

立法會
Legislative Council

LC Paper No. CB(1)1126/05-06
(These minutes have been seen
by the Administration)

Ref : CB1/BC/13/04

Bills Committee on Financial Reporting Council Bill

**Minutes of the tenth meeting held on
Friday, 10 February 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. Meeting with the Administration**
(LC Paper No. CB(1)866/05-06(01) — “Follow-up to the eighth meeting on 12 January 2006” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)866/05-06(02) — Paper provided by the Administration on “Follow-up actions arising from the meeting held on 12 January 2006”
- 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)866/05-06(03) — “Follow-up to the ninth meeting on 23 January 2006” prepared by the Legislative Council Secretariat

- LC Paper No. CB(1)866/05-06(04) — Paper provided by the Administration on “Follow-up actions arising from the meeting held on 23 January 2006”
- LC Paper No. LS27/05-06 — “Note on the statutory Informer Protection Provision relating to the Independent Commission Against Corruption” prepared by the Legal Service Division of the Legislative Council Secretariat
- 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”

The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

- Admin 2. At the request of the Bills Committee, the Administration agreed to take the following actions:

Organizational structure of the Audit Investigation Board (AIB) and a Financial Reporting Review Committee (FRRC)

- (a) The Administration undertook to propose a Committee Stage amendment (CSA) to expressly provide that the quorum for any meeting of the AIB was to be two members, or half of its members, whichever was the greater (paragraph 6 of LC Paper No. CB(1)866/05-06(04)).
- (b) The Administration undertook to propose a CSA to expressly provide that the quorum for any meeting of a FRRC was to be half of its

members (paragraph 6 of LC Paper No. CB(1)866/05-06(02)).

- (c) The Administration undertook to propose a CSA to the effect that if a member of the Financial Reporting Council (FRC), the AIB, or a FRRC had disclosed an interest in the matter being investigated or enquired, the member would not be counted for the purpose of forming a quorum at the relevant meeting of the FRC, the AIB, or a FRRC (paragraph 7 of LC Paper No. CB(1)866/05-06(04)).
- (d) In connection with item 4 of the list of follow-up actions for the meeting on 12 January 2006 (LC Paper No. CB(1)866/05-06(01)), the Administration agreed to review whether the drafting of the relevant provisions in the Bill might give rise to any doubts concerning the position that a change in the membership of a FRRC during an enquiry would neither itself constitute a breach of the principles of natural justice nor affect the Committee's legal status and the legality of evidence collected by it. The Administration would revert to the Bills Committee during the clause-by-clause examination of the Bill (paragraph 4 of LC Paper No. CB(1)866/05-06(02)).
- (e) According to the Administration, in the unlikely situation that where most or all of the members of the AIB or a FRRC could not or should not continue to serve, for example, due to death or conflict of interest in the matter being investigated or enquired, the AIB or FRRC would not be able to continue to operate as it could not meet the quorum requirement for meetings. In such circumstances, provisions in the Interpretation and General Clauses Ordinance (Cap.1) might be invoked to deal with issues relating to vacancy in the membership and dissolution of the AIB or FRRC. In this connection, the Administration was requested to consider and respond to the views and suggestions of members of the Bills Committee, as follows:
 - (i) It might not be appropriate to rely on the general principles provided in Cap. 1 to deal with matters relating to the operation of the AIB or a FRRC; and
 - (ii) The Administration was requested to re-consider the need of setting out clearly in the Bill how matters relating to vacancy in the membership and dissolution of the AIB or a FRRC should be dealt with.

Enquiry powers of the AIB and a FRRC

- (f) Members noted that the Administration had consulted the Hong Kong Institute of Certified Public Accountants (HKICPA), and the latter was of the view that, as a matter of principle, it would be preferable for the FRC to utilize the proposed powers conferred upon it under clauses 31,

32 and 45 to enforce an information-gathering requirement imposed on a certified public accountant than to look to the Institute to do so under the Professional Accountants Ordinance (PAO) (Cap. 50). While the PAO provided that a failure or neglect of a certified public accountant to comply with a requirement of an Investigation Committee of the HKICPA was disciplinable under the PAO, the HKICPA considered that the PAO was not generally intended to enforce the powers of statutory bodies other than the HKICPA. The HKICPA therefore considered that it was not necessary to add an express provision in the PAO to the effect that a certified public accountant failing to comply with a requirement imposed by the AIB or a FRRC should be concurrently disciplinable (paragraph 11 of LC Paper No. CB(1)866/05-06(02)). However, the HKICPA also pointed out that, in serious cases, disciplinary action might be invoked under section 34(1)(a)(x) of the PAO as a catch-all provision for conduct which would be reasonably regarded as bringing discredit upon the Institute or the accountancy profession (footnote 11 of LC Paper No. CB(1)866/05-06(02)). In this connection, the Administration was requested to invite the HKICPA to re-consider its position having regard to views expressed by members of the Bills Committee, as follows:

- (i) Given that the HKICPA might initiate disciplinary proceedings against a certified public accountant who had failed to comply with a requirement of its Investigation Committee under section 34(1)(a)(vii) of the PAO, and that it was the Administration's policy intent that the AIB be set up to take over the investigation functions of the HKICPA in respect of suspected irregularities of the accountancy profession in relation to the audit of accounts for listed entities, it was justified to provide explicitly in the PAO that a certified public accountant failing to comply with a requirement of the AIB or a FRRC should be subject to disciplinary proceedings of the HKICPA;
- (ii) In connection with item (i) above, it should also be noted that failure to comply with an information-gathering requirement imposed by the AIB without reasonable excuse was a criminal offence under clause 31. This formed a justifiable ground for the HKICPA to initiate disciplinary proceedings against the certified public accountant concerned; and
- (iii) Section 34(1)(a)(x) of the PAO was concerned with serious misconduct and might only be invoked for conduct which could be reasonably regarded as bringing discredit upon the HKICPA or the accountancy profession. It appeared that the provision might not be readily invoked for every matter relating to accountants' non-compliance with information-gathering requirements of the

AIB or a FRRC.

- (g) In connection with item (f) above, the Administration was requested to consider members' view that administrative arrangements should be put in place for the FRC to inform the HKICPA of non-compliance of accountants with the information-gathering requirement of the AIB or a FRRC so as to facilitate the Institute to initiate appropriate disciplinary actions.

Clauses 49 and 50 – Revision of financial reports

- (h) Having noted the Administration's response to members' concerns on clauses 40 and 50 (paragraphs 12 and 13 of LC Paper No. CB(1)866/05-06(02)), some members raised further questions. In this connection, the Administration was requested to consider and respond to members' views and suggestions, 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) The request for a listed entity to revise its financial report might imply that there was a relevant non-compliance in relation to the entity and the reporting accountant concerned had failed to prepare the reports in accordance with the relevant financial standards. It was doubtful as to whether the FRC should make a positive assertion that there was a relevant non-compliance in relation to a listed entity without giving the parties concerned an opportunity to respond to the FRC's findings. Such an assertion was against the principles of law and principles of natural justice;
 - (iii) The question of whether there was a relevant non-compliance in relation to a listed entity and the reporting accountant concerned should be determined by the court or the relevant disciplinary body;
 - (iv) In connection with items (i) to (iii) above, the Administration should review the drafting of clauses 49 and 50 with reference to sections 245A and 245B of the United Kingdom (UK) Companies Act 1985 on which the two clauses were modelled. In particular, the Administration was requested to consider some members' suggestions that consideration should be given to revise the drafting of clause 49(1) to the effect that:
 - the positive assertion "there is a relevant non-compliance ..." in clause 49(1) be replaced by the formulation used in section

245A(1) of the UK Companies Act 1985, i.e. “there is, or may be, a question whether...”; and

- the FRC was required to issue a notice to the listed entity concerned indicating the respects in which it appeared to the FRC that a question of a relevant non-compliance arose or might arise (section 245A(1) of the UK Companies Act 1985) and specifying a period for the listed entity and the persons concerned to give an explanation (section 245A(2) of the UK Companies Act 1985).

Clause 51 - Preservation of secrecy

- (i) Members noted the Administration’s policy intent that the Official Receiver (OR) would only use the disclosure gateway under clause 51(3)(b)(ix) to obtain information for performing his statutory duties as OR other than in the capacity of a liquidator/provisional liquidator under the Companies Ordinance (CO) (Cap. 32), while the OR would use the disclosure gateway under clause 51(3)(c) to obtain information for performing his statutory duties as OR in the capacity of a liquidator/provisional liquidator (paragraph 3 of LC Paper No. CB(1)866/05-06(04)). In this connection, the Administration was requested to provide proposals for improving the relevant provisions to clearly reflect the policy intent for the Bills Committee’s consideration as soon as practicable.
- (j) Having noted the Administration’s response to members’ concern on clause 51 (paragraph 4 of LC Paper No. CB(1)866/05-06(04)) and considered the protection of informers provision under section 30A of the Prevention of Bribery Ordinance (PBO) (Cap. 201) and similar provisions in other ordinances (LC Paper No. LS27/05-06), the Administration was requested to respond to members’ views and suggestions, as follows:
 - (i) The purpose of clause 51 was to preserve the secrecy of information obtained by the FRC in the course of performing its functions rather than to protect the identity of the persons who lodged complaints to the FRC; and
 - (ii) Given the need to safeguard the interests of informers of the FRC, the Administration should make reference to section 30A of the PBO and relevant provisions in other ordinances to provide in the Bill separate provisions on “Protection of informers”.

Clause 52 – Avoidance of conflict of interests

- (k) Clause 52(3) provided that a person had an interest in a matter if the matter related to a listed entity in which he had an interest, or related to his past or present employers, clients, associates, or another person whom he knew was or had been a client of his, past or present, employers or associates. In this connection, the Administration was requested to clarify whether clause 52(3) would apply to a matter which related to a person's past employer, which was an entity merged with other entities and no longer existed by itself.
- (l) Clause 52(5) provided that after a member of the FRC, the AIB or a FRRC had disclosed the nature of any interest in any matter, unless the FRC otherwise determined, he should not be present during any deliberation of the FRC, the AIB, or a FRRC, or take part in any decision, with respect to the matter. Clause 52(6) further provided that the member should not be present during any deliberation of the FRC, the AIB, or a FRRC for the purpose of making the determination under clause 52(5), or take part in the making of the determination by the FRC. In this connection, the Administration was requested to respond to members' views and suggestions, as follows:
- (i) It was not fair and justified to require the FRC to determine whether a person who had disclosed interest in a matter should present during the deliberation of or take part in the decision with respect to the matter, given that it was the person concerned, not the FRC, who had the knowledge about the nature of the interest and conflicts involved. It was suggested that:
- the wording “unless the Council otherwise determines” in clause 52(5) be deleted;
 - clause 52(6) be deleted; and
 - clause 52(5)(b) be amended to the effect that the member who had disclosed interest in a matter should not take part in any meetings of the FRC, the AIB or a FRRC, with respect to the matter.
- (ii) While the title of clause 52 was “Avoidance of conflict of interests (避免利益衝突)”, subclauses (2) and (5) required a person to disclose the nature of the interest (披露該利害關係的性質). The Administration should examine whether there was any inconsistency between the title of clause 52 and the requirement under the two subclauses; and if there was, to review the drafting of clause 52 for making improvement;

- (iii) Consideration should be given to set out clearly the kinds of interest that required to be disclosed and the circumstances under which such disclosures should be made; and
- (iv) Consideration should be given to include provisions in the Bill to prevent a member who had disclosed interest in a matter from accessing information (e.g. papers, minutes of meetings) available to the FRC, the AIB or a FRRC concerning the matter.

Date of next meeting

3. The Chairman reminded members that the next meeting would be held on Friday, 24 February 2006, at 8:30 am.

II. Any other business

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

Council Business Division 1
Legislative Council Secretariat
22 March 2006

**Proceedings of the tenth meeting of the
Bills Committee on Financial Reporting Council Bill
on Friday, 10 February 2006, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000450	Chairman Administration Assistant Legal Adviser 6 (ALA6) Ms Emily LAU	<p>Matters arising from the eighth meeting on 12 January 2006 (LC Paper Nos. CB(1)866/05-06(01) and (02))</p> <p><u>Use of incriminating evidence in proceedings</u> (Paragraphs 2 and 3 of LC Paper No. CB(1)866/05-06(02))</p> <p>(a) Briefing by the Administration</p> <p>(b) Member's enquiry on the 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 respect of which the person concerned was charged with an offence under Part V of the Crimes Ordinance (Cap. 200), or for perjury</p>	
000451-001302	Chairman Administration ALA6 Mr Ronny TONG	<p><u>Organizational structure of a Financial Reporting Review Committee (FRRC)</u> (Paragraphs 4 to 8 of LC Paper No. CB(1)866/05-06(02))</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(a) Briefing by the Administration</p> <p>(b) The Administration's undertaking to take the following actions:</p> <ul style="list-style-type: none"> (i) To propose a Committee Stage amendment (CSA) to expressly provide that the quorum for any meeting of a FRRC was to be half of its members; and (ii) To review whether the drafting of the relevant provisions in the Bill might give rise to any doubts concerning the position that a change in the membership of a FRRC during an enquiry would neither itself constitute a breach of the principles of natural justice nor affect the Committee's legal status and the legality of evidence collected by it, and revert to the Bills Committee during the clause-by-clause examination of the Bill <p>(c) The Administration's advice that given that a FRRC was to consist of at least five members and that the Financial Reporting Council</p>	<p>The Administration to take action under paragraph 2(b) and (d) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>(FRC) could appoint more than five members to a FRRC, there was no particular reason to provide an upper limit on the number of members of a FRRC</p> <p>(d) ALA6's view that the provision of an upper limit on the number of members of a FRRC might prevent possible manipulation of a FRRC by increasing the number of its members</p>	
001303-001900	Chairman Administration	<p><u>Enquiry powers and post-enquiry actions of a FRRC</u> (Paragraphs 9 to 15 of LC Paper No. CB(1)866/05-06(02))</p> <p>Briefing by the Administration</p>	
001901-001930	Chairman Administration	<p><u>Organizational structure of a FRRC</u> (Paragraph 8 of LC Paper No. CB(1)866/05-06(02))</p> <p>The Administration's response that it had considered the suggestion of providing in the Bill an upper limit on the number of members of a FRRC and maintained the view that there was no need to do so</p>	
001931-003122	Mr Ronny TONG Chairman Administration Ms Emily LAU	<p><u>Clauses 49 and 50 – Revision of financial reports</u> (Paragraphs 12 and 13 of and Annex B to LC Paper No. CB(1)866/05-06(02))</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(a) Members' views, as follows:</p> <p>(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;</p> <p>(ii) The request for a listed entity to revise its financial report might imply that there was a relevant non-compliance in relation to the entity and the reporting accountant concerned had failed to prepare the reports in accordance with the relevant financial standards. It was doubtful as to whether the FRC should make a positive assertion that there was a relevant non-compliance in relation to a listed entity without giving the parties concerned an opportunity to respond to the FRC's findings. Such an assertion is against the principles of</p>	

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		<p>law and principles of natural justice;</p> <p>(iii) The question of whether there was a relevant non-compliance in relation to a listed entity and the reporting accountant concerned should be determined by the court or the relevant disciplinary body; and</p> <p>(iv) Sections 245A and 245B of the United Kingdom (UK) Companies Act 1985, on which clauses 49 and 50 were modelled, were much carefully worded to avoid giving a positive assertion that the financial report of the company concerned had failed to comply with the requirements of the Act</p> <p>(b) Request for the Administration to take the following actions:</p> <p>(i) To consider and respond to members' views in item (a)(i) to (iii) above; and</p> <p>(ii) To review the drafting of clauses 49 and 50</p>	<p>The Administration to take action under paragraph 2(h)(i) to (iv) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>with reference to sections 245A and 245B of the UK Companies Act 1985 taking into account members' suggestions that consideration should be given to revise the drafting of clause 49(1) to the effect that -</p> <ul style="list-style-type: none">● the positive assertion "there is a relevant non-compliance ..." in clause 49(1) be replaced by the formulation used in section 245A(1) of the UK Companies Act 1985, i.e. "there is, or may be, a question whether..."; and● the FRC was required to issue a notice to the listed entity concerned indicating the respects in which it appeared to the FRC that a question of a relevant non-compliance arised or might arise (section 245A(1) of the UK Companies Act	

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		<p>1985) and specifying a period for the listed entity and the persons concerned to give an explanation (section 245A(2) of the UK Companies Act 1985)</p>	
003123-003933	Ms Emily LAU Administration	<p><u>Enquiry powers of the Audit Investigation Board (AIB) and a FRRC</u> (Paragraph 11 and note 11 of LC Paper No. CB(1)866/05-06(02))</p> <p>(a) On whether a certified public accountant failing to comply with an information-gathering requirement of the AIB or a FRRC should be disciplinable under the Professional Accountants Ordinance (PAO) (Cap. 50), members noted that the Administration had consulted the Hong Kong Institute of Certified Public Accountants (HKICPA) on the matter, and the latter's views were as follows:</p> <p>(i) As a matter of principle, it would be preferable for the FRC to utilize the proposed powers conferred upon it under clauses 31, 32 and 45 to enforce an</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>information-gathering requirement imposed on a certified public accountant than to look to the Institute to do so under the PAO;</p> <p>(ii) While the PAO provided that a failure or neglect of a certified public accountant to comply with a requirement of an HKICPA's Investigation Committee was disciplinable under the PAO, the HKICPA considered that the PAO was not generally intended to enforce the powers of statutory bodies other than the HKICPA. The HKICPA therefore considered that it was not necessary to add an express provision in the PAO to the effect that a certified public accountant failing to comply with a requirement imposed by the AIB or a FRRC should be concurrently disciplinable; and</p> <p>(iii) In serious cases, disciplinary action might be invoked under section 34(1)(a)(x) of</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>the PAO as a catch-all provision for conduct which would be reasonably regarded as bringing discredit upon the Institute or the accountancy profession</p> <p>(b) Members' request for the Administration to consider their view that administrative arrangements should be put in place for the FRC to inform the HKICPA of non-compliance of accountants with the information-gathering requirement of the AIB or a FRRC so as to facilitate the Institute to initiate appropriate disciplinary actions</p> <p>(c) In respect of item (b) above, the Administration's advice that it was believed that the FRC would set up mechanism to facilitate its communication with relevant bodies, including the HKICPA, in taking follow-up actions for auditing irregularities and financial non-compliance relating to listed companies</p> <p>(d) The Administration's advice in response to member's enquiries, as follows:</p> <p>(i) Failure to comply with</p>	<p>The Administration to take action under paragraph 2(g) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>an information-gathering requirement without reasonable excuse imposed by the AIB was an offence (clause 31), or might result in the court, on the application of the AIB, ordering compliance with that requirement by the person concerned and punishing him as if he had been guilty of contempt of court (clause 32); and</p> <p>(ii) Failure to co-operate with a FRRC with respect to an enquiry was not an offence per se, but a FRRC might apply to the court under clause 45 (similar to clause 32) to compel the person concerned to comply with the information-gathering requirement whereby the court might punish the person for the failure as if he had been guilty of contempt of court</p>	
003934-005417	<p>Dr LUI Ming-wah Administration Mr Ronny TONG Chairman ALA6</p>	<p><u>Clauses 49 and 50 – Revision of financial reports</u></p> <p>(a) In response to members' enquiries, the Administration</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>advised that following an enquiry into the non-compliances of a relevant financial report with the relevant accounting requirements, the FRC might, pursuant to clause 49, specify in a notice why in the FRC's opinion there was a relevant non-compliance, and request the listed entity to voluntarily revise the relevant financial report. If a listed corporation did not comply with the request, the FRC might, pursuant to clause 50, apply to the court for a declaration that there was a relevant non-compliance in the relevant financial report, and an order requiring the directors of the listed corporation to revise the financial report in such manner as the court considered necessary</p> <p>(b) ALA6's advice, as follows:</p> <ul style="list-style-type: none"> (i) Non-compliance with clause 49 was not a criminal offence; (ii) The notice issued by the FRC under clause 49 might not be published; and (iii) Pursuant to clause 50, the question of whether there was a financial 	

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		<p>non-compliance would be determined by the court. The court was empowered to give directions with respect to rectification of the financial report</p>	
005418-005947	<p>ALA6 Chairman Administration Ms Emily LAU</p>	<p><u>Enquiry powers of the AIB and a FRRC</u></p> <p>(a) Members' concern about why certified public accountants failing to comply with the information-gathering requirement of the AIB or a FRRC should not be disciplinable under the PAO</p> <p>(b) Members' request for the Administration to invite the HKICPA to re-consider its position having regard to members' views, as follows:</p> <p>(i) Given that the HKICPA might initiate disciplinary proceedings against a certified public accountant who had failed to comply with a requirement of its Investigation Committee under section 34(1)(a)(vii) of the PAO, and that it was the Administration's policy intent that the AIB be set up to take over the</p>	<p>The Administration to take action under paragraph 2(f)(i) to (iii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>investigation functions of the HKICPA in respect of suspected irregularities of the accountancy profession in relation to the audit of accounts for listed entities, it was justified to provide explicitly in the PAO that a certified public accountant failing to comply with a requirement of the AIB or a FRRC should be subject to disciplinary proceedings of the HKICPA;</p> <p>(ii) It should also be noted that failure to comply with an information-gathering requirement imposed by the AIB without reasonable excuse was a criminal offence under clause 31. This formed a justifiable ground for the HKICPA to initiate disciplinary proceedings against the certified public accountant concerned; and</p> <p>(iii) Section 34(1)(a)(x) of the PAO was concerned with serious misconduct and might only be invoked for conduct which could be</p>	

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		<p>reasonably regarded as bringing discredit upon the HKICPA or the accountancy profession. It appeared that the provision might not be readily invoked for every matter relating to accountants' non-compliance with information-gathering requirements of the AIB or a FRRC</p>	
005948-010100	Chairman Administration	<p><u>Immunity</u> (Paragraphs 16 and 17 of LC Paper No. CB(1)866/05-06(02))</p> <p>Briefing by the Administration</p>	
010101-012624	Chairman Administration ALA6 Mr Ronny TONG	<p>Matters arising from the ninth meeting on 23 January 2006 (LC Paper Nos. CB(1)866/05-06(03) and (04), LS27/05-06)</p> <p><u>Clause 51 – Preservation of secrecy</u></p> <p>(a) Briefing by the Administration (paragraphs 2 to 4 of LC Paper No. CB(1)866/05-06(04))</p> <p>(b) The Administration's view that clause 51(1), which was modelled on section 378(1) of the Securities and Futures Ordinance (SFO) (Cap. 571), being a "catch-all" provision, was wide enough to protect</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>the confidentiality of the auditor or reporting accountant who communicated to the FRC any information or opinion relating to an investigation or enquiry, and hence it was not necessary to provide for separate secrecy requirements in the Bill</p> <p>(c) Briefing by ALA6 on the protection of informers provision under section 30A of the Prevention of Bribery Ordinance (PBO) (Cap. 201) and similar provisions in other ordinances (LC Paper No. LS27/05-06)</p> <p>(d) Members' concern that clause 51 was not sufficient for protecting the identity of the persons who lodged complaints about auditing irregularities and financial non-compliances in relation to listed entities to the FRC</p> <p>(e) Members' request for the Administration to respond to their views and suggestions, as follows:</p> <p>(i) The purpose of clause 51 was to preserve the secrecy of information obtained by the FRC in the course of performing its functions rather than to protect</p>	<p>The Administration to take action under paragraph 2(j)(i) and (ii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>the identity of the persons who lodged complaints to the FRC; and</p> <p>(ii) Given the need to safeguard the interests of informers of the FRC, the Administration should make reference to section 30A of the PBO and similar provisions in other ordinances (as listed in LC Paper No. LS27/05-06) to provide in the Bill separate provisions on “Protection of informers”</p> <p>(f) On the concern about subclauses (3)(b)(ix) and (3)(c) of clause 51, members noted the following positions of the Administration (paragraph 3 of LC Paper No. CB(1)866/05-06(04)):</p> <p>(i) It was the Administration’s policy intent that the Official Receiver (OR) would only use the disclosure gateway under clause 51(3)(b)(ix) to obtain information for performing his statutory duties as OR other than in the capacity of a liquidator/provisional</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>liquidator under the Companies Ordinance (CO) (Cap. 32), while the OR would use the disclosure gateway under clause 51(3)(c) to obtain information for performing his statutory duties as OR in the capacity of a liquidator/provisional liquidator; and</p> <p>(ii) The Administration would review the drafting of the relevant clauses and revert to the Bills Committee during the clause-by-clause scrutiny of the Bill</p> <p>(g) In connection with item (f)(ii) above, instead of reverting to the Bills Committee during the clause-by-clause scrutiny of the Bill, the Administration was requested to provide proposals for improving the relevant provisions to clearly reflect the policy intent for the Bills Committee's consideration as soon as practicable</p>	<p>The Administration to take action under paragraph 2(i) of the minutes</p>
012625-013737	<p>Chairman Administration Ms Emily LAU ALA6</p>	<p><u>Avoidance of conflict of interests</u></p> <p>(a) Briefing by the Administration (Paragraphs 5 to 8 of LC Paper No. CB(1)866/05-06(04))</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) The Administration's undertakings, as follows:</p> <p>(i) To propose a CSA to expressly provide that the quorum for any meeting of the AIB was to be two members, or half of its members, whichever was the greater; and</p> <p>(ii) To propose a CSA to the effect that if a member of the FRC, the AIB, or a FRRC had disclosed an interest in the matter being investigated or enquired, the member would not be counted for the purpose of forming a quorum at the relevant meeting of the FRC, the AIB, or a FRRC</p> <p>(c) In connection with item (b) above, members' concern that in the unlikely situation that where most or all of the members of the AIB or a FRRC could not or should not continue to serve, for example, due to death or conflict of interest in the matter being investigated or enquired, the AIB or FRRC would not be able to continue to operate as it could not</p>	<p>The Administration to take action under paragraph 2(a) and (c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>meet the quorum requirement for meetings</p> <p>(d) The Administration’s advice, as follows:</p> <p>(i) The proposed quorum requirements for meetings of the AIB and a FRRC were made to address members’ concern that without the quorum requirements for meetings, the AIB or a FRRC with the participation of only one member might conduct enquiries and make decisions; and</p> <p>(ii) In the circumstances where most or all of the members of the AIB or a FRRC could not or should not continue to serve, provisions in the Interpretation and General Clauses Ordinance (Cap.1) might be invoked to deal with issues relating to vacancy in the membership and dissolution of the AIB or FRRC</p> <p>(e) Views of members and ALA6, as follows:</p> <p>(i) The Administration’s proposals in item (b)</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>above were an improvement; and</p> <p>(ii) It might not be appropriate to rely on the general principles provided in Cap. 1 to deal with matters relating to the operation of the AIB or a FRRC</p> <p>(f) Members' request for the Administration to consider and respond to their views in item (e)(ii) above, and to re-consider the need of setting out clearly in the Bill how matters relating to vacancy in the membership and dissolution of the AIB or a FRRC should be dealt with</p>	<p>The Administration to take action under paragraph 2(e)(i) and (ii) of the minutes</p>
013738-014904	Mr Ronny TONG Administration Ms Emily LAU	<p><u>Avoidance of conflict of interests</u></p> <p>(a) Members' views and concerns, as follows:</p> <p>(i) Clause 52(5) provided that after a member of the FRC, the AIB or a FRRC had disclosed the nature of any interest in any matter, unless the FRC otherwise determined, he should not be present during any deliberation of the FRC, the AIB, or a FRRC, or take part in any decision, with respect to the matter.</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>Clause 52(6) further provided that the member should not be present during any deliberation of the FRC, the AIB, or a FRRC for the purpose of making the determination under clause 52(5), or take part in the making of the determination by the FRC; and</p> <p>(ii) It was not fair and justified to require the FRC to determine whether a person who had disclosed interest in a matter should present during the deliberation of or take part in the decision with respect to the matter, given that it was the person concerned, not the FRC, who had the knowledge about the nature of the interest and conflicts involved</p> <p>(b) Members' request for the Administration to take the following actions:</p> <p>(i) To respond to the views in item (a)(ii) above;</p> <p>(ii) To review subclauses (5) and (6) of clause 52 taking into account the following suggestions -</p>	<p>The Administration to take action under paragraph 2(1)(i) and (iv) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<ul style="list-style-type: none"> ● the wording “unless the Council otherwise determines” in subclause (5) be deleted; ● subclause (6) be deleted; and ● subclause (5)(b) be amended to the effect that the member who had disclosed interest in a matter should not take part in any meetings of the FRC, the AIB or a FRRC, with respect to the matter <p>(iii) To consider including provisions in the Bill to prevent a member who had disclosed interest in a matter from accessing information (e.g. papers, minutes of meetings) available to the FRC, the AIB or a FRRC concerning the matter</p> <p>(c) The Administration’s advice, as follows:</p> <ul style="list-style-type: none"> (i) Clause 52 was modelled on the 	

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		<p>relevant provisions of the SFO and other relevant ordinances;</p> <p>(ii) There were comments from deputations that the interest disclosure regime in clause 52 was too stringent, and might discourage people from taking up appointments to serve the FRC, the AIB or a FRRC;</p> <p>(iii) The Administration's policy intent was to put in place an effective interests disclosure regime in clause 52 covering genuine, perceived, indirect or remote interests, and to empower the FRC, if it saw fit, to determine whether a person with disclosed interest should continue to participate in an investigation or enquiry of the matter concerned; and</p> <p>(iv) The suggestion in item (b)(ii) and (iii) above might undermine the flexibility of the FRC</p>	
014905-015933	Ms Emily LAU Administration Mr SIN Chung-kai	<p><u>Avoidance of conflict of interest</u></p> <p>(a) Members' request for the</p>	The Administration

Time marker	Speaker	Subject(s)	Action Required
		<p>Administration to respond to their views and suggestion, as follows:</p> <p>(i) While the title of clause 52 was “Avoidance of conflict of interests (避免利益衝突)”, subclauses (2) and (5) required a person to disclose the nature of the interest (披露該利害關係的性質). The Administration should examine whether there was any inconsistency between the title of clause 52 and the requirement under the two subclauses; and if there was, to review the drafting of clause 52 for making improvement; and</p> <p>(ii) Consideration should be given to set out clearly the kinds of interest that required to be disclosed and the circumstances under which such disclosures should be made</p> <p>(b) The Administration’s advice that the disclosure of interests regime in clause 52 was aimed to avoid a conflict of interests situation during an investigation or enquiry.</p>	<p>to take action under paragraph 2(1)(ii) and (iii) of the minutes</p>

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		The heading of this clause reflected that intent and was thus appropriate	
015934-020154	Administration Chairman	<p><u>Avoidance of conflict of interest</u></p> <p>(a) Members noted that clause 52(3) provided that a person had an interest in a matter if the matter related to a listed entity in which he had an interest, or related to his past or present employers, clients, associates, or another person whom he knew was or had been a client of his, past or present, employers or associates</p> <p>(b) Members' request for the Administration to clarify whether clause 52(3) would apply to a matter which related to a person's past employer, which was an entity merged with other entities and no longer existed by itself</p>	The Administration to take action under paragraph 2(k) of the minutes
020155-020225	Chairman	Date of next meeting	