

**立法會**  
**Legislative Council**

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**Legislative Council**  
**Panel on Financial Affairs**

**Minutes of special meeting held on**  
**Wednesday, 24 July 2002 at 10:45 am**  
**in the Chamber of the Legislative Council Building**

- Members present** : Hon Ambrose LAU Hon-chuen, GBS, JP (Chairman)  
Hon Henry WU King-cheong, BBS,JP (Deputy Chairman)  
Hon James TIEN Pei-chun, GBS, JP  
Hon Albert HO Chun-yan  
Hon Eric LI Ka-cheung, JP  
Hon NG Leung-sing, JP  
Hon Bernard CHAN, JP  
Hon CHAN Kam-lam, JP  
Hon SIN Chung-kai  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Emily LAU Wai-hing, JP  
Hon MA Fung-kwok, JP
- Non-Panel member attending** : Hon Fred LI Wah-ming, JP
- Members absent** : Hon LEE Cheuk-yan  
Dr Hon David LI Kwok-po, GBS, JP  
Hon James TO Kun-sun  
Dr Hon Philip WONG Yu-hong

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- Public officers attending** : For item I
- Mr Frederick MA  
Secretary for Financial Services and the Treasury
- Mr Alan LAI  
Permanent Secretary for  
Financial Services and the Treasury (Treasury)
- Mr Tony MILLER  
Permanent Secretary for  
Financial Services and the Treasury (Financial  
Services)
- For item II
- Miss Susie HO  
Deputy Secretary for  
Financial Services and the Treasury (Financial Services)
- Mr Edward LAU  
Acting Official Receiver
- Miss Nancy LAW  
Administrator (Official Receiver's Office)
- Mr Aaron CHENG  
Acting Assistant Official Receiver (Financial Services)
- Attendance by invitation** : For item II
- Mr Hugh DICKSON  
Consultant
- Mr John TOOHEY  
Partner, PricewaterhouseCoopers
- Mr Victor YONG  
Manager, PricewaterhouseCoopers
- Clerk in attendance** : Ms Anita SIT  
Chief Assistant Secretary (1)6

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**Staff in attendance** : Ms Pauline NG  
Assistant Secretary General 1

Mr WONG Tin-yau, Anthony  
Senior Assistant Secretary (1)8

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**I Meeting with the new Secretary for Financial Services and the Treasury**

The Chairman welcomed the Secretary for Financial Services and the Treasury (SFST) and representatives of the Administration to the meeting, and invited SFST to introduce the work priorities under his policy portfolio.

2. SFST welcomed the opportunity to meet with Members and listen to their views on policies in respect of financial services and public finances. In regard to financial services, SFST said that the objective was to maintain and enhance Hong Kong's status as a major international financial centre through the provision of an appropriate economic and legal environment for an open, fair and efficient market. The work priorities in this respect included:

- (a) to strengthen the protection for investors in the financial markets and for bank depositors and hence measures to reduce the default risk of financial institutions;
- (b) to improve the present listing structure and procedures so as to ensure effective checks and balances in respect of the Listing Committee of the Hong Kong Exchanges and Clearing Limited (HKEx), and to reduce the cost for initial listing; and
- (c) to strengthen the corporate governance regime of Hong Kong through amendments to the Listing Rules and the relevant legislation.

3. On public finances, SFST said that the Financial Secretary (FS) in his 2002 Budget Speech set three targets for public finances to be attained by 2006-07 as follows -

- (a) restore balance in the Consolidated Account;
- (b) attain a balanced Operating Account; and
- (c) reduce public expenditure to 20% of GDP or below.

To assist FS in drawing up the 2003-04 Budget, the Financial Services and the Treasury Bureau (FSTB) would, in the coming months, discuss with the bureau

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secretaries the allocation of resources for different policy areas for the year. FSTB would also compile information on public finances to facilitate FS's consultation with LegCo Members on the Budget to be undertaken in late 2002.

Discussion with members

*Reviving the economy*

4. In response to Mr Henry WU's question about the measures under his policy portfolio to revive the economy, SFST said that his priority would be to create a market environment that was conducive to the listing of high quality companies in Hong Kong, and to increase the depth and breadth of the financial markets and facilitate the development of new products and services. He further said that while the robustness of Hong Kong's economy currently relied heavily on the US economy, he would place emphasis on positioning Hong Kong as the region's pre-eminent financial center.

5. Mr Eric LI expressed support for the overall direction SFST had planned to take. He considered that tapping the opportunities of the development in the Mainland and reducing cost of conducting business in Hong Kong were crucial for reviving the economy. He sought further details in regard to the concrete measures that would support the direction and objectives SFST had set out.

6. SFST replied that he would put substantial efforts on attracting capital flows and investments into Hong Kong. He would do so by strengthening Hong Kong's corporate governance regime. With its proximity to the Mainland, Hong Kong had an edge in attracting corporations of the Mainland and overseas countries to establish their base office in Hong Kong to support their business development in the Mainland. Besides, it was important to position Hong Kong as the best place to raise funds for Mainland enterprises. He would also further develop the bond market in Hong Kong to stimulate investor interest. As for cutting business cost, one of the initiatives was to streamline the listing procedure, such that the cost to companies applying for listing in Hong Kong would be reduced. SFST pledged that when more concrete plans were in place, his bureau would present them to Members and sought their views and further suggestions.

7. Mr Bernard CHAN and Mr Henry WU asked if the Administration had plans to help Hong Kong's banking and insurance industries to garner new opportunities in the Mainland. SFST said that he was aware of the difficulties and challenges faced by the banking and insurance industries due to the opening up of the Mainland market. He looked forward to the opportunity to visit the Mainland himself and liaise with relevant authorities to see how Hong Kong companies could be better positioned to capitalize on the new opportunities in the Mainland.

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*Measures to improve the listing structure and procedures*

8. In response to Mr Henry WU's question on SFST's plans to reform the listing structure and procedures, SFST said that after consulting the Securities and Futures Commission (SFC) and HKEx, he was of the view that the Listing Committee should continue to be placed under HKEx constituted by independent members. Additionally, the Listing Committees for the Main Board and the GEM Board would be consolidated into a single committee with broadened participation of market users. To streamline the listing procedures, the senior executives of HKEx would vet applications upfront. HKEx would appoint experienced overseas experts to administer the listing and adjudication process. It was hoped that with these measures, there would be greater attraction for foreign companies to get listed in Hong Kong, hence increasing capital flows into Hong Kong, and reinforcing Hong Kong's status as an international financial centre. He, together with the Chairman of SFC and the Chairman and Chief Executive of HKEx, would be announcing the details of these measures to the media at a press conference following this meeting.

9. Mr SIN Chung-Kai expressed concern about the propriety of placing the Listing Committee under HKEx. He highlighted that HKEx was itself a listed company, and it might be more appropriate and effective that SFC should instead regulate listed companies. SFST reiterated that SFC and HKEx had been duly consulted on this issue. It was felt that HKEx, as a front-line entity that had direct contacts with market users and practitioners, would be in a more suitable position than SFC for front-line monitoring of listed companies. In regard to the transparency of appointing members of the Listing Committee, SFST said that all nominations of Listing Committee members would be vetted and approved by a Nominations Committee formed jointly by SFC and HKEx. Since the SFC still had a monitoring role over the Listing Committee, this provided adequate checks and balances that would ensure a high standard of corporate governance in Hong Kong. SFST assured members that the structure of the Listing Committee would be reviewed in two years' time, and if it was found that the Listing Committee should come under the jurisdiction of SFC, appropriate measures would be taken accordingly.

10. As to whether SFST might recruit his own contacts and acquaintances to serve as members on the Listing Committee, SFST clarified that he was not eligible to nominate or appoint members to the Listing Committee, as the membership would be decided entirely by the Nominations Committee formed jointly by HKEx and SFC.

*Measures to strengthen the corporate governance regime*

11. Mr Albert HO and Ms Emily LAU expressed concern about the inadequate protection for small investors under the current corporate governance regime. They asked what measures would be put in place in this regard to

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improve the situation, and what concrete measures had been planned to strengthen the corporate governance regime in Hong Kong.

12. SFST said that valuable lessons could be learned from the recent scandals of large US corporations. In a recent report published by Standard & Poor's, the corporate governance regime in Hong Kong was said to be of a high standard in the global context. The regulatory regime for the accounting profession in Hong Kong was regarded as stringent. For example, the Hong Kong accounting standards did not permit the use of special purpose entities. Notwithstanding the favourable assessment made by Standard & Poor's, the Administration and the relevant regulatory authorities were making concerted efforts to strengthen Hong Kong's corporate governance regime. HKEx had published a consultation paper which contained various proposals to amend the listing rules to further strengthen corporate governance in Hong Kong. Moreover, a system of "dual filing" would be put in place, whereby companies would be required to file listing applications and public disclosure of information on their business to both HKEx and SFC. Coupled with other legislative measures and the regulatory efforts of SFC and HKEx, the entire regulatory regime would be strengthened and would afford greater protection for the interest of minority shareholders. At Ms LAU's request, SFST agreed to provide members with a copy of the report by Standard & Poor's.

*(Post-meeting note: The report titled "Corporate Governance in Hong Kong" published by Standard & Poor's was circulated to members vide LC Paper No. CB(1)2513/01-02 dated 13 September 2002.)*

*Issues relating to the securities brokerage industry*

13. Mr Henry WU sought SFST's view on the minimum brokerage commission rule. SFST said that he personally considered that the minimum brokerage commission rule should be abolished. He did not share the view of some members of the industry that small and medium sized brokerage companies would be wiped out by large corporations as a result. He observed that many on-line trading brokers had already been charging commission lower than the minimum rate under the existing minimum brokerage commission rule. This had not had any significant impact on the business of those smaller brokerage companies. He believed that many investors still preferred to seek the professional advice of traditional brokerage agents. SFST however took note of Mr WU's suggestion for adopting several tiers of commission rate according to transaction volume, instead of a complete abolition of the minimum commission rule.

14. Mr CHAN Kam-lam said that the operating environment for many small brokerage companies was somewhat stifling as they were required to comply with a number of stringent rules and regulations laid down by SFC. While he appreciated that for the protection of investors, stringent monitoring of brokerage agents was essential, he asked if the Administration could exercise

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some measure of flexibility to provide leeway for small brokerage companies in conducting their business. SFST said that he would keep in view Mr CHAN's concern and would see to it that a balance was struck in this regard.

*Arrangement and control of public finances*

15. Mr Albert HO referred to FS's decision to waive the Government's claim for \$798 million worth of dividends otherwise payable by the Mass Transit Railway Corporation (MTRC) to provide funding support for the latter to implement the Penny's Bay Rail Link project. He said that in the light of this incident, Members had raised concern about the scope and extent of powers of FS in relation to the management of dividends and other forms of income generated from Government's investment. Members were also concerned whether proper mechanisms were in place to ensure that the exercise of such powers was properly accounted for by the Administration to the Legislative Council. He sought SFST's views on the propriety of FS' decision not to present a proposal for the waiver of the dividends to the Finance Committee for discussion and review. Mr HO added that according to the advice of the Legal Adviser of LegCo, the Administration's approach in interpreting section 38(1)(a) of the Public Finance Ordinance (Cap. 2) in this case was stretching statutory interpretation to its very limits. Moreover, Members would expect a more co-operative attitude from the Administration.

16. SFST affirmed the Administration's view that FS was empowered to abandon, remit or waive any claims by or on behalf of the Government in consideration of public interest under section 38(1)(a) of the Public Finance Ordinance. FS' decision to exercise his power to waive the share dividends was legitimate and was strictly made in consideration of public interest. He opined that under the existing legislative framework, the Finance Committee had adequate powers to monitor public expenditure. He however assured members that the Administration held an open mind as to the necessity to review the legislative framework in respect of the management of public finance to meet the current needs of Hong Kong.

17. In response to Mr NG Leung-sing's enquiry on the planing process for the 2003-04 Budget, SFST replied that he was aware that a letter (dated 22 July 2002) had been sent to FS from the Secretary General of the LegCo Secretariat conveying Members' concerns on this subject. He pledged that the Administration would provide a timetable for the consultation and presentation of the 2003-04 Budget to Members by end August 2002. SFST assured members that consultation sessions with LegCo Members would be held to seek Members' views on the Budget. In response to Mr NG's further question on the timing of the consultation, SFST said that this would probably take place around October/November 2002.

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*Avoidance of conflict of interests*

18. Ms Emily LAU referred to the brief synopsis of the personal profile of SFST extracted from the Administration's press release issued on 24 June 2002 (tabled) and noted that SFST had worked for many years in the commercial field and maintained close relationships with a number of high-profile entrepreneurs and tycoons of Hong Kong. In this connection, Ms LAU asked how SFST planned to convince LegCo members and the public that he would impartially discharge his duties in the overall interest of Hong Kong while maintaining his network of personal contacts. She also said that disclosure of the declaration of interests of the principal officials was essential to assure the public that there was no conflict of interests when they carried out their public duties. She was disappointed that the relevant details of SFST could not be provided at the current meeting to better facilitate discussion, although she understood that such details together with those of other principal officials would be published by the Administration in early August 2002.

19. SFST responded that while he came from the commercial sector, he had been an employee rather than an entrepreneur who had business interests of his own. Having worked in the financial industry for some years, it was natural that he had established a wide network of contacts including persons at senior levels in the commercial sector. This however did not imply that there would be conflict of interests as a result of these relationships. In fact, he intended to maintain not only these relationships but also a wide network of contacts with the community such that he would be able to hear different views that would help him shape policies to better serve the people of Hong Kong. He also took the opportunity to clarify that his contact with Mr Richard LI of Pacific Century Cyber Works (PCCW) was strictly on business in regard to handing over his affairs pertinent to his departure from PCCW to take up the post of SFST.

20. SFST assured members that he would make the best endeavors to avoid conflict of interests in carrying out his duties. He had declared his personal interests to the Administration, and these details would be released to the public in due course. If there were problems in this regard, he would be pleased to explain accordingly.

21. Ms Emily LAU questioned why the Administration had to take a month after SFST officially came on board to release his declaration of interests. SFST replied that not until the announcement of his appointment as SFST, he had not had the opportunity to attend to his personal financial affairs, and therefore the necessary arrangements could not have been completed well before he took up the post of SFST.

22. In response to Ms Emily LAU's query as to whether he had been given special privilege to renounce his Canadian citizenship in an expedited manner to enable his appointment as a principal official, SFST said that he could not say for



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sure if the process had been expedited, as he had no similar prior experience to compare with.

23. The Chairman thanked the Administration for attending the meeting.

**II Consultancy Study on the Review of the Role of the Official Receiver's Office**

LC Paper No. CB(1)2152/01-02(06) - Information paper with Report on the Consultancy Study on the Review of the Role of the Official Receiver's Office attached

24. At the Chairman's invitation to speak, Deputy Secretary for Financial Services and the Treasury (Financial Services) (DS/FST) briefed members on the background to and the major recommendations of the Consultancy Study on the Review of the Role of the Official Receiver's Office (the Consultancy Study). The Consultancy Study was tasked to review the existing role of the Official Receiver's Office (ORO) in the provision of insolvency and liquidation administration services, and to identify what future role it should play and what changes were required for its current mode of operation.

25. Mr Hugh DICKSON, Consultant, gave a powerpoint presentation on the review of the role of the ORO. (The presentation notes were tabled for members' reference and issued after the meeting vide LC Paper No. CB(1)2349/01-02(02) dated 25 July 2002.)

Discussion with members

*Administration of fees incurred during the liquidation process*

26. Mr Eric LI said that the consultancy review of the ORO had been long awaited, but was still timely in the light of rising liquidation and bankruptcy cases due to the current unfavourable economic conditions. Mr LI observed that the process for release of liquidation fees for private sector insolvency practitioners (PIPs) was lengthy and cumbersome. There was inadequate co-ordination between judicial courts and ORO in regard to fee administration in many cases, as a result of which overseas PIPs in particular were reluctant to take on cases involving companies in Hong Kong. He was concerned that against a background of increasing liquidation cases, there were no guiding principles or service pledge for taxing masters to speed up the release of liquidation fees for PIPs. He asked the Administration what plans there were for improving the situation.

27. Mr Albert HO said that while he appreciated that process for release of liquidation fees was lengthy as described by Mr LI, he was sympathetic that

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approval of liquidation fees was not within the area of expertise of judicial courts. He therefore was of the view that the ORO should be endowed greater power to administer liquidation fees.

28. Mr Hugh DICKSON said that experience in overseas jurisdictions had shown that there were few bodies similar to ORO which was involved in administering liquidation fees. Usually the creditors would approve fees, and if there were difficulties, then the courts would be requested to decide. In the United Kingdom, there was a set of guiding principles for approving fees for insolvency practitioners. The principles were incorporated into a code of practice followed by insolvency practitioners.

29. DS/FST said that she understood from liquidators that the process for release of liquidation fees was somewhat lengthy, as such required the approval from judicial courts. The Administration had not taken a position on the responsibility of ORO for fee supervision for liquidation cases, before assessing the public's views on the Consultation Paper. In regard to putting in place a service pledge for release of liquidation fees, DS/FST said that this was beyond the purview of the Administration. However she would convey Mr LI's concerns to the Judiciary Administrator to see how the situation could be improved.

*Issues related to outsourcing and staffing*

30. Mr Henry WU noted that while at present the number of insolvency cases was on the rise, as the economy improved, the number of liquidation cases would accordingly decrease in the future. He asked how the staffing resources for the ORO could be adjusted according to changes in caseloads.

31. Mr Hugh DICKSON said that whilst personal bankruptcies had risen substantially in Hong Kong in recent years, this was in fact a global trend. As to how the staffing resources of ORO should be adjusted according to the fluctuation in caseloads, Mr DICKSON said that contracting out insolvency cases to insolvency practitioners in the private sector would enable ORO to respond flexibly in this regard. Outsourcing cases to the private sector when ORO's resources were fully used would prevent building up a backlog of cases. Should the number of such cases decrease, ORO could simply stop outsourcing and deal with insolvency cases itself. It was therefore recommended in the Consultancy Study that legislative changes be introduced to allow ORO to outsource bankruptcy cases, while continuing the existing outsourcing schemes in respect of liquidation cases.

32. In response to Mr Eric LI's question on the average cost per liquidation case, Acting Assistant Official Receiver (Financial Services) replied that there were substantial savings in outsourcing some of the liquidation cases. According to the latest tendering exercise on 25 February 2002, the average cost per case was \$13,384, which was substantially lower than the average cost per

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case of \$16,606 for the previous exercise on 27 April 2001. If ORO were to handle the liquidation cases, the average cost would be some \$36,000 per case. Mr LI said that on average the cost per liquidation case that was contracted out was lower than initially estimated and that PIPs who had successfully tendered for the cases were required to complete the liquidation process for each case within one year. Qualified PIPs which included qualified accountants, lawyers etc. would therefore face tougher challenges and take on more pressure ahead.

33. Mr Albert HO said that while he supported the principle of outsourcing as a means of dealing with changing caseloads for ORO, he was concerned that some PIPs were not “user friendly” to creditors and concerned members of the public. Very often, these practitioners saw themselves as being only accountable to the courts. In this regard ORO had an important role to play in monitoring the performance of PIPs, and should be accordingly empowered to do so. Acting Official Receiver (AOR) said that ORO had been taking an active role as far as possible in mediating between creditors, members of the public and PIPs. ORO would continue to do so. He took note of Mr Albert HO’s suggestion that in outsourcing liquidation cases, appointed liquidators should commit to some form of service pledge and undertaking to ensure that they would provide quality service to creditors and members of the public.

*Liquidation cases requiring further investigation*

34. Mr Albert HO said that ORO should step up enforcement and ensure that parties filing for liquidation or bankruptcy were genuinely eligible to do so, and prevented from taking advantage of legal loopholes or the system.

35. DS/FST said that the Administration would not hesitate to indict parties falsifying information during the liquidation/bankruptcy process. In regard to parties suspected of falsifying information to ORO or liquidators, ORO would conduct the required investigations, though it might not successfully indict all cases due to the lack of evidence in some cases.

36. Mr Albert HO noted that the caseloads of liquidation and bankruptcy cases had increased significantly over the last five years. He was concerned whether ORO had adequate resources to discharge its enforcement responsibilities, and in this regard asked if there were statistics on the number of cases investigated by ORO, the success rate of recovering money for creditors subsequent to investigations etc.

37. AOR replied that relevant legislation provided that the appointed liquidator had the responsibility to investigate the company being liquidated should it be reported by creditors that the company concerned might have falsified information or was suspected of having undeclared assets. The appointed liquidator should provide a satisfactory explanation to relevant creditors subsequent to investigation. In regard to statistics requested by Mr HO, AOR said that while there were statistics on the number of cases

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successfully indicted, statistics on other areas such as cases lacking in evidence were not readily available.

*The way forward*

38. Mr Eric LI noted that there were a number of recommendations on the changes to ORO made in the Consultancy Study, some of which were complex and required legislative amendments. He considered that the most pressing changes were those related to simplifying the liquidation process. He asked the Administration what the timetable was in this regard. AOR replied that the actual timetable for implementing the changes would be developed following the outcome of the public consultation.

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39. In response to Ms Emily LAU's enquiry on the way forward following the consultation, DS/FST replied that the consultation period would run up to August 2002. The Administration expected that by the end of year 2002, it would be ready to present its recommendations on the future role of ORO to the Panel.

40. The Chairman thanked the Administration for attending the meeting.

**III Any other business**

41. There being no other business, the meeting ended at 1:00 pm.

Legislative Council Secretariat  
26 November 2002