立法會
Legislative Council

LC Paper No. CB(2)216/01-02
(These minutes have been
seen by the Administration)

Ref : CB2/BC/18/00

Bills Committee on Revenue (No. 3) Bill 2001

Minutes of the 1st meeting on Thursday, 21 June 2001 at 10:45 am
in Conference Room B of the Legislative Council Building

Members Present	**:**	Hon Margaret NG (Chairman) Hon Mrs Selina CHOW LIANG Shuk-yee, JP Hon CHAN Kam-lam Hon Ambrose LAU Hon-chuen, GBS, JP Dr Hon TANG Siu-tong, JP Hon Henry WU King-cheong, BBS
Member Absent	**:**	Hon SIN Chung-kai
Public Officers Attending	**:**	Mr Martin GLASS, JP Deputy Secretary for the Treasury Ms Esther LEUNG Principal Assistant Secretary for the Treasury Ms Salina YAN Principal Assistant Secretary for Financial Services (Securities) Mr Mark DICKENS Executive Director (Supervision of Markets) Securities and Futures Commission Mr Gerald GREINER Senior Director (Supervision of Markets) Securities and Futures Commission

Action

Mrs Teresa CHU
Assistant Commissioner of Inland Revenue

Mr Thomas LI
Senior Superintendent of Stamp Office

Miss Maisie CHAN
Assistant Secretary for the Treasury

Miss Gloria LO
Assistant Secretary for Financial Services (Securities) 1

Mr K F CHENG
Senior Assistant Law Draftsman, Department of Justice

Clerk in Attendance : Ms Doris CHAN
Chief Assistant Secretary (2) 4

Staff in Attendance : Ms Bernice WONG
Assistant Legal Adviser 1

Ms Dora WAI
Senior Assistant Secretary (2) 4

I. Election of Chairman

Miss Margaret NG was elected Chairman of the Bills Committee.

II. Meeting with the Administration

Briefing by the Administration

2. At the invitation of the Chairman, Deputy Secretary for the Treasury (DS for Tsy) briefed members on the background of the Revenue (No. 3) Bill 2001 (the Bill) as set out in the Legislative Council (LegCo) Brief on the Bill.

Questions from members

3. Noting that 50% of the levy income collected by the Securities and Futures Commission (SFC) from each of the purchaser and seller of a securities transaction at

Action

the rate of 0.01% of the consideration of the transaction was currently retained by the Stock Exchange of Hong Kong (SEHK), Dr TANG Siu-tong asked how SEHK could maintain its operation after its share of the levy was removed.

4. Principal Assistant Secretary for Financial Services (Securities) (PASFS(S)) explained that since SEHK had become a subsidiary of the Hong Kong Exchanges and Clearing Ltd which was a commercial entity, it was no longer justifiable for SEHK to rely on the statutory levy as a source of income. Following discussions, the Administration reached agreement with SEHK to remove the portion of the levy going to SEHK and replace it by a trading fee, which would initially be set at the same rate as the levy reduction. The proposed fee level had already been approved by SFC.

5. Dr TANG Siu-tong noted that the Administration proposed to increase the existing levy on securities transactions by 0.002% for the purpose of setting up a new Investor Compensation Fund (the new Fund). As the setting up of the new Fund was envisaged in the Securities and Futures Bill (the SF Bill) which was currently being considered by a bills committee, he asked whether it would be more logical for the proposed increase in levy under the Bill to be dealt with later after the new Fund had been set up.

6. In response, PASFS(S) pointed out that currently there were two compensation funds in operation, viz the Unified Exchange Compensation Fund (UECF) which provided compensation to investors who suffered from pecuniary loss as a result of default by their stockbrokers; and the Commodity Exchange Compensation Fund (CECF) which provided similar compensation to those who invested in commodity futures contracts. Money for the new Fund would come from the balance of the existing UECF and CECF and from an *ad valorem* levy on securities transactions. As the balance of UECF as at the end of the year 2000 amounted to some $650 million which was insufficient to provide adequate protection to investors, the Administration considered it prudent to start building up UECF through an increase in levy. The balance under UECF, after making the necessary reserves for payment of outstanding compensation claims and refund of deposits to exchange participants, would be transferred to the new Fund when it was established. The levy increase was intended to last until the new Fund had accumulated $1 billion. When this target was reached, the Administration would introduce legislative amendments to remove the additional levy of 0.002%.

7. PASFS(S) further pointed out that the LegCo Legal Service Division Report on the Bill confirmed that from the legal point of view, it was possible for the proposed levy increase to come into effect before the setting up of the new Fund and the making of the related rules in relation to the Fund.

8. Mr Henry WU said that the industry welcomed the proposed reduction in the rate of stamp duty and had no strong views on the proposed increase in the rate of transaction levy as well as the proposed trading fee payable to SEHK. He pointed out that the industry was concerned whether sufficient time would be allowed for them to

Action

make preparations for the change, e.g. modifications to their existing computer software. The industry was also concerned whether brokers had to make their own arrangements to pay the levy of 0.007% to SEHK and SFC separately after the enactment of the Bill.

9. PASFS(S) said that the Administration had liaised with the industry on the matter and learned that a period of one month was needed to carry out the necessary modification works. The Administration would take into account the lead time required when proposing the effective date for the Bill.

10. Executive Director (Supervision of Markets), Securities and Futures Commission (ED(SM)/SFC) supplemented that the payment arrangements for transaction levy would remain unchanged, i.e. brokers would have to pay the levy of 0.007% to SEHK which would then arrange to pay 0.002% to SFC. He also said that a rubber stamp to update the old contract notes would be acceptable as an interim measure.

11. Assistant Legal Adviser 1 (ALA1) pointed out that both the Budget Speech and the LegCo Brief specified that the purpose of the proposed levy increase was to set up the new Fund. Before the new Fund was established, the increase in levy would form part of the reserves of SFC. Under section 99(2) of the Securities Ordinance (Cap. 333), SFC might, with the approval of the Financial Secretary, pay into UECF the monies received from the proposed additional levy of 0.002%. Having explained the legal aspect, she queried whether it would be more logical from the policy point of view that the proposed levy increase should be considered after the new Fund was established. She further pointed out that when introducing the Bill to the Bills Committee at the start of this meeting, the Administration seemed to have changed its policy in that the purpose of the proposed levy increase was not solely for setting up the new Fund, but also for topping up the balance of the existing UECF.

12. Mrs Selina CHOW sought clarification as to the purpose of the proposed levy increase. She questioned whether it was appropriate for the proposed increase in levy to be considered at this stage when the establishment of the new Fund had yet to be decided by the Bills Committee on the SF Bill. She also asked whether the industry had been consulted on the proposed increase and whether the target of $1 billion was an appropriate amount.

13. PASFS(S) explained that the new Fund, when established, would replace the existing UECF and CECF. As UECF was currently under-funded, the Administration intended to start topping it up as soon as possible so that there would be a larger amount to be transferred to the new Fund once it was established.

14. As to why the proposed levy increase had to be considered now, ED(SM)/SFC said that this was based on the future demand on the new Fund made by the consultant engaged by SFC. Having regard to historical records and the expected market growth, the consultant developed a model which suggested that the new Fund should be bigger

than the existing fund in order to provide an extended coverage. Based on historical experience, it was estimated that $92 million would have to be paid out each year under the extended coverage and it would increase over time as the market grew. That figure exceeded the income that the existing fund was currently making. Under the existing coverage on the stock exchange side, the model showed that $79 million had to be paid out each year. This amount also exceeded the income of the existing fund, which was mainly from interest. Such income was approximately $43 million per year at the moment.

15. As regards consultation with the industry, ED(SM)/SFC said that SFC had issued a consultation paper on the new Fund in March 2001. During the consultation period which ended on 6 April 2001, 11 submissions were received which showed that the industry was generally supportive of the proposed compensation arrangements under the new Fund. The gist of the comments received had been reported to the Bills Committee on the SF Bill.

16. As to whether $1 billion was an appropriate amount, ED(SM)/SFC said that although $1 billion would not be sufficient if there were two default cases like C.A. Pacific incident in a year, a balance had to be struck between raising too much money from the market and having an inadequate fund. On balance, $1 billion was considered appropriate and the money should be raised sooner rather than later given the under-funding situation of the existing UECF.

17. Mr Henry WU said that based on the existing levy rate, it might take some five to six years for the fund to accumulate $1 billion. He then informed the meeting that there were no unified views in the industry in respect of the proposed levy increase. Some considered it unfair as the levy rate for futures transactions would not be subject to the same increase. Some considered that the proposed levy increase should be able to attract more investments as the protection to investors would be enhanced. They considered it a good opportunity to increase the levy rate at this point in time because the actual cost of transaction would not increase following the reduction in stamp duty.

18. The Chairman asked the Administration to provide a breakdown of the amounts for beefing up the present fund and for augmenting the new Fund. ED(SM)/SFC explained that SFC had never tried to distinguish between the two. The information now available was that an amount of $500 million to $800 million would be available for transfer to the new Fund.

19. Mrs Selina CHOW considered it more appropriate that the Bills Committee should focus only on the under-funding situation of the existing fund rather than to address the need of the new Fund, the establishment of which had yet to be approved. She suggested that the Administration should inform members of the targeted level in topping up the existing fund and asked when the additional levy of 0.002% would be removed.

20. PASFS(S) said that based on compensation claims in the past 10 years and the

Action

expert advice of the risk assessment consultants, the existing fund was considered to be under-funded and should be topped up to $1 billion in order to reach a prudent level. The time required to reach that level depended on the market turnover value and whether there would be claims for compensation. However, it was envisaged that with the proposed increase of 0.002% in the securities transaction levy and based on recent market turnover value, the UECF would receive about $100 million levy income each year. As the UECF had a balance of about $650 million at the end of the year 2000 and together with the income from interest, it would be able to accumulate $1 billion in two to three years.

21. As the consensus of members was that only the under-funding situation of the existing fund should be dealt with under the Bill as far as increase in the levy rate was concerned, the Chairman asked the Administration to provide members with a justification solely on the basis of the under-funding situation, stating clearly how much levy income was required for that purpose. PASFS(S) undertook to provide members with the requested information as soon as possible.

Adm

22. Mr Henry WU opined that although members had reservations about the proposed levy increase, the proposed reduction in stamp duty should not be delayed as the public had been expecting such reduction since the Budget Speech was delivered in March 2001. Mrs Selina CHOW shared his view.

23. The Chairman agreed that the proposed increase in levy and reduction in stamp duty were two self-contained issues. She therefore suggested that the Administration should consider splitting the Bill in order to give earlier effect to the proposed reduction in stamp duty as members were very supportive of such reduction. Alternatively, it might consider appointing an earlier effective date for the part of the Bill relating to stamp duty reduction. She said that the Administration should bear the responsibility should there be any unnecessary delay in reducing the rate of stamp duty. DS for Tsy responded that the Administration did not wish to rebundle the Bill as it was a combined package. However, the Administration would consider the suggestion of appointing an earlier effective date for the reduction in stamp duty.

24. In reply to a question raised by the Chairman, ALA1 said that if members wished to support reduction in stamp duty, members could vote against clauses 2 and 3 of the Bill so that the rate of levy for securities transactions would remain unchanged. The rate of stamp duty would be reduced pursuant to clause 4 of the Bill. ALA1 added that if members, in addition to supporting the reduction in stamp duty, also supported that SEHK should not continue to receive the statutory levy as a source of income and that such levy should be replaced by a trading fee, members could vote for the entire Bill but a Committee Stage amendment (CSA) should be introduced to amend "0.007%" in clause 2 to "0.005%".

25. In response to the Chairman, ED(SM)/SFC said that in the event that clauses 2 and 3 of the Bill were not passed by LegCo, the only consequence was that the Government would start building up the existing fund later. He also drew members'

Action

attention to the fact that there was currently no ongoing source of income for UECF except the income from interest.

26. The Chairman asked how soon the Government would be able to set up the new Fund after the passage of the SF Bill. ED(SM)/SFC responded that the new Fund was expected to be set up as soon as the legislation was enacted since the administrative arrangement should not be complex. In reply to a further question from the Chairman, ED(SM)/SFC said that if clauses 2 and 3 of the Bill were not passed, the building up of the fund would be delayed for around six to nine months.

27. In view of members' comments, Mr Henry WU suggested that the Administration should consider giving up the proposed increase in levy at this stage by introducing a CSA to amend "0.007%" in clause 2 to "0.005%".

28. PASFS(S) explained that as she had been focusing on consultation with the industry on the compensation arrangements for the new Fund in the last few months, she might have mixed up the figures relating to the new Fund with that of the existing fund. She undertook to provide members with a paper setting out more detailed information on the existing fund.

29. The Chairman asked the Administration to carefully consider the views expressed by members at the meeting. She also reminded the Administration that the last LegCo meeting in the current session was scheduled for 11 July 2001 and if the Second Reading debate on the Bill was to be resumed on that date, the deadline for giving notice of the resumption was 23 June 2001. Any notice received by LegCo after that date would need special approval by the President of LegCo.

III. Date of next meeting

30. Members agreed to hold a further meeting on 22 June 2001 at 10:45 am to continue discussion with the Administration.

31. There being no other business, the meeting ended at 12:25 pm.

Legislative Council Secretariat
30 October 2001