

**立法會**  
**Legislative Council**

LC Paper No. CB(1)743/05-06  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/13/04

**Bills Committee on Financial Reporting Council Bill**

**Minutes of the seventh meeting held on  
Tuesday, 20 December 2005, at 11:00 am  
in the Chamber of the Legislative Council Building**

- Members present** : Hon TAM Heung-man (Chairman)  
Hon Albert HO Chun-yan  
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
- Members absent** : Dr Hon LUI Ming-wah, SBS, JP  
Hon Bernard CHAN, JP  
Hon CHAN Kam-lam, SBS, JP
- 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. Confirmation of minutes of meeting**  
(LC Paper No. CB(1)547/05-06 — Minutes of fifth meeting held on  
17 November 2005)

The minutes of the fifth meeting held on 17 November 2005 were confirmed.

- II. Meeting with the Administration**  
(LC Paper No. CB(1)286/05-06(03) — Paper provided by the  
Administration on “Component  
Two — Audit Investigation  
Board”
- LC Paper No. CB(1)548/05-06(01) — “Follow-up to the sixth meeting  
on 6 December 2005” prepared  
by the Legislative Council  
Secretariat

LC Paper No. CB(1)420/05-06(02) — Paper provided by the Administration on “Component Three — Financial Reporting Review Panel and Financial Reporting Review Committee”

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

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

(a) Investigation reports of the Audit Investigation Board (AIB)

The Administration undertook to consider proposing a Committee Stage amendment (CSA) to clause 35(5) to carve out the admissibility of AIB’s investigation reports in criminal proceedings as evidence of the facts stated in the reports (paragraph 22 of LC Paper No. CB(1)286/05-06(03)).

(b) Financial Reporting Review Panel (FRRP)

The Administration undertook to consider proposing a CSA to clause 39(1) to set out explicitly the backgrounds and disciplines that the Chief Executive (CE) should consider in the appointment of members of the FRRP (paragraph 3 of LC Paper No. CB(1)420/05-06(02)).

(c) Financial Reporting Review Committees (FRRC)

Clause 40(1) provided that the Financial Reporting Council (FRC) might appoint a FRRC, and clause 41(1) provided that a FRRC was to consist of at least five members of the FRRP. Some members of the Bills Committee were concerned that the arrangements for the appointment of a FRRC and its members, and the details of operation of a FRRC, were not stipulated in the Bill. The Administration was requested to consider and respond to the views of members and/or the legal adviser to the Bills Committee that the Bill should set out clearly the following details:

- (i) Arrangements for the appointment of a FRRC and its members by the FRC, and that such power of appointment was non-delegable;
- (ii) Criteria for the FRC to select FRRP members to form a FRRC,

such as no conflict of interests;

- (iii) Whether the appointment of a member of a FRRC could be revoked; if it could, the authority (the CE or the FRC) for revoking the appointment and the circumstances under which such power could be exercised;
- (iv) Operation of a FRRC in the event of removal or resignation of its member(s). For example, if one of the five members of a FRRC had been removed or had resigned during the enquiry stage, whether a new member would be appointed to the FRRC or a new FRRC would be formed to handle the same matter. In this connection, if a new member would be appointed to the FRRC to handle the same matter, the following concerns needed to be addressed:
  - The change in membership of the FRRC during the enquiry stage might be against the principle of natural justice, and might subject the legal status of the FRRC and the report it made to legal challenge; and
  - Whether the parties concerned would be informed of the change in membership of the FRRC;
- (v) Operation of a FRRC in the event that one of its members was found to have conflict of interests with the matter under enquiry. According to clause 52(5), it seemed that the member concerned should not be present during any deliberation of the FRRC, and should not take part in any decision of the FRRC, with respect to the matter. In the circumstance, it was not clear whether the FRRC with the participation of only four members would meet the requirement of clause 41(1) that a FRRC was to consist of at least five members of the FRRP, and whether a new member should be appointed to the FRRC or a new FRRC should be formed to handle the same matter;
- (vi) In connection with items (iv) and (v) above, it was necessary to set out clearly the quorum of a FRRC; and
- (vii) Instead of relying on section 51 of the Interpretation and General Clauses Ordinance (Cap. 1), it should be set out clearly in the Bill that the powers of a FRRC should not be affected by any vacancy in its membership.

(d) Jurisdiction of the FRRC

The Administration was requested to respond in writing whether “special notices” or “special reports” for the purpose of clarification, “managerial accounts”, and “directors’ reports” published by listed entities were covered by the definition of “relevant financial reports” set out in Part 1 of Schedule 1 to the Bill. If they were not covered by the definition, the Administration was requested to consider some members’ view that as these documents might contain important financial information of listed entities, they should be subject to the jurisdiction of the FRRC.

(e) Enquiry power of a FRRC

Clause 43 provided that the enquirer might require persons from the specified classes to produce any record or document, or any information or explanation, relevant to the non-compliance. Clause 45 further empowered the enquirer to apply to the court for an inquiry of any unreasonable refusal or failure to comply with the requirement under clause 43. The Administration was requested to consider and respond to members’ views and suggestions, as follows:

- (i) In the event that the relevant records or documents did not belong to the persons concerned, or the persons concerned were forbidden to disclose the records or documents by statutory or contractual requirements, it would be difficult for them to comply with clause 43. There should be provisions in the Bill specifying how such situations were to be dealt with; and
- (ii) Clause 45 should set out the criteria for considering whether the refusal or failure of the persons concerned to comply with clause 43 was “unreasonable”.

Date of next meeting

4. The Chairman reminded members that the next meeting would be held on Thursday, 12 January 2006, at 8:30 am.

**III. Any other business**

5. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1  
Legislative Council Secretariat  
19 January 2006

**Proceedings of the seventh meeting of the  
Bills Committee on Financial Reporting Council Bill  
on Tuesday, 20 December 2005, at 11:00 am  
in the Chamber of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000012	Chairman	Confirmation of minutes of meeting (LC Paper No. CB(1)547/05-06)	
000013-000158	Chairman	<p><u>Follow-up to the last meeting on 6 December 2005</u> (LC Paper No. CB(1)548/05-06(01))</p> <p>The Administration's undertaking that it would endeavour to provide before the next meeting a written response to the issues raised at the last meeting</p>	
000159-001759	Administration Ms Emily LAU Assistant Legal Adviser 6 (ALA6) Chairman	<p>Part 1 (Clause 4 – “Relevant irregularity”), Part 3 (Composition of the Audit Investigation Board; scope of the investigation; investigation powers; referral of cases, etc., Schedule 4 to the Bill)</p> <p><u>Post-investigation actions of the Audit Investigation Board (AIB)</u> (Paragraphs 21 to 24 of LC Paper No. CB(1)286/05-06(03))</p> <p>(a) Briefing by the Administration</p> <p>(b) Member's enquiry about the details of the Administration's proposed</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>Committee Stage amendment (CSA) to clause 35(5)</p> <p>(c) The Administration’s advice that the CSA would carve out the admissibility of AIB’s investigation reports in criminal proceedings as evidence of the facts stated in the reports (paragraph 22 of LC Paper No. CB(1)286/05-06(03))</p> <p>(d) Member’s view that in deciding whether or not AIB’s investigation reports should be published, the Financial Reporting Council (FRC) should give priority to the third consideration set out in clause 35(4), i.e. whether or not the reports should be published in the interest of the investing public or in the public interest (clause 35(4)(c))</p> <p>(e) The Administration’s advice, as follows:</p> <p>(i) It was the policy intent that the FRC should take into account the three considerations set out in clause 35(4)(a), (b) and (c) when deciding whether or not to publish an investigation report or any part thereof; and</p>	<p>The Administration to take action under paragraph 3(a) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>(ii) It was believed that the FRC would strike a proper balance of the three considerations in making the decision</p> <p>(f) ALA6's view that clause 35(4), as presently drafted, set out the three considerations to be taken into account by the FRC without giving priority to any of the three considerations</p>	
001800-002149	Administration Chairman	<p><u>Comparison of AIB's investigation powers with those vested in an Investigation Committee of the Hong Kong Institute of Certified Public Accountants under the Professional Accountants Ordinance</u> (Paragraphs 25 and 26 of LC Paper No. CB(1)286/05-06(03))</p> <p>Briefing by the Administration</p>	
002150-002824	Chairman Administration Ms Emily LAU Mr Ronny TONG	<p><u>Comments by deputations on post-investigation actions of the AIB and costs and expenses of investigation (Clauses 35, 36 and 37)</u> (Items 4.26 to 4.29, 4.31, 6.1 to 6.7, and 4.32 to 4.35 of LC Paper No. CB(1)166/05-06(03))</p> <p>(a) The Administration's briefing on its written response to items 4.32 to 4.35 of LC Paper No. CB(1)166/05-06(03)</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(b) Members' enquiries on the recovery of costs and expenses of investigations undertaken by the AIB</p> <p>(c) The Administration's advice, as follows:</p> <p>(i) Clause 37 provided that if, on a prosecution instituted as a result of an investigation under Part 3 of the Bill, the court or Magistrate might order the convicted person to pay to the FRC the sum the court or Magistrate considered appropriate for the costs and expenses in relation or incidental to the investigation reasonably incurred by the FRC;</p> <p>(ii) If there was no case after an investigation or the person was not found to have committed an irregularity by the court or Magistrate on a prosecution, the FRC would not recover the investigation cost from any person; and</p> <p>(iii) Given that the court or Magistrate would</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>consider all relevant circumstances before ordering the payment, the proposed costs and expenses reclaim mechanism was appropriate</p>	
002825-005235	<p>Chairman Administration Ms Emily LAU Mr Ronny TONG Mr Jeffrey LAM ALA6</p>	<p>Part 1 (Clause 5 – “Relevant non-compliance”), Part 4 (Composition of the Financial Reporting Review Panel and a Financial Reporting Review Committee; enquiry powers; voluntary and mandatory revision of relevant financial reports, etc., Schedules 1, 5 and 6 to the Bill</p> <p><u>Organizational structure of the Financial Reporting Review Panel (FRRP) and a Financial Reporting Review Committee (FRRC)</u> (Paragraphs 3 to 6 of LC Paper No. CB(1)420/05-06(02))</p> <p>(a) Briefing by the Administration, as follows:</p> <p>(i) Clause 39(1) provided that the Chief Executive (CE) should, in consultation with the FRC, appoint the FRRP of at least 20 persons;</p> <p>(ii) The appointment of FRRP members would be given by notice published in the Gazette, and the notice would not be subsidiary</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>legislation under the Ordinance;</p> <p>(iii) There would be no overlap in membership of the FRC and the FRRP;</p> <p>(iv) The Administration would consider proposing a CSA to clause 39(1) to set out explicitly the backgrounds and disciplines that the CE should consider in the appointment of members of the FRRP (paragraph 3 of LC Paper No. CB(1)420/05-06(02)); and</p> <p>(v) Clause 40(1) provided that the FRC might appoint a FRRC for the purpose of enquiring into non-compliances of financial reports in relation to a listed entity, and clause 41(1) provided that a FRRC was to consist of at least five members of the FRRP</p> <p>(b) Members' concerns and views, as follows:</p> <p>(i) The arrangements for the appointment of a</p>	<p>The Administration to take action under paragraph 3(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>FRRC and its members, and the details of operation of a FRRC were not stipulated in the Bill; and</p> <p>(ii) Criteria for the FRC to select FRRP members to form a FRRC, such as no conflict of interests, should be set out in the Bill</p> <p>(c) The Administration’s advice, as follows:</p> <p>(i) In selecting FRRP members to form a FRRC, the FRC would consider various criteria, such as the background of the members and whether they had conflict of interests with the matter under enquiry;</p> <p>(ii) Given the provisions in clauses 40 and 41, and other provisions in the Bill, such as those in Schedule 2, it was not necessary to provide in the Bill the arrangements for the FRC to appoint a FRRC and its members and the details of operation of a FRRC; and</p> <p>(iii) Clause 52 contained</p>	

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		<p>provision on avoidance of conflict of interests and was applicable to members of a FRRC</p> <p>(d) A member’s suggestion that there should be guidelines for FRRC members to avoid conflict of interests and a mechanism for members to declare relevant interests</p> <p>(e) The Administration’s advice, as follows:</p> <p>(i) The provisions on appointment of members to committees to be established by the FRC and avoidance of conflict of interests were modelled on similar provisions governing other regulatory bodies, such as those under the Securities and Futures Ordinance; and</p> <p>(ii) The Administration was not aware of any problems encountered by the regulatory bodies in the operation of the provisions referred to in item (e)(i) above</p> <p>(f) ALA6’s suggestion that the Bill should set out clearly that the power for the FRC to appoint a FRRC was</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>non-delegable</p> <p>(g) Request for the Administration to consider and respond to the views of members and/or ALA6 in items (b) and (f) above</p>	<p>The Administration to take action under paragraph 3(c)(i) and (ii) of the minutes</p>
005236-011849	<p>Mr Albert HO Administration Mr Ronny TONG ALA6 Ms Emily LAU Chairman</p>	<p><u>Revocation and resignation of members from a FRRC, and operation of a FRRC</u></p> <p>(a) Members' and ALA6's enquiries and concerns, as follows:</p> <p>(i) Whether the appointment of a member of a FRRC could be revoked; if it could, the authority (the CE or the FRC) for revoking the appointment and the circumstances under which such power could be exercised;</p> <p>(ii) Operation of a FRRC in the event of removal or resignation of its member(s). For example, if one of the five members of a FRRC had been removed or had resigned during the enquiry stage, whether a new member would be appointed to the FRRC or a new FRRC</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>would be formed to handle the same matter. If a new member would be appointed to the FRRC to handle the same matter, the following concerns needed to be addressed:</p> <ul style="list-style-type: none"><li>● The change in membership of the FRRC during the enquiry stage might be against the principle of natural justice, and might subject the legal status of the FRRC and the report it made to legal challenge; and</li><li>● Whether the parties concerned would be informed of the change in membership of the FRRC</li></ul> <p>(b) The Administration's advice, as follows:</p> <ul style="list-style-type: none"><li>(i) Section 2 of Schedule 5 to the Bill provided that the CE might remove a member of the FRRP;</li><li>(ii) Given that the FRC might appoint a FRRC under clause 40(1), it had power to revoke the appointment according</li></ul>	

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		<p>to the provisions in the Interpretation and General Clauses Ordinance (Cap. 1). Section 3 of Schedule 6 to the Bill also provided that the FRC might fill a vacancy occurred among the members of a FRRC;</p> <p>(iii) It was envisaged that the FRC might consider removing an existing member from a FRRC when the member had conflict of interests with the matter under enquiry or appointing a new member to a FRRC upon resignation of a member;</p> <p>(iv) Section 51 of Cap. 1 provided that where any board, tribunal, commission, committee or similar body was established by or under any Ordinance, their powers should not be affected by any vacancy in the membership thereof, any defect in the appointment or qualification of a person purporting to be a member thereof, or any minor irregularity in the convening of any meeting thereof; and</p>	

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		<p>(v) Given that a FRRC was tasked to enquire into non-compliances of financial reports of listed entities instead of conducting disciplinary or criminal proceedings, the principles of natural justice regarding the right to a fair hearing might not apply in full force as it would in relation to judicial acts</p> <p>(c) Members' and ALA6's concerns, as follows:</p> <p>(i) The Bill did not clearly provide how a FRRC would operate in the event that one of its members was found to have conflict of interests with the matter under enquiry. According to clause 52(5), it seemed that the member concerned should not be present during any deliberation of the FRRC, and should not take part in any decision of the FRRC, with respect to the matter. In this circumstances, it was not clear -</p> <ul style="list-style-type: none"> <li>● whether the FRRC</li> </ul>	

Time marker	Speaker	Subject(s)	Action Required
		<p>with the participation of only four members would meet the requirement of clause 41(1) that a FRRC was to consist of at least five members of the FRRP; and</p> <ul style="list-style-type: none"> <li>● whether a new member should be appointed to the FRRC or a new FRRC should be formed to handle the same matter;</li> </ul> <p>(ii) In connection with items (a)(ii) and (c)(i) above, it was necessary to set out clearly the quorum of a FRRC; and</p> <p>(iii) Instead of relying on section 51 of Cap. 1, it should be set out clearly in the Bill that the powers of a FRRC should not be affected by any vacancy in its membership</p> <p>(d) Request for the Administration to consider and respond to the views of members and/or ALA6 in items (a)(i), (ii) and (c)(i), (ii) and (iii) above</p>	<p>The Administration to take action under paragraph 3(c)(iii) to (vii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
011850-013627	Chairman Administration ALA6 Mr Ronny TONG Ms Emily LAU	<p><u>Jurisdiction of the FRRC</u>                      (Paragraphs 7 to 10 of LC Paper No. CB(1)420/05-06(02))</p> <p>(a) Briefing by the Administration, as follows:</p> <p>(i) Clause 9(c) provided that one of the functions of the FRC was to enquire into relevant non-compliances in relation to listed entities and the question whether or not there were any relevant non-compliances in relation to listed entities;</p> <p>(ii) Clause 5 set out that there was a “relevant non-compliance” if a “relevant financial report” of the entity had not complied with a “relevant requirement”;</p> <p>(iii) Part 1 of Schedule 1 to the Bill set out the scope of “relevant financial reports”, which included, namely, published accounts of a listed corporation under sections 129C and 336 of the Companies Ordinance (CO); a</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>published summary financial report of a listed corporation referred to in section 141CA of the CO; any quarterly, interim or annual financial statements of a listed entity for the purposes of the relevant code issued by the Securities and Futures Commission (SFC) or Listing Rules; and a “specified report” required for a listing document issued by or on behalf of a listed entity; and</p> <p>(iv) The corresponding “relevant requirement” in relation to a “relevant financial report” was set out in Part 1 of Schedule 1 to the Bill. A “relevant requirement” referred to an accounting requirement as to the matters or information to be included in a “relevant financial report” as provided in the CO, the Hong Kong Financial Reporting Standards, the International Financial Reporting Standards, the Listing Rules and the relevant code</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>published by the SFC, or any generally acceptable accounting principles allowed to be used under the Listing Rules</p> <p>(b) ALA6's enquiry about examples of the relevant code issued by the SFC referred to in item (a)(iii) above, and the Administration's advice that the Code on Real Estate Investment Trusts issued by the SFC was an example</p> <p>(c) Member's enquiry about why directors' reports were not included in the definition of "relevant financial report" (comments by deputations in item 5.5 of LC Paper No. CB(1)166/05-06(03))</p> <p>(d) The Administration's advice that although directors' reports might form part of the annual or interim reports issued by listed entities, the disclosures in the directors' reports were statutorily not part of the companies' financial statements</p> <p>(e) Members' view that given "special notices" or "special reports", "managerial accounts", and "directors' reports" published by listed entities might contain important financial</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>information of listed entities, they should be covered by the definition of “relevant financial reports” and hence be subject to the jurisdiction of the FRRC</p> <p>(f) Request for the Administration to clarify whether the documents mentioned in item (e) above were covered by the definition of “relevant financial reports” in Part 1 of Schedule 1 to the Bill. If they were not covered by the definition, the Administration was requested to consider members’ view set out in item (e) above</p>	<p>The Administration to take action under paragraph 3(d) of the minutes</p>
013628-014239	<p>Chairman Administration Mr Ronny TONG Ms Emily LAU</p>	<p><u>Enquiry powers of a FRRC</u> (Paragraphs 11 and 12 of LC Paper No. CB(1)420/05-06(02))</p> <p>(a) Briefing by the Administration, as follows:</p> <p>(i) Clause 43 provided that the enquirer might require persons from the specified classes to produce any record or document, or any information or explanation, relevant to the non-compliance; and</p> <p>(ii) Clause 45 further empowered the enquirer</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>to apply to the court for an inquiry of any unreasonable refusal or failure to comply with the requirement under clause 43</p> <p>(b) Members' views and suggestions, as follows:</p> <p>(i) In the event that the relevant records or documents did not belong to the persons concerned, or the persons concerned were forbidden to disclose the records or documents by statutory or contractual requirements, it would be difficult for them to comply with clause 43;</p> <p>(ii) There should be provisions in the Bill specifying how the situations referred in item (i) above were to be dealt with; and</p> <p>(iii) Clause 45 should set out the criteria for considering whether the refusal or failure of the persons concerned to comply with clause 43 was "unreasonable"</p> <p>(c) The Administration's advice, as follows:</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>(i) Clause 40(1) provided that the FRC might initiate its enquiry powers or appoint a FRRC to enquire into a case if the threshold (i.e. it appeared to the FRC that there was or might be a question whether or not there was a relevant non-compliance in relation to a listed entity) was met;</p> <p>(ii) It was believed that the FRC or the FRRC would endeavour to seek cooperation from the parties concerned to comply with clause 43; and</p> <p>(iii) The court would consider all relevant circumstances and evidence before deciding whether the person's refusal or failure to comply with clause 43 was unreasonable</p> <p>(d) Members' concern about clause 45 and request for the Administration to consider and respond to their views and suggestions in item (b) above</p>	<p>The Administration to take action under paragraph 3(e) of the minutes</p>

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
014240-014330	Chairman	Date of next meeting	

Council Business Division 1  
Legislative Council Secretariat  
19 January 2006