

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1462/20-21  
(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 second meeting on  
Tuesday, 31 August 2021, at 2:30 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-ye, GBM, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Holden CHOW Ho-ding  
Hon CHAN Chun-ying, JP  
Hon Tony TSE Wai-chuen, BBS, JP
- Member absent** : Hon Christopher CHEUNG Wah-fung, SBS, JP
- 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)<sup>4</sup>
- Miss CHAN Hoi-ting, Gillian  
Assistant Secretary for Financial Services and the  
Treasury (Financial Services)<sup>(4)1</sup>
- 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

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**I Meeting with the Administration**

Matters arising from the previous meeting

(LC Paper No. CB(1)1262/20-21(01) — List of follow-up actions arising from the discussion at the meeting on 12 August 2021

LC Paper No. CB(1)1262/20-21(02) — Administration's response to issues raised at the meeting on 12 August 2021

LC Paper No. CB(1)1197/20-21(03) — Letter dated 11 August 2021 from the Legal Service Division to the Administration

LC Paper No. CB(1)1262/20-21(03) — Administration's response to the Legal Service Division's letter dated 11 August 2021)

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Other relevant papers

- (LC Paper No. CB(1)1272/20-21(01) — Submission from the Taxation Institute of Hong Kong
- LC Paper No. CB(1)1274/20-21(01) — Submission from the Society of Chinese Accountants & Auditors
- LC Paper No. CB(3)799/20-21 — The Bill
- File Ref: ACCT/2/1/2C — Legislative Council Brief
- 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)

Discussion

The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration

*Funding arrangement of the post-reform Financial Reporting Council*

2. The Administration was requested to respond to a member's views that the Administration should provide undertaking during the resumption of the Second Reading debate on the Financial Reporting Council (Amendment) Bill 2021 ("the Bill") on the following matters:

- (a) the post-reform Financial Reporting Council ("FRC") would maintain the Hong Kong Institute of Certified Public Accountants("HKICPA")'s current level of fees for issuing practising certificates to certified public accountants ("CPAs") and

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registration of firms and corporate practices for a certain period of time (say, five years) after the implementation of the proposed reform; and

- (b) the Administration would inject additional seed capital into FRC to help it migrate to the reformed new regime.

*Development of the accounting profession*

- 3. The Administration was requested to respond to a member's views that:
  - (a) the post-reform FRC should be entrusted with the duty to promote the further development of the accounting and auditing profession, and such duty should be explicitly stated in the proposed amended section 9 of the Financial Reporting Council Ordinance (Cap. 588) on the functions of FRC and be included in the long title of the Bill;
  - (b) the post-reform FRC should provide continuing professional development training for practising CPAs through measures including organization of relevant seminars on topics such as development opportunities in the Mainland for CPAs; and
  - (c) the Administration should undertake to report within 2022 to the Panel on Financial Affairs on the progress of its discussion with stakeholders on the policy and legislation prohibiting the use of certain descriptions which might mislead the public into believing that an individual or a company was a registered CPA or practice unit.

*Guidelines by the post-reform Financial Reporting Council*

- 4. In respect of the guidelines on pecuniary penalties to be developed by the post-reform FRC, the Administration was requested to provide the following information:
  - (a) how the post-reform FRC would formulate its guidelines for imposing pecuniary penalties, and whether such guidelines would be subsidiary legislation; and
  - (b) the practices of other comparable regulators such as the Securities and Futures Commission, the Insurance Authority, the Property Management Services Authority and the Estate Agents Authority in

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the formulation and promulgation of their statutory or non-statutory guidelines on the imposition of pecuniary penalties.

*(Post meeting note: The Administration's written responses were issued to members vide LC Paper No. CB(1)1286/20-21(02) on 3 September 2021.)*

**II Any other business**

Date of next meetings

5. The Chairman said that an additional meeting would be scheduled to speed up the scrutiny process. The third and fourth meetings of the Bills Committee would be held on 7 September 2021 at 4:30 pm and 14 September 2021 at 2:30 pm respectively.

6. There being no other business, the meeting ended at 4:29 pm.

Council Business Division 1  
Legislative Council Secretariat  
5 November 2021

**Proceedings of the second meeting of  
the Bills Committee on Financial Reporting Council (Amendment) Bill 2021  
on Tuesday, 31 August 2021, at 2:30 pm  
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
<b>Agenda item I — Meeting with the Administration</b>			
000417 – 001511	Chairman Administration	Briefing by the Administration on its response to issues raised at the meeting on 12 August 2021 [LC Paper No. CB(1)1262/20-21(02)]	
001512 – 002101	Chairman Mr CHAN Chun-ying Administration	<p>Mr CHAN's enquiries as follows:</p> <p>(a) why the Financial Reporting Council (Amendment) Bill 2021 ("the Bill") had not specified the assistance which the post-reform Financial Reporting Council ("FRC") might provide to other local and overseas regulators;</p> <p>(b) why there were provisions in the Bill for the post-reform FRC to recover the costs and expenses of its investigations from certified public accountants ("CPAs") but there were no similar provisions in the current Financial Reporting Council Ordinance (Cap. 588) ("FRCO") for the recovery of costs from auditors of public interest entities ("PIEs"); and</p> <p>(c) details of recovery of FRC's costs and expenses of its investigations from CPAs.</p> <p>The Administration responded as follows:</p> <p>(a) there were existing provisions in FRCO empowering FRC to provide assistance to other local and overseas regulators. The post-reform FRC would develop mechanisms (e.g. memorandum of understanding ("MOU")) with relevant local regulators and liaise with relevant authorities of overseas jurisdictions on regulatory collaborations; and</p>	

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		<p>(b) the arrangements in recovering the costs and expenses of investigation from CPAs were modelled on the existing arrangement under the Professional Accountants Ordinance (Cap. 50) ("PAO"). The Administration would consider enhancements (including aligning the relevant arrangements for PIE auditors and non-PIE auditors) in future as appropriate.</p>	
<p>002102 – 010938</p>	<p>Chairman Ms Starry LEE Administration Mr Holden CHOW Mrs Regina IP Mr Tony TSE</p>	<p><u>Funding arrangement of the post-reform Financial Reporting Council</u></p> <p>Ms LEE's views as follows:</p> <p>(a) the Administration should provide undertaking during the resumption of the Second Reading debate on the Bill on the following matters:</p> <p>(i) the post-reform FRC would maintain HKICPA's current level of fees for issuing practising certificates to CPAs and registration of firms and corporate practices for a certain period of time (say, five years) after the implementation of the proposed reform; and</p> <p>(ii) the Administration would inject additional seed capital into FRC to help it migrate to the reformed new regime.</p> <p>Mrs IP's views that many small and medium-sized practice units had expressed concern about a possible surge in compliance costs under the reformed new regime.</p> <p>The Administration responded as follows:</p> <p>(a) the Administration would discuss with FRC and bodies in the accounting profession on the funding arrangements of the post-reform FRC (including the collection of fees, the details of which would be stipulated in subsidiary legislation to be submitted for the scrutiny of the Legislative Council ("LegCo") within 2022); and</p>	<p>The Administration to take action as per paragraph 2 of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) the Administration was aware of the concerns of small and medium-sized practice units about the reformed new regime. The proportionality approach would be adopted for FRC's regulatory work. The post-reform FRC would apply a higher level of regulatory control to PIE auditors as significant interests of public investors were involved. For other auditors and CPAs, the regulatory requirements applicable to them and the consequences of non-compliance to be adopted by FRC would remain comparable to those currently provided in PAO.</p> <p><u>Regulatory work of the post-reform Financial Reporting Council</u></p> <p>In respect of FRC's investigation on professional irregularities of CPA, Mr CHOW enquired whether FRC would make reference to other regulatory regimes to set up a disciplinary committee consisting of persons outside FRC for making decisions on disciplinary cases after conducting the investigation.</p> <p>Ms LEE's views as follows:</p> <p>(a) it would be desirable for the post-reform FRC to appoint persons with relevant knowledge/experience (preferably persons who had been CPAs (practising) (i.e. CPAs holding practising certificates)) as CPA investigators; and</p> <p>(b) the post-reform FRC should recruit more staff members with practising experience.</p> <p>The Administration responded as follows:</p> <p>(a) under PAO, the investigation and disciplinary proceedings of HKICPA were carried out by designated committees. The current regulatory procedures established under FRCO, which were carried out by the FRC executive team under the supervision of the FRC Board comprising all non-practitioners, would be adopted to ensure impartiality and</p>	



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		<p>independence of the regulatory process from the profession;</p> <p>(b) FRC would seek advice from the accounting profession during the investigation process if necessary, such as through appointing practitioners as expert witnesses/consultants;</p> <p>(c) an aggrieved party could apply for review against the specified decisions of FRC to the Accounting and Financial Reporting Review Tribunal ("the Tribunal") to be formed under the reformed new regime;</p> <p>(d) a CPA could be appointed as a member of the FRC Board as long as he/she fulfilled the requirement of being a non-practitioner in the three years prior to the appointment; and</p> <p>(e) FRC would recruit staff with relevant experience and knowledge.</p> <p>Mrs IP's enquiry if the reformed new regime could expedite the disciplinary proceedings of the accounting profession.</p> <p>Mr TSE's and Ms LEE's enquiry about possible increase in the maximum pecuniary penalty of \$500,000 for CPA misconduct.</p> <p>The Administration responded as follows:</p> <p>(a) besides increasing the efficiency of investigation and disciplinary proceedings of CPA and practice units, the reformed new regime would also help enhancing the fit and proper requirement of the professionals and their continuing professional development ("CPD");</p> <p>(b) there was no intention to increase the current maximum pecuniary penalty of \$500,000 for CPA misconduct; and</p> <p>(c) in addition to pecuniary penalty, other types of sanctions (e.g. the issue of reprimands) might also be imposed to</p>	

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		<p>achieve deterrent effect against misconduct.</p> <p>Mrs IP's enquiry about how the post-reform FRC could develop a consistent approach with that of HKICPA for handling disciplinary matters given that the FRC Board members were non-practitioners.</p> <p>The Administration responded that:</p> <ul style="list-style-type: none"> <li>(a) while all members of the FRC Board must be non-practitioners, at least one-third of them would be appointed because of their knowledge and experience in PIE engagements;</li> <li>(b) a statutory advisory committee consisting of practitioners, service users and other stakeholders of the accounting profession would be established to provide advice to FRC;</li> <li>(c) many staff members of FRC had experience in the accounting profession; and</li> <li>(d) FRC could seek advice from the accounting profession if necessary.</li> </ul> <p>Ms LEE's enquiry if the Administration would propose amendments to the Bill to include express provisions on the fit and proper requirement for renewal of CPA registration, and application and renewal of practicing certificates to reflect the proposal set out in paragraph 12 of the Administration's paper.</p> <p>The Administration responded in the affirmative.</p> <p><u>Legal representation during the investigation proceedings</u></p> <p>Mrs IP's and Mr CHOW's enquiry about the right for a person subject to FRC's investigation proceedings to appoint a legal representative.</p>	

		<p>The Administration responded as follows:</p> <ul style="list-style-type: none"><li>(a) a person under FRC's investigation might be required to produce documents and/or answer questions. While such investigation proceedings were not formal hearings, the person could seek the assistance of a legal representative if necessary; and</li><li>(b) the person could be represented by a legal representative in the review and appeal proceedings in the Tribunal and the Court of Appeal.</li></ul> <p><u>Development of the accounting profession</u></p> <p>Ms LEE's views that:</p> <ul style="list-style-type: none"><li>(a) the post-reform FRC should provide CPD training for practising CPAs through measures including organization of relevant seminars on topics such as development opportunities in the Mainland for CPAs; and</li><li>(b) the Administration should undertake to report within 2022 to the Panel on Financial Affairs on the progress of its discussion with stakeholders on the policy and legislation prohibiting the use of certain descriptions which might mislead the public into believing that an individual or a company was a registered CPA or practice unit.</li></ul> <p>Mrs IP's enquiries about:</p> <ul style="list-style-type: none"><li>(a) whether the post-reform FRC would issue practising certificates to members of the Institute of Chartered Accountants in England and Wales ("ICAEW"); and</li><li>(b) jurisdictions which had signed mutual or reciprocal agreements with HKICPA in relation to registration of CPAs.</li></ul> <p>The Administration responded as follows:</p> <ul style="list-style-type: none"><li>(a) the attainment of professional and practising qualifications in the accounting profession were two distinct processes;</li></ul>	<p>The Administration to take action as per paragraph 3(b) and (c) of the minutes</p>
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Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) a person with recognized accounting qualifications in other jurisdictions could register as a CPA in Hong Kong if the accountancy body of the jurisdiction concerned had signed a mutual or reciprocal agreement with HKICPA in relation to registration of CPAs. Under the reformed new regime, the person upon becoming a CPA in Hong Kong, had to apply for a practising certificate from the post-reform FRC. FRC would issue a practising certificate to the person if he/she had fulfilled the relevant requirements; and</p> <p>(c) HKICPA had signed a reciprocal recognition agreement for CPAs with ICAEW.</p> <p>Mr TSE's enquiry about conformity of the reformed new regime with Article 142(3) of the Basic Law ("BL").</p> <p>The Administration responded that it had addressed the issue in its response to the Legal Service Division's letter dated 11 August 2021 ("LSD's letter"). The reformed new regime would bring Hong Kong's regulatory system more in line with the latest global best practice, and at the same time continue to recognize the role and professional functions of the professional body. The reformed new regime as a whole was compatible with Article 142(3) of BL.</p>	
010939 – 012120	Chairman Ms Starry LEE Mr Holden CHOW Mrs Regina IP Assistant Legal Adviser 10 ("ALA10") Administration	<p>Briefing by the Administration on its response to LSD's letter            [LC Paper No. CB(1)1262/20-21(03)]</p> <p><u>Guidelines by the post-reform Financial Reporting Council</u></p> <p>Ms LEE's and the Chairman enquiries about:</p> <p>(a) how the post-reform FRC would formulate its guidelines for imposing pecuniary penalties, and whether such guidelines would be subsidiary legislation; and</p> <p>(b) the practices of other comparable regulators such as the Securities and</p>	

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		<p>Futures Commission, the Insurance Authority, the Property Management Services Authority and the Estate Agents Authority in the formulation and promulgation of their statutory or non-statutory guidelines on the imposition of pecuniary penalties.</p> <p>The Administration undertook to provide information to address members' enquiries, and responded as follows:</p> <p>(a) the sanction guidelines to be issued by the post-reform FRC were not subsidiary legislation; and</p> <p>(b) the post-reform FRC would engage relevant stakeholders including the accounting profession in formulating the guidelines.</p> <p>In response to Mr CHOW's enquiry, the Administration advised that the statutory advisory committee would be set up upon commencement of the Bill, and the post-reform FRC would have formulated its sanction guidelines by that time. In developing the sanction guidelines, FRC would engage the profession and stakeholders to listen to their views.</p> <p>Mrs IP's enquiry about the Administration's plans to introduce reforms to other professions similar to that proposed for the accounting profession, i.e. by separating the registration of the professionals from the issuance of practising certificates.</p> <p>The Administration responded that the proposed reform for the accounting profession was made having regard to the unique circumstances of the profession and the international trend in the regulation of the accounting profession.</p>	<p>The Administration to take action as per paragraph 4 of the minutes</p>
<b>Clause-by-clause examination of the Bill</b>			
012121 – 013055	Chairman Administration Ms Starry LEE Mrs Regina IP	<b>Financial Reporting Council (Amendment) Bill 2021</b>  <b>Part 1</b>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><b>Preliminary</b></p> <p><u>Clause 1 – Short title and commencement</u></p> <p>In response to Mrs IP's enquiry about the commencement of the Bill, the Administration advised that its target was to table the Commencement Notice before LegCo in the first half of 2022 and to commence the Bill in the second half of 2022.</p>	
013056 – 013638	Chairman Administration ALA10 Ms Starry LEE	<p><u>Clause 2 – Enactments amended</u></p> <p><b>Part 2</b></p> <p><b>Amendments to Financial Reporting Council Ordinance (Cap. 588)</b></p> <p><u>Clause 3 – Long title substituted</u></p> <p><u>Clause 4 – Section 1 amended (short title)</u></p> <p><u>Clause 5 – Section 2 amended (interpretation)</u></p> <p><u>Clause 6 – Section 3A amended (meaning of various types of auditors and engagements)</u></p>	
013639 – 015434	Chairman Administration Ms Starry LEE ALA10	<p><u>Clause 7 – Section 3B added</u></p> <p><i>3B. Professional irregularity by professional persons</i></p> <p>The Administration's responses as follows:</p> <p>(a) it was considering amendments to the proposed new section 3B in light of comments from some stakeholders; and</p> <p>(b) there was no definition on the term "professional misconduct" in the current FRCO and PAO [ALA10's enquiry in her letter to the Administration (paragraph 10 of LC Paper No. CB(1)1197/20-21(03)) and the Administration's reply (paragraph 10 of LC Paper No. CB(1)1262/20-21(02))].</p> <p>Ms LEE's enquiry about why the phrase "without reasonable excuse" was only provided in the proposed new section 3B(1)(e) but not</p>	

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		<p>sections 3B(1)(c) and (d) as the matters covered in these provisions were all related to professional irregularities of professional persons.</p> <p>The Administration responded as follows:</p> <p>(a) the proposed new section 3B(1)(e) involved compliance with the procedural requirements of FRC's inspections and investigations. A party would only commit a professional irregularity if he/she failed, without reasonable excuse, to comply with such requirements;</p> <p>(b) the proposed new section 3B(1)(c) or (d) involved misconduct set out in other ordinances (i.e. PAO and the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615)). The issues of burden of proof and applicability of "reasonable excuse" were set out in such ordinances; and</p> <p>(c) the proposed new section 3B(1)(c) or (d) merely reflected the relevant professional irregularities currently set out in PAO.</p>	
015435 – 020221	Chairman Administration Ms Starry LEE	<p><u>Clause 8 – Section 4 amended (practice irregularity by PIE auditors, non-PIE auditors, etc.)</u></p> <p><u>Clause 9 – Part 2 heading amended (Financial Reporting Council)</u></p> <p><u>Clause 10 – Section 6 amended (establishment of Financial Reporting Council)</u></p> <p><u>Clause 11 – Section 7 amended (composition of FRC)</u></p> <p><u>Clause 12 – Section 9 amended (functions of FRC)</u></p> <p><u>Clause 13 – Section 10 amended (powers of FRC)</u></p> <p>The Administration said that it was considering amendments to the proposed amended section 10 upon internal review.</p>	

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		Ms LEE's request for the Administration to respond to her views that the post-reform FRC should be entrusted with the duty to promote the further development of the accounting and auditing profession, and such duty should be explicitly stated in the proposed amended section 9 on the functions of FRC and be included in the long title of the Bill.	The Administration to take action as per paragraph 3(a) of the minutes
<b>Agenda item II — Any other business</b>			
020222 – 020303	Chairman Ms Starry LEE	Date of next meetings	

Council Business Division 1  
Legislative Council Secretariat  
5 November 2021