

立法會
Legislative Council

LC Paper No. CB(1)165/05-06
(These minutes have been seen
by the Administration)

Ref : CB1/BC/13/04

Bills Committee on Financial Reporting Council Bill

**Minutes of the third meeting held on
Friday, 7 October 2005, 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
Dr Hon LUI Ming-wah, SBS, JP
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** : 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 Alan LO
Principal Assistant Secretary for Financial Services and the
Treasury (Financial Services)
- Mr Jackie LIU
Assistant Secretary for Financial Services and the Treasury
(Financial Services)

Mr Gordon JONES, JP
Registrar of Companies

Mr Lawrence PENG
Senior Assistant Law Draftsman
Department of Justice

Miss Selina LAU
Government Counsel
Department of Justice

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

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

Ms Connie SZETO
Senior Council Secretary (1)4

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- I. Meeting with the Administration**
- (LC Paper No. CB(1)2368/04-05(01) — “Follow-up to the second meeting on 27 September 2005” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)2365/04-05(01) — “Summary of 31 submissions (Position as at 4 October 2005)” prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)2368/04-05(02) — Paper provided by the Administration on “Administration’s Responses to the Submissions made to the Bills Committee”

LC Paper No. CB(1)2368/04-05(03) — Paper provided by the Administration on “Component One — Establishment of the Financial Reporting Council”

LC Paper No. CB(1)2288/04-05(34) — Paper provided by the Administration on “Functions of the Financial Reporting Council”)

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:

(a) Establishment of the Financial Reporting Council (FRC)

To address the concerns raised by some deputations about the need for establishing the FRC, the Administration was urged to liaise with the deputations concerned and explain the Administration’s responses to them.

(b) Funding of FRC

To address the concerns raised by members and deputations about the proposed funding arrangements for the FRC at the Bills Committee meetings on 27 September and 7 October 2005, the Administration was requested to take the following actions and provide written response:

(i) To take into account the following points when considering whether the proposed annual budget of \$10 million and reserve fund of \$10 million would be sufficient for the effective operation of the FRC -

- The estimated workload of FRC should be worked out;
- Given the complexity of the issues involved, it might be necessary for FRC members to spend considerable time and efforts on FRC’s work. Consideration should therefore be given to providing FRC members with remuneration. One of the possible options was to provide remuneration for a certain number of hours spent on FRC’s work per month; and
- Given the Administration’s advice that the proposed annual budget for the FRC had been worked out with reference to the annual expenses incurred by the Hong Kong Institute of

Certified Public Accountants (HKICPA) in undertaking investigations in 2003 and 2004, members highlighted that some of the investigations of HKICPA were conducted by retired audit professionals free of charge. In working out the budget for the FRC, consideration should be given to whether and how far the assistance of retired audit professionals could be solicited to take up FRC's work free of charge.

- (ii) To provide a paper on the remuneration policy for members appointed to comparable statutory bodies in Hong Kong.
- (iii) To report to the Bills Committee as early as practicable on the outcome of the Administration's liaison with HKICPA, the Securities and Futures Commission, and the Hong Kong Exchanges and Clearing Limited on whether additional resources should be injected to the FRC.

(c) Composition of the FRC

Given that all members of the FRC would be appointed by the Chief Executive (CE) and that the members' qualification requirements were not set out in the Bill, members of the Bills Committee expressed concern that the FRC might not be able to maintain independence and there would be a lack of transparency in the appointment process. The Administration was requested to further consider putting in place measures to ensure that the membership of the FRC would include a wide and balanced composition, and that its members would have relevant experience and expertise but no conflict of interests in undertaking investigation or enquiry work.

(d) Checks and balances of the FRC

On the proposed check and balance measures for the FRC (LC Paper No. CB(1)2368/04-05(03)), the Administration was requested to consider and respond to the following concerns and suggestions made by members:

- (i) Clause 14, which empowered the CE to give the FRC written directions with respect to the performance of any of its functions, might undermine the independence of the FRC. The Administration was requested to re-consider the need for such a provision.
- (ii) Members were concerned that it was not set out clearly in the Bill the circumstances under which the FRC might initiate investigation or enquiry into suspected auditing irregularities or financial non-compliances, and that there was no mechanism for reviewing

FRC's decisions in this regard. The Administration was requested to take the following actions -

- To consider the need of including provisions in the Bill to empower the FRC to initiate investigation or enquiry into suspected auditing irregularities or financial non-compliances involving "public interest";
 - To consider putting in place a mechanism for reviewing FRC's decision of not initiating an investigation or enquiry into a suspected auditing irregularity or financial non-compliance, such as a mechanism similar to the Operations Review Committee for reviewing the decisions of the Independent Commission Against Corruption.
- (iii) In connection with item (d)(ii) above, the Administration was requested to consider a member's suggestion of providing in the Bill a mechanism for the FRC to reach a consensus with the relevant body before making its decision of not initiating an investigation or enquiry into suspected irregularity or financial non-compliance referred by the body.
- (e) Administration's responses to submissions on the Bill
To facilitate the Bills Committee's consideration of the Administration's responses to the various written submissions, the Administration was requested to take the following actions:
- (i) To incorporate the Administration's responses in the summary of submissions prepared by the LegCo Secretariat; and
 - (ii) To provide a detailed response to the view of the British Chamber of Commerce in Hong Kong that the Director of Audit might be in the best position to have a general oversight of the number and types of cases investigated by the FRC and the outcomes, and whether details were reported.

II. Any other business

Date of the fourth meeting

3. The Chairman reminded members that the fourth meeting had been scheduled for Monday, 31 October 2005, at 8:30 am.

Proposed meeting schedule

4. Members noted that the LegCo Secretariat would work out a proposed meeting schedule covering the period from November 2005 to June 2006 for members' consideration at the fourth meeting. The proposed meeting schedule would be worked out on the basis of members' views expressed at the meeting held on 19 July 2005 that meetings of the Bills Committee should be held at three-week intervals. Ms Emily LAU suggested that the Bills Committee should hold meetings at two-week intervals. The Clerk said that the proposed meeting schedule would be prepared taking into account members' views and other considerations, such as the need to avoid clashes with meetings of other committees which had overlapping membership with the Bills Committee, and availability of meeting venue.

5. There being no other business, the meeting ended at 12:40 pm.

Council Business Division 1
Legislative Council Secretariat
28 October 2005

**Proceedings of the third meeting of the
Bills Committee on Financial Reporting Council Bill
on Friday, 7 October 2005, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-001330	Chairman Administration Mr SIN Chung-kai Clerk Ms Emily LAU	<p><u>Matters arising from the meeting on 27 September 2005</u></p> <p>Administration's responses to submissions on the Bill (LC Paper No. CB(1)2368/04-05(02))</p> <p>(a) Members' view that in order to facilitate the Bills Committee's consideration of the Administration's responses to the concerns and views raised in the various submissions, the responses should be set out by issues of concern and not by deputations</p> <p>(b) The Administration's advice that it would, during discussion of each component of the Bill, set out its responses to the concerns and views on major issues of the Bill raised in the submissions</p> <p>(c) Request for the Administration to incorporate its responses to submissions in the summary of submissions prepared by the LegCo Secretariat (LC Paper</p>	The Administration to take action under paragraph 2(e)(i) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		No. CB(1)2365/04-05(01))	
001331-002744	Chairman Administration	<p><u>Part 1 (Preliminary), Part 2 (Establishment, composition, functions, powers, and checks and balances of the Financial Reporting Council (FRC), Schedules 2 and 3 of the Bill)</u></p> <p>(a) The Administration’s briefing on the paper on “Establishment of the FRC” (LC Paper No. CB(1)2368/04-05(03))</p> <p>(b) The Administration’s undertaking to report to the Bills Committee as early as practicable on the outcome of its liaison with the Hong Kong Institute of Certified Public Accountants (HKICPA), the Securities and Futures Commission (SFC), and the Hong Kong Exchanges and Clearing Limited (HKEx) on whether additional resources should be injected to the FRC (Paragraph 22 of LC Paper No. CB(1)2368/04-05(03))</p>	The Administration to take action under paragraph 2(b)(iii) of the minutes
002745-003611	Chairman Ms Emily LAU Administration	<p><u>Establishment of the FRC</u></p> <p>(a) Member’s support for the establishment of the FRC</p> <p>(b) Member’s concern about the reservation expressed by some deputations on the need for establishing the FRC</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(c) The Administration's explanation on the background and purposes of the establishment of the FRC (Paragraph 3 of LC Paper No. CB(1)2368/04-05(03))</p> <p>(d) Member's urge for the Administration to liaise with the deputations concerned and explain the Administration's responses to them</p>	<p>The Administration to take action under paragraph 2(a) of the minutes</p>
003612-003733	<p>Chairman Mr SIN Chung-kai Administration</p>	<p><u>Checks and balances of the FRC</u></p> <p>Administration's confirmation that the FRC would be regarded as "public bodies" to be subject to the jurisdiction of the Prevention of Bribery Ordinance (clause 75 of the Bill)</p>	
003734-005919	<p>Chairman Ms Emily LAU Administration Clerk</p>	<p><u>Composition of the FRC</u></p> <p>(a) Member's views, as follows:</p> <p>(i) Given that all members of the FRC would be appointed by the Chief Executive (CE) and that the members' qualification requirements were not set out in the Bill, the FRC might not be able to maintain independence and there would be a lack of transparency in the</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>appointment process; and</p> <p>(ii) The FRC should include a wide and balanced composition and its members should have the relevant experience and expertise but no conflict of interests in undertaking investigation or enquiry work into auditing irregularities and financial non-compliances.</p> <p>(b) Request for the Administration to further consider putting in place measures to address the concerns in items (a)(i) and (ii) above</p> <p>(c) The Administration's responses, as follows:</p> <p>(i) The majority of FRC members must be "lay persons" (clause 7(2));</p> <p>(ii) The Registrar of Companies or his representative, and the Chief Executive Officer (CEO) of the FRC would be ex officio members of the FRC (clause 7(1)(a) and (b)). There would be one</p>	<p>The Administration to take action under paragraph 2(c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>nominated member from each of the HKICPA, the SFC and the HKEx (clause 7(1)(c)(i) to (iii)). These arrangements would ensure that the FRC had members coming from the Government, and the professional and regulatory bodies;</p> <p>(iii) The CE would consider appointing lay members of different backgrounds and disciplines;</p> <p>(iv) The qualification requirements of the appointed members were not set out in the Bill so as to facilitate the CE in appointing the best available candidates in the light of actual circumstances; and</p> <p>(v) There were no detailed qualification requirements for appointing members to the FRC in the United Kingdom (UK); and the Sarbanes-Oxley Act in the United States did not specify that the appointees to the Public Company Accounting</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>Oversight Board should represent certain stakeholder groups, although the Act provided that no more than two members of the Board should be accountants.</p> <p><u>Checks and balances of the FRC</u></p> <p>(a) Member's and deputations' concern that clause 14, which empowered the CE to give the FRC written directions with respect to the performance of any of its functions, might undermine the independence of the FRC</p> <p>(b) The Administration's responses, as follows:</p> <p>(i) Clause 14 was a reserved power and a tool of last resort for the Government; and</p> <p>(ii) The CE could only invoke the power after consultation with the Chairman of the FRC and on being satisfied that it was in the public interest to do so</p> <p>(c) Request for the Administration to re-consider the need for clause 14</p>	<p>The Administration to take action under paragraph 2(d)(i) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
005920-012754	Chairman Mr Albert HO Mr SIN Chung-kai Mr Ronny TONG Ms Emily LAU Clerk	<p><u>Checks and balances of the FRC</u></p> <p>(a) Members' concern about the following two points:</p> <p>(i) The Bill did not set out clearly the circumstances under which the FRC might initiate investigation or enquiry into suspected auditing irregularities or financial non-compliances; and</p> <p>(ii) There was no mechanism for reviewing FRC's decisions referred to in item (a)(i) above</p> <p>(b) Request for the Administration to consider the need of including provisions in the Bill to empower the FRC to initiate investigation or enquiry into suspected auditing irregularities or financial non-compliances involving "public interest". The suggestion would address some deputations' concern about duplicate investigation undertaken by the FRC and other bodies on the same auditing irregularity or financial non-compliance.</p> <p>(c) The Administration's responses, as follows:</p>	<p>The Administration to take action under paragraph 2(d)(ii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<ul style="list-style-type: none"> <li data-bbox="778 398 1190 629">(i) Clauses 23 and 40 provided the statutory thresholds for the FRC to exercise its investigatory or enquiry powers; <li data-bbox="778 674 1190 1294">(ii) Clause 9 clearly set out the functions of the FRC, which included conducting investigation or enquiry into auditing irregularities or financial non-compliances in relation to listed entities. This would ensure that the investigation or enquiry work of the FRC would be of sufficient public interest; <li data-bbox="778 1339 1190 1809">(iii) In the absence of an objective definition of “public interest” which would need to be considered in the light of the merits of individual cases, it was inappropriate to include a “public interest” test for the initiation of an investigation or enquiry; and <li data-bbox="778 1854 1190 1960">(iv) The FRC would be subject to the oversight of The Ombudsman 	

Time marker	Speaker	Subject(s)	Action Required
		<p>(clause 76). Complaints against the actions or inaction of the FRC might be lodged with the Office of The Ombudsman.</p> <p>(d) Members' concerns on the following two points:</p> <p>(i) The Ombudsman, whose power was confined to the handling of complaints against maladministration, was not in a position to review FRC's decision of not initiating an investigation or enquiry into a suspected auditing irregularity or financial non-compliance. Judicial review by the court was also not an appropriate measure to review such decisions by the FRC; and</p> <p>(ii) How the public would be made aware of FRC's decision of not initiating an investigation or enquiry into a suspected auditing irregularity or financial non-compliance given that the FRC was not obliged to provide</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>reasons for its decision in this regard, and the need for the FRC to preserve secrecy of information (clause 51);</p> <p>(e) The Administration's responses, as follows:</p> <p>(i) While it was important for the FRC to earn public confidence and trust, part of its work (including investigatory decisions) was necessarily subject to secrecy requirements and should not be publicly disclosed;</p> <p>(ii) Disclosure of information of non-pursuable cases might affect adversely and unfairly the relevant persons in connection with such cases; and</p> <p>(iii) It was believed that the FRC would consider whether to disclose its decision of not initiating an investigation or enquiry into a suspected auditing irregularity or financial non-compliance having regard to clause 51</p>	<p>The Administration</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>(f) Request for the Administration to take the following actions:</p> <p>(i) To consider putting in place a mechanism for reviewing FRC's decision of not initiating an investigation or enquiry into a suspected auditing irregularity or financial non-compliance, such as a mechanism similar to the Operations Review Committee for reviewing the decisions of the Independent Commission Against Corruption; and</p> <p>(ii) To consider a member's suggestion of providing in the Bill a mechanism for the FRC to reach a consensus with the relevant body before making its decision of not initiating investigation or enquiry into a suspected irregularity or financial non-compliance referred by the body</p>	<p>to take action under paragraph 2(d)(ii) of the minutes</p> <p>The Administration to take action under paragraph 2(d)(iii) of the minutes</p>
012755-013354	<p>Ms Emily LAU Administration Chairman Mr SIN Chung-kai</p>	<p><u>Administration's responses to submissions on the Bill</u></p> <p>(a) Member's view that the Administration's responses</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>had not addressed the view of the British Chamber of Commerce in Hong Kong that the Director of Audit might be in the best position to have a general oversight of the number and types of cases investigated by the FRC and the outcomes, and whether details were reported (Page 8 of LC Paper No. CB(1)2368/04-05(02))</p> <p>(b) Request for the Administration to provide a detailed response to the view in item (a) above</p>	<p>Administration to take action under paragraph 2(e)(ii) of the minutes</p>
013355-015219	<p>Chairman Ms Emily LAU Administration Mr Albert HO Clerk</p>	<p><u>Whether FRC members should be provided with remuneration</u></p> <p>(a) Members' views, as follows:</p> <p>(i) Given the complexity of the issues involved, it might be necessary for FRC members to spend considerable time and efforts on FRC's work, consideration should be given to providing FRC members with remuneration. One of the possible options was to provide remuneration for a certain number of hours spent on FRC's work per month;</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(ii) It was necessary for the Administration to review the funding arrangement of the FRC taking into account of item (i) above; and</p> <p>(iii) There was no standard practice in provision of remuneration for members appointed to bodies and committees in Hong Kong. For instance, members of the Buildings Appeal Tribunal were provided with remuneration.</p> <p>(b) Request for the Administration to provide a paper on the remuneration policy for members appointed to comparable statutory bodies in Hong Kong</p> <p>(c) The Administration's responses, as follows:</p> <p>(i) It was envisaged that save for the CEO who would assume a remunerated executive post, the other members of the FRC would serve on a pro bono basis as public service;</p> <p>(ii) The investigatory or enquiry work of the FRC would be undertaken by staff and</p>	<p>Administration to take action under paragraph 2(b)(ii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>experts who would receive remuneration;</p> <p>(iii) Members of the HKICPA Investigation Panels and Disciplinary Panels did not receive remuneration for their service; and</p> <p>(iv) Members of the FRRP in the UK were not remunerated</p> <p><u>Proposed annual budget and reserve fund of the FRC</u></p> <p>(a) Concerns raised by members and deputations that the proposed annual budget of \$10 million and reserve fund of \$10 million would not be sufficient for the effective operation of the FRC</p> <p>(b) The Administration's advice that:</p> <p>(i) in working out the proposed annual budget for the FRC, reference was made to the expenses incurred by the HKICPA in undertaking investigation and disciplinary functions in 2003 and 2004; and</p> <p>(ii) Given that the FRC's function was purely</p>	

Time marker	Speaker	Subject(s)	Action Required
		be injected to the FRC	
015220-015355	Ms Emily LAU Chairman Clerk Administration	(a) Date of the fourth meeting (b) Proposed meeting schedule	

Council Business Division 1
Legislative Council Secretariat
28 October 2005