

立法會

Legislative Council

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Report of the Panel on Financial Affairs for submission to the Legislative Council

Purpose

This report gives an account of the work of the Panel on Financial Affairs during the Legislative Council session 2001-02. It will be tabled at the meeting of the Council on 3 July 2002 in accordance with Rule 77(14) of the Rules of Procedure of the Council.

The Panel

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000 for the purpose of monitoring and examining Government policies and issues of public concern relating to financial and finance matters. The terms of reference of the Panel are at **Appendix I**.

3. The Panel comprises 16 members, with Hon Ambrose LAU Hon-chuen and Hon Henry WU King-cheong elected as Chairman and Deputy Chairman respectively. The membership list of the Panel is at **Appendix II**.

Major work

Hong Kong's economic development

4. During the 2001-02 session, the Panel continued to provide a forum for LegCo Members to discuss with the Financial Secretary matters relating to the economic development in Hong Kong. Two meetings with the Financial Secretary were held on 3 December 2001 and 13 June 2002 respectively. Pursuant to the decision of the House Committee, the briefing on 3 December 2001 also served as a forum for the Financial Secretary to brief Members on his visit to Beijing in late October 2001.

5. At the meetings with the Financial Secretary, Members took note of Hong Kong's latest economic situation and the Government's views on the short-term and long-term outlook for the economy. At his recent briefing on 13 June 2002, the Financial Secretary highlighted that Hong Kong was still undergoing an economic transition, but there were initial signs of improvement in some major areas such as exports of goods and services and strong growth in tourism. He stressed that Hong Kong's economic development should be geared towards high-value-added economic activities. Having regard to Hong Kong's competitive advantages, Hong Kong should focus on the development of financial services, logistics, tourism and producer and professional services. The Financial Secretary also considered it paramount for Hong Kong to establish closer economic co-operation with the Pearl River Delta region, nurture and attract talent, and maintain a small but efficient government.

6. Recognizing the importance to capitalize the business opportunities arising from the opening up of the Mainland economy, Members urged the Financial Secretary to accord priority to the discussions with the Mainland authorities on establishing closer economic ties between the Mainland and the Hong Kong Special Administrative Region, whilst taking care of the need to abide by the rules and regulations of the World Trade Organization (WTO). The Financial Secretary assured Members that to enable Hong Kong companies to enjoy a head start in developing their business in the Mainland, the Administration was proactively exploring ways to enable early access of local business and professional services into the Mainland within the ambit of the WTO. The Administration would be working closely with the Central Government as well as the Mainland authorities of those provinces and cities which had substantial economic ties with Hong Kong to facilitate better collaboration on economic matters between the two sides.

7. Some Members felt that the up-front task of the Financial Secretary was to ease unemployment and restore the confidence of citizens in the economy. They urged the Administration to be cautious about the economic and social impacts of scaling down government spending. Members also sought clarification on the plans for development of the local community economy. In response to these concerns, the Financial Secretary stressed that the Government's role in the economy should be a market enabler. The Government should refrain from competing for resources with the business sector, which had greater capability to foster creativity and provide economic impetus. He also clarified that promoting the development of the local economy was one of the strategies he had advocated to stimulate domestic consumption and to create employment opportunities for the lower-skilled segment of the local workforce. He would continue to lead the inter-bureau working group for the work on development of the local economy.

Management of public finances

Level of fiscal reserves

8. The management of public finance, in particular the level of the fiscal reserves to be maintained, was a major area of concern of Panel members. To follow up the discussions on the subject in the 2000-01 session and to assist members to deliberate the subject in greater depth, the Panel commissioned a research study on the management and use of fiscal reserves in overseas jurisdictions. The research report was presented to the Panel in March 2002. Members noted that while some overseas jurisdictions had laid down statutes or guidelines on the management and use of fiscal reserves, Hong Kong was the only jurisdiction which had laid down guidelines for determining the target level of fiscal reserves among the jurisdictions studied. Members considered that as the guidelines were laid down by the former Financial Secretary in 1998 when the local economic conditions and the Government's fiscal position were very different from the present-day circumstances, it was necessary to critically review the applicability of those guidelines to present-day circumstances and in this connection, the purposes of the fiscal reserves.

9. The Panel noted that the incumbent Financial Secretary announced in his 2002-03 Budget Speech a revised target level of fiscal reserves, i.e. a level equivalent to around 12 months of government expenditure to meet operating and contingency requirements. The revised guideline dispensed with the previous requirement to also link the level of fiscal reserves to money supply. In response to the Panel's request for clarification, the Administration advised that in view of the technical measures taken by the Hong Kong Monetary Authority (HKMA) to strengthen Hong Kong's currency board system and resilience against speculative attacks, and the substantial increase in the foreign currency assets of the Exchange Fund since the Asian financial crisis, the Administration no longer believed that the level of fiscal reserves should be linked to, amongst other things, a fixed percentage of the Hong Kong dollar Money Supply (M1). However, the Administration considered it crucial for the fiscal reserves to continue to be placed with the Exchange Fund to ensure that the Exchange Fund would have abundant resources to defend the stability of Hong Kong's monetary and financial systems.

Tax regime

10. In view of the successive operating deficits in the past few years, the Government had established the Task Force on Review of Public Finances and the Advisory Committee on New Broad-based Taxes to examine whether Hong Kong was facing a structural fiscal problem, and the types of new broad-based taxes suitable for Hong Kong respectively. The Panel was briefed on the findings and recommendations of the Task Force in late February 2002 and those of the Advisory Committee in early March 2002. The Panel noted that the Task Force had identified several changes in the economy and in the demographic characteristics of Hong Kong which had affected, and would continue to affect,

government revenue and expenditure in a fundamental way. The Panel noted with caution the projections made by the Task Force regarding the state of government finances up to 2021-22. While members recognized that the Government was bound to increase revenue and/or reduce expenditure in the coming few years if there was no significant improvement in the economic situation, they pointed out that many of the assumptions underlying the projections of the Task Force could easily become invalid over time. The Secretary for the Treasury acknowledged that the projections spanning 20 years were necessarily constrained, but stressed that the projections made under different economic growth scenarios pointed to the same broad direction, i.e. there would continue to be fiscal deficits if the current revenue and expenditure policies were to continue.

11. The Panel noted the recommendation of the Advisory Committee on New Broad-based Taxes that a Goods and Services Tax (GST) be adopted over the longer term to raise additional revenue to help solve Hong Kong's structural fiscal problem. As it took time to implement a GST, the Advisory Committee had also recommended an increase in rates on tenements, a reduction in personal allowances under salaries tax and the introduction of a land and sea departure tax to help bridge the gap pending the implementation of GST. Members highlighted that proposals to introduce new taxes should give careful consideration to the peculiar characteristics of Hong Kong, including the structure of the existing tax regime, the distribution of wealth and the extent of income disparity among the population. Members also expressed concern about the financial impact of GST on the lower-income households and suggested that the measures practiced in overseas jurisdictions to alleviate the impact of general consumption tax on the lower-income households be examined. In this regard, the Panel requested the Research and Library Services Division of the Legislative Council Secretariat to collect relevant information for the Panel's further consideration of the subject. Members generally considered that the issue of new taxes posed far-reaching implications for the whole community and urged the Administration to conduct wide public consultation before seeking to implement any new taxes.

Hong Kong Monetary Authority

12. During the session, the Panel continued to receive briefings by the Chief Executive of HKMA on three occasions on the work of HKMA in relation to its objectives of maintaining the stability of the Hong Kong dollar through sound management of the Exchange Fund, ensuring the safety and stability of the banking system, and promoting the efficiency, integrity and development of the financial system.

13. The Panel followed up the issues arising from the former Financial Secretary's decision to use \$3.699 billion from the Exchange Fund to purchase permanent office accommodation for HKMA. On the legality of using the Exchange Fund for the purchase, members noted that the Administration had subsequently switched from relying on section 6(a) to section 6(b) of the

Exchange Fund Ordinance (EFO) (Cap.66) to substantiate the legality of the purchase after having sought the advice of the Department of Justice at the Panel's request. Yet, the purported delegation of power from the Chief Executive to the Financial Secretary to approve the purchase under section 6(b) of EFO was queried by the Legal Adviser of the Legislative Council Secretariat. In response, the Financial Secretary sought further advice from the Department of Justice and thereafter sought and received the approval for the purchase from the Chief Executive under section 6(b) of EFO. Members expressed grave dissatisfaction with the confusing manner in which the Administration had handled the legality issue of the purchase.

14. The Panel also noted the advice of the Legal Adviser of the Legislative Council Secretariat that section 6(b) of EFO was a clear delegation of authority to the Chief Executive to approve public expenditure which was incidental and necessary for the due performance of duties laid upon the Financial Secretary and the Exchange Fund Advisory Committee. In accordance with Article 64 of the Basic Law, the Chief Executive would be accountable to the Legislature for his decision to approve the purchase and the decision was amenable to judicial review. Having regard to the advice, the Panel sought further information related to the office purchase from the Administration, including the justification for the Chief Executive's decision to approve the purchase.

15. In reply, the Administration advised, among others, that the Chief Executive, having considered the specific accommodation need of HKMA and the suitability of the proposed property to meet these needs, took the view that the purchase of the premises was incidental expenditure which was necessary for the due performance of the duties laid upon the Financial Secretary (which included those of HKMA) in connection with the operation of the Exchange Fund under section 6(b) of the EFO. The Administration also advised that the expenditure for the fitting out of the permanent accommodation was chargeable to the Exchange Fund.

16. The Panel took note of the Administration's advice as well as the Legal Adviser's corresponding comments that the Administration's reply had addressed the issue of justification for the Chief Executive's approval for the purchase by referring to the Chief Executive's considerations in general terms, which were "specific accommodation needs of HKMA" and "the suitability of the proposed property to meet these needs". No other details had been provided. As regards the expenditure for fitting out the permanent office, the Panel noted the Legal Adviser's advice that if Members were satisfied that the expenditure for the purchase of the office accommodation for HKMA might be justified as "incidental" and "necessary" within the meaning of section 6(b) of the EFO, it seemed to follow that expenses for fitting out could also be so justified. However, it would still be lawful for the Administration to seek approval of the Legislative Council or Finance Committee for the expenditure to be charged to the General Revenue.

17. The purchase of permanent office for HKMA also gave rise to concerns about the accountability and governance of HKMA. Noting that the former Financial Secretary had announced the plan to review the powers and management structure of HKMA in March 2001, the Panel wrote to the incumbent Financial Secretary to convey members' concern about the lack of progress of the review and to draw FS's attention to the need to take up the matter.

18. The Panel decided to examine the governance of HKMA with reference to the governance of other government departments and comparable regulatory authorities of overseas jurisdictions. The Panel will also examine the effect of the Accountability System of Principal Officials on the political neutrality and accountability of HKMA. The Research and Library Services Division of the Legislative Council Secretariat has been requested to conduct a research study in this regard.

The Banking sector

Residential mortgage loans in negative equity

19. In view of the severe financial hardship experienced by many homeowners whose mortgaged properties had become negative equity, the Panel discussed with the Administration and the banking industry the extent of the negative equity problem and the possible measures that could be taken to assist these homeowners. The Panel noted the position of the Hong Kong Association of Banks that where possible, banks were willing to assist homeowners with negative equity through the provision of loan refinancing packages at a lower interest rate, extending repayment period and other loan restructuring arrangements. However, in pursuing these arrangements, banks must be very prudent so as not to adversely affect depositors' interest and banks' own credit ratings. Members, on the other hand, highlighted the problems encountered by some negative equity homeowners when seeking to restructure their mortgage loans and to lower the interest rate on their mortgages. Members urged HKMA and the banking industry to work together with other relevant parties to explore feasible measures to assist these homeowners.

20. The Panel kept monitoring the negative equity situation and the progress of the work in this regard by raising the subject with the Chief Executive of HKMA at the latter's briefings for the Panel on the work of HKMA.

Consumer protection in the banking sector

21. To follow up the issues raised by LegCo Members relating to protection for banking consumers on various forums in the past, the Panel held a special meeting in February 2002 to examine the subject with the associations of the banking industry and the Consumer Council. The Panel reviewed the statutory and non-statutory mechanisms for prudential supervision and conduct regulation of the banking industry and the extent to which these mechanisms could afford

protection for banking consumers. In the course of the deliberation, the Panel made reference to the relevant regulatory framework and practices in the United States, the United Kingdom and Australia. Having regard to overseas experience and local circumstances, the Panel considered that certain major issues should be examined in greater depth. These included the role and enforcement powers of HKMA on consumer protection matters, the effectiveness of the existing complaint handling mechanism, and the enforcement mechanism for the Code of Banking Practices.

22. The second round of discussion was held in June 2002, focusing on issues related to complaints made by banking consumers. In the light of the increase in the number of banking consumer complaints, Members considered it necessary to monitor the situation and requested HKMA to discuss with relevant parties an appropriate mechanism for the reporting of statistics on banking consumer complaints. Members took note of the measures taken by the Administration and the banking industry to enhance consumer protection and examined different options of enhancing the existing arrangements for handling consumer complaints. The Panel decided to revisit the above and related issues with all relevant parties in about six months' time.

Proposal on sharing of positive consumer credit data

23. Against a rising trend of delinquent consumer debts and personal bankruptcies, the banking industry proposed to extend the scope of consumer credit data, to include both positive and negative credit data, that could be shared among credit providers. Under the industry's proposal, the scope of positive data sharing would cover a borrower's credit exposure and repayment history in respect of all consumer credit products (i.e. credit cards, other unsecured personal loans and secured personal loans). The proposal was supported by HKMA.

24. The Panel noted the justifications for the proposal as propounded by the Administration and the banking industry. It was argued that positive data sharing would help improve the risk management ability of banks and reduce their bad debts. This in turn would be conducive to the stability of the banking system and consumers would likely benefit from the reduced cost of credit in a competitive environment. It was also highlighted that the industry's proposal was in line with the scope of data sharing in other well established financial centres, and the framework of protection of consumer credit data in Hong Kong was comparable to that in other jurisdictions which permitted positive data sharing.

25. On the other hand, the Panel noted the concerns raised by the Consumer Council regarding the implications of the proposal on personal data privacy and the need to review the marketing practices of credit providers, which to some extent had contributed to the problem of over-indebtedness of some consumers. The Panel also noted that the Privacy Commissioner for Personal Data had not taken a position on the proposal of the banking industry, but the Privacy Commissioner held the view that extending the scope of consumer data sharing should be adequately justified by the benefits brought about to the whole

community by so doing and there should be additional safeguards against unauthorised disclosure or misuse of personal information.

26. The Privacy Commissioner indicated that his office would conduct public consultation on any proposed changes to the Code of Practice on Consumer Credit Data, should it be considered that a larger scope of consumer credit data sharing was justified. The Panel has decided to revisit the issue in due course.

Corporate governance

27. The collapse of Enron, a corporation based in the United States, gave rise to concerns in the global community over corporate governance issues such as the independence of auditors, the quality of corporate reporting and disclosure of information and the accountability of the audit committees of corporations. As good corporate governance was a key factor in building and sustaining any successful financial market, the Panel held a special meeting to review the local corporate governance regime and the initiatives that had been taken or being taken by the relevant regulatory and professional bodies to strengthen corporate governance in Hong Kong.

28. The Panel noted that improving corporate governance was a continuing exercise, the success of which relied on the concerted efforts of the Government, the industry regulators, market operators, professionals as well as stakeholders, i.e. shareholders, company directors and senior management of corporations. Members thus called upon the Administration to work in collaboration with the relevant regulatory and professional bodies to continue their efforts in fortifying the local corporate governance regime to keep pace with major international financial centres and to draw upon the experience of other financial centres to improve Hong Kong's corporate governance regime.

Other issues

29. Other issues which were considered by the Panel during the session were the monitoring of the financial position of insurance companies and the compensation arrangements for insurance policyholders, and the development of the retail debt market in Hong Kong. The Panel also invited the Administration to brief Members on the results of the 2001 Population Census and the Hong Kong Population Projections for the period from 2002 to 2031.

30. The Panel was also consulted on a number of legislative proposals relating to: the minimum and maximum levels of relevant income for contributions to the Mandatory Provident Fund Schemes and the operational aspects of the Schemes; the reform of the registration regime for overseas companies; the provision of a legal framework for the submission of tax returns by electronic means and by telephone with the use of a password; and the Financial Resources Rules, which are subsidiary legislation under the Securities and Futures Commission Ordinance (Cap. 24). Apart from these legislative proposals initiated by the Administration, the Panel also reviewed the policy aspects of three

Private Member's Bills on bank mergers before those Bills were formally introduced to the Legislative Council.

31. The Panel also gave views on the 2002-03 Budget of the Securities and Futures Commission, the funding proposal to establish a \$10 billion facility to provide reinsurance cover for employee compensation reinsurance policies, the proposed replacement of Government Financial Management Information System, and the proposal to establish the Rating and Valuation Department Trading Fund. With regard to the last proposal, the Panel has requested the Administration to provide further details to substantiate the financial viability of the proposed trading fund operation and the staff deployment arrangements for further consideration by the Panel.

Council Business Division 1
Legislative Council Secretariat
26 June 2002

Legislative Council

Panel on Financial Affairs

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to financial and finance matters.
2. To provide a forum for the exchange and dissemination of views on the above policy matters.
3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.
4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.
5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

**Legislative Council
Panel on Financial Affairs**

Membership list

Chairman Hon Ambrose LAU Hon-chuen, GBS, JP

Deputy Chairman Hon Henry WU King-cheong, BBS

Members Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Eric LI Ka-cheung, JP
Dr Hon David LI Kwok-po, GBS, JP
Hon NG Leung-sing, JP
Hon James TO Kun-sun
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong
Hon Jasper TSANG Yok-sing, JP
Hon Emily LAU Wai-hing, JP
Hon MA Fung-kwok

(Total : 16 Members)

Clerk Ms Anita SIT

Legal Adviser Mr KAU Kin-wah

Date 3 July 2002