

Bills Committee on Financial Reporting Council Bill

Summary of submissions

(Position as at 12:00 noon, 26 September 2005)

30 submissions

	<u>LC Paper No.</u>
The Association of International Accountants – Hong Kong Branch (AIA(HK))	CB(1)2288/04-05(01)
British Chamber of Commerce in Hong Kong (BCCHK)	CB(1)2288/04-05(02)
Deloitte Touche Tohmatsu (Deloitte)	CB(1)2288/04-05(03)
The Chamber of Hong Kong Listed Companies (CHKLC)	CB(1)2288/04-05(04)
Hong Kong Institute of Certified Public Accountants (HKICPA)	CB(1)2288/04-05(05)
CPA Australia – Hong Kong China Division (CPAA(HKC))	CB(1)2288/04-05(06)
The Chartered Institute of Management Accountants – Hong Kong Division (CIMA(HK))	CB(1)2288/04-05(07)
Mr CHAN Sai-hoi (S H CHAN)	CB(1)2288/04-05(08)
The Chinese General Chamber of Commerce (CGCC)	CB(1)2288/04-05(09)
Mandatory Provident Fund Schemes Authority (MPFA)	CB(1)2288/04-05(10)
Office of the Privacy Commissioner for Personal Data, Hong Kong (OPCPD)	CB(1)2288/04-05(11)
The Office of The Ombudsman (Ombudsman)	CB(1)2288/04-05(12)
KPMG	CB(1)2288/04-05(13)
Standing Committee on Company Law Reform (SCCLR)	CB(1)2288/04-05(14)
Hong Kong General Chamber of Commerce (HKGCC)	CB(1)2288/04-05(15)

	<u>LC Paper No.</u>
Hong Kong Trustees Association Ltd (HKTA)	CB(1)2288/04-05(16)
The Association of Chartered Certified Accountants (Hong Kong) (ACCA(HK))	CB(1)2288/04-05(17)
The Law Society of Hong Kong (LSHK) — Companies and Financial Law Committee — Securities Law Committee	CB(1)2288/04-05(18)
The Hong Kong Chinese Enterprises Association (HKCEA)	CB(1)2288/04-05(19)
Hong Kong Association of Restricted Licence Banks and Deposit-taking Companies (DTCA)	CB(1)2288/04-05(20)
Securities and Futures Commission (SFC) — Investor Education Advisory Committee (IEAC) — Public Shareholders Group (PSG) — Staff	CB(1)2288/04-05(21)(a) and (b)
The Hong Kong Institute of Chartered Secretaries (HKICS)	CB(1)2288/04-05(22)
National Institute of Accountants of Australia – China Branch (NIAA(C))	CB(1)2288/04-05(23)
Ernst and Young (E & Y)	CB(1)2288/04-05(24)
Hong Kong Bar Association (HKBA)	CB(1)2288/04-05(25)
Mr Oscar WONG Sai-hung (Oscar WONG)	CB(1)2288/04-05(27)
Mr Simon YOUNG (Simon YOUNG)	CB(1)2288/04-05(28)
Mr David GUNSON (David GUNSON)	CB(1)2288/04-05(29)
Dr Peter P F CHAN (Peter CHAN)	CB(1)2288/04-05(30)
Mr Peter H Y WONG (Peter WONG)	CB(1)2288/04-05(31)

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Appendix I Extracts from the Professional Accountants Ordinance

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	Views of organizations on major issues of the Bill	Name of Organization
1	<i>General comments</i>	
1.1	Supports the Bill.	KPMG NIAA(C) HKICPA Oscar WONG S H CHAN
1.2	Supports the establishment of the Financial Reporting Council (FRC) as an independent statutory body.	HKICS NIAA(C) CIMA(HK)
1.3	Supports the establishment of the FRC.	KPMG SCCLR ACCA(HK) LSHK CHKLC BCCHK Simon YOUNG
1.4	<ul style="list-style-type: none"> ● Broadly supportive of the Administration's proposals. ● It is vital to keep costs under control and consider carefully the FRC's scope of work. 	DTCA
1.5	No comment on the Bill.	MPFA HKTA
1.6	<ul style="list-style-type: none"> ● It is not the right time to establish the FRC. The Administration should first tackle other more pressing issues in the financial market of Hong Kong, such as enhancing the regulatory regime over listing. ● Establishment of the FRC is not the only option to improve financial reporting of companies. The Administration should consider strengthening the existing regulatory regime of the accounting profession and avoid setting up an additional statutory body. 	CGCC

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1.7	<ul style="list-style-type: none"> ● The objective of establishing the FRC, and the nature and role of the FRC are unclear. There are four points of concern: <ul style="list-style-type: none"> (a) The FRC may change the existing self-regulatory regime of the accounting profession resulting in regulation of professionals by non-professionals. The engagement of external expertise for conducting investigations may involve high costs and may not be efficient; (b) There will be overlap of investigatory functions between the FRC, Hong Kong Institute of Certified Public Accountants (HKICPA) and SFC resulting in wastage of resources; (c) The establishment of the FRC will increase the compliance cost of listed entities. The obligations of the auditors will be increased and they may charge listed entities more for auditing work. Given that the running costs of the FRC will be shared by the Companies Registry Trading Fund (CRTF), Hong Kong Exchanges and Clearing Limited (HKEx), SFC and HKICPA, it may result in a situation where the costs will be recovered from levies imposed on listed entities; and (d) The need for establishing the FRC merits further consideration. ● Suggests that the Administration should consider other options for enhancing the existing regulatory regime of the accounting profession, as follows: <ul style="list-style-type: none"> (a) To set up a “Listed Entities Financial Reporting Committee” under the HKICPA, with one third of its members being non-accountants, to undertake investigation against accounting irregularities. The Committee would not be vested with prosecution or disciplinary powers and would be oversight by a Board of Review; or (b) To entrust HKEx or SFC with the proposed functions of the FRC to avoid overlap of 	HKCEA

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	functions and wastage of resources.	
1.8	Fully agrees that it is of paramount importance for Hong Kong to maintain an effective regulatory regime for the accounting profession, but fails to see how the establishment of the FRC will improve the regulatory regime of the accounting profession.	HKGCC
2	<i>Funding of the FRC</i>	
2.1	It is important to provide adequate funding for the FRC.	SCCLR
2.2	The proposal for the Government, HKEx, HKICPA and SFC to contribute to the funding of the FRC is appropriate.	NIAA(C)
2.3	Funding for the FRC should come from the Government, the professional body and the business community in particular from listed companies in Hong Kong by enforcing a levy on them.	CPAA(HKC)
2.4	<ul style="list-style-type: none"> ● The full funding arrangements are not set out in the Bill. It is important that the funding arrangements demonstrate the independence of the FRC, and that funding is adequate to allow the FRC to perform its functions fully. ● The proposed annual contribution of \$2.5 million by each of the four parties concerned (i.e. the Government, HKEx, HKICPA and SFC) appears to be inadequate for the running of the FRC. 	ACCA(HK)
2.5	<ul style="list-style-type: none"> ● Supports the proposal to review the funding arrangement in three years' time. ● It is very probable that the annual funding of \$10 million and the reserve of \$10 million will be insufficient for the running of the FRC, especially in times of large scale investigations or when the FRC faces judicial review against its decisions. It is necessary to set out the long term funding plan for the FRC at this stage. 	HKICS

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2.6	The small budget of the FRC may prevent it from carrying out its functions effectively and efficiently.	A member of SFC's IEAC
2.7	<ul style="list-style-type: none"> ● The initial contribution of \$2.5 million each and then three years contributions of \$2.5 million each is steep for the four bodies to bear, especially for the HKICPA and CRTF. ● Given that the FRC is a statutory body, the Government should fund the operations initially and the FRC should move towards creating a levy which would eventually fund all its operations. 	BCCHK
2.8	<ul style="list-style-type: none"> ● The proposed budget of the FRC is small as compared to those of similar bodies overseas. In order for the FRC to achieve its objectives, it should be better funded. ● Funding of the United States (US) Public Company Accounting Oversight Board (PCAOB) and the United Kingdom (UK) FRC comes from levies on companies based on their market capitalization. It is suggested that a similar funding model be adopted for the FRC. ● Seeks clarification on whether the FRC's proposed budget represents an increase over the resources currently made available by the HKICPA to conduct inspections of auditors. 	A member of SFC's PSG
2.9	<ul style="list-style-type: none"> ● Expresses concern about the small annual budget for the FRC. An annual budget of \$10 million is likely to be inadequate to provide the necessary under-pinning suggested by the Bill. ● A formula for cost-apportionment which relies more substantially on the shoulders of the auditors than on the general membership of the HKICPA might be more equitable. 	CIMA(HK)
2.10	If the FRC needs to contract out its investigation work due to heavy caseload, it will involve high cost which may not be affordable by the FRC in view of its limited financial resources.	CGCC

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3	<p><i>The FRC</i> <i>(Parts 1, 2 and Schedules 1, 2, 3 to the Bill)</i></p>	
	<p><u><i>Composition of the FRC</i></u></p>	
3.1	<ul style="list-style-type: none"> ● Supports the proposal that the majority of the members of the FRC should be lay persons (clause 7) which is in line with the international trend towards making the oversight of auditors and financial reporting of listed entities more independent from the accounting profession. ● Expresses concern about the criteria for selecting the lay members of the FRC. Suggests that: <ul style="list-style-type: none"> (a) lay members shall possess relevant, personal, specific experience and expertise which are essential for conducting effective investigations and making sound and fair judgement in relation to financial reporting of listed entities; and (b) the FRC should be both cautious and demanding in its choice of lay members whom can be drawn from other professional bodies. 	HKICS
3.2	<ul style="list-style-type: none"> ● The proposed composition of the FRC is appropriate (clause 7). ● It is important that members of the FRC have a broad set of experience and skills. The lay members should have at least a working knowledge of financial and accounting issues. At least one member should come from the wider community who is not a representative of the business community. 	NIAA(C)
3.3	<p>Welcomes the proposed composition of overwhelmingly lay members.</p>	CIMA(HK)
3.4	<p>Membership of the FRC should include a balanced representation of the interested parties.</p>	Oscar WONG
3.5	<ul style="list-style-type: none"> ● It is important for FRC staff and members to have the relevant experience and expertise in listed companies to enable them to have a good understanding of the case issues. 	CPAA(HKC)

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	<ul style="list-style-type: none"> ● Members of the FRC can be appointed from a pool of experts which consists of a balanced number of accountants and lay persons. The pool of experts may include retired audit partners who can take up volunteer advisory roles. 	
3.6	<p>It is inappropriate for the FRC to include a majority of lay persons as its members. Audits are highly technical, and investigations of auditing irregularities even more so. The investigation of auditing irregularities should be conducted by professionals.</p>	HKGCC
3.7	<ul style="list-style-type: none"> ● Any person nominated as a member of the FRC by the HKICPA should be from their Secretariat, and not from an audit firm. ● Suggests that a representative from a Chamber of Commerce is one of the nominated members and also a lawyer who is an expert in the listing rules area. ● There should be a Chairman who would lead the Board. He/she should not be anyone from the HKICPA, the HKEx, or the SFC. 	BCCHK
3.8	<ul style="list-style-type: none"> ● Suggests to stipulate in clause 7 that the four to six “other appointed members” of the FRC should represent the stakeholder groups that the FRC is intended to protect, e.g. listed companies and investors. ● Clause 2 of Schedule 2 to the Bill states that appointments to the FRC should be for a term not exceeding three years, although members can be reappointed. As a good corporate governance practice, there should be a maximum term for any member reappointed. The Bill is silent in this respect. 	ACCA(HK)
3.9	<ul style="list-style-type: none"> ● Clause 1 of Schedule 3 to the Bill provides that the term of office of the Chief Executive Officer (CEO) is three years and he is eligible for re-appointment. There is a loophole that a particular person may take up this position for an exceedingly long period of time if he is eligible for re-appointment every time his 	CHKLC

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	<p>tenure of office is due for renewal. There is a need to impose a maximum time limit, say, not more than two terms, to avoid this from happening.</p> <ul style="list-style-type: none"> ● The remuneration of the CEO is not mentioned in the Bill. Consideration should be given to specify that the remuneration of the CEO be referable to a certain pay level of a civil servant of a comparable rank. ● As the CEO is a key figure of the FRC, there should be mandatory provisions on the notice period in respect of his resignation (e.g. at least three to six months) to ensure a smooth transition. To avoid actual or possible conflict of interests and to safeguard impartiality in discharging his duties, the CEO should not be permitted to take up any position in conflict with his position as CEO within a period of 12 months after termination. 	
3.10	Consideration should be given to whether the provisions in clause 4(1)(d) of Schedule 3 to the Bill (about removal of the CEO) are sufficiently stringent.	HKICPA
3.11	Given the lean structure of the FRC, it may not be able to carry out investigations efficiently. This may result in backlog of cases.	CGCC
<i>Functions and powers of the FRC</i>		
3.12	<ul style="list-style-type: none"> ● Expresses concern about the circumstances under which the FRC may initiate investigation against auditing/reporting irregularities through the Audit Investigation Board (AIB), or may initiate an enquiry into cases of non-compliance with financial requirements through a Financial Reporting Review Committee (FRRC). ● Suggests that objective criteria be stipulated to ensure that the FRC will exercise its judgement in a reasonable manner. 	CGCC
3.13	<ul style="list-style-type: none"> ● The meaning of “relevant irregularity”, which sets out the scope of investigation by the AIB is set out in clause 4 and in particular, the “specified events” are described in subclause (3). These extend beyond the 	ACCA(HK)

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	<p>public interests (such as doing or omitting to do something that is likely to bring discredit upon the auditor). The scope of investigation should be limited to cases where public interests are jeopardized.</p> <ul style="list-style-type: none"> ● The AIB must be seen to be investigating irregularities and possible irregularities where there is public interest. “Public interest entities” and “listed entities” have a high degree of overlap, but are not identical: the former also includes unlisted public companies, large charities, insurance companies and pension funds. The AIB should address cases which raise issues affecting the public interest, whenever they arise. There is currently no provision in the Bill to extend the scope of investigation of the AIB to other public interest entities. 	
3.14	<ul style="list-style-type: none"> ● The FRC should be restricted to launching investigations only in respect of material irregularities in the accounts of listed companies and the matter raises or appears to raise important issues affecting the public interest (clause 4). This latter requirement is part of the scheme adopted by the Accountancy Investigation and Disciplinary Board (AIDB) in the UK (part of the FRC in the UK). ● Clause 4(3)(c) provides that a specified event has occurred in relation to an auditor or reporting accountant of a listed entity if the auditor or reporting accountant has been negligent in the conduct of his profession. This provision is inappropriate because clause 4(3)(d) (guilty of professional misconduct) is sufficient to encompass any negligence which would legally constitute professional misconduct. Clause 4(3)(c) should be deleted. 	Deloitte
3.15	<ul style="list-style-type: none"> ● FRC enquiries and investigations should be launched only when a significant public interest exists. Some degree of proportion, materiality and context should be brought to bear in a decision to launch an enquiry or investigation. ● Consideration of proportion, materiality, context and public interest should particularly be reflected in clauses 4 and 5 which explain the meaning of 	E&Y

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	<p>“relevant irregularity” and “relevant non-compliance”.</p> <ul style="list-style-type: none"> ● The scope of clause 4(4)(a)(vi) and (6)(b) are too wide as they refer to refusal/negligence of an auditor or reporting accountant to comply with the provisions of “any bylaw or rule made or any direction lawfully given by the HKICPA Council”. ● Clause 4(3)(c) should not be included in the Bill on the grounds that: <ul style="list-style-type: none"> (a) it does not state a proviso that negligence should have had a material or public interest effect in order to warrant consideration by the FRC; (b) a material negligent act, or one with a public interest effect or a course of negligent behaviour is already addressed by clause 4(3)(d) which deals with professional misconduct. 	
3.16	<ul style="list-style-type: none"> ● Sees no merit in that clause 4(3) is reinventing the potential misdeeds and negligence of accountants when what is really important is the Disciplinary Rules of the Professional Accountants Ordinance (PAO). ● Suggests that reference to the relevant parts of the PAO be made in clause 4(3). 	Peter WONG
3.17	<ul style="list-style-type: none"> ● The FRC seems to delegate much of its power to the proposed AIB and the FRRCs. It is questionable whether the proposed structure is unnecessarily complex. ● The AIB is not responsible for discipline. This differs from the role of the AIDB in the UK, which takes up cases identified as relating to the public interest, and may not only investigate, but also deliver disciplinary sanctions in such cases. The division of responsibility between the AIB and the HKICPA seems strange. ● Any possible overlap or duplication of investigation duties between the AIB and the HKICPA should be removed by the identification by the AIB of “public 	CIMA(HK)

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	interest”, which would automatically allow the AIB to take up the case.	
3.18	<ul style="list-style-type: none"> ● The HKICPA should continue to act as the profession’s regulatory body and to be responsible for the disciplinary role of which the prosecution role is an integral part. ● The FRC’s investigation role and the HKICPA’s prosecution and disciplinary roles should be properly defined in order for the process to be co-ordinated. ● The FRC is expected to work closely with the HKICPA to develop the non-statutory protocols, guidelines and/or Memorandum of Understanding (“MOU”) in order to enable the HKICPA to discharge the prosecution role effectively. 	HKICPA
3.19	<ul style="list-style-type: none"> ● To enhance the interaction and communication between the investigatory function and subsequent prosecution, it is important for the FRC and the relevant enforcement agency or professional body to have a good understanding and consensus of the terms of reference as well as the scope of investigation. This could be facilitated by a MOU between the FRC and the relevant bodies to outline the details of cooperation including the criteria to be adopted by the FRC in determining the basis for prosecution. ● FRC’s decision to refer the case to further action should be based on three key functions: materiality, public interest and the likelihood of successful case to facilitate the prosecution process. It is essential for the FRC and the relevant parties to agree to a comprehensive set of criteria covering the assistance required for the FRC. ● The terms of reference for the three organizations (HKICPA, SFC & FRC) need to be clearly defined to avoid overlapping of functions. The FRC through the AIB would be responsible for the investigation of the suspected irregularities of auditors of listed corporations and the preparation of auditors’ reports. The FRC through the FRRC would enquire into suspected non-compliance of the accounts and 	CPAA(HKC)

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	<p>financial statements of corporations and collective investment schemes listed in Hong Kong. The HKICPA would continue to be responsible for the investigation of the non-listed sector and misconduct of the accounting profession, and the SFC would investigate auditors and other persons involved in market misconducts.</p> <ul style="list-style-type: none"> ● Suggests that an appeal process should be in place, and the FRC funding be modified to reflect the additional costs. 	
3.20	<ul style="list-style-type: none"> ● Undue overlap between investigations undertaken by the FRC and SFC is not anticipated. The FRC's investigation will focus on evidence of auditor malpractice, particularly whether the audit work was sufficient and whether appropriate judgments were made, whereas SFC will be looking for evidence of corporate fraud or misconduct, breach of Listing Rules or market misconduct. ● There will be good reasons for the FRC and SFC to co-ordinate their investigations, but this is not provided for in the Bill. 	Staff of SFC
3.21	<ul style="list-style-type: none"> ● As the proposed function of the AIB is actually a part of the current functions of the HKICPA, there is no change from the current situation in terms of overlapping of functions with SFC. ● The Bill will promote two-way sharing of information between the FRC and SFC which is an improvement from the current one-way flow of information from the SFC to the HKICPA only. ● SFC and the FRC would need to co-ordinate their work in respect of the same case where both have interest in different aspects. 	Members of SFC's PSG
3.22	<ul style="list-style-type: none"> ● Expresses support for the proposed functions of the FRC (clause 9). ● On the proposal that the FRC may refer cases to specified bodies, clauses 9 and 12 should be clarified as to whether the FRC will act in the capacity of 	KPMG

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	<p>complainant or whether it will be purely referring the case to the HKICPA for its further action. It would facilitate the disciplinary process if the FRC was to act as the complainant.</p> <ul style="list-style-type: none"> ● Given that the Disciplinary Committee of the HKICPA must consist of a majority of lay persons, the Committee is sufficiently independent of the members of the HKICPA, thus avoiding the need for the FRC to set up its own disciplinary body in respect of auditors. 	
3.23	<p>The functions of the FRC include conducting investigations and enquiries “in response to a complaint or otherwise” (clause 9(b) and (c)). There are three points of concern:</p> <ul style="list-style-type: none"> (a) The FRC’s scope should remain primarily reactive upon receipt of referrals from other regulators and complainants; (b) In the case of proactive investigations, there should be checks and balances to ensure that, before the investigation is allowed to proceed beyond a very preliminary stage, due consideration is given to whether the benefits of the investigation and its outcome are likely to outweigh the significant cost and resources the investigation may entail. The costs and resources that would likely be required from all relevant parties, i.e. from both the FRC and those individuals and entities to be investigated, should be taken into account; and (c) It is also important to take account of other developments that should help enhance corporate governance and financial reporting in Hong Kong, particularly when considering whether the benefits of proactively undertaking investigation into past practices or information already reported would outweigh the costs. 	KPMG and a member of SCCLR
3.24	<ul style="list-style-type: none"> ● There may be a certain degree of overlapping between the work of the law enforcement agencies, regulators and professional bodies. Therefore it is likely that for a particular case involving party under investigation, there are two or more of such agencies 	CHKLC

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	<p>carrying on investigations and the normal day-to-day operations of listed entities will be adversely affected.</p> <ul style="list-style-type: none"> ● Suggests that the FRC should be placed under a legal responsibility that, whenever it intends to start an investigation on a party (which may be a listed company or an accounting firm), it should enquire and/or consult, on a strictly confidential basis, with other related law enforcement agencies to avoid duplication in investigations. 	
3.25	<ul style="list-style-type: none"> ● There should be some mechanism inserted in the Bill for confidential communication and agreement between the FRC and, for example, the HKICPA and the SFC when an enquiry or investigation is planned by the FRC, to ensure that those entities do not implement parallel enquiries, in order to avoid the inconvenience, oppression and costs to affected parties of duplicate investigations. 	E&Y
3.26	<p>Suggests incorporating in the Bill provisions to prevent duplicate investigations by the FRC, HKICPA and SFC against the same auditor or accountant relating to the same irregularity. This would prevent wastage of resources, and harassment and oppression faced by the auditor.</p>	Deloitte
3.27	<ul style="list-style-type: none"> ● It is necessary to ensure there is no duplication of or confusion about the respective roles of the FRC and other authorities, such as SFC and HKEx, which shall be responsible for the follow-up actions after the investigation is over. ● There should be communication between the FRC and the Police or the relevant authorities throughout the investigations so that the FRC is advised on the kind of information or evidence which it should collect for an offence or disciplinary action to be established. It will be a great waste of efforts if an investigation report is subsequently found to be lacking in some crucial evidence rendering any legal or disciplinary action impossible to proceed. 	HKICS

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3.28	<p>The rules and procedures, particularly as to the adducing of evidence by the FRC during the investigation phase and HKICPA both during the formulation and preparation of the prosecution phase as well as the disciplinary hearing phase, have to be efficient, relevant and matching, because what evidence/conclusion is reached during investigation must be replicable by the prosecution during the disciplinary process. Those rules and procedure are very urgently needed.</p>	Peter WONG
3.29	<ul style="list-style-type: none"> ● Members of PSG feel more comfortable if the FRC has a disciplinary function. There are three points of concern: <ul style="list-style-type: none"> (a) There are concerns about the transparency and efficiency of disciplinary cases handled by the HKICPA, and inadequate sanctions on cases; (b) The HKICPA is not obliged by the Bill to take disciplinary action for cases referred by the FRC; and (c) If the investigation and disciplinary functions are housed in different bodies, there is a danger that disciplinary cases will not proceed after referral. ● Suggest that FRC's disciplinary actions be funded by the HKICPA as that part of its current function would be transferred to the FRC. 	Members of SFC's PSG
3.30	<ul style="list-style-type: none"> ● The proposal that the FRC's function should remain purely investigatory (clause 9) is inappropriate for two main reasons: <ul style="list-style-type: none"> (a) The Bill is inconsistent with the International Organization of Securities Commissions (IOSCO) Principles for Auditor Oversight. To be consistent with these Principles, there should be a mechanism to make auditors subject to discipline by an oversight body that is independent of the profession. If cases are referred to HKICPA or other professional bodies for disciplinary proceedings, the FRC should act in a monitoring role to ensure that proper follow up actions are taken; and 	ACCA(HK)

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	<p>(b) The Bill is inadequate to meet the objectives of enhancing the transparency and accountability of the regulatory regime for the auditing profession. The regulatory process is undermined if public interest disciplinary action remains in the hands of a professional accountancy body, giving rise to a lack of independence at the end of the regulatory process.</p> <ul style="list-style-type: none"> ● Suggestions on the functions of the FRC, as follows: <ul style="list-style-type: none"> (a) There should be provision for the accountancy bodies regulating their members to report on their activities to the FRC for cases referred for disciplinary proceedings, and for the FRC to inspect/investigate such activities these bodies; and (b) If the FRC is finally vested with the necessary disciplinary powers, the need for a separate appeal tribunal becomes stronger. Where the FRC does not possess any disciplinary power, it should at least have the power to refer cases that are warranted of disciplinary action directly to the Disciplinary Committee of the local statutory professional accountancy body, and act as the complainant to present the case in front of the Disciplinary Committee. This will avoid duplication of resources of the FRC and the local statutory accountancy body. 	
3.31	<ul style="list-style-type: none"> ● No view on whether the FRC should have purely an investigative role or whether it should take on some of the prosecution work of the HKICPA. The issue is a policy question. ● The following experience of regulatory bodies are relevant: <ul style="list-style-type: none"> (a) It is not uncommon, nor prohibited by law, for regulatory bodies to perform both investigatory and disciplinary roles, while it is less common for them to take up both investigatory and criminal prosecutorial role; 	Staff of SFC

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	<p>(b) Most overseas securities regulators have the power to both investigate and bring civil proceedings, and also conduct disciplinary proceedings. The Financial Services Authority (FSA) in the UK, Australian Securities and Investments Commission (ASIC) and SFC itself can also bring criminal proceedings (for summary offences); and</p> <p>(c) It is essential to avoid prejudgement of proceedings by ensuring that those who establish the evidence of a breach through investigation do not play a part in making a decision on the breach. For instance, with regard to SFC's disciplinary proceedings, at the end of investigation, evidence of an alleged breach is passed to a separate group of staff who decide whether there is enough evidence to start disciplinary cases and conduct the proceedings together with an ultimate decision maker. The same situation prevails in the Securities and Exchange Commission in the US, the SFA and the ASIC, though their specific arrangements differ.</p> <ul style="list-style-type: none"> ● Given the small budget of the FRC, there is concern about whether sufficient separation of roles of FRC's staff would be achieved to provide safeguards of the rights of those involved in disciplinary proceedings. 	
3.32	<ul style="list-style-type: none"> ● The Bar Council investigates complaints about the conduct of barristers through the Special Committee on Discipline. The Special Committee reports to the Bar Council. The Bar Council may refer a substantiated complaint to a Barristers Disciplinary Tribunal. ● While the primary work of investigation is done by the Special Committee on Discipline, the Barristers Disciplinary Tribunal has the power to investigate the matter further. Although there is some scope for overlap in the investigatory process, the investigatory and sanctioning components of the disciplinary process are quite separate. No problems have been created in the context of disciplinary proceedings 	HKBA

	Views of organizations on major issues of the Bill	Name of Organization
	<p>against barristers by reason of the separation of the investigatory and sanctioning components of the disciplinary process.</p> <ul style="list-style-type: none"> ● No comment on the proposed structure of the disciplinary process for auditors contemplated in the Bill. 	
3.33	<ul style="list-style-type: none"> ● The public trust in the audit profession is best served by having independent investigation and disciplinary regimes for company auditors. Such a “dual” system is applied in other jurisdictions, e.g. Australia. ● The role of the AIB should be to conduct investigation and gather evidence on cases. It is suggested that the AIB will refer cases involving less serious matters to the HKICPA for taking action. As for serious cases, rather than simply handing over the findings and documents to the HKICPA for taking action, the AIB should present its evidence and findings to an Audit Discipline Board (ADB) and act in more of a prosecutorial manner. It is suggested that: <ul style="list-style-type: none"> (a) the ADB should be made up of a mixture of people with audit and accounting backgrounds and lay persons; (b) a panel of audit/accountancy experts and a panel of lay person be set up. The ADB will draw members from these panels to form an Audit Disciplinary Tribunal (ADT) for hearing disciplinary cases referred by the AIB; (c) the ADB will also act as an appeal board to hear appeals against the decisions of an ADT; (d) the decisions of the ADT/ADB will be made public; and (e) the HKICPA could have regard to the decision of the ADB and the information presented by the AIB to determine if there is a need for further action at the professional level. 	NIAA(C)

	Views of organizations on major issues of the Bill	Name of Organization
3.34	<p>Clause 9 states that the FRC may refer a case or complaint to a “specified body”, being a “specified authority” or “specified enforcement agency”. The interpretation of a “specified authority” (clause 2) includes an accountancy body that is a member of the International Federation of Accountants (IFAC). In view of the different categories of IFAC membership possible (including affiliate membership), this requirement should refer to current full membership of IFAC.</p>	ACCA(HK)
3.35	<p>Clause 9(f) provides that the FRC may refer to a “specified body” any case or complaint concerning a relevant irregularity or non-compliance in relation to a listed entity. There are two points of concern:</p> <ul style="list-style-type: none"> ● Listed companies, such as banks and insurance companies, already have their respective regulators. Referral of cases to a “specified body” may give rise to problem of “dual regulation”; and ● At present, auditors of listed companies are not subject to registration or qualification assessment. It is unreasonable to subject auditors of listed companies to the FRC’s regulation. 	HKCEA
3.36	<p>There should be clear provisions in the Bill:</p> <p>(a) to enable the FRC to engage full time staff to assist in the work of the AIB and a FRRC; and</p> <p>(b) to enable the FRC to refer those matters beyond its remit to other relevant authorities for appropriate follow-up action.</p>	SCCLR
3.37	<ul style="list-style-type: none"> ● Under clause 12(1)(b) and (2)(b), the FRC may provide assistance to a specified authority on the authority’s investigation or enquiry into irregularities or non-compliance in relation to a listed entity if “it is not contrary to the interest of the investing public or to the public interest” to do so. However, as the term “public interest” is not defined in the Bill, it is a fluid concept subject to the regulator’s own interpretation. ● Prefers a higher standard of requirement, e.g. “it is in the public interest” which shows the existence of 	OPCPD

	Views of organizations on major issues of the Bill	Name of Organization
	public interest directly.	
3.38	<ul style="list-style-type: none"> ● The role of the FRC should include oversight of the adoption of accounting and auditing standards. It should perform a similar function of the FRC in Australia and provide a mechanism for public oversight in this aspect. ● The adoption of International Accounting Standards should make the process easier to achieve. 	NIAA(C)
3.39	It is important to subject the prescribed powers of the FRC to close scrutiny against the human rights standards provided for in the Basic Law and Hong Kong Bill of Rights as challenges against the FRC could undermine its credibility and potentially compromise its investigations.	Simon YOUNG
3.40	The procedures for hiring external expertise to assist in the investigation of large corporate scandal case have not been set out in the Bill. It would be useful if certain guidelines are available in this regard.	Oscar WONG
3.41	Suggests that any accountant who is subject to the hearing of the HKICPA Disciplinary Committee may choose to be heard by the AIB at his choice.	Peter CHAN
<i>Miscellaneous</i>		
3.42	The FRC may refer the relevant investigation/enquiry report to a “specified body”, such as the HKICPA, for disciplinary action, further investigation or any other actions. The maximum sanctions that the HKICPA could impose are a fine of \$500,000 and/or order that the name of the professional accountant be removed from the register permanently. Such level of fine would not be sufficient to deter serious wrongdoings, and would render the FRC a toothless tiger.	A member of SFC’s IEAC
3.43	Suggests that the investigation results and disciplinary actions taken, and also actions not taken, by the specified body be made transparent and known to the public to help achieving deterrent effects on wrongdoers and strengthening regulatory accountability.	A member of SFC’s IEAC

	Views of organizations on major issues of the Bill	Name of Organization
3.44	<ul style="list-style-type: none"> ● Guidelines (clause 13), especially on the manner in which the FRC proposes to perform its functions, should be issued simultaneously at the time the FRC Ordinance is in force. ● The guidelines should clarify the following issues: <ul style="list-style-type: none"> (a) whether the FRC would only act upon receiving complaints and/or reports made to it, or would pro-actively and spontaneously carry out investigations; (b) whether the FRC would systematically review all annual and interim reports issued by listed companies and make enquiries with the companies and/or their respective auditors; and (c) whether the listed company under investigation is expected to make an announcement once an investigation started against it. 	CHKLC
3.45	The proposed provision (clause 14) allowing the Chief Executive (CE) to give the FRC written directions as he thinks fit with respect to the performance of any of its functions may be perceived as a lack of independence.	ACCA(HK)
3.46	The proposed provision for the CE to give written directions to the FRC (clause 14) may subject it to political interference.	NIAA(C)
3.47	The FRC should keep and maintain its accounts and the Director of Audit should be responsible for the audit (Clauses 18 and 19).	NIAA(C)
3.48	The Director of Audit may be in the best position to have a general oversight of the number and type of cases investigated by the FRC and their outcomes, as well as whether details are reported.	BCCHK
3.49	Consideration should be given as to whether liquidators should be included as a relevant body to whom the FRC would disclose the relevant information obtained.	SCCLR

	Views of organizations on major issues of the Bill	Name of Organization
3.50	<ul style="list-style-type: none"> ● Whether it should be “or” instead of “and” at the end of clause 4(2)(a). ● Clause 4(3) is similar to but not the same as section 34(1)(a) of the Professional Accountants Ordinance (PAO). <i>(Remarks: Section 34 of the PAO is attached in Appendix I.)</i> ● Clause 6(2)(c) provides that the FRC is “capable of being sued...”. However, clause 53 provides the FRC with immunity. There may be contradiction in the two clauses. ● Clause 7(1) has not specified whether the FRC members should be paid. ● There may be contradiction between subclauses (2)(a) and 2(b) of clause 10. The word “employ” is used in subclause (2)(a), whereas “appoint” is used in subclause (2)(b). ● Whether the word “perform” instead of “performs” should be used in clause 13(1)(a). 	HKICPA
4	<p><i>The Audit Investigation Board (AIB)</i> <i>(Part 3 and Schedule 4 to the Bill)</i></p>	
4.1	<ul style="list-style-type: none"> ● It is necessary to clarify the role of the FRC in relation to the AIB, in particular the extent to which the FRC conducts its investigations and how much evidence it would gather. ● Considers that the FRC (i.e. AIB) should have a role to obtain sufficient evidence through conducting investigations to support a successful disciplinary case. 	A member of SFC’s IEAC
4.2	<ul style="list-style-type: none"> ● Agrees that the AIB should pursue investigations and not handle disciplinary matters. The AIB should be staffed by employees of the FRC; although they may subcontract investigative work to suitable parties if required, but at all times controlling the matter and the secrecy aspects. 	BCCHK

	Views of organizations on major issues of the Bill	Name of Organization
	<ul style="list-style-type: none"> ● Agrees that investigations can cover the audit firm, its principals and staff, i.e. individuals, and may be instituted where there is reasonable cause to believe there has been an irregularity. 	
4.3	<ul style="list-style-type: none"> ● It is important for the public perception that auditors be and be seen to be independent. ● Suggests that “auditor independence” be included in the scope of “irregularity” to be investigated by the AIB. 	NIAA(C)
4.4	<ul style="list-style-type: none"> ● Expresses concern that a suspected case of auditing irregularity may fall under the scope of both the AIB and the FRRC. For instance, the FRRC may enquire into a listed entity which has failed to comply with the Listing Rules in preparing its financial statements. Such non-compliance may be due to negligence of the auditor which can trigger an investigation by the AIB. It is not clear whether the powers of the AIB and FRRC are to be exercised on a mutually exclusive basis. ● It is necessary to clarify the duties of the AIB and the FRRC in respect of the situation mentioned above taking into account that the powers of the former are much more extensive than those of the latter. 	HKICS
4.5	<ul style="list-style-type: none"> ● Considers that the remit of the AIB and the FRRC should be expanded to cover all situations where financial reports would be required to be prepared and widely circulated. ● Under the proposed definitions of “specified report” and “listing document” (clause 2), many financial reports required to be prepared and widely circulated in accordance with both the Main Board and the GEM Listing Rules (the “Listing Rules”) will fall outside the coverage of the Bill. For example: <ul style="list-style-type: none"> (a) the definition of “listing document” does not cover the introduction documents which count as listing documents for the purpose of the Listing Rules. Under the Listing Rules, introduction 	<p>SCCLR</p> <p>A member of SCCLR</p>

	Views of organizations on major issues of the Bill	Name of Organization
	<p>documents are expressly included in the definition of “listing documents”; and</p> <p>(b) the definition of “financial reports” does not cover financial reports included in circulars required to be prepared and circulated by listed companies in connection with major transactions, very substantial acquisitions and very substantial disposals. These reports are of no less significance to the investing public.</p> <ul style="list-style-type: none"> ● Consideration should be given to appropriately expand the definitions of “specified report” and “listing document”. 	A member of SCCLR
4.6	<ul style="list-style-type: none"> ● Given the small size of the AIB (clause 22), it may not be able to cope with its duties and workload. 	CHKLC
4.7	<ul style="list-style-type: none"> ● Clause 23 specifies when the FRC may exercise its powers to initiate investigations. It is not clear what constitutes “circumstances suggesting” and “reasonable cause to believe” that there is auditing and reporting irregularity. Suggests that the FRC should issue guidelines under clause 13 in this regard. ● Suggests that the FRC should provide guidance to assure that the use by auditors of a top-down, risk-based approach employing reasonable judgement in the auditing of accounts under the generally accepted accounting principles will be recognized and respected by the FRC. Similar guidance has been issued by the Securities and Exchange Commission and the PCAOB in the US recently when they evaluate the implementation experience of section 404 of the Sarbanes-Oxley Act. 	HKICS
4.8	<p>Clauses 25 and 26 provide that the investigator may require the auditor of the listed entity, or of a “relevant undertaking” of the listed entity, to produce records and documents. There are two suggestions:</p> <ul style="list-style-type: none"> ● The meanings of “relevant undertaking” and “associated undertaking” are similar. It is clearer to include “associated undertaking” in clauses 25 and 26; and 	AIA(HK)

	Views of organizations on major issues of the Bill	Name of Organization
	<ul style="list-style-type: none"> ● It is necessary to specifically extend the statutory obligation to produce records and documents to officers of the listed entity, a relevant undertaking, or an associated undertaking. 	
4.9	<ul style="list-style-type: none"> ● Clauses 25 and 26 empower the investigator to require the auditors and reporting accountants of listed entities to produce records and documents relating to auditing or reporting irregularities. Clause 28 further empowers the investigator to require the auditors and the reporting accountants, or a person whom the investigator has reasonable cause to believe to be in possession of records or documents that contain, or are likely to contain, information relevant to the relevant irregularity or to the question whether or not there is such an irregularity, to produce the records or documents. There are three points of concern: <ul style="list-style-type: none"> (a) Such powers are over extensive and wider than the equivalent power of the investigation provisions in the FRC in the UK, and the PCAOB in the US; (b) Given that the role of the FRC is investigatory/enquiry only, the powers of the FRC/AIB should enable it to compel the provision of information and documents by auditors and listed companies, but not further. In particular, the powers should not extend to legal advisers whose legal professional privilege may not always be successfully claimed; (c) The FRC/AIB should not have all the investigation powers of SFC which would be overly intrusive and not justified by its objective and jurisdiction. ● In contrast, the investigatory powers of the FRC/FRRRC as provided under clause 42 are not so extensive. The power to require production of records and documents and provision of information and explanation is restricted to the listed corporation, the auditor and officers or employees of the corporation. The scope of such power is appropriate. 	LSHK

	Views of organizations on major issues of the Bill	Name of Organization
4.10	<p>Clause 25, 26 and 27 provide the FRC with the power to require auditors and reporting accountants of listed entities to produce records and documents relating to auditing or reporting irregularities and to give explanation on the information therein. There are two points of concern in respect of a listed entity which is a bank, as follows:</p> <ul style="list-style-type: none"> ● The records and documents may contain information relating to customers. As banks are subject to statutory obligation to protect customers' personal data, they may not be able to produce the records and documents and give explanation on the information therein; and ● There should be provisions stipulating that the required records and documents do not cover information relating to customers' personal data. 	HKCEA
4.11	<p>The requirement under clause 25 may pose problems to auditors of listed entities or relevant undertakings of the entities if such listed entities/undertakings have operations in the Mainland. There are different laws in the Mainland relating to commercial secrets, States secrets, etc. which may inhibit Hong Kong based auditors from producing documents which are held by their associated practices in the Mainland.</p>	Deloitte
4.12	<ul style="list-style-type: none"> ● Clause 25 may pose problem to auditors or reporting accountants if the required documents are physically located in countries/jurisdictions outside Hong Kong. Regulations of that other country or jurisdiction may pose legal impediments with respect to providing the documents to the investigator. ● The auditors or reporting accountants should be relieved from the obligation to produce the required documents if such is prohibited by legal impediments arising under the laws of the relevant jurisdiction. 	E&Y
4.13	<p>There are differences between clause 25(1) and (2) and section 42D of the PAO which sets out the powers of an HKICPA Investigation Committee.</p> <p><i>(Remarks: Section 42D of the PAO is attached in Appendix I.)</i></p>	HKICPA

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4.14	<p>Clause 28(1)(d) is too vague and too wide. It provides the requirement for the auditor or reporting accountant of the listed entity or the relevant person to “give the investigator all other assistance in connection with the investigation that he is reasonably able to give”. Other sub-paragraphs of clause 28(1) have clearly set out all the requirements which an investigator could reasonably make of a person.</p>	Deloitte
4.15	<ul style="list-style-type: none"> ● The investigator is required under clause 29 to consult the relevant regulatory bodies before invoking the powers under clauses 25, 26 and 28. The purpose of this requirement and the consequences for failure to do so are unclear. ● The consequences for the FRC failing to consult should be made clear. 	Simon YOUNG
4.16	<p>The consultation requirements under clauses 29 and 43 may result in a dilemma or deadlock if the consulted body is not agreeable to the proposed exercise of the power. The Bill should provide how the matter will proceed in such kind of situation.</p>	HKICS
4.17	<p>Person being investigated should be properly informed of their rights, for example, their right to legal representation.</p>	Oscar WONG
4.18	<ul style="list-style-type: none"> ● Concern about abrogation of the privilege against self-incrimination (clause 30), as follows: <ul style="list-style-type: none"> (a) At common law, an individual’s privilege against self-incrimination entitles him to refuse to answer any questions or participate in any conduct which could result in his direct incrimination. Clause 30 expressly abrogates this privilege and requires the individual to comply even if compliance would result in the materialization of self-incriminating evidence; and (b) In other words, only a claim-based use immunity is given to the individual. Where the individual makes an express claim of the privilege, the ensuring answers cannot be used against the individual as evidence in any subsequent prosecution. Those answers which are not 	Simon YOUNG

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	<p>prefaced or qualified by a claim of privilege can be used as incriminating evidence at trial. The claim-based use immunity is to be contrasted with a blanket use immunity which by statute automatically confers immunity over all of the incriminating answers given by the individual.</p> <ul style="list-style-type: none"> ● Suggests conferring blanket use immunity for all answers given by persons under compulsion: <ul style="list-style-type: none"> (a) Use immunity should be given to individuals as a matter of right and should not be something that must be claimed on an ad hoc basis; and (b) Blanket use immunity obviates the need to warn the individual of the right to claim the use immunity, thus avoiding potential legal wrangle in cases where the investigators have failed to give the required warning. <p><i>(Remarks: Mr YOUNG raises the same concern and suggestion on clause 44.)</i></p>	
4.19	<ul style="list-style-type: none"> ● There is no apparent reason why the offence in clause 31(1) should be one of strict liability. ● It is recommended that the <i>mens rea</i> requirement of “knowledge or recklessly” be expressly added to the provision. 	Simon YOUNG
4.20	<ul style="list-style-type: none"> ● The proposed fine under clause 31(12) is the same as that under clause 31(13) (i.e. \$1,000,000), even though the offences under subclause (13) are of a more serious nature, being “with intent to defraud”. ● Suggests that the proposed fine under clause 31(13) be raised to give more deterring effect. 	AIA(HK)
4.21	<p>Clause 32 provides that a person who fails to comply with the requirements under clauses 25, 26, 27 or 28 may either be charged with a criminal offence or punished in the same manner as if he had been guilty of contempt of court. There are three points of concerns:</p> <ul style="list-style-type: none"> ● Whether the contempt power is necessary given the 	Simon YOUNG

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	<p>availability of a host of criminal offences in clause 31 for which the person may be prosecuted;</p> <ul style="list-style-type: none"> ● Even the Independent Commission Against Corruption has not been given recourse to a contempt power where there is non-compliance with authorizations issued pursuant to section 13 of the Prevention of Bribery Ordinance; and ● The problem of the proposed contempt mechanism is that imprisonment for contempt can occur without the usual safeguards of the criminal process. The rules of evidence in criminal proceedings would not apply to this proceeding and thus hearsay evidence would be generally admissible. <p><i>(Remarks: Mr YOUNG raises the same concern on clause 45.)</i></p>	
4.22	<ul style="list-style-type: none"> ● Clause 34 provides for magistrate’s warrants to be issued to search for, seize and remove certain records and documents. The clause potentially applies to the premises of anybody, regardless of whether they have anything to do with the listed company or the auditor. ● Suggests that domestic premises be excluded from the scope of clause 34. If domestic premises are to be included, the warrant should be approved by a High Court judge rather than by a magistrate. 	Deloitte
4.23	<ul style="list-style-type: none"> ● Clause 35(5) provides that the AIB’s investigation report be admissible in criminal proceedings as evidence of the facts stated in the report. The proposal is controversial and lacks justifications. There are two points of concern: <ul style="list-style-type: none"> (a) As all criminal trials, the investigator should be required to attend the proceedings as a witness and be subjected to full cross-examination as to his or her findings. Written reports, which will most likely contain hearsay upon hearsay, would not normally be admissible in a criminal trial; and (b) Police officers are not allowed to submit their investigation file as admissible evidence at trial, 	Simon YOUNG

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	<p>and there is no reason why FRC's investigation reports should be treated differently.</p> <ul style="list-style-type: none"> ● The Hong Kong Law Reform Commission is currently studying the reform of hearsay rule in criminal proceedings. It is highly recommended that the possible enactment of any hearsay exception in the Bill be deferred and made consistent with the reforms which may flow from the Commission's study. <p><i>(Remarks: Mr YOUNG raises the same concern on FRRC's enquiry report (clause 47(5)).)</i></p>	
4.24	<ul style="list-style-type: none"> ● While an FRC investigation report could be used as the basis for initiating court or disciplinary proceedings, it should not have the status of being "admissible as evidence of the facts stated in the report" in such proceedings (clauses 35(5) and 47(5)). ● The court or disciplinary body should use the FRC investigation report as it deems appropriate in implementing its normal procedures, and such procedures should be conducted in accordance with their usual rules, requiring (if necessary) the calling of witnesses as to fact and expert witnesses as to expressions of opinion. 	E&Y
4.25	<ul style="list-style-type: none"> ● It is inappropriate to make the AIB's investigation report admissible as evidence in any court or disciplinary proceedings (clause 35(5)) for the following reasons: <ul style="list-style-type: none"> (a) Such reports may contain large amount of hearsay and expressions of opinion put forward as matters of fact. It is fundamentally inappropriate for that material to be submitted in any criminal proceedings. It is equally inappropriate to make such reports admissible as evidence in any civil proceedings; (b) Admission of the reports in civil proceedings may result in misuse of reports by civil litigants and their lawyers to promote the prospect of success in the litigation; and 	Deloitte

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	<p>(c) Admission of the reports in any court proceedings may prolong and bog down the procedures of investigation as accountants, directors and other related persons would be forced to defend the investigation as if it was a rehearsal for subsequent court proceedings.</p> <ul style="list-style-type: none"> ● Suggests that clause 35(5) be limited to enabling facts stated in the investigation report to be only prima facie evidence in the Market Misconduct Tribunal or in disciplinary proceedings under the PAO. <p><i>(Remarks: Deloitte raises the same concern and suggestion on clause 47(5).)</i></p> <ul style="list-style-type: none"> ● The Bill is silent on who is to take the responsibility for disciplinary prosecution under the PAO. If a matter is of sufficient public interest for the FRC to have taken action, it appears logical, practical and expedient for the FRC to fill the role of prosecutor. It is unfair for the HKICPA to bear the cost of prosecution in respect of which it has had no role. 	
4.26	<p>Suggests that investors be allowed to use the findings of the FRC and findings of the disciplinary actions of the HKICPA in civil actions for damages. The suggestion would greatly reduce the cost of shareholders action and enhance the standards of audit work.</p>	<p>A member of SFC's PSG and a member of IEAC</p>
4.27	<p>Clause 36(2) provides that if the FRC has directed the AIB to conduct an investigation, it shall not exercise a power under clause 36(1) in respect of the case (i.e. close the case, suspend the investigation, or carry out other follow-up action) unless the AIB has submitted a report and the FRC has considered it. There is no reason why the FRC should be deprived of the power to cease or suspend any investigation.</p> <p><i>(Remarks: Deloitte raises the same concern on clause 48(2).)</i></p>	<p>Deloitte</p>
4.28	<ul style="list-style-type: none"> ● Clause 37 empowers the courts and magistrates to order persons convicted on prosecutions instituted as a result of investigations under Part 3 of the Bill to pay 	<p>CGCC</p>

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	<p>the costs and expenses of the investigations.</p> <ul style="list-style-type: none"> ● Given that the investigation costs and expenses involved could be very high, suggests that a ceiling be set for the sum to be paid by the convicted persons. ● The Administration should consider how the investigation costs and expenses should be recovered if the investigation has not proved any irregularities of the auditor concerned. 	
4.29	Where an irregularity is proved, the costs of the investigation can in some suitable instances be recovered from the auditor, or from the guilty party (clause 37).	BCCHK
4.30	Suggests that a legal cost reclaim mechanism should be established to enable the HKICPA to recover costs in relation to cases referred to it by the FRC for taking disciplinary proceedings.	SCCLR
4.31	Insofar as the FRC is performing its investigatory/enquiry role against suspected irregularities concerning auditors, which will be referred to appropriate regulatory authorities for follow-up action, there is no need to set up a separate body to hear appeals against the decisions of the FRC.	KPMG and a member of SCCLR
4.32	<ul style="list-style-type: none"> ● Given that the role of the FRC is investigatory only, there is no need to set up an appeal tribunal to hear appeals against FRC's decisions. ● If the FRC takes up a disciplinary role, it is necessary to provide an appeal tribunal. 	NIAA(C)
4.33	<ul style="list-style-type: none"> ● Given that the role of the FRC is investigatory only, there is no need to set up an appeal tribunal to hear appeals against FRC's decisions. ● However, a further check and balance mechanism may be built in for the FRC to review its decisions to enhance fairness of the procedures/findings. 	HKICS
4.34	The AIB will handle investigations but in terms of fines or penalties, SFC will in most cases impose penalties, if necessary. This process will need to be reviewed in the light of experience.	BCCHK

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5	<i>The Financial Reporting Review Panel (FRRP) and a Financial Reporting Review Committee (FRRC) (Part 4 and Schedules 4, 5 to the Bill)</i>	
5.1	The proposal for the establishment of an FRRP, and the use of the panel to provide members for FRRCs for individual cases, are strongly supported.	CIMA(HK)
5.2	Clause 39 states that the CE appoints members of the FRRP, whom he considers suitable for appointment to FRRCs. Clause 41 gives no further detail of the expertise required of members of a FRRC. In view of the technical expertise required, the FRRP and each FRRC should consist of a majority of accountants, who should be drawn from a variety of backgrounds, and bring to the Panel and the Committees experience in a variety of sectors.	ACCA(HK)
5.3	The FRRC should comprise not less than 20 professionals, chosen by the CE, with five being chosen to review any particular case, and chaired by a Panel Convener.	BCCHK
5.4	Enquiries by a FRRC should be extended to all public interest entities, rather than just listed entities as stipulated under clause 40(1).	ACCA(HK)
5.5	<ul style="list-style-type: none"> ● The objective of the FRRCs and the Financial Reporting Review Panel (FRRP) is to consider whether the provision of financial information complies with relevant legal and accounting requirements. Therefore, the review should cover the whole set of annual accounts wherever financial information is presented. Two suggestions: <ul style="list-style-type: none"> (a) The definition of “relevant requirement” (Parts 1 and 2 of Schedule 1 to the Bill) is in relation to an “accounting requirement”, and therefore does not include compliance of other information issued with financial statements (e.g. directors’ reports) with relevant legal requirements. Rather, the definition should be in relation to an “accounting or reporting requirement”; (b) The definition of “relevant financial report”(Parts 1 and 2 of Schedule 1 to the Bill) is in relation to a balance sheet and accounts annexed to it in 	ACCA(HK)

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	<p>accordance with section 129C(1) of the Companies Ordinance. Therefore, the directors report (required to be attached by section 129D of the Companies Ordinance) is not included within the definition of “relevant financial report”. The definition should be changed to cover “directors reports”.</p>	
5.6	<p>There should be clear provisions in the Bill:</p> <ul style="list-style-type: none"> ● to give a FRRC the discretion to decide whether to take “pro-active approach” in performing its functions; and ● to permit cross referral of cases between the AIB and a FRRC. 	SCCLR
5.7	<p>Clause 49 does not refer to the speed of the FRC’s action to request the removal of any non-compliance, or the period within which the operator of the entity must take the remedial action. If it is the intention that the FRC will publish more detailed operational procedures in due course, these detailed operational procedures should be referred to in the Bill.</p>	ACCA(HK)
5.8	<p>Clause 49(1)(b) permits the FRC to request the operator of a listed entity to cause the relevant financial report to be revised or take other remedial action. Clause 50 enables the FRC to apply to the Court for an order requiring the directors of a listed corporation to revise the relevant financial report or take other necessary remedial action. Clause 49 refers to a listed entity which means a listed corporation or a listed collective investment scheme as stipulated in clause 3. Hence, the scope of clause 50 should not be limited to a listed corporation, but should refer to a listed entity as interpreted under clause 3.</p>	ACCA(HK)
5.9	<ul style="list-style-type: none"> ● Where the matter under investigation is a question of non-compliance with financial reporting standards, there is concern about the lack of appeal provisions. There are two points of concern: <ul style="list-style-type: none"> (a) Clause 49 empowers the FRC to request directors of a listed entity to rectify their financial reports, and clause 50 empowers the FRC to seek a court 	KPMG and a member of SCCLR

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	<p>order to compel such a rectification under certain circumstances. However, there is no requirement for the FRC to consult the HKICPA where the directors and/or the auditors of the listed entity do not agree with the FRC's interpretation of the relevant financial reporting standards; and</p> <p>(b) The proposed provisions mentioned above are unfair to the listed entity under investigation and would undermine the authority of the HKICPA to set and interpret financial reporting standards.</p> <ul style="list-style-type: none"> ● In the UK, the FRC plays the combined role of enforcer with the role of standard setter and therefore operates successfully without a specific requirement for its FRC to consult its standard setter. In Hong Kong, however, the FRC will be independent from the standard setting body, i.e. the HKICPA. ● Strongly recommends that safeguards be introduced to ensure that for cases involving the interpretation of financial reporting standards, the HKICPA should be consulted as to their views on the acceptable interpretations of the accounting principles in question. 	
5.10	<ul style="list-style-type: none"> ● The power of the FRC to seek a court order to mandate rectification of the annual financial statements only apply to Hong Kong incorporated companies (clause 50 and Part 2 of Schedule 1 to the Bill). The effect will be that the FRC will be unable to oblige listed companies which are incorporated outside Hong Kong to revise their financial statements. ● The only manner in which non-Hong Kong companies can be compelled to revise their financial statements would be by giving statutory force to the Listing Rules. The Administration should move forward with the legislation necessary to give such statutory backing to the Listing Rules so that all listed companies are subject to the same degree of regulation. 	HKICPA

	Views of organizations on major issues of the Bill	Name of Organization
5.11	<ul style="list-style-type: none"> ● Very disappointed that the FRC will not be empowered to seek a court order to mandate rectification of annual financial statements of listed entities generally. In UK, the FRC has been very effective in getting errant companies to correct their accounts using the appropriate accounting treatment with a minimum of fuss. The present proposal of only punishing the auditors is a very clumsy and ineffective way to trying to get his client to do the right thing and does not always achieve the real objective of high quality accounts which are compliant with accounting standards. ● While there are legal difficulties to legislate for listed companies which are constituted overseas, that barrier was surmounted by using the listed rules when it first surfaced. There should be other similarly imaginative ways round this problem. 	Peter WONG
5.12	<ul style="list-style-type: none"> ● There is a genuine need to put in place a set of appeal procedures to check the very extensive regulatory power of the FRC and serve as a comparatively more objective yardstick on the quality of work of the FRC. ● If in case it turns out that there are not any irregularities or incidents of non-compliance, or that there is a legally justifiable defence made by it, the party under investigation should be entitled to seek reasonable compensation from the FRC for all costs and expenses incurred and loss suffered by it owing to the time and resources reasonably devoted for assisting and cooperating with the FRC in its investigations. In addition to the appeal procedures, this will serves as an effective check and balance measure to avoid any investigations being started unreasonably or when started, being carried on with undue delay. 	CHKLC
5.13	<p>The FRC's requirement for a listed entity to revise its financial report would have significant implications on the entity. A proper appeal mechanism should be set up for the aggrieved listed entities to appeal against the FRC's decisions.</p>	HKCEA

	Views of organizations on major issues of the Bill	Name of Organization
5.14	Where an error has been identified and the accounts amended, that costs of the FRRC can be recovered from the corporation, or the directors who approved the defective accounts.	BCCHK
5.15	The revised or amended accounts of listed entities should be published after the filing of a “caution” with the Registrar of Companies.	BCCHK
6	<i>Publication of investigation/enquiry report by the FRC (Clauses 35 and 47 of the Bill)</i>	
6.1	The FRC should have discretion as to whether reports about cases should be published; it is not appropriate that all cases should be published even on a no-names basis.	BCCHK
6.2	Expresses grave concern about the proposal that the FRC may cause to be published the investigation/enquiry reports. The discretion for the FRC to publish such reports may prejudice the interests of the listed companies involved in the cases under investigation or enquiry.	CGCC
6.3	Expresses concern about the appropriateness of empowering the FRC to publish AIB/FRRC investigation reports.	SCCLR
6.4	<ul style="list-style-type: none"> ● The FRC’s power to publish reports should be exercised with due care and the publication of reports should not prejudice subsequent proceedings or those persons affected by the publication. ● It would be helpful if the rights of the persons being affected can be further elaborated, for example, their right to be given reasonable opportunity to make representation prior to the publication of the report. 	Oscar WONG
6.5	<ul style="list-style-type: none"> ● Clauses 35(4)(a)(i) and 47(4)(a)(i) require the FRC’s consideration of whether or not the publication of an FRC investigation report may adversely affect “any criminal proceedings before a court or magistrate”. The scope should be extended to include “any civil proceedings”. ● Clauses 35 and 47 should include a requirement for the FRC to inform the affected auditors, reporting 	E&Y

	Views of organizations on major issues of the Bill	Name of Organization
	<p>accountant, persons, etc of an intention to publish the report. There should be provisions for the affected parties to make representation and submissions to the FRC in respect of such a situation. The FRC should then be required to take these submissions into account in deciding whether or not to cause publication of such an investigation report.</p>	
6.6	<ul style="list-style-type: none"> ● Apart from the factors provided in clause 35 for the FRC to take into account in deciding whether or not to cause an investigation report to be published, extreme care should be taken in determining the timing of publication of the report. ● Suggests that the FRC should issue guidelines on the circumstances and timing of the publication of investigation report with a view to balancing the need for transparency and protection of privacy. ● Suggests that an investigation report should only be published after the relevant authority or the Police has confirmed that it will take up and pursue the case. Consideration may also be given as to whether investigation reports relating to closed or suspended cases should be published. 	HKICS
6.7	<ul style="list-style-type: none"> ● There is inadequate protection offered to the parties under investigation. The FRC has immunity protection under clause 53, and clause 47(3) empowers the FRC to publish reports (or parts of them). ● Suggests that it should be mandatory for the AIB and FRRC to provide copies of draft reports to the individuals identified in those reports, and to consider any representations which might be made as a result, before such reports are formally submitted to the FRC. 	CIMA(HK)
7	<p><i>Miscellaneous (Part 5 of the Bill)</i></p>	
7.1	<ul style="list-style-type: none"> ● Clause 51(3)(b)(ix) permits the FRC to disclose information to the Official Receiver. Clause 51(3)(c) permits the FRC to disclose information to a person who is a liquidator or provisional liquidator appointed 	E&Y

	Views of organizations on major issues of the Bill	Name of Organization
	<p>under the Companies Ordinance.</p> <ul style="list-style-type: none"> ● The disclosure of FRC investigation information or reports to a liquidator or provisional liquidator is wholly inappropriate. The purpose of an FRC investigation is different from a liquidator’s purpose. It is inequitable that the investigative and other powers of the FRC should be available to liquidators in the pursuit of litigation against auditors. Furthermore, an FRC investigation report may contain information, and may be prepared with access to people, to which a liquidator may not be permitted access. ● FRC reports should not be sent to the Official Receiver who is essentially in the position of a liquidator and/or would be able to make such FRC investigation information or reports available to a liquidator. 	
7.2	<ul style="list-style-type: none"> ● Although the Bill has made express provision under clause 51(8) that the duty of secrecy does not affect the operation of section 44(8) of the Personal Data (Privacy) Ordinance (PD(P)O) in relation to disclosure for the purpose of an investigation by the Commissioner, section 44(8) applies only when the Commissioner summons the person to furnish information and the Commissioner may not necessarily exercise such power in each and every complaint case especially when requesting for information in the preliminary enquiry stage. ● It is advisable to include the Commissioner also under clause 51(3)(b) of the Bill so that the Commissioner falls within the excepted category of persons to whom information may be disclosed without fear of breach of duty of secrecy. 	OPCPD
7.3	<p>Welcomes clause 51(8) which ensures that The Ombudsman’s investigation powers will not be affected by the FRC’s duty to maintain secrecy.</p>	Ombudsman
7.4	<ul style="list-style-type: none"> ● Clause 52 sets out the provisions in respect of the avoidance of conflict of interests. It does not explain what is meant by an “interest” in a listed entity. The Bill should refer to a “direct or indirect interest”, 	ACCA(HK)

	Views of organizations on major issues of the Bill	Name of Organization
	<p>thereby including the interests of a spouse, a trust of which a member is a trustee, or any other person included in subclause (3)(b).</p> <ul style="list-style-type: none"> ● Internal guidelines (possibly in the form of a staff code of conduct) should also be released to provide for a sufficient “cool down period” for any members and other persons performing any function of the FRC. The guidelines should stipulate a period after they have left the FRC during which they may not work for an employer with whom they had involvement through the FRC. 	
7.5	<ul style="list-style-type: none"> ● The proposed provisions in clause 52 may be too harsh. There are three points of concern: <ul style="list-style-type: none"> (a) The proposed provisions apply to members of the FRC, the AIB, the FRRC, committees established by the FRC and persons who perform a function under the FRC Ordinance. The list of interest to be declared is very extensive. For example, a person must declare his interest in a matter if the matter relates to another person whom he knows is or was a client of a third person who is or was his associate; (b) The consequence of contravention of the provision, including omission, is severe (i.e. a fine of \$1,000,000 and imprisonment for two years) (clause 52(7)). Persons appointed to serve on the governing bodies of many other statutory boards are not subject to the same onerous disclosure obligations and severe sanctions, e.g. MPFA and Town Planning Board; and (c) Given the onerous disclosure obligations and severity of the sanction, it may be difficult to persuade sufficient number of qualified and suitable candidates to take up the appointment as members of the FRC, the AIB and the FRRC. ● Suggests that the Administration should review the disclosure obligations and sanctions in clause 52. 	LSHK

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7.6	Consideration should be given to enunciating the general principle of avoiding bias and then providing examples of conflicts in clause 52.	HKICPA
7.7	<ul style="list-style-type: none"> ● In clause 52, there has been an attempt to be all inclusive in defining what are the conflicts. Such attempt is doomed to failure because it is impossible to foresee all circumstances, particularly in the future. ● Suggests to enunciate the principle which is “that it is to avoid bias” and then set out examples to illustrate what are considered conflicts. 	Peter WONG
7.8	<p>Several subclauses of clause 52 are exceptionally wide and confusing. Examples are:</p> <ul style="list-style-type: none"> ● Subclause (2) provides that if a person (i.e. a member of the FRC, the AIB, the FRRRC or a committee established by the FRC, or a person who performs a function under the FRC Ordinance) is required to consider a matter in which he has an interest, he shall immediately disclose the nature of the interest to the FRC. However, when a matter first comes before the FRC, a member might not appreciate that there is a conflict of interest until further facts are disclosed. Hence, a member should only be required to disclose an interest immediately when he becomes aware of it. ● Under subclause (3)(b)(iv), a person has an interest in a matter if it relates to another person whom he knows is or was a client of a third person by whom he is or was employed; or who is or was his associate. This potentially could involve a huge range of persons. The problem is further compounded when one is taken to the definition of “associate” in subclause (9) which is also very wide. In this connection, subclause (9)(k) is far too wide because it relates not only to directors of a corporation and its related corporations but, in respect of the related corporations, even extends to employees. The range of conflict of interests should be more tightly drawn. 	Deloitte
7.9	<ul style="list-style-type: none"> ● Given the nature of the type of investigations undertaken by the FRC, which may be complex, or involve an ongoing widening of focus and ongoing 	E&Y

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	<p>clarification of the situations and relationships being investigated, it may not immediately be apparent to an FRC member that a conflict of interest exists which requires disclosure under clause 52(2).</p> <ul style="list-style-type: none"> ● The wording of clause 52(2) should be extended to include wording along the lines of “when the FRC member becomes aware, or reasonable grounds exist for him to become aware” that he is required to consider a matter in which he has an interest. 	
7.10	<ul style="list-style-type: none"> ● Clause 54 provides that an auditor who communicates in good faith to the FRC any information or opinion on a specified matter is exempt from civil liability by reason of such communication. Since communication might involve the disclosure of personal data, the immunity so conferred will affect the operation of other statutory provisions where civil liability attaches, such as section 66 of the PD(P)O. This anomaly is undesirable in view of the powers given to the FRC to apply for court orders or search warrants to search and seize documents. ● The auditor who communicates with the FRC is no different from other informants who are still obliged to observe the requirements of the PD(P)O in their capacity as data users and be accountable for their own actions. The exemption given under section 58(2) of the PD(P)O is already sufficient to afford the informant protection in disclosing information to the FRC. The immunity proposed in the Bill, if improperly handled, is a potential threat to personal data privacy. <p><i>(Remarks: Sections 58 and 66 of the PD(P)O are attached in Appendix II.)</i></p>	OPCPD
7.11	Auditors should be able to have immunity in reporting to the FRC on any suspected fraud or irregularities in current or previous audits.	BCCHK
7.12	Enquire about whether there would be whistleblower protection provisions in the Bill, which are important for staff of audit firms and listed companies.	Members of SFC’s PSG

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7.13	Consideration needs to be given to whether clause 58 (about destruction of documents) should be extended to require evidence to be kept upon the conclusion of an AIB/FRC investigation until either the HKICPA decides whether to prosecute or the prosecution (and any appeal) is concluded.	HKICPA
8	<i>Consequential and related amendments (Part 6 of the Bill)</i>	
8.1	Guidance should be given under clause 71 as to the level of costs to be awarded.	HKICPA
8.2	Welcomes the inclusion of the FRC in the schedule of public organizations to be subject to The Ombudsman’s jurisdiction (clause 76). This will enable members of the public who feel aggrieved by the administrative acts of the FRC to put their complaint to The Ombudsman for investigation if warranted.	Ombudsman
8.3	<p>Clause 79 amends section 2(1) of the PD(P)O to add the FRC under the definition of “financial regulator”. There is no objection in principle to the proposed amendment insofar as the functions of the FRC can satisfy the CE to include protecting members of the public against financial loss arising from dishonesty, incompetence, malpractice or seriously improper conduct by persons concerned in matters allowed under section 58(3) of the PD(P)O. The exemptions afforded under section 58(1)(f)(ii) and (g) could avail the FRC in appropriate cases.</p> <p><i>(Remarks: Sections 2(1) and 58 of the PD(P)O are attached in Appendix II.)</i></p>	OPCPD
9	<i>Other comments</i>	
9.1	<p>Definitions of “associated undertaking” and “relevant undertaking” (clause 2) and “relevant requirement” (Part 1 of Schedule 1 to the Bill) all include similar lists of the relevant accounting standards requirements and the Listing Rules. The drafting of these provisions should set out the following details:</p> <ul style="list-style-type: none"> ● the following accounting standards - 	E&Y

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	<p>(a) the standards of accounting practices issued...under section 18A of the Professional Accountants Ordinance;</p> <p>(b) the International Financial Reporting Standards issued by the International Accounting Standards Board; or</p> <p>(c) any other generally accepted accounting principles allowed for usage under the Listing Rules; and</p> <ul style="list-style-type: none">● the Listing Rules.	
9.2	Trustee investment law reform must be undertaken to make a success of the FRC Ordinance.	David GUNSON

- ~~(4) (a) 凡紀律委員會依據第(3)款解散，以下條文即適用~~
- ~~(i) 在符合(b)段的規定下，理事會須同時成立另一個紀律委員會，以處理解散的委員會曾負責的投訴；及~~
 - ~~(ii) 在處理該投訴時，依據第(i)節的規定成立的紀律委員會須重新處理該投訴；據此，該委員會無須顧及在根據第(3)款被解散前曾負責該投訴的委員會的程序。~~
- ~~(b) 凡紀律委員會根據第(3)款解散，則曾是該解散的委員會的委員，並曾以任何方式參與其程序的人，均沒有資格成為依據(a)(i)段的規定成立的紀律委員會的委員。~~

~~(由 1994 年第 96 號第 21 條增補)~~

34. 紀律條文

- (1) 如有投訴——
- (a) 指某會計師—— (由 2004 年第 23 號第 54 條修訂)
- (i) 曾被裁定犯有《刑事罪行條例》(第 200 章)第 V 部 (宣誓下作假證供) 所訂的罪行；
 - (ii) 曾在香港或其他地方被裁定犯有涉及不誠實行為的罪行；
 - (iii) 不論是否以會計師的身分—— (由 2004 年第 23 號第 54 條修訂)
 - (A) 捏造或安排捏造任何文件；
 - (B) 就任何文件作出關鍵性的陳述，而該陳述是該會計師明知是虛假的或不相信是真實的；
 - (iv) 在進行其專業工作時曾有疏忽行為；
 - (v) 沒有遵從或忽略遵從根據第 32F(2) 條發出的任何指示而無合理辯解，而該指示是執業審核委員會規定其遵從的；
 - (vi) 沒有或忽略遵守、維持或以其他方式應用專業標準；
 - (vii) 沒有遵從或忽略遵從調查委員會就該會計師而根據第 42D 條所作的任何規定而無合理辯解；
 - (viii) 曾犯有專業上的失當行為；

- ~~(4) (a) Where a Disciplinary Committee is dissolved pursuant to subsection (3), the following shall apply—~~
- ~~(i) subject to paragraph (b), the Council shall at the same time constitute another Disciplinary Committee to deal with the complaint with which the dissolved committee was concerned; and~~
 - ~~(ii) in dealing with the complaint, the Disciplinary Committee constituted pursuant to the requirement of subparagraph (i) shall deal with it afresh and, accordingly, it shall not have any regard to the proceedings of the committee which before its dissolution under subsection (3) was concerned with the complaint.~~
- ~~(b) Where a Disciplinary Committee is dissolved under subsection (3), a person who was a member of the dissolved committee and who participated in any way in its proceedings shall not be eligible for membership of the Disciplinary Committee constituted pursuant to the requirements of paragraph (a)(i).~~

~~(Added 96 of 1994 s. 21)~~

34. Disciplinary provisions

- (1) A complaint that—
- (a) a certified public accountant— (*Amended 23 of 2004 s. 54*)
- (i) has been convicted of any offence under Part V (Perjury) of the Crimes Ordinance (Cap. 200);
 - (ii) has been convicted in Hong Kong or elsewhere of any offence involving dishonesty;
 - (iii) whether as a certified public accountant or not— (*Amended 23 of 2004 s. 54*)
 - (A) falsified or caused to be falsified any document;
 - (B) made any statement which is material and which he knows to be false or does not believe to be true, in respect of any document;
 - (iv) has been negligent in the conduct of his profession;
 - (v) without reasonable excuse, failed or neglected to comply with any direction issued under section 32F(2) and with which he was required by the Practice Review Committee to comply;
 - (vi) failed or neglected to observe, maintain or otherwise apply a professional standard;
 - (vii) without reasonable excuse, failed or neglected to comply with any requirement made under section 42D in relation to him by an Investigation Committee;
 - (viii) has been guilty of professional misconduct;

- (ix) 拒絕遵從或忽略遵從理事會訂立的任何附例或規則的條文，或理事會合法地作出的任何指示；
 - (x) 犯不名譽的行為；
 - (xi) 在作為執業法團的董事時，以公司董事或看來是公司董事的身分提供服務，而在提供該項服務時，該公司並不名列註冊紀錄冊第 II 部內；或
 - (xii) 作為上述的董事，而在執業法團在專業彌償保險方面根本沒有受保或受保程度未達本條例規定時，以該執業法團董事的身分從事會計執業；
- (b) 指某執業法團——
- (i) 或其任何董事——
 - (A) 捏造或安排捏造任何文件；
 - (B) 就任何文件作出關鍵性的陳述，而該陳述是該執業法團的任何董事明知是虛假的或不相信是真實的；
 - (ii) 沒有遵從第 28D(6)(a) 或 (7) 條所提述的規定，或停止遵從或沒有遵從第 28D(2)(b) 或 (c) 條適用於該執業法團的任何規定；
 - (iii) 以一公司名稱提供服務，而該名稱並非當時就該執業法團而列於註冊紀錄冊上的名稱；
 - (iv) 作為上述的執業法團，而在專業彌償保險方面根本沒有受保或受保程度未達本條例規定的情況下從事會計執業；或
 - (v) 作出或不作出任何事情，而假若該執業法團是一名個人會計師，作出或不作出該等事情即會被個別人士合理地視為不名譽的行為，

則該投訴須向註冊主任提出，而註冊主任須將該投訴呈交理事會，理事會可酌情決定，但須在符合第 32D(7) 條的規定下將該投訴提交紀律小組。（由 1992 年第 14 號第 6 條修訂；由 2004 年第 23 號第 36 條修訂）

(IAAA) 如理事會決定不將有關投訴提交紀律小組，而投訴人因理事會的決定感到受屈，投訴人可要求理事會將該投訴提交紀律小組，而除非理事會認為未顯示有表面證據支持該投訴，或該投訴屬瑣屑無聊或無理纏擾，否則理事會須將該投訴提交紀律小組。（由 2004 年第 23 號第 36 條增補）

(IAA) 第 (1) 款 (a) 段第 (iv) 至 (ix) 節的條文在加以必要的變通後適用於執業法團；據此，除第 (1)(b) 款指明的理由外，亦可基於如此適用於執業法團的上述各節條

- (ix) refused or neglected to comply with the provisions of any bylaw or rule made or any direction lawfully given by the Council;
 - (x) was guilty of dishonourable conduct;
 - (xi) while a director of a corporate practice, rendered any service as, or purporting to be, a director of a company whose name did not appear in Part II of the register at the time when the service was rendered; or
 - (xii) being such a director, practised accountancy as such a director at a time when the corporate practice was covered by professional indemnity insurance either not at all or not to the extent required by this Ordinance;
- (b) a corporate practice—
- (i) or any of its directors—
 - (A) falsified or caused to be falsified any document;
 - (B) made any statement which is material and which any of its directors knows to be false or does not believe to be true, in respect of any document;
 - (ii) failed to comply with a requirement referred to in section 28D(6)(a) or (7) or ceased or failed to comply with any requirement of section 28D(2)(b) or (c) applying to it;
 - (iii) rendered any service under a company name other than the name which then appeared in relation to the practice in the register;
 - (iv) being such a practice, practised accountancy without being covered by professional indemnity insurance at all or to the extent required by this Ordinance; or
 - (v) did or omitted to do something which, were the practice an individual certified public accountant, would reasonably be regarded as being dishonourable conduct by an individual,

shall be made to the Registrar who shall submit the complaint to the Council which may, in its discretion but subject to section 32D(7), refer the complaint to the Disciplinary Panels. (Amended 14 of 1992 s. 6)

(IAAA) If the Council decides not to refer the complaint to the Disciplinary Panels, the complainant who is aggrieved by the Council's decision may request the Council to refer the complaint to the Disciplinary Panels, whereupon the Council shall, unless it is of the opinion that no prima facie case has been shown for the complaint, or that the complaint is frivolous or vexatious, refer the complaint to the Disciplinary Panels. (Added 23 of 2004 s. 36)

(IAA) The provisions of subparagraphs (iv) to (ix) of paragraph (a) of subsection (1) shall apply mutatis mutandis in relation to a corporate practice and accordingly, in addition to those specified in subsection (1)(b), a complaint

文所指明的任何 1 項或多於 1 項理由，根據第 (1) 款提出針對某執業法團的投訴。
(由 1995 年第 85 號第 16 條增補)

(1A) 凡註冊主任有理由相信第 (1)(a) 或 (b) 款適用於某會計師或執業法團或按第 (1AA) 款而適用的第 (1)(a) 款適用於某會計師或執業法團，則註冊主任須將事實呈交理事會，而理事會可酌情決定將投訴提交紀律小組。(由 1977 年第 22 號第 12 條增補。由 1985 年第 14 號第 10 條修訂)

(2) 就第 (1)(a)(x) 及 (b)(v) 款而言，“不名譽的行為”(dishonourable conduct) 指會計師的作為或不作為，不論是否在履行專業工作的過程中或以會計師的身分作出，而該作為或不作為會合理地被視為損及或相當可能會損及該會計師本身、公會或會計師專業的聲譽。(由 2004 年第 23 號第 36 條修訂)

(3) 在執業審核委員會根據第 32D(5) 條作出投訴的任何時候身為該委員會委員的人，不得以紀律委員會委員的身分參與關乎該投訴的任何程序。(由 1992 年第 14 號第 6 條增補)

(由 1994 年第 69 號第 22 條修訂；由 1995 年第 85 號第 16 條修訂；由 2004 年第 23 號第 54 條修訂)

~~35. 紀律委員會的紀律處分權力~~

~~(1) 如紀律委員會信納根據第 34 條向其提交的投訴證明屬實，則該紀律委員會可酌情決定作出以下任何 1 項或多於 1 項命令——~~

- ~~(a) 將會計師的姓名或名稱從註冊紀錄冊中永久刪除或刪除一段紀律委員會認為適當的時間的命令；~~
- ~~(b) 譴責會計師的命令；~~
- ~~(c) 會計師須向公會繳付不超過 \$500,000 罰款的命令；~~
- ~~(d) 會計師須繳付根據第 VA 部針對他而進行的調查的費用及開支和附帶費用及開支的命令；~~
- ~~(da) 取消會計師獲發的執業證書的命令； (由 2004 年第 23 號第 37 條增補)~~
- ~~(db) 會計師永久或在紀律委員會認為合適的期間內不獲發執業證書的命令， (由 2004 年第 23 號第 37 條增補)~~
- ~~(e) (由 2004 年第 23 號第 37 條廢除)~~

~~而紀律委員會可在任何情況下 (由 2004 年第 23 號第 37 條修訂)~~

under subsection (1) may be made against such a practice on any 1 or more of the grounds specified in those subparagraphs as so applied. (Added 85 of 1995 s. 16)

(1A) Where the Registrar has reason to believe that subsection (1)(a) or (b), or subsection (1)(a) as applied by subsection (1AA), applies to a certified public accountant or a corporate practice, he shall submit the facts to the Council which may, in its discretion, refer the complaint to the Disciplinary Panels. (Added 22 of 1977 s. 12. Amended 14 of 1985 s. 10)

(2) For the purposes of subsection (1)(a)(x) and (b)(v), “dishonourable conduct” (不名譽的行為) means an act or omission of a certified public accountant, whether or not in the course of carrying out professional work or as a certified public accountant, which would reasonably be regarded as bringing or likely to bring discredit upon the certified public accountant himself, the Institute or the accountancy profession.

(3) A person who was a member of the Practice Review Committee at any time when a complaint was made by it under section 32D(5) shall not take part as a member of a Disciplinary Committee in any proceedings relating to such complaint. (Added 14 of 1992 s. 6)

(Amended 69 of 1994 s. 22; 85 of 1995 s. 16; 23 of 2004 ss. 36 & 54)

~~35. Disciplinary powers of Disciplinary Committee~~

~~(1) If a Disciplinary Committee is satisfied that a complaint referred to it under section 34 is proved, the Disciplinary Committee may, in its discretion make any one or more of the following orders——~~

- ~~(a) an order that the name of the certified public accountant be removed from the register, either permanently or for such period as it may think fit;~~
- ~~(b) an order that the certified public accountant be reprimanded;~~
- ~~(c) an order that the certified public accountant pay a penalty not exceeding \$500,000 to the Institute;~~
- ~~(d) an order that the certified public accountant pay the costs and expenses of and incidental to an investigation against him under Part VA;~~
- ~~(da) an order that the practising certificate issued to the certified public accountant be cancelled; (Added 23 of 2004 s. 37)~~
- ~~(db) an order that a practising certificate shall not be issued to the certified public accountant either permanently or for such period as the Disciplinary Committee may think fit, (Added 23 of 2004 s. 37)~~
- ~~(e) (Repealed 23 of 2004 s. 37)~~

~~and the Disciplinary Committee may in any case— (Amended 23 of 2004 s. 37)~~

42D. 調查委員會在其程序方面的權力

- (1) 以下條文在調查委員會的程序方面適用——
- (a) 本段對其適用的任何人，如有關的調查委員會合理地相信有任何紀錄或其他文件是在其管有或控制之下，而該等紀錄或文件是該委員會覺得載有或相當可能載有與該委員會的程序有關的資料，則除第(5)款另有規定外，須——
- (i) 在該委員會合理地要求的時間內及在合理地要求的地點，向該委員會出示或讓其取用該委員會指明的任何紀錄或其他文件，而該等紀錄或文件均屬該委員會指明的類別或種類，並且是在該人的管有或控制之下的任何紀錄或其他文件，而在上述任何一種情況下，該紀錄或其他文件均是與該程序有關的或是該委員會覺得是與該程序有關的；
- (ii) 在該委員會要求下，就為遵從根據第(i)節作出的要求而出示或讓該委員會取用的任何物件，給予該委員會或委員該委員會指明的解釋或進一步的詳情；
- (iii) 給予該委員會該人合理地能給予的與該委員會的程序相關的一切協助；
- (b) 凡與調查委員會的程序有關的任何資料或事宜是以非可閱形式記錄的，則(a)段所賦予要求出示任何紀錄或其他文件的權力，須包括要求出示任何該等資料或事宜或該等資料或事宜的有關部分的可閱形式複製本的權力；
- (c) 調查委員會可查閱、檢查或抄錄或複印根據(a)或(b)段的要求出示的紀錄或文件，或撮錄或摘錄該等紀錄或文件的內容；
- (d) 凡——
- (i) 任何人為本條的目的提供任何紀錄或文件的副本；
- (ii) 在行使根據本條賦予的權力下印製任何紀錄或文件的副本，並在印製該等副本時使用任何人的影印機或其他設施。

42D. Powers of Investigation Committee as regards its proceedings

- (1) The following provisions shall apply as regards the proceedings of an Investigation Committee—
- (a) any person to whom this paragraph applies, and whom the relevant Investigation Committee reasonably believes to have in his possession or under his control any record or other document which appears to that Committee as containing or being likely to contain information relevant to the proceedings of the Committee, shall subject to subsection (5)—
- (i) produce to the Committee or afford to the Committee access to, any record or other document specified by the Committee which is of a class or description so specified and which is in his possession or under his control being in either case a record or other document which is or appears to the Committee to be relevant to the proceedings, within such time and at such place as the Committee may reasonably require;
- (ii) if so required by the Committee, give to it or him such explanation or further particulars in respect of anything produced or to which access is given in compliance a requirement under subparagraph (i) as the Committee shall specify;
- (iii) give to the Committee all assistance in connection with its proceedings which he is reasonably able to give;
- (b) where any information or matter relevant to the proceedings of an Investigation Committee is recorded otherwise than in legible form, any power to require the production of any record or other document conferred under paragraph (a), shall include the power to require the production of a reproduction of any such information or matter or of the relevant part of it in legible form;
- (c) an Investigation Committee may inspect, examine or make copies of or take any abstract of or extract from a record or document which may be required to be produced under paragraph (a) or (b);
- (d) where—
- (i) a copy of any record or document is supplied by any person for the purposes of this section;
- (ii) a copy of any record or document is made in the exercise of any power conferred under this section and a photocopying machine or other facility of a person is used to make such copy,

則公會須向有關人士補還為印製該等副本而招致的合理影印或其他費用；

- (e) 憑藉根據第 42E 條作出的轉授而根據本條行使任何權力的人，在受其行使權力影響的人要求下，須將第 42E 條提述的有關文書或其副本出示供該人查閱。

(2) 第(1)(a)款適用於——

- (a) 調查委員會的程序所關乎的會計師、執業會計師事務所或執業法團，而——
- (i) 如該程序關乎會計師，第(1)(a)款亦適用於該會計師的僱主及前僱主(如有的話)及該會計師的任何僱員或前僱員；及
 - (ii) 如該程序關乎執業會計師事務所或執業法團，第(1)(a)款亦適用於該事務所或執業法團的任何僱員或前僱員；及
- (b) (a)段指明者以外的任何會計師、執業會計師事務所或執業法團，以及該會計師、事務所或執業法團的任何屬會計師或公會註冊學生的任何僱員或前僱員。(由 2004 年第 23 號第 47 條代替)

(3) 任何人如遵從調查委員會憑藉第(1)款所作的要求，則該人不得僅因該項遵從而招致對其他人的任何法律責任。

(4) 任何人不得以遵從調查委員會根據第(1)款所作的要求可能會導致其入罪為理由，而獲豁免遵從該要求。但如該人在回答根據第(1)(a)(ii)款向其提出的問題前，聲稱該答案可能會導致其入罪，則該問題及答案均不得在刑事法律程序中接納為針對該人的證據。

(5) 本條的任何條文不得用作強逼任何人出示載有法律執業者以法律執業者身分所發出或所獲得而享有特權的通訊的紀錄或文件。

the Institute shall reimburse the person concerned the reasonable photocopying or other expenses incurred in making such copy;
(Amended 23 of 2004 s. 54)

- (e) a person exercising any power under this section by virtue of a delegation under section 42E shall, if so required by a person affected by such exercise, produce for inspection by such person the relevant instrument referred to in section 42E or a copy thereof.

(2) Subsection (1)(a) applies—

- (a) to the certified public accountant, firm of certified public accountants (practising) or corporate practice to whom the Investigation Committee's proceedings relate and—
- (i) where the proceedings relate to a certified public accountant, also to that accountant's employer and former employer (if any) and to any employee or former employee of such accountant; and
 - (ii) where the proceedings relate to a firm of certified public accountants (practising) or corporate practice, also to any employee or former employee of such firm or corporate practice; and
- (b) to any certified public accountant, firm of certified public accountants (practising) or corporate practice other than those specified in paragraph (a), and any employee or former employee of such accountant, firm or corporate practice who is a certified public accountant or a student registered with the Institute. (Replaced 23 of 2004 s. 47)

(3) A person who complies with a requirement of an Investigation Committee which is made by virtue of subsection (1) shall not incur any liability to any other person by reason only of the compliance.

(4) A person is not excused from complying with a requirement of an Investigation Committee under subsection (1) on the ground that to do so might tend to incriminate him but, where that person claims, before he answers a question put to him under subsection (1)(a)(ii), that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings.

(5) Nothing in this section shall be taken to compel the production by a person of a record or document containing a privileged communication by or to a legal practitioner in that capacity.

第 486 章

個人資料(私隱)條例

本條例旨在在個人資料方面保障個人的私隱，並就附帶事宜及相關事宜訂定條文。

[第 II 部、第 71 條 (以涉及附表 2 為限) 及附表 2	}	1996 年 8 月 1 日	1996 年第 343 號法律公告
其他條文，但第 30 及 33 條除外		1996 年 12 月 20 日	1996 年第 514 號法律公告
第 30 條	}	1997 年 8 月 1 日	1997 年第 409 號法律公告]

第 I 部

導言

1. 簡稱及生效日期

- (1) 本條例可引稱為《個人資料(私隱)條例》。
- (2) 本條例自民政事務局局长以憲報公告指定的日期起實施。(由 1997 年第 362 號法律公告修訂)

2. 釋義

- (1) 在本條例中，除文意另有所指外——
- “文件”(document) 除包括書面文件外，包括——
- (a) 包含視覺影像以外的資料的紀錄碟、紀錄帶或其他器件，而所包含的資料能夠在有或沒有其他設備的輔助下，從該紀錄碟、紀錄帶或器件重現；及
- (b) 包含視覺影像的膠卷、紀錄帶或其他器件，而所包含的影像能夠在有或沒有其他設備的輔助下，從該膠卷、紀錄帶或器件重現；

CHAPTER 486

PERSONAL DATA (PRIVACY)

An Ordinance to protect the privacy of individuals in relation to personal data, and to provide for matters incidental thereto or connected therewith.

[Part II, section 71 (as affects Schedule 2) and Schedule 2	}	1 August 1996	L.N. 343 of 1996
The other provisions, excluding sections 30 and 33		20 December 1996	L.N. 514 of 1996
Section 30	}	1 August 1997	L.N. 409 of 1997]

PART I

PRELIMINARY

1. Short title and commencement

- (1) This Ordinance may be cited as the Personal Data (Privacy) Ordinance.
- (2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Home Affairs by notice in the Gazette.

2. Interpretation

- (1) In this Ordinance, unless the context otherwise requires—
- “act” (作為) includes a deliberate omission;
- “adverse action” (不利行動), in relation to an individual, means any action that may adversely affect the individual's rights, benefits, privileges, obligations or interests (including legitimate expectations);
- “appointed day” (指定日) means the day appointed under section 1(2);
- “approved code of practice” (核准實務守則) means a code of practice approved under section 12;
- “code of practice” (實務守則) includes—

- “使用” (use), 就個人資料而言, 包括披露或移轉該等資料;
- “披露” (disclosing), 就個人資料而言, 包括披露自資料推斷所得的資訊;
- “指明” (specified), 就格式而言, 指根據第 67 條指明;
- “指定日” (appointed day) 指根據第 1(2) 條指定的日子;
- “訂明人員” (prescribed officer) 指根據第 9(1) 條獲僱用或聘用的人;
- “相當可能損害” (would be likely to prejudice) 包括可能會損害;
- “保障資料原則” (data protection principle) 指在附表 1 列明的任何保障資料原則;
- “查閱資料要求” (data access request) 指根據第 18 條提出的要求;
- “紀錄簿” (log book), 就資料使用者而言, 指由資料使用者根據第 27(1) 條備存及維持的紀錄簿;
- “個人身分標識符” (personal identifier) 指——
- 由資料使用者為其作業而編配予一名個人; 及
 - 就該資料使用者而言, 能識辨該名個人的身分而不虞混淆, 的標識符, 但用以識辨該名個人的該人的姓名, 則不包括在內;
- “個人資料” (personal data) 指符合以下說明的任何資料——
- 直接或間接與一名在世的個人有關的;
 - 從該等資料直接或間接地確定有關的個人的身分是切實可行的; 及
 - 該等資料的存在形式令予以查閱及處理均是切實可行的;
- “個人資料系統” (personal data system) 指全部或部分由資料使用者用作收集、持有、處理或使用個人資料的任何系統 (不論該系統是否自動化的), 並包括組成該系統一部分的任何文件及設備;
- “核准實務守則” (approved code of practice) 指根據第 12 條核准的實務守則;
- “核對程序” (matching procedure) 指將為 1 個或 1 個以上的目的而取自 10 個或 10 個以上的資料當事人的個人資料與為其他目的而自該等資料當事人收集的個人資料比較的程序 (用人手方法的除外), 而——
- 所作比較 (不論是全部的還是部分的) 是為了產生和核實某些可 (即時或於其後任何時間) 用作對任何該等資料當事人採取不利行動的資料的; 或
 - 所作比較產生和核實某些資料, 而就該等資料而言可合理地相信將該等資料 (即時或於其後任何時間) 用作對任何該等資料當事人採取不利行動是切實可行的;
- “核對程序要求” (matching procedure request) 指根據第 31(1) 條提出的要求;



- “enforcement notice” (執行通知) means a notice under section 50(1);
- “financial regulator” (財經規管者) means any of—
- the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66);
 - the Securities and Futures Commission referred to in section 3(1) of the Securities and Futures Ordinance (Cap. 571); (*Replaced 5 of 2002 s. 407*)
 - a recognized clearing house, a recognized exchange company, a recognized exchange controller or a recognized investor compensation company within the meaning of section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571); (*Replaced 5 of 2002 s. 407*)
 - a person authorized under Part III of the Securities and Futures Ordinance (Cap. 571) to provide automated trading services as defined in Schedule 5 to that Ordinance; (*Replaced 5 of 2002 s. 407*)
 - (*Repealed 5 of 2002 s. 407*)
 - the Insurance Authority appointed under section 4 of the Insurance Companies Ordinance (Cap. 41);
 - the Registrar of Occupational Retirement Schemes appointed under section 5 of the Occupational Retirement Schemes Ordinance (Cap. 426);
 - the Mandatory Provident Fund Schemes Authority established by section 6 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485); (*Added 4 of 1998 s. 14*)
 - a person specified in a notice under subsection (7) to be a regulator for the purposes of this definition;
- “inaccurate” (不準確), in relation to personal data, means the data is incorrect, misleading, incomplete or obsolete;
- “inspection” (視察) means an inspection under section 36;
- “investigation” (調查) means an investigation under section 38;
- “log book” (紀錄簿), in relation to a data user, means the log book kept and maintained by the data user under section 27(1);
- “matching procedure” (核對程序) means any procedure whereby personal data collected for 1 or more purposes in respect of 10 or more data subjects are compared (except by manual means) with personal data collected for any other purpose in respect of those data subjects where the comparison—
- is (whether in whole or in part) for the purpose of producing or verifying data that; or
 - produces or verifies data in respect of which it is reasonable to believe that it is practicable that the data, may be used (whether immediately or at any subsequent time) for the purpose of taking adverse action against any of those data subjects;

“財經規管者”(financial regulator)指任何以下人士或機構——

- (a) 根據《外匯基金條例》(第 66 章)第 5A 條委任的金融管理專員；
- (b) 《證券及期貨條例》(第 571 章)第 3(1) 條提述的證券及期貨事務監察委員會；(由 2002 年第 5 號第 407 條代替)
- (c) 《證券及期貨條例》(第 571 章)附表 1 第 1 部第 1 條所指的認可結算所、認可交易所、認可控制人或認可投資者賠償公司；(由 2002 年第 5 號第 407 條代替)
- (d) 根據《證券及期貨條例》(第 571 章)第 III 部獲認可提供該條例附表 5 所界定的自動化交易服務的人；(由 2002 年第 5 號第 407 條代替)
- (e)-(ea) (由 2002 年第 5 號第 407 條廢除)
- (f) 根據《保險公司條例》(第 41 章)第 4 條委任的保險業監督；
- (g) 根據《職業退休計劃條例》(第 426 章)第 5 條委任的職業退休計劃註冊處處長；
- (ga) 由《強制性公積金計劃條例》(第 485 章)第 6 條設立的強制性公積金計劃管理局；(由 1998 年第 4 號第 14 條增補)
- (h) 屬根據第 (7) 款刊登的公告為本定義的目的所指明為規管者的人；

“第三者”(third party), 就個人資料而言, 指除以下人士外的任何人——

- (a) 資料當事人；
- (b) 就資料當事人而屬有關人士的人；
- (c) 資料使用者；或
- (d) 獲資料使用者為以下事情以書面授權的人——
 - (i) 在資料使用者的直接控制下收集、持有、處理或使用有關的資料；或
 - (ii) 代資料使用者收集、持有、處理或使用有關的資料；

“執行通知”(enforcement notice)指第 50(1) 條下的通知；

“專員”(Commissioner)指根據第 5(1) 條設立的個人資料私隱專員；

“處理”(processing), 就個人資料而言, 包括將資料修訂、擴增、刪去或重新排列(不論是否藉自動化方法或其他方法)；

“提出要求者”(requestor), 就——

- (a) 查閱資料要求或改正資料要求而言, 指已提出該項要求的個人或代該名個人提出該項要求的有關人士；
- (b) 核對程序要求而言, 指已提出該項要求的資料使用者；

“matching procedure request” (核對程序要求) means a request under section 31(1);

“personal data” (個人資料) means any data—

- (a) relating directly or indirectly to a living individual;
- (b) from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and
- (c) in a form in which access to or processing of the data is practicable;

“personal data system” (個人資料系統) means any system, whether or not automated, which is used, whether in whole or in part, by a data user for the collection, holding, processing or use of personal data, and includes any document and equipment forming part of the system;

“personal identifier” (個人身分標識符) means an identifier—

- (a) that is assigned to an individual by a data user for the purpose of the operations of the user; and
- (b) that uniquely identifies that individual in relation to the data user,

but does not include an individual's name used to identify that individual;

“practicable” (切實可行) means reasonably practicable;

“prescribed officer” (訂明人員) means a person employed or engaged under section 9(1);

“processing” (處理), in relation to personal data, includes amending, augmenting, deleting or rearranging the data, whether by automated means or otherwise;

“register” (登記冊) means the register of data users kept and maintained by the Commissioner under section 15(1);

“relevant data user” (有關資料使用者), in relation to—

- (a) an inspection, means the data user who uses the personal data system which is the subject of the inspection;
- (b) a complaint, means the data user specified in the complaint;
- (c) an investigation—
 - (i) in the case of an investigation initiated by a complaint, means the data user specified in the complaint;
 - (ii) in any other case, means the data user the subject of the investigation;
- (d) an enforcement notice, means the data user on whom the notice is served;

“relevant person” (有關人士), in relation to an individual (howsoever the individual is described), means—

- (a) where the individual is a minor, a person who has parental responsibility for the minor;
- (b) where the individual is incapable of managing his own affairs, a person who has been appointed by a court to manage those affairs;

(2) 凡——

- (a) 個人資料是為第 (1) 款所提述的目的而使用 (不論該等資料是否為該等目的而持有); 及
- (b) 第 3 保障資料原則的條文就該等使用而適用便相當可能會損害該款所提述的任何事宜,

該等資料獲豁免而不受第 3 保障資料原則的條文所管限, 而在為任何人違反任何該等條文而針對他進行的法律程序中, 如該人證明他當時有合理理由相信不如此使用該等資料便相當可能會損害任何該等事宜, 即為免責辯護。

(3) 就任何個人資料是否需有第 (1) 款下的豁免或曾否在任何時間需有第 (1) 款下的豁免的問題, 可由行政長官或政務司司長決定, 而一份由行政長官或政務司司長簽署並證明需有或曾在任何時間需有該項豁免的證明書, 即為該事實的證據。 (由 1997 年第 362 號法律公告修訂; 由 1999 年第 34 號第 3 條修訂)

(4) 就第 (2) 款而言, 一份由行政長官或政務司司長簽署的證明個人資料是為或曾為第 (1) 款所提述的任何目的而使用的證明書, 即為該事實的證據。 (由 1997 年第 362 號法律公告修訂; 由 1999 年第 34 號第 3 條修訂)

(5) 行政長官或政務司司長可在第 (3) 或 (4) 款所提述的證明書中, 就該證明書所關乎的個人資料及為該證明書所指明的理由, 指示專員不得進行視察或調查, 而在此情況下, 專員須遵從該項指示。 (由 1997 年第 362 號法律公告修訂; 由 1999 年第 34 號第 3 條修訂)

(6) 看來是第 (3) 或 (4) 款所提述的證明書的文件, 須獲收取為證據, 而在沒有相反證據的情況下, 該文件須當作為該等證明書。

(7) 在本條中——

“保安”(security) 包括防止或排拒無權進入香港及留在香港的人 (包括按照《入境條例》(第 115 章) 的條文被扣留的人) 進入香港及留在香港; (由 1997 年第 80 號第 103(1) 條修訂)

“國際關係”(international relations) 包括與任何國際組織的關係。

58. 罪行等

(1) 為——

- (a) 罪行的防止或偵測;

(2) Personal data are exempt from the provisions of data protection principle 3 in any case in which—

- (a) the use of the data is for any of the purposes referred to in subsection (1) (and whether or not the data are held for any of those purposes); and
- (b) the application of those provisions in relation to such use would be likely to prejudice any of the matters referred to in that subsection,

and in any proceedings against any person for a contravention of any of those provisions it shall be a defence to show that he had reasonable grounds for believing that failure to so use the data would have been likely to prejudice any of those matters.

(3) Any question whether an exemption under subsection (1) is or at any time was required in respect of any personal data may be determined by the Chief Executive or Chief Secretary for Administration; and a certificate signed by the Chief Executive or Chief Secretary for Administration certifying that the exemption is or at any time was so required shall be evidence of that fact. (Amended L.N. 362 of 1997; 34 of 1999 s. 3)

(4) For the purposes of subsection (2), a certificate signed by the Chief Executive or Chief Secretary for Administration certifying that personal data are or have been used for any purpose referred to in subsection (1) shall be evidence of that fact. (Amended L.N. 362 of 1997; 34 of 1999 s. 3)

(5) The Chief Executive or Chief Secretary for Administration may, in a certificate referred to in subsection (3) or (4), in respect of the personal data to which the certificate relates and for the reasons specified in that certificate, direct the Commissioner not to carry out an inspection or investigation and, in any such case, the Commissioner shall comply with the direction. (Amended L.N. 362 of 1997; 34 of 1999 s. 3)

(6) A document purporting to be a certificate referred to in subsection (3) or (4) shall be received in evidence and, in the absence of evidence to the contrary, shall be deemed to be such a certificate.

(7) In this section—

“international relations” (國際關係) includes relations with any international organization;

“security” (保安) includes the prevention or preclusion of persons (including persons detained in accordance with the provisions of the Immigration Ordinance (Cap. 115)) entering and remaining in Hong Kong who do not have the right to enter and remain in Hong Kong.

58. Crime, etc.

- (1) Personal data held for the purposes of—
 - (a) the prevention or detection of crime;

- (b) 犯罪者的拘捕、檢控或拘留；
- (c) 任何稅項的評定或收取；
- (d) 任何人所作的非法或嚴重不當的行為、或不誠實的行為或舞弊行為的防止、排除或糾正(包括懲處)；
- (e) 防止或排除因——
 - (i) 任何人輕率的業務經營手法或活動；或
 - (ii) 任何人所作的非法或嚴重不當的行為、或不誠實的行為或舞弊行為，
 而引致的重大經濟損失；
- (f) 確定有關的資料當事人的品格或活動是否相當可能對以下事情有重大不利影響——
 - (i) 由該資料使用者執行法定職能所關乎的事情；或
 - (ii) 與本段憑藉第(3)款而適用的職能的執行有關的事情；或
- (g) 本段憑藉第(3)款而適用的職能的執行，

而持有的個人資料，在以下情況下獲豁免而不受第6保障資料原則及第18(1)(b)條的條文所管限——

- (i) 該等條文適用於該等資料便相當可能會損害本款所提述的任何事宜；或
 - (ii) 該等條文適用於該等資料便相當可能會直接或間接識辨屬該等資料來源的人的身分。
- (2) 凡——
- (a) 個人資料是為第(1)款所提述的目的而使用(不論該等資料是否為該等目的而持有)；及
 - (b) 第3保障資料原則的條文就該等使用而適用便相當可能會損害該款所提述的任何事宜，

則該等資料獲豁免而不受第3保障資料原則的條文所管限，而在為任何人違反任何該等條文而針對他進行的法律程序中，如該人證明他當時有合理理由相信不如此使用該資料便相當可能會損害任何該等事宜，即為免責辯護。

- (3) 第(1)款(f)(ii)及(g)段適用於財經規管者的以下職能——
- (a) 保障公眾免受因以下事情導致的財政損失的職能——
 - (i) 屬——

- (b) the apprehension, prosecution or detention of offenders;
- (c) the assessment or collection of any tax or duty;
- (d) the prevention, preclusion or remedying (including punishment) of unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;
- (e) the prevention or preclusion of significant financial loss arising from—
 - (i) any imprudent business practices or activities of persons; or
 - (ii) unlawful or seriously improper conduct, or dishonesty or malpractice, by persons;
- (f) ascertaining whether the character or activities of the data subject are likely to have a significantly adverse impact on any thing—
 - (i) to which the discharge of statutory functions by the data user relates; or
 - (ii) which relates to the discharge of functions to which this paragraph applies by virtue of subsection (3); or
- (g) discharging functions to which this paragraph applies by virtue of subsection (3),

are exempt from the provisions of data protection principle 6 and section 18(1)(b) where the application of those provisions to the data would be likely to—

- (i) prejudice any of the matters referred to in this subsection; or
- (ii) directly or indirectly identify the person who is the source of the data.

(2) Personal data are exempt from the provisions of data protection principle 3 in any case in which—

- (a) the use of the data is for any of the purposes referred to in subsection (1) (and whether or not the data are held for any of those purposes); and
- (b) the application of those provisions in relation to such use would be likely to prejudice any of the matters referred to in that subsection,

and in any proceedings against any person for a contravention of any of those provisions it shall be a defence to show that he had reasonable grounds for believing that failure to so use the data would have been likely to prejudice any of those matters.

(3) Paragraphs (f)(ii) and (g) of subsection (1) apply to any functions of a financial regulator—

- (a) for protecting members of the public against financial loss arising from—
 - (i) dishonesty, incompetence, malpractice or seriously improper conduct by persons—

- (A) 從事銀行、保險、投資或其他財經服務的提供；
- (B) 從事公司的管理；
- (BA) 從事已根據《強制性公積金計劃條例》(第 485 章) 註冊的公積金計劃的管理； (由 1998 年第 4 號第 14 條增補)
- (C) 從事《職業退休計劃條例》(第 426 章) 所指的職業退休計劃的管理；或
- (D) 公司股東，
的人的不誠實行為、不勝任、不良行為或嚴重不當的行為；或
- (ii) 已獲或未獲解除破產令的破產人的行為；
- (b) 維持或促進提供 (a)(i)(A) 段所提述的任何服務的任何體系的一般穩定性或有效運作的職能；或
- (c) 為本款的施行而在第 (4) 款下的公告中指明的職能。
- (4) 行政長官可為第 (3) 款的施行藉憲報公告指明財經規管者的職能。 (由 1999 年第 34 號第 3 條修訂)
- (5) 現聲明——
- (a) 第(3)款的施行不得損害第 (1) 款 (a)、(b)、(c)、(d) 及 (f)(i) 段就財經規管者而施行的概括性；
- (b) 第(4)款下的公告是附屬法例。

59. 健康

與有關的資料當事人的身體健康或精神健康有關的個人資料，獲豁免而不受以下任何或所有條文所管限——

- (a) 第 6 保障資料原則及第 18(1)(b) 條的條文；
- (b) 第 3 保障資料原則的條文，

但上述豁免僅在以下情況適用——

- (i) 該等條文適用於該等資料便相當可能會對該資料當事人的身體健康或精神健康造成嚴重損害；或
- (ii) 該等條文適用於該等資料便相當可能會對任何其他個人的身體健康或精神健康造成嚴重損害。

60. 法律專業保密權

假如在法律上就某些資訊而享有法律專業保密權的聲稱是能夠成立的，包含該等資訊的個人資料獲豁免而不受第 6 保障資料原則及第 18(1)(b) 條的條文所管限。

- (A) concerned in the provision of banking, insurance, investment or other financial services;
- (B) concerned in the management of companies;
- (BA) concerned in the administration of provident fund schemes registered under the Mandatory Provident Fund Schemes Ordinance (Cap. 485); (Added 4 of 1998 s. 14)
- (C) concerned in the management of occupational retirement schemes within the meaning of the Occupational Retirement Schemes Ordinance (Cap. 426); or
- (D) who are shareholders in companies; or
- (ii) the conduct of discharged or undischarged bankrupts;
- (b) for maintaining or promoting the general stability or effective working of any of the systems which provide any of the services referred to in paragraph (a)(i)(A); or
- (c) specified for the purposes of this subsection in a notice under subsection (4).
- (4) For the purposes of subsection (3), the Chief Executive may, by notice in the Gazette, specify a function of a financial regulator. (Amended 34 of 1999 s. 3)
- (5) It is hereby declared that—
- (a) subsection (3) shall not operate to prejudice the generality of the operation of paragraphs (a), (b), (c), (d) and (f)(i) of subsection (1) in relation to a financial regulator;
- (b) a notice under subsection (4) is subsidiary legislation.

59. Health

Personal data relating to the physical or mental health of the data subject are exempt from the provisions of either or both of—

- (a) data protection principle 6 and section 18(1)(b);
- (b) data protection principle 3,

in any case in which the application of those provisions to the data would be likely to cause serious harm to the physical or mental health of—

- (i) the data subject; or
- (ii) any other individual.

60. Legal professional privilege

Personal data are exempt from the provisions of data protection principle 6 and section 18(1)(b) if the data consist of information in respect of which a claim to legal professional privilege could be maintained in law.

~~作出該作為或從事該行為或在其受僱用過程中作出該類作為或從事該類行為，即為免責辯護。~~

~~(4) 為免生疑問，現聲明：本條不就刑事法律程序而適用。~~

66. 補償

(1) 除第(4)款另有規定外，任何個人如因符合以下說明的違反事項而蒙受損害，則該名個人有權就該損害向有關的資料使用者申索補償——

- (a) 遭違反的是本條例下的規定；
- (b) 違反規定者是資料使用者；及
- (c) 該違反規定事項全部或部分關乎個人資料而該名個人是資料當事人。

(2) 為免生疑問，現聲明：第(1)款所提述的損害可以是或可包括對感情的傷害。

(3) 在憑藉本條針對任何人提出的法律程序中，如證明以下事項，即為免責辯護——

- (a) 該人已採取在所有情況下屬合理所需的謹慎措施，以避免有關的違反規定事項發生；或
- (b) 在因有關的個人資料不準確而發生的有關違反規定事項的個案中，該個人資料準確地記錄有關的資料使用者從資料當事人或第三者處所收到或取得的資料。

(4) 凡因有關的個人資料不準確而發生第(1)款所提述的違反規定事項，並因此而導致有關的個人蒙受該款所提述的損害，則不得就緊接本條開始實施後1年期屆滿前的任何時間所發生的損害，根據該款獲支付補償。

第 X 部

雜項條文

67. 專員指明格式的權力

~~(1) 在符合第(2)款的規定下，專員可就本條例規定須符合指明格式的任何文件，及就為本條例的施行而須有的其他文件，訂明他認為合適的格式。~~

~~case may be, by an employee of his it shall be a defence for that person to prove that he took such steps as were practicable to prevent the employee from doing that act or engaging in that practice, or from doing or engaging in, in the course of his employment, acts or practices, as the case may be, of that description.~~

~~(4) For the avoidance of doubt, it is hereby declared that this section shall not apply for the purposes of any criminal proceedings.~~

66. Compensation

(1) Subject to subsection (4), an individual who suffers damage by reason of a contravention—

- (a) of a requirement under this Ordinance;
- (b) by a data user; and
- (c) which relates, whether in whole or in part, to personal data of which that individual is the data subject,

shall be entitled to compensation from that data user for that damage.

(2) For the avoidance of doubt, it is hereby declared that damage referred to in subsection (1) may be or include injury to feelings.

(3) In any proceedings brought against any person by virtue of this section it shall be a defence to show that—

- (a) he had taken such care as in all the circumstances was reasonably required to avoid the contravention concerned; or
- (b) in any case where the contravention concerned occurred because the personal data concerned were inaccurate, the data accurately record data received or obtained by the data user concerned from the data subject or a third party.

(4) Where an individual suffers damage referred to in subsection (1) by reason of a contravention referred to in that subsection which occurred because the personal data concerned were inaccurate, then no compensation shall be payable under that subsection in respect of so much of that damage that has occurred at any time before the expiration of 1 year immediately following the day on which this section commences.

PART X

MISCELLANEOUS

67. Power of Commissioner to specify forms

~~(1) Subject to subsection (2), the Commissioner may specify the form of any document required under this Ordinance to be in the specified form and the form of such other documents required for the purposes of this Ordinance as he thinks fit.~~