

立法會
Legislative Council

LC Paper No. CB(1)2109/05-06
(These minutes have been seen
by the Administration)

Ref : CB1/BC/13/04

Bills Committee on Financial Reporting Council Bill

**Minutes of the eighteenth meeting held on
Monday, 29 May 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 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
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 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)1588/05-06 — Minutes of fifteenth meeting held on 28 April 2006)

The minutes of the fifteenth meeting held on 28 April 2006 were confirmed.

- II. Meeting with the Administration**
(LC Paper No. CB(1)1589/05-06(01) — “Follow-up to the seventeenth meeting on 22 May 2006” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1589/05-06(02) — Extracts from the Report of the Bills Committee on Construction Industry Council (No. 2) Bill with relevant Committee Stage amendments

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)1589/05-06(03)	—	Marked-up copy of the Chinese text of Schedule 2 to 6 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)1589/05-06(04)	—	Draft Committee Stage amendments to clause 14 proposed by Hon Ronny TONG
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:

Section 5 of Schedule 2 – Removal of appointed members of the Financial Reporting Council (FRC)

- (a) The Administration undertook to move a Committee Stage amendment (CSA) to section 5 of Schedule 2 to the effect that the Chief Executive (CE) should give notice of removal of a member of the FRC by notice published in the Gazette as soon as possible after the removal had been made.

Section 4 of Schedule 3 – Removal of Chief Executive Officer (CEO) of the FRC

- (b) The Administration undertook to move a CSA to section 4 of Schedule 3 to the effect that the CE should give notice of removal of the CEO of the FRC by notice published in the Gazette as soon as possible after the removal had been made.

New section 1B of Schedule 4 – Removal of members of the Audit Investigation Board (AIB)

- (c) The Administration undertook to amend the new section 1B of Schedule 4 to the effect that the FRC should give notice of removal of a member of the AIB by notice published in the Gazette as soon as possible after the removal had been made.

Section 2 of Schedule 5 – Removal of members of the Financial Review Reporting Panel (FRRP)

- (d) The Administration undertook to move a CSA to section 2 of Schedule 5 to the effect that the CE should give notice of removal of a member of the FRRP by notice published in the Gazette as soon as possible after the removal had been made.

Revised draft CSAs proposed by the Administration

- (e) The Administration undertook to provide a full set of the marked-up copy of the English text of the Bill showing the revised draft CSAs proposed by the Administration for the consideration of the Bills Committee at the next meeting on 9 June 2006.

(Post-meeting note: The marked-up copy of the English text of the Bill showing the revised draft CSAs proposed by the Administration (June 2006) was issued to members vide LC Paper No. CB(1)1655/05-06(03) on 7 June 2006.)

CSAs to be moved by the Bills Committee

4. The Bills Committee decided by a majority of the members present that the Chairman would, on behalf of the Bills Committee, move the following CSAs:

(a) Tenure of appointed members of the FRC

A CSA to section 2 of Schedule 2 to the Bill to the effect that an appointed member of the FRC might not serve continuously for more than six years;

- (b) Regulating the transaction of business by circulation of papers
A CSA to section 7 of Schedule 2 to the Bill to the effect that a member of the FRC might, upon receipt of a paper issued to him for transaction of business without a meeting, give notice in writing to the chairman requiring that the business to which the paper related be transacted at a meeting, and the chairman should convene the meeting accordingly;
- (c) Recruitment arrangement for the CEO
A CSA to section 1 of Schedule 3 to the Bill to set out clearly that the CEO was to be recruited openly;
- (d) Remuneration for the CEO
A CSA to section 3 of Schedule 3 to the Bill to the effect that the remuneration of the CEO was to be determined with reference to the remuneration of public officers of comparable level by an independent committee appointed by the FRC for such purpose; and
- (e) Policy governing post-termination employment of the CEO
A CSA to section 3 of Schedule 3 to the Bill to the effect that the FRC should set comprehensive arrangements for the post-termination employment of the CEO, including a sanitization period of not less than 12 months commencing from the date of termination during which the CEO should not take up any remunerative employment without the prior written approval of the FRC.

5. The Chairman requested the Assistant Legal Adviser (ALA) to prepare the draft CSAs for the Bills Committee's consideration at the next meeting.

(Post-meeting note: The draft CSAs prepared by ALA were issued to members vide LC Paper No. CB(1)1655/05-06(04) on 7 June 2006.)

CSAs to be moved by Hon Ronny TONG

6. Hon Ronny TONG briefed members on his draft CSAs to clause 14.

(Post-meeting note: Hon Ronny TONG's speaking notes on his draft CSAs were issued to members vide LC Paper No. CB(1)1668/05-06 on 2 June 2006.)

Date of next meeting

7. The Chairman reminded members that the next meeting would be held on Friday, 9 June 2006 at 8:30 am.

III. Any other business

8. There being no other business, the meeting ended at 12:35 pm.

Council Business Division 1
Legislative Council Secretariat
8 August 2006

**Proceedings of the eighteenth meeting of the
Bills Committee on Financial Reporting Council Bill
on Monday, 29 May 2006, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000146	Chairman	<i>Confirmation of minutes of meeting</i> (LC Paper No. CB(1)1588/05-06)	
000147-000514	Chairman	Briefing on meeting arrangement	
000515-000549	Chairman Administration	<p><i>Matters arising from the 17th meeting</i></p> <p><u>Section 5 of Schedule 2 to the Bill – Removal of appointed members</u></p> <p>The Administration advised that it had taken on board members' views expressed at the last meeting and would move a Committee Stage amendment (CSA) to amend section 5 of Schedule 2 to the effect that the Chief Executive (CE) should give notice of removal of members of the Financial Reporting Council (FRC) by notice published in the Gazette as soon as possible after the removal had been made</p>	The Administration to take action under paragraph 3(a) of the minutes
000550-001244	Chairman Administration Ms Emily LAU Mr Albert HO Mr Ronny TONG	<p>Section 2 of Schedule 2 – Tenure of appointed members (LC Paper No. CB(1)1589/05-06(02))</p> <p>(a) The Administration considered the present drafting appropriate and that there was no need for amendment. While the Administration would follow the</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>prevailing policy guideline that non-official members of statutory bodies should not hold office for more than six consecutive years, the Administration did not consider it necessary to prescribe in the Bill rigidly the maximum number of terms an appointed member might serve so as to allow flexibility for reappointment under the exigency of circumstances, such as where there was a need for reappointing a member of the FRC to enable him to continue to oversee an investigation or enquiry beyond his six years' service</p> <p>(b) Some members were concerned that in the absence of express provisions in the Bill in this regard, what constituted the "exigency of circumstances" would be subject to the interpretation of the Administration. They stressed the importance for the Administration to observe the policy guideline so as to enhance good governance of statutory bodies. Given that the Administration had already amended the Construction Industry Council (CIC) (No. 2) Bill to set out clearly that an appointed member of the CIC might not serve continuously for more than six years, the members could not see why the same policy guideline should not be set</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>out in this Bill</p> <p>(c) The Administration pointed out that the context of the CIC was entirely different and there was no apparent need to follow the approach adopted for the CIC</p> <p>(d) A member suggested that the Bills Committee should move a CSA to section 2 of Schedule 2 to the effect that an appointed member of the FRC might not serve continuously for more than six years. The Chairman and two other members indicated support for the suggestion</p>	
001245-001332	Mr CHAN Kam-lam Chairman	<p>(a) A member indicated that he accepted the Administration's position and considered that it was not necessary to set out in the Bill the maximum number of terms appointed members of the FRC might serve</p> <p>(b) The Bills Committee decided by a majority of the members present that the Chairman would, on behalf of the Bills Committee, move the proposed CSA</p>	
001333-002205	Assistant Legal Adviser 6 (ALA6) Administration Mr Albert HO Ms Emily LAU Chairman	<p>(a) ALA6 pointed out that investigations or enquires would in practice be conducted by members of the Audit Investigation Board (AIB) or the Financial Reporting Review Committee (FRRC), and not by members of the FRC. He enquired whether the maximum</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>tenure requirement on FRC members needed to apply to members of AIB/FRRC</p> <p>(b) The Administration advised that members of the AIB would be appointed for a term fixed by the FRC, while members of the FRRC would be appointed from amongst members of the Financial Reporting Review Panel (FRRP), and they would be appointed for a term not exceeding three years. Members of the AIB and the FRRP were eligible for reappointment</p> <p>(c) The Chairman requested ALA6 to prepare draft CSA to be moved by the Bills Committee to section 2 of Schedule 2</p>	
002206-002615	<p>Chairman Administration Ms Emily LAU Mr Albert HO Mr Ronny TONG</p>	<p><u>Section 7 of Schedule 2 – Transaction of business by circulation of papers</u></p> <p>(a) The Administration advised that the provisions in section 7 of Schedule 2 were drafted with reference to the system adopted by the Securities and Futures Commission (SFC). The Administration considered that the system was effectual and suitable for the operation of the FRC</p> <p>(b) A member reiterated her view expressed at the last meeting that to prevent abuse of the provision in section 7 of Schedule 2, new</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>provisions should be added modelling on the CSA moved by the Administration to the CIC (No. 2) Bill on 24 May 2006 for regulating the transaction of business by circulation of papers without a meeting. The effect of the relevant CSA to the CIC (No. 2) Bill was that any member of the CIC might, upon receipt of such a paper issued to him, give notice in writing to the chairman requiring that the business to which the paper related be transacted at a meeting, and the chairman should convene the meeting accordingly. She considered that a similar CSA should be moved to this Bill. The Chairman and two other members indicated support for the suggestion</p>	
002616-002800	<p>Mr CHAN Kam-lam Chairman Ms Emily LAU ALA6</p>	<p>(a) A member did not support the proposed CSA to section 7 of Schedule 2</p> <p>(b) The Bills Committee decided by a majority of the members present that the Chairman would, on behalf of the Bills Committee, move the proposed CSA</p> <p>(c) The Chairman requested ALA6 to prepare draft CSAs to be moved by the Bills Committee to section 7 of Schedule 2 along the line of similar CSAs moved by the Administration to the CIC (No. 2) Bill</p>	

Time marker	Speaker	Subject(s)	Action Required
002801-002924	Chairman	<p>The Chairman advised that the Administration had provided the marked-up copy of the Chinese text of Schedules 2 to 6 of the Bill showing the draft CSAs proposed by the Administration (LC Paper No. CB(1)1589/05-06(03)). The Chinese text would be considered by ALA6 in tandem with the English text to ensure that the two were consistent with each other</p>	
002925-003934	Administration Ms Emily LAU Mr Albert HO	<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 3 to the Bill – Provisions relating to Chief Executive Officer (CEO) of the FRC</u></p> <p>(a) Briefing by the Administration on Schedule 3</p> <p>(b) The Administration advised that having considered members' views expressed at the last meeting, it would move a CSA to section 4 of Schedule 3 to the effect that the CE should give notice of removal of the CEO of the FRC by notice published in the Gazette as soon as possible after the removal had been made</p> <p>(c) A member considered that the following two proposals made by The Chamber of Hong Kong Listed Companies should be considered by the Administration</p>	<p>The Administration to take action under paragraph 3(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>(LC Paper No. CB(1)1127/05-06(02)):</p> <ul style="list-style-type: none"> (i) To impose a maximum tenure of the CEO; and (ii) To specify that the remuneration of the CEO be referable to a certain pay level of a civil servant of a comparable rank <p>(d) The Administration's responses to item (c) above that:</p> <ul style="list-style-type: none"> (i) the provisions on tenure of the CEO of the FRC was modelled on the arrangements for comparable posts in similar statutory bodies, where a maximum tenure was not prescribed. The Administration did not consider it necessary to set out in the Bill any limits on the number of terms a person could be appointed as the CEO of the FRC; (ii) the CEO would likely be recruited through an open global search process; and (iii) It was not appropriate to prescribe rigidly the pay level of the CEO in the legislation, so as to allow flexibility for the CE in deciding the remuneration packages of individuals 	

Time marker	Speaker	Subject(s)	Action Required
		<p>after taking into account, among other things, their background, capability and performance, together with the pay trends and levels in comparable bodies. The terms and conditions of employment would be stipulated in detail in the employment contract. The arrangement was largely the same as that adopted by similar bodies such as the SFC</p>	
003935-005245	<p>Mr Albert HO Ms Emily LAU Chairman Mr Ronny TONG Mr SIN Chung-kai ALA6 Clerk Administration</p>	<p>(a) Members stressed the need to ensure that the CEO of the FRC was remunerated at a reasonable level</p> <p>(b) The Administration pointed out that the FRC might, like the SFC, set up a Remuneration Committee to make recommendations on the remuneration packages of its senior executives</p> <p>(c) Members considered it necessary to add an express provision in the Bill to make it clear that the CEO was to be recruited openly. The Administration did not see the need to do so</p> <p>(d) To enhance the corporate governance of the FRC, a member suggested that CSAs be moved by the Bills Committee to Schedule 3 to the Bill to the effect that:</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(i) the CEO of the FRC was to be recruited openly;</p> <p>(ii) the remuneration of the CEO was to be determined with reference to the remuneration of public officers of comparable level by an independent committee appointed by the FRC for such purpose; and</p> <p>(iii) the FRC should set comprehensive arrangements for the post-termination employment of the CEO to avoid conflict of interest, including a sanitization period of not less than 12 months commencing from the date of termination of employment with the FRC, during which the CEO should not take up any remunerative employment without the prior written approval of the FRC</p> <p>(e) The Chairman and three other members indicated support for the proposed CSAs mentioned in item (d) above</p> <p>(f) The Administration pointed out that in drafting Schedule 3, it had made reference to the arrangements adopted by other statutory bodies such as the SFC. The Administration did not</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>support the proposed CSAs mentioned in item (d) above as they were not consistent with the drafting approach of Schedule 3</p> <p>(g) The Bills Committee decided by a majority of the members present that the Chairman would, on behalf of the Bills Committee, move the proposed CSA</p>	
005246-010718	<p>Chairman Administration Ms Emily LAU ALA6</p>	<p><u>Schedule 4 to the Bill – Provisions relating to the AIB and its members</u></p> <p>(a) Briefing by the Administration on Schedule 4 and the draft proposed CSAs</p> <p><i>New section 1B of Schedule 4</i></p> <p>(b) The Administration advised that it had taken on board members' views expressed at the last meeting and would move a CSA to amend the new section 1B of Schedule 4 to the effect the FRC should give notice of removal of a member of the AIB by notice published in the Gazette as soon as possible after the removal had been made</p> <p><i>Section 1 of Schedule 4</i></p> <p>(c) In response to a member's enquiry, the Administration advised that most of the members of the AIB would be full-time paid staff responsible for conducting investigations of cases of irregularities. The</p>	<p>The Administration to take action under paragraph 3(c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>mode of operation of the AIB followed the system in the United Kingdom where the investigating body was headed by a full-time chief executive and supported by full-time investigators</p> <p><i>New section 1A of Schedule 4</i></p> <p>(d) In response to a member's enquiry, the Administration clarified that the reference in the new section 1A(1) to a temporary member appointed "in his place" meant that the temporary member so appointed would act in the capacity of the member who was unable to perform the functions of his office as member</p>	
010719-011413	Administration Mr Albert HO ALA6	<p><u>Schedule 5 to the Bill – Provisions relating to FRRP and its members</u></p> <p>(a) Briefing by the Administration on Schedule 5</p> <p><i>Section 2 of Schedule 5</i></p> <p>(b) The Administration advised that it had taken on board members' views expressed at the last meeting and would move a CSA to section 2 of Schedule 5 to the effect the CE should give notice of removal of a member of the FRRP by notice published in the Gazette as soon as possible after the removal had been made</p>	The Administration to take action under paragraph 3(d) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		<p><i>Resignation of members</i></p> <p>(c) In response to a member's enquiry, the Administration advised that a member of the FRRP might resign from office by giving notice in writing to the CE, and the resignation might take immediate effect. For members of the AIB who were employees of the FRC, requirements governing resignation, such as giving of prior notice of resignation, would be set out in detail in their employment contracts</p> <p>(d) ALA6's advice that as opposed to members of the AIB, the provisions on resignation of members of the FRRP and FRRC did not apply in the context of an employer-employee relationship with the FRC</p>	
011414-011857	ALA6 Administration	<p><u>Vacancy in membership of the AIB</u></p> <p>(a) ALA6 was concerned that the absence of a requirement on filling of vacancy in the membership of the AIB might have implications on the quorum of a meeting of the AIB</p> <p>(b) The Administration advised that when a vacancy occurred, the number of members of the AIB would be reduced and the quorum would be calculated according to the requirement under the proposed new</p>	

Time marker	Speaker	Subject(s)	Action Required
		section 2(2) of Schedule 4	
011858-012241	Administration Chairman Ms Emily LAU	<p><u>Schedule 6 to the Bill – Provisions relating to the FRRC and its members</u></p> <p>(a) Briefing by the Administration on Schedule 6</p> <p>(b) The Administration advised that in response to members’ view that the parties concerned should be informed of the changes in the membership of the FRRC, a new section 3(2) of Schedule 6 had been proposed, which stated that if the FRC appointed a member of the FRRP, or a Panel Convenor, under section 3(1) to fill a vacancy, the FRC should notify the listed entity concerned in writing of the name of the member or Panel Convenor</p>	
012242-012409	Chairman Administration	<p><u>Long title</u></p> <p>Briefing by the Administration on the long title of the Bill</p>	
012410-012524	Mr Albert HO Administration	<p>In response to a member’s enquiry on disclosure of information by the FRC to a specified authority, the Administration advised that clause 51(8) provided that the preservation of secrecy provisions in clause 51(1) did not affect the operation of section 13(3) of The Ombudsman Ordinance (Cap. 397) or section 44(8) of the Personal Data (Privacy) Ordinance (Cap. 486). Therefore, the Administration did not see the need for specifying a</p>	

Time marker	Speaker	Subject(s)	Action Required
		disclosure gateway under clause 51(3) in relation to disclosure of information to The Ombudsman	
012525-013649	Chairman Mr Ronny TONG Administration Ms Emily LAU ALA6	<p>(a) Briefing by Mr Ronny TONG on his proposed CSAs to clause 14 (LC Paper No. CB(1)1589/05-06(04))</p> <p>(b) The Administration pointed out that it did not support Mr Ronny TONG's proposed CSAs as they ran counter to the legislative intent of clause 14. The Administration further advised that clause 14 was not modelled on the practices in other places, but drafted to suit the needs of Hong Kong based on similar arrangements applicable to other statutory bodies</p> <p>(c) ALA6 advised that in his view, clause 14(3) was necessary and should be retained</p>	
013650-013741	Chairman Administration	<p>(a) The Chairman advised that members who wished to proposed CSAs to the Bill might provide their proposed amendments to the Bills Committee as soon as possible</p> <p>(b) Request for the Administration to provide a full set of the marked-up copy of the English text of the Bill showing the revised draft CSAs proposed by the Administration for the consideration of the Bills</p>	The Administration to take action under paragraph 3(e) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		Committee at the next meeting	
013742-014244	Chairman Administration Clerk	(a) Date of next meeting and meeting arrangement (b) Legislative timetable	

Council Business Division 1
Legislative Council Secretariat
8 August 2006