

**Bills Committee on
Financial Reporting Council Bill**

Fourth meeting on 31 October 2005

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

Composition of the Financial Reporting Council (FRC)

1. Noting that the Administration maintains its original proposal under which all members of the FRC will be appointed by the Chief Executive (CE) and the members' qualification requirements are not set out in the Bill, some members of the Bills Committee re-iterate their concern that the FRC may not be able to maintain independence and there will be a lack of transparency in the appointment process. In this connection, the Administration is requested to consider and respond to the following views, suggestions and request raised by members:
 - (a) A transparent and independent mechanism should be put in place for the appointment of members of the FRC. The majority of the members should be nominated by the relevant bodies and stakeholders.
 - (b) Given the Administration's advice that its intention is to establish a FRC with a wide and balanced composition and that the CE will consider appointment of candidates from different backgrounds and disciplines (such as those with experience in accounting, auditing, finance, banking, law, business administration, etc.), such intention and principles should be set out clearly in the Bill.
 - (c) In connection with items (a) and (b) above, consideration should be given to the following points:
 - (i) To set out clearly in the Bill the backgrounds and disciplines from which the CE shall consider in the appointment of the four to six other members of the FRC (clause 7(1)(c)(iv)), and to make reference to the Administration's proposed Committee Stage amendments (CSAs) to clause 9(3) of the Construction Industry Council (No. 2) Bill; and
 - (ii) To set out clearly in the Bill that the appointment of the four to six other members of FRC shall be made on the basis of the nomination made by the relevant bodies and stakeholders (such as associations of listed companies and legal professional bodies). Reference should be made to the Administration's proposed CSAs to add the new subclauses (5)

and (6) to clause 9 and the new Schedule 1A to the Construction Industry Council (No. 2) Bill.

- (d) The Administration is requested to make reference to overseas experience, including the appointment mechanism in relevant overseas bodies, such as the United Kingdom (UK) FRC, and the power and role of the designated commissioner in the UK who is responsible for appointing members to public boards and bodies.

Meetings and proceedings of the FRC

- 2. To enhance the transparency of FRC, some members consider it necessary for meetings of the FRC to be held in public as far as possible, in particular those meetings which involve policy discussions and decisions, such as the meetings relating to the performance of the function set out in clause 9(e), i.e. to approve and oversee the policies and activities of the Investigation Board, a Review Committee and a committee established by the FRC. In this connection, the Administration is requested to consider and respond to the following views and suggestions raised by members:
 - (a) To set out clearly in the Bill that meetings of the FRC will be held in public unless in some specified circumstances (such as those involving discussions on the details of investigation of an individual case), and to make reference to the Administration's proposed CSAs to add the new clause 7A to Schedule 2 to the Construction Industry Council (No. 2) Bill;
 - (b) To provide in the Bill the requirement for the FRC to make public the major discussions and decisions made at its closed meetings, including FRC's decisions on not initiating an investigation or enquiry into a suspected auditing irregularity or financial non-compliance and the relevant reasons; and
 - (c) In connection with item (b) above, the Administration is requested to provide information on the possible means through which the public will be informed of the major discussions and decisions made at closed meetings of the FRC.

Written directions of the CE

- 3. To address a member's concern that clause 14, which empowers the CE to give the FRC written directions with respect to the performance of any of its functions, may undermine the independence of the FRC, the Administration is requested to consider and respond to the following suggestion and request raised by the member:

- (a) To provide in clause 14 that the FRC is required to comply with the CE's written directions if the directions are not inconsistent with the FRC's functions, and to make reference to section 6E(3) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
- (b) To provide in clause 14 that the CE's written directions to the FRC should be made public and specify the circumstances under which non-disclosure may be allowed;
- (c) When resuming the Second Reading debate on the Bill in due course, the Secretary for Financial Services and the Treasury is requested to incorporate in his speech the gist of paragraphs 13 and 14 of the paper on "Appointment to and Checks and Balances on the Proposed Financial Reporting Council" (LC Paper No. CB(1)166/05-06(02)), including the following points:
 - (i) Clause 14 is a tool of last resort for the Administration, through the CE, to implement necessary remedial measures in the most pressing and extreme circumstances;
 - (ii) CE will take into account all prevailing circumstances, including whether there is any major malfunction on the part of the FRC, whether the reputation of Hong Kong as an international financial centre is at stake, the urgency of remedial actions required of the FRC, and whether other checks and balances are performed effectively at the time; and
 - (iii) No direction has ever been given by the CE in the past in accordance with relevant provisions in other ordinances, as this reserve power is not intended to be used lightly.
- (d) To clarify whether the CE's written directions to the FRC are subject to judicial review.

Proposed Process Review Panel (PRP)

- 4. Some members consider that as the proposed PRP for the FRC will only conduct reviews of the FRC's operational procedures, it could not address their call for a mechanism for reviewing FRC's decisions on not initiating investigations or enquiries into suspected auditing irregularities or financial non-compliances. In this connection, the Administration is requested to consider and respond to the following suggestion and request raised by the members:
 - (a) To expand the proposed ambit of the PRP to cover the review of FRC's decisions on not initiating investigations or enquiries into suspected auditing irregularities or financial non-compliances;

- (b) To provide the proposed terms of reference and composition of the PRP; and
- (c) To prepare corresponding amendments to other relevant clauses, such as clause 51.

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