

立法會
Legislative Council

LC Paper No. CB(1)1452/05-06
(These minutes have been seen
by the Administration)

Ref : CB1/BC/13/04

Bills Committee on Financial Reporting Council Bill

**Minutes of the thirteenth meeting held on
Friday, 31 March 2006, at 10:45 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon TAM Heung-man (Chairman)
Hon Albert HO Chun-yan
Hon SIN Chung-kai, 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** : Dr Hon LUI Ming-wah, SBS, JP
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, SBS, 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

Mr Justin TAM
Council Secretary (1)3

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- I. Meeting with the Administration**
- | | | |
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| (LC Paper No. CB(3)713/04-05 | — | The Bill |
| LC Paper No. CB(1)1127/05-06(01) | — | Marked-up copy of the Bill showing the draft Committee Stage amendments proposed by the Administration (March 2006) |
| LC Paper No. CB(1)1127/05-06(02) | — | “Summary of outstanding issues of concern and proposed amendments to individual clauses of the Bill (Position as at 22 March 2006)” prepared by the Legislative Council Secretariat |

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:

Clause 12 – Referral of cases to specified authorities

(a) Clause 12 set out the circumstances under which the Financial Reporting Council (FRC) might refer cases or complaints, or provide assistance, to specified authorities. In this connection, the Administration was requested to provide information on the list of authorities, regulatory organizations and accountancy bodies in the Mainland which fell within paragraph (a)(i) or (a)(ii) of the definition of “specified authority” in clause 2(1).

Clause 14 – Written directions of the Chief Executive (CE)

(b) Clause 14 empowered the CE to give the FRC written directions with respect to the performance of any of its functions. Members noted the Administration’s advice that there was no provision in the Bill prohibiting the disclosure of such written directions, and that the CE would decide whether to make public such written directions, and if so, in what manner, in light of actual circumstances. In this connection, the Administration was requested to consider and provide written response to the following views and request raised by some members -

- (i) In empowering the CE to give written directions to the FRC, it was essential to ensure that the CE would exercise such power in an appropriate manner. The circumstances under which the CE might exercise such power should therefore be set out clearly in the Bill;
- (ii) In connection with item (i) above and for the purpose of enhancing transparency, it should be set out clearly in the Bill that the CE’s written directions to the FRC should be made public, not immediately when the directions were given but at an appropriate time; and

- (iii) To invite the Secretary for Financial Services and the Treasury (SFST) to attend the next meeting of the Bills Committee to discuss the subject with members.
- (c) The Administration was requested to provide written response to the request raised by some members at the Bills Committee meeting on 31 October 2005 for SFST to incorporate in his speech resuming the Second Reading debate on the Bill the gist of paragraphs 13 and 14 of the paper on “Appointment to and Checks and Balances on the Proposed Financial Reporting Council” (LC Paper No. CB(1)166/05-06(02)), including the following points -
- (i) Clause 14 was a tool of last resort for the Administration, through the CE, to implement necessary remedial measures in the most pressing and extreme circumstances;
 - (ii) CE would take into account all prevailing circumstances, including whether there was any major malfunction on the part of the FRC, whether the reputation of Hong Kong as an international financial centre was at stake, the urgency of remedial actions required of the FRC, and whether other checks and balances were performed effectively at the time; and
 - (iii) No direction had ever been given by the CE in the past in accordance with relevant provisions in other ordinances, as this reserve power was not intended to be used lightly.

Clauses 25 and 55 – Legal professional privilege

- (d) Clause 25 provided the investigator with the power to require production of records and documents relating to auditing irregularity. In response to a member’s concern on whether the investigator might require the production of those records and documents that were subject to legal professional privilege, the Administration advised that under clause 55(1), the FRC Ordinance did not affect any claims, rights or entitlements that would, apart from the Ordinance, arise on the ground of legal professional privilege. In this connection, the Administration was requested to consider and provide written response to the member’s suggestion that it should be set out clearly in the Bill that the powers under clause 25 and other relevant clauses were subject to the provisions in clause 55.

Clause 28 – Power to require attendances and answers

- (e) Clause 28 provided the investigator with the power to require production of records and documents and to require attendances and answers. In response to a member’s concern on whether the persons concerned were

allowed to have legal representation in attending before the investigator, the Administration advised that there was no provision in the Bill prohibiting the persons concerned from doing so. In this connection, members noted that in May 2005, the Court of Appeal in its judgment in CACV170/2004 quashed the direction of the Chairman of the Listing (Disciplinary) Committee in the disciplinary proceedings in respect of New World Development Company Limited and others that legal advisers not be permitted to address the Listing (Disciplinary) Committee. To protect the interests of the persons concerned, the member considered that it should be set out clearly in the Bill that the persons concerned were allowed to have legal representation in attending before the investigator. The Administration was requested to consider the member's view and provide written response.

(Post-meeting note: On the case mentioned in paragraph 2(e) above, the Court of Final Appeal delivered its judgment on 6 April 2006 (FACV No. 22 of 2005) and reversed the decision of the Court of Appeal.)

Date of next meeting

3. The Chairman reminded members that the next meeting would be held on Monday, 10 April 2006, at 8:30 am.

II. Any other business

4. There being no other business, the meeting ended at 12:30 pm.

Council Business Division 1
Legislative Council Secretariat
10 May 2006

**Proceedings of the thirteenth meeting of the
Bills Committee on Financial Reporting Council Bill
on Friday, 31 March 2006, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-001418	Chairman Assistant Legal Adviser 6 (ALA6) Administration Mr SIN Chung-kai	<p><i>Clause-by-clause examination of the Bill with draft Committee Stage amendments (CSAs) proposed by the Administration</i> (LC Paper Nos. CB(1)1127/05-06(01) & (02), CB(1)166/05-06(03))</p> <p><u>Clause 12 – Assistance, etc. to specified authorities under certain circumstances</u></p> <p>(a) Briefing by the Administration that clause 12 set out the circumstances under which the Financial Reporting Council (FRC) might refer cases or complaints, or provide assistance, to specified authorities</p> <p>(b) Member’s enquiry on the list of authorities, regulatory organizations and accountancy bodies in the Mainland which fell within paragraph (a)(i) or (a)(ii) of the definition of “specified authority” in clause 2(1)</p> <p>(c) Member’s request for the Administration to provide</p>	The Administration to take action under

Time marker	Speaker	Subject(s)	Action Required
		information on item (b) above	paragraph 2(a) of the minutes
001419-001520	Administration Mr SIN Chung-kai	<u>Clause 13 – FRC might issue guidelines</u> Briefing by the Administration on clause 13 and the draft proposed CSA	
001521-005144	Administration Ms Emily LAU Chairman Mr SIN Chung-kai Mr Albert HO ALA6 Mr Ronny TONG	<u>Clause 14 – Written directions of the Chief Executive (CE)</u> (a) Briefing by the Administration on clause 14 (b) Members’ concerns, as follows: (i) Whether CE’s written directions to the FRC would be made public; and (ii) Whether the Secretary for Financial Services and the Treasury (SFST) would incorporate in his speech resuming the Second Reading debate on the Bill the gist of paragraphs 13 and 14 of the paper on “Appointment to and Checks and Balances on the Proposed Financial Reporting Council” (LC Paper No. CB(1)166/05-06(02)) as requested by members	

Time marker	Speaker	Subject(s)	Action Required
		<p>at the Bills Committee meeting on 31 October 2005, including the following points -</p> <ul style="list-style-type: none">● Clause 14 was a tool of last resort for the Administration, through the CE, to implement necessary remedial measures in the most pressing and extreme circumstances;● CE would take into account all prevailing circumstances, including whether there was any major malfunction on the part of the FRC, whether the reputation of Hong Kong as an international financial centre was at stake, the urgency of remedial actions required of the FRC, and whether other checks and balances were performed effectively at the time; and	

Time marker	Speaker	Subject(s)	Action Required
		<ul style="list-style-type: none"> ● No direction had ever been given by the CE in the past in accordance with relevant provisions in other ordinances, as this reserve power was not intended to be used lightly <p>(c) The Administration response, as follows:</p> <ul style="list-style-type: none"> (i) There was no provision in the Bill prohibiting the disclosure of CE's written directions to the FRC; (ii) The CE would decide whether to make public such written directions, and if so, in what manner, in light of actual circumstances, such as the impact on investors, the public and the parties concerned; and (iii) The Administration would consider members' request in item (b)(ii) above and revert to the Bills Committee at the next meeting <p>(d) Request for the Administration to provide</p>	<p>The Administration to take action under</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>written response to the request raised by members in item (b)(ii) above</p> <p>(e) Request for the Administration to consider and provide written response to the following views and request raised by some members -</p> <p>(i) In empowering the CE to give written directions to the FRC, it was essential to ensure that the CE would exercise such power in an appropriate manner. The circumstances under which the CE might exercise such power should therefore be set out clearly in the Bill;</p> <p>(ii) In connection with item (i) above and for the purpose of enhancing transparency, it should be set out clearly in the Bill that the CE's written directions to the FRC should be made public, not immediately when the directions were given but at an appropriate time; and</p> <p>(iii) To invite the SFST to attend the next meeting</p>	<p>paragraph 2(c) of the minutes</p> <p>The Administration to take action under paragraph 2(b)(i) to (iii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>of the Bills Committee to discuss with members on the subject</p> <p>(f) Some members' view that if the Administration did not accept the suggested amendments mentioned in item (e)(i) and (ii) above, the Bills Committee should consider moving CSAs for those purposes</p>	
005145-005248	Administration	<p><u>Clauses 15, 16 and 17</u></p> <p>Briefing by the Administration on clauses 15, 16 and 17</p>	
005249-005450	Administration Mr Ronny TONG	<p><u>Clauses 18, 19 and 20</u></p> <p>(a) Briefing by the Administration on clauses 18, 19 and 20</p> <p>(b) Member's enquiry about the disclosure of the FRC's financial statements</p> <p>(c) The Administration's advice that under clause 20, the FRC was required to submit to the SFST, as soon as practicable after the end of each financial year of the FRC, a report on its activities and statement of accounts for that financial year, and a report on the audit of that statement. The SFST should cause these reports and statement to be laid before the Legislative</p>	

Time marker	Speaker	Subject(s)	Action Required
		Council	
005451-005521	Administration	<u>Clause 21 – Interpretation</u> Briefing by the Administration on clause 21 and the draft proposed CSAs	
005522-011705	Administration Mr Albert HO Mr Ronny TONG	<u>Clause 22 – Audit Investigation Board (AIB)</u> (a) Briefing by the Administration on clause 22 and the draft proposed CSA to add the new sub-clause (3A) (b) A member’s concern that given the small number of members of the AIB, it was not justified to provide in the new sub-clause (3A) that the AIB might perform its functions, and its proceedings were valid, despite - (i) a vacancy in the membership of the AIB; (ii) a defect in the appointment or qualification of a person purporting to be a member of the AIB; or (iii) a minor irregularity in the convening of any meeting of the AIB	

Time marker	Speaker	Subject(s)	Action Required
		<p>(c) The Administration’s advice, as follows:</p> <ul style="list-style-type: none"> (i) The AIB would only perform investigatory functions. In the Administration’s view, a change in the membership of the AIB during the course of an investigation would not by itself constitute a breach of the principles of natural justice, and would not affect the AIB’s legal status and thus, the legality of evidence collected by it (ii) The new sub-clause (3A) was proposed to put it beyond doubt that the powers of the AIB would not be affected on the occasions mentioned in item (b)(i) to (iii) above (iii) The wording of the new sub-clause (3A) was modelled on section 51 of the Interpretation and General Clauses Ordinance (Cap. 1); and (iv) Clause 22(2) provided that the AIB was to consist of the Chief Executive Officer of the FRC and at least one other member 	

Time marker	Speaker	Subject(s)	Action Required
		<p>appointed by the FRC. It was envisaged that the FRC would appoint full-time staff of the FRC or other consultants, agents and advisers, to the AIB to undertake the investigation work. Hence, the AIB was not expected to have a high turnover of members</p> <p>(d) A member's view that during the course of an investigation conducted by the Police, it was not uncommon for the investigation team to change one of its members. He shared the Administration's view that, as a matter of principle, a change in the membership of the AIB during the course of an investigation would not by itself constitute a breach of the principles of natural justice</p>	
011706-011854	Administration	<p><u>Clauses 23 and 24</u></p> <p>Briefing by the Administration on clauses 23 and 24</p>	
011855-013250	Administration Mr Ronny TONG	<p><u>Clause 25 – Powers to require production of records and documents relating to auditing irregularity</u></p> <p>(a) Briefing by the Administration on clause 25</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) Member's concerns, as follows:</p> <p>(i) While clause 25 provided the investigator with the power to require production of records and documents relating to auditing irregularity, the scope of the records and documents covered by the clause seemed to be too wide; and</p> <p>(ii) It was doubtful as to whether the investigator might require the production of those records and documents that were subject to legal professional privilege</p> <p>(c) The Administration's response, as follows:</p> <p>(i) Sub-clauses (1), (2) (4) and (5) of clause 25 provided the investigator with the power to require production of records and documents from different targets, including the auditor of the listed entity, the listed entity, an authorized institution, and any other persons;</p>	

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		<p>and</p> <p>(ii) Under clause 55(1), the FRC Ordinance did not affect any claims, rights or entitlements that would, apart from the Ordinance, arise on the ground of legal professional privilege</p> <p>(d) Request for the Administration to consider and provide written response to the member's suggestion that it should be set out clearly in the Bill that the powers under clause 25 and other relevant clauses were subject to the provisions in clause 55</p>	<p>The Administration to take action under paragraph 2(d) of the minutes</p>
013251-013510	Ms Emily LAU Administration	<p><u>Clause 25 – Powers to require production of records and documents relating to auditing irregularity</u></p> <p>Member's support for providing the AIB with sufficient power to carry out its investigation work</p>	
013511-013804	Administration Mr Ronny TONG	<p><u>Clauses 26 and 27</u></p> <p>Briefing by the Administration on clauses 26 and 27</p>	
013805-014100	Administration Mr Albert HO ALA6	<p><u>Clause 28 – Powers to require production of records and documents, and to require attendances and answers, etc.</u></p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(a) Briefing by the Administration on clause 28 and the draft proposed CSA</p> <p>(b) Member's concern on whether the persons required to attend and answer enquiries about records and documents relating to auditing irregularities were entitled to legal representation</p> <p>(c) In response to item (b) above, the Administration's advice that there was no provision in the Bill prohibiting the persons concerned from doing so</p> <p>(d) ALA's advice that in May 2005, the Court of Appeal in its judgment in CACV170/2004 quashed the direction of the Chairman of the Listing (Disciplinary) Committee in the disciplinary proceedings in respect of New World Development Company Limited and others that legal advisers not be permitted to address the Listing (Disciplinary) Committee; and</p> <p>(e) In connection with item (d) above, member's view that in order to protect the interests of the persons concerned, it should be set out clearly in the Bill that the persons</p>	<p>The Administration to take action under paragraph 2(e) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		concerned were allowed to have legal representation in attending before the investigator	
014101-014300	Ms Emily LAU Administration	<u>Clause 28</u> Briefing by the Administration on its written response to the comments of The Association of International Accountants – Hong Kong Branch on the reference to an “authorized officer” (LC Paper No. CB(1)1127/05-06(02))	
014301-014400	Chairman	<i>Date of next meeting</i>	

Council Business Division 1
Legislative Council Secretariat
10 May 2006