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Panel on Financial Affairs

Meeting on 23 May 2016

**Updated background brief on the work of the
Financial Reporting Council**

Purpose

This paper provides background information on the establishment of the Financial Reporting Council ("FRC"), its key functions, organization structure, and funding arrangements. The paper also provides a summary of the major views and concerns expressed by members of the Panel on Financial Affairs ("FA Panel") on the work of FRC in recent years.

Background

Establishment of the Financial Reporting Council

2. In the wake of the Asian financial crisis in the late 1990s and various corporate scandals in the United States¹ in the early 2000s, there was considerable public demand for enhanced regulation of the accountancy profession in Hong Kong. In 2003, upon request of the Government, the Hong Kong Institute of Certified Public Accountants ("HKICPA") put forward proposals to enhance the regulatory regime for the profession, which included setting up an independent investigatory council to take charge of investigation of complaints concerning public interest lodged against auditors.

¹ Scandals involving large corporations such as Enron and Worldcom revealed in the early 2000s have aroused global concern for regulation of the accountancy profession. In order to rebuild public confidence in the information disclosed in company financial reports, various international financial centres, such as the United States and the United Kingdom, had actively introduced reforms to strengthen regulation of the profession.

The Government subsequently conducted two rounds of public consultation in September 2003 and February 2005 on the proposals for establishing the independent investigatory council, i.e. FRC.

3. On 29 June 2005, the Administration introduced the Financial Reporting Council Bill into the Legislative Council ("LegCo"). The Bill was passed by LegCo on 13 July 2006 and enacted as the Financial Reporting Council Ordinance (Cap. 588) ("FRCO"). FRC became fully operational in July 2007.

Functions of the Financial Reporting Council

4. The key functions of FRC are to (a) conduct independent investigations into possible auditing and reporting irregularities related to listed entities; (b) enquire into possible non-compliances with financial reporting requirements on the part of listed entities; and (c) require listed entities to remove any non-compliance identified.

5. FRC may initiate investigations or enquiries upon receipt of complaints or on its own initiative. The Audit Investigation Board ("AIB") and the Financial Reporting Review Panel ("FRRP") were set up under FRCO to assist FRC in discharging its key functions.² If FRC decides to initiate an investigation into auditing or reporting irregularities, it may direct AIB to conduct the investigation. If FRC decides to conduct an enquiry into a non-compliance with financial reporting requirements of a listed entity, it may appoint a Financial Reporting Review Committee consisting of a Panel Convenor as the Chairman and at least four other members of FRRP to conduct the enquiry.

6. To avoid overlapping with the work of other regulatory bodies, FRC has signed Memoranda of Understanding ("MoUs") with HKICPA and other regulators including the Securities and Futures Commission ("SFC"), the Stock Exchange of Hong Kong Limited ("SEHK"), the Hong Kong Monetary Authority and the Insurance Authority on the protocols for referring cases/complaints to FRC for investigation and enquiry. Auditing or reporting irregularities identified by FRC will be referred to HKICPA, non-compliances relevant to the Listing Rules will be referred to SFC or SEHK, and cases involving criminal offences will be referred to the Police or

² Section 22(2) of FRCO provides that AIB is to consist of the Chief Executive Officer of FRC (as an ex-officio member and chairman of AIB) and other members appointed by FRC. All current members of AIB are staff of FRC. Section 39 of FRCO provides that the Chief Executive shall, in consultation with FRC, appoint an FRRP of at least 20 suitable persons (including at least three Panel Convenors).

the Independent Commission Against Corruption ("ICAC") for necessary follow-up actions. FRC is not empowered to discipline or prosecute.

Organization structure of and funding arrangements for the Financial Reporting Council

7. According to section 7 of FRCO, the Council of FRC is to consist of nine to 11 members including two ex-officio members (namely the Registrar of Companies or his representative and the Chief Executive Officer of FRC). To uphold FRC's status as an independent investigator for the accountancy profession, section 7(2) and (4) of FRCO requires that the Chairman and a majority of FRC members must be lay persons, i.e. non-accountants. The Council of FRC has established five committees, namely Corporate Communications Committee, Finance Committee, Independent Audit Oversight Reform Committee, Operations Oversight Committee and Remuneration Committee, to advise on relevant areas of its work. An independent Process Review Panel was established in November 2008 for reviewing the handling of cases by FRC to ensure its actions and decisions adhere to internal procedures and guidelines.³ An Honorary Advisory Panel was formed in December 2012 to advise FRC on its operations and any professional, technical and strategic issues it faces. An organization chart of FRC is given in the **Appendix I**.

8. FRC is jointly funded by the Companies Registry Trading Fund, SFC, Hong Kong Exchanges and Clearing Limited ("HKEX") and HKICPA.⁴ According to the MoU signed between FRC and the four funding parties in November 2014, which covers a period of five years (from 2015 to 2019), the four funding parties will contribute on an "equal share" basis with a 5% annual increment.

9. In accordance with FRCO, FRC is required to submit its estimates of income and expenditure for approval by the Secretary for Financial Services and the Treasury annually. The accounts of FRC are to be audited by the Director of Audit. The annual report, annual accounts and auditor's report of FRC are to be laid before LegCo after the end of each financial year.

³ The Process Review Panel comprises six members appointed by the Chief Executive including the FRC Chairman as an ex-officio member. Since 2010, the Process Review Panel published its Annual Report in February, March or April each year. The 2015 Annual Report of the Process Review Panel was published in April 2016.

⁴ The combined contribution from the four funding parties amounted to \$19.4 million in 2014, and the actual expenditure of FRC in 2014 was \$21.6 million. FRC maintains a Reserve Fund of \$20 million.

Independent auditor oversight reform

10. According to the Government, it has become international standards that auditor regulatory regimes should be independent of the audit profession and be subject to independent oversight by bodies acting in the public interest. Against this international trend, Hong Kong's present regulatory regime is considered as largely a self-regulatory regime. This has rendered Hong Kong ineligible for representation at the International Forum of Independent Audit Regulators and failing to meet the regulatory requirements of the European Commission, thus rendering FRC unable to enter into reciprocal arrangements with overseas regulators and develop workable arrangements for cross-border regulatory cooperation.

11. To address the above deficiency, the Government proposes to enhance the independence of the existing regulatory regime for auditors of listed entities. According to the reform proposals, FRC will perform the role of the independent auditor oversight body by expanding its regulatory remit which will include, among other things, conducting inspection and investigation and exercising disciplinary powers with regard to auditors of listed entities; and overseeing HKICPA's functions of registration, and setting continuing professional development requirements and standards on professional ethics, auditing and assurance in respect of such auditors.

12. The Government conducted a public consultation on the reform proposals from June to September 2014, and released the consultation outcome in June 2015. According to the Government, a majority of respondents are supportive of the objective and direction of the reform. The Government's target is to introduce an amendment bill into LegCo in the 2016-2017 legislative session for reforming the regulatory regime.

Deliberations of the Panel on Financial Affairs

13. Since the establishment of FRC in 2006, the Administration and FRC have conducted annual briefings for FA Panel on FRC's work in April, May or July of each year. The Administration also briefed FA Panel on the independent auditor oversight reform proposals and the conclusions of the relevant public consultation at the meetings on 7 July 2014 and 6 July 2015. The major concerns and views expressed by Panel members at these meetings are summarized in the ensuing paragraphs.

Investigation and enquiry work of the Financial Reporting Council

Time required to complete investigations and enquiries

14. At the meetings on 5 May 2014 and 4 May 2015, members enquired about the average processing time for FRC to conduct an investigation, and the reasons for the surge in the number of pursuable complaints received by FRC in 2014. There was concern whether the complaints received by FRC were handled in a timely manner.

15. FRC responded that the time required to complete an investigation or enquiry was influenced by a host of factors, including the complexity of the case and the irregularities or non-compliances involved. An investigation or enquiry would generally take around a year or more to complete. As regards the increase in the number of complaints received by FRC, this could be attributed to the growing public awareness of FRC's functions and work, better understanding between FRC and other regulatory bodies on their respective regulatory purviews and the cases referral mechanism, as well as development of new accounting and auditing standards generating more complaints.

Reviews of modified auditors' reports

16. Panel members noted that FRC proactively screened modified auditors' reports on financial statements of listed entities to identify potential non-compliances with accounting requirements. At the meeting on 6 April 2009, some members enquired whether FRC would consider conducting random review of auditors' reports which did not contain modifications. FRC explained that it did not possess the necessary resources to implement this task. On members' suggestion that FRC should conduct random checking of accounting firms to facilitate timely detection of auditing irregularities, FRC advised that it was not empowered to conduct random checking on accounting firms, which was the responsibility of HKICPA. However, HKICPA would refer cases of auditing irregularities and/or non-compliances of accounting requirements to FRC for investigations or enquiries.

Risk-based financial statements review programme

17. Panel members noted that, in addition to reviewing modified auditors' reports, FRC had implemented a risk-based financial statements review programme ("risk-based review programme") since 2011 to conduct comprehensive reviews of entire sets of financial statements of listed entities with selection criteria based on prevailing risk factors. The themes for each

review cycle were selected after consultation with other regulatory bodies to reflect market participants' concerns over listed companies in the period.

18. At the meeting on 4 April 2011, FRC took note of members' views that the programme should cover financial statements of newly listed companies of which the reported profits differed significantly from their pre-listing profit forecasts. It undertook to consider a member's suggestion of making public the criteria for selecting financial statements for review. FRC also advised that it would review cases where the changes in valuations of the assets of a listed company were not in line with the changes in valuations of similar assets of other listed companies. Such reviews would include an assessment of the assumptions underlying the valuations.

19. At the meeting on 4 May 2015, Panel members noted that FRC had engaged external reviewers on a pro bono basis to assist in the risk-based review programme with a view to enhancing work efficiency. A member expressed concern about potential conflicts of interest if the external reviewers were practising accountants.

20. FRC responded that to ensure sufficient checks and balances, two external reviewers were involved in the review of a company's financial statements. All external reviewers were subject to stringent requirements on declaration of interests and they were not involved in cases in which they had a conflict of interest. Their work was kept confidential according to the secrecy provisions in FRCO. Moreover, all financial statements reviewed by the external reviewers were re-examined by FRC staff to ensure their comments to the financial statements were consistent, correct and in accordance with FRC's policy. FRC would allocate sufficient manpower resources to ensure timely completion of the reviews.

Procedural fairness of investigations

21. At the meetings on 3 May 2013 and 5 May 2014, some Panel members expressed concern about the procedural fairness of FRC's investigations. They enquired how FRC would decide whether there were irregularities or non-compliances in the financial statements or modified auditors' reports given that certain accounting issues, such as computation of asset depreciation, were a matter of judgment.

22. FRC responded that in respect of each pursuable complaint, the staff of FRC would review information provided by the complainant together with other available information, such as information collected from the listed entity and auditor concerned. FRC staff would then prepare a complaint assessment report and make recommendations to the Council of FRC on

whether there was established prima facie evidence to initiate an investigation; and if so, the Council of FRC would direct its AIB to conduct an investigation. To ensure sufficient checks and balances in the process, the complaint assessment report would be reviewed by the Operations Oversight Committee before the Council of FRC made a decision on the case. Moreover, relevant procedures were in place so that an auditor/reporting accountant under AIB's investigation would be given a chance to make representation to AIB. For investigation reports referred to HKICPA, the auditors/reporting accountants concerned would also be given an opportunity to be heard before HKICPA. To ensure procedural fairness, draft reports of investigations and enquiries would be sent to the parties concerned for comments.

Cross-border cooperation

23. At the meetings on 4 April 2011 and 4 May 2015, Panel members enquired whether FRC would have access to the original accounting and audit documents kept by the Mainland auditors engaged by Hong Kong-listed Mainland companies during investigations into auditing irregularities of the companies; and whether there was any mechanism for handling Mainland companies' refusal for provision of information to their Hong Kong auditors on the grounds that the information might involve "state secrets". Some members considered that FRC should review the arrangement of solely relying on the Ministry of Finance ("MoF") to investigate auditing irregularities relating to Hong Kong-listed Mainland companies.

24. FRC responded that it was the international practice for the relevant regulator of the jurisdiction in which the company was incorporated to be responsible for investigating complaints against the company concerned and making a report to the regulator of the place where the company was listed. FRC had signed an MoU with MoF to establish an investigation cooperation framework in line with the international practice. Under the MoU, MoF would act as the agent of FRC in the Mainland for investigations. FRC would work closely with MoF regarding the detailed arrangements for such investigations, request investigation reports from MoF, and publish the full reports or extracts as appropriate.

25. FRC advised that there were difficulties for Hong Kong regulators including FRC to gain access to commercial documents in the Mainland under the existing Mainland regulations. FRC was discussing with MoF and the China Securities Regulatory Commission, and contemplated to sign MoUs with them to resolve the issue. As for documents involving state secrets, which mainly concerned the defence industry, the Hong Kong regulators were exploring possible means to address the issue by making

reference to the practices in overseas jurisdictions, e.g. requiring an auditor to sign a statement declaring its conformity to the relevant official secrets law before it was exposed to state secrets, or asking the relevant authorities to confirm the general tenor of a document without disclosing the actual document to the auditor.

26. At the meeting on 4 April 2011, some members suggested that FRC should make reference to the investigatory arrangements of ICAC for FRC's investigation work in the Mainland. Under the arrangements, ICAC might send officers to the Mainland to interview witnesses and check documents in the presence of the relevant Mainland authorities. FRC responded that it would study ICAC's investigatory arrangements in the Mainland for reference. It pointed out that the MoU with MoF was signed on a reciprocal basis. If the suggestion that FRC be allowed to investigate complaints in the Mainland was to be pursued, the implications of allowing Mainland authorities to investigate complaints against Hong Kong companies listed in Mainland stock markets had to be considered.

27. At the meeting on 2 April 2012, Panel members enquired about the steps FRC had taken to enhance the checking of the financial statements of Mainland companies listed in Hong Kong. FRC remarked that it had maintained a list of Hong Kong-listed Mainland companies for continuous monitoring of suspected irregularities. FRC would review the financial reports of these companies to check against possible auditing or reporting irregularities. FRC had also discussed with other relevant regulatory bodies the issues concerned and the appropriate actions required.

Transparency of work

28. At the meetings on 5 May 2014 and 4 May 2015, Panel members enquired about the disclosure of complaints-related information by FRC. They urged FRC to step up transparency of its investigation and enquiry process by disclosing relevant information, such as whether a complaint was admitted and reasons for rejecting a complaint, and notifying the complainants about the results of investigations or enquiries.

29. FRC advised that if it decided not to pursue a complaint, it would communicate with the complainant concerned and explain the reasons. If a complaint was pursuable and investigations were to be conducted, FRC would not alert the parties concerned until conclusion of the investigation process. After completion of each investigation, where appropriate, FRC would refer the investigation report to HKICPA, which would then determine if any disciplinary action was warranted. At the same time, FRC would issue a press release on a no-name basis summarizing the major issues

covered in the investigation and its major findings. After HKICPA had completed its disciplinary proceedings, an executive summary of the report containing the names of the parties concerned would be uploaded on FRC's website.

30. At the meeting on 3 May 2013, some members suggested that FRC should publish on its website the modified auditors' reports issued by listed entities, and a summary of FRC's recommendations to the listed entities and auditors concerned under the risk-based review programme. Moreover, the financial regulators including FRC should explore the feasibility of establishing a one-stop platform for disseminating information to investors. FRC took note of members' suggestions and advised that information of listed entities (including their modified auditors' reports, if any) was currently available on the website of HKEX.

Corporate governance

31. At the meetings on 8 April 2010 and 5 May 2014, Panel members expressed concern about FRC's measures to prevent conflicts of interest of its members and staff, many of whom were accountants or auditors and had worked in accounting firms. FRC advised that FRCO stipulated that the number of FRC members who were lay persons was to exceed the number of those who were not. FRC members were subject to stringent requirements on declaration of interests and would not be involved in discussion of any case in which they had an interest. A mechanism was also in place requiring FRC staff to declare interests. Staff who had previously worked in an accounting firm under FRC's investigation or enquiry would not be allowed to handle the relevant case.

Independent auditor oversight reform

Stakeholder engagement

32. At the meetings on 3 May 2013, 5 May 2014, 4 May 2015 and 6 July 2015, Panel members called on the Administration to step up efforts in engaging stakeholders on the proposed auditor regulatory reform. A member further suggested that the Administration should set up a representative consultative committee so that the views of all stakeholders and not just those from HKICPA would be fully considered. Noting that the public consultation for the reform proposals had ended in September 2014, members enquired whether the Administration would consider launching another round of public consultation with a view to reaching a consensus with the audit profession on certain contentious proposals before introducing the relevant amendment bill into LegCo.

33. The Administration responded that after completion of the public consultation in September 2014, it had identified a few areas for further engagement with relevant stakeholders with a view to enhancing mutual understanding and balancing the interests of all parties concerned. There would still be room for discussing certain details with stakeholders when preparing the amendment bill within the framework of the consultation conclusions. The Administration would continue to make use of the pre-existing tripartite forum to engage HKICPA and FRC, and maintain dialogue with other stakeholder groups, including regulators, small and medium-sized audit firms, listed companies, and other relevant professional bodies.

Regulatory framework and new powers of the Financial Reporting Council

34. At the meetings on 7 July 2014 and 6 July 2015, some Panel members expressed concerns that the proposed expansion of FRC's regulatory remit might lead to over-concentration of powers in FRC, and entrusting HKICPA with the role of the Registrar of listed entity auditors might result in a cumbersome regulatory structure. To ensure fairness and due process in the exercise of FRC's powers, members urged that FRC's investigation and disciplinary mechanisms should be separated, and suggested that the Administration should consider setting up a separate disciplinary committee under FRC for hearing and deciding on disciplinary cases in respect of auditors of listed entities.

35. The Administration explained that the reform proposals would meet the prevailing international standard that the auditor regulatory regime should be independent of the audit profession and address the concern about the effectiveness of the existing disciplinary mechanism of HKICPA. Entrusting FRC with the role of an independent auditor oversight body in lieu of setting up a new statutory body would address the concern that the regulatory framework could become cumbersome after the reform.

36. On the concern about over-concentration of powers in FRC, the Administration pointed out that there was no international requirement in auditor regulation to vest the disciplinary power in a body independent of the independent auditor regulator. Given that FRC was independent of the audit profession, it would not be deemed to be unfair to auditors of listed entities if FRC was empowered to exercise inspection, investigation and disciplinary powers under the new regime. There would be checks and balances to ensure fairness and due process when FRC discharged its functions, including deploying separate teams of staff members to undertake the investigation and disciplinary work respectively, and requiring FRC to give reasons for its

disciplinary decisions and provide the parties concerned with the opportunity of being heard before imposition of disciplinary sanctions. There would also be an independent appeal mechanism to hear appeals from auditors of listed entities and the provision for further appeal to the court if leave was granted by the court. The Administration would consider the appropriateness of involving persons independent of FRC and of the audit profession in the disciplinary process under the auspices of FRC when working out the details of the amendment bill.

Scope of the reform

37. At the meeting on 6 July 2015, a member questioned the rationale for limiting the scope of the reform to auditors of listed entities instead of the entire audit profession. The Administration advised that since the proposed reform would entail substantial changes to the existing regulatory regime, it would be prudent for the Administration to adopt a step-by-step approach in proceeding with the reform having regard to, among other factors, the implications of the reform on the profession and its impact on FRC's manpower requirement.

Latest development

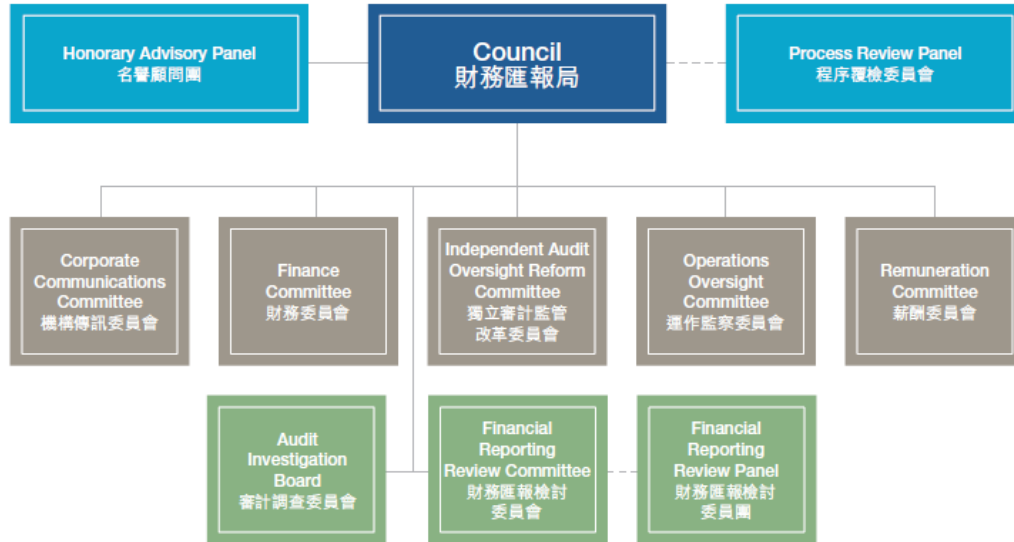
38. FRC will brief FA Panel on its work in the past year at the meeting on 23 May 2016.

References

39. A list of relevant papers is at **Appendix II**.

Council Business Division 1
Legislative Council Secretariat
16 May 2016

Organization Structure
組織架構



(Source : Annual Report 2015 of the Financial Reporting Council)

Appendix II

List of relevant papers

Date	Event	Papers/Minutes of meeting
5 July 2007	The Panel on Financial Affairs ("FA Panel") discussed the establishment of the Financial Reporting Council ("FRC")	<p><u>FRC's paper</u> (LC Paper No. CB(1)2008/06-07(01))</p> <p><u>Minutes</u> (LC Paper No. CB(1)2364/06-07)</p>
8 April 2008	FA Panel discussed the work of FRC since July 2007	<p><u>Financial Reporting Council's paper</u> (LC Paper No. CB(1)1163/07-08(03))</p> <p><u>Minutes</u> (LC Paper No. CB(1)1381/07-08)</p>
6 April 2009	FA Panel discussed the work of FRC since April 2008	<p><u>Powerpoint presentation materials at the meeting</u> (Chinese version only) (LC Paper No. CB(1)1251/08-09(01))</p> <p><u>FRC's paper</u> (LC Paper No. CB(1)1177/08-09(04))</p> <p><u>Minutes</u> (LC Paper No. CB(1)1410/08-09)</p>
8 April 2010	FA Panel discussed the work of FRC since April 2009	<p><u>Powerpoint presentation materials at the meeting</u> (Chinese version only) (LC Paper No. CB(1)1599/09-10(01))</p> <p><u>FRC's paper</u> (LC Paper No. CB(1)1496/09-10(03))</p> <p><u>Minutes</u> (LC Paper No. CB(1)1847/09-10)</p>

Date	Event	Papers/Minutes of meeting
4 April 2011	FA Panel discussed the work of FRC since April 2010	<p>Powerpoint presentation materials at the meeting (Chinese version only) (LC Paper No. CB(1)1870/10-11(02))</p> <p>FRC's paper (LC Paper No. CB(1)1748/10-11(05))</p> <p>Minutes (LC Paper No. CB(1)2637/10-11)</p>
2 April 2012	FA Panel discussed the work of FRC since April 2011	<p>Powerpoint presentation materials at the meeting (Chinese version only) (LC Paper No. CB(1)1502/11-12(01))</p> <p>FRC's paper (LC Paper No. CB(1)1411/11-12(04))</p> <p>Minutes (LC Paper No. CB(1)2028/11-12)</p>
3 May 2013	FA Panel discussed the work of FRC since April 2012	<p>Powerpoint presentation materials at the meeting (LC Paper No. CB(1)976/12-13(02))</p> <p>FRC's paper (LC Paper No. CB(1)929/12-13(07))</p> <p>Minutes (LC Paper No. CB(1)1789/12-13)</p>
10 October 2013	FRC published a report on independent audit oversight	<p>Press release</p> <p>Report by FRC (English version only)</p>

Date	Event	Papers/Minutes of meeting
5 May 2014	FA Panel discussed the work of FRC since April 2013	<p><u>Powerpoint presentation materials at the meeting</u> (LC Paper No. CB(1)1375/13-14(03))</p> <p><u>FRC's paper</u> (LC Paper No. CB(1)1309/13-14(07))</p> <p><u>Minutes</u> (LC Paper No. CB(1)1942/13-14)</p>
7 July 2014	FA Panel discussed the proposals to improve the regulatory regime for listed entity auditors	<p><u>Powerpoint presentation materials at the meeting</u> (LC Paper No. CB(1)1762/13-14(01))</p> <p><u>Administration's paper</u> (LC Paper No. CB(1)1668/13-14(01))</p> <p><u>Minutes</u> (LC Paper No. CB(1)1998/13-14)</p> <p><u>Administration's follow-up paper</u> (LC Paper No. CB(1)1913/13-14(02))</p>
4 May 2015	FA Panel discussed the work of FRC since April 2014	<p><u>Powerpoint presentation materials at the meeting</u> (LC Paper No. CB(1)833/14-15(02))</p> <p><u>FRC's paper</u> (LC Paper No. CB(1)780/14-15(03))</p> <p><u>Minutes</u> (LC Paper No. CB(1)1070/14-15)</p>

Date	Event	Papers/Minutes of meeting
6 July 2015	FA Panel discussed the consultation conclusions on the proposals to improve the regulatory regime for listed entity auditors	<p data-bbox="882 226 1439 304"><u>Powerpoint presentation materials at the meeting</u></p> <p data-bbox="882 309 1439 387">(LC Paper No. CB(1)1069/14-15(04))</p> <p data-bbox="882 439 1439 517"><u>Administration's paper</u></p> <p data-bbox="882 479 1439 557">(LC Paper No. CB(1)1034/14-15(08))</p> <p data-bbox="882 609 1439 687"><u>Minutes</u></p> <p data-bbox="882 649 1439 687">(LC Paper No. CB(1)1258/14-15)</p>