

立法會
Legislative Council

LC Paper No. CB(1)2287/04-05
(These minutes have been seen
by the Administration)

Ref : CB1/BC/13/04

Bills Committee on Financial Reporting Council Bill

**Minutes of the first meeting held on
Tuesday, 19 July 2005, 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 Bernard CHAN, JP
Hon SIN Chung-kai, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Ronny TONG Ka-wah, SC

Members absent : Hon CHAN Kam-lam, SBS, JP
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 Gordon JONES, JP
Registrar of Companies

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

Ms Connie SZETO
Senior Council Secretary (1)4

I. Election of Chairman

Miss TAM Heung-man was elected Chairman of the Bills Committee.

II. Meeting with the Administration

(LC Paper No. CB(3)713/04-05

— The Bill

Ref: C15/3(05) Pt. 9

— The Legislative Council Brief on “Financial Reporting Council Bill” issued by the Financial Services and the Treasury Bureau

LC Paper No. LS86/04-05

— The Legal Service Division Report

LC Paper No. CB(1)2050/04-05(01)

— Background brief prepared by the Legislative Council Secretariat

LC Paper No. CB(1)2050/04-05(02) — Paper provided by the Administration on “Copy of the overseas legislation upon which the Bill is modelled”)

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:

(a) Function of the Financial Reporting Council (FRC)

To address members’ concern on whether the function of the FRC should be purely investigatory, the Administration was requested to take the following actions and provide written response:

- (i) To provide a paper on the regulatory regimes for various professions and industries in Hong Kong, including information on the statutory or professional body responsible for the investigation of irregularities of each of the professions and industries, and whether the same body was empowered to undertake prosecution and impose sanctions in respect of the irregularities;
- (ii) To further consider whether the function of the FRC should be purely investigatory, having regard to the following issues -
 - The findings of item (i) above;
 - The merits, demerits and impact of splitting the powers to undertake investigation and prosecution; and
 - The merits, demerits and impact of splitting the powers to undertake investigation and impose sanctions.
- (iii) If the Administration maintained its original proposal that the function of the FRC should be purely investigatory, the Administration was requested to consider and respond to the following suggestions raised by members -
 - To involve the Hong Kong Institute of Certified Public Accountants (HKICPA) and/or law enforcement agencies at an early stage of FRC’s investigatory work; and
 - To put in place a mechanism for HKICPA and/or law enforcement agencies to set out the suspected case, including stating all possible offences of the auditor under investigation, for the FRC to undertake investigation to collect the relevant evidence.

(b) Comparison with overseas practices and legislation

Having noted the comparison table in Annex A to LC Paper No. CB(1)2050/04-05(02), members requested the Administration to provide a more detailed comparison of the regulatory regime for the accounting profession in Hong Kong and those in other jurisdictions, including a detailed comparison of FRC and similar regulatory bodies in other jurisdictions. The comparison should cover the following aspects -

- (i) Powers and functions of the relevant regulatory bodies;
- (ii) Whether the relevant regulatory bodies were empowered to undertake investigation and prosecution and impose sanctions; if not, the title and functions of the body which had such powers;
- (iii) Effectiveness of the regulatory regimes, including the effectiveness in deterring and identifying irregularities; and
- (iv) Comparison of the proposals in the Bill and the relevant provisions in the Sarbanes-Oxley Act in the United States, including their respective background, objectives and scope of application.

(c) Work plan

The Administration undertook to provide a proposed work plan for the Bills Committee's consideration at the next meeting to be held on 27 September 2005. The work plan should include a proposed programme for the Bills Committee to scrutinize the Bill, with information on the following items -

- (i) List of the major issues to be examined by the Bills Committee and the relevant clauses/schedules;
- (ii) The estimated number of meetings required for completing examination of each of the major issues;
- (iii) The estimated number of meetings required for completing examination of the Bill clause-by-clause and the draft proposed Committee Stage amendments, if any; and
- (iv) Target date for completing scrutiny of the Bill (assuming that meetings of the Bills Committee would be held at three-week intervals from October 2005 onwards).

- (d) In connection with item (c)(i) above, the Administration undertook to provide papers to brief members on each of the major issues in due course. The papers should cover the objective and the gist of the relevant provisions in the Bill, relevant local and overseas legislation, and the Administration's response to the following questions raised by members:
- (i) What was the legal status of the FRC? Was it an independent public body?
 - (ii) To whom the FRC was accountable?
 - (iii) What was the extent of the investigatory powers of the FRC?
 - (iv) Did the Bill provide for the handling of witnesses and experts?
 - (v) Was there any professional support for the FRC, such as legal advice?
 - (vi) Was there any immunity provision for the FRC?
 - (vii) Why did the Administration not propose to set up a separate body to hear appeals against the decisions of the FRC?
 - (viii) What were the rights of the persons who were under the investigation of the FRC? How would their rights be protected?

Consultation with the public and relevant organizations

4. The Bills Committee agreed to invite the public to give views on the Bill and/or to meet with the Bills Committee by issuing a press release, announcing an invitation for views on the LegCo website, and writing to the 18 District Councils. The Bills Committee also agreed to invite the organizations/individuals which/who had been consulted by the Administration or had submitted views to the Administration on the relevant legislative proposals (Paragraph 6(b) of the Members' Brief (LC Paper No. CB(1)2051/04-05), and the following organizations suggested by members, to give views on the Bill and/or to meet with the Bills Committee:

- (a) The Real Estate Developers Association of Hong Kong;
- (b) The Hong Kong Chinese Enterprises Association;
- (c) Investor Education Advisory Committee and Public Shareholders Group of the Securities and Futures Commission (SFC);

- (d) The investigation and prosecution arms of SFC;
- (e) The Special Committee on Discipline of the Hong Kong Bar Association;
and
- (f) Standing Committee on Compliance and its Investigation Committees,
and Standing Committee on Practitioners Affairs and its Company and
Financial Law Committee of the Law Society of Hong Kong.

5. Members noted that the deadline for submissions would be 12 September 2005.

(Post-meeting note: The list of organizations/individuals to be invited to give views on the Bill was issued to members for information vide LC Paper No. CB(1)2110/04-05 on 21 July 2005.)

Meeting with deputations and the Administration

6. The Bills Committee agreed that the second and third meetings be scheduled with details as follows:

<u>Meeting</u>	<u>Date</u>	<u>Time</u>	<u>Purpose</u>
Second	27 September (Tuesday)	2:30 pm - 5:30 pm	Meeting with deputations and the Administration
Third	7 October (Friday)	10:45 am - 12:45 pm	Meeting with the Administration

III. Any other business

7. There being no other business, the meeting ended at 12:05 pm.

**Proceedings of the first meeting of the
Bills Committee on Financial Reporting Council Bill
on Tuesday, 19 July 2005, at 10:45 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action Required
000000-000105	Dr LUI Ming-wah Mr SIN Chung-kai Mr Ronny TONG Miss TAM Heung-man Mr Jeffrey LAM	Election of Chairman	
000106-000236	Chairman	Introductory remarks	
000237-000412	Administration	Administration's briefing on the Bill (The Legislative Council Brief (C15/3(05) Pt. 9) and LC Paper No. CB(1)2050/04-05(02))	
000413-001723	Chairman Mr SIN Chung-kai Administration	(a) Comparison of the proposed Financial Reporting Council (FRC) with the Public Company Accounting Oversight Board (PCAOB) in the United States (US) established under the Sarbanes-Oxley Act (SO Act) (b) Administration's advice that - (ii) it might not be appropriate to make direct comparison between the FRC and PCAOB in view of the differences in the nature of the accounting regulatory regimes in	

Time marker	Speaker	Subject(s)	Action Required
		<p>Hong Kong and US, the respective background of the Bill and SO Act and their scope;</p> <p>(ii) PCAOB was similar to the proposed Audit Investigation Board under the FRC but had both investigatory and disciplinary powers; and</p> <p>(iii) the function of the FRC would be purely investigatory, and the powers to undertake disciplinary actions and criminal prosecution against auditors would rest with the relevant professional bodies (e.g. the Hong Kong Institute of Certified Public Accountants (HKICPA)) and law enforcement agencies respectively</p> <p>(c) Request for the Administration to provide a more detailed comparison of the regulatory regime for the accounting profession in Hong Kong and those in other jurisdictions, including the proposals in the Bill and the relevant provisions in SO Act</p>	<p>Administration to take action under paragraph 3(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
001724-002105	M Jeffrey LAM Administration	<p>(a) Member's support for establishing the FRC to enhance Hong Kong's status as an international financial centre</p> <p>(b) Member's concern about the long term funding arrangement for the FRC</p> <p>(c) Administration's advice that-</p> <p>(i) the Administration, Securities and Futures Commission (SFC), Hong Kong Exchanges and Clearing Company Limited (HKEx), and HKICPA had agreed to contribute to the funding of the FRC on an equal share basis;</p> <p>(ii) as to the amount of contributions, it had been agreed that for the first three years, each party would contribute \$2.5 million per annum as recurrent funding. In addition, each party would contribute a one-off amount of up to \$2.5 million to set up a Reserve Fund; and</p> <p>(iii) the Administration would keep in view FRC's funding requirements and work</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>out the long term funding arrangement with SFC, HKEx and HKICPA in the third year of operation of the FRC</p>	
002106-002922	Mr Ronny TONG Chairman Administration	<p>(a) Administration's undertaking to provide papers to brief members on each of the major issues in the Bill in due course</p> <p>(b) Request for the Administration to respond to the following questions relating to the Bill -</p> <p>(i) What was the legal status of the FRC? Was it an independent public body?</p> <p>(ii) To whom the FRC was accountable?</p> <p>(iii) What was the extent of the investigatory powers of the FRC?</p> <p>(iv) Did the Bill provide for the handling of witnesses and experts?</p> <p>(v) Was there any professional support for the FRC, such as legal advice?</p> <p>(vi) Was there any immunity provision for</p>	<p>Administration to take action under paragraph 3(d) of the minutes</p> <p>Administration to take action under paragraph 3(d) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>the FRC?</p> <p>(vii) Why did the Administration not propose to set up a separate body to hear appeals against the decisions of the FRC?</p> <p>(viii) What were the rights of the persons who were under the investigation of the FRC? How would their rights be protected?</p>	
002923-003245	Clerk Chairman Administration Mr SIN Chung-kai	Administration's undertaking to provide a proposed work plan for the Bills Committee's consideration at the next meeting on 27 September 2005	Administration to take action under paragraph 3(c) of the minutes
003246-004948	Dr LUI Ming-wah Administration Chairman	<p>(a) Member's support for establishing the FRC to enhance the public oversight of auditors and quality of financial reporting of listed entities</p> <p>(b) Comparison of the proposals in the Bill and the relevant provisions in SO Act</p> <p>(c) Administration's advice that -</p> <p>(i) it might not be appropriate to make direct comparison between the Bill and SO Act as there were differences in their</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>background, objectives and scope of application;</p> <p>(ii) SO Act aimed to address a wide range of corporate governance issues arising from concerns about accounting crisis in the US in late 2002; and</p> <p>(iii) in Hong Kong, the Administration had devised the Corporate Governance Action Plan to upgrade corporate governance standards</p> <p>(d) Request for the Administration to provide a more detailed comparison of the regulatory regime for the accounting profession in Hong Kong and those in other jurisdictions</p> <p>(e) Member's concern about the lack of power by the FRC to impose sanctions in respect of accountants' irregularities, and the demerits and impact of splitting the powers for undertaking investigation and imposing sanctions</p> <p>(f) Administration's advice that -</p> <p>(i) the splitting of investigatory and</p>	<p>Administration to take action under paragraph 3(b) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
		<p>sanctioning powers was built upon the existing regulatory regime for the accountancy profession;</p> <p>(ii) The set up of the FRC would address the need to enhance the independence of investigation of irregularities of auditors of listed entities and the concern about the lack of adequate power under the Professional Accountants Ordinance (Cap. 50) to require non-HKICPA members to produce documents or provide information; and</p> <p>(iii) there was wide support for splitting the investigatory and sanctioning functions in handling auditors' irregularities of listed entities</p> <p>(g) Request for the Administration to further consider whether the function of the FRC should be purely investigatory</p>	<p>Administration to take action under paragraph 3(a)(ii) of the minutes</p>
004949-011023	Mr Ronny TONG Chairman Administration	<p>(a) Member's concern about -</p> <p>(i) the splitting of powers for undertaking</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>investigation and prosecution of auditors' irregularities; and</p> <p>(ii) the lack of connection in the work of the FRC and subsequent disciplinary and prosecution work undertaken by HKICPA and the law enforcement agencies</p> <p>(b) Administration's briefing on its written responses to concerns raised at the meeting of the Panel on Financial Affairs on 6 May 2005 (LC Paper No. CB(1)1805/04-05(02))</p> <p>(c) Administration's advice that -</p> <p>(i) there was separation in the investigation and disciplinary functions of the Accounting Investigation and Discipline Board in the United Kingdom; and</p> <p>(ii) under the existing Companies Ordinance (Cap. 32), independent investigators would be appointed to undertake investigation of suspected irregularities of companies if considered necessary</p>	

Time marker	Speaker	Subject(s)	Action Required
		<p>and the Financial Secretary would consider the need for taking follow-up action in the light of the investigation</p> <p>(d) Request for the Administration to further consider whether the function of the FRC should be purely investigatory</p> <p>(e) Request for the Administration to consider the following suggestions if it maintained its original proposal that the function of the FRC should be purely investigatory -</p> <p>(i) To involve HKICPA and/or law enforcement agencies at an early stage of FRC's investigatory work; and</p> <p>(ii) To put in place a mechanism for HKICPA and/or law enforcement agencies to set out the suspected case, including stating all possible offences of the auditor under investigation, for the FRC to undertake investigation to collect the relevant evidence</p>	<p>Administration to take action under paragraph 3(a)(ii) of the minutes</p> <p>Administration to take action under paragraph 3(a)(iii) of the minutes</p>

Time marker	Speaker	Subject(s)	Action Required
011024-011055	Mr SIN Chung-kai	Request for the Administration to provide information on comparison of the proposals enshrined in the Bill and SO Act	Administration to take action under paragraph 3(b) of the minutes
011056-011140	Dr LUI Ming-wah Administration	Request for the Administration to provide information on the regulatory regimes for various professions and industries in Hong Kong	Administration to take action under paragraph 3(a)(i) of the minutes
011141-012150	Chairman Mr SIN Chung-kai Mr Ronny TONG Dr LUI Ming-wah Clerk Administration	<p>(a) Members' agreement with the proposed arrangements for consulting the public and relevant organizations/individuals on the Bill as set out in paragraph 6 of the Members' Brief (LC Paper No. CB(1)2051/04-05)</p> <p>(b) Members' suggestions on the organizations to be consulted on the Bill</p> <p>(c) Deadline for submissions and dates of the second and third meetings of the Bills Committee</p>	