

**Bills Committee on  
Financial Reporting Council Bill**

**Seventh meeting on 20 December 2005**

**List of follow-up actions to be taken by the Administration**

1. Investigation reports of the Audit Investigation Board (AIB)

The Administration undertakes to consider proposing a Committee Stage amendment (CSA) to clause 35(5) to carve out the admissibility of AIB's investigation reports in criminal proceedings as evidence of the facts stated in the reports (paragraph 22 of LC Paper No. CB(1)286/05-06(03)).

2. Financial Reporting Review Panel (FRRP)

The Administration undertakes to consider proposing a CSA to clause 39(1) to set out explicitly the backgrounds and disciplines that the Chief Executive (CE) shall consider in the appointment of members of the FRRP (paragraph 3 of LC Paper No. CB(1)420/05-06(02)).

3. Financial Reporting Review Committees (FRRC)

Clause 40(1) provides that the Financial Reporting Council (FRC) may appoint a FRRC, and clause 41(1) provides that a FRRC is to consist of at least five members of the FRRP. Some members of the Bills Committee are concerned that the arrangements for the appointment of a FRRC and its members, and the details of operation of a FRRC, are not stipulated in the Bill. The Administration is requested to consider and respond to the views of members and/or the legal adviser to the Bills Committee that the Bill should set out clearly the following details:

- (a) Arrangements for the appointment of a FRRC and its members by the FRC, and that such power of appointment is non-delegable;
- (b) Criteria for the FRC to select FRRP members to form a FRRC, such as no conflict of interests;
- (c) Whether the appointment of a member of a FRRC could be revoked; if it could, the authority (the CE or the FRC) for revoking the appointment and the circumstances under which such power could be exercised;

- (d) Operation of a FRRC in the event of removal or resignation of its member(s). For example, if one of the five members of a FRRC has been removed or has resigned during the enquiry stage, whether a new member would be appointed to the FRRC or a new FRRC would be formed to handle the same matter. In this connection, if a new member would be appointed to the FRRC to handle the same matter, the following concerns need to be addressed:
    - (i) The change in membership of the FRRC during the enquiry stage may be against the principle of natural justice, and may subject the legal status of the FRRC and the report it made to legal challenge; and
    - (ii) Whether the parties concerned would be informed of the change in membership of the FRRC;
  - (e) Operation of a FRRC in the event that one of its members is found to have conflict of interests with the matter under enquiry. According to clause 52(5), it seems that the member concerned shall not be present during any deliberation of the FRRC, and shall not take part in any decision of the FRRC, with respect to the matter. In the circumstance, it is not clear whether the FRRC with the participation of only four members would meet the requirement of clause 41(1) that a FRRC is to consist of at least five members of the FRRP, and whether a new member should be appointed to the FRRC or a new FRRC should be formed to handle the same matter;
  - (f) In connection with items (d) and (e) above, it is necessary to set out clearly the quorum of a FRRC; and
  - (g) Instead of relying on section 51 of the Interpretation and General Clauses Ordinance (Cap. 1), it should be set out clearly in the Bill that the powers of a FRRC shall not be affected by any vacancy in its membership.
4. Jurisdiction of the FRRC

The Administration is requested to respond in writing whether “special notices” or “special reports” for the purpose of clarification, “managerial accounts”, and “directors’ reports” published by listed entities are covered by the definition of “relevant financial reports” set out in Part 1 of Schedule 1 to the Bill. If they are not covered by the definition, the Administration is requested to consider some members’ view that as these documents may contain important financial information of listed entities, they should be subject to the jurisdiction of the FRRC.

5. Enquiry power of a FRRC

Clause 43 provides that the enquirer may require persons from the specified classes to produce any record or document, or any information or explanation, relevant to the non-compliance. Clause 45 further empowers the enquirer to apply to the court for an inquiry of any unreasonable refusal or failure to comply with the requirement under clause 43. The Administration is requested to consider and respond to members' views and suggestions, as follows:

- (a) In the event that the relevant records or documents do not belong to the persons concerned, or the persons concerned are forbidden to disclose the records or documents by statutory or contractual requirements, it would be difficult for them to comply with clause 43. There should be provisions in the Bill specifying how such situations are to be dealt with; and
- (b) Clause 45 should set out the criteria for considering whether the refusal or failure of the persons concerned to comply with clause 43 is "unreasonable".