

立法會
Legislative Council

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Legislative Council
Panel on Financial Affairs

Minutes of special meeting held on
Thursday, 3 May 2001 at 4:30 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon Ambrose LAU Hon-chuen, JP (Chairman)
Hon Henry WU King-cheong, BBS (Deputy Chairman)
Hon James TIEN Pei-chun, JP
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, JP
Hon NG Leung-sing
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon SIN Chung-kai
Hon Jasper TSANG Yok-sing, JP
Hon Emily LAU Wai-hing, JP
- Members absent** : Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong
- Public officers attending** : Hong Kong Monetary Authority
Mr Joseph YAM, JP
Chief Executive

Mr David CARSE, JP
Deputy Chief Executive

Mr Tony LATTER, JP
Deputy Chief Executive

Miss Amy YIP, BBS, JP
Deputy Chief Executive (Acting)

Clerk in attendance : Mrs Florence LAM
Chief Assistant Secretary (1)4

Staff in attendance : Ms Pauline NG
Assistant Secretary General 1

Ms Connie SZETO
Senior Assistant Secretary (1)1

For Item II

Mr Jimmy MA, JP
Legal Adviser

I Briefing by the Chief Executive of the Hong Kong Monetary Authority
(LC Papers No. CB(1) 1112/00-01(01),(02) and (03))

Briefing by the Chief Executive of Hong Kong Monetary Authority

The Chief Executive of Hong Kong Monetary Authority (CE/HKMA) gave a power-point presentation on the work of HKMA. The presentation covered HKMA Annual Report 2000 and the latest developments in HKMA's four main responsibilities i.e. maintaining the stability of the Hong Kong dollar, promoting the safety and stability of the banking system, developing and enhancing the financial infrastructure, and managing the Exchange Fund (EF).

2. CE/HKMA said that the exchange rate of the Hong Kong dollar had remained stable during the first four months of 2001. However, vulnerabilities in the world economy, including risks of increasing globalization of financial markets, continuing economic and financial market

adjustments in the US, uncertainty in the economic prospect of Japan, financial problems in emerging markets, etc. might have an adverse impact on the stability of the Hong Kong dollar. Moreover, there were internal risks in the Hong Kong economy, including successive operating deficits in government finance in recent years.

3. Turning to the banking sector, CE/HKMA said that HKMA was making good progress with various reform measures. HKMA was drawing up the details for introducing a deposit insurance scheme and the establishment of a Commercial Credit Reference Agency. The final phase of interest rate deregulation would take place as scheduled in early July 2001. The momentum of consolidation in the banking sector continued as a result of increasing competition in the industry.

4. In respect of development in the financial infrastructure, CE/HKMA said that following the successful launch of the US dollar clearing system in December 2000, HKMA was studying the possibility of introducing clearing systems in other currencies to further enhance Hong Kong's status as an international financial centre. Moreover, the review on the provision of retail payment services was expected to be completed shortly.

5. On the management of EF, CE/HKMA said that the investment environment had been extremely difficult during the first four months of 2001 and EF had incurred an investment loss. The investment climate for the remainder of 2001 would continue to be difficult, though it was too early to tell how EF would perform in 2001.

6. CE/HKMA said that in his briefing to the Panel in January 2001 he stressed that there was an increasing need to address the issue of protection of banking consumers as the banking sector had become more competitive. He explained that under the Banking Ordinance (Cap. 155), HKMA only had a general duty to provide a measure of protection to depositors and there was no explicit mandate for it to function as a consumer watchdog. HKMA had therefore conducted a comparative study (Comparative Study) on how consumer protection arrangements in Hong Kong compared with those in the United Kingdom (UK) and Australia. The study was aimed at collecting information on overseas experience and highlighting the gaps in the Hong Kong arrangements. HKMA had not made any recommendations. The report of the study had been provided to members. On the way forward, CE/HKMA said that HKMA and the Government would consider the policy implications of the study and would work out proposals in consultation with the industry associations and the Consumer Council. HKMA was open-minded on whether it should have a more explicit role on banking consumer protection and welcomed views from members and the public.

Discussion with Members

Management of the Exchange Fund

7. Noting that the level of EF had reached over HK\$1,000 billion with an accumulated surplus of over HK\$300 billion, Mr SIN Chung-kai considered that the monetary purpose of EF to maintain the stability of the Hong Kong dollar should have been fully met. He asked whether the accumulated surplus of EF could be used to fund government programmes.

8. CE/HKMA said that in terms of foreign currency reserves ranking, Hong Kong's EF was the third largest in the world. In terms of reserves on a per capita basis, Hong Kong was ranked as the second highest in the world i.e. after Singapore. He shared members' view that EF was public money and should be invested for the interest of Hong Kong's long-term development. On the monetary purpose of EF, CE/HKMA said that in order to provide full backing for the current monetary base of HK\$220 billion, it was necessary for Hong Kong to maintain the level of foreign reserves at US\$28 billion, i.e. the theoretical minimum. However, HKMA had utilized about US\$38 billion to defend the Hong Kong dollar against the attacks on the currency in 1998. The amount was over three times of the then theoretical minimum of US\$12 billion. While it was difficult to derive a scientific formula for determining the appropriate level of foreign reserves, given that Hong Kong was a small economy with an entirely open market, it would be prudent to maintain a level of foreign reserves well above the theoretical minimum to meet possible vulnerabilities and associated risks.

9. Responding to Mr NG Leung-sing's enquiry, CE/HKMA advised that according to the long-term asset allocation strategy of EF adopted in 1999, 20% of the assets would be invested in equities including 5% in Hong Kong equities. At the end of April 2001, the total value of the Hong Kong equity portfolio amounted to HK\$110.9 billion. Hence, HK\$60 billion would have to be disposed of and around HK\$50 billion would be kept as long-term investment in accordance with the investment guidelines of EF.

Note-issuing bank

10. Mr LEE Cheuk-yan was of the view that the note-issuing banks in Hong Kong should have due regard to public interest. He considered that the recent move of the Hong Kong and Shanghai Banking Corporation (HSBC) to increase its fees and charges was not in the public interest. Mr LEE enquired whether there were any criteria for authorizing banks as note-issuing banks for Hong Kong. Referring to the practice in overseas jurisdictions that the central banks were responsible for issuing bank notes, Mr LEE asked whether HKMA had any plan to take up that role.

11. In reply, CE/HKMA said that there were historical reasons for HSBC to become one of the note-issuing banks in Hong Kong. He added that authorization of note-issuing banks was governed by the Legal Tender Notes Issue Ordinance (Cap. 65) which provided the Financial Secretary (FS) with such a power subject to the approval of the Chief Executive in Council. Under the existing currency board arrangements, before the issuing of bank notes, a bank had to surrender an equivalent amount of US dollar assets (at the exchange rate of HK\$7.8 to US\$1) to the Government for the issue of certificates of indebtedness to be held by the note-issuing bank to cover the bank notes it issued. While the note-issuing bank status would have some publicity value for the bank concerned, such a status would not bring with it any monetary benefits. CE/HKMA supplemented that subject to amendments to the relevant ordinances, HKMA could be authorized to issue bank notes. Nonetheless, as the current system had been operating effectively and there had not been any public concern, the Government had no intention to change the current system.

Remuneration for senior staff of HKMA

12. Miss Emily LAU noted from HKMA Annual Report 2000 that the number of senior staff at the executive directorate level and above had increased by one over a year earlier. She also noted that despite the poor investment performance of EF recently, there was a pay rise for senior staff. She asked whether the salary increases were in line with the trend in the financial services sector.

13. CE/HKMA clarified that the number of staff at executive directorate level or above remained at 12, the same as in 1999. As to the concern about salary increases for directorate staff, CE/HKMA advised that the pay packages of HKMA staff were determined by the Exchange Fund Advisory Committee (EFAC) with reference to those offered in the local financial services sector. Annual pay level and pay trend surveys of the local financial services sector were conducted for the consideration of EFAC in the annual pay assessment exercise. EFAC also took into account the performance of HKMA in determining the pay adjustments for staff. CE/HKMA further explained that the pay adjustments in 2000 reflected the performance in 1999. Upon Miss LAU's request, CE/HKMA would consult EFAC in due course on whether future surveys on annual pay level and pay trends could be made available to members.

HKMA

Consolidation in the banking industry

14. Responding to Mr NG Leung-sing's enquiry about the role of HKMA in promoting consolidation in the banking sector, CE/HKMA said that consolidation in the sector through mergers and acquisitions would help banks to achieve greater economies of scale and to enhance their competitiveness.

HKMA would continue its efforts to encourage banks to consolidate by advocating the idea publicly and putting it on the agenda for the industry to consider.

Protecting banking consumers

15. Noting from the Comparative Study that the enforcement mechanisms for the non-statutory codes of banking practice in the UK and Australia were different from that of Hong Kong, Miss Emily LAU asked about the extent to which HKMA would make reference to these two systems. She also asked whether HKMA would consider providing legislative backing to the current non-statutory Code of Banking Practice (the Code) to enhance its effectiveness.

16. The Deputy Chief Executive of HKMA (DCE/HKMA) said that industry associations in the UK, Australia and Hong Kong had issued non-statutory codes of banking practice to establish minimum standards. However, there were differences in the enforcement and sanctions against non-compliance with the codes. The Banking Code Standards Board in the UK and the Australian Securities and Investment Commission (ASIC) were specialist agencies responsible for monitoring compliance with the codes by the industry. In Hong Kong, the Code was monitored by HKMA. However, this was not a statutory responsibility. Neither did HKMA have any specific statutory powers relating to the Code. The UK and Australia were reviewing the existing monitoring systems. These reviews had revealed deficiencies of the current self-regulatory approach adopted by banks in respect of compliance with the codes in protecting the interests of banking consumers and enabling appropriate disciplinary actions to be taken against breaches. For instance, in Australia there was a recommendation to give ASIC the power to approve the code to enhance its effectiveness. CE/HKMA supplemented that HKMA had been playing a proactive role and working closely with the industry associations in establishing the Code. It was also involved in monitoring compliance with and reviewing the Code. The present self-regulatory regime was working effectively and there had been few non-compliance cases. Nonetheless, HKMA would keep in view the latest developments in other jurisdictions.

17. In respect of the regulation of fees and charges for banking services, Miss Emily LAU noted from the Comparative Study that while there was no regulation in this area in the codes of banking practice in the UK and Australia, the banks in Australia did exempt special classes of customers, such as the financially disadvantaged, pensioners, students and the disabled, from paying fees for services. She asked whether HKMA would consider it appropriate to introduce rules to regulate fees and charges for banking services.

18. CE/HKMA said that in view of increasing competition in the banking sector, there would be pressure for banks to increase fees and charges for their services. However, HKMA was not inclined to interfere in matters relating to the revision of banking fees and charges as this was a commercial decision. HKMA attached more importance to ensure that banks would operate in a fair and transparent manner so that customers could make free and informed choices on banking services. He added that the review of the Code in relation to fees and charges was being finalized after consultation with the industry associations and the Consumer Council.

19. Miss Emily LAU noted that both the UK and Australia had put in place an Ombudsman scheme to deal with customer complaints. However, there was no similar scheme in Hong Kong. Miss LAU asked whether HKMA would consider introducing such a scheme in Hong Kong. She also enquired about how the existing complaint handling arrangements in Hong Kong compared with the Ombudsman schemes in these places, and whether HKMA was satisfied with the present arrangements.

20. DCE/HKMA said that HKMA received about 600 complaints from banking customers in a year, over half of which were related to debt collection practice of banks. The complaints were referred to the banks concerned for investigation. HKMA would ensure that the banks put in place adequate systems for handling customer complaints. However, HKMA could not arbitrate the complaints, nor could it make orders for compensation. HKMA was satisfied that customer complaints had been properly and fairly dealt with by banks. There had been some problems in resolving complaints about debt collection. To address this problem, HKMA would revise the Code to specify clearly the role of banks in monitoring debt collection agencies engaged by them.

21. CE/HKMA also said that the Ombudsman scheme had certain merits. HKMA would keep an open-mind and would welcome public comments on the issue. DCE/HKMA supplemented that in reviewing the customer complaint handling system, HKMA considered that it might be necessary to strengthen its existing role by setting more specific standards on internal resolution procedures undertaken by banks. In Australia, failure of a bank to provide the appropriate dispute resolution procedures would be a breach of the licence requirement. However, this was different from the Ombudsman scheme which provided an independent and external dispute resolution mechanism for banking customers. The Ombudsman was empowered to award compensation to customers when they suffered losses caused by the banks concerned.

22. As regards HKMA's involvement in consumer protection, Mr SIN Chung-kai was of the view that if HKMA was to assume the statutory responsibility for consumer protection, it would have to be provided with more

powers. As such, it would be necessary to put in place sufficient checks and monitoring systems to ensure the accountability of HKMA.

23. In response, CE/HKMA said that HKMA remained open-minded as to whether it should assume such a role. If HKMA were to be involved, it would require a clear mandate, statutory powers and additional resources. On the concern about checks and balances, CE/HKMA stressed that HKMA had been pursuing a policy of transparency and accessibility to further enhance its public accountability. Apart from continuing with the existing accountability arrangements, an internal review was underway to find ways to further strengthen the transparency and accountability arrangements of HKMA.

24. Miss Emily LAU praised HKMA for taking the initiative to conduct the Comparative Study. She remarked that the study would form a useful basis for public discussion on issues relating to protection of banking consumers. Noting that the Legislative Council (LegCo) Research and Library Services Division was conducting a research on the subject which was expected to be completed in June or July 2001, Miss LAU suggested that the Panel should deliberate on the subject when the research report was available.

II Any other business

Permanent accommodation for the Hong Kong Monetary Authority

25. Members noted that a special Panel meeting was held on 20 April 2001 to receive a briefing by CE/HKMA on the proposal to purchase office accommodation at Two International Finance Centre. They also noted that FS signed a Memorandum of Understanding (MOU) with the developer concerned on 28 April 2001. The purchase involved expenditure of HK\$3.699 billion, which would be charged to EF. At members' request at the meeting on 20 April 2001, the LegCo Secretariat Legal Adviser (LA) had provided the Panel with a paper (LC Paper No CB(1) 1120/00-01 issued on 2 May 2001) setting out his views on the legal issues involved.

26. Miss Emily LAU said that at the meeting on 20 April 2001, some members had expressed grave concern over the legality of using EF to purchase permanent office accommodation for HKMA. Members were of the view that the cost for purchasing the premises should be charged to the general revenue and should be subject to the approval of LegCo. Miss LAU considered the signing of MOU by FS on 28 April to be a disrespect of LegCo. Since LA's paper had raised queries about FS's reliance on section 6(a) of the Exchange Fund Ordinance (EFO) (Cap.66) to justify the charging of expenditure to EF and that in LA's view, FS's decision had effectively nullified LegCo's constitutional function of approving public expenditure under Article 73(3) of the Basic Law, Miss LAU opined that the Panel should pursue the matter.

27. CE/HKMA said that HKMA only received LA's paper on 2 May 2001. HKMA would respond to the points raised in the paper as soon as possible. His preliminary comments were that while the paper had analyzed the legal issues involved, it had not given any conclusion on the legality of using EF for the purchase. Having regard to HKMA's legal advice that it was within FS' power under EFO to use EF for the said purchase, LA's comments could be seen as an allegation against FS for not acting in accordance with the law.

(Post-meeting note: HKMA's response to LA's paper was circulated to members vide LC Paper No. CB(1) 1290/00-01 on 18 May 2001.)

28. LA explained that the purpose of his paper was to analyze the various legal issues relating to the subject to facilitate members' consideration of the issues rather than to act like a judge to determine whether FS had contravened any laws.

29. Miss Emily LAU requested HMKA to provide details of its legal advice to FS and the analysis regarding the legality of charging the cost to EF. She also considered it necessary for members to have access to the advice of the Department of Justice (D of J) on the matter.

30. CE/HKMA undertook to provide the details of HKMA's legal advice on the purchase for members' reference.

(Post-meeting note: The reply from FS's Office, HKMA's legal advice and analysis on the subject were circulated to members vide LC Paper No. CB(1) 1290/00-01 on 18 May 2001.)

Action to be taken by the Panel in pursuing the matter

31. Miss Emily LAU suggested that the Panel should consider whether it was necessary to engage an independent counsel to provide further legal advice on the matter. As an alternative, the Panel might consider reporting the matter to the House Committee for discussion as to how the matter should be followed up. Noting that HKMA had undertaken to respond to LA's paper and that FS's Office would be requested to seek D of J's advice on the matter, Mr Eric LI and Mr NG Leung-sing were of the view that the Panel should consider these views first before deciding the way forward. Mr SIN Chung-kai suggested that the Panel should convene a special meeting to discuss the legal advice provided by HKMA and D of J when this was available.

32. After further deliberations, members agreed that this issue should be reviewed at the regular meeting of the Panel to be held on 4 June 2001.

(Post-meeting note: Members noted at the meeting on 4 June 2001 that FS had invited D of J to give its views on the matter and the advice would be provided to the Panel in due course. LA had provided a paper responding to HKMA's legal advice (CB(1) 1290/00-01 dated 18 May 2001) which was circulated to members vide LC paper No. CB(1) 1518/00-01 on 12 June 2001.)

33. The meeting ended at 6:15 pm.

Legislative Council Secretariat
4 September 2001