

Financial Reporting Council Bill

**Mark-up Copy of the Bill
With the Finalized Draft Committee Stage Amendments
Proposed by the Administration**

A BILL

To

Provide for the establishment of a Financial Reporting Council to investigate irregularities committed by auditors of listed corporations and of listed collective investment schemes in respect of the audit of accounts, and irregularities committed by reporting accountants of such corporations and of such schemes in respect of the preparation of financial reports for prospectuses or other listing documents, and to enquire into instances of non-compliance with legal, accounting or regulatory requirements in the financial reports of such corporations and of such schemes, for the establishment of an Audit Investigation Board to conduct such investigations, for the appointment by the Council of a Financial Reporting Review Committee to make such enquiries, and for related matters.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title and commencement

(1) This Ordinance may be cited as the Financial Reporting Council Ordinance.

(2) This Ordinance shall come into operation on a

day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires -

"appointed member" (委任成員), in relation to the Council, means a member of the Council appointed under section 7(1)(c);

"associated undertaking" (相聯企業) -

(a) in relation to a listed corporation, means

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(i) an undertaking that is a subsidiary undertaking, as construed in accordance with the Twenty-third Schedule to the Companies Ordinance (Cap. 32), of the corporation~~a subsidiary of the corporation within the meaning of section 2 of the Companies Ordinance (Cap. 32)~~¹;

(ii) an undertaking that is accounted for and consolidated in the accounts, or is required to be accounted for and consolidated in the next accounts, of the corporation as a subsidiary for the purposes of -

(A) the standards of accounting practices issued or specified,

¹ A technical amendment regarding the definition of "subsidiary undertaking" construed in accordance with the Twenty-third Schedule to the Companies Ordinance (Cap. 32), added by the Companies (Amendment) Ordinance 2005.

or deemed to be issued or specified, under section 18A of the Professional Accountants Ordinance (Cap. 50), as in force at the material time;

(B) the International Financial Reporting Standards issued by the International Accounting Standards Board, as in force at the material time;

(C) the Listing Rules; or

(D) any generally acceptable accounting principles allowed for usage under the Listing Rules;

(iii) an undertaking in which the corporation has an interest (whether held by that corporation directly or indirectly through any other corporation or corporations) that is accounted for by that corporation in its accounts using the method generally known as equity accounting; or

(iv) a corporation a substantial shareholder of which is also a substantial shareholder of the corporation;

(b) in relation to a listed collective investment scheme, means -

(i) an undertaking that is accounted for and consolidated in the accounts, or

is required to be accounted for and consolidated in the next accounts, of the scheme as a subsidiary for the purposes of -

- (A) the standards of accounting practices issued or specified, or deemed to be issued or specified, under section 18A of the Professional Accountants Ordinance (Cap. 50), as in force at the material time;
 - (B) the International Financial Reporting Standards issued by the International Accounting Standards Board, as in force at the material time;
 - (C) the Listing Rules; or
 - (D) any generally acceptable accounting principles allowed for usage under the Listing Rules; or
- (ii) an undertaking in which the scheme has an interest (whether held by that scheme directly or indirectly through any other corporation or corporations) that is accounted for by that scheme in its accounts using the method generally known as equity accounting;

"audit" (審計) -

- (a) in relation to the accounts of a listed

corporation, means an audit of those accounts required for the purposes of the Companies Ordinance (Cap. 32), as in force at the material time, or the Listing Rules;

(b) in relation to the accounts of a listed collective investment scheme, means an audit of those accounts required for the purposes of the relevant code or the Listing Rules;

(c) in relation to the accounts of a relevant undertaking of a listed entity, means -

(i) in the case where an audit of those accounts is required for the purposes of the Companies Ordinance (Cap. 32), or the corporate law of a place outside Hong Kong, as in force at the material time, such an audit so required;

(ii) in any other case, the audit of those accounts, regardless of whether or not required for the purposes of any constitutional instrument of the undertaking;

"audit working paper" (審計工作材料) means a record, or document, that is prepared, or obtained and retained, by or on behalf of an auditor for, or in connection with, the auditor's performance of his functions relating to an audit of accounts;

"auditor" (核數師) -

(a) in relation to a listed corporation -

(i) means a person appointed to be an

auditor of the corporation for the purposes of the Companies Ordinance (Cap. 32), as in force at the material time, or the Listing Rules, regardless of whether or not the person is qualified for the appointment; and

(ii) includes -

(A) if the person so appointed is an individual, an employee or agent of that person involved in the audit of the accounts of the corporation;

(B) if the person so appointed is a partnership, a partner, employee or agent of that person involved in the audit of the accounts of the corporation; and

(C) if the person so appointed is a corporation, a member, director, employee or agent of that person involved in the audit of the accounts of the corporation;

(b) in relation to a listed collective investment scheme -

(i) means a person appointed to be an auditor of the scheme for the purposes of the relevant code or the Listing Rules, regardless of whether or not the person is qualified for the appointment; and

(ii) includes -

(A) if the person so appointed is an individual, an employee or agent of that person involved in the audit of the accounts of the scheme;

(B) if the person so appointed is a partnership, a partner, employee or agent of that person involved in the audit of the accounts of the scheme; and

(C) if the person so appointed is a corporation, a member, director, employee or agent of that person involved in the audit of the accounts of the scheme;

(c) in relation to a relevant undertaking or associated undertaking of a listed entity, or an undertaking that was formerly an associated undertaking of a listed entity

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(i) means -

(A) in the case where an auditor of the undertaking is required to be appointed for the purposes of the Companies Ordinance (Cap. 32), or the corporate law of a place outside Hong Kong, as in force at the material time, a person appointed to be such an

auditor, regardless of whether or not the person is qualified for the appointment;

(B) in any other case, a person appointed to be an auditor of the undertaking -

(I) regardless of whether or not the person is appointed for the purposes of any constitutional instrument of the undertaking; and

(II) regardless of whether or not the person is qualified for the appointment; and

(ii) includes -

(A) if the person so appointed is an individual, an employee or agent of that person involved in the audit of the accounts of the undertaking;

(B) if the person so appointed is a partnership, a partner, employee or agent of that person involved in the audit of the accounts of the undertaking; and

(C) if the person so appointed is a corporation, a member, director, employee or agent of that person involved in the

audit of the accounts of the undertaking;

"authorized institution" (認可機構) means an authorized institution within the meaning of section 2(1) of the Banking Ordinance (Cap. 155);

"books" (簿冊) includes accounts and accounting information, however compiled or stored, and whether recorded in a legible form or recorded otherwise than in a legible form but is capable of being reproduced in a legible form;

"collective investment scheme" (集體投資計劃) means a collective investment scheme within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

"Commissioner of Inland Revenue" (稅務局局長) means the Commissioner of Inland Revenue appointed under the Inland Revenue Ordinance (Cap. 112);

"company" (公司) means a company within the meaning of section 2(1) of the Companies Ordinance (Cap. 32);

"controller" (控權人) means a person who is an indirect controller, or a majority shareholder controller, within the meaning of section 2(1) of the Banking Ordinance (Cap. 155);

"corporation" (法團) means a company or other body corporate incorporated either in Hong Kong or elsewhere;

"Council" (財務匯報局) means the Financial Reporting Council established by section 6(1);

"debenture" (債權證) means a debenture within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

"director" (董事) includes a shadow director and any person occupying the position of director by whatever name called;

"Director of Audit" (審計署署長) means the Director of Audit appointed under section 3 of the Audit Ordinance (Cap. 122);

"document" (文件) includes -

- (a) any register, books and tape recording;
- (b) any input or output, in whatever form, into or from an information system; and
- (c) any other document or similar material (whether produced mechanically, electronically, magnetically, optically, manually or by any other means);

"function" (職能) includes a power and a duty;

"HKEC" (交易結算公司) means the company incorporated under the Companies Ordinance (Cap. 32) and registered under that Ordinance by the name Hong Kong Exchanges and Clearing Limited;

"HKICPA" (香港會計師公會) means the Hong Kong Institute of Certified Public Accountants incorporated by section 3 of the Professional Accountants Ordinance (Cap. 50);

"Independent Commission Against Corruption" (廉政公署) means the Independent Commission Against Corruption established by section 3 of the Independent Commission Against Corruption Ordinance (Cap. 204);

"information" (資料) includes data, text, images, sound codes, computer programmes, software and databases, and any combination thereof;

"information system" (資訊系統) means an information system within the meaning of section 2(1) of the Electronic

Transactions Ordinance (Cap. 553);

"Insurance Authority" (保險業監督) means the Insurance Authority appointed under section 4(1) of the Insurance Companies Ordinance (Cap. 41);

"Investigation Board" (調查委員會) means the Audit Investigation Board established by section 22(1);

"lay person" (業外人士) means a person who is not -

- (a) a certified public accountant within the meaning of the Professional Accountants Ordinance (Cap. 50); or
- (b) a member of an accountancy body that is a member of the International Federation of Accountants;

"listing document" (上市文件) -

- (a) in relation to a listed corporation, means -
 - (i) a prospectus; or
 - (ii) a document issued for the purposes of the Listing Rules that -
 - (A) offers any securities issued by the corporation to the public for subscription, or purchase, for a consideration; or
 - (B) is calculated to invite offers by the public to subscribe for, or purchase, for a consideration any securities issued by the corporation;
- (b) in relation to a listed collective investment scheme, means a document issued for the purposes of the relevant code or

the Listing Rules that -

- (i) offers any interests in the scheme to the public for acquisition for a consideration;
- (ii) offers the scheme to the public for participation for a consideration; or
- (iii) is calculated to invite offers by the public to acquire for a consideration any interests, or participate for a consideration, in the scheme;

"Listing Rules" (《上市規則》) means -

- (a) the Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited; or
- (b) the Rules Governing the Listing of Securities on the Growth Enterprise Market of the Stock Exchange of Hong Kong Limited,

approved by the Securities and Futures Commission under section 24 of the Securities and Futures Ordinance (Cap. 571), and as in force at the material time;

"manager" (管理人), in relation to a listed collective investment scheme, means the person who is responsible, for the purposes of the relevant code or the Listing Rules, for the operation, and the management of the property, of the scheme for the benefit of those who hold interests in the scheme;

"Mandatory Provident Fund Schemes Authority" (強積金管理局) means the Mandatory Provident Fund Schemes Authority

established by section 6(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);

"Market Misconduct Tribunal" (市場失當行為審裁處) means the Market Misconduct Tribunal established by section 251(1) of the Securities and Futures Ordinance (Cap. 571);

"Monetary Authority" (金融管理專員) means the Monetary Authority appointed under section 5A(1) of the Exchange Fund Ordinance (Cap. 66);

"officer" (高級人員) -

(a) in relation to a corporation, means a director, manager or secretary of, or any other person involved in the management of, the corporation; or

(b) in relation to an unincorporated association or partnership, means any member of the governing body of, or any other person involved in the management of, the association or partnership;

"Official Receiver" (破產管理署署長) means the Official Receiver appointed under section 75(1) of the Bankruptcy Ordinance (Cap. 6);

"possession" (管有), in relation to any matter, includes custody, control and power of or over the matter;

"prospectus" (招股章程) means a prospectus within the meaning of section 2(1) of the Companies Ordinance (Cap. 32);

"public officer" (公職人員) -

(a) means a person holding an office of emolument under the Government, whether such office be permanent or temporary; but

(b) does not include -

(i) a person holding such an office by virtue only of being the chairman of a board or tribunal established under an Ordinance; or

(ii) a person who is a judicial officer for the purpose of section 2 of the Judicial Officers Recommendation Commission Ordinance (Cap. 92) or a judicial officer appointed by the Chief Justice;²

"record" (紀錄) means any record of information (however compiled or stored) and includes -

- (a) any books, deed, contract, agreement, voucher and receipt;
- (b) any document or other material used with or produced by an information system;
- (c) any information that is recorded otherwise than in a legible form but is capable of being reproduced in a legible form;
- (d) any document, disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of other equipment) of being reproduced; and
- (e) any film (including a microfilm), disc, tape or other device in which visual images are embodied so as to be capable

² A technical amendment, formulated in response to the view of the Legal Adviser to the Bills Committee, to clarify the scope of the term "public officer", with reference to section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) and sections 101A(2)(b) and (7) of the Banking Ordinance (Cap. 155, as amended under the Banking (Amendment) Ordinance 2005).

(with or without the aid of other equipment) of being reproduced;

"Registrar of Companies" (公司註冊處處長) means the Registrar of Companies appointed under section 303(2) of the Companies Ordinance (Cap. 32);

"related person" (有關連人士), in relation to the Council, means -

- (a) a person employed by the Council under section 10; or
- (b) a person appointed as a consultant, agent or adviser of the Council under section 10;

"relevant code" (有關守則) means a code or guideline published under section 399 of the Securities and Futures Ordinance (Cap. 571) for providing guidance in relation to the operation of section 104 of that Ordinance, and as in force at the material time;

"relevant financial report" (有關財務報告) -

- (a) except in relation to sections 5(2) and 50, has the meaning assigned to it by Part 1 of Schedule 1;
- (b) in relation to sections 5(2) and 50, has the meaning assigned to it by Part 2 of Schedule 1;

"relevant requirement" (有關規定) -

- (a) except in relation to sections 5(2) and 50, has the meaning assigned to it by Part 1 of Schedule 1;
- (b) in relation to sections 5(2) and 50, has the meaning assigned to it by Part 2 of Schedule 1;

"relevant time" (有關期間) -

- (a) in relation to an auditor's report on the audit of the accounts of a listed entity, means any time, whether before, on or after the commencement of section 4, during which the entity is or was listed;
- (b) in relation to a listing document issued by or on behalf of a listed entity, means any time, whether before, on or after the commencement of section 4, since the entity was formed;
- (c) in relation to a relevant financial report of a listed entity (other than a specified report), means any time, whether before, on or after the commencement of section 5, during which the entity is or was listed;

"relevant undertaking" (有關企業) -

- (a) in relation to a listed corporation, means an undertaking that is, or was at the material time -
 - (i) a subsidiary undertaking, as construed in accordance with the Twenty-third Schedule to the Companies Ordinance (Cap. 32), of the corporation; or a subsidiary of the corporation within the meaning of section 2 of the Companies Ordinance (Cap. 32); or³
 - (ii) an undertaking that is required to be accounted for and consolidated in the accounts, or the next accounts, of the corporation as a subsidiary

³ See footnote 1.

for the purposes of -

- (A) the standards of accounting practices issued or specified, or deemed to be issued or specified, under section 18A of the Professional Accountants Ordinance (Cap. 50), as in force at the material time;
- (B) the International Financial Reporting Standards issued by the International Accounting Standards Board, as in force at the material time;
- (C) the Listing Rules; or
- (D) any generally acceptable accounting principles allowed for usage under the Listing Rules;

(b) in relation to a listed collective investment scheme, means an undertaking that is, or was at the material time, an undertaking that is required to be accounted for and consolidated in the accounts, or the next accounts, of the scheme as a subsidiary for the purposes of

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- (i) the standards of accounting practices issued or specified, or deemed to be issued or specified, under section 18A of the Professional Accountants Ordinance (Cap. 50), as in force at the

material time;

(ii) the International Financial Reporting Standards issued by the International Accounting Standards Board, as in force at the material time;

(iii) the Listing Rules; or

(iv) any generally acceptable accounting principles allowed for usage under the Listing Rules;

"reporting accountant" (匯報會計師) -

(a) in relation to a listed corporation -

(i) means a person appointed for the purposes of paragraph 43 of the Third Schedule to the Companies Ordinance (Cap. 32), or the Listing Rules, to prepare a specified report required for a listing document issued by or on behalf of the corporation, regardless of whether or not the person is qualified for the appointment; and

(ii) includes -

(A) if the person so appointed is an individual, an employee or agent of that person involved in the preparation of the specified report;

(B) if the person so appointed is a partnership, a partner, employee or agent of that person involved in the

preparation of the specified report; and

(C) if the person so appointed is a corporation, a member, director, employee or agent of that person involved in the preparation of the specified report;

(b) in relation to a listed collective investment scheme -

(i) means a person appointed for the purposes of the relevant code or the Listing Rules to prepare a specified report required for a listing document issued by or on behalf of the scheme, regardless of whether or not the person is qualified for the appointment; and

(ii) includes -

(A) if the person so appointed is an individual, an employee or agent of that person involved in the preparation of the specified report;

(B) if the person so appointed is a partnership, a partner, employee or agent of that person involved in the preparation of the specified report; and

(C) if the person so appointed is a corporation, a member, director, employee or agent of

that person involved in the preparation of the specified report;

"responsible person" (負責人), in relation to a listed collective investment scheme, means -

- (a) the manager of the scheme; or
- (b) the person appointed as the trustee, or custodian, of the property of the scheme;

"Review Committee" (檢討委員會) means a Financial Reporting Review Committee appointed under section 40(1)(b);

"Review Panel" (檢討委員會) means the Financial Reporting Review Panel appointed under section 39(1);

"Secretary" (局長) means the Secretary for Financial Services and the Treasury;

"securities" (證券) -

- (a) means -
 - (i) shares, stocks, debentures, loan stocks, funds, bonds or notes;
 - (ii) rights, options or interests (whether described as units or otherwise) in, or in respect of, shares, stocks, debentures, loan stocks, funds, bonds or notes;
 - (iii) certificates of interest or participation in, temporary or interim certificates for, receipts for, or warrants to subscribe for or purchase, shares, stocks, debentures, loan stocks, funds, bonds or notes;
 - (iv) interests, rights or property, whether in the form of an instrument

or otherwise, commonly known as securities;

(v) interests, rights or property that is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of the Securities and Futures Ordinance (Cap. 571) as being regarded as securities in accordance with the terms of the notice; but

(b) does not include -

(i) any negotiable receipt or other negotiable certificate or document evidencing the deposit of a sum of money, or any rights or interest arising under the receipt, certificate or document;

(ii) any bill of exchange within the meaning of section 3 of the Bills of Exchange Ordinance (Cap. 19) and any promissory note within the meaning of section 89 of that Ordinance;

(iii) interests, rights or property that is interests, rights or property, or is of a class or description of interests, rights or property, prescribed by notice under section 392 of the Securities and Futures Ordinance (Cap. 571) as not being regarded as securities in accordance with the terms of the notice;

"Securities and Futures Commission" (證監會) means the

Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571);

"shadow director" (幕後董事) means a person in accordance with whose directions or instructions the directors of a corporation are accustomed or obliged to act, but a person shall not be regarded as a shadow director by reason only of the fact that the directors act on advice given by him in a professional capacity;

"share" (股份) means any share in the share capital of a corporation;

"specified authority" (指明當局) -

(a) means -

(i) an authority, or regulatory organization, whether in Hong Kong or elsewhere; or

(ii) an accountancy body, whether in Hong Kong or elsewhere, that is a member of the International Federation of Accountants; but

(b) does not include a specified enforcement agency;

"specified body" (指明團體) means a specified authority or a specified enforcement agency;

"specified enforcement agency" (指明執行機構) means -

(a) the Commissioner of Police of Hong Kong;

(b) the Commissioner of the Independent Commission Against Corruption;

(c) the HKICPA;

(d) the HKEC;

(e) the Securities and Futures Commission;

(f) the Registrar of Companies;

- (g) the Monetary Authority;
- (h) the Insurance Authority;
- (i) the Commissioner of Inland Revenue;
- (j) the Official Receiver;
- (k) the Mandatory Provident Fund Schemes Authority; or
- (l) the Market Misconduct Tribunal;

"specified report" (指明報告) -

- (a) in relation to a prospectus issued by or on behalf of a listed corporation, means any report, specified in Part II of the Third Schedule to the Companies Ordinance (Cap. 32), that is required under section 38 or 342 of that Ordinance to be set out in the prospectus;
- (b) in relation to a listing document (other than a prospectus) issued by or on behalf of a listed entity, means any report on the profits and losses of, the assets and liabilities of, and other financial information on -
 - (i) the entity; or
 - (ii) a business or undertaking to be acquired, or disposed of, by the entity,that is required for inclusion in the listing document issued for the purposes of the relevant code or the Listing Rules;

"substantial shareholder" (大股東) means a substantial shareholder within the meaning of section 6 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571);

"undertaking" (企業) includes an unincorporated association carrying on a trade or business (whether or not for profit), a corporation and a partnership.

(2) In this Ordinance, a reference to the performance of a function includes the exercise of a power and the discharge of a duty.

(3) In this Ordinance, a reference to the interest of the investing public does not include any interest the taking into consideration of which is or is likely to be contrary to the public interest.

3. Listed entity

(1) In this Ordinance -
"listed collective investment scheme" (上市集體投資計劃) means a collective investment scheme that is or has been listed and includes the collective investment scheme before it is or was listed;

"listed corporation" (上市法團) means a corporation that is or has been listed and includes the corporation before it is or was listed;

"listed entity" (上市實體) means a listed corporation or a listed collective investment scheme.

(2) For the purposes of this Ordinance -

(a) a corporation is listed if any securities issued by the corporation are listed on a recognized stock market; and

(b) a collective investment scheme is listed if any interests in the scheme are listed on a recognized stock market.

(3) For the purposes of subsection (2)(a) -

(a) the securities issued by a corporation are taken to be listed on a recognized stock

market if, on the application of the corporation or of a holder of the securities, the company operating the market has agreed to allow, subject to the requirements of the Securities and Futures Ordinance (Cap. 571), dealings in those securities to take place on the market; and

(b) if, after the securities are taken to be listed on a recognized stock market by virtue of paragraph (a), dealings in those securities on the market are suspended, the suspension does not affect the operation of that paragraph in relation to those securities.

(4) For the purposes of subsection (2)(b) -

(a) the interests in a collective investment scheme are taken to be listed on a recognized stock market if, on the application of a responsible person of the scheme, the company operating the market has agreed to allow, subject to the requirements of the Securities and Futures Ordinance (Cap. 571), dealings in those interests to take place on the market; and

(b) if, after the interests are taken to be listed on a recognized stock market by virtue of paragraph (a), dealings in those interests on the market are suspended, the suspension does not affect the operation of that paragraph in relation to those interests.

(5) In this section -

"dealing" (交易), in relation to securities issued by a corporation or interests in a collective investment scheme, means, whether as principal or agent, making or offering to make an agreement with another person, or inducing or attempting to induce another person, to enter into or to offer to enter into an agreement -

(a) for or with a view to acquiring, disposing of, subscribing for or underwriting such securities or interests; or

(b) the purpose or pretended purpose of which is to secure a profit to any of the parties -

(i) from the yield of such securities or interests; or

(ii) by reference to fluctuations in the value of such securities or interests;

"recognized stock market" (認可證券市場) means a stock market operated by a company recognized as an exchange company under section 19(2) of the Securities and Futures Ordinance (Cap. 571).

4. Relevant irregularity

(1) In this Ordinance, "relevant irregularity" (有關不當行為) means an auditing irregularity or a reporting irregularity.

(2) For the purposes of this Ordinance -

(a) there is an auditing irregularity in relation to a listed entity if, in respect of the audit of the accounts of the entity set out in subsection (7), a specified event under subsection (3), (4), (5) or

(6) has occurred in relation to the auditor of the entity at the material time; and

(b) there is a reporting irregularity in relation to a listed entity if, in respect of the preparation of a specified report required for a listing document issued at the relevant time by or on behalf of the entity, a specified event under subsection (3), (4), (5) or (6) has occurred in relation to the reporting accountant of the entity at the material time.

(3) A specified event has occurred in relation to an auditor or reporting accountant of a listed entity, if the auditor or reporting accountant -

(a) falsified or caused to be falsified a document;

(b) made a statement, in respect of a document, that was material and that he knew to be false or did not believe to be true;

(c) has been negligent in the conduct of his profession;

(d) has been guilty of professional misconduct; or

(e) did or omitted to do something that, were the auditor or reporting accountant an individual certified public accountant, would reasonably be regarded as bringing or likely to bring discredit upon the auditor or reporting accountant himself, the HKICPA or the accountancy profession.

(4) Without prejudice to the generality of

subsection (3), where the auditor or reporting accountant is a corporate practice, a specified event has also occurred in relation to the auditor or reporting accountant if -

- (a) the auditor or reporting accountant -
 - (i) failed to comply with a requirement referred to in section 28D(6)(a) or (7) of the Professional Accountants Ordinance (Cap. 50);
 - (ii) ceased or failed to comply with a requirement of section 28D(2)(b) or (c) of that Ordinance applicable to the practice;
 - (iii) rendered any service under a company name other than the name that then appeared in relation to the practice in the CPA register;
 - (iv) practised accountancy as such a practice without being covered by professional indemnity insurance at all or to the extent required by that Ordinance;
 - (v) failed or neglected to observe, maintain or otherwise apply a professional standard; or
 - (vi) refused or neglected to comply with the provisions of any bylaw or rule made or any direction lawfully given by the HKICPA Council; or
- (b) a director (who is a certified public accountant) of the auditor or reporting accountant -
 - (i) rendered any service as, or

purporting to be, a director of a company whose name did not, at the time when the service was rendered, appear in Part II of the CPA register; or

(ii) practised accountancy as such a director at a time when the auditor or reporting accountant was covered by professional indemnity insurance either not at all or not to the extent required by the Professional Accountants Ordinance (Cap. 50).

(5) Without prejudice to the generality of subsection (3), where the auditor or reporting accountant is a certified public accountant, a specified event has also occurred in relation to the auditor or reporting accountant if the auditor or reporting accountant -

(a) failed or neglected to observe, maintain or otherwise apply a professional standard; or

(b) refused or neglected to comply with the provisions of any bylaw or rule made or any direction lawfully given by the HKICPA Council.

(6) Without prejudice to the generality of subsection (3), where the auditor or reporting accountant is a firm of certified public accountants (practising), a specified event has also occurred in relation to the auditor or reporting accountant if the auditor or reporting accountant -

(a) failed or neglected to observe, maintain or otherwise apply a professional standard;

- (b) refused or neglected to comply with the provisions of any bylaw or rule made or any direction lawfully given by the HKICPA Council; or
- (c) rendered any service under a firm name other than the name that then appeared in relation to the firm in the CPA register.

(7) The accounts of a listed entity referred to in subsection (2)(a) are -

- (a) in the case where the entity was a listed corporation, those a copy of the auditor's report on which -
 - (i) was sent at the relevant time under section 129G(1) of the Companies Ordinance (Cap. 32); or
 - (ii) was issued, circulated, published or distributed at the relevant time for the purposes of the Listing Rules;
- (b) in the case where the entity was a listed collective investment scheme, those a copy of the auditor's report on which was issued, circulated, published or distributed at the relevant time for the purposes of the relevant code or the Listing Rules.

(8) In this section -

"certified public accountant" (會計師) means a certified public accountant within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50);

"certified public accountant (practising)" (執業會計師) means a certified public accountant (practising) within the meaning of section 2 of the Professional

Accountants Ordinance (Cap. 50);

"corporate practice" (執業法團) means a corporate practice within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50);

"CPA register" (註冊紀錄冊) means the register of certified public accountants kept under section 22 of the Professional Accountants Ordinance (Cap. 50);

"HKICPA Council" (理事會) means the Council of the HKICPA established by section 10(1) of the Professional Accountants Ordinance (Cap. 50);

"professional indemnity insurance" (專業彌償保險) means a professional indemnity insurance within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50);

"professional standard" (專業標準) means any of the professional standards within the meaning of section 2 of the Professional Accountants Ordinance (Cap. 50).

5. Relevant non-compliance

(1) For the purposes of this Ordinance (except section 50), there is a relevant non-compliance in relation to a listed entity if a relevant financial report, within the meaning of Part 1 of Schedule 1, of the entity has not complied with a relevant requirement, within the meaning of Part 1 of that Schedule, that applies to in respect of^{3A} the report within the meaning of Part 1 of that Schedule⁴.

(2) For the purposes of section 50, there is a

^{3A} A further technical amendment in consultation with the Legal Adviser to the Bills Committee.

⁴ A technical amendment, formulated in response to the view of the Legal Adviser to the Bills Committee, to improve the clarity of the provision.

relevant non-compliance in relation to a listed corporation if a relevant financial report, within the meaning of Part 2 of Schedule 1, of the corporation has not complied with a relevant requirement, within the meaning of Part 2 of that Schedule, that applies to ~~in~~ respect of^{4A} the report ~~within the meaning of Part 2 of that Schedule~~⁵.

PART 2

FINANCIAL REPORTING COUNCIL

6. Establishment of Financial Reporting Council

(1) There is established by this section a body corporate with the corporate name of "Financial Reporting Council" in English and "財務匯報局" in Chinese.

(2) The Council -

- (a) has perpetual succession under its corporate name;
- (b) shall provide itself with a common seal; and
- (c) is capable of suing and being sued in its corporate name.

(3) The Council is not a servant or agent of the Government and does not enjoy any status, immunity or privilege of the Government.

7. Composition of Council

(1) The Council is to consist of -

- (a) the Registrar of Companies, or a person

^{4A} See footnote 3A.

⁵ See footnote 4.

appointed by the Registrar, in writing, as his representative, as an ex officio member;

(b) the Chief Executive Officer of the Council, as an ex officio member; and

(c) subject to subsection (2), the following members -

(i) one member appointed by the Chief Executive on the nomination of the Securities and Futures Commission;

(ii) one member appointed by the Chief Executive on the nomination of the HKEC;

(iii) one member appointed by the Chief Executive on the nomination of the HKICPA; and

(iv) not fewer than 4, and not more than 6, other members appointed by the Chief Executive from amongst persons who either because of their experience in accounting, auditing, finance, banking, law, administration or management, or because of their professional or occupational experience, appear to the Chief Executive to be suitable for such the appointment⁶.

(2) The number of members of the Council who are lay

⁶ Please refer to paragraph 4 of the Administration's paper entitled "Follow-up actions arising from the meeting held on 31 October 2005" (LC Paper No. CB(1)286/05-06(02)), as discussed at the Bills Committee's meeting on 17 November 2005. In response to some Members' view, we agree to provide for further guidance in the Bill as to how the appointment power may be exercised.

persons is to exceed the number of those who are not.

(3) A public officer is not eligible for appointment under subsection (1)(c).

(4) The Chief Executive shall appoint, from amongst the appointed members of the Council who are lay persons, the Chairman of the Council.

(5) The Chief Executive shall give notice of each appointment under subsection (1)(c) or (4) by notice published in the Gazette.

(5A) The Council may perform any of its functions, and its proceedings are valid, despite -

(a) a vacancy in the membership of the Council;

(b) a defect in the appointment or qualification of a person purporting to be a member of the Council; or

(c) a minor irregularity in the convening of any meeting of the Council.⁷

(6) Schedule 2 has effect with respect to the Council and its members.

8. Chief Executive Officer

(1) The Chief Executive shall appoint a person to be the Chief Executive Officer of the Council.

(2) A public officer is not eligible for appointment under subsection (1).

(3) The Chief Executive shall give notice of an appointment under subsection (1) by notice published in

⁷ Please refer to paragraph 7 of the Administration's paper entitled "Follow-up actions arising from the meeting held on 12 January 2006" (LC Paper No. CB(1)866/05-06(02)), as discussed at the Bills Committee's meeting on 10 February 2006. This is a technical amendment to put beyond doubt the position that the powers of the Financial Reporting Council (FRC) will not be affected on the said occasions.

the Gazette.

(4) The Chief Executive Officer of the Council -

(a) is the administrative head of the Council and is responsible, subject to the direction of the Council, for administering the affairs of the Council; and

(b) has, subject to that direction, such other responsibilities as may be assigned by the Council.

(5) Schedule 3 has effect with respect to the Chief Executive Officer of the Council.

9. Functions of Council

The functions of the Council are -

(a) to receive complaints concerning -

(i) relevant irregularities in relation to listed entities; and

(ii) relevant non-compliances in relation to listed entities;

(b) to investigate, in response to a complaint or otherwise -

(i) relevant irregularities in relation to listed entities; and

(ii) the question whether or not there are any relevant irregularities in relation to listed entities;

(c) to enquire, in response to a complaint or otherwise, into -

(i) relevant non-compliances in relation to listed entities; and

(ii) the question whether or not there are any relevant non-compliances in

- relation to listed entities;
- (d) with respect to each of the investigations or enquiries, to decide on, and carry out, the appropriate action in accordance with this Ordinance;
 - (e) to approve and oversee the policies and activities of the Investigation Board, a Review Committee, and a committee established by the Council;
 - (f) to refer to a specified body any case or complaint concerning -
 - (i) a relevant irregularity in relation to a listed entity; or
 - (ii) a relevant non-compliance in relation to a listed entity;
 - (g) to provide assistance to a specified body on the body's investigation or enquiry into, or dealing with, any case or complaint concerning -
 - (i) a relevant irregularity in relation to a listed entity; or
 - (ii) a relevant non-compliance in relation to a listed entity; and
 - (h) to perform such other functions as are imposed on the Council under this or any other Ordinance.

10. Powers of Council

(1) The Council may do all such things as are necessary for, or incidental or conducive to, the performance of its functions.

(2) Without prejudice to the generality of subsection (1), the Council may -

- (a) employ persons to assist the Council, the Investigation Board, a Review Committee, [a committee established by the Council,](#)⁸ or any or all of them, in the performance of its or their functions;
- (b) appoint persons as consultants, agents or advisers to assist the Council, [the Investigation Board, a Review Committee, a committee established by the Council, or any or all of them, in the performance of its or their functions](#)~~in the performance of its functions~~⁹;
- (c) hold, acquire, lease, sell, charge, dispose of or otherwise deal with all kinds of property, whether movable or immovable;
- (d) enter into, carry out, assign or accept the assignment of, vary or rescind, any contract, agreement, memorandum of understanding or other obligation;
- (e) with the approval of the Secretary, borrow money on security or other conditions;
- (f) accept gifts;
- (g) receive and expend moneys;
- (h) publish or otherwise make available materials indicating to the public any matter relating or incidental to the performance by the Council of any of its functions;
- (i) do all such things as the Council thinks

⁸ [A technical amendment.](#)

⁹ [A technical amendment.](#)

fit in respect of its administration and management; and

- (j) exercise such other powers as are conferred on the Council under this or any other Ordinance.

11. Delegations

(1) Subject to subsection (2), the Council may delegate, in writing, any of its functions to -

- (a) a member of the Council;
- (b) a committee established by the Council; or
- (c) an employee of the Council, whether by reference to his name or to the office held by him.

(2) The Council shall not delegate any of its functions under subsection (1), sections 9(b), (c), (d), (e), (f) and (g), 10(2)(e), 12, 13, 17(2) and (3), 18(2), 20(1) and 52(5), Parts 3 and 4, and section 8(1), (2) and (3) of Schedule 2.

(3) If the Council delegates a function under this section, it may at the same time authorize the delegate to sub-delegate the function.

(4) The Council may -

- (a) revoke a delegation, or an authorization in respect of a sub-delegation, under this section;
- (b) attach restrictions or conditions to a delegation under this section; or
- (c) attach restrictions or conditions to an authorization in respect of a sub-delegation under this section, including those on the exercise of power to sub-delegate.

(5) A delegation or sub-delegation under this section does not prevent the Council or its delegate from concurrently performing the function delegated or sub-delegated.

(6) If a person purports to act pursuant to a delegation or sub-delegation under this section, he is presumed, unless the contrary is proved, to be acting in accordance with the terms of the delegation or sub-delegation.

(7) Without prejudice to subsection (5), if there is a delegation or sub-delegation under this section in respect of a function of the Council, any reference in this or any other Ordinance to the Council in connection with the performance of the function is, unless the context otherwise requires, to be construed accordingly.

12. Assistance, etc. to specified authorities under certain circumstances

(1) If the Council is of the opinion that the conditions in subsection (2) are satisfied, it may, subject to subsections (4) and (5) -

(a) refer to a specified authority any case or complaint concerning -

(i) a relevant irregularity in relation to a listed entity; or

(ii) a relevant non-compliance in relation to a listed entity; and

(b) provide assistance to a specified authority on the authority's investigation or enquiry into, or dealing with, any case or complaint concerning -

(i) a relevant irregularity in relation

to a listed entity; or
(ii) a relevant non-compliance in
relation to a listed entity.

(2) The conditions are -

- (a) the referral, or the provision of assistance, will enable or assist the specified authority to perform its functions; and
- (b) it is not contrary to the interest of the investing public or to the public interest that the case or complaint should be referred or the assistance should be provided.

(3) In forming an opinion on the conditions set out in subsection (2) for the purposes of subsection (1)(b), the Council shall take into account -

- (a) whether or not the specified authority will pay to the Council any of the costs and expenses incurred in providing the assistance; and
- (b) whether or not the specified authority will be able and willing to provide reciprocal assistance.

(4) If the specified authority falls within paragraph (a)(i) of the definition of "specified authority" in section 2(1), the Council shall satisfy itself that -

- (a) the authority -
 - (i) performs any function similar to a function of the Council under section 9(a), (b), (c) or (d); or
 - (ii) regulates, supervises or investigates -

- (A) accountants;
 - (B) banking, insurance or other financial services; or
 - (C) the affairs of corporations;
- (b) the authority is subject to adequate secrecy provisions; and
- (c) the case or complaint is referred, or the assistance is provided -
- (i) with a view to the authority's performance of any of its regulatory, supervisory or investigatory function; or
 - (ii) otherwise for the purpose of such function.

(5) If the specified authority falls within paragraph (a)(ii) of the definition of "specified authority" in section 2(1), the Council shall satisfy itself that -

- (a) the authority is subject to adequate secrecy provisions; and
 - (b) the case or complaint is referred, or the assistance is provided -
- (i) with a view to the authority's taking of any disciplinary action, or conducting of any investigation, against any of the members of the authority; or
 - (ii) otherwise for the purpose of such action or investigation.

(6) If the Council has, for the purposes of subsection (4) or (5), satisfied itself that a specified authority falls within subsection (4)(a) and (b) or (5)(a), the Council shall as soon as practicable

thereafter cause the name of the authority to be published in the Gazette.

- (7) Despite anything in this Ordinance, if -
 - (a) a person is required -
 - (i) to give an explanation, or make a statement, under section 27;
 - (ii) to give an answer or response to any question under section 28;
 - (iii) to give an explanation or further particulars under section 28;
 - (iv) to give any information or explanation under section 43(1); and
 - (b) the explanation, particulars, information or statement, or the answer or response, might tend to incriminate the person, and the person so claims before giving the explanation, particulars or information, or making the statement, or giving the answer or response,

the Council shall not provide evidence of the requirement, as well as the explanation, particulars, information or statement, or the question and the answer or response, to a specified authority in a jurisdiction outside Hong Kong for use in criminal proceedings against the person in that jurisdiction.

13. Council may issue guidelines

- (1) The Council may issue guidelines not inconsistent with this Ordinance -
 - (a) indicating the manner in which it proposes to perform ~~performs~~¹⁰ its functions; or

¹⁰ An editorial amendment.

(b) providing guidance on the operation of any provision of this Ordinance.

(2) The Council shall publish the guidelines in the Gazette.

(3) The Council may amend or revoke any of the guidelines. Subsection (2) applies to such an amendment or revocation in the same way as it applies to the issue of a guideline.

(4) A person does not incur any civil or criminal liability only because the person has contravened any of the guidelines. If, in any legal proceedings, the court or magistrate is satisfied that such a guideline is relevant to determining a matter that is in issue -

(a) the guideline is admissible in evidence in the proceedings; and

(b) proof that the person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter.

(5) A guideline issued under this section is not subsidiary legislation.

14. Directions of Chief Executive

(1) After consultation with the Chairman of the Council, the Chief Executive may, on being satisfied that it is in the public interest to do so, give the Council such written directions as he thinks fit with respect to the performance of any of the Council's functions.

(2) The Council shall comply with any direction given under subsection (1).

(3) If a direction is given under subsection (1), a requirement under an Ordinance that the Council shall, for the purpose of performing any of the functions to which

the direction relates -

- (a) form any opinion;
- (b) be satisfied as to any matter (including the existence of particular circumstances); or
- (c) consult any person,

does not apply for any purpose connected with the performance of functions pursuant to, or consequent upon, the direction.

15. Council to furnish information

When required by the Secretary, the Council shall furnish to him -

- (a) such information as he specifies on the principles, practices and policy the Council is pursuing or adopting, or proposes to pursue or adopt, in performing any of the Council's functions; and
- (b) the reasons for pursuing or adopting, or proposing to pursue or adopt, those principles, practices and policy.

16. Exemption from taxation

The Council is exempt from taxation under the Inland Revenue Ordinance (Cap. 112).

17. Financial years and estimates

(1) The Council may, with the prior approval of the Secretary, fix a period to be the financial year of the Council.

(2) As soon as practicable after the commencement of this section, the Council shall submit to the Secretary, for his approval, estimates of the income and expenditure

of the Council for the first financial year of the Council.

(3) In each financial year of the Council, the Council shall, before a date to be fixed by the Secretary, submit to the Secretary, for his approval, estimates of the income and expenditure of the Council for the next financial year of the Council.

18. Accounts

(1) The Council shall keep proper accounts and records of its transactions.

(2) As soon as practicable after the end of each financial year of the Council, the Council shall cause to be prepared for the financial year a statement of accounts of the Council that -

- (a) gives a true and fair view of -
 - (i) the state of affairs of the Council as at the end of that financial year; and
 - (ii) the results of the operations and cash flows of the Council in that financial year; and
- (b) is signed by the Chairman, and the Chief Executive Officer, of the Council.

19. Director of Audit as auditor

(1) The statement of accounts prepared under section 18(2) is to be audited by the Director of Audit who shall make a report to the Council on the audit of that statement.

(2) A report made under subsection (1) is to contain a statement by the Director of Audit as to whether in his opinion the statement of accounts gives a true and fair

view of the matters set out in section 18(2)(a)(i) and (ii).

(3) The Director of Audit is entitled to have access to such books of account and other records of the Council as he considers necessary to perform his functions as the auditor of the Council.

(4) The Director of Audit is entitled to require from any person holding, or accountable for, those books of account and records such information and explanation as he considers necessary to perform his functions as the auditor of the Council.

**20. Reports and statement to be laid
before Legislative Council**

(1) As soon as practicable after the end of each financial year of the Council, the Council shall submit to the Secretary -

- (a) a report on the activities of the Council for that financial year;
- (b) a copy of the statement of accounts prepared under section 18(2) for that financial year; and
- (c) a copy of the report made under section 19(1) on the audit of that statement.

(2) The Secretary shall cause the reports and statement received by him under subsection (1) to be laid on the table of the Legislative Council.

PART 3

RELEVANT IRREGULARITIES

Division 1 - Preliminary

21. Interpretation

(1) In this Part -
"authorized officer" (獲授權人員) means a person authorized by the investigator under section 28(6);
"investigator" (調查機構) means, subject to subsections (2), (3) and (4), the Council.

(2) If the Investigation Board is directed under section 23(1)(b) to conduct an investigation concerning an auditing irregularity, a reference to "investigator" in sections 25 and 27 and Divisions 3 and 4~~Division 3~~, means, for the purpose of the irregularity, the Board.

(3) If the Investigation Board is directed under section 23(2)(b) to conduct an investigation concerning a reporting irregularity, a reference to "investigator" in sections 26 and 27 and Divisions 3 and 4~~Division 3~~, means, for the purpose of the irregularity, the Board.

(4) If the Investigation Board is directed under section 23(3)(b) to conduct an investigation concerning a relevant irregularity, a reference to "investigator" in section 28 and Divisions 3 and 4~~Division 3~~¹¹, means, for the purpose of the irregularity, the Board.

22. Audit Investigation Board

(1) There is established by this section a board

¹¹ Technical amendments.

called the "Audit Investigation Board" in English and "審計調查委員會" in Chinese.

- (2) The Investigation Board is to consist of -
- (a) the Chief Executive Officer of the Council, as an ex officio member and chairman; and
 - (b) at least one other member appointed by the Council.

(3) The Council shall give notice of an appointment under subsection (2)(b) by notice published in the Gazette.

(3A) The Investigation Board may perform any of its functions, and its proceedings are valid, despite -

- (a) a vacancy in the membership of the Board;
- (b) a defect in the appointment or qualification of a person purporting to be a member of the Board; or
- (c) a minor irregularity in the convening of any meeting of the Board.¹²

(4) Schedule 4 has effect with respect to the Investigation Board and its members.

23. Initiating investigation concerning relevant irregularity

(1) If it appears to the Council that there are circumstances suggesting that there is an auditing irregularity in relation to a listed entity, and the Council certifies in writing to that effect -

- (a) the Council may, for the purpose of investigating the irregularity or the question whether or not there is such an

¹² See footnote 7.

irregularity, exercise the powers under sections 25 and 27 and Division 3; or

- (b) the Council may, in writing, direct the Investigation Board to investigate, with those powers, the irregularity and the question whether or not there is such an irregularity.

(2) If it appears to the Council that there are circumstances suggesting that there is a reporting irregularity in relation to a listed entity, and the Council certifies in writing to that effect -

- (a) the Council may, for the purpose of investigating the irregularity or the question whether or not there is such an irregularity, exercise the powers under sections 26 and 27 and Division 3; or

- (b) the Council may, in writing, direct the Investigation Board to investigate, with those powers, the irregularity and the question whether or not there is such an irregularity.

(3) If the Council has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that there is or may be a relevant irregularity in relation to a listed entity -

- (a) the Council may, for the purpose of investigating the irregularity or the question whether or not there is such an irregularity, exercise the powers under section 28 and Division 3; or

- (b) the Council may, in writing, direct the Investigation Board to investigate, with those powers, the irregularity and the

question whether or not there is such an irregularity.

(4) After having directed the Investigation Board to conduct an investigation under subsection (1)(b), (2)(b) or (3)(b), the Council may direct the Board to cease the investigation.

(5) The Investigation Board shall comply with a direction under subsection (1)(b), (2)(b), (3)(b) or (4).

(6) If the Investigation Board is directed under paragraph (b) of subsection (1), (2) or (3) to conduct an investigation concerning a relevant irregularity, the Council shall not, for the purpose of investigating the irregularity or the question whether or not there is such an irregularity, exercise the powers referred to in paragraph (a) of that subsection.

24. Council to notify certain bodies of powers under Divisions 2 and 3 being exercisable

- (1) If the Council certifies under section 23 that -
- (a) it appears to the Council that there are circumstances suggesting that there is an auditing irregularity in relation to a listed entity to which this section applies;
 - (b) it appears to the Council that there are circumstances suggesting that there is a reporting irregularity in relation to a listed entity to which this section applies; or
 - (c) the Council has reasonable cause to believe that there is or may be a relevant irregularity in relation to a listed

entity to which this section applies, the Council shall give a written notice in accordance with subsections (3) and (4).

- (2) This section applies to a listed entity -
 - (a) that -
 - (i) is an authorized institution; or
 - (ii) to the Council's knowledge -
 - (A) is a controller of an authorized institution;
 - (B) has as its controller an authorized institution; or
 - (C) has a controller that is also a controller of an authorized institution;
 - (b) that is an insurer authorized under the Insurance Companies Ordinance (Cap. 41);
 - (c) that is -
 - (i) a licensed person within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); or
 - (ii) a collective investment scheme authorized under section 104 of that Ordinance; or
 - (d) that is an approved trustee within the meaning of section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).
- (3) The notice is to be given to -
 - (a) in the case of a listed entity that falls within subsection (2)(a), the Monetary Authority;
 - (b) in the case of a listed entity that falls

within subsection (2)(b), the Insurance Authority;

(c) in the case of a listed entity that falls within subsection (2)(c), the Securities and Futures Commission;

(d) in the case of a listed entity that falls within subsection (2)(d), the Mandatory Provident Fund Schemes Authority.

(4) The notice is to specify that the powers under Division 3 and -

(a) in the case of subsection (1)(a), sections 25 and 27;

(b) in the case of subsection (1)(b), sections 26 and 27;

(c) in the case of subsection (1)(c), section 28,

are exercisable for the purpose of investigating the relevant irregularity or the question whether or not there is such an irregularity.

Division 2 - Powers for the purpose of investigation

25. Powers to require production of records and documents relating to auditing irregularity

(1) The investigator may, in writing, require a person who is, or was at the material time, the auditor of the listed entity, or of a relevant undertaking of the entity, to produce, within the time and at the place specified in the requirement, any record or document specified in the requirement if the investigator has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that -

- (a) the person is in possession of records or documents that -
 - (i) may be in the nature of audit working papers; and
 - (ii) relate to the audit of the accounts of the entity or undertaking;
 - (b) the record or document specified in the requirement -
 - (i) relates to the audit of the accounts of the entity or undertaking; and
 - (ii) is relevant to the auditing irregularity or to the question whether or not there is such an irregularity.
- (2) The investigator may, in writing, require -
- (a) where the listed entity is a listed corporation, the listed corporation;
 - (b) where the listed entity is a listed collective investment scheme, a person who is, or was at the material time, a responsible person of the listed collective investment scheme; or
 - (c) a relevant undertaking of the listed entity,

to produce, within the time and at the place specified in the requirement, any record or document specified in the requirement if the investigator has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that the conditions in subsection (3) are satisfied.

- (3) The conditions are -
- (a) the listed corporation, person or relevant undertaking is in possession of records or

documents that relate to the audit of the accounts of the listed entity or undertaking; and

(b) the record or document specified in the requirement -

(i) relates to the audit of the accounts of the entity or undertaking; and

(ii) is relevant to the auditing irregularity or to the question whether or not there is such an irregularity.

(4) The investigator may, in writing, require an authorized institution to produce, within the time and at the place specified in the requirement, any record or document specified in the requirement if the investigator has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that -

(a) the institution is in possession of records or documents that relate to the audit of the accounts of the listed entity, or of a relevant undertaking of the entity; and

(b) the record or document specified in the requirement -

(i) relates to the audit of the accounts of the entity or undertaking; and

(ii) is relevant to the auditing irregularity or to the question whether or not there is such an irregularity.

(5) The investigator may, in writing, require any person to produce, within the time and at the place specified in the requirement, any record or document

specified in the requirement if the investigator has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that -

- (a) the person -
 - (i) has directly or indirectly dealt with, or has had dealings directly or indirectly with, the listed entity or a relevant undertaking of the entity; or
 - (ii) is otherwise in possession of records or documents that relate to the audit of the accounts of the entity or undertaking;
- (b) the person -
 - (i) is not, or was not at the material time, the auditor referred to in subsection (1);
 - (ii) is not the listed corporation, responsible person or relevant undertaking referred to in subsection (2); and
 - (iii) is not an authorized institution; and
- (c) the record or document specified in the requirement -
 - (i) relates to the audit of the accounts of the entity or undertaking;
 - (ii) is relevant to the auditing irregularity or to the question whether or not there is such an irregularity; and
 - (iii) cannot be obtained by the investigator under subsection (1),

(2) or (4).

26. Powers to require production of records and documents relating to reporting irregularity

(1) The investigator may, in writing, require a person who is, or was at the material time, the reporting accountant of the listed entity, or an auditor of a relevant undertaking of the entity, to produce, within the time and at the place specified in the requirement, any record or document specified in the requirement if the investigator has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that -

(a) the person is in possession of records or documents that relate to the preparation of a specified report required for a listing document issued by or on behalf of the entity; and

(b) the record or document specified in the requirement -

(i) relates to the preparation of a specified report required for a listing document issued by or on behalf of the entity; and

(ii) is relevant to the reporting irregularity or to the question whether or not there is such an irregularity.

(2) The investigator may, in writing, require -

(a) where the listed entity is a listed corporation, the listed corporation;

(b) where the listed entity is a listed

collective investment scheme, a person who is, or was at the material time, a responsible person of the listed collective investment scheme; or

- (c) a relevant undertaking of the listed entity,

to produce, within the time and at the place specified in the requirement, any record or document specified in the requirement if the investigator has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that the conditions in subsection (3) are satisfied.

(3) The conditions are -

- (a) the listed corporation, person or relevant undertaking is in possession of records or documents that relate to the preparation of a specified report required for a listing document issued by or on behalf of the listed entity; and

- (b) the record or document specified in the requirement -

- (i) relates to the preparation of a specified report required for a listing document issued by or on behalf of the entity; and

- (ii) is relevant to the reporting irregularity or to the question whether or not there is such an irregularity.

(4) The investigator may, in writing, require an authorized institution to produce, within the time and at the place specified in the requirement, any record or document specified in the requirement if the investigator

has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that -

(a) the institution is in possession of records or documents that relate to the preparation of a specified report required for a listing document issued by or on behalf of the listed entity; and

(b) the record or document specified in the requirement -

(i) relates to the preparation of a specified report required for a listing document issued by or on behalf of the entity; and

(ii) is relevant to the reporting irregularity or to the question whether or not there is such an irregularity.

(5) The investigator may, in writing, require any person to produce, within the time and at the place specified in the requirement, any record or document specified in the requirement if the investigator has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that -

(a) the person -

(i) has directly or indirectly dealt with, or has had dealings directly or indirectly with, the listed entity or a relevant undertaking of the entity; or

(ii) is otherwise in possession of records or documents that relate to the preparation of a specified report required for a listing

document issued by or on behalf of the entity;

- (b) the person -
 - (i) is not, or was not at the material time, the reporting accountant or auditor referred to in subsection (1);
 - (ii) is not the listed corporation, responsible person or relevant undertaking referred to in subsection (2); and
 - (iii) is not an authorized institution; and
- (c) the record or document specified in the requirement -
 - (i) relates to the preparation of a specified report required for a listing document issued by or on behalf of the entity;
 - (ii) is relevant to the reporting irregularity or to the question whether or not there is such an irregularity; and
 - (iii) cannot be obtained by the investigator under subsection (1), (2) or (4).

27. Provisions supplementary to sections 25 and 26: powers to require additional information, etc.

(1) If a person does not produce a record or document pursuant to a requirement imposed on him under section 25 or 26, the investigator may, in writing,

require the person to state where the record or document is.

(2) If a person produces a record or document pursuant to a requirement imposed on him under section 25 or 26, the investigator may -

(a) make copies, or otherwise record the details, of the record or document; and

(b) in writing, require the person or, where the person is a corporation, an existing, or past, officer or employee of that person, to give an explanation, or make a statement, on -

(i) the circumstances under which the record or document was prepared or made;

(ii) the instructions given or received in connection with the record or document;

(iii) the reasons for the making of entries in, or the omission of entries from, the record or document; and

(iv) such other matter regarding the record or document as the investigator may think fit.

(3) If a person gives an explanation, or makes a statement, pursuant to a requirement imposed on him under subsection (1) or (2), the investigator may, in writing, require the person to verify, within the time specified in the requirement, the explanation or statement by a statutory declaration.

(4) If, for the reason that the information concerned is not within his knowledge or possession, a

person does not give an explanation, or make a statement, pursuant to a requirement imposed on him under subsection (1) or (2), the investigator may, in writing, require the person to verify, within the time specified in the requirement, that reason and fact by a statutory declaration.

28. Powers to require production of records and documents, and to require attendances and answers, etc.

(1) The investigator may, in writing, require a person who is, or was at the material time,¹³ the auditor or reporting accountant of the listed entity, or a person whom the investigator has reasonable cause to believe to be in possession of records or documents that contain, or are likely to contain, information relevant to the relevant irregularity or to the question whether or not there is such an irregularity, or a person whom the investigator has reasonable cause to believe to be otherwise in possession of such information, to -

- (a) produce, within the time and at the place specified in the requirement, any record or document (including any audit working paper) specified in the requirement that -
 - (i) is or may be relevant to the relevant irregularity or to the question whether or not there is such an irregularity; and
 - (ii) is in his possession;
- (b) attend before the investigator or an authorized officer at the time and place specified in the requirement, and answer

¹³ A technical amendment.

any question relating to any matter under investigation that the investigator or officer may raise with him;

(c) respond to any written question relating to any matter under investigation that the investigator may raise with him;

(d) give the investigator all other assistance in connection with the investigation that he is reasonably able to give.

(2) If a person produces a record or document pursuant to a requirement imposed on him under subsection (1)(a), the investigator may require the person to give an explanation or further particulars in respect of the record or document.

(3) If a person gives any answer, response, explanation or particulars pursuant to a requirement imposed on him under subsection (1) or (2), the investigator or, where the answer is given to an authorized officer's question under subsection (1)(b), the officer may, in writing, require the person to verify, within the time specified in the requirement, the answer, response, explanation or particulars by a statutory declaration.

(4) If, for the reason that the information concerned is not within his knowledge or possession, a person does not give any answer, response, explanation or particulars pursuant to a requirement imposed on him under subsection (1) or (2), the investigator or, where the answer is given to an authorized officer's question under subsection (1)(b), the officer may, in writing, require the person to verify, within the time specified in the requirement, that reason and fact by a statutory declaration.

(5) The investigator or an authorized officer shall not require an authorized institution to disclose any information, or produce any record or document, relating to the affairs of a customer of the institution under this section unless -

(a) the customer is a person whom the investigator or officer has reasonable cause to believe may be able to give information relevant to the investigation; and

(b) the investigator or officer is satisfied, and certifies in writing that it is satisfied, that the disclosure or production is necessary for the purpose of the investigation.

(6) The investigator may, in writing, authorize a person who is a member of the investigator, or who is employed by the Council to assist the investigator, for the purposes of subsection (1)(b).

**Division 3 - Provisions supplementary to
Division 2**

**29. Investigator to consult before
imposing certain requirements
under Division 2**

The investigator or an authorized officer shall not impose a requirement on a person under section 25, 26 or 28 unless, before doing so, the investigator has consulted -

(a) if the person -

(i) is an authorized institution; or

(ii) to the Council's knowledge -

(A) is a controller of an

- authorized institution;
 - (B) has as its controller an authorized institution; or
 - (C) has a controller that is also a controller of an authorized institution,
- the Monetary Authority;
- (b) if the person is an insurer authorized under the Insurance Companies Ordinance (Cap. 41), the Insurance Authority;
 - (c) if the person is -
 - (i) a licensed person within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); or
 - (ii) a responsible person of a collective investment scheme authorized under section 104 of that Ordinance,the Securities and Futures Commission; and
 - (d) if the person is an approved trustee within the meaning of section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), the Mandatory Provident Fund Schemes Authority.

30. Use of incriminating evidence in proceedings

- (1) If the investigator or an authorized officer requires a person -
 - (a) to give an explanation, or make a statement, under section 27;
 - (b) to give an answer or response to any question under section 28; or

(c) to give an explanation or further particulars under section 28, the investigator or officer shall ensure that the person has first been informed or reminded of the limitations imposed by subsection (2) on the admissibility in evidence of the requirement and of the explanation, particulars or statement, or the question and the answer or response.

(2) Despite anything in this Ordinance, if -

(a) the investigator or an authorized officer requires a person -

(i) to give an explanation, or make a statement, under section 27;

(ii) to give an answer or response to any question under section 28; or

(iii) to give an explanation or further particulars under section 28; and

(b) the explanation, particulars or statement, or the answer or response, might tend to incriminate the person, and the person so claims before giving the explanation or particulars, or making the statement, or giving the answer or response,

the requirement, as well as the explanation, particulars or statement, or the question and the answer or response, are not admissible in evidence against the person in criminal proceedings in a court of law other than those in which the person is charged with an offence under section 31(1), (2), (3), (4), (5), (6), (7) or (8), or under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the explanation, particulars or statement, or the answer or response.

**31. Offences relating to requirements
under Division 2**

(1) A person commits an offence if he, without reasonable excuse, fails to comply with a requirement imposed on him under section 25, 26, 27 or 28.

(2) A person commits an offence if he, with intent to defraud, fails to comply with a requirement imposed on him under section 25, 26, 27 or 28.

(3) A person commits an offence if, being -

(a) an officer or employee of a listed corporation;

(b) an officer or employee of a responsible person of a listed collective investment scheme; or

(c) an officer or employee of a relevant undertaking of a listed entity,

he, with intent to defraud, causes or allows the corporation, responsible person or undertaking to fail to comply with a requirement imposed on the corporation, responsible person or undertaking under section 25, 26, 27 or 28.

(4) A person commits an offence if he -

(a) in purported compliance with a requirement imposed on him under section 25, 26 or 27, produces any record or document, or gives an explanation, or makes a statement, that is false or misleading in a material particular; and

(b) knows that, or is reckless as to whether or not, the record or document, or the explanation or statement, is false or misleading in a material particular.

(5) A person commits an offence if he -

- (a) in purported compliance with a requirement imposed on him under section 28, produces any record or document, or gives an answer or response, or gives any explanation or particulars, that is false or misleading in a material particular; and
- (b) knows that, or is reckless as to whether or not, the record or document, or the answer or response, or the explanation or particulars, is false or misleading in a material particular.

(6) A person commits an offence if he, with intent to defraud -

- (a) in purported compliance with a requirement imposed on him under section 25, 26 or 27, produces any record or document, or gives an explanation, or makes a statement, that is false or misleading in a material particular; or
- (b) in purported compliance with a requirement imposed on him under section 28, produces any record or document, or gives an answer or response, or gives any explanation or particulars, that is false or misleading in a material particular.

(7) A person commits an offence if, being -

- (a) an officer or employee of a listed corporation;
- (b) an officer or employee of a responsible person of a listed collective investment scheme; or
- (c) an officer or employee of a relevant undertaking of a listed entity,

he, with intent to defraud, causes or allows the corporation, responsible person or undertaking to, in purported compliance with a requirement imposed on the corporation, responsible person or undertaking under section 25, 26 or 27, produce any record or document, or give an explanation, or make a statement, that is false or misleading in a material particular.

- (8) A person commits an offence if, being -
- (a) an officer or employee of a listed corporation;
 - (b) an officer or employee of a responsible person of a listed collective investment scheme; or
 - (c) an officer or employee of a relevant undertaking of a listed entity,

he, with intent to defraud, causes or allows the corporation, responsible person or undertaking to, in purported compliance with a requirement imposed on the corporation, responsible person or undertaking under section 28, produce any record or document, or give an answer or response, or give any explanation or particulars, that is false or misleading in a material particular.

(9) A person is not excused from complying with a requirement imposed on him under section 25, 26, 27 or 28 only on the ground that to do so might tend to incriminate him.

(10) Despite anything in this Ordinance, no criminal proceedings may be instituted against a person under subsection (1), (2), (3), (4), (5), (6), (7) or (8) in respect of a conduct if -

- (a) proceedings have previously been instituted against the person for the

purposes of section 32(2)(b) in respect of the same conduct; and

- (b) those proceedings remain pending, or by reason of the previous institution of those proceedings, no proceedings may again be lawfully instituted against that person for the purposes of section 32(2)(b) in respect of the same conduct.

(11) A person who commits an offence under subsection (1) is liable -

- (a) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
- (b) on summary conviction to a fine at level 5 and to imprisonment for 6 months.

(12) A person who commits an offence under subsection (4) or (5) is liable -

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(13) A person who commits an offence under subsection (2), (3), (6), (7) or (8) is liable -

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

32. Court of First Instance to inquire into failure to comply with requirements under Division 2

(1) If a person fails to comply with a requirement imposed on him under section 25, 26, 27 or 28, the investigator may, by originating summons, apply to the Court of First Instance for an inquiry into the failure.

(2) On such application, the Court of First Instance may -

(a) on being satisfied that there is no reasonable excuse for the person not to comply with the requirement, order the person to comply with the requirement within the period specified by the Court; and

(b) on being satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if he and, if applicable, that other person had been guilty of contempt of court.

(3) An originating summons under subsection (1) is to be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

(4) Despite anything in this Ordinance, no proceedings may be instituted against a person for the purposes of subsection (2)(b) in respect of a conduct if -

(a) criminal proceedings have previously been instituted against the person under section 31(1), (2), (3), (4), (5), (6), (7) or (8) in respect of the same conduct; and

- (b) those criminal proceedings remain pending, or by reason of the previous institution of those criminal proceedings, no criminal proceedings may again be lawfully instituted against that person under section 31(1), (2), (3), (4), (5), (6), (7) or (8) in respect of the same conduct.

33. Inspection of records or documents seized, etc.

If the investigator has taken possession of any record or document under Division 2, the investigator shall, subject to any reasonable conditions the investigator imposes as to security or otherwise, permit any person who would be entitled to inspect the record or document had the investigator not taken possession of it under that Division, to inspect it and to make copies or otherwise record details of it at all reasonable times.

34. Magistrate's warrants

(1) If a magistrate is satisfied on information on oath laid by the investigator that there are reasonable grounds to suspect that there is, or is likely to be, on premises specified in the information any record or document that may be required to be produced under Division 2, the magistrate may issue a warrant authorizing a person specified in it, and such other person as may be necessary to assist in the execution of the warrant, to -

- (a) enter the premises, if necessary by force, at any time within the period of 7 days beginning on the date of the warrant; and
- (b) search for, seize and remove any record or document that the person so specified has

reasonable cause to believe may be required to be produced under Division 2.

(2) If an authorized person has reasonable cause to believe that another person on the premises is employed, or engaged to provide a service, in connection with a business that is or has been conducted on the premises, the authorized person may require that other person to produce for examination any record or document that -

- (a) is in the possession of that other person;
and
- (b) the authorized person has reasonable cause to believe may be required to be produced under Division 2.

(3) An authorized person may, in relation to any record or document required to be produced under subsection (2) -

- (a) prohibit any person found on the premises from -
 - (i) removing the record or document from the premises;
 - (ii) erasing anything from, adding anything to or otherwise altering anything in, the record or document;
or
 - (iii) otherwise interfering in any manner with, or causing or permitting any other person to interfere with, the record or document; or
- (b) take any other step that appears to the authorized person to be necessary for -
 - (i) preserving the record or document;
or
 - (ii) preventing interference with the

record or document.

(4) Any record or document removed under this section may be retained for -

(a) a period not exceeding 6 months beginning on the day of its removal; or

(b) if the record or document is or may be required for -

(i) any criminal proceedings;

(ii) any proceedings before the Market Misconduct Tribunal; or

(iii) any proceedings under this Ordinance or Part V of the Professional

Accountants Ordinance (Cap. 50),

for such longer period as may be necessary

for the purpose of those proceedings¹⁴.~~for~~

~~criminal proceedings or for any~~

~~proceedings under this Ordinance, for such~~

~~longer period as may be necessary for the~~

~~purpose of those proceedings.~~

(5) If an authorized person removes any record or document under this section, he -

(a) shall as soon as practicable after the removal give a receipt for the record or document; and

(b) may permit any person who would be entitled to inspect the record or document

¹⁴ Please refer to paragraph 9 of the Administration's paper entitled "Follow-up actions arising from the meeting held on 23 January 2006" (LC Paper No. CB(1)866/05-06(04)), as discussed at the Bills Committee's meeting on 24 February 2006. In response to Members' comment, we agree to propose an amendment to the effect that the records or documents removed under this section may be retained for such longer period as may be necessary for the purpose of the proceedings before the Market Misconduct Tribunal and the disciplinary proceedings under the Professional Accountants Ordinance (Cap. 50).

but for the removal -

- (i) to inspect it; and
- (ii) to make copies or otherwise record details of it at all reasonable times.

(6) Section 102 of the Criminal Procedure Ordinance (Cap. 221) applies to any property that has by virtue of this section come into the possession of the investigator, as it applies to property that has come into the possession of the police.

(7) A person commits an offence if he -

- (a) without reasonable excuse, fails to comply with a requirement or prohibition under subsection (2) or (3); or
- (b) obstructs an authorized person exercising a power conferred by subsection (2) or (3).

(8) A person who commits an offence under subsection (7) is liable -

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(9) In this section, "authorized person" (獲授權人) means a person authorized by a warrant issued under subsection (1) to carry out the act set out in paragraphs (a) and (b) of that subsection.

Division 4 - Cases under investigation

35. Investigation reports¹⁵

(1) As soon as practicable after the completion of an investigation under this Part, the investigator shall prepare a written report on the findings of the investigation.

(2) The investigator may, if it thinks fit, prepare an interim report on the investigation. But if the investigator ~~falls is one~~ within ~~the meaning of~~ section 21(2), (3) or (4)^{15A}, the investigator shall also prepare an interim report on the investigation as soon as practicable after being required by the Council to do so.

(3) The Council may adopt, ~~with or without any revision to it,~~^{15B} a report prepared under subsection (1) or (2).¹⁶

(4) If, in the Council's opinion, any person named in a report prepared under subsection (1) or (2) would in the event of a publication or other disclosure of the report, or any part of the report, be adversely affected by the publication or disclosure, the investigator shall, before the report is adopted under subsection (3), first

¹⁵ Clause 35 has been rewritten in view of the substantial amendments proposed.

^{15A} A drafting amendment.

^{15B} A technical amendment in consultation with the Legal Adviser to the Bills Committee.

¹⁶ To propose an adoption procedure for an investigation report.

give the person a reasonable opportunity of being heard.¹⁷

(5) After having adopted a report under subsection (3), the Council may cause the report, or any part of the report, to be published.

(6) In deciding whether or not to cause a report, or any part of a report, to be published under subsection (5), the Council shall take into account -

(a) whether or not the publication may adversely affect -

(i) any criminal proceedings before a court or magistrate;

(ii) any proceedings before the Market Misconduct Tribunal; or

(iii) any proceedings under Part V of the Professional Accountants Ordinance (Cap. 50),

that have been or are likely to be instituted;

(b) whether or not the publication may adversely affect any person named in the report; and

(c) whether or not the report, or that part of the report, should be published in the interest of the investing public or in the public interest.

(7) In any civil proceedings before a court or any

¹⁷ Please refer to paragraphs 19 to 20 of the Administration's paper entitled "Component Two: Audit Investigation Board" (LC Paper No. CB(1)286/05-06(03)), as discussed at the Bills Committee's meeting on 6 December 2005. With reference to the common law principles on natural justice, we agree to propose an express provision providing for a "reasonable opportunity of being heard" for any person who is named in an investigation report and may be adversely affected by the publication or other disclosure of the report.

proceedings before the Market Misconduct Tribunal or under Part V of the Professional Accountants Ordinance (Cap. 50), a document purporting to be a copy of a report adopted under subsection (3), and purporting to be certified by the Chairman of the Council as a true copy of such a report, is, on its production without further proof, admissible as evidence of the facts stated in the report.¹⁸

~~35. Investigation Board's reports~~

~~(1) If the Council has directed the Investigation Board to conduct an investigation under section 23(1)(b), (2)(b) or (3)(b), the Board shall, as soon as practicable after the completion of the investigation, submit a written report to the Council on the findings of the investigation.~~

~~(2) If so required by the Council, the Investigation Board shall submit an interim report on the investigation.~~

~~(3) The Council may cause to be published a report submitted under subsection (1) or (2) or any part of such a report.~~

~~(4) In deciding whether or not to cause a report, or part of a report, to be published under subsection (3), the Council shall take into account —~~

~~(a) whether or not the publication may adversely affect —~~

¹⁸ Please refer to paragraph 22 of the Administration's paper entitled "Component Two: Audit Investigation Board" (LC Paper No. CB(1)286/05-06(03)), as discussed at the Bills Committee's meeting on 20 December 2005. In view of the comments of some deputations concerning the rule against hearsay evidence in criminal proceedings, we propose carving out the admissibility of the investigation reports in criminal proceedings. In addition, we have revised the evidential requirement concerning the admission of the report with reference to section 401 of the Securities and Futures Ordinance (Cap. 571).

- ~~(i) any criminal proceedings before a court or magistrate;~~
- ~~(ii) any proceedings before the Market Misconduct Tribunal; or~~
- ~~(iii) any proceedings under Part V or VA of the Professional Accountants Ordinance (Cap. 50),~~
 - ~~that has been or is likely to be instituted;~~
- ~~(b) whether or not the publication may adversely affect any person named in the report; and~~
- ~~(c) whether or not the report, or that part of the report, should be published in the interest of the investing public or in the public interest.~~

~~(5) In any proceedings before a court or magistrate or the Market Misconduct Tribunal or any proceedings under Part V or VA of the Professional Accountants Ordinance (Cap. 50), a copy of a report of the Investigation Board under subsection (1) or (2) that is signed by the Chief Executive Officer of the Council, and counter-signed by the Chairman of the Council, is admissible as evidence of the facts stated in the report.~~

36. Council's powers to close case, suspend investigation and follow up, etc.

- (1) The Council may, in relation to an investigation under this Part concerning a relevant irregularity -
- (a) close the case without further action;
 - (b) suspend the investigation for such period as the Council thinks fit; or

- (c) carry out such other follow-up action in accordance with this Ordinance as the Council thinks fit.

(2) The Council shall not, in relation to an investigation under this Part, exercise a power under subsection (1) unless the Council has taken into account the report ~~relating to the investigation~~ prepared under section 35(1) or (2) for the investigation^{18A}.

~~(2) If the Council has directed the Investigation Board to conduct an investigation under section 23(1)(b), (2)(b) or (3)(b), the Council shall not exercise a power under subsection (1) in relation to the investigation unless the Board has submitted a report under section 35(1) or (2), and the Council has considered the report.¹⁹~~

(3) As soon as practicable after deciding to exercise a power under subsection (1), the Council shall give written notice of the decision to -

- (a) in the case where the relevant irregularity is an auditing irregularity, the auditor concerned; or
- (b) in the case where the relevant irregularity is a reporting irregularity, the reporting accountant concerned,

unless the Council is satisfied that the notification may prejudice the investigation, or any other action by the Council, or a specified body, relating to the investigation.

^{18A} A drafting amendment.

¹⁹ Technical amendments consequential upon the revised clause 35.

37. Costs and expenses of investigation

(1) If, on a prosecution instituted as a result of an investigation under this Part, a person is convicted by a court or magistrate, the court or magistrate may order the person to pay to the Council the sum the court or magistrate considers appropriate for the costs and expenses in relation or incidental to the investigation reasonably incurred by the Council.

(2) The Council may recover the sum so ordered as a civil debt due to it.

PART 4

RELEVANT NON-COMPLIANCES

Division 1 - Preliminary

38. Interpretation

(1) In this Part, "enquirer" (查訊機構) means, subject to subsection (2), the Council.

(2) If a Review Committee is appointed under section 40(1)(b) to make an enquiry concerning a relevant non-compliance, a reference to "enquirer" means, for the purpose of the non-compliance, the Committee.

39. Financial Reporting Review Panel

(1) The Chief Executive shall, in consultation with the Council, appoint a Financial Reporting Review Panel of at least 20 persons, whom the Chief Executive considers suitable for appointment under section 40(1)(b) as members of a Review Committee either because of their experience in accounting, auditing, finance, banking, law, administration or management, or because of their

professional or occupational experience²⁰.

(2) The Chief Executive shall appoint, from amongst the members of the Review Panel, at least²¹ 3 Panel Convenors.

(3) The Chief Executive shall give notice of each appointment under subsection (1) or (2) by notice published in the Gazette.

(4) Schedule 5 has effect with respect to the Review Panel and its members.

40. Initiating enquiry concerning relevant non-compliance

(1) If it appears to the Council that there is or may be a question whether or not there is a relevant non-compliance in relation to a listed entity, and the Council certifies in writing to that effect -

(a) the Council may, for the purpose of enquiring into the non-compliance or the question, exercise the powers under Division 2; or

(b) the Council may appoint a Financial Reporting Review Committee consisting of -

(i) a Panel Convenor appointed under

section 39(2), who is to be the

Chairman of the Review Committee;

²⁰ Please refer to paragraph 3 of the Administration's paper entitled "Component Three: Financial Reporting Review Panel and Financial Reporting Review Committees" (LC Paper No. CB(1)420/05-06(02)), as discussed at the Bills Committee's meeting on 20 December 2005. In response to some Members' view, we agree to provide for further guidance in the Bill as to how the appointment power may be exercised.

²¹ An amendment to provide for greater flexibility in the appointment of Panel Convenors.

and

(ii) at least 4 other members of the

Review Panel,

to enquire, with those powers, into the non-compliance and the question.

~~(b) the Council may appoint a Financial Reporting Review Committee in accordance with section 41(1) to enquire, with those powers, into the non-compliance and the question.²²~~

(1A) On making an appointment under subsection (1)(b), the Council shall notify the listed entity in writing of the names of the members of the Review Committee.²³

(2) The Council shall, on making an appointment under subsection (1)(b), specify the terms of reference of the Review Committee, and the Committee shall act in accordance with those terms.^{23A}

~~(2) A Review Committee shall comply with the terms of the appointment.~~

(3) If a Review Committee is appointed to make an enquiry concerning a relevant non-compliance, the Council shall not, for the purpose of enquiring into the non-compliance or the question whether or not there is such a

²² A technical amendment to improve the clarity of the provision.

²³ Please refer to paragraph 7 of the Administration's paper entitled "Follow-up actions arising from the meeting held on 20 December 2005" (LC Paper No. CB(1)665/05-06(07)), as discussed at the Bills Committee's meeting on 12 January 2006. To enhance the transparency of the operation of a FRRC, we propose that the FRC shall notify the listed entity of the names of the members of a Financial Reporting Review Committee (FRRC) upon the appointment.

^{23A} A technical amendment in consultation with the Legal Adviser to the Bills Committee.

non-compliance, exercise the powers under Division 2.

**41. Financial Reporting Review
Committee**

(1) A Review Committee may perform any of its functions, and its proceedings are valid, despite -

(a) a vacancy in the membership of the Committee;

(b) a defect in the appointment or qualification of a person purporting to be a member of the Review Panel or the Committee; or

(c) a minor irregularity in the convening of any meeting of the Committee.²⁴

~~(1) A Review Committee is to consist of at least 5 members of the Review Panel. One of the members is to be a Panel Convenor appointed under section 39(2), who is to be the Chairman of the Review Committee.~~

(2) Schedule 6 has effect with respect to a Review Committee and its members.

**42. Council to notify certain bodies
of powers under Division 2 being
exercisable**

(1) If the Council certifies under section 40(1) that it appears to the Council that there is or may be a question whether or not there is a relevant non-compliance in relation to a listed entity to which this section applies, the Council shall give a written notice in

²⁴ Please refer to paragraph 4 of the Administration's paper entitled "Follow-up actions arising from the meeting held on 12 January 2006" (LC Paper No. CB(1)866/05-06(02)), as discussed at the Bills Committee's meeting on 10 February 2006. This is a technical amendment to put beyond doubt the position that the powers of a FRRC will not be affected on the said occasions.

accordance with subsections (3) and (4).

- (2) This section applies to a listed entity -
 - (a) that -
 - (i) is an authorized institution; or
 - (ii) to the Council's knowledge -
 - (A) is a controller of an authorized institution;
 - (B) has as its controller an authorized institution; or
 - (C) has a controller that is also a controller of an authorized institution;
 - (b) that is an insurer authorized under the Insurance Companies Ordinance (Cap. 41);
 - (c) that is -
 - (i) a licensed person within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); or
 - (ii) a collective investment scheme authorized under section 104 of that Ordinance; or
 - (d) that is an approved trustee within the meaning of section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).
- (3) The notice is to be given to -
 - (a) in the case of a listed entity that falls within subsection (2)(a), the Monetary Authority;
 - (b) in the case of a listed entity that falls within subsection (2)(b), the Insurance Authority;

(c) in the case of a listed entity that falls within subsection (2)(c), the Securities and Futures Commission;

(d) in the case of a listed entity that falls within subsection (2)(d), the Mandatory Provident Fund Schemes Authority.

(4) The notice is to specify that the powers under Division 2 are exercisable for the purpose of enquiring into the relevant non-compliance or the question whether or not there is such a non-compliance.

Division 2 - Powers for the purpose of enquiry

43. Powers to require production of records and documents and provision of information and explanation

(1) The enquirer may, in writing, require -

(a) where the listed entity is a listed corporation, the listed corporation;

(b) where the listed entity is a listed collective investment scheme, a person who is, or was at the material time, a responsible person of the listed collective investment scheme;

(c) a relevant undertaking of the listed entity;

(d) a person who is, or was at the material time, an auditor of the corporation, scheme or undertaking; or

(e) a person who is, or was at the material time, an officer or employee of the corporation, responsible person or undertaking,

to produce or give, within the time and at the place specified in the requirement, any record or document, or any information or explanation, specified in the requirement if the enquirer has reasonable cause to believe, and certifies in writing that it has reasonable cause to believe, that the record or document, or the information or explanation, is relevant to the relevant non-compliance or to the question whether or not there is such a non-compliance.

(2) The enquirer shall not impose a requirement on a person under subsection (1) unless, before doing so, the enquirer has consulted -

- (a) if the person -
 - (i) is an authorized institution; or
 - (ii) to the Council's knowledge -
 - (A) is a controller of an authorized institution;
 - (B) has as its controller an authorized institution; or
 - (C) has a controller that is also a controller of an authorized institution,
- the Monetary Authority;
- (b) if the person is an insurer authorized under the Insurance Companies Ordinance (Cap. 41), the Insurance Authority;
 - (c) if the person is -
 - (i) a licensed person within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); or
 - (ii) a responsible person of a collective investment scheme authorized under

section 104 of that Ordinance,
the Securities and Futures Commission; and
(d) if the person is an approved trustee
within the meaning of section 2(1) of the
Mandatory Provident Fund Schemes Ordinance
(Cap. 485), the Mandatory Provident Fund
Schemes Authority.

(3) A person is not excused from complying with a
requirement imposed on him under subsection (1) only on
the ground that to do so might tend to incriminate him.

44. Use of incriminating evidence in proceedings

(1) If the enquirer requires a person to give any
information or explanation under section 43(1), the
enquirer shall ensure that the person has first been
informed or reminded of the limitations imposed by
subsection (2) on the admissibility in evidence of the
requirement and of the information or explanation.

(2) Despite anything in this Ordinance, if -

(a) the enquirer requires a person to give any
information or explanation under section
43(1); and²⁵

(b) the information or explanation might tend
to incriminate the person, and the person
so claims before giving the information or
explanation,

the requirement, as well as the information or
explanation, are not admissible in evidence against the
person in criminal proceedings in a court of law other

²⁵ A technical amendment.

than those in which the person is charged with an offence under Part V of the Crimes Ordinance (Cap. 200), or for perjury, in respect of the information or explanation.

45. Court of First Instance to inquire into failure to comply with requirements under section 43

(1) If a person fails to comply with a requirement imposed on him under section 43, the enquirer may, by originating summons, apply to the Court of First Instance for an inquiry into the failure.

(2) On such application, the Court of First Instance may -

(a) on being satisfied that there is no reasonable excuse for the person not to comply with the requirement, order the person to comply with the requirement within the period specified by the Court; and

(b) on being satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if he and, if applicable, that other person had been guilty of contempt of court.

(3) An originating summons under subsection (1) is to be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

46. Inspection of records or documents seized, etc.

If the enquirer has taken possession of any record or document under this Division, the enquirer shall, subject

to any reasonable conditions the enquirer imposes as to security or otherwise, permit a person who would be entitled to inspect the record or document had the enquirer not taken possession of it under this Division, to inspect it and to make copies or otherwise record details of it at all reasonable times.

Division 3 - Cases under enquiry

47. Enquiry reports²⁶

(1) As soon as practicable after the completion of an enquiry under this Part, the enquirer shall prepare a written report on the findings of the enquiry.

(2) The enquirer may, if it thinks fit, prepare an interim report on the enquiry. But if the enquirer ~~falls is one~~ within ~~the meaning of~~ section 38(2)^{26A}, the enquirer shall also prepare an interim report on the enquiry as soon as practicable after being required by the Council to do so.

(3) The Council may adopt, ~~with or without any revision to it,~~^{26B} a report prepared under subsection (1) or (2).

(4) If, in the Council's opinion, any person named in a report prepared under subsection (1) or (2) would in the event of a publication or other disclosure of the report, or any part of the report, be adversely affected by the publication or disclosure, the enquirer shall,

²⁶ Amendments mirroring the same to clause 35.

^{26A} A drafting amendment.

^{26B} A technical amendment in consultation with the Legal Adviser to the Bills Committee.

before the report is adopted under subsection (3), first give the person a reasonable opportunity of being heard.

(5) After having adopted a report under subsection (3), the Council may cause the report, or any part of the report, to be published.

(6) In deciding whether or not to cause a report, or any part of a report, to be published under subsection (5), the Council shall take into account -

(a) whether or not the publication may adversely affect -

(i) any criminal proceedings before a court or magistrate;

(ii) any proceedings before the Market Misconduct Tribunal; or

(iii) any proceedings under Part V of the Professional Accountants Ordinance (Cap. 50),

that have been or are likely to be instituted;

(b) whether or not the publication may adversely affect any person named in the report; and

(c) whether or not the report, or that part of the report, should be published in the interest of the investing public or in the public interest.

(7) In any civil proceedings before a court or any proceedings before the Market Misconduct Tribunal or under Part V of the Professional Accountants Ordinance (Cap. 50), a document purporting to be a copy of a report adopted under subsection (3), and purporting to be certified by the Chairman of the Council as a true copy of such a report, is, on its production without further

proof, admissible as evidence of the facts stated in the report.

~~47. Review Committee's reports~~

~~(1) If the Council has appointed a Review Committee to make an enquiry under section 40(1)(b), the Committee shall, as soon as practicable after the completion of the enquiry, submit a written report to the Council on the findings of the enquiry.~~

~~(2) If so required by the Council, a Review Committee shall submit an interim report on the enquiry.~~

~~(3) The Council may cause to be published a report submitted under subsection (1) or (2) or any part of such a report.~~

~~(4) In deciding whether or not to cause a report, or part of a report, to be published under subsection (3), the Council shall take into account—~~

~~(a) whether or not the publication may adversely affect—~~

~~(i) any criminal proceedings before a court or magistrate;~~

~~(ii) any proceedings before the Market Misconduct Tribunal; or~~

~~(iii) any proceedings under Part V or VA of the Professional Accountants Ordinance (Cap. 50),~~

~~that has been or is likely to be instituted;~~

~~(b) whether or not the publication may adversely affect any person named in the report; and~~

~~(c) whether or not the report, or that part of the report, should be published in the~~

~~interest of the investing public or in the public interest.~~

~~(5) In any proceedings before a court or magistrate or the Market Misconduct Tribunal or any proceedings under Part V or VA of the Professional Accountants Ordinance (Cap. 50), a copy of a report of the Review Committee under subsection (1) or (2) that is signed by the Chairman of the Committee, and counter signed by the Chairman of the Council, is admissible as evidence of the facts stated in the report.~~

48. Council's powers to close case, suspend enquiry and follow up, etc.

(1) The Council may, in relation to an enquiry under this Part concerning a relevant non-compliance -

- (a) close the case without further action;
- (b) suspend the enquiry for such period as the Council thinks fit;
- (c) secure the removal of the non-compliance in accordance with Division 4; or
- (d) carry out such other follow-up action in accordance with this Ordinance as the Council thinks fit.

(2) The Council shall not, in relation to an enquiry under this Part, exercise a power under subsection (1) unless the Council has taken into account the report relating to the enquiry prepared under section 47(1) or (2) for the enquiry^{26C}.

~~(2) If the Council has appointed a Review Committee to make an enquiry under section 40(1)(b), the Council shall not exercise a power under subsection (1) in~~

^{26C} A drafting amendment.

~~relation to the enquiry unless the Committee has submitted a report under section 47(1) or (2), and the Council has considered the report.~~²⁷

(3) As soon as practicable after deciding to exercise a power under subsection (1), the Council shall give written notice of the decision to the listed entity concerned unless the Council is satisfied that the notification may prejudice the enquiry, or any other action by the Council, or a specified body, relating to the enquiry.

**Division 4 - Council's powers to
secure removal of relevant non-
compliance**

**49. Council to give notice to operator of
listed entities to secure removal of
relevant non-compliance**

(1) If, after the Council has taken into account a report prepared under section 47(1) or (2) for an enquiry concerning a relevant non-compliance in relation to a listed entity, it appears to the Council that there is, or may be, a question whether or not there is such a relevant non-compliance in relation to a listed entity, the Council may give a written notice to the operator of the listed entity in accordance with subsection (1A).^{27A}

(1A) The notice is to -

(a) indicate the respects in which it appears to the Council that such a question arises

²⁷ Technical amendments consequential upon the revised clause 47.

^{27A} Further technical amendments in consultation with the Legal Adviser to the Bills Committee.

or may arise;

(b) specify -

(i) such manner of revising the relevant financial report of the listed entity as the Council thinks fit; or

(ii) such other remedial action concerning that report as the Council thinks fit; and

(c) specify a period for the operator to -

(i) give a satisfactory explanation of the relevant financial report of the entity;

(ii) cause that report to be revised in such manner as specified in the notice; or

(iii) take such other remedial action concerning that report as specified in the notice.

~~(1) If it appears to the Council that there is a relevant non-compliance in relation to a listed entity, the Council may, by a written notice to the operator of the entity -~~

~~(a) specify why, in the Council's opinion, there is a relevant non-compliance in relation to the entity; and~~

~~(b) request the operator to -~~

~~(i) cause the relevant financial report of the entity to be revised in such manner as the Council considers necessary; or~~

~~(ii) take such other remedial action concerning that report as the Council considers necessary,~~

~~within the period specified in the notice.~~²⁸

- (2) In this section, "operator" (營辦人) -
- (a) in relation to a listed corporation, means the directors of the corporation;
 - (b) in relation to a listed collective investment scheme, means the manager of the scheme.

50. Council may apply to Court of First Instance to secure removal of relevant non-compliance

- (1) This section applies if -
- (a) the Council gives a notice to the directors of a listed corporation under section 49(1); and
 - (b) at the end of the period specified in the notice, or such longer period as the Council may allow, it appears to the Council that the directors have not -
 - (i) given a satisfactory explanation of the relevant financial report of the corporation;
 - (ii) caused that report to be revised in such manner as specified in the notice; or
 - (iii) taken such other remedial action concerning that report as specified

²⁸ Please refer to Annex B to the Administration's paper entitled "Follow-up actions arising from the meeting held on 10 February 2006" (LC Paper No. CB(1)963/05-06(02)). We have refined the drafting of the proposed amendments in the light of the Bills Committee's discussion at the meeting on 24 February 2006.

in the notice.

~~(1) This section applies if -~~

- ~~(a) the Council makes a request to the directors of a listed corporation under section 49(1)(b); and~~
- ~~(b) those directors fail to comply with the request.²⁹~~

(2) The Council may, by originating summons, apply to the Court of First Instance for -

- (a) a declaration that there is a relevant non-compliance in relation to the listed corporation; and
- (b) an order requiring the directors of the corporation to -
 - (i) cause the relevant financial report of the corporation to be revised in such manner as the Court considers necessary; or
 - (ii) take such other remedial action concerning that report as the Court considers necessary,within the period specified in the order.

(3) An originating summons under subsection (2) is to be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

(4) On making an application under subsection (2), the Council shall deliver -

- (a) a copy of the notice of application; and
- (b) a statement setting out the grounds for the application and the matter at issue in the proceedings,

²⁹ See footnote 28.

to the Securities and Futures Commission, and to the Registrar of Companies for registration.

(5) If the Court of First Instance makes an order under subsection (2)(b), it may also give directions with respect to -

- (a) the audit of the accounts constituting the relevant financial report that has been revised pursuant to the order;
- (b) the revision of the directors' report, or summary financial report, relating to the relevant financial report;
- (c) the steps to be taken by the directors of the listed corporation to bring the order to the attention of those who are likely to rely on, or have relied on, the relevant financial report; or
- (d) such other matters as the Court thinks fit.

(6) If the Court of First Instance makes a declaration and order under subsection (2), it may also order all or part of any of the costs and expenses set out in subsection (7) -

- (a) to be borne by the directors of the listed corporation who were party to the approval of the relevant financial report; and
- (b) to be recoverable from those directors as a civil debt.

(7) The costs and expenses referred to in subsection (6) are -

- (a) the costs and expenses of and incidental to the application;
- (b) in the case where the Council has enquired into, or has appointed a Review Committee

to enquire into, the relevant non-compliance or the question whether or not there is such a non-compliance, the costs and expenses of and incidental to the enquiry; and

- (c) the costs and expenses incurred by the listed corporation in connection with, or in consequence of, revising the relevant financial report or carrying out remedies to the report.

(8) If the Court of First Instance makes an order under subsection (6) -

- (a) it shall have regard to whether each of the directors who were party to the approval of the relevant financial report knew, or ought to have known, that the report did not comply with any relevant requirement; and
- (b) it may exclude one or more directors from the order or order the payment of different amounts by different directors.

(9) On the conclusion of proceedings on an application under subsection (2), the Council shall deliver -

- (a) a sealed copy of the declaration, order, direction or other determination made by the Court of First Instance; or
- (b) a notice that the application has failed or been withdrawn,

to the Securities and Futures Commission, and to the Registrar of Companies for registration.

(10) For the purposes of this section, the directors of a listed corporation at the time when the relevant

financial report of the corporation was approved by them, except any of those who shows that he took all reasonable steps to prevent the report from being so approved, were party to the approval of that report.

PART 5

MISCELLANEOUS

51. Preservation of secrecy³⁰

(1) Except in the performance of any function under this Ordinance or for carrying into effect the provisions of this Ordinance, a specified person -

(a) shall not suffer or permit any person to have access to any matter relating to the affairs of any person that comes to the specified person's knowledge in the performance of any function under this Ordinance; and

(b) shall not communicate any such matter to any person other than the person to whom such matter relates.

(2) Despite subsection (1), a specified person may -

(a) disclose information that has already been made available to the public;

(b) disclose information for the purpose of any criminal proceedings in Hong Kong or an investigation conducted with a view to

³⁰ ~~We are considering some Members' views regarding the protection of informers' identity and disclosure gateways to Official Receiver and liquidators. We will revert to the Bills Committee, with proposed Committee Stage Amendments (if any), when ready. The revised wording was discussed at the Bills Committee's meeting on 12 May 2006 (See LC Paper No. CB(1)1460/05-06(02)).~~

- bringing any such proceedings;
 - (c) disclose information for the purpose of seeking advice from, or giving advice by, counsel, or a solicitor, or other professional adviser, acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance;
 - (d) disclose information in connection with any judicial or other proceedings to which the specified person is a party; and
 - (e) disclose information in accordance with an order of a court, magistrate or tribunal, or in accordance with a law or a requirement made under a law.
- (3) Despite subsection (1), the Council may -
- (a) subject to subsection (4), disclose information to a specified authority for the purpose of referring a case or complaint, or providing assistance, to the authority under section 12;
 - (b) subject to subsection (4), disclose information to -
 - (i) the Chief Executive;
 - (ii) the Financial Secretary;
 - (iii) the Secretary for Justice;
 - (iv) the Secretary for Financial Services and the Treasury;
 - (v) the Commissioner of Police of Hong Kong;
 - (vi) the Commissioner of the Independent Commission Against Corruption;
 - (vii) the Commissioner of Inland Revenue;

(viii) the Registrar of Companies;

(ix) the Official Receiver in a capacity other than that of a liquidator or provisional liquidator appointed under, or holding such office by virtue of, the Companies Ordinance (Cap. 32);

~~(ix) the Official Receiver;~~

(x) the Monetary Authority;

(xi) the Securities and Futures Commission;

(xii) the Market Misconduct Tribunal;

(xiii) the Insurance Authority;

(xiv) the Mandatory Provident Fund Schemes Authority;

(xv) the HKICPA;

(xvi) an inspector appointed by the Financial Secretary under section 142 or 143 of the Companies Ordinance (Cap. 32) to investigate the affairs of a corporation;

(xvii) a public officer authorized by the Secretary under subsection (12); or

(xviii) a company recognized as an exchange company under section 19(2) of the Securities and Futures Ordinance (Cap. 571);

(c) subject to subsection (4), if there is or has been an investigation under Part 3 concerning a relevant irregularity, or an enquiry under Part 4 concerning a relevant non-compliance, in relation to a listed corporation, disclose information on the

listed corporation to -

(i) the Official Receiver in the capacity of a liquidator or provisional liquidator of the listed corporation appointed under, or holding such office by virtue of, the Companies Ordinance (Cap. 32);
or

(ii) any other person who -

(A) is a liquidator or provisional liquidator of the listed corporation appointed under the Companies Ordinance (Cap. 32);
or

(B) acts in a similar capacity in relation to the listed corporation under any law of a place outside Hong Kong;

~~(c) disclose information to a person who~~

~~(i) is a liquidator or provisional liquidator appointed under the Companies Ordinance (Cap. 32); or~~

~~(ii) acts in a similar capacity under any law of a place outside Hong Kong,~~

~~for the purpose of enabling or assisting the person to perform his functions as such liquidator or provisional liquidator or in such similar capacity;~~

(d) disclose information with the consent of -

(i) the person from whom the information was obtained or received; and

(ii) if the information does not relate to such person, the person to whom

it relates;

- (e) disclose information in summary form that is so framed as to prevent particulars relating to any person from being ascertained from it; and
- (f) disclose information for the purpose of, or in connection with, an audit under section 19.

(4) The Council shall not disclose information under subsection (3)(a), (b) or (c) ~~or (b)~~ unless the Council is of the opinion that -

- (a) the disclosure will enable or assist the recipient of the information to perform his functions; and
- (b) it is not contrary to the interest of the investing public or to the public interest that the information should be so disclosed.

(5) Subject to subsection (6), if information is disclosed pursuant to subsection (1), (2) or (3) (other than subsection (2)(a) or (3)(e)) -

- (a) the person to whom the information is so disclosed; or
- (b) any other person obtaining or receiving the information from that person,

shall not disclose the information to any other person.

(6) Subsection (5) does not prohibit the person referred to in subsection (5)(a) or (b) from disclosing the information to any other person if -

- (a) the Council consents to the disclosure;
- (b) the information has already been made available to the public;
- (c) the disclosure is for the purpose of

seeking advice from, or giving advice by, counsel, or a solicitor, or other professional adviser, acting or proposing to act in a professional capacity in connection with any matter arising under this Ordinance;

- (d) the disclosure is in connection with any judicial or other proceedings to which the person so referred to is a party; or
- (e) the disclosure is in accordance with an order of a court, magistrate or tribunal, or in accordance with a law or a requirement made under a law.

(7) The Council may attach such conditions as it considers appropriate to -

- (a) a disclosure of information made by it pursuant to subsection (3); or
- (b) a consent granted by it pursuant to subsection (6)(a).

(8) Subsection (1) does 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).

(9) Any specified person who contravenes subsection (1) commits an offence and is liable -

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(10) A person commits an offence if -

- (a) he discloses any information in contravention of subsection (5); and

- (b) at the time of the disclosure -
- (i) he knew, or ought to have known, that the information was previously disclosed to him or any other person pursuant to subsection (1), (2) or (3) (other than subsection ~~subsections~~(2)(a) or (3)(e)); and
 - (ii) he had no reasonable grounds to believe that subsection (5) does not apply to him by virtue of subsection (6).

(11) A person who commits an offence under subsection (10) is liable -

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(12) The Secretary may authorize any public officer as a person to whom information may be disclosed under subsection (3)(b)(xvii).

(13) In this section, "specified person" (指明人士) means -

- (a) the Council; or
- (b) any person who -
 - (i) is or has been -
 - (A) a member of the Council, the Investigation Board, a Review Committee or a committee established by the Council;
 - (B) a related person of the Council; or

- (C) a person employed by or assisting a related person of the Council; and
- (ii) performs or has performed any function under this Ordinance.

51A. Protection of informers^{30A}

(1) Any information on the identity of a relevant person is not admissible in evidence in -

- (a) any civil or criminal proceedings before a court or magistrate;
- (b) any proceedings before the Market Misconduct Tribunal; or
- (c) any proceedings under Part V of the Professional Accountants Ordinance (Cap. 50).

(2) In such proceedings, a witness is not obliged -

- (a) to disclose the name or address of a relevant person who is not a witness in those proceedings; or
- (b) to state any matter that would lead, or would tend to lead, to discovery of the name or address of a relevant person who is not a witness in those proceedings.

(3) If a book, document or paper that is in evidence, or liable to inspection, in such proceedings contains an entry -

- (a) in which a relevant person is named or described; or
- (b) that might lead to discovery of a relevant

^{30A} The wording of clause 51A was discussed at the Bills Committee's meeting on 22 May 2006 (See LC Paper No. CB(1)1528/05-06(02)).

person,
the court, the magistrate, the Market Misconduct Tribunal
or the Disciplinary Committee constituted under section
33(3) of the Professional Accountants Ordinance (Cap. 50),
as the case may be, shall cause all such passages to be
concealed from view, or to be obliterated, so far as may
be necessary to protect the relevant person from
discovery.

(4) In such proceedings, the court, the magistrate,
the Market Misconduct Tribunal or the Disciplinary
Committee, as the case may be, may, despite subsection
(1), (2) or (3), permit inquiry, and require full
disclosure, concerning a relevant person if -

(a) it is of the opinion that justice cannot
be fully done between the parties to the
proceedings without disclosure of the name
of the relevant person; or

(b) in the case of a relevant person falling
within paragraph (a) of the definition of
"relevant person" in subsection (6), it is
satisfied that the relevant person made a
material statement that he -

(i) knew or believed to be false; or

(ii) did not believe to be true.

(5) This section has effect despite sections 35 and
47.

(6) In this section, "relevant person" (有關人士)
means -

(a) an informer who has given information to
the Council, the Investigation Board or a
Review Committee with respect to an
investigation under Part 3 or an enquiry

- under Part 4; or
- (b) a person who has assisted the Council, the Investigation Board or a Review Committee with respect to such an investigation or enquiry.

52. Avoidance of conflict of interests³¹

- (1) This section applies to a person who -
- (a) is a member of the Council, the Investigation Board, a Review Committee or a committee established by the Council; or
- (b) performs a function under this Ordinance.
- (2) If, in the course of performing a function under this Ordinance, a person is required to consider a matter in which he has an interest, he shall immediately disclose the nature of the interest to the Council.
- (3) For the purposes of subsection (2), a person has an interest in a matter if the matter relates to -
- (a) a listed corporation in the securities of which he has an interest;
- (aa) a listed collective investment scheme in the interests of which he has an interest;
- or
- ~~(a) a listed entity in which he has an interest; or~~
- (b) another person -
- (i) by whom he is or was employed;
- (ii) of whom he is or was a client;

³¹ We are considering some Members' views to fine tune the provisions. We will revert to the Bills Committee, with proposed Committee Stage Amendments (if any), when ready. The amendments to clause 52 were discussed at the Bills Committee's meeting on 28 April 2006 (See LC Paper No. CB(1)1364/05-06(02)).

- (iii) who is or was his associate; or
- (iv) whom he knows is or was a client of a third person -
 - (A) by whom he is or was employed; or
 - (B) who is or was his associate.

(4) The Council shall record, in a record kept for the purpose, the particulars of any disclosure made under this section.

(5) After a person has disclosed the nature of any interest in any matter, he shall not, unless the Council otherwise determines -

(a) be present during any deliberation of the Council, Investigation Board or Review Committee, or a committee established by the Council, with respect to the matter;
~~or~~

(b) take part in any decision of the Council, Investigation Board or Review Committee, or such a committee, with respect to the matter; or-

(c) keep or be given any document, or the relevant part of any document, that contains a record of, or is issued for the purpose of, such deliberation or decision.

(6) For the purpose of the making of a determination by the Council under subsection (5), a person who has an interest in a matter to which the disclosure relates shall not -

(a) be present during any deliberation of the Council for the purpose of making the determination; ~~or~~

(b) take part in the making of the

determination by the Council; or-

(c) keep or be given any document, or the relevant part of any document, that contains a record of, or is issued for the purpose of, such deliberation or the making of such determination.

(6A) If the Council determines under subsection (5) that a person may be present during any deliberation, or take part in any decision, of the Council, Investigation Board or Review Committee, or a committee established by the Council, the Council shall give written notice of the determination to -

(a) in the case of a deliberation or decision with respect to an investigation under Part 3 concerning an auditing irregularity, the auditor concerned;

(b) in the case of a deliberation or decision with respect to an investigation under Part 3 concerning a reporting irregularity, the reporting accountant concerned; or

(c) in the case of a deliberation or decision with respect to an enquiry under Part 4 concerning a relevant non-compliance, the listed entity concerned.

(7) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable -

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

(8) A contravention of this section does not invalidate a decision of the Council, Investigation Board or Review Committee, or a committee established by the Council.

(9) In this section -
"associate" (有聯繫者), in relation to a person, means -

- (a) the spouse, or any minor child (natural or adopted) or minor step-child, of the person;
- (b) any corporation of which the person is a director;
- (c) any employee or partner of the person;
- (d) the trustee of a trust of which the person, his spouse, minor child (natural or adopted) or minor step-child, is a beneficiary or a discretionary object;
- (e) another person in accordance with whose directions or instructions the person is accustomed or obliged to act;
- (f) another person accustomed or obliged to act in accordance with the directions or instructions of the person;
- (g) a corporation in accordance with the directions or instructions of which, or the directions or instructions of the directors of which, the person is accustomed or obliged to act;
- (h) a corporation which is, or the directors of which are, accustomed or obliged to act in accordance with the directions or instructions of the person;
- (i) a corporation at general meetings of which

the person, either alone or together with another, is directly or indirectly entitled to exercise or control the exercise of 33% or more of the voting power;

(j) a corporation of which the person controls the composition of the board of directors;

or

~~(k) if the person is a corporation~~

~~(i) each of its directors and its related corporations and each director or employee of any of its related corporations; and~~

~~(ii) a pension fund, provident fund or employee share scheme of the corporation or of a related corporation of the corporation; or~~

(k₁) without limiting the circumstances in which paragraphs (a) to (jk) apply, in circumstances concerning the securities of or other interest in a corporation, or rights arising out of the holding of such securities or interest, any other person with whom the person has an agreement or arrangement -

(i) with respect to the acquisition, holding or disposal of such securities or interest; or

(ii) under which they undertake to act together in exercising their voting power at general meetings of the corporation.

~~"related corporation" (有連繫法團) means a related~~

~~corporation within the meaning of section 3 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).~~

53. Immunity

(1) A person who complies with a requirement imposed on him under section 25, 26, 27, 28, 34 or 43 does not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, by reason only of the compliance.³²

(2) A person does not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, in respect of anything done, or omitted to be done, by him in good faith in the performance, or purported performance, of the functions of the Council, the Investigation Board, a Review Committee or a committee established by the Council.³³

53. Immunity

~~The Council, or a person who is, or is acting as, a~~

³² Please refer to paragraph 17 of the Administration's paper entitled "Follow-up actions arising from the meeting held on 20 December 2005" (LC Paper No. CB(1)665/05-06(07)), as discussed at the Bills Committee's meeting on 12 January 2006. We agree with Members that a person who complies, during investigations or enquiries, with the relevant information-gathering requirements imposed under this Ordinance shall not incur any civil liability by reason only of that compliance. In addition, a further technical amendment is proposed to include the requirement under section 34 in the scope of this immunity clause.

³³ The original clause 53 has been recast to clarify the Administration's intention that a person does not incur **civil** liability in respect of anything done, or omitted to be done, by him in good faith in the performance or purported performance of the functions of the FRC, the Audit Investigation Board (AIB), a FRRC and any committee established by the FRC.

~~member, or a related person, of the Council, is not liable for anything done, or omitted to be done, in good faith in the performance, or purported performance, of the functions of the Council.~~

54. Immunity in respect of communication with Council by auditors of listed entities

(1) Without prejudice to section 53, if a person who is or was -

(a) an auditor or reporting accountant of a listed entity;

(b) an auditor of -

(i) an associated undertaking of a listed entity;

(ii) an undertaking that was formerly an associated undertaking of a listed entity,

communicates in good faith to the Council any information or opinion on a specified matter in relation to the entity of which he becomes or became aware in his capacity as such auditor or reporting accountant, he does not incur any civil liability, whether arising in contract, tort, defamation, equity or otherwise, by reason only of the communication.

(2) §For the avoidance of doubt, subsection (1) applies even though the person has previously communicated the information or opinion to any other person.^{33A}

(3) In this section, "specified matter" (指明事宜), in relation to a listed entity -

(a) means a matter, whether occurring before,

^{33A} A technical amendment in consultation with the Legal Adviser to the Bills Committee.

during or after the entity is or was listed, that, in the person's opinion, suggests that -

- (i) there is a relevant irregularity in relation to the entity; or
 - (ii) there is a relevant non-compliance in relation to the entity; and
- (b) if the person is or was an auditor of an undertaking referred to in subsection (1)(b)(ii), includes any matter occurring before, during or after the undertaking ceased to be an associated undertaking of the listed entity that, in the person's opinion, suggests that before the cessation -
- (i) there is a relevant irregularity in relation to the entity; or
 - (ii) there is a relevant non-compliance in relation to the entity.

55. Legal professional privilege

(1) Subject to subsection (2), this Ordinance does not affect any claims, rights or entitlements that would, apart from this Ordinance, arise on the ground of legal professional privilege.

(2) Subsection (1) does not affect any requirement under this Ordinance to disclose the name and address of a client of a legal practitioner (whether or not the legal practitioner is qualified in Hong Kong to practise as counsel or to act as a solicitor).

56. Production of information in information systems

(1) If -

- (a) a person may require the production of any record or document under Part 3 or 4; and
- (b) any information or matter contained in such record ~~the record~~ or document is recorded otherwise than in a legible form but is capable of being reproduced in a legible form,

the person may also require the production of a reproduction of the recording of the information or matter, or the relevant part of the recording, in a legible form.

(2) If -

- (a) a person may require the production of any record or document under Part 3 or 4; and
- (b) any information or matter contained in such record ~~the record~~³⁴ or document is recorded in an information system,

the person may also require the production of a reproduction of the recording of the information or matter, or the relevant part of the recording, in a form that enables the information or matter to be reproduced in a legible form.

57. Lien claimed on records or documents

If a person claims a lien on any record or document in his possession that is required to be produced under Part 3 or 4 -

³⁴ Technical amendments, in response to the view of the Legal Adviser to the Bills Committee, to improve the clarity of the provisions.

- (a) the lien does not affect the requirement to produce the record or document;
- (b) no fee is payable for or in respect of the production; and
- (c) the production does not affect the lien.

58. Destruction of documents, etc.

(1) A person commits an offence if he destroys, falsifies, conceals or otherwise disposes of, or causes or permits the destruction, falsification, concealment or disposal of, any record or document required to be produced under Part 3 or 4, with intent to conceal, from the person by whom the requirement to produce was imposed, facts or matters capable of being disclosed by the record or document.

(2) A person who commits an offence under subsection (1) is liable -

- (a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (b) on summary conviction to a fine at level 6 and to imprisonment for 6 months.

59. Service of notice, etc.

(1) This section applies to -

- (a) a notice under section 24, 36(3), [40\(1A\)](#), 42, 48(3), ~~or~~ [49\(1\) or 52\(6A\) or section 3\(2\) of Schedule 6³⁵](#); or
- (b) a requirement under section 25, 26, 27, 28

³⁵ [A technical amendment consequent upon the amendments in clauses 40\(1A\) and 52\(6A\), and section 3\(2\) of Schedule 6. See footnotes 23, 31 and 54.](#)

or 43.

(2) Such a notice or requirement is taken to be given or issued to a person if -

- (a) in the case of an individual, it is -
 - (i) delivered to him by hand;
 - (ii) left at, or sent by post to, his last known business or residential address;
 - (iii) sent by facsimile transmission to his last known facsimile number; or
 - (iv) sent by electronic mail transmission to his last known electronic mail address;
- (b) in the case of a company, it is -
 - (i) delivered to any officer of the company by hand;
 - (ii) left at, or sent by post to, the registered office of the company within the meaning of the Companies Ordinance (Cap. 32);
 - (iii) sent by facsimile transmission to its last known facsimile number; or
 - (iv) sent by electronic mail transmission to its last known electronic mail address;
- (c) in the case of a company to which Part XI of the Companies Ordinance (Cap. 32) applies ~~non Hong Kong company within the meaning of section 2(1) of the Companies~~

~~Ordinance (Cap. 32)~~³⁶, it is -

- (i) delivered by hand to, or sent by post to, the person resident in Hong Kong who is authorized to accept service of process and notices on its behalf for the purposes of that Part ~~Part XI of that Ordinance~~ at his address delivered to the Registrar of Companies under that Ordinance;
 - (ii) sent by facsimile transmission to the last known facsimile number of the person; or
 - (iii) sent by electronic mail transmission to the last known electronic mail address of the person;
- (d) in the case of a partnership, it is -
- (i) delivered to any partner of the partnership by hand;
 - (ii) left at, or sent by post to, the last known principal place of business of the partnership;
 - (iii) sent by facsimile transmission to the last known facsimile number of the partnership; or
 - (iv) sent by electronic mail transmission to the last known electronic mail address of the partnership;

³⁶ A technical amendment to denote the Administration's intention that clause 59(2)(c) applies to an "oversea company" before the commencement of Schedule 2 to the Companies (Amendment) Ordinance 2004, or a "non-Hong Kong Company" after such commencement.

(e) in the case of a body corporate (other than a company, or a company to which Part XI of the Companies Ordinance (Cap. 32) applies or a non Hong Kong company)³⁷ or an unincorporated association (other than a partnership), it is -

- (i) delivered to any officer of the body or association by hand;
- (ii) left at, or sent by post to, the last known principal place of business of the body or association;
- (iii) sent by facsimile transmission to the last known facsimile number of the body or association; or
- (iv) sent by electronic mail transmission to the last known electronic mail address of the body or association.

60. Amendment of Schedules

(1) The Secretary may, by notice published in the Gazette, amend Schedule 1.

(2) The Chief Executive in Council may, by notice published in the Gazette, amend Schedule 2, 3, 4, 5 or 6.

PART 6

CONSEQUENTIAL AND RELATED AMENDMENTS

Companies Ordinance

61. Section Sections added

³⁷ See footnote 36.

The Companies Ordinance (Cap. 32) is amended by adding immediately after section 141D -

**"Revision of ~~defective~~ accounts
or reports**

**141E. Voluntary revision of
accounts, summary
financial reports or
directors' reports**

(1) If -

(a) a copy of any accounts of a company
has been sent under section 129G to a
person entitled to be sent the copy;
and

(b) it appears to the directors of the
company that the accounts did not
comply with this Ordinance,

the directors may cause the accounts to be revised and
make necessary consequential revisions to the summary
financial report or directors' report concerned.

(2) Such revision of the accounts is to be
confined to -

(a) those aspects in which the accounts
did not comply with this Ordinance;
and

(b) other necessary consequential
revisions.

~~(1) If it appears to the directors of a company
that any accounts of the company did not comply with
this Ordinance, the directors may -~~

~~(a) cause the accounts to be revised; and~~

~~(b) make necessary consequential
revisions to the summary financial
report or directors' report concerned.~~

~~(2) If the accounts, or a copy of the accounts, have been laid before the company in its general meeting under section 122 or 124 or forwarded to the Registrar under section 109, such revision of the accounts is to be confined to—~~

~~(a) the correction of those aspects in which the accounts did not comply with this Ordinance; and~~

~~(b) the making of necessary consequential revisions.³⁸~~

(3) If —

(a) the directors of a company decide to cause any accounts of the company to be revised under subsection (1); and

(b) a copy of the accounts has been forwarded to the Registrar under section 109,

the company shall, as soon as practicable after the decision, deliver to the Registrar for registration a warning statement, in the specified form, that the accounts will be so revised.

(4) If a company fails to comply with subsection (3), the company, and every officer of the company who is in default shall be liable to a fine and, for continued default, to a daily default fine.~~authorizes or permits the default, shall be guilty of an offence and liable to a fine.^{38A}~~" .

³⁸ A technical amendment to recast subsections (1) and (2) of the proposed section 141E of the Companies Ordinance (Cap. 32) to clarify the Administration's intention with respect to the triggering point and scope of voluntary revision to accounts.

^{38A} A technical amendment.

61A. Section added

The following is added -

"336A. Voluntary revision of
accounts³⁹

(1) If -

(a) a certified copy of any accounts of
an overseas company has been delivered
to the Registrar for registration
under section 336; and

(b) it appears to the directors of the
company that the accounts did not
comply with the relevant requirements,
the directors may cause the accounts to be revised and
make necessary consequential revisions to the
directors' report concerned.

(2) Such revision of the accounts is to be
confined to -

(a) those aspects in which the accounts
did not comply with the relevant
requirements; and

(b) other necessary consequential
revisions.

(3) If the directors of an overseas company
decide to cause any accounts of the company to be
revised under subsection (1), the company shall, as
soon as practicable after the decision, deliver to the
Registrar for registration a warning statement, in the
specified form, that the accounts will be so revised.

(4) In this section, "relevant requirements" (有

³⁹ To propose interim provisions to cater for voluntary revision of
accounts by an "overseas company", before the commencement of
Schedule 2 to the Companies (Amendment) Ordinance 2004 with
respect to a "non-Hong Kong company".

關規定), in relation to the accounts of an overseas company, means -

- (a) the law for the time being applicable to that company in the place of its incorporation or origin; or
- (b) ~~if in the case where section 336(4)~~ applies to that company, this Ordinance."

62. Section substituted

Section 336A (as added by section 61A of this Ordinance) is repealed and the following substituted -⁴⁰

~~62. Section added~~

~~The following is added -~~

"336A. Voluntary revision of accounts

(1) If -

- (a) a certified copy of any accounts of a non-Hong Kong company registered under this Part has ~~have~~ been delivered to the Registrar for registration under section 336; and
- (b) it appears to the directors of the company that the accounts did not comply with the relevant requirements,

the directors may cause the accounts to be revised.

(2) Such revision of the accounts is to be confined to -

- (a) ~~the correction of~~ those aspects in which the accounts did not comply with the relevant requirements; and

⁴⁰ See footnote 39.

(b) ~~the making of other~~ necessary consequential revisions.

(3) If the directors of a non-Hong Kong company decide to cause any accounts of the company to be revised under subsection (1), the company shall, as soon as practicable after the decision, deliver to the Registrar for registration a warning statement, in the specified form, that the accounts will be so revised.

(4) In this section, "relevant requirements" (有關規定), in relation to the accounts of a non-Hong Kong company, means -

(a) in the case where section 336(1) applies to the company, the law of the place of incorporation of that company;

(b) in the case where section 336(2) applies to the company -

(i) the laws of any other jurisdictions where that company is registered as a company; or

(ii) the rules of any stock exchange or similar regulatory bodies in those jurisdictions."

63. Power to make regulations

Section 359A is amended by adding -

"(3) Without prejudice to the power conferred under subsection (1), the Chief Executive in Council may make regulations providing for the application of this Ordinance in relation to -

- (a) the accounts, summary financial report or directors' report that has been revised under section 141E; and
- (b) the accounts or directors' report that has ~~that~~ have⁴¹ been revised under section 336A.

(4) Regulations made under subsection (3)(a) may -

- (a) make different provision according to whether the accounts, summary financial report or directors' report has been revised by -
 - (i) supplementing the accounts or report with another document that shows the revisions; or
 - (ii) replacing the accounts or report;
- (b) provide for the functions of the auditors of the company in relation to the accounts, summary financial report or directors' report that has been revised;
- (c) where -
 - (i) the accounts or directors' report, or a copy of the accounts or report, has, before the revision, been sent to members and other persons under section 129G, laid before the company in its general meeting under section 122, 124 or 129D,

⁴¹ See footnote 39.

or forwarded to the Registrar under section 109; or

(ii) a copy of a summary financial report has, before the revision, been sent to a person in compliance with ~~under~~ section 141CA,

require the company or^{41A} the directors of the company to take such steps as may be specified in the regulations in relation to the accounts or report that has been revised;

(d) apply this Ordinance to the accounts, summary financial report or directors' report that has been revised subject to such additions, exceptions and modifications as specified in the regulations; and

(e) provide for incidental, consequential and transitional provisions.

(5) Regulations made under subsection (3)(b)

may -

(a) make different provision according to whether the accounts or directors' report has ~~have~~ been revised by -

(i) supplementing the accounts or report with another document that shows the revisions; or

(ii) replacing the accounts or report;

^{41A} Technical amendments.

- (b) require a company to which section 336A applies ~~the non-Hong Kong company~~ to take such steps as may be specified in the regulations in relation to the accounts or directors' report that has ~~that have~~ been revised;
- (c) apply this Ordinance to the accounts or directors' report that has ~~that have~~⁴² been revised subject to such additions, exceptions and modifications as specified in the regulations; and
- (d) provide for incidental, consequential and transitional provisions."

(6) Regulations made under subsection (3) may -

(a) provide that any of the following is an offence -

(i) a failure to take all reasonable steps to secure compliance as respects the accounts, summary financial report or directors' report that has been revised with -

(A) a specified provision of the regulations; or

(B) a specified provision of this Ordinance as having effect under the regulations;

(ii) a contravention of -

⁴² See footnote 39.

(A) a specified provision of
the regulations; or

(B) a specified provision of
this Ordinance as having
effect under the
regulations;

(b) provide that such an offence is
punishable -

(i) by a fine not exceeding
\$300,000, or by a term of
imprisonment not exceeding 12
months, or by both such fine
and imprisonment; and

(ii) in the case where a person is
convicted of such an offence
after continued default,
refusal or contravention, also
by a fine not exceeding \$700
for each day on which the
default, refusal or
contravention is continued;

(c) provide for any specified defence to
be available in proceedings for such
an offence; and

(d) provide that a court shall not
sentence a person to imprisonment for
such an offence unless satisfied that
the offence was committed wilfully.^{42A}

^{42A} A new subsection is added to provide the vires for the offence provisions in the Regulations.

64. Punishment of offences under this Ordinance

The Twelfth Schedule is amended by adding -

"141E(4) Company failing to deliver to Registrar warning statement	Summary level 5	\$700"
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Insurance Companies Ordinance

65. Secrecy

Section 53A(3B) of the Insurance Companies Ordinance (Cap. 41) is amended -

- (a) in paragraph (b), by repealing "or";
- (b) in paragraph (c), by repealing the full stop at the end and substituting "; or";
- (c) by adding -
 - "(d) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (of 2005)."

Professional Accountants Ordinance

66. Interpretation

Section 2 of the Professional Accountants Ordinance (Cap. 50) is amended by adding -

"“FRC” (財務匯報局) means the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (of 2005);”.

67. Section added

The following is added -

"7A. Power of Institute to make contributions to FRC

The Institute may contribute to the FRC such

amount, as the Institute thinks fit, of the costs and expenses reasonably incurred by the FRC for the performance of the FRC's functions."

68. Particular powers of Council

Section 18 is amended -

(a) in subsection (1)(aa), by adding ", including those payable by the practice units, or a class of the practice units, to the Institute for the purpose of the contribution under section 7A" before the semicolon;

(b) by adding -

"(1A) For the purposes of subsection (1)(aa), the Council may, in order to provide for particular circumstances or cases, fix different fees for the same matter, service or facility."

69. Council's power to give directions

Section 18B is amended by adding -

"(1A) Without prejudice to the generality of subsection (1), the Council may, in connection with the payment by a practice unit of any fees fixed under section 18(1)(aa) for the purpose of the contribution under section 7A, give directions to practice units requiring the production or provision to the Institute by a practice unit of any document or information to enable the Institute to ascertain whether or not the practice unit falls within a particular class for the purpose of such payment."

70. Secrecy

Section 32H(2) is amended by repealing everything after "apply in relation" and substituting -

"to -

- (a) any disclosure made in relation to or for the purpose of any disciplinary proceedings under Part V or criminal proceedings; or
- (b) any disclosure to the FRC for the purpose of enabling or assisting the FRC to perform its functions under the Financial Reporting Council Ordinance (of 2005).".

70A.Disciplinary provisions

Section 34 is amended -

(a) in subsection (1)(a), by adding -

"(ia) has been convicted of any offence under section 31 of the Financial Reporting Council Ordinance (of 2006);

(ib) has been punished by the Court of First Instance under section 32(2)(b) of the Financial Reporting Council Ordinance (of 2006) for failing to comply with a requirement imposed under section 25, 26, 27 or 28 of that Ordinance or for being involved in the failure;

- (ic) has been punished by the Court of First Instance under section 45(2)(b) of the Financial Reporting Council Ordinance (of 2006) for failing to comply with a requirement imposed under section 43 of that Ordinance or for being involved in the failure;"
- (b) in subsection (1AA), by repealing "(iv) to (ix)" and substituting "(ia), (ib), (ic), (iv), (v), (vi), (vii), (viii) and (ix)".⁴³

71. Disciplinary powers of Disciplinary Committee

Section 35(1)(d) is amended by repealing everything after "certified public" and substituting -

"accountant -

- (i) pay the costs and expenses of and incidental to an investigation against him under Part VA; and
- (ii) where the disciplinary proceedings were instituted as a result of an investigation under the Financial Reporting Council Ordinance (of 2005), pay to the FRC the sum the Disciplinary Committee considers appropriate for the costs and expenses in relation or incidental to the investigation reasonably incurred by the FRC;"

⁴³ Please refer to paragraph 5 of the Administration's paper entitled "Follow-up actions arising from the meeting held on 10 February 2006" (LC Paper No. CB(1)963/05-06(02)), as discussed at the Bills Committee's meeting on 24 February 2006. We have consulted the Hong Kong Institute of Certified Public Accountants on the proposed amendments which empower the Institute to discipline its members who have failed to comply with an information-gathering requirement imposed by the FRC in investigations or enquiries.

72. Consent order

Section 35B(1) is amended by adding -

"(ba) an order that the certified public accountant pay to the FRC the sum the Disciplinary Committee considers appropriate for the costs and expenses in relation or incidental to an investigation under the Financial Reporting Council Ordinance (of 2005) reasonably incurred by the FRC;"

72A. Section added

The following is added -

"42CA. Referral of matter to FRC

(1) Where it appears to the Council that there are circumstances suggesting -

(a) that -

(i) a certified public accountant has acted in a manner described in section 34(1)(a)(iii), (xi) or (xii);

(ii) section 34(1)(a)(iv), (vi), (viii), (ix) or (x) paragraph (iv), (vi), (viii), (ix) or (x) of section 34(1)(a) applies to a certified public accountant or a firm of certified public accountants (practising); or

(iii) section 34(1)(a) (as applied by section 34(1AA)) or (b), as applied by section 34(1AA), applies to a corporate practice; and

(b) that the matter constitutes a

relevant irregularity in relation to a listed entity for the purposes of the Financial Reporting Council Ordinance (of 2006),
the Council shall refer the matter to the FRC and shall not, even if it may do so under section 42C(2)(a), constitute an Investigation Committee in relation to the matter.

(2) ~~For the avoidance of doubt, subsection (1) does not apply if a complaint of the matter is submitted to the Council, or the matter otherwise comes to the Council's attention, before the commencement of section 72A of the Financial Reporting Council Ordinance (of 2006).~~^{43A}~~this section.~~

73. Secrecy

Section 42G(2) is amended by repealing everything after "apply in relation" and substituting -

"to -

- (a) any disclosure made in relation to or for the purpose of any disciplinary proceedings under Part V or criminal proceedings; or
- (b) any disclosure to the FRC for the purpose of enabling or assisting the FRC to perform its functions under the Financial Reporting Council Ordinance (of 2005).".

^{43A} In response to the Bills Committee's view, a new section is added to the Professional Accountants Ordinance to stipulate the "referral" requirement from the HKICPA to the FRC. See paragraph 13 of LC Paper No. CB(1)1364/05-06(02). Some further drafting amendments have been proposed in consultation with the Legal Adviser to the Bills Committee.

Banking Ordinance

74. Official secrecy

Section 120(5A) of the Banking Ordinance (Cap. 155) is amended -

- (a) in paragraph (b), by repealing "or";
- (b) in paragraph (c), by repealing the full stop at the end and substituting "; or";
- (c) by adding -
 - "(e) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (of 2006)."

~~74. Official secrecy~~

~~Section 120 of the Banking Ordinance (Cap. 155) is amended -~~

- ~~(a) in subsection (5), by adding after paragraph (gaa) -~~
 - ~~"(gab) to the disclosure of information by the Monetary Authority to the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (of 2005) for the purpose of enabling or assisting the Council to exercise its functions under that Ordinance;"~~
- ~~(b) in subsection (5C), by adding ", (gab)" after "(gaa)".⁴⁴~~

⁴⁴ A technical amendment in consultation with the Hong Kong Monetary Authority.

Prevention of Bribery Ordinance

75. Public bodies⁴⁵

Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) is amended by adding -

"106. Financial Reporting Council."

75A. Public bodies specified for purposes of definition of "public servant"

Schedule 2 is amended by adding -

"8. Financial Reporting Council."

The Ombudsman Ordinance

76. Organizations to which this Ordinance applies

Schedule 1 to The Ombudsman Ordinance (Cap. 397) is amended, in Part I, by adding -

"Financial Reporting Council."

Companies Registry Trading Fund

77. Services to be provided by the Trading Fund

Schedule 1 to the Companies Registry Trading Fund (Cap. 430 sub. leg. B) is amended by adding -

"6A. Supporting the Financial Reporting Council

⁴⁵ We are considering the view of the Legal Adviser to the Bills Committee whether the context of the proposed amendment is wide enough to be construed as covering the "AIB" and a "FRRC". We also propose specifying the "Financial Reporting Council" in Schedule 2 to the Prevention of Bribery Ordinance to ensure that members of the Audit Investigation Board and Financial Reporting Review Committees fall within the definition of "public servants" for the purposes of that Ordinance.

established by section 6(1) of the Financial Reporting Council Ordinance (of 2005) in the performance of its functions by -

- (a) providing the service of the Registrar of Companies as an ex officio member of the Council; and
- (b) making contributions, whether in cash or in kind, to sponsor ~~sponsoring~~⁴⁶the performance by the Council of any of its functions."

Mandatory Provident Fund Schemes Ordinance

78. Authority may disclose certain information despite section 41

Section 42(1)(d) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended by repealing "or the Securities and Futures Commission" and substituting ", the Securities and Futures Commission, or the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (of 2005)".

Personal Data (Privacy) Ordinance

79. Interpretation

Section 2(1) of the Personal Data (Privacy) Ordinance (Cap. 486) is amended, in the definition of "financial regulator", by adding -

- "(gb) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (of 2005);"

⁴⁶ A technical amendment to improve the clarity of the provision.

Securities and Futures Ordinance

80. Orders, etc. of Tribunal

Section 257(1) of the Securities and Futures Ordinance (Cap. 571) is amended by adding -

"(fa) where the proceedings were instituted as a result of an investigation under the Financial Reporting Council Ordinance (of 2005), an order that the person pay to the Financial Reporting Council established by section 6(1) of that Ordinance the sum the Tribunal considers appropriate for the costs and expenses in relation or incidental to the investigation reasonably incurred by the Council;".

81. Preservation of secrecy, etc.

Section 378(3)(f) is amended by adding -

"(xia) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (of 2005);".

SCHEDULE 1

[ss. 2, 5 & 60]

DEFINITIONS OF "RELEVANT FINANCIAL REPORT" AND
"RELEVANT REQUIREMENT"

PART 1

In this Ordinance (except sections 5(2) and 50 of this Ordinance) -

"relevant financial report" (有關財務報告) -

(a) in relation to a listed corporation, means

-

- (i) a balance sheet of the corporation, together with any accounts annexed to it for the purposes of section 129C(1) of the Companies Ordinance (Cap. 32), a copy of which was sent at the relevant time under section 129G of that Ordinance to a person entitled to be sent the copy;
- (ii) the accounts of the corporation, a certified copy of which was delivered at the relevant time to the Registrar of Companies for registration under section 336 of the Companies Ordinance (Cap. 32);
- (iii) a summary financial report of the corporation, a copy of which was sent at the relevant time in compliance with section 141CA of the Companies Ordinance (Cap. 32) to a person entitled to be sent the copy;
- (iv) a set of financial statements of the corporation -
 - (A) providing information on the results of the operations or cash flows of the corporation in a period of at least 3 months;
 - (B) providing information on the state of affairs of the corporation as at the end of that period; and
 - (C) issued, circulated, published or distributed at the relevant

time for the purposes of the Listing Rules; or

(v) a specified report required for a listing document issued at the relevant time by or on behalf of the corporation;

(b) in relation to a listed collective investment scheme, means -

(i) a set of financial statements of the scheme -

(A) providing information on the results of the operations or cash flows of the scheme in a period of at least 3 months;

(B) providing information on the state of affairs of the scheme as at the end of that period; and

(C) issued, circulated, published or distributed at the relevant time for the purposes of the relevant code or the Listing Rules; or

(ii) a specified report required for a listing document issued at the relevant time by or on behalf of the scheme;

“relevant requirement” (有關規定) -

(a) in relation to a relevant financial report of a listed corporation, means an accounting requirement as to the matters or information to be included in the

report, as provided in -

- (i) the Companies Ordinance (Cap. 32), as in force at the material time;
 - (ii) the standards of accounting practices issued or specified, or deemed to be issued or specified, under section 18A of the Professional Accountants Ordinance (Cap. 50), as in force at the material time;
 - (iii) the International Financial Reporting Standards issued by the International Accounting Standards Board, as in force at the material time;
 - (iv) the Listing Rules; or
 - (v) any generally acceptable accounting principles allowed for usage under the Listing Rules;
- (b) in relation to a relevant financial report of a listed collective investment scheme, means an accounting requirement as to the matters or information to be included in the report, as provided in -
- (i) the standards of accounting practices issued or specified, or deemed to be issued or specified, under section 18A of the Professional Accountants Ordinance (Cap. 50), as in force at the material time;
 - (ii) the International Financial Reporting Standards issued by the

International Accounting Standards Board, as in force at the material time;

- (iii) the Listing Rules;
- (iv) any generally acceptable accounting principles allowed for usage under the Listing Rules; or
- (v) the relevant code.

PART 2

In sections 5(2) and 50 of this Ordinance -

“relevant financial report” (有關財務報告), in relation to a listed corporation, means -

- (a) a balance sheet of the corporation, together with any accounts annexed to it for the purposes of section 129C(1) of the Companies Ordinance (Cap. 32), a copy of which was sent at the relevant time under section 129G of that Ordinance to a person entitled to be sent the copy;
- (b) a summary financial report of the corporation, a copy of which was sent at the relevant time in compliance with section 141CA of the Companies Ordinance (Cap. 32) to a person entitled to be sent the copy; or
- (c) a specified report required for a prospectus issued at the relevant time by or on behalf of the corporation;

“relevant requirement” (有關規定), in relation to a relevant financial report of a listed corporation, means an accounting requirement as to the matters or

information to be included in the report, as provided in the Companies Ordinance (Cap. 32), as in force at the material time.

SCHEDULE 2 [ss. 7, 11 & 60]

PROVISIONS RELATING TO COUNCIL AND ITS MEMBERS

1. Seal

(1) The affixing of the common seal of the Council is to be authenticated by the signature of -

- (a) the Chairman of the Council; or
- (b) such other member of the Council authorized by it for the purpose.

(2) Any document purporting to be a document duly executed under the seal of the Council is to be received in evidence and is, unless the contrary is proved, to be deemed to be a document so executed.

2. Tenure of appointed members

(1) An appointed member of the Council is to be appointed for a term not exceeding 3 years.

(2) On the expiry of his period of appointment or reappointment, an appointed member of the Council is eligible for reappointment.

(3) An appointed member of the Council may resign from office by giving notice in writing to the Chief Executive. A notice of resignation takes effect on the date specified in the notice or, if no date is specified, on the date of receipt by the Chief Executive of the notice.

3. Acting Chairman or temporary member

~~Temporary Chairman or member~~

(1) If -

(a) because of absence from Hong Kong or any other reason, the Chairman of the Council is unable to perform the functions of his office as Chairman; or

(b) there is a vacancy in the office of Chairman of the Council,

the Chief Executive may appoint another appointed member of the Council who is a lay person to act as Chairman of the Council during the absence, incapacity or vacancy.^{46A}

~~(1) If, because of absence from Hong Kong or any other reason, the Chairman of the Council is unable to perform the functions of his office as Chairman, the Chief Executive may appoint, from amongst the other appointed members of the Council who are lay persons, a temporary Chairman to act in his place during his absence or incapacity.~~

(2) If, because of absence from Hong Kong or any other reason, an appointed member of the Council, other than the Chairman, is unable to perform the functions of his office as member, the Chief Executive may, subject to subsection (3), appoint another person to be a temporary member in his place during his absence or incapacity.

(3) If the Chief Executive is to appoint a person to be a temporary member in the place of an appointed member of the Council who was appointed under section 7(1)(c)(i), (ii) or (iii) of this Ordinance on the nomination of

^{46A} A technical amendment to empower the Chief Executive to appoint an acting Chairman of the FRC during a vacancy in the Chairman's office or the absence or incapacity of the Chairman.

another person, the Chief Executive shall make the appointment on the nomination of that other person.

(4) If a person is appointed to act as Chairman of the Council, the person may perform all the functions of the Chairman.

(5) If a person is appointed as a temporary member of the Council, the person may perform all the functions of the member in whose place the person is appointed.^{46B}

~~(4) If a person is appointed as the temporary Chairman, or a temporary member, of the Council, the person may perform all the functions of the Chairman, or member, in whose place the person is appointed.~~

4. **Terms and conditions of appointment of members**

All matters relating to the terms and conditions of the appointment of an appointed member of the Council are to be determined by the Chief Executive.

5. **Removal of appointed members**

(1) If the Chief Executive is satisfied that an appointed member of the Council -

- (a) has become a public officer;
- (b) has become bankrupt;
- (c) is incapacitated by physical or mental illness;
- (d) is convicted in Hong Kong of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in Hong Kong of an offence that, if committed in Hong Kong, would be an

^{46B} See footnote 46A.

offence so punishable; or

(e) is otherwise unable or unfit to perform the functions of a member of the Council, the Chief Executive may declare his office as member of the Council to be vacant, and upon such declaration the office becomes vacant.

(2) The Chief Executive shall give notice of a declaration under subsection (1) in such manner as he thinks fit.

(3) Subsection (4) applies if notice of a declaration is given under subsection (2) otherwise than by notice published in the Gazette.

(4) The Chief Executive shall, as soon as practicable after having given notice under subsection (2), give another notice of the declaration by notice published in the Gazette.^{46C}

6. Meetings and proceedings of Council

(1) Meetings are to be held as often as necessary to enable the Council to perform its functions.

(2) A meeting of the Council may be convened by the Chairman of the Council. The Chairman of the Council is to convene a meeting of the Council on being given a notice for that purpose by 2 or more other members of the Council.

(3) The procedure for convening meetings of the Council and for the conduct of business at those meetings is, subject to this Ordinance-Schedule⁴⁷, to be determined by the Council.

^{46C} An amendment to stipulate the gazettal requirement in response to Members' view expressed at the meeting on 22 May 2006.

⁴⁷ A technical amendment.

(4) The quorum for a meeting of the Council is two thirds of the members of the Council.

(5) A member of the Council is regarded as being present at a meeting of the Council if -

(a) he participates in the meeting by telephone, video conferencing or other electronic means; and

(b) he is able to communicate with the other members present at the meeting and they are able to communicate with him.

(5A) If a member of the Council is required under section 52(5) or (6) of this Ordinance not to be present during any deliberation of, or not to take part in any decision of or the making of a determination by, the Council, he is not to be counted for the purpose of forming a quorum at such part of a meeting of the Council that is held for such deliberation or decision or the making of such determination.⁴⁸

(6) The Chairman of the Council shall preside at all meetings of the Council. Subject to section 3(1), if the Chairman is absent from any meeting or any part of the meeting, he may nominate an appointed member of the Council who is a lay person to preside in his absence as Chairman at the meeting or that part of the meeting.

(7) At a meeting of the Council, each member of the Council present has one vote.

(8) Subject to subsection (9), every matter for

⁴⁸ Please refer to paragraph 7 of the Administration's paper entitled "Follow-up actions arising from the meeting held on 23 January 2006" (LC Paper No. CB(1)866/05-06(04)), as discussed at the Bills Committee's meeting on 10 February 2006. This is a technical amendment to put beyond doubt the position that a member who is excluded from a meeting by virtue of clause 52(5) or (6) is not to be counted for the purpose of forming a quorum at the relevant meeting.

decision at a meeting of the Council is to be determined by a majority of the votes of the members of the Council present. In the case of an equality of votes, the Chairman of the Council, or the member of the Council nominated by the Chairman to preside at the meeting, has a casting vote.

(9) For the purposes of subsection (8), the number of the votes that constitutes the majority, apart from the casting vote (if any), is to be 4 or more.

7. Transaction of business by circulation of papers

(1) The Council may transact any of its business by circulation of papers.

(2) A written resolution that is approved in writing by all the members of the Council present in Hong Kong (being not less than the number required to constitute two thirds of the members of the Council) is as valid and effectual as if it had been duly passed at a meeting of the Council by the votes of the members of the Council so approving the resolution.

8. Committees

(1) The Council may establish committees for any general or special purposes as it thinks fit.

(2) The Council shall appoint one of its members to be the chairman of such a committee.

(3) The Council may appoint other members of such a committee. The number of such other members who are members of the Council is to exceed the number of those who are not.

(4) The procedure for convening meetings of such a committee and for the conduct of business at those

meetings is, subject to any direction of the Council, to be determined by the committee.

SCHEDULE 3

[ss. 8 & 60]

PROVISIONS RELATING TO CHIEF EXECUTIVE OFFICER OF
COUNCIL

1. Tenure of Chief Executive Officer

(1) The Chief Executive Officer of the Council is to be appointed for a term not exceeding 3 years.

(2) On the expiry of his period of appointment or reappointment, the Chief Executive Officer of the Council is eligible for reappointment.

(3) The Chief Executive Officer of the Council may resign from office by giving notice in writing to the Chief Executive. ~~A notice~~ Unless it is otherwise provided in the terms and conditions of the appointment determined under section 3, a notice of resignation takes effect on the date specified in the notice or, if no date is specified, on the date of receipt by the Chief Executive of the notice.^{48A}

2. Acting Chief Executive Officer

(1) If -

(a) because of absence from Hong Kong or any other reason, the Chief Executive Officer is unable to perform the functions of his office as Chief Executive Officer; or

(b) there is a vacancy in the office of Chief

^{48A} A technical amendment to enable that the relevant arrangement about a notice of resignation be otherwise provided in the terms and conditions in connection with the appointment of the Chief Executive Officer.

Executive Officer,
the Chief Executive may appoint another person to act as
Chief Executive Officer during the absence, incapacity or
vacancy.

(2) If a person is appointed to act as Chief
Executive Officer, the person may perform all the
functions of the Chief Executive Officer.^{48B}

~~2. Acting Chief Executive Officer~~

~~(1) If, because of absence from Hong Kong or any~~
~~other reason, the Chief Executive Officer of the Council~~
~~is unable to perform the functions of his office as Chief~~
~~Executive Officer, the Chief Executive may appoint another~~
~~person to act in the place of the Chief Executive Officer~~
~~during his absence or incapacity.~~

~~(2) If a person is appointed to act in the place of~~
~~the Chief Executive Officer of the Council, the person may~~
~~perform all the functions of the Chief Executive Officer.~~

3. Terms and conditions of appointment of Chief Executive Officer

All matters relating to the terms and conditions of
the appointment of the Chief Executive Officer of the
Council are to be determined by the Chief Executive.

4. Removal of Chief Executive Officer

(1) If the Chief Executive is satisfied that the
Chief Executive Officer of the Council -

(a) has become a public officer;

^{48B} A technical amendment to empower the Chief Executive to appoint an
acting Chief Executive Officer of the FRC during a vacancy in the
office of the Chief Executive Officer or the absence or incapacity
of the Chief Executive Officer.

- (b) has become bankrupt;
- (c) is incapacitated by physical or mental illness;
- (d) is convicted in Hong Kong of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in Hong Kong of an offence that, if committed in Hong Kong, would be an offence so punishable; or
- (e) is otherwise unable or unfit to perform the functions of the Chief Executive Officer of the Council,

the Chief Executive may declare his office as Chief Executive Officer of the Council to be vacant, and upon such declaration the office becomes vacant.

(2) The Chief Executive shall give notice of a declaration under subsection (1) in such manner as he thinks fit.

(3) Subsection (4) applies if notice of a declaration is given under subsection (2) otherwise than by notice published in the Gazette.

(4) The Chief Executive shall, as soon as practicable after having given notice under subsection (2), give another notice of the declaration by notice published in the Gazette.^{48C}

^{48C} See footnote 46C.

SCHEDULE 4

[ss. 22 & 60]

PROVISIONS RELATING TO INVESTIGATION BOARD AND ITS MEMBERS

1. Appointment of members

(1) A member appointed to the Investigation Board under section 22(2)(b) of this Ordinance is to be appointed for a term fixed by the Council at the time of his appointment.

(2) On the expiry of his period of appointment or reappointment, a member of the Investigation Board is eligible for reappointment.

(3) All matters relating to the terms and conditions of the appointment of a member of the Investigation Board are to be determined by the Council.

(4) A member of the Investigation Board may resign from office by giving notice in writing to the Council. A notice of resignation takes effect on the date specified in the notice or, if no date is specified, on the date of receipt by the Council of the notice.

1A. Temporary member

(1) If, because of absence from Hong Kong or any other reason, a member of the Investigation Board, other than the chairman, is unable to perform the functions of his office as member, the Council may appoint another person to be a temporary member in his place during his absence or incapacity.

(2) If a person is appointed as a temporary member of the Investigation Board, the person may perform all the

functions of the member in whose place the person is appointed.⁴⁹

1B. Removal of members

(1) If the Council is satisfied that a member of the Investigation Board appointed under section 22(2)(b) of this Ordinance -

- (a) has become bankrupt;
- (b) is incapacitated by physical or mental illness;
- (c) is convicted in Hong Kong of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in Hong Kong of an offence that, if committed in Hong Kong, would be an offence so punishable; or
- (d) is otherwise unable or unfit to perform the functions of a member of the Investigation Board,

the Council may declare his office as member of the Investigation Board to be vacant, and upon such declaration the office becomes vacant.

(2) The Council shall give notice of a declaration under subsection (1) in such manner as it thinks fit.⁵⁰

(3) Subsection (4) applies if notice of a declaration is given under subsection (2) otherwise than by notice published in the Gazette.

⁴⁹ To propose express provisions for an arrangement for temporary members of the AIB.

⁵⁰ To propose express provisions to empower the FRC to remove members of the AIB who are unable or unfit to perform the functions of the AIB.

(4) The Council shall, as soon as practicable after having given notice under subsection (2), give another notice of the declaration by notice published in the Gazette.^{50A}

2. Meetings and proceedings, etc. of Investigation Board

(1) The chairman of the Investigation Board shall convene such meetings of the Board as he considers necessary for the Board to perform its functions.

(2) The quorum for a meeting of the Investigation Board is 2 members of the Board or one half of the members of the Board, whichever is the greater.

(3) If a member of the Investigation Board is required under section 52(5) of this Ordinance not to be present during any deliberation of, or not to take part in any decision of, the Board, he is not to be counted for the purpose of forming a quorum at such part of a meeting of the Board that is held for such deliberation or decision.⁵¹

(4) The Investigation Board may transact any of its business by circulation of papers.

(5) The Investigation Board may, subject to this Ordinance and any direction of the Council, determine -

- (a) the procedure for convening meetings of the Board and for the conduct of business at those meetings; and
- (b) the procedure in the transaction of

^{50A} See footnote 46C.

⁵¹ Please refer to paragraphs 6 and 7 of the Administration's paper entitled "Follow-up actions arising from the meeting held on 23 January 2006" (LC Paper No. CB(1)866/05-06(04)), as discussed at the Bills Committee's meeting on 10 February 2006. The amendments provide for the quorum arrangement for a meeting of the AIB.

business of the Board by circulation of papers.⁵²

~~(2) The procedure for convening meetings of the Investigation Board and for the conduct of business at those meetings is, subject to any direction of the Council, to be determined by the Board.~~

SCHEDULE 5

[ss. 39 & 60]

PROVISIONS RELATING TO REVIEW PANEL AND ITS MEMBERS

1. Tenure of members

(1) A member of the Review Panel is to be appointed for a term not exceeding 3 years.

(2) On the expiry of his period of appointment or reappointment, a member of the Review Panel is eligible for reappointment.

(3) A member of the Review Panel may resign from office by giving notice in writing to the Chief Executive. A notice of resignation takes effect on the date specified in the notice or, if no date is specified, on the date of receipt by the Chief Executive of the notice.

2. Removal of members

(1) If the Chief Executive is satisfied that a member of the Review Panel -

- (a) has become bankrupt;
- (b) is incapacitated by physical or mental illness;
- (c) is convicted in Hong Kong of an offence

⁵² Technical amendments concerning the transaction of business at the AIB.

that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in Hong Kong of an offence that, if committed in Hong Kong, would be an offence so punishable; or

(d) is otherwise unable or unfit to perform the functions of a member of the Review Panel,

the Chief Executive may declare his office as member of the Review Panel to be vacant, and upon such declaration the office becomes vacant.

(2) The Chief Executive shall give notice of a declaration under subsection (1) in such manner as he thinks fit.

(3) Subsection (4) applies if notice of a declaration is given under subsection (2) otherwise than by notice published in the Gazette.

(4) The Chief Executive shall, as soon as practicable after having given notice under subsection (2), give another notice of the declaration by notice published in the Gazette.^{52A}

SCHEDULE 6 [ss. 41, 59 & 60]

PROVISIONS RELATING TO REVIEW COMMITTEE AND ITS MEMBERS

1. **Meetings and proceedings, etc. of Review Committee**

(1) The Chairman of a Review Committee shall convene such meetings of the Committee as he considers necessary

^{52A} See footnote 46C.

for the Committee to perform its functions.

(2) The quorum for a meeting of a Review Committee is one half of the members of the Committee.

(3) If a member of a Review Committee is required under section 52(5) of this Ordinance not to be present during any deliberation of, or not to take part in any decision of, the Committee, he is not to be counted for the purpose of forming a quorum at such part of a meeting of the Committee that is held for such deliberation or decision.

(4) A Review Committee may transact any of its business by circulation of papers.

(5) A Review Committee may, subject to this Ordinance and any direction of the Council, determine -

(a) the procedure for convening meetings of the Committee and for the conduct of business at those meetings; and

(b) the procedure in the transaction of business of the Committee by circulation of papers.

~~(2) The procedure for convening meetings of the Review Committee and for the conduct of business at those meetings is, subject to any direction of the Council, to be determined by the Committee.⁵³~~

2. Resignation of members

(1) A member of a Review Committee may resign from office by giving notice in writing to the Council. A notice of resignation takes effect on the date specified in the notice or, if no date is specified, on the date of receipt by the Council of the notice.

⁵³ See footnotes 51 and 52.

(2) If a member of a Review Committee ceases to be a member of the Review Panel, he ceases to be such member of the Committee.

3. Council may fill vacancy

(1) If a vacancy occurs among the members of a Review Committee by reason of death, resignation or otherwise, the Council may appoint -

- (a) subject to paragraph (b), another member of the Review Panel; or
- (b) in the case of a vacancy in the office of the Chairman of the Committee, another Panel Convenor appointed under section 39(2) of this Ordinance,

to fill the vacancy.

(2) If the Council appoints a member of the Review Panel, or a Panel Convenor, under subsection (1) to fill a vacancy, the Council shall notify the listed entity concerned in writing of the name of the member or Panel Convenor.⁵⁴

4. Temporary Chairman or member

(1) If, because of absence from Hong Kong or any other reason, the Chairman of a Review Committee is unable to perform the functions of his office as Chairman, the Council may appoint, from amongst the Panel Convenors appointed under section 39(2) of this Ordinance, a temporary Chairman to act in his place during his absence

⁵⁴ Please refer to paragraph 7 of the Administration's paper entitled "Follow-up actions arising from the Bills Committee's meeting held on 20 December 2005" (LC Paper No. CB(1)665/05-06(07)). To enhance the transparency of the operation of a FRRC, we propose that the FRC shall notify the listed entity concerned of the change of the membership of the FRRC.

or incapacity.

(2) If, because of absence from Hong Kong or any other reason, a member of a Review Committee, other than the Chairman, is unable to perform the functions of his office as member, the Council may appoint another member of the Review Panel to be a temporary member in his place during his absence or incapacity.

(3) If a person is appointed as the temporary Chairman, or a temporary member, of a Review Committee, the person may perform all the functions of the Chairman, or member, in whose place the person is appointed.

Explanatory Memorandum

The principal object of this Bill is to provide for -

- (a) the establishment of a Financial Reporting Council ("Council") -
 - (i) to investigate -
 - (A) irregularities committed by auditors of listed entities (i.e. listed corporations and listed collective investment schemes) in respect of the audit of accounts; and
 - (B) irregularities committed by reporting accountants of listed entities in respect of the preparation of financial reports required for prospectuses or other listing documents; and
 - (ii) to enquire into instances of non-compliances with legal, accounting or regulatory requirements in the

financial reports of listed entities;

- (b) the establishment of an Audit Investigation Board ("Investigation Board") to conduct such investigation; and
- (c) the appointment by the Council of a Financial Reporting Review Committee ("Review Committee") to make such enquiries.

2. Part 1 contains preliminary provisions. Clause 2 defines the terms as used in the Bill. In particular, the terms "relevant financial report" and "relevant requirement" are defined by reference to Schedule 1. Clause 3 defines "listed entity" as used in the Bill. Clauses 4 and 5 set out when there is a relevant irregularity, or relevant non-compliance, in relation to a listed entity.

3. Part 2 deals with the establishment of the Council. In particular -

- (a) clauses 6 and 7 establish the Council and set out its composition and membership;
- (b) clause 8 provides for the appointment of a Chief Executive Officer of the Council;
- (c) clauses 9 and 10 set out the functions and powers of the Council;
- (d) clause 11 deals with the delegation of functions and powers of the Council;
- (e) clause 12 sets out the circumstances in which the Council may refer cases or complaints, or provide assistance, to certain persons;
- (f) clause 13 empowers the Council to issue guidelines;

- (g) clause 14 empowers the Chief Executive to give the Council written directions with respect to the performance of the Council's functions;
- (h) clause 15 requires the Council to furnish information to the Secretary for Financial Services and the Treasury on the performance of its functions; and
- (i) clauses 17 to 20 deal with the financial provisions in relation to the Council.

4. Part 3 deals with relevant irregularities. Division 1 (clauses 21 to 24) contains preliminary provisions. Division 2 (clauses 25 to 28) sets out the powers that are exercisable for the purpose of an investigation concerning a relevant irregularity. Division 3 (clauses 29 to 34) contains provisions that are supplementary to those powers. Division 4 (clauses 35 to 37) contains provisions on cases under investigation. In particular -

- (a) clause 22 establishes the Investigation Board and sets out its composition and membership;
- (b) clause 23 specifies when the Council may -
 - (i) exercise the powers under clauses 25 to 28 for the purpose of investigations concerning relevant irregularities; or
 - (ii) direct the Investigation Board to conduct such investigations with those powers;
- (c) clause 24 requires that in the event of relevant irregularities in relation to certain listed entities, the Council shall notify the supervisory bodies concerned of

- the powers under Divisions 2 and 3 of Part 3 being exercisable for the purpose of the irregularities;
- (d) clauses 25 and 26 set out the powers to require production of records and documents from -
 - (i) auditors, and reporting accountants, of the listed entities concerned;
 - (ii) the listed corporations concerned;
 - (iii) subsidiaries of the listed corporations concerned and of the listed collective investment schemes concerned;
 - (iv) managers, and trustees, of the listed collective investment schemes concerned;
 - (v) authorized institutions; and
 - (vi) other persons;
 - (e) clause 27 sets out the supplementary powers to require additional information;
 - (f) clause 28 sets out the powers to require production of records and documents and to require attendances and answers;
 - (g) clause 31 sets out the offences for failures to comply with requirements imposed under Division 2;
 - (h) clause 32 empowers the Council or Investigation Board to apply to the Court of First Instance for inquiries into such failures;
 - (i) clause 34 provides for magistrate's warrants to be issued to search for, seize and remove certain records and documents;

- (j) clause 35 requires the Investigation Board to submit to the Council written reports on the findings of investigations;
- (k) clause 36 sets out what the Council may do in relation to cases under investigation; and
- (l) clause 37 empowers the courts and magistrates to order persons convicted on prosecutions instituted as a result of investigations under Part 3 to pay the costs and expenses of the investigations.

5. Part 4 deals with relevant non-compliances. Division 1 (clauses 38 to 42) contains preliminary provisions. Division 2 (clause 43 to 46) sets out the powers that are exercisable for the purpose of an enquiry concerning a relevant non-compliance. Division 3 (clauses 47 and 48) contains provisions on cases under enquiry. Division 4 (clauses 49 and 50) sets out the Council's power to secure removal of relevant non-compliances. In particular -

- (a) clause 39 provides for the appointment of the Financial Reporting Review Panel ("Review Panel") and sets out its composition and membership;
- (b) clause 40 specifies when the Council may -
 - (i) exercise the powers under clause 43 for the purpose of enquires concerning relevant non-compliances; or
 - (ii) appoint Review Committees to make such enquiries with those powers;
- (c) clause 41 sets out the composition and membership of Review Committees;
- (d) clause 42 requires that in the event of

relevant non-compliances in relation to certain listed entities, the Council shall notify the supervisory bodies concerned of the powers under Division 2 of Part 4 being exercisable for the purpose of the non-compliances;

- (e) clause 43 sets out the powers to require production of records and documents, and to require provision of information or explanation, from -
 - (i) the listed corporations concerned, their subsidiaries, and officers, employees and auditors of such corporations and subsidiaries; and
 - (ii) managers, trustees and auditors of the listed collective investment schemes concerned, subsidiaries of such schemes, auditors of such schemes and subsidiaries, and officers and employees of such managers, trustees and subsidiaries;
- (f) clause 45 empowers the Council or Review Committees to apply to the Court of First Instance for inquiries into failures to comply with requirements imposed under clause 43;
- (g) clause 47 requires Review Committees to submit to the Council written reports on the findings of enquiries;
- (h) clause 48 sets out what the Council may do in relation to cases under enquiry;
- (i) clause 49 empowers the Council to request a voluntary rectification of financial

reports; and

- (j) clause 50 empowers the Council to seek a court order to compel such a rectification under certain circumstances.

6. Part 5 deals with miscellaneous matters. In particular -

- (a) clauses 51 to 55 contain provisions on confidentiality, conflict of interest, immunity and legal professional privilege; and
- (b) clauses 56 to 59 contain other miscellaneous provisions.

7. Part 6 contains the consequential and related amendments to several Ordinances.

8. Schedule 2 contains the provisions relating to the Council. Those provisions deal with the tenure of certain members, procedures of proceedings and other related matters.

9. Schedule 3 contains the provisions relating to the Chief Executive Officer of the Council. Those provisions deal with the tenure of the Chief Executive Officer and other related matters.

10. Schedule 4 contains the provisions relating to the Investigation Board. Those provisions deal with the tenure of members, procedures of proceedings and other related matters.

11. Schedule 5 contains the provisions relating to the Review Panel. Those provisions deal with the tenure of members and other related matters.

12. Schedule 6 contains the provisions relating to Review Committees. Those provisions deal with the procedures of proceedings and other related matters.