

**Bills Committee on
Financial Reporting Council Bill**

Thirteenth meeting on 31 March 2006

List of follow-up actions to be taken by the Administration

Clause 12 – Referral of cases to specified authorities

1. Clause 12 sets out the circumstances under which the Financial Reporting Council (FRC) may refer cases or complaints, or provide assistance, to specified authorities. In this connection, the Administration is requested to provide information on the list of authorities, regulatory organizations and accountancy bodies in the Mainland which fall within paragraph (a)(i) or (a)(ii) of the definition of “specified authority” in clause 2(1).

Clause 14 – Written directions of the Chief Executive (CE)

2. Clause 14 empowers the CE to give the FRC written directions with respect to the performance of any of its functions. Members note the Administration’s advice that there is no provision in the Bill prohibiting the disclosure of such written directions, and that the CE will decide whether to make public such written directions, and if so, in what manner, in light of actual circumstances. In this connection, the Administration is requested to consider and provide written response to the following views and request raised by members:
 - (a) In empowering the CE to give written directions to the FRC, it is essential to ensure that the CE would exercise such power in an appropriate manner. The circumstances under which the CE may exercise such power should therefore be set out clearly in the Bill;
 - (b) In connection with item (a) above and for the purpose of enhancing transparency, it should be set out clearly in the Bill that the CE’s written directions to the FRC should be made public, not immediately when the directions are given but at an appropriate time; and
 - (c) To invite the Secretary for Financial Services and the Treasury (SFST) to attend the next meeting of the Bills Committee to discuss with members on the subject.
3. The Administration is requested to provide written response to the request raised by members at the Bills Committee meeting on 31 October 2005 for SFST to incorporate in his speech resuming the Second Reading debate on the Bill the gist of paragraphs 13 and 14 of the paper on “Appointment to and Checks and Balances on the Proposed Financial Reporting Council” (LC Paper No. CB(1)166/05-06(02)), including the following points:

- (a) Clause 14 is a tool of last resort for the Administration, through the CE, to implement necessary remedial measures in the most pressing and extreme circumstances;
- (b) CE will take into account all prevailing circumstances, including whether there is any major malfunction on the part of the FRC, whether the reputation of Hong Kong as an international financial centre is at stake, the urgency of remedial actions required of the FRC, and whether other checks and balances are performed effectively at the time; and
- (c) No direction has ever been given by the CE in the past in accordance with relevant provisions in other ordinances, as this reserve power is not intended to be used lightly.

Clauses 25 and 55 – Legal professional privilege

- 4. Clause 25 provides the investigator with the power to require production of records and documents relating to auditing irregularity. In response to a member's concern on whether the investigator may require the production of those records and documents that are covered by legal professional privilege, the Administration advises that under clause 55(1), the FRC Ordinance does not affect any claims, rights or entitlements that would, apart from the Ordinance, arise on the ground of legal professional privilege. In this connection, the Administration is requested to consider and provide written response to the member's suggestion that it should be set out clearly in the Bill that the powers under clause 25 and other relevant clauses are subject to the provisions in clause 55.

Clause 28 – Power to require attendances and answers

- 5. Clause 28 provides the investigator with the power to require production of records and documents and to require attendances and answers. In response to a member's concern on whether the persons concerned are allowed to have legal representation in attending before the investigator, the Administration advises that there is no provision in the Bill prohibiting the persons concerned from doing so. In this connection, members note that in May 2005, the Court of Appeal in its judgment in CACV170/2004 quashed the direction of the Chairman of the Listing (Disciplinary) Committee in the disciplinary proceedings in respect of New World Development Company Limited and others that legal advisers not be permitted to address the Listing (Disciplinary) Committee. To protect the interests of the persons concerned, the member considers that it should be set out clearly in the Bill that the persons concerned are allowed to have legal representation in attending before the investigator. The Administration is requested to consider the member's view and provide written response.