

**Bills Committee on
Financial Reporting Council Bill**

Fourteenth meeting on 10 April 2006

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

Clause 14 – Written directions of the Chief Executive (CE)

1. As agreed, the Secretary for Financial Services and the Treasury will incorporate in his speech resuming the Second Reading debate on the Bill 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)166/05-06(02)), including the following points:
 - (a) Clause 14 is a tool of last resort for the Administration, through the CE, to implement necessary remedial measures in the most pressing and extreme circumstances;
 - (b) CE will take into account all prevailing circumstances, including whether there is any major malfunction on the part of the Financial Reporting Council (FRC), whether the reputation of Hong Kong as an international financial centre is at stake, the urgency of remedial actions required of the FRC, and whether other checks and balances are performed effectively at the time; and
 - (c) No direction has ever been given by the CE in the past in accordance with relevant provisions in other ordinances, as this reserve power is not intended to be used lightly.

Clause 29 – Investigator to consult the relevant authorities before imposing certain requirements on a person

2. The Administration is requested to consider a member’s suggestion that the purpose for the investigator to consult the relevant authorities be set out in clause 29.

Clauses 31 and 32 – Failure to comply with the requirements under clauses 25 to 28

3. Clause 31 sets out the offences for failures to comply with the requirements imposed under clauses 25 to 28, and clause 32 empowers the FRC or the Audit Investigation Board to apply to the Court of First Instance for inquiries into such failures. Members note the Administration's advice that under clauses 31(10) and 32(4), a person who does not comply with the relevant requirement is protected from the "double jeopardy" of a criminal prosecution under clause 31 and a court order under clause 32. In other words, if a person who has not complied with a requirement imposed by the investigator is subject to a court order under clause 32, he will not face a separate prosecution for a non-compliance with the same requirement under clause 31, and vice versa. The legal adviser to the Bills Committee considers that in accordance with the policy intent, the limitation provided under clause 32(4) should apply only to the non-compliance specified in clause 31(1) (i.e. failure to comply without reasonable excuse), but not to those specified in clause 31(2) to (8) (which involve false representation and intent to defraud). The Administration is requested to re-consider the drafting in the light of the policy intent.

Council Business Division 1
Legislative Council Secretariat
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