

立法會
Legislative Council

LC Paper No. CB(1)2122/05-06
(These minutes have been seen
by the Administration)

Ref : CB1/BC/13/04

Bills Committee on Financial Reporting Council Bill

**Minutes of the nineteenth meeting held on
Friday, 9 June 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)

Ms Selene TSOI
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 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)1654/05-06 — Minutes of sixteenth meeting held on 12 May 2006)

The minutes of the sixteenth meeting held on 12 May 2006 were confirmed.

- II. Meeting with the Administration**
(LC Paper No. CB(1)1655/05-06(01) — Letter dated 6 June 2006 from Hon SIN Chung-kai
- LC Paper No. CB(3)713/04-05 — The Bill
- LC Paper No. CB(1)1655/05-06(02) — “Follow-up to the eighteenth meeting on 29 May 2006” prepared by the Legislative Council Secretariat

- LC Paper No. CB(1)1655/05-06(03) — Marked-up copy of the Bill showing the revised draft Committee Stage amendments proposed by the Administration (June 2006)
- LC Paper No. CB(1)1655/05-06(04) — Draft Committee Stage amendments to Schedules 2 and 3 to the Bill prepared by the Assistant Legal Adviser for the Bills Committee
- 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(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)

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

Amendments proposed by Hon SIN Chung-kai

3. Mr SIN Chung-kai briefed members on his letter proposing amendments to be made to the Bill to:

- (a) set out the source of funding for the Financial Reporting Council (FRC); and
- (b) incorporate in clause 17 of the Bill, along the line of section 13 of the Securities and Futures Ordinance (Cap. 571) (SFO), provisions requiring the Administration to cause the estimates of the FRC’s income and expenditure to be laid on the table of the Legislative Council (LegCo).

4. The Administration indicated that it did not support the proposed amendments on the grounds that:

- (a) there was no need to set out the funding arrangement for the FRC in the Bill since the arrangement would be effected through a memorandum of understanding among the four funding parties of the FRC concerned; and
- (b) there was no need to cause the estimates of the FRC's income and expenditure to be laid on the table of LegCo since, as opposed to the arrangement applicable to the Securities and Futures Commission (SFC), no funding to be approved by LegCo was proposed for the FRC.

5. After discussion, Mr SIN Chung-kai indicated that he would not pursue the amendment proposed in paragraph 3(a) above. He sought members' support for the amendment proposed in paragraph 3(b). Members had diverse views on the proposed amendment to clause 17. At the request of the Bills Committee, the Administration agreed to seek in writing the views of the funding parties of the FRC (including the SFC, the Hong Kong Exchanges and Clearing Limited, and the Hong Kong Institute of Certified Public Accountants) on the proposed amendment, and provide their responses for the Bills Committee's consideration as early as practicable.

(Post-meeting note: The proposed amendment to clause 17 was further discussed at the meeting on 16 June 2006.)

Other follow-up actions to be taken by the Administration

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

Clause 36 – Drafting issue

- (a) On the drafting of the proposed CSA to clause 36(2), the Administration accepted a member's suggestion to change the expression "for the investigation" to "in relation to the investigation" or "in respect of the investigation".
- (b) In connection with item (a) above, the Administration was requested to consider the need to make similar amendments to other relevant clauses.

Date of next meeting

7. The next meeting was scheduled to be held on Friday, 16 June 2006 at 10:45 am.

III. Any other business

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

Council Business Division 1
Legislative Council Secretariat
14 August 2006

**Proceedings of the nineteenth meeting of the
Bills Committee on Financial Reporting Council Bill
on Friday, 9 June 2006, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000030	Chairman	<i>Confirmation of minutes of meeting</i> (LC Paper No. CB(1)1654/05-06)	
000031-000230	Chairman	Briefing on meeting arrangement	
000231-000449	Chairman Administration	<i>Examination of the English text of the marked-up copy of the Bill with the finalized draft Committee Stage amendments (CSAs) proposed by the Administration</i> (LC Paper No. CB(1)1655/05-06(03)) <u>Clause 4(7)(a) and (b)</u> The Chairman recapped that at the meeting on 24 March 2006, the Administration was requested to consider whether the drafting of clause 4(7)(a) and (b) could be improved to facilitate the understanding of readers. The Administration advised that having examined the relevant provisions, it was satisfied that the original drafting was appropriate and did not call for any amendment.	
000450-000531	Chairman Administration	<u>Clause 5(1) and (2)</u> Briefing by the Administration on the proposed CSAs to clause 5(1) and (2)	

Time marker	Speaker	Subject(s)	Action Required
000532-000602	Administration	<p><u>Clause 7(1)(c)(iv)</u></p> <p>Briefing by the Administration on the proposed CSAs to clause 7(1)(c)(iv)</p>	
000603-000741	Administration	<p><u>Clause 35(2) and (3)</u></p> <p>Briefing by the Administration on the proposed CSAs to clause 35(2) and (3)</p>	
000742-001325	<p>Administration Mr Ronny TONG Assistant Legal Adviser 6 (ALA6) Ms Emily LAU</p>	<p><u>Clause 36(2)</u></p> <p>(a) Briefing by the Administration on the proposed CSA to clause 36(2)</p> <p>(b) Having considered the views of a member on the drafting of the proposed CSA, the Administration accepted the member's suggestion to change the expression "for the investigation" to "in relation to the investigation" or "in respect of the investigation"</p>	<p>The Administration to take action under paragraph 6(a) of the minutes</p>
001326-001644	<p>Administration Ms Emily LAU ALA6</p>	<p><u>Clause 40(2)</u></p> <p>(a) Briefing by the Administration on the proposed CSA to clause 40(2)</p> <p>(b) In response to a member's enquiry, ALA6 advised that the Financial Reporting Council (FRC) would have to determine the terms of reference of a Financial Reporting Review Committee (FRRC) having regard to the particular nature of</p>	

Time marker	Speaker	Subject(s)	Action Required
		individual cases. As such, it might not be practicable to set out the terms of reference of a FRRC expressly in the Bill	
001645-001704	Administration	<u>Clause 47</u> Briefing by the Administration on the proposed CSAs to clause 47	
001705-001839	Administration Ms Emily LAU	<u>Clause 48(2)</u> (a) Briefing by the Administration on the proposed CSA to clause 48(2) (b) The Administration was requested to consider the need to change the expression “for the enquiry” to “in relation to the enquiry” or “in respect of the enquiry” and make similar amendments to other relevant clauses	The Administration to take action under paragraph 6(b) of the minutes
001840-002018	Chairman Administration Ms Emily LAU	<u>Proposed new clause 51A</u> In response to a member’s enquiry on the need for the new clause 51A(5), the Administration explained the legislative intent of introducing the new clause 51A having regard to the Bills Committee’s views on protection of informers	
002019-002226	Administration	<u>Clauses 53(1), 54(2) and 59(1)</u> Briefing by the Administration on the proposed CSAs to the above subclauses	

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002227-002834	Administration ALA6 Mr Ronny TONG	<p><u>Clause 61 (Addition of new section 141E to the Companies Ordinance (CO))</u></p> <p>(a) Briefing by the Administration on the proposed amendment to the new section 141E(4) of the CO</p> <p>(b) ALA6 pointed out that the use of the expression “who is in default” in the new section 141E(4) of the CO to replace “who authorizes or permits” might have the effect of narrowing the scope of the offence in question</p> <p>(c) A member considered that the change in expression might in practice widen the scope of the offence, as the expression “in default” could cover an act which was not intentional</p> <p>(d) The Administration advised that the proposed amendment to the new section 141E(4) of the CO was to prescribe the offence in terms consistent with section 351(2) of the CO</p>	
002835-003833	Administration Chairman Ms Emily LAU Mr Ronny TONG	<p><u>Clause 63(4)(c)(ii) and (6)(a) to (d)</u></p> <p>(a) Briefing by the Administration on the proposed CSAs to clause 63(4)(c)(ii) and the new subclause (6)</p> <p>(b) In response to members’ and ALA6’s enquiries, the</p>	

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		<p>Administration advised that the new subclause (6) was needed to set out expressly that the regulations made under the proposed new section 359A(3) of the CO provided for the arrangements for revision of the accounts, summary financial report or directors' report under the new section 141E and 336A of the CO; the conduct that would constitute an offence and the penalties for contravention. The Administration considered it appropriate to set out the enabling provisions expressly in the regulations, which would be subject to the negative vetting of the Legislative Council (LegCo)</p>	
003834-004024	Administration	<p><u>New clauses 72A and 75A</u></p> <p>Briefing by the Administration on the proposed CSAs to add the new clauses 72A and 75A</p>	
004025-004600	<p>Administration Mr Ronny TONG Ms Emily LAU ALA6</p>	<p><u>Section 3 of Schedule 2</u></p> <p>(a) Briefing by the Administration on the proposed CSAs to section 3 of Schedule 2</p> <p>(b) In response to members' enquiries, the Administration advised that:</p> <p>(i) under section 3(1) of Schedule 2, if the Chairman of the FRC was unable to perform the functions of his office as</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>Chairman because of absence from Hong Kong or any other reason, or there was a vacancy in the office of the Chairman, the Chief Executive (CE) might appoint another appointed member of the FRC who was a lay person to act as the Chairman during the absence, incapacity or vacancy; and</p> <p>(ii) as a temporary member of the FRC appointed under section 3(2) of Schedule 2 was not an appointed member of the FRC, he would not be appointed under section 3(1) to act as the Chairman</p>	
004601-004633	Administration	<p><u>Section 5 of Schedule 2</u></p> <p>Briefing by the Administration on the proposed CSAs to section 5 of Schedule 2</p>	
004634-005729	<p>Administration Mr Ronny TONG Chairman ALA6 Ms Emily LAU</p>	<p><u>Schedule 3</u></p> <p>(a) Briefing by the Administration on the proposed CSAs to Schedule 3</p> <p>(b) A member considered that to enhance the independence and credibility of the FRC, the Chief Executive Officer (CEO) of the FRC should be a lay person, as in the case of the Chairman of the FRC</p>	

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		<p>(c) The Administration responded that the policy intention was that the office of the CEO should be assumed by a person having the relevant expertise, knowledge and market experience so as to perform the investigatory and regulatory functions of the FRC. The Administration was of the view that the “lay person” requirement should not apply to the CEO of the FRC. However, the requirement that the majority of the members of the FRC should be lay persons could achieve a suitable balance</p> <p>(d) A member said that she accepted the Administration’s view in item (c) above</p>	
005730-010451	<p>Ms Emily LAU Administration Mr Bernard CHAN Chairman Mr SIN Chung-kai</p>	<p><u>Section 2 of Schedule 3</u></p> <p>(a) A member considered that it might not be necessary to set out expressly in the FRC Ordinance the requirement for the CE to appoint an acting CEO since an internal system and arrangement for acting appointments should be in place within the FRC</p> <p>(b) The Administration advised that as opposed to the civil service, it would be appropriate, in the case of the FRC which was a statutory body, to set out in express terms that the appointment of an acting CEO should be made by the CE in each individual case. The</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>same approach was adopted by other statutory bodies such as the Securities and Futures Commission. In practice, the CE would appoint an officer from among the existing senior staff in the FRC to act as the CEO, rather than appointing someone from outside the FRC</p> <p>(c) The Chairman and a member said that they supported that the CEO of the FRC should be a person with professional knowledge and experience in the accountancy field</p>	
010452-010519	Administration	<p><u>Proposed new subsections (3) and (4) of section 4 of Schedule 3</u></p> <p>Briefing by the Administration on the proposed new subsections (3) and (4) of section 4 of Schedule 3</p>	
010520-010610	Administration	<p><u>New section 1B of Schedule 4</u></p> <p><u>Section 2(3) and (4) of Schedule 5</u></p> <p>Briefing by the Administration on the proposed CSAs to Schedule 4 and 5 mentioned above</p>	
010611-010711	Chairman	<p>The Chairman advised that the Chinese version of the marked-up copy of the Bill with the finalized draft CSAs proposed by the Administration would be considered by ALA6 in tandem with the English text to ensure that the two were consistent with each other</p>	

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010712-013556	<p>Mr SIN Chung-kai Administration Ms Emily LAU Chairman Clerk Mr Bernard CHAN Mr CHAN Kam-lam Mr Ronny TONG</p>	<p><u>Letter dated 6 June 2006 from Hon SIN Chung-kai on funding and estimates of income and expenditure of the FRC</u> (LC Paper No. CB(1)1655/05-06(01))</p> <p>(a) Mr SIN briefed members on his letter proposing amendments to be made to the Bill to:</p> <ul style="list-style-type: none"> (i) set out the source of funding for the FRC; and (ii) incorporate in clause 17 of the Bill, along the line of section 13 of the Securities and Futures Ordinance, provisions requiring the Administration to cause the estimates of the FRC's income and expenditure to be laid on the table of LegCo so as to enhance the transparency of the FRC's expenditure <p>(b) The Administration stated that it did not support the proposed amendments in item (a) above on the grounds that:</p> <ul style="list-style-type: none"> (i) there was no need to set out the funding arrangement for the FRC in the Bill since the arrangement would be effected through a memorandum of understanding among the four funding parties of the FRC concerned; and 	

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		<p>(ii) there was no need to cause the estimates of the FRC's income and expenditure to be laid on the table of LegCo since, as opposed to the arrangement applicable to the SFC, no funding to be approved by LegCo was proposed for the FRC</p> <p>(c) Mr SIN indicated that he would not pursue his proposed amendment in item (a)(i) above but sought members' support for the proposed amendment in item (a)(ii) above. A member expressed support for the amendment</p> <p>(d) In response to the Chairman, the Clerk advised that while the funding arrangements for the FRC had been discussed by the Bills Committee, the proposed amendment in item (a)(ii) above had not been raised and discussed previously</p> <p>(e) Members agreed that the funding parties of the FRC should be consulted on the proposed amendment in item (a)(ii) above</p> <p>(f) At the request of the Bills Committee, the Administration agreed to seek in writing the views of the funding parties of the FRC (including the SFC, the Hong Kong Exchanges and Clearing Limited, and the Hong Kong Institute of Certified</p>	<p>The Administration to take action under paragraph 5 of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		Public Accountants) on the proposed amendment in item (a)(ii) above, and provide their responses for the Bills Committee's consideration as early as practicable	
013557-013633	Dr Philip WONG Chairman	A member enquired about the proposed CSAs to be moved by the Chairman on behalf of the Bills Committee. The Chairman advised that the matter would be dealt with later at the meeting	
013634-013753	Mr SIN Chung-kai Administration	<u>Removal of the CEO</u> A member enquired whether "public officer" in section 4(1) of Schedule 3 included a Member of LegCo. The Administration advised that by virtue of the definition of "public officer" in clause 2 of the Bill, a LegCo Member was not a public officer for the purposes of the Bill	
013754-014632	Chairman Dr Philip WONG Ms Emily LAU Mr Ronny TONG Mr Jeffrey LAM ALA6 The Clerk	<u>Draft CSAs to Schedule 2 and 3 to the Bill to be moved by the Bills Committee</u> (LC Paper No. CB(1)1655/05-06(04)) (a) The Chairman invited members' views on the draft CSAs prepared by ALA6 for the Bills Committee (b) Dr Philip WONG indicated that while he was not available to attend the last meeting on 29 May, he noted that agreement had been reached for the Bills Committee to move a number of	

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		<p>CSAs. He had reservations that the proposed CSAs be moved in the name of the Bills Committee. He would like to propose a motion on this issue</p> <p>(c) Some members pointed out that a decision had been made by a majority of the members present at the last meeting on 29 May 2006 that the Chairman would, on behalf of the Bills Committee, move the proposed CSAs to Schedule 2 and 3 to the Bill</p> <p>(d) The Clerk advised that according to Rule 24(n) of the House Rules, the decisions of a committee should not be reopened for discussion, unless with the permission of the committee</p> <p>(e) Dr Philip WONG said that having regard to Rule 24(n) of the House Rules, he would not move the motion in item (b) above</p>	
014633-015310	<p>Chairman ALA6 Administration Mr Andrew LEUNG Ms Emily LAU Mr CHAN Kam-lam Mr Ronny TONG Mr Jeffrey LAM</p>	<p>(a) Briefing by ALA6 on the draft proposed CSA to section 2(2) of Schedule 2 to the Bill on tenure of appointed members of the FRC, which was drafted along the line of the CSA moved by the Administration to the Construction Industry Council (No. 2) Bill</p> <p>(b) The Administration did not support the proposed CSA. It</p>	

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		<p>considered that the context of the Construction Industry Council (CIC) was entirely different and there was no apparent need to follow the approach adopted for the CIC. The Administration would follow the prevailing policy guideline on tenure of appointed members of statutory bodies, but it did not consider it necessary to prescribe in the Bill rigidly the maximum number of terms an appointed member of the FRC might serve so as to allow flexibility for reappointment under the exigency of circumstances</p> <p>(c) Members expressed diverse views. Some members considered that given that the Administration had already amended the CIC (No. 2) Bill to set out clearly that an appointed member of the CIC might not serve continuously for more than six years, they could not see why the same policy guideline should not be set out in the Bill. Some other members supported the Administration's view that the proposed CSA was not necessary</p>	
015311-020324	Chairman ALA6 Mr Jeffrey LAM Mr Ronny TONG Ms Emily LAU	(a) Briefing by ALA6 on the draft proposed CSAs to section 7 of Schedule 2 on regulating the transaction of business of the FRC by circulation of papers. The proposed amendments were also modelled on similar CSAs moved by the Administration to	

Time marker	Speaker	Subject(s)	Action Required
		<p>the CIC (No. 2) Bill</p> <p>(b) The Administration did not consider the proposed CSAs necessary</p> <p>(c) A member expressed support for the Administration's position. The other two members supported the proposed CSAs</p> <p>(d) In response to a member's enquiry on the proposed CSAs, ALA6 advised that the meaning of "specified period" in the proposed section 7(1)(b) of Schedule 2 was set out in proposed section 7(7) of Schedule 2. Under the proposed amendment, the determination of a specified period by the Chairman of the FRC, within which a member of the FRC might signify whether he endorsed the written resolution circulated to members of the Council in relation to a business of the FRC, was a necessary requirement if it was intended that the business to which the written resolution related would be transacted without a meeting. The wording of the proposed amendment was based on similar provisions in the CIC (No. 2) Bill</p>	

Time marker	Speaker	Subject(s)	Action Required
020325-020610	Chairman Clerk Mr Andrew LEUNG Mr Ronny TONG	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
14 August 2006