

立法會
Legislative Council

LC Paper No. CB(1)1463/20-21
(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 third meeting on
Tuesday, 7 September 2021, at 4:30 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)⁴
- Miss CHAN Hoi-ting, Gillian
Assistant Secretary for Financial Services and the
Treasury (Financial Services)⁽⁴⁾¹
- Mr LI Ming-fung, Gary
Senior Government Counsel
Department of Justice

Miss HO Yuen-ting, Wendy
Senior Government Counsel (Acting)
Department of Justice

Miss HO Wai-kwan, Celia
Senior Government Counsel (Acting)
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

Action

I Meeting with the Administration

Matters arising from the previous meeting

(LC Paper No. CB(1)1286/20-21(01) — List of follow-up actions arising from the discussion at the meeting on 31 August 2021

LC Paper No. CB(1)1286/20-21(02) — Administration's response to issues raised at the meeting on 31 August 2021

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

Action

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

Clause-by-clause examination of the Bill

(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)

Other relevant papers

(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(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

Guidelines to be issued by the post-reform Financial Reporting Council

2. Under the proposed amended section 37H of the Financial Reporting Council Ordinance (Cap. 588), the post-reform Financial Reporting Council ("FRC") must not impose a pecuniary penalty under the proposed new section 37CA(2)(b) for any certified public accountants' misconduct unless FRC had had regard to the guideline(s) published in the Gazette (which would not be subsidiary legislation) indicating the way in which it exercised its power to impose the penalty. The Administration was requested to consider the suggestion from members and the Legal Adviser to the Bills Committee that the

Action

Bill should explicitly require FRC to consult relevant parties when formulating such guidelines.

(Post meeting note: The Administration's written responses were issued to members vide LC Paper No. CB(1)1326/20-21(02) on 13 September 2021.)

II Any other business

Date of next meeting

3. The Chairman said that in order to speed up the scrutiny process, the next meeting would be held on 14 September 2021 from 3:00 pm to 6:30 pm.

4. There being no other business, the meeting ended at 6:28 pm.

Council Business Division 1
Legislative Council Secretariat
5 November 2021

**Proceedings of the third meeting of
the Bills Committee on Financial Reporting Council (Amendment) Bill 2021
on Tuesday, 7 September 2021, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
Agenda item I — Meeting with the Administration			
000401 – 001705	Chairman Administration Ms Starry LEE Mr Tony TSE	<p><u>Briefing by the Administration on its response to issues raised at the meeting on 31 August 2021</u></p> <p>[LC Paper No. CB(1)1286/20-21(02)]</p> <p>Ms LEE's views and enquiries as follows:</p> <p>(a) the Administration should critically examine the need of injecting additional seed capital into the post-reform Financial Reporting Council ("FRC") to alleviate the accounting profession's concern about a potential surge in compliance costs for supporting FRC's expanded functions and help FRC in migrating to the reformed new regime;</p> <p>(b) the Administration should introduce amendments to the Financial Reporting Council (Amendment) Bill 2021 ("the Bill") to clearly specify FRC's role in promoting the development of the accounting profession; and</p> <p>(c) whether the post-reform FRC would have the function to provide continuing professional development ("CPD") training for practising certified public accountants ("CPAs").</p> <p>The Administration responded as follows:</p> <p>(a) it would propose amendments to the Bill to specify FRC's role in promoting the development of the accounting profession; and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) the post-reform FRC would get more involved in the development of the accounting profession including the provision of CPD training.</p> <p>Mr TSE requested the Administration to provide its proposed amendments to the Bill as soon as possible so as to allow sufficient time for members and relevant parties to consider the amendments.</p>	
Clause-by-clause examination of the Bill			
001706 – 005405	Chairman Administration Ms Starry LEE Mr Holden CHOW Assistant Legal Adviser 10 ("ALA10")	<p>Financial Reporting Council (Amendment) Bill 2021</p> <p><u>Clause 19 – Part 2A added</u></p> <p>The Administration said that it would propose amendments to the proposed new sections 20AAB, 20AAG and 20AAL of the Financial Reporting Council Ordinance (Cap. 588) ("FRCO").</p> <p>Part 2A</p> <p>Issue of Practising Certificate and Registration of Firm Name, Firm and Corporate Practice etc.</p> <p><i>Division 1 – Issue of Practising Certificate to Certified Public Accountant</i></p> <p><i>Subdivision 1 – Application for Practising Certificate</i></p> <p>20AAB. <i>Decision on application</i></p> <p><i>Subdivision 2 – Renewal of Practising Certificate</i></p> <p>20AAF. <i>Application</i></p> <p><i>Subdivision 3 – Requirements for Issue or Renewal of Practising Certificate and Supplementary Provisions</i></p> <p>20AAL. <i>Requirements for issue or renewal of practising certificate</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>Division 2 — Registration of Firm Name or Firm</i></p> <p><i>Subdivision 2 — Renewal of Registration of Firm Name or Firm</i></p> <p>20AAX. <i>Application</i></p> <p>ALA10 highlighted her enquiries regarding issuance and renewal of practising certificate (paragraphs 6 and 8 of LC Paper No. CB(1)1197/20-21(03)) ("LSD's letter") and requested the Administration to:</p> <ul style="list-style-type: none"> (a) elaborate the rationale for conferring the post-reform FRC (under the proposed new section 20AAL(4) of FRCO) the power to dispense with the requirement for a CPA to sit the examinations set by the Hong Kong Institute of Certified Public Accounts ("HKICPA") for ascertaining whether the CPA had the necessary local experience and knowledge; (b) clarify whether the post-reform FRC would consult the HKICPA Council before exercising the power in (a); and (c) explain why FRC was provided with the discretion to allow an application for the renewal of registration of firm name or firm to be made after the deadline of 15 December of the year in which the current registration expired (i.e. the proposed new section 20AAX(3)(b) of FRCO) but no such discretion was provided for the renewal of practising certificate (i.e. the proposed new section 20AAF of FRCO). <p>The Administration responded by highlighting its written response to LSD's letter ((paragraphs 6-8 of LC Paper No. CB(1)1262/20-21(03)) as follows:</p> <ul style="list-style-type: none"> (a) as the post-reform FRC would be the ultimate authority for issuance of practising certificates, it was justifiable to provide FRC the power to dispense with the requirements concerned; 	

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		<p>(b) the current drafting of the Bill would provide flexibility to the post-reform FRC in operation, and FRC would consult HKICPA in processing the applications concerned as necessary; and</p> <p>(c) the provisions in the Bill for renewal of practising certificates and registration of practice units were drawn up with reference to the existing renewal mechanism for registration of auditors of public interest entities as provided in FRCO which had been operating smoothly and the renewal mechanism under the existing Professional Accountants Ordinance (Cap. 50) ("PAO") in which the arrangements were not the same for different types of renewal in view of the actual operation and experience. It was envisaged that FRC would provide guidance and assistance to its regulatees for making relevant renewal applications.</p> <p><i>Division 1 — Issue of Practising Certificate to Certified Public Accountant</i></p> <p><i>Subdivision 4 — Cancellation or Suspension of Practising Certificate</i></p> <p>20AAO. <i>Cancellation or suspension of practising certificate on non-disciplinary grounds</i></p> <p>20AAP. <i>Notification of cancellation or suspension of practising certificate</i></p> <p>Ms LEE's enquiries as follows:</p> <p>(a) the circumstances under which the practising certificate of a CPA may be cancelled or suspended;</p> <p>(b) whether a CPA receiving FRC's cancellation or suspension notification concerned (under the proposed new section 20AAP of FRCO) could make representation to FRC, and if so, whether such arrangements would be specified in the Bill; and</p>	

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		<p>(c) whether the post-reform FRC would, before making a cancellation or suspension decision regarding the practising certificate held by a CPA, would require the person concerned to produce relevant documents and/or answer questions.</p> <p>Mr CHOW echoed the view that the post-reform FRC should provide a CPA an opportunity to make representation before it decided to cancel or suspend the practising certificate.</p> <p>The Administration responded as follows:</p> <p>(a) the proposed new section 20AAO of FRCO set out the conditions that the post-reform FRC may cancel or suspend a practising certificate on non-disciplinary grounds. The section was transplanted from the relevant provisions of PAO without material changes in content. Besides, the practising certificate of a CPA may be cancelled by the disciplinary sanction imposed by FRC against his/her misconduct under the proposed new section 37CA;</p> <p>(b) in practice, a CPA receiving a notification of cancellation or suspension of practising certificate under the proposed new section 20AAO could seek clarification with or raise objection to post-reform FRC if necessary. If FRC maintained its decision, the CPA could apply to the Accounting and Financial Reporting Review Tribunal to be formed under the reformed new regime for review of the decision;</p> <p>(c) FRC would formulate guidelines on the cancellation or suspension of practising certificates and the accounting profession could offer their views during the process;</p> <p>(d) the proposed new section 20AAO(3) would provide flexibility for the post-reform FRC to suspend the practising certificate held by a CPA temporarily instead of cancellation; and</p>	

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		<p>(e) the policy objective of the proposed new section 20AAP was to require FRC to provide a written notice on its decision to cancel or suspend the practising certificate of a CPA under the proposed new section 20AAO.</p> <p>On the written reply to ALA10's enquiry regarding cancellation and suspension of practising certificate as set out in paragraph 9 of LSD's letter, the Administration supplemented that the market itself would determine whether it would engage a CPA (practising), who had been found by a court to be mentally incapacitated, for professional services (paragraph 9 of LC Paper No. CB(1)1262/20-21(03)).</p>	
005406 – 011032	Chairman Administration Mr Holden CHOW Mr Tony TSE	<p><u>Clause 42 – Part 3AA added</u></p> <p>Part 3AA</p> <p>Inspection and Investigation in relation to Practice Units etc.</p> <p><i>Division 2 – Inspection in relation to Practice Units</i></p> <p><i>Subdivision 1 – Conduct of Inspection</i></p> <p><i>20ZZC. Powers of CPA inspector</i></p> <p>In response to Mr CHOW's enquiry, the Administration confirmed that the proposed new section 20ZZC(5) of FRCO addressed the issue of legal professional privilege.</p>	
011033 – 012828	Chairman Administration ALA10 Ms Starry LEE Mr Holden CHOW	<p><u>Clause 60 – Section 37AA added</u></p> <p><i>37AA. CPA misconduct by professional persons</i></p> <p>The Administration said that it would propose amendments to the proposed new section 37AA of FRCO.</p> <p><u>Clause 67 – Section 37H amended (guidelines for exercise of power to impose pecuniary penalty)</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>ALA10 highlighted her enquiries regarding guidelines to be issued by the post-reform FRC (paragraph 11 of LSD's letter). She pointed out that under the proposed amended section 37H of FRCO, the post-reform FRC must not impose a pecuniary penalty under the proposed new section 37CA(2)(b) for any CPA misconduct unless FRC had had regard to the guideline(s) published in the Gazette (which would not be subsidiary legislation) indicating the way in which it exercised its power to impose the penalty. She enquired whether the Administration would consider specifying explicitly in the Bill:</p> <p>(a) that FRC had to consult relevant parties when formulating such guidelines (similar to the arrangement stipulated in section 83(3) of the Insurance Ordinance ("IO") (Cap. 41)); and</p> <p>(b) the matters that might be included in the guidelines.</p> <p>Ms LEE and Mr CHOW concurred that the Bill should explicitly require the post-reform FRC to consult relevant parties when formulating such guidelines given that similar arrangements were set out for the Insurance Authority under IO, and it was necessary to provide checks and balances for FRC's expanded powers under the reformed new regime. They requested the Administration to respond to their suggestion.</p>	<p>The Administration to take action as per paragraph 2 of the minutes</p>
<p>012829 – 014544</p>	<p>Chairman Administration Ms Starry LEE ALA10 Mr Tony TSE</p>	<p><u>Clause 85 – Section 50G amended (FRC may authorize persons to inspect accounts etc.)</u></p> <p>The Administration said that it would propose amendments to the proposed amended section 50G of FRCO.</p> <p><u>Clause 88 – Section 53 amended (avoidance of conflict of interests)</u></p> <p>The Administration highlighted ALA10's enquiries regarding avoidance of conflict of interests set out in paragraph 12 of LSD's letter and its written response ((paragraphs 12-13 of LC Paper No. CB(1)1262/20-21(03)).</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>ALA10's enquiries about:</p> <ul style="list-style-type: none"> (a) the matters the post-reform FRC would consider in determining whether an interest would require disclosure under the proposed new section 53(3) of FRCO and the mechanism for making the disclosure; and (b) whether non-compliance with the disclosure requirements would be a criminal offence given that section 53(8) of FRCO (i.e. the penalty provision for non-compliance with the disclosure requirements) was repealed by the Bill. <p>The Administration responded as follows:</p> <ul style="list-style-type: none"> (a) FRC's powers would be expanded under the reformed new regime. In the light of the much wider types of potential interests which a person might have in all the accounting engagements, it was considered appropriate to adopt the practice of other comparable statutory bodies, such as the Insurance Authority, in formulating the relevant guideline on declaration of interest; and (b) while non-compliance with the guideline on declaration of interest per se was not a criminal offence, there would be criminal consequences for a party if he/she contravened the relevant legislation in Hong Kong (e.g. provision of false information and/or documents). <p>In response to Ms LEE's and Mr TSE's enquiries, the Administration responded that:</p> <ul style="list-style-type: none"> (a) the proposed amended section 53(1) of FRCO set out the parties that would be required to make interest declarations, which included members of the FRC Board and committees as well as any person performing a function under FRCO; and (b) the post-reform FRC's guideline on declaration of interest would be open to the public; and to enhance FRC's 	

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		accountability, the register of interests made by FRC members and any person who performed a function under FRCO would be available for public inspection.	
014545 – 020020	Chairman Administration ALA10	<p><u>Clause 90 – Section 55 amended (immunity in respect of communication with FRC by PIE auditors and non-PIE auditors)</u></p> <p>The Administration said that it would propose amendments to the amended section 55 of FRCO.</p>	
Agenda item II — Any other business			
020021 – 020203	Chairman Administration Ms Starry LEE	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
 5 November 2021