

立法會
Legislative Council

LC Paper No. CB(1)896/18-19
(These minutes have been seen
by the Administration)

Ref : CB1/BC/4/17

Bills Committee on Financial Reporting Council (Amendment) Bill 2018

**Minutes of the seventh meeting on
Monday, 17 December 2018, at 9:00 am
in Conference Room 2 of the Legislative Council Complex**

Members present : Hon WONG Ting-kwong, GBS, JP (Chairman)
Hon Kenneth LEUNG (Deputy Chairman)
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Kin-por, GBS, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon CHAN Chun-ying, JP
Hon CHEUNG Kwok-kwan, JP

Members absent : Hon James TO Kun-sun
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon WU Chi-wai, MH
Hon Dennis KWOK Wing-hang
Dr Hon Junius HO Kwan-yiu, JP
Hon Kenneth LAU Ip-keung, BBS, MH, JP

Public officers attending : Ms NG Ching-ching, Winnie, JP
Deputy Secretary for Financial Services and the
Treasury (Financial Services)³

Mr AU Ka-shing, Billy
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)⁴

Ms CHAN Ka-man, Carmen
Senior Government Counsel
Department of Justice

Ms CHEUNG Mee-bo, Mabel
Senior Assistant Law Draftsman (LP)
Department of Justice

Attendance by invitation : Mr Paul F WINKELMANN
Chief Executive Officer
Financial Reporting Council

Ms Florence WONG
Senior Director (Investigation & Compliance)
Financial Reporting Council

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)4

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Mr Hugo CHIU
Senior Council Secretary (1)4

Ms Sharon CHAN
Legislative Assistant (1)4

Action

I Confirmation of minutes

(LC Paper No. CB(1)290/18-19 — Minutes of the meeting on
29 October 2018)

The minutes of the meeting held on 29 October 2018 were confirmed.

Action

II Meeting with the Administration

Draft amendments to the Bill

(A) Amendments to the Bill proposed by the Administration

(LC Paper No. CB(1)237/18-19(01) — Draft Committee Stage amendments proposed by the Administration

LC Paper No. CB(1)331/18-19(01) — Letter dated 13 December 2018 from the Administration on its draft Committee Stage amendments)

(B) Amendments to the Bill proposed by Hon Kenneth LEUNG

(LC Paper No. CB(1)272/18-19(01) — Letter dated 5 December 2018 from Hon Kenneth LEUNG regarding his proposed amendments to the Bill

LC Paper No. CB(1)331/18-19(02) — Explanatory notes by Hon Kenneth LEUNG regarding his proposed amendments to the Bill)

Other relevant papers

(LC Paper No. CB(3)287/17-18 — The Bill

File Ref: ACCT/2/1/2C — Legislative Council Brief

LC Paper No. LS25/17-18 — Legal Service Division Report

LC Paper No. CB(1)591/17-18(01) — Marked-up copy of the Financial Reporting Council (Amendment) Bill 2018 prepared by the Legal Service Division (Restricted to members only))

Action

Discussion

2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).
3. The Deputy Chairman declared that he was returned by the Functional Constituency of Accountancy. Ms Starry LEE declared that she was a member of the Hong Kong Institute of Certified Public Accountants and an employee of one of the "Big Four" accounting firms.

III Any other business

Legislative timetable

4. The Chairman concluded that the Bills Committee had completed the scrutiny of the Financial Reporting Council (Amendment) Bill 2018 ("the Bill").
5. Members noted that the Administration planned to resume the Second Reading debate on the Bill at the Council meeting of 30 January 2019. The Chairman said that he would report the Bills Committee's deliberations at the House Committee meeting on 18 January 2019. The deadline for giving notice of amendments to the Bill would be 21 January 2019.
6. There being no other business, the meeting ended at 9:53 am.

Council Business Division 1
Legislative Council Secretariat
16 April 2019

**Proceedings of the seventh meeting of
the Bills Committee on Financial Reporting Council (Amendment) Bill 2018
on Monday, 17 December 2018, at 9:00 am
in Conference Room 2 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
Agenda item I — Confirmation of minutes			
000415 – 000504	Chairman	Confirmation of minutes [LC Paper No. CB(1)290/18-19]	
Agenda item II — Meeting with the Administration			
000505 – 001056	Chairman Administration Deputy Chairman	<p>Briefing by the Administration on its proposed amendments to the Financial Reporting Council (Amendment) Bill 2018 ("the Bill") [LC Paper Nos. CB(1)237/18-19(01) and CB(1)331/18-19(01)]</p> <p>The Deputy Chairman noted that the Administration proposed to amend the commencement arrangement of the Bill under clause 1 of the Bill from 1 August 2019 to a day to be appointed by the Secretary for the Financial Services and the Treasury by a notice published in the Gazette. He enquired about the expected commencement arrangement of the Bill, and the factors the Administration would take into account in determining the appropriate time for commencement.</p> <p>The Administration responded as follows:</p> <p>(a) the proposed amendment was to provide flexibility and more time for the Financial Reporting Council ("FRC") to complete preparation for implementing the proposals in the Bill (including formulating the levy collection procedures and finalizing the agreement with the Hong Kong Institute of Certified Public Accountants ("HKICPA") on how FRC would carry out its new oversight functions and power concerning HKICPA under the Bill, and liaising with overseas auditor regulators); and</p>	

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		<p>(b) the Bill was envisaged to come into operation after 1 August 2019 but the exact commencement date could not be confirmed at the moment. The Administration's target was to bring the Bill into operation as soon as practicable.</p>	
<p>001057 – 001254</p>	<p>Chairman Administration Assistant Legal Adviser 10 ("ALA10")</p>	<p>In response to ALA10's request to explain the reason for tying the commencement date of the Financial Reporting Council (Amendment) Ordinance 2019 ("the 2019 Amending Ordinance") with the day on which section 23 of the said Ordinance came into operation, the Administration advised that:</p> <p>(a) the proposed amendments relating to the commencement date of the Bill set out in LC Paper No. CB(1)331/18-19(01) ((i) the commencement date of the 2019 Amending Ordinance and (ii) the phrase "commencement date" in the proposed amended section 32BA(2) of the Professional Accountants Ordinance (Cap. 50) ("PAO") meant the day on which section 23 of the 2019 Amending Ordinance came into operation) were to avoid potential ambiguity in relation to the definition of the commencement of the Bill. Section 23 of the 2019 Amending Ordinance, which provided for the registration and recognition of public interest entity ("PIE") auditors, was the first step in implementing the new regulatory regime for PIE auditors. The Administration considered the proposed amendments appropriate and could achieve the desired purpose; and</p> <p>(b) in addition, the commencement arrangement regarding the calculation of a financial year of FRC prior to the commencement of the 2019 Amending Ordinance would not be affected.</p>	

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001255 – 002739	Chairman Deputy Chairman Ms Starry LEE Administration	<p>Declaration of interest by the Deputy Chairman and Ms Starry LEE.</p> <p><u>Pecuniary penalty for misconduct committed by public interest entity auditors or registered responsible persons</u></p> <p>[LC Paper Nos. CB(1)272/18-19(01) and CB(1)331/18-19(02)]</p> <p>The Deputy Chairman explained his proposed amendments to the proposed new sections 37D(3)(b)(iv)(A) and 37E(3)(b)(iii)(A) of the Financial Reporting Council Ordinance (Cap. 588) ("FRCO") as follows:</p> <p>(a) under the proposed new sections 37D(3)(b)(iv) and 37E(3)(b)(iii) of FRCO, the maximum pecuniary penalty for misconduct committed by PIE auditors or registered responsible persons was the greater of \$10 million ("the level of pecuniary penalty") or three times the amount of the profit gained or loss avoided by the person as a result of the misconduct. His proposed amendments were to reduce the level of pecuniary penalty to "\$1 million", "\$5 million" or "\$8 million";</p> <p>(b) the proposed amendments aimed to allay the concern of small and medium-sized ("SMS") accounting/audit firms about the high pecuniary penalty of \$10 million; and</p> <p>(c) there were other sanctions available to FRC (e.g. suspension or revocation of registration) for breaches committed by PIE auditors. Such sanctions would provide sufficient deterrence.</p> <p>Ms LEE's views as follows:</p> <p>(a) the accounting industry (especially SMS accounting/audit firms) had expressed concern about the proposed high level of pecuniary penalty (particularly the ceiling</p>	

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		<p>of \$10 million), and pointed out that the pecuniary penalty level was higher than that in overseas auditor regulatory regimes including Singapore;</p> <p>(b) the Administration should highlight the level of pecuniary penalty adopted by other comparable jurisdictions; and</p> <p>(c) Hong Kong should align its level of pecuniary penalty with that of other comparable jurisdictions.</p> <p>The Administration responded that:</p> <p>(a) it was opposed to the proposed amendments put forward by the Deputy Chairman;</p> <p>(b) the proposed maximum level of pecuniary penalty was set at \$10 million in the consultation paper published in 2014, and had been fully deliberated since the public consultation exercise;</p> <p>(c) the Bill (the proposed section 37H of FRCO) provided that FRC must issue guidelines on the imposition of pecuniary penalty ("the Guidelines") specifying the manner in which FRC would exercise its power in ordering a PIE auditor to pay a pecuniary penalty, and must have regard to the Guidelines in exercising such power. The principles FRC would adhere to when devising the Guidelines were set out in the Administration paper (LC Paper No. CB(1)771/17-18(02)) provided to the Bills Committee. The Guidelines would stipulate that FRC should take into account, among other things, the financial resources and strength of the practice unit/individual concerned and should avoid the likely effect of putting a practice unit or individual in financial jeopardy;</p> <p>(d) the Administration had already provided a comparison of the maximum level of pecuniary penalty imposed by the major</p>	

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		<p>member jurisdictions of the International Forum of Independent Audit Regulators. It should be noted that the auditor regulatory regime of the United Kingdom ("UK") did not impose any limit on the pecuniary penalty level. There had been comments in recent years for increasing the level of penalty actually imposed in disciplinary cases. UK was an overseas jurisdiction with a capital market most comparable to that of Hong Kong. The maximum pecuniary penalty in the auditor regulatory regime of the United States was much higher than that proposed for Hong Kong. While the regulatory regimes of Australia, Canada and Singapore either did not introduce any pecuniary penalty, or set a lower maximum pecuniary penalty than that of Hong Kong, it might not be appropriate to make a direct comparison with such jurisdictions as the features of their regulatory regimes and sizes of their capital markets were different from those of Hong Kong; and</p> <p>(e) while the Administration was aware of the industry's concern, the proposed pecuniary penalty had struck a reasonable balance between the interests of various stakeholder groups. In addition, the Administration considered that the maximum level of pecuniary penalty should have sufficient deterrent effect for enhancing investor protection.</p>	
002740 – 002932	Chairman Mr Christopher CHEUNG	<p>Mr CHEUNG's views as follows:</p> <p>(a) auditors played an important role in helping investors to assess the accuracy of the financial reports of listed companies/companies applying for listing; and</p> <p>(b) there were incidents where the financial positions of some listed companies deteriorated shortly after their listings which might indicate that some PIE auditors engaging in initial public</p>	

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		offerings ("IPOs") might not have discharged their duties properly. PIE auditors charged high fees for services provided to IPOs. The level of sanctions imposed on misconduct of PIE auditors should be commensurate with the scale of IPOs concerned.	
002933 – 003253	Chairman Mr CHAN Chun-ying	<p>Mr CHAN's views as follows:</p> <p>(a) while he understood the accounting industry's concern relayed by the Deputy Chairman and Ms Starry LEE, he considered that the Bills Committee should bear in mind the objectives of the Bill which included strengthening the regulation of PIE auditors in response to comments of the international community that only very limited sanctions were available in Hong Kong's current auditor regulatory regime;</p> <p>(b) as the Bill applied to PIE auditors of various scales, it would be inappropriate to reduce the proposed level of pecuniary penalty solely to address the concern of SMS accounting/audit firms; and</p> <p>(c) FRC should be urged to undertake that when exercising the power to order a PIE auditor to pay a pecuniary penalty, it would adhere to the principle of not putting a practice unit or individual in financial jeopardy.</p>	
003254 – 003700	Chairman Mr CHAN Kin-por Mr Christopher CHEUNG Mr CHAN Chun-ying	<p>Mr CHAN Kin-por's views as follows:</p> <p>(a) the proposed level of pecuniary penalty in the Bill was on a par with that for insurance intermediaries under the Insurance Ordinance (Cap. 41). In comparison with insurance intermediaries, the consequences of PIE auditors' misconduct could give rise to more adverse impacts;</p> <p>(b) in determining the level of pecuniary penalty, it was important to strike</p>	

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		<p>a balance between the interests of various stakeholders;</p> <p>(c) FRC should undertake that the pecuniary penalty to be imposed on a PIE auditor would not put the practice unit or individual concerned in financial jeopardy; and</p> <p>(d) he did not support the Bills Committee moving the proposed amendments on behalf of the Deputy Chairman.</p> <p>Mr CHAN Chun-ying pointed out that banks in Hong Kong were subject to criminal sanctions for their misconduct under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615), while the proposed sanction on PIE auditors was non-criminal.</p>	
003701 – 003921	Chairman Deputy Chairman	<p>The Deputy Chairman's views as follows:</p> <p>(a) accounting/audit firms would also be subject to criminal sanctions for breaches under the Companies Ordinance (Cap. 622);</p> <p>(b) for audit engagement concerning IPOs, auditors would assess and form opinions (like true and fair views) on the integrity and accuracy of the past financial reports of the companies applying for listing. It was not the duty of auditors to make projections on the future financial performance of the companies concerned; and</p> <p>(c) his proposed amendments served to address the industry's concern about the high level of pecuniary penalty proposed in the Bill.</p>	
003922 – 005135	Chairman Mr CHEUNG Kwok-kwan Mr Christopher CHEUNG Ms Starry LEE Administration	<p>Mr CHEUNG Kwok-kwan's view and enquiry as follows:</p> <p>(a) the sanctions in the new PIE auditor regulatory regime should have sufficient deterrence; and</p>	

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		<p>(b) whether the level of pecuniary penalty would be tied to the financial resources of the PIE auditor concerned, and if so, whether the arrangement would lead to the inadvertent result that a PIE auditor committing serious misconduct yet with limited financial resources would be subject to a relatively lower pecuniary penalty.</p> <p>Mr Christopher CHEUNG, Ms LEE and the Chairman exchanged views on the work of auditors in Hong Kong.</p> <p>The Administration responded as follows:</p> <p>(a) PIE auditors played a vital role in assessing the integrity and accuracy of the financial reports of listed companies;</p> <p>(b) FRC would issue the Guidelines, and have regard to the Guidelines when exercising its power to order a PIE auditor to pay a pecuniary penalty. Such arrangements were stipulated in the proposed new section 37H of FRCO; and</p> <p>(c) FRC would consider a host of factors (rather than just the financial resources of a PIE auditor) in determining the level of pecuniary penalty to be imposed. FRC would take note of the concern expressed by Mr CHEUNG Kwok-kwan when formulating the Guidelines.</p>	
005136 – 005451	Chairman Deputy Chairman Ms Starry LEE Clerk	<p>Ms LEE said that she needed more time to examine the Deputy Chairman's proposed amendments concerning the pecuniary penalty.</p> <p>The Deputy Chairman remarked that he would move his proposed amendments on his own name. If the President ruled that his proposed amendments were admissible, he would move them in the order of \$1 million, \$5 million and \$8 million.</p>	

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005452 – 005555	Chairman ALA10 Administration	ALA10 remarked that she would liaise with the Administration after the meeting on whether the conjunction "or" in the proposed amended section 52(1) of PAO should be changed to "and".	
Agenda item III — Any other business			
005556 – 005723	Chairman Administration	Legislative timetable and concluding remarks	

Council Business Division 1
Legislative Council Secretariat
16 April 2019