

立法會
Legislative Council

LC Paper No. CB(1) 295/00-01
(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

Legislative Council
Panel on Financial Affairs

Minutes of Meeting held on
Monday, 6 November 2000 at 10:45 am
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
Hon NG Leung-sing
Hon James TO Kun-sun
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon SIN Chung-kai
Hon Jasper TSANG Yok-sing, JP
Hon Emily LAU Wai-hing, JP

Non-Panel Member attending : Hon Fred LI Wah-ming, JP

Members absent : Dr Hon David LI Kwok-po, JP
Dr Hon Philip WONG Yu-hong

Public officers attending : For Items IV - VII

Mr Stephen IP
Secretary for Financial Services

Action

For Items IV - VI

Mrs Rebecca LAI
Deputy Secretary for Financial Services (1)

For Item IV

Miss Denise YUE
Secretary for the Treasury

Mr Martin GLASS
Deputy Secretary for the Treasury (2)

Mr Tommy YUEN
Principal Assistant Secretary (Investments)

Ms Salina YAN
Principal Assistant Secretary (Securities)

For Items V and VI

Mr David CARSE
Acting Chief Executive, Hong Kong Monetary
Authority

Mr Edmond LAU
Head (Banking Development), Hong Kong
Monetary Authority

For Item VII

Miss Susie HO
Deputy Secretary for Financial Services (2)

**Attendance by
invitation**

: For Item IV

Securities and Futures Commission

Mr Andrew SHENG
Chairman

Mr Keith LUI
Director (Supervision of Market)

Action

For Item VII

Mandatory Provident Fund Schemes Authority

Mr Rafael HUI
Managing Director

Mr Alan WONG
Deputy Managing Director

Mr Ernest LEE
Executive Director (Member Protection)

Clerk in attendance : Ms LEUNG Siu-kum
Chief Assistant Secretary (1)4

Staff in attendance : Ms Connie SZETO
Senior Assistant Secretary (1)1

I Confirmation of minutes of previous meeting
(LC Paper No. CB(1) 69/00-01)

The minutes of the Panel meeting held on 10 October 2000 were confirmed.

II Information papers issued since September 2000
(LC Paper Nos. CB(1) 3, 18, 95, and 118/00-01)

2. Members noted the above papers issued since September 2000. As regards LC Paper No. CB(1) 118/00-01 concerning the proposal to create two posts each in the Financial Services Bureau and the Official Receiver's Office, some members raised questions about the proposal. Due to time constraint, members agreed that the proposal would not be discussed at the meeting. Members could raise their concerns at the Establishment Subcommittee meeting on 15 November 2000.

Action

III Dates of the next two meetings and items for discussion

(Revised lists of outstanding items for discussion and proposed discussion items for meetings, both tabled at the meeting)

3. Members agreed to discuss the following items at the Panel meeting scheduled for 4 December 2000, at 10:45 am -

- (a) Briefing by the Financial Secretary on Hong Kong's latest economic situation;
- (b) Revision of livelihood-related fees and charges; and
- (c) Overseas duty visit.

4. On item (c), the Chairman informed that the Legislative Council (LegCo) Commission had earmarked funds for Panels/Committees to conduct overseas duty visits. The House Committee would consider proposals from Panels and make recommendation to LegCo Commission. He invited members to put forward their proposals, if any, to the Clerk for discussion at the next Panel meeting.

5. Moreover, members agreed to hold the regular January Panel meeting on Thursday, 11 January 2001, at 2:30 pm to discuss the following items -

- (a) Briefing by the Chief Executive of the Hong Kong Monetary Authority;
- (b) Review of the Growth Enterprise Market listing rules; and
- (c) Strategic Change Plan for the Companies Registry.

6. The majority of political parties and members disagreed with the proposal of Mr LEE Cheuk-yan (LC Paper No. CB(1) 126/00-01(02)) in requiring the Panel to discuss views and recommendations made by political parties and independent members on the 2001-02 Budget.

IV Issues arising from the initial public offering of the Mass Transit Railway Corporation

(LC Paper No. CB(1) 126/00-01(04) tabled at the meeting)

7. The Secretary for the Treasury (S for Tsy) briefed members on Government's work in coordinating the initial public offering (IPO) of the Mass Transit Railway Corporation (MTRC). Mr Andrew SHENG, Chairman of the Securities and Futures Commission (SFC) took members through SFC's report tabled at the meeting on the distribution of duplicate share certificates and

Action

related issues in relation to MTRC IPO. They stressed that notwithstanding the unfortunate incident of the distribution of duplicate share certificates, MTRC IPO had been successful evidenced by its numerous records set, including the largest number of applications received, the most applicants allocated with shares, and the first time to utilize electronic IPO (eIPO) facilities.

8. Pointing out that the problem of duplicate share certificates was mainly caused by errors in the computer systems of MTRC's share registrar, Central Registration Hong Kong Limited (Central), Mr James TIEN and Mr Henry WU expressed concern about the service quality of Central and the regulation of share registrar in general.

9. On the concern about service quality of Central, S for Tsy said that the appointment of the company as the share registrar for MTRC IPO had taken into account various factors, including Central being the largest share registrar in Hong Kong, its good business track record, and its confirmation of fulfilling the capacity requirement of handling 650,000 applications. Mr SHENG supplemented that Central had conducted a test run using its backup and development computer systems to ascertain the necessary speed for meeting the obligations under the Share Registrar's Agreement (SRA) signed with MTRC. However, Central's production computer system ran much slower than the expected speed achieved in the test run causing delay in data processing. In order not to delay the printing of share certificates, the processed information was split into six different files for printing. This decision had disabled the single printing control system, which should have functioned to identify and remove duplicate certificates. Central had to resort to manual processes to screen out duplicate certificates. Because of human errors, some duplicate certificates were despatched to investors. The reasons for the slow down in Central's computer system had not been fully established. Nonetheless, Central had commissioned an expert to conduct an investigation and overall review of its computer systems for appropriate enhancements. SFC would monitor the progress of the review and provide further information to members when the same should be available.

(Post-meeting note: The information was circulated to members vide LC Paper No. CB(1) 260/00-01.)

10. As regards Mr LEE Cheuk-yan's concern about the monitoring of Central's work procedures, S for Tsy said that the responsibilities of Central in the IPO process were clearly laid down in SRA and it was unnecessary for the Government to follow through every step of the company's work procedures. On whether Central had informed MTRC in the first instance of the delay in data processing and its decision to change the procedures in printing share certificates, S for Tsy undertook to convey the enquiry to MTRC and revert to the Panel in due course.

Action

(Post-meeting note: The information was circulated to members vide LC Paper No. CB(1) 260/00-01.)

11. On the regulation over share registrars, Mr SHENG said that currently their services were governed by the agreements they entered into with issuers and IPO sponsors. In the wake of the incident, SFC would consult the market, the industry and the Government on the need of enhancing the existing self-regulatory system of share registrars to impose additional supervision by introducing a non-statutory code of conduct, or replacing the current system by a more statutory regulatory model.

12. Mr SIN Chung-kai remarked that the tight share offer timetable might have exerted pressure on Central and in return led to the incident. In response, S for Tsy said the advice of the Government Financial Adviser in the IPO exercise was that in order to protect the interest of the investing public, it was appropriate for MTRC shares to commence trading as soon as possible after application for shares closed on 28 September and after the offer price had been fixed. The Administration considered that sufficient time had been given to market participants and investors to prepare for the first trading day of shares on 5 October. The public was informed of the results of share application through different channels, including the placing of a full list of successful applicants in over 100 post offices and numerous brokerage houses. Shares certificates were despatched on 4 October. Successful applicants who sold their shares on 5 October before receiving the share certificates should have no problem in settling their transactions on 10 October (6, 7 and 8 October were non-trading days) under the T+2 settlement rule.

13. As to whether investors would breach securities laws for placing orders to sell their MTRC shares before receiving the share certificates, Mr SHENG said that in this particular incident, investors would not be taken as breaching legal provisions relating to short selling if it was confirmed that they had been allocated with the MTRC shares. The operation of brokerage houses in executing the sell orders was a separate issue. Upon request of the Chairman, the Administration undertook to clarify the matter in writing after the meeting.

(Post-meeting note: The information was circulated to members vide LC Paper No. CB(1) 260/00-01.)

14. Mr Henry WU pointed out that the incident had aroused confusion in some brokerage houses and complaints by investors. He requested reports submitted by involving parties on the incident be disclosed. The Secretary for Financial Services (SFS) said that Central had openly accepted its responsibility in relation to the incident and apologized unreservedly for any

Action

embarrassment and inconvenience caused to all concerned. Besides continuing with the investigation on the technical errors in its computer systems, Central had indicated its intention to appoint a person with experience of working at a senior level in registry business as its executive chairman and to provide communication and crisis management training to its senior staff. He supported SFC's initiative to review the regulation of share registrars.

15. In reply to Ms Emily LAU's enquiry on whether the Government would seek compensation from Central for possible adverse impact of the incident on the reputation of Hong Kong as a financial market, S for Tsy said that there was no penalty clause in SRA and according to Government's legal advice, it would be very difficult to establish loss or damage incurred by the Government arising from the incident other than pecuniary losses suffered. Nonetheless, SRA provided that Central would be responsible for all damages claimed by third party. Central had further agreed in a supplementary agreement signed after the incident that it would provide MTRC with a full indemnity in respect of the incident. S for Tsy further advised that up to 24 October, MTRC had not received any claim for damages. She also took note of Ms LAU's view that in future, the Government should consider including appropriate penalty clauses in service contracts or agreements for the protection of public interest.

16. On the way forward, Mr CHAN Kam-lam urged the Administration to expedite the development of scripless financial market for Hong Kong with a view to minimizing risks involved in paper transactions. SFS responded that the incident highlighted the importance for Hong Kong to move towards a scripless financial market. Besides refining and enhancing eIPO mechanism, the Steering Committee on the Enhancement of Financial Infrastructure (SCEFI) would be reconvened to study the subject and devise a practical action plan for implementation. Mr SHENG supplemented that the development of a scripless market involved many complex issues. SCEFI would study them carefully and make reference to overseas models with a view to working out an appropriate system and regulatory framework for Hong Kong within two years.

17. As regards Government's plans to offer more MTRC shares in the future, S for Tsy advised that it had been clearly laid down in MTRC's prospectus that no further share offer would be made within six months after this IPO. The Administration would review the situation by October 2001 the earliest. She further re-iterated the Administration's commitment to remaining as the majority shareholder of MTRC in the coming 20 years.

Action

V Proposals on business practices of authorized institutions in relation to credit cards

(Administration's information note issued in early October 2000)

18. The Acting Chief Executive, Hong Kong Monetary Authority (CE/HKMA(Atg)) informed members that the Informal Working Group (IWG) on the Review of the Code of Banking Practice (the Code) had put forward a set of proposals aimed at improving the business practices of authorized institutions (AIs) in relation to credit cards for the consultation of the banking industry and the Consumer Council in early October 2000. In the light of the comments received, IWG would refine the proposals for implementation in due course.

19. Responding to Mr LI Wah-ming's comment that a number of problems revealed in AIs' business practices relating to credit cards had yet to be addressed, CE/HKMA(Atg) said that IWG would continue with the review on the Code to recommend other improvements for AIs in their operation of credit card business.

20. On Mr Albert HO's concern about the effectiveness of the non-statutory Code for the protection of the interests of credit card holders, CE/HKMA(Atg) advised that the Code was issued jointly by the Hong Kong Association of Banks and the Deposit-taking Companies Association and endorsed by HKMA. HKMA monitored AI's compliance with the Code as part of its regular supervision and took appropriate follow up actions against breaches, including demanding rectification by AIs, issuing warnings and assessing the properness of the management of AIs. While the consultation paper contained specific proposals, including limiting card holders' maximum liability for card loss at \$500, it was not possible to prescribe all business practices in the Code. Whether particular provisions in the credit card agreements were unconscionable would need to be determined by court in case of disputes between AIs and customers. HKMA was not vested with power to intervene, adjudicate, or mediate in these disputes. Nevertheless, HKMA recognized that as AIs had been expanding their business to include more customer-based financial products, there were increasing calls for review in HKMA's traditional role as the prudential regulator of banks to strengthen its power to better safeguard the interests of bank customers. To this end, the Administration would review relevant ordinances and identify necessary resources to see how best the issue could be pursued.

21. On the concern about interest rate ceilings for credit card lending, CE/HKMA(Atg) explained that AIs were exempted from the Money Lenders Ordinance (MLO) (Cap. 163) to allow them free scope to set interest rates under the Currency Board arrangement in Hong Kong. IWG recommended that if the annualized percentage rates (APR) of interest charged were higher than 48%, which was considered to be extortionate under MLO, AIs concerned

Action

had to justify why such rates were not unreasonable or unfair. In any case, APR should not exceed 60% except under exceptional monetary conditions.

22. As regards Mr CHAN Kam-lam's suggestion for AIs to provide card holders with more information on interest rates and other charges in bank statements, CE/HKMA(Atg) said that IWG already recommended AIs to disclose the prevailing interest rates and relevant fees for credit card lending. He further explained that due to differences in practices of AIs and repayment patterns of card holders, the calculation of APR for credit card lending was extremely complicated. The APR would depend on the assumptions used in the calculation. In order to facilitate comparison by card holders, IWG recommended AIs to adopt a standard method for the calculation of APRs. IWG was of the view that it would be appropriate to largely follow the guideline on "Credit Charges and APR" issued by the Office of Fair Trading in the United Kingdom (UK) for computation of APRs. The UK method of calculation was specified in the 1974 Consumer Credit Act and had been implemented for many years. The assumptions provided for in the UK guideline were largely consistent with the behaviour patterns of card holders in Hong Kong. IWG believed that with certain adaptations to cater for the local environment, the UK method would be suitable for Hong Kong.

VI Enhancing deposit protection in Hong Kong

(Legislative Council Brief ref. B9/2/2C VII (2000) dated 24 October 2000, LC Paper No. CB(1) 111/00-01)

23. Mr Eric LI declared interest as a non-executive director of Hang Seng Bank Limited.

24. CE/HKMA(Atg) said that the captioned consultation paper issued on 24 October 2000 was to invite views on the proposals of the consultancy study on enhancing deposit protection in Hong Kong (the Study), which was completed in July 2000. The Study concluded that the best protection for small depositors would be to establish an insurance based deposit protection scheme (DPS) in Hong Kong. CE/HKMA added that public consultation period would end on 17 January 2001. HKMA would consider all comments received carefully before deciding the way forward.

25. Mr James TIEN conveyed the Liberal Party's support for the introduction of a DPS in Hong Kong. Responding to enquiries raised by Mr TIEN and Mr Bernard CHAN about the institutional and funding arrangements for such scheme, CE/HKMA(Atg) said that the Consultant had recommended a publicly administered, privately funded deposit insurance scheme with the banking sector responsible for funding the insurance loss, the borrowing costs of any back-up finance, and the scheme's administration cost. It would be an "ex ante" scheme with the premia to be collected from banks

Action

upfront. It would be unnecessary for the scheme to hold sufficient liquidity to meet all conceivable funding requirements as there would be liquidity support by the Government through the Exchange Fund for meeting depositor payouts in excess of the scheme's resources. The scheme would not require an elaborate management structure. It could be administered by either a division of HKMA or a separate legal entity. In either case, the day-to-day administration of the scheme could be delegated to HKMA staff. On details about the premia to be paid by banks, CE/HKMA(Atg) said that based on the assumptions of the Consultant's analysis, an annual premium of 10 basis point (i.e. 0.1%) on the covered deposit of \$100,000 would be sufficient to cover annual losses in the majority of circumstances. However, this was only a preliminary indication. As regards the level of reserve to be maintained under the scheme, there would be potential for reducing or suspending premia once sufficient reserves had been accumulated. For members' reference, CE/HKMA(Atg) informed the Panel that the reserve in DPS in Canada was maintained at a level of \$400 million Canadian dollar (i.e. \$2 billion Hong Kong dollar).

26. While expressing support for the Consultant's proposal, Mr Eric LI cautioned about drawbacks of a DPS, such as the problem of moral hazard, distortion in competition between banks on deposits, and funding burden on banks.

27. In response, CE/HKMA(Atg) said that HKMA recognized that moral hazard was a potential problem in introducing a deposit insurance scheme and would consider measures to address the problem when designing the features of the scheme. On concern about distortion in competition, CE/HKMA(Atg) said that a deposit insurance scheme would help to level the playing field. While any deposit insurance schemes might give rise to depositors withdrawing their deposits from a bank and re-depositing them in various banks, the trend for smaller banks to merge together and to be acquired by bigger banks would continue in order to achieve greater cost-effectiveness and to compete effectively in the changing banking environment. Under the proposed deposit insurance scheme, the funding burden on banks would be relatively small given the low premia required from banks. Moreover, since a deposit insurance scheme would contribute to system stability, all banks in the system would be benefited.

VII Implementation of the Mandatory Provident Fund System

(LC Paper Nos. CB(1) 126/00-01(05), 139/00-01(01)(tabled at the meeting), and 177/00-01)

28. In view of the imminent implementation of the Mandatory Provident Fund (MPF) System on 1 December, 2000, Mr LEE Cheuk-yan expressed concern about the low enrolment rate of MPF schemes, in particular, Industry

Action

Schemes (ISs) set up for the construction and catering industries. Referring to complaints by casual employees in the two industries about their employers trying to reduce their MPF liabilities by joining Master Trust Schemes (MTSs) instead of ISs, Mr LEE opined that in order to better protect the interests of casual employees in the two industries, the MPFA should not allow employers to enrol these employees in MTSs.

29. On latest compliance rate of employers and self-employed persons (SEPs) on MPF schemes, Mr Alan WONG, Deputy Managing Director, Mandatory Provident Fund Schemes Authority (MPFA) advised that as at 2 November 2000, about 99,000 employers and 72,000 SEPs had enrolled in MPF schemes which represented some 40% and 26% of the total relevant population respectively. It was estimated that over one million employees had been enrolled representing about 52% of the total relevant population. Enrolment had been increasing by a weekly rate of 7%-8% recently. MPFA expected that the enrolment situation would improve considerably in the coming month.

30. As regards concern about compliance rate of ISs, Mr Ernest LEE, Executive Director (Member Protection), MPFA said that ISs were specially designed for industries with high labour mobility. So far, two ISs had been registered to facilitate relevant employers and employees in the construction and catering industries to participate in the MPF System. An IS had several advantages over a MTS because of its simplified procedures, low administration and record keeping requirements. However, the enrolment rate of ISs was poorer than expected. This might be partly due to the fact that some employers had been misled by certain intermediaries to enrol in a MTS and did not fully realize the convenience of ISs, and partly because of the structural problems in the construction industry. For instance, the presence of numerous trades and the multi-layer structure of the sub-contracting system in the construction industry had caused ambiguity in employer-employee relation which created difficulties for the implementation of ISs. MPFA would step up efforts in promoting ISs to the two industries. It had been working closely with relevant trade associations and unions on public education and publicity for ISs.

31. On concern about employers in the construction and catering industries trying to reduce their MPF liabilities, Mr Rafael HUI, Managing Director, MPFA stressed that employers' obligation for contributions was the same under both MTSs and ISs. Employers of these two industries were required to enrol their casual employees who were employed on a daily basis or for any period of more than or less than 60 days in either a MTS or an IS and to make contributions from the commencement date of MPF System on 1 December 2000 onwards. Employers who failed to enrol their employees, if convicted, would be liable to a fine of \$100,000 and imprisonment of six months. Those who delayed enrolment or contributions would be liable to pay

Action

contribution surcharges and financial penalties, plus all contributions in arrears backdated from the commencement date. However, MPFA considered it inappropriate to compulsorily require employers in the two industries to enrol their casual employees in ISs, as some employers who also employed regular employees might find it administratively more convenient to sign up all their employees in a single MTS. MPFA therefore expected the compliance rate of ISs to be low at the initial stage of MPF implementation. However, it was envisaged that more employers who had enrolled in MTSs would shift to ISs after they had appreciated the advantages associated with such schemes.

32. On Mr Bernard CHAN and Mr CHAN Kam-lam's enquiries about MPFA's enforcement action against non-complying employers and SEPs after the launch of MPF on 1 December 2000, Mr HUI advised that MPFA had set up a professional enforcement team of about 60 people to undertake enforcement duties including carrying out investigations on complaints, conducting inspections on employers, as well as initiating prosecution against non-compliant parties when necessary. MPFA was finalizing the details of an enforcement action plan for consultation with the MPF Schemes Advisory Committee and approval of the MPFA Management Board in due course. Mr HUI pointed out that as contribution payment of ISs could start as early as 1 December 2000, the MPFA would be able to take enforcement action against late enrolment in these schemes from this date. Enforcement action in respect of other schemes would begin after the 60-day permitted period. As MPF was a brand new system in Hong Kong, MPFA would step up its publicity efforts to enhance community awareness of the system and the penalties for non-compliance. The MPFA had been issuing letters to remind employers who had not yet signed up of the 1 December Launch Day and the penalties provisions in the law.

VIII Any other business

(LC Paper No. CB(1) 126/00-01(06))

33. Members endorsed the proposed terms of reference of the Panel to be submitted to the House Committee for approval by LegCo.

34. The meeting ended at 1:15 pm.

Legislative Council Secretariat

14 December 2000