# 立法會 Legislative Council

LC Paper No. CB(1)284/05-06 (These minutes have been seen by the Administration)

Ref: CB1/BC/13/04

#### **Bills Committee on Financial Reporting Council Bill**

Minutes of the fourth meeting held on Monday, 31 October 2005, at 8:30 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 CHAN Kam-lam, SBS, JP

Hon SIN Chung-kai, JP

Hon Emily LAU Wai-hing, JP

Hon Jeffrey LAM Kin-fung, SBS, JP

Hon Andrew LEUNG Kwan-yuen, SBS, JP

Hon Ronny TONG Ka-wah, SC

**Member absent**: Dr Hon Philip WONG Yu-hong, GBS

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

Ms Connie SZETO

Senior Council Secretary (1)4

## I. Confirmation of minutes of meetings

(LC Paper No. CB(1)136/05-06

 Minutes of second meeting held on 27 September 2005

LC Paper No. CB(1)165/05-06

Minutes of third meeting held on 7 October 2005)

The minutes of the second and third meetings held on 27 September and 7 October 2005 respectively were confirmed.

#### II. Meeting with the Administration

(LC Paper No. CB(1)166/05-06(01)

- "Follow-up to the third meeting on 7 October 2005" prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)2368/04-05(03) Paper provided by the Administration on "Component One Establishment of the Financial Reporting Council"

Action - 3 -

LC Paper No. CB(1)166/05-06(02) — Paper provided by the Administration "(I)" on Appointment to; and (II) Checks and Balances on the Proposed Financial Reporting Council" LC Paper No. CB(1)166/05-06(03) — Paper provided by the Administration on "Summary of submissions Administration's responses" "Proposed meeting schedule" LC Paper No. CB(1)166/05-06(04) prepared by the Legislative Council Secretariat LC Paper No. CB(1)2288/04-05(35) — Paper provided the by "Proposed Administration on work plan")

2. <u>The Bills Committee</u> 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) Composition of the Financial Reporting Council (FRC)

Noting that the Administration maintained its original proposal under which all members of the FRC would be appointed by the Chief Executive (CE) and the members' qualification requirements were not set out in the Bill, some members of the Bills Committee re-iterated their concern that the FRC might not be able to maintain independence and there would be a lack of transparency in the appointment process. In this connection, the Administration was requested to consider and respond to the following views, suggestions and request raised by members:

- (i) A transparent and independent mechanism should be put in place for the appointment of members of the FRC. The majority of the members should be nominated by the relevant bodies and stakeholders:
- (ii) Given the Administration's advice that its intention was to establish a FRC with a wide and balanced composition and that the

CE would consider appointment of candidates from different backgrounds and disciplines (such as those with experience in accounting, auditing, finance, banking, law, business administration, etc.), such intention and principles should be set out clearly in the Bill;

- (iii) In connection with item (a)(i) and (a)(ii) above, consideration should be given to the following points:
  - To set out clearly in the Bill the backgrounds and disciplines from which the CE should consider in the appointment of the four to six other members of the FRC (clause 7(1)(c)(iv)), and to make reference to the Administration's proposed Committee Stage amendments (CSAs) to clause 9(3) of the Construction Industry Council (No. 2) Bill; and
  - To set out clearly in the Bill that the appointment of the four to six other members of FRC should be made on the basis of the nomination made by the relevant bodies and stakeholders (such as associations of listed companies and legal professional bodies). Reference should be made to the Administration's proposed CSAs to add the new subclauses (5) and (6) to clause 9 and the new Schedule 1A to the Construction Industry Council (No. 2) Bill.
- (iv) The Administration was requested to make reference to overseas experience, including the appointment mechanism in relevant overseas bodies, such as the United Kingdom (UK) FRC, and the power and role of the designated commissioner in the UK who was responsible for appointing members to public boards and bodies.

## (b) Meetings and proceedings of the FRC

To enhance the transparency of FRC, some members considered it necessary for meetings of the FRC to be held in public as far as possible, in particular those meetings which involved policy discussions and decisions, such as the meetings relating to the performance of the function set out in clause 9(e), i.e. to approve and oversee the polices and activities of the Investigation Board, a Review Committee and a committee established by the FRC. In this connection, the Administration was requested to consider and respond to the following views and suggestions raised by members:

(i) To set out clearly in the Bill that meetings of the FRC would be held in public unless in some specified circumstances (such as those involving discussions on the details of investigation of an individual case), and to make reference to the Administration's proposed CSAs to add the new clause 7A to Schedule 2 to the

#### Construction Industry Council (No. 2) Bill;

- (ii) To provide in the Bill the requirement for the FRC to make public the major discussions and decisions made at its closed meetings, including FRC's decisions on not initiating an investigation or enquiry into a suspected auditing irregularity or financial non-compliance and the relevant reasons; and
- (iii) In connection with item (b)(ii) above, the Administration was requested to provide information on the possible means through which the public would be informed of the major discussions and decisions made at closed meetings of the FRC.

#### (c) Written directions of the CE

To address a member's concern that clause 14, which empowered the CE to give the FRC written directions with respect to the performance of any of its functions, might undermine the independence of the FRC, the Administration was requested to consider and respond to the following suggestions and request raised by the member:

- (i) To provide in clause 14 that the FRC was required to comply with the CE's written directions if the directions were not inconsistent with the FRC's functions, and to make reference to section 6E(3) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
- (ii) To provide in clause 14 that the CE's written directions to the FRC should be made public and specify the circumstances under which non-disclosure might be allowed;
- (iii) When resuming the Second Reading debate on the Bill in due course, the Secretary for Financial Services and the Treasury was requested to incorporate in his speech the gist of paragraphs 13 and 14 of the paper on "Appointment to and Checks and Balances on the Proposed Financial Reporting Council" (LC Paper No. CB(1)66/05-06(02)), including the following points:
  - Clause 14 was a tool of last resort for the Administration, through the CE, to implement necessary remedial measures in the most pressing and extreme circumstances;
  - The CE would take into account all prevailing circumstances, including whether there was any major malfunction on the part of the FRC, whether the reputation of Hong Kong as an international financial centre was at stake, the urgency of remedial actions required of the FRC, and whether other checks and balances were performed effectively at the time; and

Action - 6 -

- No direction had ever been given by the CE in the past in accordance with relevant provisions in other ordinances, as this reserve power was not intended to be used lightly.
- (iv) To clarify whether the CE's written directions to the FRC were subject to judicial review.

#### (d) Proposed Process Review Panel (PRP)

Some members considered that as the proposed PRP for the FRC would only conduct reviews of the FRC's operational procedures, it could not address their call for a mechanism for reviewing FRC's decisions on not initiating investigations or enquiries into suspected auditing irregularities or financial non-compliances. In this connection, the Administration was requested to consider and respond to the following suggestion and request raised by the members:

- (i) To expand the proposed ambit of the PRP to cover the review of FRC's decisions on not initiating investigations or enquiries into suspected auditing irregularities or financial non-compliances;
- (ii) To provide the proposed terms of reference and composition of the PRP; and
- (iii) To prepare corresponding amendments to other relevant clauses, such as clause 51.

#### Meeting schedule

- 4. <u>The Chairman</u> invited members to consider the proposed meeting schedule (LC Paper No. CB(1)166/05-06(04)) for the fifth to nineteenth meetings covering the period from November 2005 to June 2006. She pointed out that the LegCo Secretariat had prepared the proposed schedule taking account of the following factors:
  - (a) According to the work plan presented by the Administration at the second meeting of the Bills Committee (LC Paper No. CB(1)2288/04-05(35)), it was estimated that 14 more meetings would be required for completing scrutiny of the Bill;
  - (b) The Administration's tentative target that the scrutiny of the Bill be completed by June 2006 with a view to resuming the Second Reading debate on the Bill in July 2006;
  - (c) Members' views expressed at previous meetings that meetings of the Bills Committee should preferably be held at two to three weeks intervals; and

Action - 7 -

- (d) The need to avoid clashes with meetings of other committees of LegCo which had overlapping membership with the Bills Committee.
- 5. <u>Members</u> endorsed the proposed meeting schedule.

(*Post-meeting note*: The meeting schedule was issued to members vide LC Paper No. CB(1)199/05-06(01) on 1 November 2005.)

## Date of next meeting

6. <u>The Chairman</u> reminded members that the next meeting would be held on Thursday, 17 November 2005, at 8:30 am.

## III. Any other business

7. There being no other business, the meeting ended at 10:30 am.

Council Business Division 1
<u>Legislative Council Secretariat</u>
15 November 2005

# Proceedings of the fourth meeting of the Bills Committee on Financial Reporting Council Bill on Monday, 31 October 2005, at 8:30 am in Conference Room A of the Legislative Council Building

000000 000224	Confirmation of minutes of	Required
000000-000224 Chairman	meetings (LC Paper Nos. CB(1)136/05-06 and 165/05-06)	
000225-001846 Chairman Administration Ms Emily LAU	Part 1 (Preliminary), Part 2 (Establishment, composition, functions, powers, and checks and balances of the Financial Reporting Council (FRC), Schedules 2 and 3 to the Bill)  Composition of the FRC  (a) The Administration's briefing on the paper on "(I) Appointment to; (II) Checks and Balances on the Proposed FRC" (Paragraphs 1 to 8 of LC Paper No. CB(1)166/05-06(02))  (b) Member's concern that all members of the FRC would be appointed by the Chief Executive (CE) and their qualification requirements were not set out in the Bill  (c) The Administration's responses, as follows:  (i) It was the	

Time marker	Speaker		Subject(s)	Action
		in FI	dministration's atention to establish a RC with a wide and alanced composition;	Required
		ap ca di an th in fin bu etc co fu th In (A	the CE would consider oppointment of andidates from ferent backgrounds and disciplines (such as accounting, auditing, nance, banking, law, usiness administration, c.) so that the FRC ould discharge its anctions and oversee he work of the Audit avestigation Board AIB) and Financial eporting Review ommittees effectively;	
		re ap se to ap av th cir ha ba di m th Fu (S	he qualification equirements for the oppointment were not et out in the Bill so as a facilitate the CE in oppointing the best vailable candidates in the light of the actual recumstances, such as awing regard to the ackgrounds and asciplines of the three tembers nominated by the Securities and attures Commission SFC), Hong Kong exchanges and Clearing limited and the Hong	

Time marker	Speaker	Subject(s		Action
		Certified Accountant (clause 7	Public ss (HKICPA) (1)(c)(i) to considering at of the ar to six (clause	Required
		proposal w with the Accountant (Amendme Ordinance prescribed qualificatio requiremen appointmen members Council, Disciplinary Investigation the HKI similar appear adoption appointment members the Authority	nt) 2004, which no detailed n ts for the nt of lay to the and y and on Panels of CPA, and oproach had oted in the	
		out in any regarding appointmen directors of	ts were set y legislation the	

Time marker	Speaker	Subject(s)	Action
			Required
		or the United States' Public Company Accounting Oversight Board	
		(d) Member's view that given the Administration's intention and principles in the appointment of members to the FRC as mentioned in item (c)(i) and (ii) above, such intention and principles should be set out in the Bill	
		(e) Member's suggestion for the Administration to consider setting out clearly in the Bill the backgrounds and disciplines from which the CE should consider in the appointment of the four to six other members of the FRC, and to make reference to the Administration's proposed Committee Stage amendments (CSAs) to clause 9(3) of the Construction Industry Council (No. 2) Bill	
		(f) The Administration's emphasis of the need to provide flexibility for the CE to appoint members of the FRC. Moreover, with rapid development in Hong Kong, it would be impossible to incorporate an exhaustive list of relevant disciplines in the legislation	

Time marker	Speaker	Subject(s)	Action
			Required
001847-002747	Mr Ronny TONG Administration	(a) Member's support for clause 7(l)(c)(i) to (iii)	
		(b) Member's views/suggestions as follows:	The Administration to take action under paragraph 3(a)(i)
		(i) A transparent and independent mechanism should be put in place for the appointment o members of the FRC and	and (ii) of the minutes
		(ii) The majority of FRC members should be nominated by the relevant bodies and stakeholders and consideration should be given to set out clearly in the Bill that the appointment of the fou to six other members of FRC should be made on the basis of the nomination made by the relevant bodies and stakeholders (such a associations of listed companies and legal professional bodies)	
002748-003507	Dr LUI Ming-wah Administration	(a) Member's enquiry that as the Administration's suggested approach had been adopted in the appointment of member to SFC, the Broadcasting Authority and the Consume	
		Council, whether the Administration had identified	

Time marker	Speaker	Subject(s)	Action Required
		any difficulties in the appointment of members to the three bodies	Kequireu
		(b) In connection with item (a) above, the Administration's response that the effectiveness of the approach had not been reviewed	
		(c) Member's views, as follows:	
		(i) The CE should consider appointment of FRC members with different backgrounds and disciplines, and the necessary expertise and experience to enable the FRC to discharge its functions effectively; and	
		(ii) Given the number of relevant associations might exceed 100, it was difficult to set out the relevant associations in the Bill	
003508-003720	Mr Jeffrey LAM	Member's view that given the rapid development in the financial services sector, the suggestion of setting out the qualification requirements of FRC members in the Bill might undermine the Administration's ability to ensure a good mix of available appointees with the necessary expertise and experience in the light of actual circumstances	

Time marker	Speaker	Subject(s)	Action
			Required
003721-004812	Ms Emily LAU Administration	Request for the Administration to make reference to the following points in considering the composition of the FRC:  (a) The Administration's proposed CSAs to clause 9(3) of the Construction Industry Council (No. 2 ) Bill for setting out clearly in the Bill the backgrounds and disciplines from which the CE should consider in the appointment of the four to six other members of the FRC;	The Administration to take action under paragraph 3(a)(iii) and (iv) of the minutes
		(b) The Administration's proposed CSAs to add the new subclauses (5) and (6) to clause 9 and the new Schedule 1A to the Construction Industry Council (No. 2) Bill for setting out clearly in the Bill that the appointment of the four to six members of the FRC should be made on the basis of the nomination made by the relevant bodies and stakeholders; and	
		(c) Overseas experience, including the appointment mechanism in relevant overseas bodies, such as the UKFRC, and the power and role of the designated commissioner in the UK who was responsible for appointing members to public	

Time marker	Speaker	Subject(s)	Action
		1 1 11 11	Required
		boards and bodies	
004813-005408	Ms Emily LAU Administration	Meetings and proceedings of the FRC	
		(a) Member's enquiry on whether there were provisions in the Bill stipulating proceedings for FRC meetings and governing conflict of interests of members	
		(b) The Administration's advice, as follows:	
		(i) Clause 52 and paragraph 6 of Schedule 2 to the Bill dealt with conflict of interests and meetings and proceedings of the FRC; and	
		(ii) The FRC could work out guidelines on details of meeting arrangements and proceedings	
		(c) Member's views, as follows:	
		(i) In order to enhance the transparency of FRC, it was necessary for meetings of the FRC to be held in public as far as possible, in particular those meetings which involved policy discussions and decisions, such as the	

Time marker	Speaker	Subject(s)	Action Required
		meetings relating to the performance of the function set out in clause 9(e), i.e. to approve and oversee the polices and activities of the AIB, a Review Committee and a committee established by the FRC; and  (ii) The Bill should set out clearly that meetings of the FRC would be held in public unless in some specified circumstances (such as those involving discussions on the details of investigation of an individual case)	Acquireu -
		(d) The Administration's advice, as follows:	
		(i) There was no provision in the Bill prohibiting the FRC from holding its meeting in public; and	
		(ii) It was believed that the FRC would consider whether its meetings should be held in public having regard to relevant provisions in the Bill, such as clause 51 (preservation of secrecy), and the actual circumstances	

Time marker	Speaker	Subject(s)	Action Required
005409-005540	Dr LUI Ming-wah Administration	Member's view that the FRC should explore possible means through which the public would be informed of the major discussions and decisions made at closed meetings of the FRC	
005541-005718	Mr CHAN Kam-lam	Member's view that it was not appropriate to set out in the Bill the requirement for the FRC to hold its meetings in public given that discussions on the details of investigation of individual cases should not be held in public, and whether the meetings were to be held in public should be a matter for the FRC to decide	
005719-005816	Mr Ronny TONG	<ul> <li>Member's views, as follows:</li> <li>(a) The FRC should not disclose discussions on the details of investigation of individual cases; and</li> <li>(b) The FRC should disclose its decisions on not initiating an investigation or enquiry into a suspected auditing irregularity or financial non-compliance and the relevant reasons</li> </ul>	
005817-005928	Mr Jeffrey LAM	Member's view that the FRC should have flexibility in deciding whether to hold its meetings in public or disclose information relating to complaints received in order to avoid jeopardizing interests of persons or entities	

Time marker	Speaker	Subject(s)	Action
			Required
010107-011458	Administration Ms Emily LAU	Appointment to; (II) Che and Balances on the Propo FRC" (Paragraphs 9 to 25	ing '(I) cks
		Written directions of the CE	
		(b) Member's concerns, follows:	as
		performance of any its functions mi undermine	RC vith the
		(ii) How the CE wo exercise his power giving writ directions to the FF and	of ten
		(iii) Whether the C written direction wo be made public	E's uld
		(c) The Administration's advias follows:	ice,
		(i) Clause 14 was a tool last resort for	of the

Time marker	Speaker	Subject(s)		Action
				Required
		the C necess measu pressi	inistration, through E, to implement sary remedial res in the mosting and extreme instances;	
		accouncircum includ was malfur of the reputa Kong internacentre urgence action FRC, checks were	E would take into nt all prevailing instances, ing whether there any major inction on the part FRC, whether the tion of Hong as an ational financial was at stake, the cay of remedial is required of the and whether other is and balances performed vely at the time;	
		been g the pa with re in oth this re	direction had ever given by the CE in ast in accordance elevant provisions are ordinances, as eserve power was tended to be used or; and	
		in the the d CE's to th Admir	was no provision Bill prohibiting isclosure of the written directions the FRC. The mistration would the on the matter in	

Time marker	Speaker	Subject(s)	Action Required
		the light of actual circumstances.	Required
	Ms Emily LAU Administration	Member's suggestions for Administration's consideration and follow-up action, as follows:  (a) To provide in clause 14 that the FRC was required to comply with the CE's written directions if the directions were not inconsistent with the FRC's functions, and to make reference to section 6E(3) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);  (b) To provide in clause 14 that the CE's written directions to the FRC should be made public and specify the circumstances under which non-disclosure might be allowed;  (c) When resuming the Second Reading debate on the Bill in due course, the Secretary for Financial Services and the Treasury was requested to incorporate in his speech the gist of paragraphs 13 and 14 of LC Paper No. CB(1)166/05-06(02); and  (d) To clarify whether the CE's written directions to the FRC were subject to judicial review.	The Administration to take action under paragraph 3(c)(i) to (iv) of the minutes

Time marker	Speaker	Subject(s)	Action
			Required
011847-011947	Mr CHAN Kam-lam	Member's views, as follows:	
		(a) It was unnecessary to provide in the Bill that the CE's written directions to the FRC should be made public; and	
		(b) The Administration should decide whether to make public such written directions in the light of actual circumstances	
011948-012557	Ms Emily LAU Chairman Mr Ronny TONG	(a) Members' views that the CE's written directions to the FRC should be made public	
		(b) The Chairman's call for the Administration to consider members' views and provide a written response	
012558-013215	Ms Emily LAU Administration	Proposed Process Review Panel (PRP)	
		(a) Member's support for the Administration's proposal of setting up a PRP for the FRC in principle, and request for the Administration to provide information on the proposed terms of reference and composition of the PRP	
		(b) The Administration's advice, as follows:	
		(i) The proposed PRP would be a non-statutory body	

Time marker	Speaker	Subject(s)	Action Required
		independent of the FRC to review the FRC's operational procedures for ensuring that they were fair and reasonable, and whether the FRC had followed its internal due process procedures in handling cases; and  (ii) The proposed PRP was modelled on the existing PRP for the SFC	Required
013216-014000	Mr Ronny TONG Administration	(a) Member's concern that the proposed PRP could not address members' call for a mechanism for reviewing FRC's decisions on not initiating investigations or enquiries into suspected auditing irregularities or financial non-compliances	
		<ul> <li>(b) The Administration's advice, as follows:</li> <li>(i) Clause 76 of the Bill included an amendment to Part I of the Schedule 1 to The Ombudsman Ordinance (Cap. 397) to the effect that complaints against the actions of the FRC might be lodged with the Office of The Ombudsman; and</li> </ul>	

Time marker	Speaker	Subject(s)	Action
		(ii) The Ombudsman would provide effective checks and balances against any maladministration on the part of the FRC	Required
		(c) Member's view that the proposed ambit of the PRP should be expanded to cover the review of FRC's decisions referred to in item (a) above	
014001-014631	Mr Bernard CHAN Administration	<ul> <li>Member's advice, as follows:</li> <li>(a) The PRP for the SFC was not a body for handling complaints against SFC's decisions; and</li> <li>(b) Given the large number of review cases involved, the PRP for the SFC only conducted reviews of cases on sample basis</li> </ul>	
014632-015109	Mr Ronny TONG Administration Mr Bernard CHAN	Request for the Administration to consider the following suggestions:  (a) To expand the proposed ambit of the PRP to cover the review of FRC's decisions on not initiating investigations or enquiries into suspected auditing irregularities or financial non-compliances; and  (b) To prepare corresponding	The Administration to take action under paragraph 3(d)(i) and (iii) of the minutes

Time marker	Speaker	Subject(s)	Action Required
		amendments to other clauses, such as clause 51 to allow the disclosure of information to the proposed PRP	
015110-015559	Chairman Ms Emily LAU Administration Clerk	Papers for discussion at the next meeting  Members' agreement to discuss the following papers at the next meeting:  (a) Paper provided by the Administration on "Functions of the FRC" (LC Paper No. CB(1)2288/04-05(34); and  (b) Paper(s) to be provided by the Administration to follow up issues raised at this meeting	
015600-015924	Chairman Ms Emily LAU Mr Ronny TONG	Meeting schedule	

Council Business Division 1
<u>Legislative Council Secretariat</u>
15 November 2005