

立法會
Legislative Council

LC Paper No. CB(1)1363/05-06
(These minutes have been seen
by the Administration)

Ref : CB1/BC/13/04

Bills Committee on Financial Reporting Council Bill

**Minutes of the twelfth meeting held on
Friday, 24 March 2006, at 10:45 am
in Conference Room A of the Legislative Council Building**

Members present : Hon TAM Heung-man (Chairman)
Hon Albert HO Chun-yan
Dr Hon LUI Ming-wah, SBS, JP
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Ronny TONG Ka-wah, SC

Members absent : Hon Bernard CHAN, JP
Hon SIN Chung-kai, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Andrew LEUNG Kwan-yuen, SBS, JP

Public officers attending : Mr Albert LAM
Deputy Secretary for Financial Services and the Treasury
(Financial Services)

Mr Alan LO
Principal Assistant Secretary for Financial Services and the
Treasury (Financial Services)

Mr Jackie LIU
Assistant Secretary for Financial Services and the Treasury
(Financial Services)

Mr Lawrence PENG
Senior Assistant Law Draftsman
Department of Justice

Miss Selina LAU
Government Counsel
Department of Justice

Clerk in attendance : Miss Salumi CHAN
Chief Council Secretary (1)5

Staff in attendance : Mr KAU Kin-wah
Assistant Legal Adviser 6

Mr Justin TAM
Council Secretary (1)3

-
- I. Confirmation of minutes of meeting**
(LC Paper No. CB(1)1126/05-06 — Minutes of tenth meeting held on 10 February 2006)

The minutes of the meeting held on 10 February 2006 were confirmed.

- II. Meeting with the Administration**
(LC Paper No. CB(3)713/04-05 — The Bill
- LC Paper No. CB(1)1127/05-06(01) — Marked-up copy of the Bill showing the draft Committee Stage amendments proposed by the Administration (March 2006)
- LC Paper No. CB(1)1127/05-06(02) — “Summary of outstanding issues of concern and proposed amendments to individual clauses of the Bill (Position as at 22 March 2006)” prepared by the Legislative Council Secretariat

LC Paper No. CB(1)166/05-06(03) — Paper provided by the Administration on “Summary of submissions and Administration’s responses”)

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

Follow-up actions to be taken by the Administration

Admin 3. At the request of the Bills Committee, the Administration agreed to take the following actions:

Clause 2 – Definition of “specified authority” and definitions of relevant terms

(a) Having noted the Administration’s response that it was not necessary to amend the definition of “specified authority” to narrow down the scope of the term to include only full membership of the International Federation of Accountants (paragraph (a)(ii) of the definition in clause 2), some members expressed concern about the need to take into account the different categories of membership of the Hong Kong Institute of Certified Public Accountants (HKICPA) and other accountancy bodies in drawing up the definitions of relevant terms in the Bill, such as “auditor” and “reporting accountant”. The Administration was requested to consider and provide a written response to the members’ concern, and consult the HKICPA if necessary.

Clause 4 – Requirement for the HKICPA to refer complaints about “relevant irregularity” of listed entities to the Financial Reporting Council (FRC)

(b) On the Administration’s proposal for the FRC and the HKICPA to enter into a Memorandum of Understanding (MOU) to set out interface arrangements between the two bodies, such as the arrangements for the referral of complaints about “relevant irregularity”, members considered it more appropriate to set out clearly in the Bill that the HKICPA, upon receipt of a complaint about “relevant irregularity” of a listed entity, should refer the case to the FRC for investigation. In this connection, the Administration undertook to consult the HKICPA on the following views expressed by members and provide a written response:

(i) Given that one of the two main functions of the FRC was to investigate relevant irregularities of auditors of listed entities, there should be a mandatory requirement for the HKICPA to refer cases concerning “relevant irregularity” of listed entities to the FRC. This could be achieved by providing the requirement in the Bill and making consequential amendments to the Professional Accountants Ordinance (Cap. 50);

- (ii) In connection with item (i) above, the FRC's functions and independence would be undermined if the HKICPA was given the discretionary power to decide whether a complaint about "relevant irregularity" of a listed entity should be referred to the FRC; and
- (iii) In connection with item (ii) above, if the Administration considered that the HKICPA should be given the discretionary power to decide not to refer a complaint about "relevant irregularity" of a listed entity to the FRC under certain circumstances, the Administration should provide justifications for its view and set out clearly the circumstances under which the HKICPA might exercise such discretionary power. The Administration was also requested to consider providing the relevant principles for the HKICPA to exercise its discretionary power in the subsidiary legislation and the detailed procedures in the form of guidelines.

Clause 4 – Drafting issue

- (c) The Administration undertook to consider how the drafting of clause 4(7)(a) and (b) could be improved to facilitate the understanding of readers.

Clause 5 – Drafting issue

- (d) Given that not all of the five types of accounting requirements set out in paragraph (a)(i) to (v) of the definition of "relevant requirement" in Part 1 of Schedule 1 to the Bill were applicable to a relevant financial report of a listed corporation, the legal adviser to the Bills Committee considered that the draft proposed Committee Stage amendment to clause 5(1) should be refined to pinpoint a relevant non-compliance. The Administration was requested to consider how the drafting could be improved to address this concern.

Date of next meeting

4. The Chairman reminded members that the next meeting would be held on Friday, 31 March 2006, at 10:45 am.

III. Any other business

5. There being no other business, the meeting ended at 12:50 pm.

Council Business Division 1
Legislative Council Secretariat
27 April 2006

**Proceedings of the twelfth meeting of the
Bills Committee on Financial Reporting Council Bill
on Friday, 24 March 2006, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000044	Chairman	<i>Confirmation of minutes of meeting</i> (LC Paper No. CB(1)1126/05-06)	
000045-000502	Chairman Ms Emily LAU Administration	<p><i>Outstanding issues arising from previous meetings</i></p> <p>(a) The Administration's advice that it would provide written responses in respect of the following outstanding issues in due course:</p> <ul style="list-style-type: none"> (i) Funding arrangement for the Financial Reporting Council (FRC); (ii) Preservation of secrecy (clause 51); (iii) Avoidance of conflict of interests (clause 52); and (iv) The need to include provisions on "Protection of informers" in the Bill <p>(b) The Chairman and a member urged the Administration to revert to the Bills Committee on the outstanding issues as soon as possible</p>	

Time marker	Speaker	Subject(s)	Action Required
000503-000802	Chairman Administration Ms Emily LAU	<p><i>Clause-by-clause examination of the Bill with draft proposed Committee Stage amendments (CSAs) proposed by the Administration</i></p> <p>(LC Paper Nos. CB(1)1127/05-06(01) & (02), CB(1)166/05-06(03))</p> <p><u>Clause 1 – Short title and commencement</u></p> <p>(a) Briefing by the Administration on clause 1</p> <p>(b) The Administration’s advice that its intention was to commence the Financial Reporting Council Ordinance shortly after enactment of the Ordinance with a view to establishing the FRC by the end of 2006</p>	
000803-003806	Administration Ms Emily LAU Dr LUI Ming-wah Chairman	<p><u>Clause 2 – Interpretation</u></p> <p>(a) Briefing by the Administration on clause 2 and the draft proposed CSAs</p> <p>(b) Definition of “specified authority” (LC Paper No. CB(1)1127/05-06(02))</p> <p>(i) Comments of The Association of Chartered Certified Accountants (Hong Kong) on the definition;</p> <p>(ii) The Administration’s</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>response that it was not necessary to amend the definition of “specified authority” to narrow down the scope of the term to include only full membership of the International Federation of Accountants (paragraph (a)(ii) of the definition in clause 2)</p> <p>(iii) Members’ concern about the need to take into account the different categories of membership of the Hong Kong Institute of Certified Public Accountants (HKICPA) and other accountancy bodies in drawing up the definitions of relevant terms in the Bill, such as “auditor” and “reporting accountant”</p> <p>(iv) The Administration’s response that reference was made to the terms “auditor” and “reporting accountant” in the Bill but not to members of the HKICPA</p> <p>(v) Request for the Administration to consider and provide a written response to members’ concern in item (iii) above, and consult the HKICPA if</p>	<p>The Administration to take action under paragraph 3(a) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		necessary	
003807-004500	Administration Ms Emily LAU Assistant Legal Adviser (ALA6)	<p><u>Clause 3 – Listed entity</u></p> <p>(a) Briefing by the Administration on clause 3</p> <p>(b) The Administration’s advice that definitions of the terms in clause 3 were modelled on those provided in the Securities and Futures Ordinance (SFO) (Cap. 571)</p> <p>(c) Under the definition of “listed entity”, the securities issued by a corporation were taken to be listed on a recognized stock market (e.g. the Stock Exchange of Hong Kong) if the company operating the market (e.g. the Hong Kong Exchanges and Clearing Limited) had approved the listing application. Given the time gap between the approval of the listing application and the trading of the securities, ALA6 was concerned whether the proposed provisions were appropriate</p> <p>(d) The Administration’s advice, as follows:</p> <p>(i) The proposed provisions aimed to protect the interests of investors; and</p> <p>(ii) Listing documents were also subject to the FRC’s</p>	

Time marker	Speaker	Subject(s)	Action Required
		investigations or enquiries	
004501-011517	Administration Ms Emily LAU ALA6 Dr LUI Ming-wah Mr Albert HO Mr Ronny TONG	<p><u>Clause 4</u></p> <p>Briefing by the Administration on clause 4 and the draft proposed CSAs</p> <p><u>Clause 4 – Requirement for the HKICPA to refer complaints about “relevant irregularity” of listed entities to FRC</u> (LC Paper No. CB(1)1127/05-06 (02))</p> <p>(a) The Administration’s proposal for the FRC and the HKICPA to enter into a Memorandum of Understanding (MOU) to set out interface arrangements between the two bodies, such as the arrangements for the referral of complaints about “relevant irregularity”</p> <p>(b) Members’ view that it would be more appropriate to set out clearly in the Bill that the HKICPA, upon receipt of a complaint about “relevant irregularity” of a listed entity, should refer the case to the FRC for investigation</p> <p>(c) The Administration’s emphasis that the MOU between the FRC and the HKICPA aimed at setting out the details of the interface arrangements and would not give the HKICPA the discretionary power to decide whether a complaint about</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>“relevant irregularity” of a listed entity should be referred to the FRC</p> <p>(d) The Administration’s undertaking to consult the HKICPA on the following views expressed by members and provide a written response:</p> <p>(i) Given that one of the two main functions of the FRC was to investigate relevant irregularities of auditors of listed entities, there should be a mandatory requirement for the HKICPA to refer cases concerning “relevant irregularity” of listed entities to the FRC. This could be achieved by providing the requirement in the Bill and making consequential amendments to the Professional Accountants Ordinance (Cap. 50);</p> <p>(ii) In connection with item (i) above, the FRC’s functions and independence would be undermined if the HKICPA was given the discretionary power to decide whether a complaint about “relevant irregularity” of a listed entity should be referred to the FRC; and</p>	<p>The Administration to take action under paragraph 3(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>(iii) In connection with item (ii) above, if the Administration considered that the HKICPA should be given the discretionary power to decide not to refer a complaint about “relevant irregularity” of a listed entity to the FRC under certain circumstances, the Administration should provide justifications for its view and set out clearly the circumstances under which the HKICPA might exercise such discretionary power. The Administration was also requested to consider providing the relevant principles for the HKICPA to exercise its discretionary power in the subsidiary legislation and the detailed procedures in the form of guidelines</p>	
011518-012417	ALA6 Administration	<p><u>Clause 4 – Drafting issues</u></p> <p>(a) Briefing by the Administration on its response to the drafting comment of the HKICPA on clause 4(2)(a) (LC Paper No. CB(1)1127/05-06(02))</p> <p>(b) The Administration’s undertaking to consider how the drafting of clause 4(7)(a) and (b) could be improved to</p>	The Administration to take action under paragraph 3(c) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		facilitate the understanding of readers	
012418-013043	ALA6 Administration	<p><u>Clause 5 – Relevant non-compliance</u></p> <p>(a) Briefing by the Administration on clause 5 and the draft proposed CSAs</p> <p>(b) ALA6’s view that as not all of the five types of accounting requirements set out in paragraph (a)(i) to (v) of the definition of “relevant requirement” in Part 1 of Schedule 1 to the Bill were applicable to a relevant financial report of a listed corporation, the draft proposed CSA to clause 5(1) should be refined to pinpoint a relevant non-compliance</p> <p>(c) Request for the Administration to consider how the drafting could be improved to address the concern in item (b) above</p>	The Administration to take action under paragraph 3(d) of the minutes
013044-014401	Administration ALA6 Ms Emily LAU Mr Albert HO	<p><u>Clauses 6 and 7 – Establishment of the FRC and its composition</u></p> <p>(a) Briefing by the Administration on clauses 6 and 7, and the draft proposed CSAs to clause 7</p> <p>(b) The Administration’s advice on the draft proposed CSA to add the new sub-clause (5A) to clause 7:</p> <p>(i) The wording of the new</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>sub-clause (5A) was modelled on section 51 of the Interpretation and General Clauses Ordinance (Cap. 1);</p> <p>(ii) The new sub-clause (5A) provided that the FRC might perform any of its functions, and its proceedings were valid, despite -</p> <ul style="list-style-type: none"> ● a vacancy in the membership of the FRC; ● a defect in the appointment or qualification of a person purporting to be a member of the FRC; or ● a minor irregularity in the convening of any meeting of the FRC. <p>(iii) The new sub-clause (5A) would put it beyond doubt that the powers of the FRC would not be affected on the above occasions.</p> <p>(c) ALA6's views, as follows:</p> <p>(i) Given that the details of the occasions referred to in item (b)(ii) above were</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>not provided in the Bill, the functions and proceedings of the FRC under the said occasions might still be subject to legal challenge; and</p> <p>(ii) It was advisable to set out the scope of “defect” and “minor irregularity” in the new sub-clause (5A) to avoid misinterpretation of the provision</p> <p>(d) The Administration’s advice, as follows:</p> <p>(i) Paragraph 6 of Schedule 2 to the Bill contained provisions on meetings and proceedings of the FRC;</p> <p>(ii) Paragraph 6(3) of Schedule 2 to the Bill provided that the procedure for convening meetings of the FRC and for the conduct of business at those meetings was, subject to Schedule 2, to be determined by the FRC; and</p> <p>(iii) The FRC was required to act lawfully and reasonably in performing its functions and carrying out its proceedings</p>	

Time marker	Speaker	Subject(s)	Action Required
014402-014608	Administration	<p><u>Clauses 8, 9 and 10</u></p> <p>Briefing by the Administration on clauses 8, 9 and 10, and the draft proposed CSAs to clause 10</p>	
014609-014723	ALA6 Administration	<p><u>Clause 9 – Functions of the FRC</u></p> <p>(a) ALA6’s concern that the present drafting of clause 9(b) and (c) seemed to suggest that the FRC would only undertake investigation or enquiry in response to complaints</p> <p>(b) The Administration’ advice that the formulation “to investigate, in response to a complaint or otherwise” and “to enquire, in response to a complaint or otherwise” in clause 9(b) and (c) reflected the policy intent that the FRC might initiate an investigation into a “relevant irregularity” or an enquiry into a “relevant non-compliance” of listed entities whether or not a complaint had been received</p>	
014724-014905	Administration	<p><u>Clause 11 – Delegations</u></p> <p>Briefing by the Administration on clause 11</p>	
014906-015945	Administration Ms Emily LAU ALA6	<p><u>Clause 12 – Assistance, etc. to specified authorities under certain circumstances</u></p> <p>(a) Briefing by the Administration,</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>as follows:</p> <ul style="list-style-type: none"> (i) Clause 12 provided that the FRC might refer and provide assistance to a “specified authority” on cases or complaints concerning “relevant irregularity” and “relevant non-compliance” of listed entities; and (ii) Before making the referral or providing the assistance, the FRC should satisfy itself that the conditions set out in sub-clauses (2), (4) and (5) were met, and take into account the factors set out in sub-clause (3) <p>(b) The Administration’s response to enquiries by members and ALA6, as follows:</p> <ul style="list-style-type: none"> (i) Clause 12 was modelled on the relevant provisions of the SFO; (ii) Police forces of overseas jurisdictions might fall within the scope of “specified authority” (clause 2) for the purpose of clause 12; and (iii) The FRC was required under clause 12(6) to publish in the Gazette the names of the specified 	

Time marker	Speaker	Subject(s)	Action Required
		authorities for the purpose of clause 12	
015946-015958	Chairman	<i>Date of next meeting</i>	
015959-020050	Mr Albert HO	<p><i>Functions and proceedings of the Audit Investigation Board (AIB) and a Financial Reporting Review Committee (FRRC)</i></p> <p>(a) A member's view that given the relative small number of members of the AIB and a FRRC, it was not justified to provide in the Bill that the AIB and the FRRC might perform any of its functions, and its proceedings were valid, despite a vacancy in the membership of the AIB/FRRC; a defect in the appointment or qualification of a person purporting to be a member of the AIB/FRRC; or a minor irregularity in the convening of any meeting of the AIB/FRRC (New sub-clause (3A) of clause 22 and new sub-clause (1) of clause 41)</p> <p>(b) The member's suggestion that the subject be further discussed at the next meeting</p>	