

立法會
Legislative Council

LC Paper No. CB(1) 1211/02-03

(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

Panel on Financial Affairs

**Minutes of special meeting held on
Thursday, 16 January 2003 at 8:30 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 Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Eric LI Ka-cheung, JP
Hon NG Leung-sing, JP
Hon James TO Kun-sun
Hon Bernard CHAN, JP
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai
Dr Hon Philip WONG Yu-hong
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, JP

Non-Panel Members : Hon CHAN Yuen-han, JP
attending Hon Miriam LAU Kin-yee, JP
Dr Hon LAW Chi-kwong, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon Michael MAK Kwok-fung

Members absent : Dr Hon David LI Kwok-po, GBS, JP
Hon MA Fung-kwok, JP

**Public officers
attending**

: Agenda Item I

Financial Services and the Treasury Bureau

Miss Susie HO

Deputy Secretary for Financial Services and the
Treasury (Financial Services)

Office of the Commissioner of Insurance

Mr Ros LAM

Acting Commissioner of Insurance

Mr H Y MOK

Assistant Commissioner of Insurance (General)

Agenda Item II

Financial Services and the Treasury Bureau

Miss AU King-chi

Deputy Secretary for Financial Services and the
Treasury (Financial Services)

**Attendance by
invitation**

: Agenda Item I

The Hong Kong Federation of Insurers

Mr K P CHENG

Chairman, The Hong Kong Federation of Insurers

Mr Jackie CHUN

Deputy Chairman, General Insurance Council, The
Hong Kong Federation of Insurers

Mr K P CHAN

Chairman, Task Force on the Review of the
Employees Compensation Assistance Scheme,
General Insurance Council, The Hong Kong
Federation of Insurers

Agenda Item II

The Hong Kong Association of Online Brokers

Mr Stewart SHING
Chairman, The Hong Kong Association of Online
Brokers

The Institute of Securities Dealers Limited

Ms CHEN Po-sum
Vice Chairman, The Institute of Securities Dealers
Limited

Hong Kong Stockbrokers Association Limited

Mr Wilfred WONG
Chairman, Hong Kong Stockbrokers Association
Limited

Mr Kenny LEE
Vice Chairman, Hong Kong Stockbrokers
Association Limited

Hong Kong Securities Professionals Association

Mr Trini C S TSANG
Chairman, Hong Kong Securities Professionals
Association

Hong Kong Securities and Futures Industry Staff Union

Mr David WONG
Chairman, Hong Kong Securities and Futures
Industry Staff Union

Mr Stephen L H CHENG
Vice Chairman, Hong Kong Securities and Futures
Industry Staff Union

Securities and Futures Commission

Mrs Alexa LAM
Acting Chairman, Securities and Futures
Commission

Mr Raymond WONG
Associate Director, Intermediaries Supervision
Department, Securities and Futures Commission

Mr Stanley NG
Senior Manager, Supervision of Markets Division,
Securities and Futures Commission

Hong Kong Exchanges and Clearing Limited

Mr Lawrence FOK
Deputy Chief Operating Officer, Hong Kong
Exchanges and Clearing Limited

Clerk in attendance : Ms Connie SZETO
Chief Assistant Secretary (1)4

Staff in attendance : Mr Joey LO
Assistant Secretary (1)1

Ms Christina SHIU
Legislative Assistant

Action

- I Business environment of the Hong Kong insurance industry and difficulties encountered by some sectors in obtaining insurance coverage**
(LC Paper Nos. CB(1) 707/02-03(01) & (02), 733/02-03(01) and 747/02-03(01))

Discussion with industry association

Hong Kong Federation of Insurers

The Chairman welcomed Mr K P CHENG, Chairman of the Hong Kong Federation of Insurers (HKFI) and other representatives to the meeting. At the invitation of the Chairman, Mr CHENG briefed the Panel on the current business environment of the insurance industry and commented on the difficulties encountered by some sectors in obtaining insurance coverage.

2. Mr CHENG remarked that for certain types of insurance, for instance, employee compensation and motor vehicle insurance, premium rates had increased in the past few years. For other types of insurance, premium rates had been stable and even on the decline. Whilst admitting that insurers had increased premium rates and tightened underwriting measures, Mr CHENG expressed reservation on complaints about customers being unable to obtain insurance coverage. He explained that customers who encountered difficulties in obtaining insurance coverage might have approached insurance companies which were not involved in the line of insurance required. All such cases had been resolved with the assistance of HKFI and relevant Government departments.

3. Mr CHENG stressed that insurance companies had to be very careful in making underwriting decisions. For certain types of insurance which had been continuously making losses, insurance companies had no choice but to raise the premium rates. The rise in premium rates were due to increasing amount of compensation for personal injury awarded by courts, rising cost for seeking reinsurance coverage after the 911 Incident, and the global shortage of quality capital for the insurance sector.

4. Despite that the insurance industry had recorded overall surplus in the first three quarters of 2002, Mr CHENG explained that as provisions for outstanding claims were normally made in the fourth quarter of the year, it remained to be seen if profits could be made in 2002 since losses were still heavy for the employee compensation and motor insurance businesses. Mr CHENG also did not support the suggestion to cross-subsidize the two types of insurance by profits from other general insurance businesses, as this would be against the users-pay principle. Premium rates should be determined with regard to the level of risk involved. Moreover, the fact that not all insurance companies were involved in every line of insurance business might render the proposal impractical. Mr CHENG emphasized that the remedy lay in improving the business environment of the insurance industry. This would be achieved by promoting industrial and road safety, thus minimizing losses in the aftermath. Mr CHENG supplemented that HKFI commissioned an independent study entitled "Review of Employees' Compensation System in Hong Kong" with a view to identifying the causes for the deterioration in the claims experience in employee's compensation business, and recommending remedies to tackle the problem. The Panel on Manpower discussed the report on the study at its meeting on 19 April 2001. Mr CHENG urged the Administration to re-examine the recommendations put forward by HKFI.

Discussion with members*Liabilities for personal injury and statutory benefits under the Employees' Compensation Ordinance*

5. Mr Henry WU remarked that under the Employees' Compensation Ordinance (Cap. 282), an employer was obliged to insure against his liabilities for bodily injuries sustained in workplace by his employees. Should negligence on the part of the employer be proven as the cause for an injury, the employer was liable to damages under the common law. This had greatly increased the liabilities on the employer and hence the amount of insurance premiums. He enquired if the legislation would be reviewed to provide for only one type of the claims. Mr Abraham SHEK echoed Mr WU's view and said that in other countries like Singapore, employers were only liable to either type of claim, ie. common law claim or statutory benefits claim.

Admin 6. In reply, Deputy Secretary for Financial Services and the Treasury (DSFST) remarked that whilst certain recommendations put forward by HKFI had been carried out by the industry (eg. having more regard to the safety measures at the workplace in setting the premium), the Administration would continue to look into other ways to improve the business environment of the industry. DSFST said that the proposal to allow for only one type of claim or to set an upper limit on the liability of the employer or motorist would have far-reaching implications, as it related to the employees/victims' rights to compensation. This might also defeat the purpose of providing statutory insurance to protect the general public, whose right to compensation was recognised under the relevant legislation and/or the common law system. Without due compensation to victims of accidents, the society eventually might had to shoulder the cost of helping the victim in the form of social assistance. DSFST maintained that the Administration did consider HKFI's recommendation in this respect but opined that it was inappropriate to set an upper limit. Nevertheless, DSFST undertook to convey members' views to the relevant Government bureaux/departments. Mr CHENG re-iterated HKFI's view that an upper limit should be set on the common law damages, which were often in the region of tens of millions.

7. Mr LEE Cheuk-yan welcomed that many insurers had stepped up their risk management in underwriting employee compensation insurance policies, for example, by having more regard to the safety measures undertaken at the work place in setting the premium rates. However, he stressed that the employees' statutory benefits should not be compromised. He opined that the ultimate solution to the problem of rising premium rates would be to set up a self-financed centralized insurance compensation fund with the Government acting as the underwriter. It was justifiable for the Government to step in and set up a centralized insurance compensation fund.

8. Mr CHENG emphasized that the insurance industry should not be blamed for the hikes in premium rates. He remarked that overseas reinsurers had in fact shared out some of the risks and losses suffered by the local insurers. He did not support the proposal of setting up a centralized compensation fund, especially at a time of serious fiscal deficit.

High insurance premium rates and lack of transparency in the operation of the industry

9. Ms Miriam LAU referred to the joint submission by herself and 51 transport operator organizations which was tabled at the meeting (LC Paper No. CB(1)744(01)). Ms LAU remarked that premium rates for motor vehicle insurance had increased by 30 to 40 % in 2002 in general, and 100% to 300% for certain types of vehicles in particular. Many transport sectors had found it difficult to afford the premium hikes which was not justified by cost increases faced by the insurers. Moreover, there had been cases where the policyholders were informed of the insurers' decision of non-renewal of their policies at very short notice, making it very difficult for them to find new insurers in time. She urged the Administration to step up regulation of the insurance industry with a view to enhancing transparency in its operation, in particular, in the determination of premium rates.

10. In response, Mr CHENG dismissed the allegation that increase in insurance premium rates had been excessive and unreasonable. Due to fierce competition, premium had been drastically reduced in the past. Good investment returns prior to the Asian financial turmoil had made it possible for insurance companies to sustain losses in some insurance businesses. After the 911 Incident, reinsurance market had shrunk and reinsurance costs had increased dramatically, forcing insurers to increase the premium rates on their customers. Nevertheless, he assured that premium rates would automatically adjust downwards given the fierce competition in Hong Kong. On the issue of non-renewal of policies at short notice, Mr CHENG explained that reinsurance arrangements were normally negotiated towards the end of the year. Before the arrangements were finalized, the insurer would be unable to inform policyholders about their renewal decisions.

11. Mr SIN Chung-kai enquired about the role of HKFI in enhancing transparency of operation of the insurance industry, for example, by formulating codes of practices or performance pledges to improve self-regulation of insurers. Mr CHENG agreed with Mr SIN's suggestion and remarked that HKFI had in fact, with the support of the Commissioner of Insurance, formulated a number of codes of practice for the industry to follow.

12. Noting the huge losses suffered by the insurance industry attributed to the substantial increase in common law damages and statutory benefits, Mr NG Leung-sing opined that it would be appropriate for the Administration

to review the level of statutory benefits and the need for setting an upper limit on damages. Mr Kenneth TING expressed concern about increases in the number and amount of claims, which had led to rises in premium rates and hence to higher business costs. Mr James TIEN also opined that a reasonable upper limit on the employers' liability should be imposed. He urged the Administration to review the legislation regarding employee compensation under statutory provisions and common law.

Admin 13. In reply, DSFST said that the amount of damages awarded was a matter for the courts. Moreover, issues relating to capping employers' liability required careful examination. She undertook to convey members' views to the relevant bureaux/departments.

14. Mr Mak Kwok-fung expressed concern about the moral hazard problem in medical insurance business in view of increasing number of false claims reported in recent years.

15. On the performance of the medical insurance business, Mr CHENG remarked that in general, medical insurance with coverage for hospitalization had made some profits, whilst those with an outpatient element had suffered losses. On balance, the business had managed to breakeven. He admitted that moral hazards existed in the medical insurance business but statistics on false claims were not available.

16. Ms Miriam LAU remarked that the problem of rising premium rates and other insurance-related issues would adversely affect various businesses and create a "lose-lose" situation. In view of the difficulties faced by various business sectors in obtaining insurance coverage and the hikes in insurance premium rates, Ms LAU suggested and members agreed that the Panel should hold public hearings to hear views of interested parties on the subject. The dates of the public hearings would be scheduled after the meeting.

(Post-meeting note: Two public hearings were scheduled for 15 and 22 March 2003.)

II Business environment of the securities brokerage industry in Hong Kong

(LC Paper No. CB(1) 707/02-03(03))

Discussion with industry associations

17. The Chairman welcomed representatives from associations of the securities brokerage industry to the meeting and invited them to present their views on the subject.

Hong Kong Association of Online Brokers
(LC Paper No. CB(1) 733/02-03(02))

18. Mr Stewart SHING, Chairman of the Hong Kong Association of Online Brokers (HKAOB) said that the association had provided a submission to the Panel. On the issue of removing the minimum brokerage commission rate, as most of HKAOB's members were registered dealers with the Securities and Futures Commission (SFC) rather than exchange participants of the Hong Kong Exchanges and Clearing Limited (HKEx), they were not bound by the minimum brokerage commission rule. The HKAOB therefore did not have views on the subject. On the need for maintaining a level playing field between securities brokerage firms and banks in the conduct of securities business, HKAOB noted that securities brokers (including online brokers) were subject to more stringent rules of SFC than banks which were governed by the Hong Kong Monetary Authority (HKMA). The HKAOB hoped that the issue of unfair competition could be resolved.

The Institute of Securities Dealers Limited
(LC Paper No. CB(1) 707/02-03(04))

19. Ms CHEN Po-shum, Vice-Chairman of the Institute of Securities Dealers Limited (ISDL) briefed members on the history and development of the securities brokerage industry in Hong Kong. Ms CHEN remarked that the minimum brokerage commission rate of 0.25% had been in existence for over 16 years and generally accepted by the investing public. Small and medium brokerage firms played an indispensable role in the development of Hong Kong's securities industry. The abolition of minimum brokerage commission rate would result in a price war where large brokerage firms would slash commission rates to drive small and medium sized firms out of the market in order to gain market share. The ISDL proposed that a two-tier brokerage commission system be introduced under which a minimum commission rate would be maintained and rates for transactions above a certain size would be negotiable. On the subject of a level playing field, whilst ISDL supported the setting up of a tripartite forum with representatives from the Administration, HKEx and SFC to assist the brokerage industry, it urged that representatives from the industry should be included in the forum so that the voices of the industry could be heard.

The Hong Kong Stockbrokers Association Limited

20. Mr Wilfred WONG, Chairman of the Hong Kong Stockbrokers Association Limited said that in view of a shrinking securities market caused by the economic downturn, increasing operational cost and fierce competition from banks over the past years, the timing for abolition of the minimum brokerage commission rate should be further deferred to allow breathing space for the small and medium brokerages. He remarked that the dual-regulator

regime enshrined under the Securities and Futures Ordinance (SFO) where securities brokerage firms and banks were regulated by SFC and HKMA respectively would cause confusion. He expressed dissatisfaction that after years of complaints by the brokerage industry, HKMA had only taken action recently to address the problem of cold calling of clients by banks. He also urged HKEx to expedite provision of individual clearing account service for both brokers and investors which was an important infrastructure for Hong Kong's financial market.

Hong Kong Securities and Professionals Association Limited
(LC Paper No. CB(1) 747/02-03(02))

21. Mr Trini TSANG, Chairman of the Hong Kong Securities and Professionals Association Limited pointed out that there was a need to maintain a level playing field between brokerage firms and banks. He further remarked that as the majority of the Directors of HKEx Board was appointed by the Government, it was apparent that the Board's decisions would be strongly influenced by the Government.

Hong Kong Securities and Futures Industry Staff Union
(LC Paper No. CB(1) 733/02-03(03))

22. Mr David WONG, Chairman of the Hong Kong Securities and Futures Industry Staff Union (HKSFISU) said that HKSFISU was strongly opposed to the decision of HKEx on 15 January 2003 to maintain its earlier decision of removing the minimum brokerage commission rate with effect from 1 April 2003. The representatives of HKSFISU then walked out in protest.

Views of the Administration and Market Regulators
(LC Paper Nos. CB(1) 747/02-03(03), (04) and (05))

23. At the invitation of the Chairman, the Deputy Secretary for Financial Services and the Treasury (DSFST), Mrs Alexa LAM, Acting Chairman of the Securities and Futures Commission, and Mr Lawrence FOK, Deputy Chief Operating Officer of HKEx stressed that the Administration and market regulators had recognized the contribution made by small and medium brokerage firms and brokers to the development of Hong Kong securities market. DSFST re-iterated the Administration's support for the brokerage industry. She briefed members on examples of on-going measures undertaken by the Administration to enhance market quality, minimize compliance burden, improve market infrastructure, and develop training opportunities for brokers. She referred members to the decision made by SFST to establish a tripartite forum comprising the Administration, SFC and HKEx to study possible measures for improving the business environment of brokerage firms and enhancing brokers' competitiveness. She said that the forum would engage the stockbroking industry.

(*Post-meeting note:* The tripartite forum is formally named as “Working Group on the Business Environment of the Stockbroking Industry”.)

Discussion with Members

Two-tier brokerage commission system and the tripartite forum

24. Mr Henry WU remarked that HKEx should change its decision on removal of the minimum brokerage commission rate and be more sympathetic to the difficulties faced by small and medium brokerages. He urged that the option of a two-tier brokerage commission system be re-examined so as to allow the industry to adapt to market development and changes, and that HKEx should shelve its decision until the above option had been fully examined. He suggested that the tripartite forum should include representatives from the securities brokerage industry. Mr WU added that the industry had lost confidence in the Administration, and it was time for the Administration to rebuild the confidence.

25. Mr James TIEN queried why the Administration had announced in haste on 15 January 2003, a whole year after postponing the abolition of the minimum brokerage commission rate, the decision to set up the tripartite forum to assist the brokerage industry. Mr TIEN urged that the tripartite forum should study the two-tier commission system. While large brokerages, which mainly served professional and institutional investors, would freely negotiate commission rates with their clients, small brokerages servicing mainly retail investors, would continue to operate under the minimum brokerage commission system.

26. Mr LEE Cheuk-yan questioned the need for removing the minimum brokerage commission when the large brokerage firms were not competing with the small and medium sized firms for business and there were no investor complaints about the rate.

27. DSFST remarked that the Administration would endeavour to balance the interests of the different market users, notably the intermediaries and the investors, in particular the small investors. She stressed that the Administration recognized the difficulties faced by small and medium brokerages. The Administration would continue to listen to the views of the industry and through the tripartite forum formulate measures to assist the industry. DSFST noted that liberalization of the brokerage commission rate was a global trend. In fact, intermediaries in the local securities market had already adopted different pricing strategies in marketing their services to the investors, and this development could not be reversed. The liberalization would allow brokers to charge different levels of commission for different

services rendered to different clients. This would allow greater flexibility for the brokers in developing business strategies and provide more choices for the investors. She remarked that the niches of the small and medium sized brokerages remained that they were in a position to provide more personalized financial advisory services to their clients. DSFST noted that since the HKEx Board first made its decision on the brokerage commission rate in 2000, the industry had had three years to prepare for the change. She said that there had been calls from different sectors, including the Consumer Council and even among the brokers, for freely negotiable commission rates. The Administration's stance on the subject had been set out in the recent letter from the Secretary for Financial Services and the Treasury to HKEx. A copy of the letter could be provided to members for reference.

(Post-meeting note: The copy of the letter concerned was provided to members for reference vide LC Paper No. CB(1) 1090/02-03 on 10 March 2003.)

28. On the issue of maintaining a level playing field, DSFST said that with the implementation of the SFO on 1 April 2003, securities business conducted by banks would continue to be regulated by the HKMA, but would be subject to the same level of regulatory standards as imposed by SFC on licensed corporations.

29. On the independence of the Government-appointed directors of HKEx Board, DSFST said that under the law all HKEx Board directors had a statutory duty to act in the interests of the public, and where there was a conflict between the public interest and the shareholders' interest, the public interest should prevail. All HKEx directors, no matter whether they were appointed or elected, were independent from the Government.

30. Mrs Alexa LAM remarked that industry practitioners had recognized that it was in their interest to add value to and diversify their services. This was evident from an increase in the number of securities dealing and advisory firms in 2002 which indicated that brokerage firms were re-engineering their activities to cope with market changes. Moreover, industry associations had been providing training courses to members to help them learn new skills and adapt to market changes.

31. Dr Philip WONG expressed deep regret on HKEx's decision to remove the minimum brokerage commission rate. He remarked that he and Mr Henry WU had urged the Administration to re-examine the two-tier commission rate system. He was disappointed that this was not covered in the scope of the tripartite forum. Moreover, the Administration seemed to have turned a deaf ear to repeated protests against unfair competition between banks and brokerages in the conduct of securities business.

32. Miss CHAN Yuen-han shared members' view that the removal of the minimum brokerage commission rate in the present economic environment would add more hardship to the operation of small and medium brokerages. She was disappointed that the Administration had not given due attention to the problems faced by the industry and had failed to take concrete measures in solving the problems. She considered the three-year transitional period insufficient for the industry to adapt to the changing environment.

Measures to stimulate the securities market

33. Mr NG Leung-sing remarked that to help the securities brokerage industry adapt to market changes and enhance its competitiveness, the Government should take active steps to promote development of the financial market, improve the business environment by stimulating transactions and turnover. He hoped that the tripartite forum would formulate effective measures to stimulate the market and help the brokerages. He urged the industry to suggest ways to simplify the regulatory requirements in order to facilitate operation of market intermediaries and reduce their compliance cost. He also urged that a level playing field be maintained in the industry.

34. Ms Emily LAU expressed support for the liberalization of the brokerage commission regime as it was a step in the right direction. However, she stressed that the Administration should not turn a blind eye to the plight suffered by the securities brokerages, in particular small and medium firms. She asked whether the Administration had assessed the impact of the removal of the minimum brokerage commission rate system on the survival of brokerage firms, e.g. the number of firms that would face closure. She further urged that assistance be provided to help the industry before the abolition of the system took effect.

35. DSFST said that like all other financial services, the securities industry had to adapt to market changes and look for new business opportunities in order to remain competitive. In this respect, HKEx had been actively developing new products and attracting Mainland enterprises to seek listing in Hong Kong. DSFST remarked that it was difficult to estimate the number of brokerage firms which would be adversely affected as a result of the liberalization of the commission rate as the business environment could be affected by many factors. Nevertheless, SFC published statistics on market intermediaries at regular intervals. DSFST assured members that the Administration would closely monitor development in the market in assessing the impact of the liberalization of the brokerage commission rate on market users.

36. Mr Lawrence FOK briefed members on the work of HKEx in attracting Mainland and overseas investors, promoting market development through enhancing corporate governance and provision of new products, improving the

business environment through maintaining a level playing field and upgrading the market infrastructure, as well as provision of training for market participants and investor.

37. Mr CHAN Kam-lam remarked that the Administration had not adopted a pro-active attitude in helping the securities industry. He said that the negative impact of the abolition of the minimum brokerage commission rate system would have been much reduced had the Administration started considering remedial measures earlier. He noted that the industry was not opposed to the abolition, but it was concerned about the timing of the implementation. He urged the Administration and market regulators to discuss related issues with the industry in the tripartite forum as soon as possible.

38. Mr Wilfred WONG and Ms CHEN Po-sum urged the Administration to re-examine the option of a two-tier commission rate system and to defer implementation of abolishing the minimum brokerage commission rate.

Motion

39. Mr Henry WU moved the following motion (English translation):

To move that the following be included as the 5th item in the work areas of the tripartite forum to be set up by the Government in relation to the securities industry:

“To re-examine the option of introducing a two-tier brokerage commission system so as to allow the industry to adapt to market developments and changes.”

The Hong Kong Exchanges and Clearing Limited is also urged to shelve its decision to remove the minimum brokerage commission rule until the above option is completely examined.

40. The motion was carried with four members voted for (Mr Henry WU, Mr James TIEN, Mr LEE Cheuk-yan and Dr Philip WONG), and two members abstained (the Chairman and Ms Emily LAU).

41. Mr Lawrence FOK re-iterated that the Board of HKEx had confirmed its earlier decision to remove the minimum brokerage commission rule from the Rules of the Stock Exchange from 1 April 2003. With effect from that date, therefore, commissions would become freely negotiated between brokers and their clients. DSFST remarked that HKEx was empowered to amend the Exchange Rules. It was inappropriate for the Administration to interfere with HKEx's decision.

Follow-up Meeting

42. Members agreed that a special meeting be held before 1 April 2003 to follow up on the matter regarding the removal of the minimum brokerage commission rate system and the work progress of the tripartite forum.

III Any other business

43. There being no other business, the meeting ended at 11:35 am.

Council Business Division 1
Legislative Council Secretariat
25 March 2003