

立法會
Legislative Council

LC Paper No. CB(1)1278/18-19
(These minutes have been seen
by the Administration)

Ref : CB1/SS/18/18

**Subcommittee on Financial Reporting Council (Amendment)
Ordinance 2019 (Commencement) Notice**

**Minutes of first meeting held on
Wednesday, 5 June 2019, at 9:00 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon WONG Ting-kwong, GBS, JP (Chairman)
Hon CHAN Kin-por, GBS, JP
Hon Kenneth LEUNG
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Holden CHOW Ho-ding
Hon CHAN Chun-ying, JP
Hon AU Nok-hin

Member absent : Hon Charles Peter MOK, JP

**Public Officers
attending** : Agenda item II

Financial Services and the Treasury Bureau

Mr Billy AU
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services) 4

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

Financial Reporting Council

Ms Wincey LAM
Acting Chief Executive Officer

Ms Florence WONG
Senior Director (Investigation & Compliance)

Mr Alfred CHAN
General Counsel

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Ms Anki NG
Council Secretary (1)5

Ms Michelle NIEN
Legislative Assistant (1)5

Action

I. Election of Chairman

Election of Chairman

Mr WONG Ting-kwong, the member who had the highest precedence in the Council among members of the Subcommittee present at the meeting, presided over the election of Chairman of the Subcommittee. He invited nominations for the chairmanship.

2. Mr CHAN Chun-ying nominated Mr WONG Ting-kwong and the nomination was seconded by Mr Holden CHOW. Mr WONG Ting-kwong accepted the nomination. Mr CHAN Kin-por took over the chair and invited nominations for the chairmanship. There being no other nominations, Mr CHAN Kin-por declared that Mr WONG Ting-kwong was elected Chairman of the Subcommittee. Mr WONG then took over the chair.

II. Meeting with the Administration

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|----------------------------------|--|
| (L.N. 80 of 2019 | — Financial Reporting Council (Amendment) Ordinance 2019 (Commencement) Notice |
| LC Paper No. LS73/18-19 | — Legal Service Division Report |
| LC Paper No. CB(1)505/18-19 | — Report of the Bills Committee on Financial Reporting Council (Amendment) Bill 2018 |
| LC Paper No. CB(1)1140/18-19(01) | — Administration's paper entitled "Commencement of the New Auditor Regulatory Regime") |

3. The Subcommittee deliberated (index of proceedings in the **Appendix**).

Invitation of views

4. Members agreed that there was no need to invite public views on the Financial Reporting Council (Amendment) Ordinance 2019 (Commencement) Notice ("the Notice").

Legislative timetable and extension of scrutiny period

5. The Chairman said that the Subcommittee had completed scrutiny of the Notice and neither the Subcommittee nor the Administration would propose any amendment to it.

6. The Subcommittee noted that the scrutiny period of the Notice would expire at the Council meeting of 19 June 2019. To allow more time for the Subcommittee to report its deliberations to the House Committee, members agreed that the Chairman should move a motion at the Council meeting of 12 June 2019 to extend the scrutiny period to the Council meeting of 10 July 2019. Members noted that, upon extension of the scrutiny period, the deadline for giving notice of motion to amend the Notice would be 3 July 2019. The Chairman would report the deliberations of the Subcommittee to the House Committee at its meeting on 28 June 2019.

(Post-meeting note: As the Council meeting of 12 June 2019 was not held and the Chairman's motion mentioned above could not be dealt with at the Council meeting of 19 June 2019 before the adjournment of the meeting, the scrutiny period of the Notice expired at the Council meeting of 19 June 2019.)

III. Any other business

7. There being no other business, the meeting ended at 9:41 am.

Council Business Division 1
Legislative Council Secretariat
23 July 2019

**Proceedings of first meeting of the
Subcommittee on Financial Reporting Council (Amendment) Ordinance 2019
(Commencement) Notice
on Wednesday, 5 June 2019, at 9:00 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Election of Chairman			
000400 – 000604	Mr WONG Ting-kwong Mr CHAN Chun-ying Mr Holden CHOW Mr CHAN Kin-por	Election of Chairman	
000605 – 000722	Chairman	Opening remarks	
Agenda item II – Meeting with the Administration			
000723 – 001151	Chairman Administration	Briefing by the Administration on the Financial Reporting Council (Amendment) Ordinance 2019 (Commencement) Notice ("the Notice") (LC Paper No. CB(1)1140/18-19(01)).	
001152 – 001326	Chairman	Briefing by the Chairman on the work of the Subcommittee.	
001327 – 002943	Chairman Mr Kenneth LEUNG Administration	Mr Kenneth LEUNG enquired about – (a) whether the proposed Sanctions Guidelines ("the Guidelines") attached to LC Paper No. CB(1)1140/18-19(01) to be formulated by the Financial Reporting Council ("FRC") under the Financial Reporting Council (Amendment) Ordinance 2019 ("FRCAO") was required under FRCAO to be published before the commencement of FRCAO; (b) when imposing sanctions, whether and to what extent FRC would make reference to, or be bound by, the decisions in the cases handled by FRC or the Hong Kong Institute of Certified Public Accountants ("HKICPA") in the past, and whether the Guidelines would be applicable to inspections conducted by FRC; and	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) how FRC would determine whether an act amounted to a misconduct in cases where FRC's interpretation of the auditing/accounting standards on which the act was based differed from the relevant auditor's interpretation of professional auditing/accounting standards which were equally acceptable in the audit industry, and whether such issue would be included/considered in the Guidelines.</p> <p>The Administration and FRC advised that –</p> <p>(a) under FRCAO, FRC must not impose a pecuniary penalty on a public interest entity ("PIE") auditor or a registered responsible person unless it had published, in the Gazette and in any other manner it considered appropriate, guidelines to indicate the way in which it exercised the power to impose the penalty and it had had regard to the Guidelines so published in imposing such penalty. To address the concerns of the Bills Committee previously formed to study the Financial Reporting Council (Amendment) Bill 2018 ("the Amendment Bill") and the industry, the Secretary for Financial Services and the Treasury ("SFST") had indicated in his speech for resumption of second reading debate of the Amendment Bill on 30 January 2019 that the Government would ensure that the Guidelines would be drawn up by FRC before the commencement of FRCAO. The Guidelines would cover both financial and non-financial sanctions on PIE auditors and registered responsible persons;</p> <p>(b) sanctions were determined on the basis of the finding of misconduct identified which was in turn based on the facts and circumstances of each particular case. In assessing the seriousness of the misconduct, FRC would look into the failings that the misconduct had involved, and would also make reference to past decisions of its own and HKICPA where appropriate. The Guidelines would be applied to inspections; and</p> <p>(c) FRC was aware that differences in interpreting auditing/accounting standards did exist, and would consult Honorary Advisors during an investigation and members of the Expert Panel during the disciplinary process on any technical accounting/auditing issue, and would ensure that the current practice (including any diversity of practice) of the profession would be considered.</p>	

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002944 – 003106	Chairman Mr Holden CHOW Administration	Mr Holden CHOW noted that as referred to in Annex A to the Administration's paper (LC Paper No. CB(1)1140/18-19(01)), consultation had been conducted for formulating the Guidelines, and considered that after clarification of certain issues by the Administration, the Subcommittee should proceed to consider the commencement dates of relevant sections of FRCAO.	
003107 – 003436	Chairman Mr Kenneth LEUNG Administration	<p>Mr Kenneth LEUNG enquired about the role of FRC, if any, in ensuring or promoting the fulfillment/performance of the duty by board directors and financial controllers of listed companies by way of, for example, educational programmes for them, considering that those executives had an important duty to ensure the integrity and accuracy of the financial statements or reports of listed companies.</p> <p>The Administration and FRC advised that FRC was not empowered to ensure or promote the fulfillment/performance of the duty by board directors and financial controllers of listed companies, which were the duties of the Securities and Futures Commission ("SFC") and/or the Hong Kong Exchanges and Clearing Limited ("HKEX").</p>	
003437 – 003614	Chairman Mr Holden CHOW Administration	<p>Mr Holden CHOW enquired about how FRC would deal with irregularities/non-compliance uncovered in conducting investigations of PIE auditors which related to the Listing Rules.</p> <p>The Administration and FRC advised that one of FRC's main functions was to investigate or enquire into, in response to a complaint or otherwise, "relevant irregularities" and "relevant non-compliances" in relation to listed entities under FRCAO. Any non-compliances relevant to the Listing Rules would be referred to SFC and/or HKEX for necessary action. To this end, there were regular liaison meetings between FRC and SFC, and FRC and HKEX which enabled FRC to make referrals to the two regulatory bodies where appropriate.</p>	
003615 – 003808	Chairman Assistant Legal Adviser 10 ("ALA10") Administration	In response to ALA10's enquiry about whether there was any differences between the considerations on imposing pecuniary penalties referred to in paragraphs 35 to 45 of the Consultation Paper (Annex A to LC Paper No. CB(1)1140/18-19(01)) and the major sanction principles on the imposition of pecuniary penalty which was provided to the Bills Committee formed to study the Amendment Bill (see Annex B to LC Paper No. CB(1)771/17-18(02)), the Administration and FRC advised that the Administration had provided to the Bills Committee a set of principles that FRC would adhere to in	

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		exercising the power to impose a pecuniary penalty and in determining the level of penalty. The Guidelines had fully incorporated the principles so provided and addressed the concerns of members of the Bills Committee.	
003809 – 003850	Chairman	Invitation of public views	
Examination of the Financial Reporting Council (Amendment) Ordinance 2019 (Commencement) Notice			
003851–004132	Chairman Mr Kenneth LEUNG Administration	<p>Financial Reporting Council (Amendment) Ordinance 2019 (Commencement) Notice (L.N. 80 of 2019)</p> <p>The Administration advised that the Financial Secretary had announced in the 2019-2020 Budget that he had decided to increase the amount of seed capital for FRC to \$400 million to help it migrate to the new regime, and exempt the levies for the first two years upon the implementation of the new regime. Taking into account the progress of the preparatory work for the new regime, SFST had made the Notice to appoint 1 October 2019 as the commencement date for FRCAO, except for sections 62 and 85 concerning payment of levies to FRC under the new regime. The two sections would be separately commenced on 1 January 2022.</p> <p>Mr Kenneth LEUNG enquired about the commencement date of the period covered by the relevant annual levies payable to FRC under FRCAO, and the reasons for the difference with the commencement date of FRCAO, if any.</p> <p>The Administration advised that the period covered by the annual levies payable to FRC under FRCAO was calculated on calendar year basis, and commenced on 1 January every year. FRCAO would come into operation on 1 October 2019 (except for sections 62 and 85) to address the industry's call for implementation of the new regime as soon as practicable.</p>	
004133–004305	Chairman	Legislative timetable	
Agenda item III –Any other business			
004306 – 004311	Chairman	Closing remarks	