, the six-month retention period might not be sufficient for the purpose. Moreover, such records or documents might be useful evidence supporting the AIB's investigation report, and might be used in the disciplinary proceedings of the HKICPA if the cases concerned were subsequently referred to the Institute; and</p> <p>(ii) It was suggested that a provision be added to allow the FRC and AIB to apply for the extension of the record retention period when necessary</p>	
013535-020010	<p>Chairman Administration Mr Ronny TONG ALA6 Mr SIN Chung-kai Ms Emily LAU</p>	<p><i>Part 6 (Consequential and related amendments)</i></p> <p><u>Revision of financial reports</u> (Paragraphs 2 to 5 of LC Paper No. CB(1)665/05-06(09))</p> <p>(a) Briefing by the Administration, as follows:</p> <p>(i) Clause 49 provided that the FRC could secure the removal of the</p>	

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		<p>relevant financial non-compliance by requesting the directors of the listed entity concerned to cause the relevant financial report to be revised in such manner as the FRC considered necessary. Clause 50 provided that if the request under clause 49 was not complied with, the FRC could apply to the court for an order of mandatory revision of the financial report. The court's decisions in this regard were appealable; and</p> <p>(ii) Consequential amendments to the CO were required for the purposes of the revised accounts, summary financial reports and directors' reports. Clauses 61 to 64 covered such consequential amendments</p> <p>(b) Members' concerns, as follows:</p> <p>(i) Given that the FRC was tasked to enquire into financial non-compliances of listed entities and did</p>	

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		<p>not have sanctioning power, it seemed not justified to empower the FRC to request listed entities to revise their defective financial reports; and</p> <p>(ii) The request for a listed entity to revise its financial report would mean that there was a relevant non-compliance in relation to the entity and the reporting accountant concerned had committed professional misconduct for having failed to prepare the reports in accordance with the relevant financial standards. Such a conclusion was against the principle of law given that no prosecution against the entity or the reporting accountant concerned had taken place;</p> <p>(c) The Administration's response, as follows:</p> <p>(i) Compliance with the request referred to in clause 49 was voluntary and that failure to comply would not amount to an offence or</p>	

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		<p>other sanctions;</p> <p>(ii) Clauses 49 and 50 were not concerned with professional misconduct of auditors or reporting accountants;</p> <p>(iii) Clauses 49 and 50 were modelled on the relevant provisions of the UK Companies Act 1985; and</p> <p>(iv) The recommendations made by the Standing Committee on Company Law Reform in the context of Phase I of the Corporate Governance Review to establish a Financial Reporting Review Panel formed the basis of the proposals enshrined in clauses 49 and 50</p> <p>(d) ALA6's views, as follows:</p> <p>(i) A FRRC was tasked to enquire into suspected financial reporting non-compliances of listed entities and consider whether there was a financial reporting non-compliance; and</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(ii) The work of a FRRC did not involve enquiry of professional misconduct of auditors and reporting accountants. Such matters were under the purview of the AIB</p> <p>(e) Request for the Administration to respond to members' concerns and provide the required information, as follows:</p> <p>(i) To respond to the concerns in item (b)(i) and (ii) above</p> <p>(ii) The policy intent that the request to listed entities in clause 49 was voluntary and that failure of entities to comply would not amount to an offence or other sanctions was not reflected in the clause;</p> <p>(iii) To clarify the implications of the FRC's request for a listed entity to revise its financial report on the entity and the reporting accountant concerned;</p> <p>(iv) By virtue of clause 50, the court was required to judge whether the relevant financial report</p>	<p>The Administration to take action under paragraph 3(e)(i) and (vi) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>had complied with the relevant financial standards and issue an order requiring revision of the relevant financial report. It was inappropriate to require the court to take such actions before any prosecution took place;</p> <p>(v) To review clauses 49 and 50; and</p> <p>(vi) To provide the UK experience in enforcing the relevant provisions of the UK Companies Act 1985, including information on the compliance of listed entities with the request for revision of financial reports, any problems encountered by the UK authority in enforcing the relevant provisions, and any measures put in place to address the problems</p>	
020011-020058	Chairman Ms Emily LAU	Date of next meeting	

23 February 2006