

**Bills Committee on
Financial Reporting Council Bill**

Eleventh meeting on 24 February 2006

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

Disciplinary provisions under the Professional Accountants Ordinance (PAO)
(Cap. 50)

1. The Administration undertakes to propose Committee Stage amendments (CSAs) to the relevant provisions of the PAO to empower the Hong Kong Institute of Certified Public Accountants (HKICPA) to discipline its members who have failed to comply with an information-gathering requirement imposed by the Audit Investigation Board (AIB) or a Financial Reporting Review Committee (FRRC) in the investigations or enquiries (paragraph 5 of LC Paper No. CB(1)963/05-06(02)).
2. The Administration undertakes to convey to the HKICPA and the future FRC members' suggestion of putting in place administrative arrangements for the FRC to inform the HKICPA of non-compliance of accountants with the information-gathering requirement of the AIB or a FRRC so as to facilitate the Institute to initiate appropriate disciplinary actions (paragraph 6 of LC Paper No. CB(1)963/05-06(02)).

Post-enquiry actions of a FRRC

3. The Administration is requested to improve the drafting of the proposed CSA to clause 49(1) (Annex B to LC Paper No. CB(1)963/05-06(02)), taking into consideration members' suggestions, as follows:
 - (a) To replace the proposed formulation "... there is or may be a question whether or not ..." in the English text of the draft proposed CSA by the formulation "... there is, or may be, a question whether or not ..."; and
 - (b) To recast the Chinese text of the draft proposed CSA so as to facilitate readers' understanding and to start the first sentence with "如財務滙報局覺得就某上市實體".

Protection of informers' identity

4. Having noted members' views and suggestions expressed at the meeting held on 10 February 2006 regarding the need to provide separate provisions in the Bill on "Protection of informers" (item 10 of LC Paper No. CB(1)963/05-06(01)), the Administration undertakes to revert to the Bills Committee as soon as practicable.

Clause 51 — Preservation of secrecy

5. Members note the Administration's draft proposed CSAs to clause 51(3)(b)(ix) and (3)(c) (Annex C to LC Paper No. CB(1)963/05-06(02)) to address the concerns about the disclosure of information to the Official Receiver (OR) for him to perform the statutory duties of his two roles, i.e. the statutory duties as OR other than in the capacity of a liquidator/provisional liquidator under the Companies Ordinance (Cap. 32), and the statutory duties as OR in the capacity of a liquidator/provisional liquidator. The Administration is requested to consider and respond to some members' further views and suggestions, as follows:
 - (a) There are two major considerations for deciding the parties to which the FRC may disclose information: Information should only be disclosed on a "need-to-know" basis, and the disclosure would not give the parties receiving the information an unfair advantage over others;
 - (b) It is unclear why it is necessary for the FRC to disclose information to a liquidator/provisional liquidator of a listed entity which is the subject of its investigation or enquiry. The disclosure of information, particularly during the investigation or enquiry stage, may give the liquidator/provisional liquidator an unfair advantage over others and jeopardize the interest of the entity concerned;
 - (c) It is unclear from the draft proposed CSAs to clause 51(3)(c) whether the FRC may, apart from disclosing information to the liquidator/provisional liquidator of a listed entity which is the subject of its investigation or enquiry (Company A), also disclose information to other liquidators/provisional liquidators. If the FRC may do so, it may disclose information about the investigation or enquiry to the liquidator/provisional liquidator of a creditor of Company A (Company B). The information may enable the liquidator/provisional liquidator of Company B to take swift action to recover assets from Company A, thus giving the

liquidator/provisional liquidator an unfair advantage over other creditors of Company A. The policy intent in this regard is unclear and should be clarified; and

- (d) From the drafting of the proposed CSAs to clause 51(3)(b) and (3)(c), it seems that the FRC may disclose any information to the OR or liquidators/provisional liquidators. There should be some restrictions on the scope of disclosure.

Clause 52 — Avoidance of conflict of interests

- 6. The Administration undertakes to propose a CSA to clarify that the term “interest” in clause 52(3)(a) means interest in securities or a collective investment scheme.
- 7. Members stress the importance of putting in place a stringent interest disclosure regime to avoid conflict of interests. In this connection, the Administration is requested to consider and respond to the views and suggestions expressed by some members, as follows:
 - (a) Details about the FRC’s interest disclosure regime, such as the kinds of interests that required to be disclosed and the circumstances under which disclosure should be made, should be clearly set out in writing, such as in the form of a code of conduct or guideline; and
 - (b) Clause 52 seems to imply that a member of the FRC/AIB/FRRC should not participate in the FRC/AIB/FRRC’s investigation or enquiry if conflict of interests is involved. This policy intent should be expressly stated in the Bill. While clause 52(5) provides that a member who has disclosed the nature of any interest in a matter shall not participate in the FRC/AIB/FRRC’s deliberations and take part in any of its decision with respect to the matter, such a provision could only be invoked after the member has disclosed his interest. If the member does not disclose his interest, clause 52(5) could not serve its purpose.
- 8. Some members are concerned about the impact of non-disclosure of interests if it is found in the course of an investigation or enquiry that a member of AIB or FRRC has not disclosed his interest in the matter which is the subject of the investigation or enquiry. The Administration points out that under clause 52(8), a contravention of clause 52 does not invalidate a decision of the FRC, AIB, FRRC, or a committee established by the FRC. In members’ view, clause 52(8) could not address the concern that non-disclosure of interests of members of AIB or FRRC, whether intentional or unintentional, is unfair to the parties under investigation or enquiry, and may subject the investigation or enquiry

report to legal challenge. In this connection, the Administration is requested to consider and respond to the views and suggestions expressed by some members, as follows:

- (a) A mechanism should be provided in the Bill to deal with the situation mentioned above. A suggested option is that if it is found in the course of an investigation or enquiry that a member of AIB or FRRC has not disclosed his interest in the matter which is the subject of the investigation or enquiry, the FRC is required to review whether the same AIB or FRRC should continue with its work or the AIB or FRRC should be dissolved and reconstituted, and the review undertaken by the FRC in this regard should be recorded in the report of the AIB or FRRC; and
 - (b) It is not appropriate to rely on the general provisions in section 42(b) of the Interpretation and General Clauses Ordinance (Cap.1) to deal with issues relating to vacancy in the membership and dissolution of the AIB or FRRC arising from the situation mentioned above.
9. Clause 52(4) provides that the FRC shall keep a record of the particulars of the interests disclosed under the clause. There is no provision in the Bill requiring the disclosure of the record. In this connection, the Administration is requested to consider and respond to the views and suggestions expressed by members, as follows:
- (a) In principle, the interest disclosure record should be made available for public inspection to enhance the transparency of the operation of the FRC. However, some members are concerned that making public the interest disclosure record may have negative impact on the market and jeopardize the interests of the listed entities under investigation or enquiry. Consideration may be given to disclose in the investigation or enquiry report the interests declared and conflict of interests involved, if any. Such record will then be made public if it is decided by the FRC that the report should be made public; and
 - (b) If a member of the FRC, AIB, or FRRC has disclosed interest in a matter which is the subject of an investigation or enquiry but the FRC considers that:
 - (i) there is no conflict of interests involved and the member should be allowed to participate in the investigation or enquiry; or
 - (ii) despite there is conflict of interests involved, the member should be allowed to participate in the investigation or enquiry,the parties under investigation or enquiry should be informed of

such disclosure of interests and the FRC's decision.

Clause 34 — Retention of records

10. The Administration undertakes to propose a CSA to clause 34(4) to the effect that the records or documents removed under a magistrate's warrant may also be retained for such longer period as may be necessary for the purpose of the disciplinary proceedings under the PAO (paragraph 9 of LC Paper No. CB(1)866/05-06(04)).

Clause 75 — Consequential amendments to the Prevention of Bribery Ordinance (PBO) (Cap. 201)

11. The Administration undertakes to consider the suggestion raised by the legal adviser to the Bills Committee that the reference to "Audit Investigation Board" and "Financial Reporting Review Committee" be added to Schedule 1 to the PBO (paragraph 10 of LC Paper No. CB(1)665/05-06(09)).

Council Business Division 1
Legislative Council Secretariat
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