

**立法會**  
**Legislative Council**

LC Paper No. CB(1)2108/05-06  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/13/04

**Bills Committee on Financial Reporting Council Bill**

**Minutes of the seventeenth meeting held on  
Monday, 22 May 2006, at 8:30 am  
in Conference Room A of the Legislative Council Building**

- Members present** : Hon TAM Heung-man (Chairman)  
Hon Albert HO Chun-yan  
Hon CHAN Kam-lam, SBS, JP  
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  
Dr Hon Philip WONG Yu-hong, GBS
- Public officers attending** : Mr Albert LAM  
Deputy Secretary for Financial Services and the Treasury  
(Financial Services)
- Mr Jackie LIU  
Acting Principal 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

**Attendance by invitation** : Ms Winnie CHEUNG  
Chief Executive & Registrar  
Hong Kong Institute of Certified Public Accountants

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

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

Mr Paul WOO  
Senior Council Secretary (1)3

Mr Justin TAM  
Council Secretary (1)3

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- I. Confirmation of minutes of meeting**  
(LC Paper No. CB(1)1527/05-06 — Minutes of fourteenth meeting held on 10 April 2006)

The minutes of the fourteenth meeting held on 10 April 2006 were confirmed.

- II. Meeting with the Administration**
- (LC Paper No. CB(1)1528/05-06(01) — “Follow-up to the sixteenth meeting on 12 May 2006” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1528/05-06(02) — Paper provided by the Administration on “Follow-up actions arising from the meeting held on 12 May 2006”
- LC Paper No. CB(3)713/04-05 — The Bill
- LC Paper No. CB(1)1127/05-06(01) — Marked-up copy of the English text of the Bill showing the draft Committee Stage amendments proposed by the Administration (March 2006)
- LC Paper No. CB(1)1528/05-06(03) — Marked-up copy of the Chinese text of clauses 51 to 81, and Schedule 1 of the Bill showing the draft Committee Stage amendments proposed by the Administration (May 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)1256/05-06(05) — Paper provided by the Administration on “Funding arrangement for the Financial Reporting Council”

LC Paper No. CB(1)1528/05-06(04) — “Summary of members’ concerns on funding arrangement for the Financial Reporting Council (Position as at 19 May 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”)

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

Follow-up actions to be taken by the Administration

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

Admin

New clause 51A – Protection of informers

- (a) On the proposal to substitute the expression “is not obliged to” in the new clause 51A(2) with “shall not”, the legal adviser to the Bills Committee was of the view that given that the amendment was no more than stating the position at common law, the proposed change might not ensure the protection of the identity of an informer as it had no sanction for any breach, but might affect the completeness of the evidence a witness might give in court due to the prohibition of disclosing the identity and particulars of relevant persons and in view of the wide scope of the definition of “relevant person” in the new clause 51A(6)(a) and (b). Further, the new clause 51A was an adaptation of section 30A of the Prevention of Bribery Ordinance (Cap. 201) which was drafted purely to prevent the identity and particulars of an informer from being elicited in cross-examinations. The amendment proposed by the Administration would not provide any comprehensive protection. The legal adviser considered that balancing the pros and cons of the effect of the proposed amendment, it might be preferable to retain the original wording of the new clause 51A(2) for this Bill, and that the Administration should consider, outside the context of this Bill and from a policy perspective, how, in the context of good corporate governance, the system for the protection of whistle blowers could be enhanced. Members accepted the legal adviser’s views and requested the Administration to consider such views.

Section 2 of Schedule 2 – Tenure of appointed members of the FRC

- (b) Section 2 of Schedule 2 provided that an appointed member of the FRC was to be appointed for a term not exceeding three years and on the expiry of his period of appointment or reappointment, the member was eligible for reappointment. Given the Administration's policy that members of statutory bodies should generally not hold office for more than six consecutive years, a member of the Bills Committee considered that such policy should be clearly set out in this Bill. In this connection, the member pointed out that the Administration had agreed to move Committee Stage amendments (CSAs) to the Construction Industry Council (No. 2) Bill to this effect. She requested the Administration to propose similar CSAs to this Bill and provide a written response.

Section 5 of Schedule 2 – Removal of appointed members of the FRC

- (c) Given that clause 7 of the Bill provided that the Chief Executive (CE) should give notice of appointment of members of the FRC by notice published in the Gazette, some members of the Bills Committee requested the Administration to amend section 5 of Schedule 2 to the effect that the CE should give notice of removal of members of the FRC by notice in the Gazette as soon as possible after the removal had been made. The Administration agreed to consider the members' request.

Section 6 of Schedule 2 – Meetings and proceedings of the FRC

- (d) A member considered that the FRC should make a set of rules of procedures covering the procedures of its meetings and proceedings. The Administration was requested to consider the member's view.

Section 7 of Schedule 2 – Transaction of business by circulation of papers

- (e) To prevent abuse of the provision of section 7 of Schedule 2 for the transaction of business of the FRC by circulation of papers, a member requested the Administration to amend the provision to the effect that any member of the FRC might, upon receipt of a paper issued to him by circulation, request that a meeting be convened for the purpose of discussing the subject matter, and the Chairman should convene the meeting accordingly. In this connection, the member of the Bills Committee pointed out that the Administration had agreed to move CSAs to the Construction Industry Council (No. 2) Bill to this effect. She requested the Administration to propose similar CSAs to this Bill and provide a written response.

Remuneration for members of the FRC/Audit Investigation Board (AIB)/Financial Reporting Review Committee (FRRC)

- (f) A member considered that the Administration should review, in the light of the operation of the FRC, whether members of the FRC/AIB/FRRC should be offered remuneration commensurate with their work. The

Administration was requested to consider the member's view.

*(Post-meeting note: While items (b) and (e) above were discussed at the meeting, the requests for the Administration to propose CSAs and provide a written response were raised by a member of the Bills Committee after the meeting. With the concurrence of the Chairman, the member's requests were incorporated in the list of follow-up actions to be taken by the Administration.)*

Date of next meeting

4. The Chairman reminded members that the next meeting would be held on Monday, 29 May 2006, at 10:45 am.

**III. Any other business**

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

Council Business Division 1  
Legislative Council Secretariat  
8 August 2006

**Proceedings of the seventeenth meeting of the  
Bills Committee on Financial Reporting Council Bill  
on Monday, 22 May 2006, at 8:30 am  
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000314	Chairman	<i>Confirmation of minutes of meeting</i> (LC Paper No. CB(1)1527/05-06)	
000315-001014	Chairman Administration Ms Emily LAU	<p><i>Matters arising from the 16<sup>th</sup> meeting</i></p> <p><u>Proposed new clause 51A – Protection of informers</u> (Paragraph 2 and Annex to LC Paper No. CB(1)1528/05-06(02))</p> <p>(a) Briefing by the Administration on its proposal to amend the new clause 51A(2) to substitute the expression “is not obliged to” with “shall not”, having regard to a member’s suggestion at the last meeting on 12 May 2006</p> <p>(b) In response to a member’s enquiry, the Administration advised that the drafting of the new clause 51A reflected the position under common law. Normally a prosecution witness would not voluntarily disclose the identity of an informer. There could be exceptional circumstances, such as the witness becoming a hostile witness of the prosecution. In addition, a prosecution witness</p>	

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		<p>might be obliged to answer questions that might disclose the identity of an informer on being cross-examined. Thus, the expression “is not obliged to” was normally sufficient for the purpose. The expression “shall not” would cover the exceptional circumstances but there would not be any statutory sanction for a contravention</p>	
001015-002714	<p>Assistant Legal Adviser 6 (ALA6) Administration Ms Emily LAU Chairman Mr CHAN Kam-lam Mr Jeffrey LAM</p>	<p>(a) ALA6’s view that:</p> <p>(i) given that the Administration’s proposed amendment to the new clause 51A(2) was no more than stating the position at common law, the proposed change might not ensure the protection of the identity of an informer as it had no sanction for any breach, but might affect the completeness of the evidence a witness might give in court due to the prohibition of disclosing the identity and particulars of relevant persons and in view of the wide scope of the definition of “relevant person” in the new clause 51A(6)(a) and (b). Further, the new clause 51A was an adaptation of section 30A of the Prevention of Bribery Ordinance</p>	

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		<p>(Cap. 201) which was drafted purely to prevent the identity and particulars of an informer from being elicited in cross-examinations. The amendment proposed by the Administration would not provide any comprehensive protection; and</p> <p>(ii) balancing the pros and cons of the effect of the proposed amendment, it might be preferable to retain the original wording of the new clause 51A(2) for this Bill, and that the Administration should consider, outside the context of this Bill and from a policy perspective, how, in the context of good corporate governance, the system for the protection of whistle blowers could be enhanced</p> <p>(b) The Administration's advice that it had no objection to retaining the original wording of the new clause 51A(2)</p> <p>(c) Members accepted ALA6's views in item (a) above and requested the Administration to consider the views set out in item (a)(ii) above</p>	<p>The Administration to take action under paragraph 3(a) of the minutes</p>

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002715-002847	Administration	<p><u>Clause 57 – Lien claimed on records or documents</u> (Paragraphs 3 to 6 of LC Paper No. CB(1)1528/05-06(02))</p> <p>Briefing by the Administration on paragraphs 3 to 6 of LC Paper No. CB(1)1528/05-06(02)</p>	
002848-003201	Administration Ms Emily LAU	<p><u>Clause 51 – Preservation of secrecy</u> (Paragraphs 7 and 8 of LC Paper No. CB(1)1528/05-06(02))</p> <p>(a) Briefing by the Administration on paragraphs 7 and 8 of LC Paper No. CB(1)1528/05-06(02)</p> <p>(b) In response to a member’s enquiry, the Administration confirmed that the FRC, when disclosing information to the Official Receiver (OR), would state clearly the purpose of the disclosure and the relevant capacity in which the OR was given the information, and that the OR would use the information properly in his relevant capacity</p>	
003202-003244	Chairman	<p>The Chairman’s advice that the Administration had provided the marked-up copy of the Chinese text of clauses 51 to 81 and Schedule 1 to the Bill showing the draft Committee Stage amendments (CSAs) proposed by the Administration (LC Paper No. CB(1)1528/05-06(03)). The Chinese text would be considered by ALA6 in tandem with the English</p>	

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		text to ensure that the two were consistent with each other	
003245-003900	Chairman Administration Ms Emily LAU	<p><i>Clause-by-clause examination of the Bill with draft CSAs proposed by the Administration</i> (LC Paper Nos. CB(1)1127/05-06(01) and (02))</p> <p><u>Schedule 2 to the Bill (Sections 1 and 2)</u></p> <p>(a) Briefing by the Administration on sections 1 and 2 of Schedule 2</p> <p><i>Section 2 of Schedule 2 – Tenure of appointed members</i></p> <p>(b) Referring to the concern expressed by The Association of Chartered Certified Accountants (Hong Kong) about the tenure of FRC’s appointed members, and the Administration’s written response (LC Paper No. CB(1)1127/05-06(02)) that there was a general policy guideline that non-official members of statutory bodies should not hold office for more than six consecutive years, a member pointed out that such guideline had often not been followed by the Government. She enquired whether the Administration would propose a CSA to specify that an appointed member of the FRC should not hold office</p>	The Administration to take action under paragraph 3(b) of the minutes

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		<p>continuously for more than six years</p> <p>(c) The Administration's response that it had followed an existing general policy guideline on tenure of appointed members of statutory bodies. It would not be necessary to prescribe a rigid requirement in the Bill, in order to allow flexibility for the Administration to take into account the exigency of circumstances when making reappointments</p>	
003901-004024	Mr Andrew LEUNG Administration	A member's view in support of the Administration's position that it was not necessary to specify in the Bill a maximum tenure of appointed members of the FRC	
004025-004107	Ms Emily LAU	A member's advice that she would consider proposing a CSA to specify in the Bill a maximum tenure of the appointed members of the FRC	
004108-005831	Administration Mr SIN Chung-kai Mr CHAN Kam-lam Mr Albert HO Chairman	<p><u>Schedule 2 to the Bill (Sections 3 to 6)</u></p> <p>(a) Briefing by the Administration on sections 3 to 6 of Schedule 2 and the draft proposed CSAs</p> <p><i>Section 5 of Schedule 2 – Removal of appointed members</i></p> <p>(b) In response to a member's enquiry, the Administration advised that section 5(1)(e) of Schedule 2 was a "catch-all"</p>	

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		<p>provision to cover other situations of an appointed member of the FRC being unable to perform the functions of a member of the FRC and should be removed from the office</p> <p>(c) Some members' view that given that clause 7 of the Bill provided that the Chief Executive (CE) should give notice of appointment of members of the FRC by notice published in the Gazette, section 5 of Schedule 2 should be amended to the effect that the CE should give notice of removal of members of the FRC by notice published in the Gazette as soon as possible after the removal had been made. The Administration agreed to consider the suggestion</p>	<p>The Administration to take action under paragraph 3(c) of the minutes</p>
005832-010306	<p>Mr SIN Chung-kai Administration Mr Albert HO Ms Emily LAU</p>	<p><u>Section 6 of Schedule 2 – Meetings and proceedings of Council</u></p> <p>(a) On section 6(5) of Schedule 2, a member stressed the need to prevent the meetings of the FRC conducted through telephone conferencing from being hacked</p> <p>(b) The Administration advised that section 6(5) of Schedule 2 was drafted with reference to similar provisions in Schedule 2 to the Securities and Futures Ordinance and that it was for</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>the FRC to decide whether a meeting would be conducted through telephone conferencing and the safety measures involved</p> <p>(c) Request for the Administration to consider a member's suggestion that the FRC should make a set of rules of procedures covering the procedures of its meetings and proceedings</p>	<p>The Administration to take action under paragraph 3(d) of the minutes</p>
010307-011019	Administration Ms Emily LAU Chairman	<p><u>Section 7 of Schedule 2 – Transaction of business by circulation of papers</u></p> <p>(a) Briefing by the Administration on section 7 of Schedule 2</p> <p>(b) In response to a member's enquiry, the Administration advised that notwithstanding section 7(2) of Schedule 2, a member of the FRC might, upon receipt of a paper issued to him by circulation, request that the business in question be transacted at a meeting of the FRC. The system was modelled on that adopted by the Securities and Futures Commission (SFC)</p> <p>(c) A member pointed out that the Administration had agreed to move CSAs to the Construction Industry Council (No. 2) Bill to regulate the transaction of business by circulation of</p>	<p>The Administration to take action under paragraph 3(e) of the minutes</p>

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		<p>papers to the effect that any member of the Construction Industry Council might, upon receipt of a paper issued to him by circulation, give notice in writing to the chairman requiring that the business be transacted at a meeting. She considered that section 7 of Schedule 2 should be amended along the same line</p>	
011020-011347	Ms Emily LAU Administration	<p>(a) The member's reiteration that the Administration should review, in the light of the operation of the FRC, whether members of the FRC/Audit Investigation Board (AIB)/Financial Reporting Review Committee (FRRC) should be offered remuneration commensurate with their work</p> <p>(b) The Administration's advice that the remuneration arrangement would be largely modelled on that adopted by the Hong Kong Institute of Certified Public Accountants (HKICPA) and would be considered in the context of the funding arrangement for the FRC</p>	
011348-011815	Administration Mr SIN Chung-kai Chairman Ms Emily LAU	<p><u>Section 8 of Schedule 2 – Committees</u></p> <p>(a) Briefing by the Administration on section 8 of Schedule 2</p> <p>(b) In response to a member's</p>	

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		<p>enquiry, the Administration advised that subject to any direction of the FRC, committees established by the FRC for any general or specific purposes would determine the procedure for convening meetings for the conduct of their own business</p>	
011816-012515	<p>Chairman Administration Ms Emily LAU HKICPA</p>	<p><u>Funding arrangement for the FRC</u> (LC Paper No. CB(1)1256/05-06(05))</p> <p>(a) The Chairman welcomed representative of the HKICPA to the meeting</p> <p>(b) Briefing by the Administration on the revised funding arrangement set out in its paper (LC Paper No. CB(1)1256/05-06(05))</p> <p>(c) HKICPA confirmed that the four parties concerned, including HKICPA, had agreed to the revised funding arrangement set out in paragraph 6 of the paper</p>	
012516-013932	<p>Ms Emily LAU Administration Mr Albert HO Chairman Registrar of Companies HKICPA</p>	<p>(a) Members considered it essential to ensure that sufficient funding would be made available to the FRC for the effective performance of its functions, and to cater for increases in the Council's workload which might incur huge costs. Where necessary, additional funding beyond the agreed commitments</p>	

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		<p>should be sought from the four contribution parties, i.e. the Hong Kong Exchanges and Clearing Limited, HKICPA, the SFC and the Administration, so that the FRC's investigation or enquiry work would not be hindered by the lack of funds</p> <p>(b) The Administration advised that the funding arrangement was formulated with reference to the number of investigations, in relation to listed entities, instigated by the Hong Kong Society of Accountants (HKSA)/HKICPA's Investigation Committees since 1998. With regard to contingency funding, the four parties had agreed that they would seriously consider any justified request made by the FRC for additional funding beyond the current commitments</p> <p>(c) Registrar of Companies and HKIPCA advised that there was a strong wish on the part of all the four parties for the FRC to operate successfully. In view of this, if there were any justifiable requests by the FRC for top-up in the funding, the requests would be considered sympathetically. The Registrar and HKICPA did not envisage any problems with the revised funding arrangement</p>	

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		<p>(d) HKICPA also advised that upon the establishment of the FRC, the FRC would take the place of the Investigation Committees of the HKICPA. The investigations would be conducted mainly on cases of alleged irregularity or non-compliance committed by auditors/accountants in relation to listed entities. In the past few years, the number of such investigations was not great. Since HKSA was given investigatory powers under the Professional Accountants Ordinance in 1994, no cases were filed for investigation until 1998. From 1998 onwards, there were only on average two to three cases instigated by the HKSA/HKICPA's Investigation Committees each year, involving an annual average cost of about \$3 million</p> <p>(e) A member pointed out that while the caseload of HKICPA's Investigation Committees remained small, the number of relevant cases might increase after the establishment of the independent FRC</p>	
013933-014338	Mr SIN Chung-kai HKICPA Administration Mr CHAN Kam-lam Ms Emily LAU	In response to a member's enquiry, the Administration advised that preliminarily it had no intention for the FRC to introduce a fund-saving mechanism under which the portion of the contribution made to the FRC that remained unused at the end of a	

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		<p>year could be carried forward to the following year. Notwithstanding this, the Administration appreciated members' concern about the funding arrangement for the FRC and would ensure that sufficient resources would be available to the FRC for the discharge of its functions</p>	
014339-015029	<p>Chairman Administration HKICPA Ms Emily LAU</p>	<p><i><b>Matters arising from the 15<sup>th</sup> meeting in relation to funding arrangement</b></i></p> <p><u>Remuneration for members of the Insider Dealing Tribunal (IDT)</u></p> <p>(a) The Administration advised that lay members of the IDT were remunerated at a rate of \$4,500 per day, or \$2,250 per half-day</p> <p><u>Remuneration arrangement for members of FRC/AIB/FRRC</u></p> <p>(b) The Administration advised that while the FRC would engage full-time paid staff for conducting investigations or enquiries, no remuneration would be provided for members of the FRC/AIB/FRRC who worked on a pro-bono basis as a form of public service. This was in line with the practice adopted by the HKICPA, under which members of its Investigation Committees worked on a pro bono basis as a kind of public service. The Administration considered this practice effective and</p>	

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		<p>acceptable</p> <p>(c) HKICPA advised that while investigations currently undertaken by HKICPA were done by full-time paid staff, members of the Investigations Committees of the HKICPA, who were responsible for adjudication and oversight duties, received no remuneration</p> <p>(d) A member was concerned that given the complexity of the issues involved in FRC's investigations or enquiries, it might be necessary for members of the FRC/AIB/FRRC to spend considerable time and efforts on FRC's work. It seemed unfair and unreasonable for the FRC not to provide remuneration for the members</p> <p>(e) The Administration advised that as there was no provision in the Bill specifying that no remuneration would be provided for members of the FRC/AIB/FRRC, the FRC would have the flexibility to decide on the need to remunerate the members as and when necessary</p> <p>(f) A member considered that the Administration should review, in the light of the operation of the FRC, whether members of the FRC/AIB/FRRC should be</p>	<p>The Administration to take action under paragraph 3(f) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>offered remuneration commensurate with their work. The Administration was requested to consider the member's view</p>	
015030-015825	<p>Chairman Administration Ms Emily LAU Mr SIN Chung-kai</p>	<p><b><i>Clause-by-clause examination of the Bill with draft CSAs proposed by the Administration</i></b> (LC Paper Nos. CB(1)1127/05-06(01) and (02))</p> <p><u>Schedule 3 to the Bill</u></p> <p>(a) Briefing by the Administration on Schedule 3 to the Bill and its written response to the deputations' views on Schedule 3</p> <p>(b) In response to a member's enquiry, the Administration advised that similar to other monitoring bodies such as the SFC, the terms and conditions of appointment, such as remuneration, of the Chief Executive Officer (CEO) of the FRC would not be set out in detail in the recruitment advertisement. The actual terms and conditions offered would be decided by the CE, taking into consideration, among other things, the qualifications and experience of the successful candidate. Recruitment of the CEO would likely be conducted openly and on a global basis</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
015826-015930	Chairman	Date of next meeting	

Council Business Division 1  
Legislative Council Secretariat  
8 August 2006