

立法會
Legislative Council

LC Paper No. CB(1)1461/20-21
(These minutes have been seen
by the Administration)

Ref : CB1/BC/12/20/2

Bills Committee on Financial Reporting Council (Amendment) Bill 2021

**Minutes of the first meeting on
Thursday, 12 August 2021, at 3:00 pm
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon CHEUNG Kwok-kwan, JP (Chairman)
Hon WONG Ting-kwong, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBM, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Holden CHOW Ho-ding
Hon CHAN Chun-ying, JP
Hon Tony TSE Wai-chuen, BBS, JP
- Member absent** : Dr Hon CHENG Chung-tai
- Public officers attending** : Mr HUI Chark-shum, Sam
Deputy Secretary for Financial Services and the Treasury
(Financial Services) Special Duties
- Mr AU Ka-shing, Billy
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)⁴
- Mr LI Ming-fung, Gary
Senior Government Counsel
Department of Justice
- Ms CHU Ying-hung, Carmen
Senior Government Counsel
Department of Justice

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

Ms Vivian CHAN
Clerical Assistant (1)4

Action

I Election of Chairman

Election of Chairman

Mr WONG Ting-kwong, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Bills Committee and invited nominations for the chairmanship.

2. Mr CHEUNG Kwok-kwan was nominated by Mr CHAN Chun-ying and the nomination was seconded by Mr Christopher CHEUNG. Mr CHEUNG Kwok-kwan accepted the nomination. There being no other nomination, Mr WONG Ting-kwong declared that Mr CHEUNG Kwok-kwan was elected the Chairman of the Bills Committee. Mr CHEUNG then took the chair.

Election of Deputy Chairman

3. Members agreed that there was no need to elect a Deputy Chairman.

II Meeting with the Administration

(LC Paper No. CB(3)799/20-21 — The Bill

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

Action

- LC Paper No. LS98/20-21 — Legal Service Division Report
- LC Paper No. CB(1)1197/20-21(01) — Marked-up copy of the Financial Reporting Council (Amendment) Bill 2021 prepared by the Legal Service Division
- LC Paper No. CB(1)1197/20-21(02) — Background brief prepared by the Legislative Council Secretariat
- LC Paper No. CB(1)1197/20-21(03) — Letter dated 11 August 2021 from the Legal Service Division to the Administration)

Discussion

4. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).
5. Ms Starry LEE declared that she was a member of the Hong Kong Institute of Certified Public Accountants ("HKICPA") and had worked on public interest entities ("PIEs") engagements.

Follow-up actions to be taken by the Administration

Funding mechanism of the post-reform Financial Reporting Council

6. The Administration was requested to provide information on its preliminary thinking on the funding mechanism of the post-reform Financial Reporting Council ("FRC"), including the proposed funding model and the considerations, and how to address the accounting profession's concern about a possible surge in the fees to be charged by FRC on the registration functions in relation to audit practitioners and practices and the securities investors' concern about FRC using the securities levy to subsidize FRC's expanded functions in regulating auditors of non-PIEs ("non-PIE auditors").

Application of accounting and auditing standards by the post-reform Financial Reporting Council

7. The Administration was requested to respond to a member's suggestion of providing FRC with flexibility in the application of accounting and auditing

Action

standards not specified in the Professional Accountants Ordinance (Cap. 50) in regulating non-PIE auditors under the reformed new regime.

Development of the accounting profession

8. The Administration was requested to provide the following information regarding the development of the accounting profession under the reformed new regime:

- (a) measures to prohibit the use of descriptions by individuals, firms or companies which attempted to mislead the public into believing that they were certified public accountants ("CPAs") or practice units registered with HKICPA or FRC;
- (b) measures to improve the working environment of CPAs/auditors (e.g. excessive working hours and increased workload arising from the incessant promulgation of new international accounting and auditing requirements); and
- (c) measures to enhance the competitiveness of small and medium sized accounting firm, and to help the local accounting profession to access the Mainland and overseas markets.

(Post meeting note: The Administration's written response was issued to members vide LC Paper No. CB(1)1262/20-21(02) on 27 August 2021.)

III Any other business

Invitation of views

9. Members agreed to invite written views on the Financial Reporting Council (Amendment) Bill 2021 by posting a notice on the website of the Legislative Council ("LegCo") for three weeks.

(Post-meeting note: The notice was posted on the LegCo website on 13 August 2021. Letters were also issued to the 18 District Councils on 16 August 2021 notifying them of the invitation.)

Action

Date of next meeting

10. Members agreed that the Bills Committee would meet once every two weeks. The Chairman said that he would work out the schedule of meetings with the Clerk.

(Post-meeting note: The second and third meetings of the Bills Committee were scheduled for 31 August 2021 at 2:30 pm and 14 September 2021 at 2:30 pm respectively. Members were informed of the meeting schedule vide LC Paper No. CB(1)1205/20-21 issued on 13 August 2021.)

11. There being no other business, the meeting ended at 5:00 pm.

Council Business Division 1
Legislative Council Secretariat
5 November 2021

**Proceedings of the first meeting of the
Bills Committee on Financial Reporting Council (Amendment) Bill 2021
on Thursday, 12 August 2021, at 3:00 pm
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
Agenda item I — Election of Chairman			
000402 – 000601	Mr WONG Ting-kwong Mr CHAN Chun-ying Mr Christopher CHEUNG Ms Starry LEE Mr CHEUNG Kwok-kwan	Election of Chairman	
Agenda item II — Meeting with the Administration			
000602 – 001942	Chairman Administration	Briefing by the Administration on the Financial Reporting Council (Amendment) Bill 2021 ("the Bill")	
001943 – 002339	Chairman Ms Starry LEE Mr Christopher CHEUNG	Invitation of views and schedule of meetings	
002340 – 003233	Chairman Mr CHAN Chun-ying Administration	<p>Mr CHAN's enquiries about:</p> <ul style="list-style-type: none"> (a) the timetable for commencing the Bill and the relevant subsidiary legislation; (b) arrangements for transferring information/records (including those on disciplinary hearings) from the Hong Kong Institute of Certified Public Accountants ("HKICPA") to the Financial Reporting Council ("FRC"); and (c) the fit and proper requirement and continuing professional development ("CPD") requirement for certified public accountants ("CPAs") under the reformed new regime. <p>The Administration responded as follows:</p> <ul style="list-style-type: none"> (a) it was preparing the relevant subsidiary legislation (which mainly related to the transitional arrangements) for tabling 	

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		<p>before the Legislative Council ("LegCo") in the first half of 2022, and was liaising with HKICPA, FRC and relevant stakeholders on the preparatory work for the reformed new regime (including developing a cooperation mechanism between FRC and HKICPA). The actual commencement of the Bill would be determined having regard to the progress of the above work;</p> <p>(b) there would be a mechanism on the transfer of relevant information/records (including those on disciplinary hearings) from HKICPA to FRC, and the detailed arrangements would be specified in the subsidiary legislation;</p> <p>(c) HKICPA could continue to set fit and proper requirements for the registration of CPAs; and</p> <p>(d) HKICPA could continue to set CPD requirements for the accounting profession subject to FRC's oversight and FRC would give instructions to HKICPA where necessary to cater to the development needs of the profession.</p>	
003234 – 003856	Chairman Mrs Regina IP Administration	<p>Mrs IP's enquiries about:</p> <p>(a) factors HKICPA would take into account in issuing practising certificates to CPAs under the existing regime, and whether the post-reform FRC would adopt similar criteria;</p> <p>(b) how the post-reform FRC would oversee HKICPA's function of conducting CPA registration examinations;</p> <p>(c) details of the regulatory regimes for the accounting profession of comparable overseas jurisdictions; and</p> <p>(d) whether professionals, e.g. securities dealers, in the financial services sector were subject to similar arrangements of separate attainment of professional and practising qualifications ("separation of</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>professional and practising qualifications arrangement").</p> <p>The Administration responded as follows:</p> <p>(a) in general, in deciding the issuance of practising certificate to a qualified CPA, HKICPA currently would consider whether the CPA concerned was a fit and proper person and whether he/she had met the requirement in accounting experience. It was envisaged that the post-reform FRC would follow the practice of HKICPA;</p> <p>(b) in conducting the fit and proper test for a CPA, HKICPA and the post-reform FRC would consider a host of factors including integrity, criminal and bankruptcy records of the applicant; and</p> <p>(c) the separation of professional and practising qualifications arrangement was at the moment only applicable to the accounting profession among the financial services sectors.</p>	
003857 – 014916	<p>Chairman Mr Tony TSE Mr Holden CHOW Ms Starry LEE Mr Christopher CHEUNG Mr CHAN Chun-ying Administration</p>	<p>Declaration of interest by Ms Starry LEE</p> <p><u>Conformity with the Basic Law</u></p> <p>Mr TSE's views as follows:</p> <p>(a) the Administration should strike a proper balance between upholding the principle of professional autonomy as provided in Article 142 of the Basic Law ("BL") and enhancing the independence of the regulatory regime for the accounting profession; and</p> <p>(b) the Administration should elaborate on the issue of conformity of the reformed new regime with Article 142 of BL.</p> <p>The Administration responded that Article 142(3) of BL provided, among others, that "the HKSAR Government shall continue to recognize the professional organizations recognized prior to the establishment of the Region, and these organizations may, on their own, assess and confer professional</p>	

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		<p>qualifications". The reformed new regime conformed with BL 142(3) as HKICPA would remain the registration authority of CPAs with responsibilities such as conducting examinations, setting CPD requirements and relevant standards, etc. , and had power to assess and confer their professional qualifications.</p> <p><u>Regulatory work and power of the post-reform Financial Reporting Council</u></p> <p>Mr CHOW's views and enquiries as follows:</p> <ul style="list-style-type: none"> (a) the accounting profession (particularly small and medium practice units solely working on engagements not involving public interest entities ("PIEs")) had expressed concern that they might be subject to excessive regulation under the reformed new regime; (b) whether the maximum pecuniary penalty for misconduct committed by auditors of non-PIE engagements would be increased from the current level of \$500,000, and whether a breach of the regulatory requirements set by the post-reform FRC would be a criminal offence; and (c) how the post-reform FRC would handle disciplinary matters of the accounting profession, and whether the relevant subsidiary legislation would specify the composition of committee(s) of the post-reform FRC responsible for handling disciplinary matters. <p>Mr TSE's views and enquiries as follows:</p> <ul style="list-style-type: none"> (a) the Administration should explain whether the post-reform FRC would make significant changes on matters, such as the scope of its powers, and types and levels of penalties, after implementation of the new regime; and (b) how disagreement between FRC and HKICPA on the handling of disciplinary cases would be resolved under the reformed new regime. 	

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		<p>The Administration responded as follows:</p> <ul style="list-style-type: none"> (a) the post-reform FRC would adopt the proportionality approach in carrying out its regulatory work. For auditors and CPAs not involved in PIE engagements, the regulatory requirements applicable to them and the consequences of non-compliance would remain comparable to those currently provided in the Professional Accountants Ordinance (Cap. 50) ("PAO"); (b) it was not envisaged that the maximum pecuniary penalty for misconduct involving practice units and CPAs who did not conduct PIE engagements would be increased to the current level for misconduct involving PIE auditors (i.e. \$10,000,000); (c) while all members of the FRC Board must be non-practitioners, at least one-third of the members would be appointed because of their knowledge and experience in PIE engagements. A statutory advisory committee consisting of practitioners, service users and other stakeholders of the accounting profession would be established to provide advice to FRC; (d) at present, when discharging its duties, such as the disciplinary function over PIE auditors, FRC could establish expert groups/panels consisting of practitioners to assist in the work; (e) the subsidiary legislation would mainly provide for transitional arrangements. The post-reform FRC would adopt the procedures established under the Financial Reporting Council Ordinance (Cap. 588) ("FRCO") for exercising the transferred powers to ensure impartiality and independence from the profession; and (f) the Bill had specified a clear demarcation of work between FRC and HKICPA, and it was not envisaged that there would be disagreement between the two parties. 	

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		<p>Mr CHAN's views and enquiries as follows:</p> <ul style="list-style-type: none"> (a) the Bill should include provisions on the transfer of relevant information/records from HKICPA to FRC which could facilitate the preparatory work of the reformed new regime; (b) the Bill should explicitly specify that FRC could (i) conduct fit and proper test; and (ii) set CPD requirements; (c) whether the post-reform FRC could apply accounting and auditing standards other than those specified in PAO in regulating non-PIE auditors; and (d) whether the post-reform FRC had the power to revoke the registration of a local PIE auditor. <p>The Administration responded as follows:</p> <ul style="list-style-type: none"> (a) there were provisions in the Bill requiring HKICPA to provide information to FRC which the latter considered necessary. The implementation details would be set out in the relevant subsidiary legislation; and (b) the post-reform FRC would be responsible for the registration of local PIE auditors. Any party aggrieved by FRC's decision on a registration application could appeal to the Accounting and Financial Reporting Review Tribunal. <p>In response to Mr TSE's enquiries, the Administration responded that:</p> <ul style="list-style-type: none"> (a) the reform introduced by the Financial Reporting Council (Amendment) Ordinance 2019 ("the 2019 Amendment Ordinance") only transferred the regulatory powers relevant to PIE auditors to FRC. Individual practice units and CPAs were subject to separate inspections by FRC and HKICPA in accordance with FRCO and PAO respectively for their quality control systems which were likewise applicable for both PIE 	

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		<p>engagements and all other engagements. The arrangement had led to inefficient use of resources and unnecessary compliance burden;</p> <p>(b) while FRC had assumed regulatory functions over local PIE auditors, HKICPA was still responsible for the registration which resulted in a fragmented approach in regulation; and</p> <p>(c) it was envisaged that the reformed new regime could reduce compliance burden of the accounting profession and enhance efficiency in regulation.</p> <p><u>Funding mechanism of the post-reform Financial Reporting Council</u></p> <p>Ms LEE's views and enquiries as follows:</p> <p>(a) the accounting profession (particularly small and medium practice units) was concerned about the fees to be charged by the post-reform FRC; and</p> <p>(b) whether the post-reform FRC could undertake not to increase its fees for a certain period of time after the implementation of the reformed new regime.</p> <p>The Administration responded as follows:</p> <p>(a) a seed capital of \$400 million was injected into FRC in 2019 to help it migrate to the PIE auditor regulatory regime before FRC started collecting levies from 1 January 2022. It was estimated that the unspent balance of the seed capital could help fund FRC's expanded functions in the initial years of the reformed new regime;</p> <p>(b) the Administration would review FRC's funding arrangement under the reformed new regime on the premise that no additional compliance burden would be created to the accounting profession. Pending conclusion of the review, FRC would not charge fees for the issuance of</p>	

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		<p>practising certificates and registration of CPA firms and corporate practices; and</p> <p>(c) the post-reform FRC would have regard to HKICPA's existing fee levels in preparing its budgets and manpower plans.</p> <p>Mr CHEUNG's view and enquiry as follows:</p> <p>(a) FRC was empowered under the 2019 Amendment Ordinance to collect levies on securities transactions (to be paid by sellers and purchasers of securities) on the ground that enhancement in the PIE auditor regulatory regime could better ensure the integrity of financial reports of listed companies and thereby increase protection for investors. It was not justifiable to use the levy on securities transactions to subsidize FRC's expanded responsibilities which would mainly relate to the regulation of non-PIE auditors; and</p> <p>(b) whether FRC would consider reducing or suspending the levy on securities transactions if the market turnover had remained high for a long period of time.</p> <p>The Administration responded as follows:</p> <p>(a) FRCO had stipulated a mechanism for adjusting FRC's levies;</p> <p>(b) FRC's current levies were designed for funding FRC's regulatory functions relating to PIE engagements. Separate consideration would be given to the funding arrangement for its expanded functions relating to non-PIE engagements; and</p> <p>(c) the reformed new regime could enhance corporate governance in Hong Kong, which in turn would benefit the financial market as a whole.</p> <p>At the request of Ms LEE and Mr CHEUNG, the Administration was required to provide information on its preliminary thinking on the funding mechanism of the post-reform FRC, including the proposed funding model and the</p>	<p>The Administration to take action as per paragraph 6 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>considerations, and how to address the accounting profession's concern about a possible surge in the fees to be charged by FRC on the registration functions in relation to audit practitioners and practices and the securities investors' concern about FRC using the securities levy to subsidize FRC's expanded functions in regulating non-PIE auditors.</p> <p><u>Transitional arrangements</u></p> <p>The Chairman enquired how the post-reform FRC would handle outstanding disciplinary cases of HKICPA.</p> <p>Mr CHEUNG enquired how FRC would resolve disagreement with HKICPA in handling outstanding disciplinary cases.</p> <p>Mr TSE opined that the Administration should consider specifying the implementation framework/principles of the transitional arrangements in the Bill.</p> <p>The Administration responded as follows:</p> <p>(a) for investigation and disciplinary cases, any proceedings carried out under PAO which had not been completed on the commencement date of the reformed new regime would continue to be conducted under the PAO mechanism. The result of an investigation conducted in accordance with the PAO mechanism would then be referred to FRC for follow-up action. Any new cases that came up after the commencement date of the reformed new regime, irrespective of whether the engagements which were the subjects of these cases were conducted before the commencement, would be handled by FRC. In other words, FRC would also take up new cases of the inspection and disciplinary work for PIE engagements completed before the commencement of the PIE auditor regulatory regime on 1 October 2019;</p> <p>(b) in formulating the transitional arrangements, the Administration would aim to prevent the same case being handled</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>by both FRC and HKICPA at the same time; and resultantly causing a party to be subject to similar investigation and disciplinary proceedings twice; and</p> <p>(c) details of the transitional arrangements would be set out in the relevant subsidiary legislation.</p> <p><u>Development of the accounting profession</u></p> <p>Mr CHOW's and Ms LEE's views that the post-reform FRC should, apart from discharging its regulatory functions, help promote the further development of the profession.</p> <p>At the request of Ms LEE, the Administration was required to provide the following information regarding the development of the accounting profession under the reformed new regime:</p> <p>(a) measures to prohibit the use of descriptions by individuals, firms or companies which attempted to mislead the public into believing that they were CPAs or practice units registered with HKICPA or FRC;</p> <p>(b) measures to improve the working environment of CPAs/auditors (e.g. excessive working hours and increased workload arising from the incessant promulgation of new international accounting and auditing requirements); and</p> <p>(c) measures to enhance the competitiveness of small and medium sized accounting firm, and to help the local accounting profession to access the Mainland and overseas markets.</p> <p>The Administration responded as follows:</p> <p>(a) upon implementation of the reformed new regime, HKICPA could focus on promoting the development of the accounting profession, and FRC would collaborate with HKICPA on the matter;</p> <p>(b) some existing restrictions on the use of misleading descriptions as provided in</p>	<p>The Administration to take action as per paragraph 8 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>PAO would be included in FRCO. The Professional Accountants (Amendment) Bill 2018 (a Members' Bill) which sought to amend PAO to tighten restrictions on the use of misleading descriptions by individuals, firms and companies that were not CPAs or practice units registered under PAO was voted down by LegCo in May 2020. The Administration would consider how to tackle the issue in consultation with stakeholders;</p> <p>(c) the Administration was liaising with the relevant Mainland authorities on measures to facilitate the practices by Hong Kong accounting professionals in the Mainland (particularly in the Guangdong-Hong Kong-Macao Greater Bay Area); and</p> <p>(d) the Administration would continue to liaise with relevant stakeholders on measures to promote further development of the accounting profession.</p>	
014918 – 015542	Chairman Mrs Regina IP Administration	<p>Mrs IP enquired about new manpower requirement of the post-reform FRC, and reiterated her enquiries about:</p> <p>(a) how the post-reform FRC would oversee HKICPA's function of conducting CPA registration examinations; and</p> <p>(b) whether there was similar separation of professional qualifications and practising arrangements for other services providers in the financial services sector.</p> <p>The Administration responded that:</p> <p>(a) in overseeing HKICPA's examination function, the post-reform FRC would review whether the examinations had complied with the relevant international standards and were conducted in an impartial manner;</p> <p>(b) FRC currently had around 50 staff members. FRC would review its manpower requirement under the reformed new regime and liaise with HKICPA in</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>exploring recruitment of HKICPA's relevant staff for specific functions where appropriate; and</p> <p>(c) there was no comparable profession in the financial services sector that differentiate professional and practising qualifications.</p>	
015543 – 020243	Chairman Mr CHAN Chun-ying Administration	<p>At the request of Mr CHAN, the Administration was required to respond to his suggestion of providing FRC with flexibility in the application of accounting and auditing standards not specified in PAO in regulating non-PIE auditors under the reformed new regime.</p> <p>The Administration responded as follows:</p> <p>(a) under the current PIE auditor regulatory regime, FRCO provided that FRC could apply accounting and auditing standards including those issued by international standards-setting boards which were relevant to the PIE engagements concerned ; and</p> <p>(b) under the proposed new regime, the post-reform FRC would regulate accounting engagements other than PIE engagements and could oversee HKICPA in the performance of the latter's functions in the issuance and specification of standards for these engagements. FRC could, where necessary, issue directions to HKICPA to ensure timely supplement to the local standards.</p>	The Administration to take action as per paragraph 7 of the minutes