

**立法會**  
**Legislative Council**

LC Paper No. CB(1)290/18-19  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/4/17

**Bills Committee on Financial Reporting Council (Amendment) Bill 2018**

**Minutes of the sixth meeting on  
Monday, 29 October 2018, at 2:30 pm  
in Conference Room 2A of the Legislative Council Complex**

**Members present** : Hon WONG Ting-kwong, GBS, JP (Chairman)  
Hon Kenneth LEUNG (Deputy Chairman)  
Hon Starry LEE Wai-king, SBS, JP  
Hon CHAN Kin-por, GBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon WU Chi-wai, MH  
Hon Dennis KWOK Wing-hang  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon CHAN Chun-ying, JP  
Hon CHEUNG Kwok-kwan, JP  
Hon Kenneth LAU Ip-keung, BBS, MH, JP

**Members absent** : Hon James TO Kun-sun  
Dr Hon Junius HO Kwan-yiu, JP

**Public officers attending** : Ms NG Ching-ching, Winnie, JP  
Deputy Secretary for Financial Services and the  
Treasury (Financial Services)<sup>3</sup>

Mr AU Ka-shing, Billy  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services)<sup>4</sup>

Mr CHAN Fong-ming  
Assistant Secretary for Financial Services and the  
Treasury (Financial Services)(4)1

Ms CHAN Ka-man, Carmen  
Senior Government Counsel  
Department of Justice

Ms CHEUNG Mee-bo, Mabel  
Senior Assistant Law Draftsman (LP)  
Department of Justice

**Attendance by invitation** : Mr Paul F WINKELMANN  
Chief Executive Officer  
Financial Reporting Council

Ms Florence WONG  
Senior Director (Investigation & Compliance)  
Financial Reporting Council

**Clerk in attendance** : Mr Hugo CHIU  
Chief Council Secretary (1)4 (Acting)

**Staff in attendance** : Miss Evelyn LEE  
Assistant Legal Adviser 10

Ms Mandy LI  
Council Secretary (1)4

Ms Sharon CHAN  
Legislative Assistant (1)4

---

Action

**I Confirmation of minutes**

(LC Paper No. CB(1)1374/17-18 — Minutes of the meeting on  
5 June 2018

Action

LC Paper No. CB(1)48/18-19 — Minutes of the meeting on 3 July 2018)

The minutes of the meetings held on 5 June 2018 and 3 July 2018 were confirmed.

## **II Meeting with the Administration**

### Matters arising from the previous meeting

(LC Paper No. CB(1)98/18-19(01) — List of follow-up actions arising from the discussion at the meeting on 3 July 2018

LC Paper No. CB(1)98/18-19(02) — Administration's response to issues raised at the meeting on 3 July 2018

LC Paper No. CB(1)98/18-19(03) — Administration's paper on "Recent Developments")

### Clause-by-clause examination of the Bill

(LC Paper No. CB(3)287/17-18 — The Bill

File Ref: ACCT/2/1/2C — Legislative Council Brief

LC Paper No. LS25/17-18 — Legal Service Division Report

LC Paper No. CB(1)591/17-18(01) — Marked-up copy of the Financial Reporting Council (Amendment) Bill 2018 prepared by the Legal Service Division (Restricted to members only)

LC Paper No. CB(1)783/17-18(01) — Letter dated 19 March 2018 from the Legal Service Division to the Administration

Action

LC Paper No. CB(1)783/17-18(02) — Administration's response to the letter dated 19 March 2018 from the Legal Service Division

LC Paper No. CB(1)590/17-18(01) — Background brief prepared by the Legislative Council Secretariat)

Discussion

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

**III Any other business**

Meeting arrangement

3. The Chairman said that the Bills Committee had completed clause-by-clause examination of Financial Reporting Council (Amendment) Bill 2018.

4. The Bills Committee noted that the Administration would provide its draft proposed amendments to the Bill for members' consideration after the meeting. The Chairman said that subject to any views members might have on the Administration's proposed amendments, he would decide whether a further meeting was necessary.

*(Post meeting note: The Administration's draft proposed amendments to the Bill were issued to members vide LC Paper No. CB(1)237/18-19(01) on 28 November 2018. The Chairman instructed that the seventh meeting be held on 17 December 2018.)*

5. There being no other business, the meeting ended at 4:11 pm.

**Proceedings of the sixth meeting of  
the Bills Committee on Financial Reporting Council (Amendment) Bill 2018  
on Monday, 29 October 2018, at 2:30 pm  
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
<b>Agenda item I — Confirmation of minutes</b>			
000427 – 000627	Chairman	Confirmation of minutes [LC Paper Nos. CB(1)1374/17-18 and CB(1)48/18-19]	
<b>Agenda item II — Meeting with the Administration</b>			
000628 – 001030	Chairman Administration	Briefing by the Administration on its response to issues raised at the meeting on 3 July 2018 [LC Paper No. CB(1)98/18-19(02)]	
<b>Clause-by-clause examination of the Bill</b>			
001031 – 001717	Chairman Administration Deputy Chairman	<p><b>Financial Reporting Council (Amendment) Bill 2018</b></p> <p><b>Part 3C</b></p> <p><b>Reviews and Appeals Regarding Decisions on PIE Auditors etc.</b></p> <p><i>Division 2 — Public Interest Entities Auditors Review Tribunal</i></p> <p><i>37N. Establishment of Public Interest Entities Auditors Review Tribunal</i></p> <p><i>37O. Jurisdiction of Tribunal</i></p> <p><i>37P. Establishment of additional tribunals</i></p> <p>The Deputy Chairman enquired about the mechanism for appointing the chairperson and ordinary members of a Public Interest Entities Auditors Review Tribunal ("Tribunal").</p> <p>The Administration responded as follows: (a) the Chief Executive ("CE") would appoint a number of persons to be members of a Tribunal panel ("panel members"); and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) a Tribunal, which consisted of a chairperson and two ordinary members, would be established to review any specified decisions as defined in the Bill in cases where an aggrieved person applied for such review. The chairperson would be appointed by CE. The Secretary for Financial Services and the Treasury would appoint two panel members as the ordinary members of the Tribunal on the recommendation of the chairperson.</p> <p>In response to the Chairman's enquiry, the Administration confirmed that a person could serve on more than one Tribunal at the same time.</p>	
001718 – 004458	Chairman Administration Mr Christopher CHEUNG Deputy Chairman	<p><b><i>Division 3 — Review of Specified Decisions</i></b></p> <p>37Q. <i>Application for review of specified decision</i></p> <p>37R. <i>Extension of time for review application</i></p> <p>37S. <i>Withdrawal of review application</i></p> <p>37T. <i>Determination of review</i></p> <p>37U. <i>Powers of Tribunal</i></p> <p>37V. <i>Sittings of Tribunal to be held in public</i></p> <p>37W. <i>Use of incriminating evidence given for purpose of review</i></p> <p>37X. <i>Contempt dealt with by Tribunal</i></p> <p>37Y. <i>Costs</i></p> <p>37Z. <i>Determination and order of Tribunal</i></p> <p>37ZA. <i>Form and proof of determination or order of Tribunal</i></p> <p>37ZB. <i>Registration of determination or order of Tribunal</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>37ZC. <i>No other right of appeal</i></p> <p><b><i>Division 4 — Taking Effect of Specified Decisions and Stay of Execution of Determinations or Orders of Tribunal</i></b></p> <p>37ZD. <i>Time when specified decision takes effect</i></p> <p>37ZE. <i>Application for stay of execution of determination or order of Tribunal</i></p> <p><b><i>Division 5 — Appeals to Court of Appeal</i></b></p> <p>37ZF. <i>Party may appeal against Tribunal's determination</i></p> <p>37ZG. <i>Application for leave to appeal</i></p> <p>37ZH. <i>Powers of Court of Appeal</i></p> <p>37ZI. <i>No stay of execution of Tribunal's determination on appeal</i></p> <p><b><i>Division 6 — Miscellaneous</i></b></p> <p>37ZJ. <i>Power of Chief Justice to make rules</i></p> <p><u>Clause 49 – Section 38 amended (interpretation)</u></p> <p><u>Clause 50 – Section 39 amended (Financial Reporting Review Panel)</u></p> <p><u>Clause 51 – Section 40 amended (initiating enquiry concerning relevant non-compliance)</u></p> <p><u>Clause 52 – Section 42 amended (Council to notify certain bodies of powers under Division 2 being exercisable)</u></p> <p><u>Clause 53 – Section 43 amended (powers to require production of records and documents and provision of information and explanation)</u></p> <p><u>Clause 54 – Section 44 amended (use of incriminating evidence in proceedings)</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 55 – Section 45 amended (Court of First Instance to inquire into failure to comply with requirements under section 43)</u></p> <p><u>Clause 56 – Section 46 amended (inspection of records or documents seized, etc.)</u></p> <p><u>Clause 57 – Section 47 amended (enquiry reports)</u></p> <p><u>Clause 58 – Section 48 amended (Council's powers to close case, suspend enquiry and follow up, etc.)</u></p> <p><u>Clause 59 – Part 4, Division 4 heading amended (Council's powers to secure removal of relevant non-compliance)</u></p> <p><u>Clause 60 – Section 49 amended (Council to give notice to operator of listed entities to secure removal of relevant non-compliance)</u></p> <p><u>Clause 61 – Section 50 amended (Council may apply to Court of First Instance to secure removal of relevant non-compliance)</u></p> <p><u>Clause 62 – Part 4A added</u></p> <p><b>Part 4A</b></p> <p><b>Levies</b></p> <p>50A. <i>Levies payable by sellers and purchasers of securities</i></p> <p>50B. <i>Levies payable by PIEs</i></p> <p>50C. <i>Levies payable by PIE auditors</i></p> <p>50D. <i>Reduction of levies</i></p> <p>50E. <i>Levies paid not refundable</i></p> <p>50F. <i>FRC may recover levy as civil debt</i></p> <p>50G. <i>FRC may authorize persons to inspect accounts etc.</i></p>	



Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 63 – Section 51 amended (preservation of secrecy)</u></p> <p><u>Clause 64 – Section 52 amended (protection of informers)</u></p> <p>The Administration remarked that technical amendments would be proposed for clause 64 to remove "the Investigation Board" in sections 52(6)(a) and 52(6)(b) as the definition of "investigator" already covered "the Investigation Board".</p> <p><u>Clause 65 – Section 53 amended (avoidance of conflict of interests)</u></p> <p><u>Clause 66 – Section 54 amended (immunity)</u></p> <p><u>Clause 67 – Section 55 amended (immunity in respect of communication with Council by auditors of listed entities)</u></p> <p><u>Clause 68 – Section 57 amended (production of information in information systems)</u></p> <p><u>Clause 69 – Section 58 amended (lien claimed on records or documents)</u></p> <p><u>Clause 70 – Section 59 amended (destruction of documents, etc.)</u></p> <p><u>Clause 71 – Section 59A added</u></p> <p>59A. <i>Reasonable excuse</i></p> <p><u>Clause 72 – Section 60 amended (service of notice, etc.)</u></p> <p><u>Clause 73 – Sections 60A to 60D added</u></p> <p>60A. <i>Chief Executive in Council may make regulations</i></p> <p>60B. <i>FRC may make regulations</i></p> <p>60C. <i>FRC must publish draft regulations</i></p> <p>60D. <i>FRC may specify forms</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 74 – Section 61 amended (amendment of Schedules)</u></p> <p><u>Clause 75 – Part 7 added</u></p> <p><b>Part 7</b></p> <p><b>Savings and Transitional Arrangements for Financial Reporting Council (Amendment) Ordinance 2018</b></p> <p><i>Division 1 – Interpretation</i></p> <p>87. <i>Interpretation</i></p> <p><i>Division 2 – Auditors Having Undertaken but Not Yet Completed PIE Engagements before 2018 Ordinance Commencement Date etc.</i></p> <p>88. <i>Practice units having undertaken but not yet completed PIE engagements before 2018 Ordinance commencement date</i></p> <p>89. <i>Persons performing functions as responsible persons before 2018 Ordinance commencement date</i></p> <p>90. <i>Overseas auditors having undertaken but not yet completed PIE engagements before 2018 Ordinance commencement date</i></p> <p>91. <i>Information of registered PIE auditors (provisional) etc. to be entered in PIE auditors register</i></p> <p><i>Division 3 – Investigations Initiated before 2018 Ordinance Commencement Date etc.</i></p> <p>92. <i>Investigations initiated before 2018 Ordinance commencement date</i></p> <p>93. <i>Investigations may be initiated in relation to audits etc. completed before 2018 Ordinance commencement date</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 76 – Schedule 1 amended (definitions of <i>relevant financial report</i> and <i>relevant requirement</i>)</u></p> <p><u>Clause 77 – Schedule 1A added</u></p> <p><i>Schedule 1A PIE Engagements and Non-PIE Engagements</i></p> <p><u>Clause 78 – Schedule 2 substituted</u></p> <p><i>Schedule 2 Financial Reporting Council</i></p> <p>The Deputy Chairman's enquiries about:</p> <p>(a) whether the office of the post-reform Financial Reporting Council's ("FRC") Deputy Chairman could be left vacant; and</p> <p>(b) how the proposed Schedule 2 to the Financial Reporting Council Ordinance (Cap. 588) ("FRCO") could be amended in the future.</p> <p>The Administration responded as follows:</p> <p>(a) the office of the post-reform FRC's Deputy Chairman could be left vacant if necessary; and</p> <p>(b) the proposed amended section 61 of FRCO had provided for amendments of the Schedules to FRCO. CE in Council may, by notice published in the Gazette, amend Schedule 2 to FRCO. The subsidiary legislation concerned would be subject to the negative vetting procedure of the Legislative Council.</p>	
004459 – 005859	Chairman Administration Deputy Chairman	<p><u>Clause 79 – Schedule 3 repealed (provisions relating to Chief Executive Officer of Council)</u></p> <p><u>Clause 80 – Schedules 3A and 3B added</u></p> <p><i>Schedule 3A Non-delegable Functions of FRC</i></p> <p><i>Schedule 3B Fees</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 81 – Schedule 4 amended (provisions relating to Investigation Board and its members)</u></p> <p><u>Clause 82 – Schedule 4A added</u></p> <p><i>Schedule 4A Provisions Relating to Tribunal</i></p> <p>The Deputy Chairman's enquiries and views as follows:</p> <p>(a) why the Financial Reporting Council (Amendment) Bill 2018 ("the Bill") only set out qualification requirements for a Tribunal's chairperson but not its ordinary members;</p> <p>(b) whether a practitioner could be appointed as an ordinary member of a Tribunal, and if so, such an arrangement would be inconsistent with that of the governing board of FRC (which would consist solely of non-practitioners); and</p> <p>(c) in order to avoid potential conflict of interest, it would be appropriate to specify requirements for the ordinary members of a Tribunal.</p> <p>The Administration responded as follows:</p> <p>(a) the proposed arrangements for the Tribunal set out in the Bill were similar to those adopted by other comparable financial regulatory regimes in Hong Kong;</p> <p>(b) as the nature of cases to be handled by a Tribunal would vary, if qualification requirements were imposed on the Tribunal's ordinary members, it might restrict the appointment of persons with appropriate expertise as Tribunal members; and</p> <p>(c) the Bill did not prohibit a practitioner from being appointed as an ordinary member of a Tribunal. The Administration would</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>carefully assess whether such an appointment would compromise the independence of the Tribunal. It was the Administration's policy intent that a Tribunal should, where possible, seek the advice of external experts to help with its work instead of appointing practitioners as its ordinary members.</p> <p>In response to the Deputy Chairman's enquiry, the Administration advised that the proposed new section 37T(5) of FRCO set out the standard of proof adopted by a Tribunal.</p>	
005900 – 011257	Chairman Administration Deputy Chairman Mr Christopher CHEUNG	<p><u>Clause 83 – Schedule 5 amended (provisions relating to Review Panel and its members)</u></p> <p><u>Clause 84 – Schedule 6 amended (provisions relating to Review Committee and its members)</u></p> <p><u>Clause 85 – Schedule 7 added</u></p> <p><i>Schedule 7 Calculation of Levies</i></p> <p>Mr CHEUNG's concern about the unfairness for securities investors to bear a higher contribution ratio (i.e. 50%) in respect of the levy than public interest entities ("PIEs") and PIE auditors (both at 25%) in funding the post-reform FRC, which was inconsistent with the "user-pay" principle and might adversely affect the securities industry.</p> <p>The Administration responded as follows:</p> <p>(a) the Administration was aware of the concern of Mr CHEUNG and the securities industry;</p> <p>(b) the Bill sought to strengthen the independence of the existing regulatory regime for PIE auditors in order to enhance investor protection. Investors could benefit from improvement in the integrity and accuracy of financial reports of listed entities. Therefore, it would not be unreasonable to impose a levy on</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>investors of securities transactions for funding the future FRC; and</p> <p>(c) the Administration considered the proposed contribution ratio appropriate having regard to various factors in a holistic manner.</p>	
011258 – 011743	Chairman Administration	<p><b>Part 3</b></p> <p><b>Related and Consequential Amendments</b></p> <p><i>Division 1 — Amendments to Professional Accountants Ordinance (Cap. 50)</i></p> <p><u>Clause 86 – Section 32B amended (Council's powers under this Part)</u></p> <p><u>Clause 87 – Section 32BA added</u></p> <p><i>32BA. Practice reviews not to be carried out or continued in relation to PIE engagements</i></p> <p><u>Clause 88 – Section 34 amended (disciplinary provisions)</u></p> <p><u>Clause 89 – Section 42CA amended (referral of matter to FRC)</u></p> <p><i>Division 2 — Amendment to Resolution of the Legislative Council Establishing Companies Registry Trading Fund (Cap. 430 sub. leg. B)</i></p> <p><u>Clause 90 – Schedule 1 amended (services to be provided by the trading fund)</u></p> <p>The Administration remarked that it would propose an amendment to section 52 of the Professional Accountants Ordinance (Cap. 50) to enable the Council of the Hong Kong Institute of Certified Public Accountants ("HKICPA") to delegate its power in administering the registration of local PIE auditors under FRCO to the staff members of HKICPA.</p>	

Time Marker	Speaker	Subject(s)	Action Required
011744 – 013924	Administration Chairman Mr Christopher CHEUNG Deputy Chairman	<p>Briefing by the Administration on its paper entitled "Recent developments" [LC Paper No. CB(1)98/18-19(03)]. The Administration explained the need for the proposed amendments to:</p> <p>(a) remove the proposed new section 20ZF(2)(c) of FRCO (which required FRC to enter into a cooperation agreement with the relevant overseas regulator before it could recognize an overseas auditor);</p> <p>(b) require the governing board of FRC to be composed of "all non-practitioners" and increase the threshold of members with "knowledge and experience in PIE engagements" from "at least two" to "at least one-third";</p> <p>(c) change the formula of calculating the levy on PIE auditors; and</p> <p>(d) change the commencement date of the Bill from 1 August 2019 to a day to be appointed by the Secretary for the Financial Services and the Treasury by a notice published in the Gazette.</p> <p>The Deputy Chairman's enquiries and views as follows:</p> <p>(a) whether deleting the proposed new section 20ZF(2)(c) of FRCO would make it more difficult for FRC to enter into cooperation agreements with overseas regulators;</p> <p>(b) besides the proposed amendment to require the governing board of FRC to be composed of "all non-practitioners" so that FRC could meet the "adequacy" test of the Statutory Audit Directive ("SAD") of the European Commission ("EC"), whether there would be further amendments to the Bill enabling FRC to meet other requirements of SAD; and</p> <p>(c) the proposed definition of "non-practitioner" in the Bill might be</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>over restrictive. The Administration should consider amending the definition from "a person who is not, or has not within the previous three years been: (a) a certified public accountant (practising); <u>or</u> (b) a partner, director, agent or employee of a practice unit" to "a person who is not, or has not within the previous three years been: (a) a certified public accountant (practising); <u>and</u> (b) a partner, director, agent or employee of a practice unit". The proposed amendment would allow more persons with experience in PIE engagements to be eligible to serve in FRC's governing board.</p> <p>The Administration responded as follows:</p> <p>(a) it was not envisaged that the deletion of the proposed new section 20ZF(2)(c) of FRCO would make it more difficult for FRC to enter into cooperation agreements with overseas regulators. Overseas regulators would examine the robustness of Hong Kong's regulatory regime in deciding whether to conclude agreements with Hong Kong;</p> <p>(b) the objective of introducing the proposed amendments regarding composition of the governing board of FRC was to facilitate FRC meeting the "adequacy" requirement of EC's SAD. As regards attainment of the EC equivalence status, it was not among the objectives of the reform of the regulatory regime for PIE auditors. Hence, the Administration had no plan to introduce further amendments to the Bill to meet other requirements of EC's SAD for attainment of the EC equivalence status; and</p> <p>(c) the proposed definition of "non-practitioner" was modelled on the existing arrangement of the European Union. The proposed definition was considered appropriate, objective and practicable.</p>	



<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
<b>Agenda item III — Any other business</b>			
013925 – 014515	Chairman Administration Deputy Chairman Assistant Legal Adviser 10 ("ALA10")	In response to ALA10's enquiry with a view to assisting members to consider whether a meeting should be held to consider the amendments to the Bill that the Administration had indicated to propose, the Administration confirmed that it had briefed members on all major proposed amendments to the Bill during the clause-by-clause examination of the Bill and in LC Paper No. CB(1)98/18-19(03). The Administration would also propose minor technical amendments which would be set out in the draft proposed amendments to the Bill to be provided to the Bills Committee in due course.  Meeting arrangement	