



香港證券經紀業協會有限公司
HONG KONG STOCKBROKERS ASSOCIATION LIMITED

香港中環永吉街 6-12 號誠利商業大廈 6 樓 C 座 電話: 2541 8832 2541 0322 Fax: 2541 1368
Flat C, 6th Floor, Shing Lee Comm. Bldg., 6-12 Wing Kut Street, Central, H.K. E-mail: info@hksa.com.hk

Submission To

LegCo Bills Committee

On

Financial Reporting Council

Hong Kong Stockbrokers Association
September 2005



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Introduction

1. The Hong Kong Stockbrokers Association had submitted a response on 15 April 2005 to the Legislative Proposals to Establish Financial Reporting Council. Our submission today is supplemental to our previous response and is made from the standpoint of participants in the securities market.
2. I should also advise that I am a member of the HKICPA, and a member of the Disciplinary Panel B (i.e. consisting of CPAs). However, the following submission is in my capacity as chairman of the HK Stockbrokers Association.

Why the FRC?

3. In order for HKG to maintain our status as the capital raising centre for the PRC, it is necessary to set higher standards and thresholds for our listed entities. Quality financial reporting promotes good corporate governance, transparency, and accountability which are all prerequisites for investor confidence and increased market liquidity.
4. At present there appears to be overlapping jurisdiction in the oversight of auditing of publicly listed companies among the Registrar of Companies, the HKICPA, the HKEx, and the SFC. The proposals carve out this overlapping area to be overseen by the FRC which will have statutory powers to carry out investigations into irregularities and non-compliance with accounting standards. We believe that this arrangement will go a long way towards enhancing investor confidence in the financial reports of listed companies.
5. The proposals appear to be a sensible mix of statutory powers of investigation, coupled with self-regulation by the HKICPA where disciplinary action is required. We fully support this concept, and concur that the FRC should avoid being police, prosecutor, judge, jury and executioner.



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Scope of Powers of the AIB and the FRRC

6. Currently, the proposals appear to be applicable only to annual accounts and interim financial statements. We would suggest that "published accounts and financial statements" should be extended to cover all financial reports prepared by auditors of listed companies published and used by the investing public such as those included in disclosure on major transactions, etc.
7. We understand the need to give the AIB powers to carry out investigations. However, we are concerned that the powers as proposed are very wide-ranging and extend to "any other person" who has had dealings with or in possession of documents "relating to the affairs of the corporation". This is particularly disturbing in that failure to comply may result in severe legal liability.
8. While we agree that there should be a mechanism for recovery of expenses incurred by the FRRC, we believe that directors should be entitled to rely on the advice of professional advisors in the preparation of financial statements. Therefore, directors should not be made to bear the costs of the enquiry and any rectifications unless it is proved beyond reasonable doubt that they were party to deliberate falsification.
9. We also wish to point out that as the FRRC is to enquire into compliance with "relevant accounting requirements", there is a danger that it would result in the FRRC interpreting accounting standards and becoming a "rule-making" body by default.

Conclusions

10. In summary, while we do have some concerns that the powers and scope may be too wide ranging, we understand the need for, and support the proposals to set up the FRC as a means to enhance investors confidence in the market.