

**Bills Committee on
Financial Reporting Council Bill**

Sixth meeting on 6 December 2005

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

1. Interface between the investigation and disciplinary proceedings

In connection with item 3 of the list of follow-up actions for the meeting on 17 November 2005 (LC Paper No. CB(1)420/05-06(01)), the Administration is requested to provide a written response to that item and to some members' view that it should be set out clearly, before the Financial Reporting Council (FRC) starts its operation, how to deal with fresh evidence or new complaints on a case, which are received after the case has been referred by the FRC to the Hong Kong Institute of Certified Public Accountants.

2. Composition and resource requirements of the Audit Investigation Board (AIB)

Given that there will be only one AIB and that it will consist of a chairman (i.e. the Chief Executive Officer of the FRC) and at least one other member appointed by the FRC, members of the Bills Committee are concerned whether the AIB will have sufficient members and relevant expertise to handle cases of different nature and complexity at the same time. The Administration is requested to provide a paper with the following information:

- (a) The anticipated workload of the AIB;
- (b) In view of the different nature and complexity of the cases, whether the chairman of the AIB will be able to oversee the investigation work of all cases, and whether sufficient resources will be available for the AIB to engage quality employees and consultants to undertake the investigation;
- (c) The proposed number of members for the AIB upon its establishment;
- (d) Whether the "at least one other member appointed by the FRC" referred to in clause 22(2)(b) are members of the FRC;

- (e) The selection criteria of the FRC for appointment of members to the AIB; and
- (f) Whether new members may be appointed to the AIB after its establishment; if yes -
 - (i) the circumstances under which new members may be appointed; and
 - (ii) whether the new members will be allowed to handle cases where the investigation work has already commenced or almost completed; if yes, how to address the concern that it is unfair to the parties concerned if the new members, who have no or little involvement in the investigation of the cases, are allowed to make decisions and/or recommendations on the cases.

3. Powers of the AIB

The Administration is requested to provide a paper with the following information:

- (a) The criteria for the FRC to determine whether it will undertake investigation into an irregularity or direct the AIB to undertake the investigation (clause 23(1), (2) and (3)). Please illustrate with examples;
- (b) The purpose of clause 23(4), which provides that the FRC may direct the AIB to cease investigation of a case, and the criteria for the FRC to exercise such power. Please illustrate with examples; and
- (c) In connection with item (b) above, members note the example quoted by the Administration that the FRC may direct the AIB to cease investigation of a case if the case is of a criminal nature. The FRC may then refer the case to the law enforcement agencies (e.g. the Police, or the Independent Commission Against Corruption) for further investigation or law enforcement action. Given that cases of a criminal nature may also involve professional misconduct, the Administration is requested to consider whether it is appropriate for the AIB to cease investigation and leave the cases entirely to the law enforcement agencies.

4. Checks and balances of the AIB

- (a) Members express concern that the common law privilege against self-incriminating is abrogated by clause 31(9) and replaced with a statutory prohibition against the admissibility of self-incriminating evidence in criminal proceedings (clause 30(2)). The

Administration is requested to review clauses 31(9) and 30(2) and provide a written response to the following points:

- (i) Article 39 of the Basic Law provides that the provisions of the International Covenant on Civil and Political Rights (ICCPR) shall be implemented through the laws of the Hong Kong Special Administrative Region. Article 14(3)(g) of the ICCPR (replicated in Article 11(2)(g) of the Hong Kong Bill of Rights) provides that a person is not to be compelled to testify against himself or to confess guilt in the determination of any criminal charge against him. The Administration is requested to elaborate on its view that clause 30(2) is consistent with Article 14(3)(g) of the ICCPR; and
 - (ii) According to jurisprudence of the European Court of Human Rights, disciplinary proceedings are regarded as quasi-criminal proceedings or criminal proceedings. The Administration is requested to make reference to the relevant case laws and court judgement, and consider whether the statutory prohibition against the admissibility of self-incriminating evidence in criminal proceedings, as provided in clause 30(2), should be extended to cover disciplinary proceedings.
- (b) The Administration agrees to consider proposing a Committee Stage amendment (CSA) to the effect that the AIB shall, before submitting a written report to the FRC on the findings of an investigation, give any person, who may be the subject of any criticism in the AIB's report, a reasonable opportunity of being heard (Paragraph 20 of LC Paper No. CB(1)286/05-06(03)). In this connection, the Administration is requested to consider a member's view that the proposed CSA should have the effect of providing the person with the right to have legal representation.