

立法會
Legislative Council

LC Paper No. CB(1)1019/04-05
(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

Panel on Financial Affairs

**Minutes of special meeting
held on Wednesday, 19 January 2005 at 8:30 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon Bernard CHAN, JP (Chairman)
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
Hon Albert HO Chun-yan
Hon CHAN Kam-lam, JP
Hon SIN Chung-kai, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon CHIM Pui-chung
Hon Albert Jinghan CHENG
Hon TAM Heung-man
- Member attending** : Hon CHAN Yuen-han, JP
- Members absent** : Hon James TIEN Pei-chun, GBS, JP
Hon LEE Cheuk-yan
Dr Hon David LI Kwok-po, GBS, JP
Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, JP
Hon Jeffrey LAM Kin-fung, SBS, JP

- Public officers attending** : Mr Frederick MA, JP
Secretary for Financial Services and the Treasury
- Mr Alan LAI, JP
Permanent Secretary for Financial Services and the Treasury
(Treasury)
- Mr Kevin HO, JP
Permanent Secretary for Financial Services and the Treasury
(Financial Services)
- Clerk in attendance** : Miss Salumi CHAN
Chief Council Secretary (1)5
- Staff in attendance** : Ms Pauline NG
Assistant Secretary General 1
- Ms Connie SZETO
Senior Council Secretary (1)4
- Ms May LEUNG
Legislative Assistant
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Action

I. Briefing by the Secretary for Financial Services and the Treasury on the relevant policy initiatives featuring in the Chief Executive's 2005 Policy Address

(LC Paper No. CB(1)710/04-05(01) — Paper provided by the Administration

LC Paper No. CB(1)740/04-05(01) Letter dated 17 January 2005 from Hon SIN Chung-kai

Relevant documents

- (a) Address by the Chief Executive at the Legislative Council meeting on 12 January 2005 — “Working Together for Economic Development and Social Harmony”; and
- (b) The 2005 Policy Address — “Policy Agenda”)

Briefing by the Secretary for Financial Services and the Treasury

At the Chairman's invitation, the Secretary for Financial Services and the Treasury (SFST) briefed Members on the initiatives relating to the Financial Services and the Treasury Bureau (FSTB) in the Chief Executive (CE)'s Policy Address 2005 and the progress in implementing the measures announced in the Policy Agenda 2004. SFST highlighted the following points:

- (a) In respect of fiscal policy, the Administration pledged to continue its efforts to restore fiscal balance in the Operating and Consolidated Accounts of the Government by 2008-09, to bring public expenditure down to 20% of Gross Domestic Product (GDP) or below, and to reduce operating expenditure to \$200 billion by 2008-09. In 2004-05, the Administration raised revenue of \$12 billion by securitization of the government tolled tunnels and bridges, capital restructuring of the Airport Authority, and further sale of accumulated stock of civil servant housing loans to the Hong Kong Mortgage Corporation. The successful issue of Government bonds in July 2004 also raised revenue of \$20 billion. The Administration would continue to implement the asset sale and securitization programme, and examine the feasibility of selling part of student loans.

- (b) On the area of financial services, the Administration would continue to build on Hong Kong's strengths as an international financial centre and a premier capital formation centre for the Mainland, and further promote the development of Hong Kong as an international asset management centre. To this end, the Administration would reinforce efforts to enhance Hong Kong's regulatory framework to keep in line with international standards, to foster good corporate governance with a view to enhancing quality of the market and protection for investors, and to facilitate the development of the financial market to enhance its competitiveness and capture the opportunities arising from the new developments in the Mainland, including the State Council's approval given in February 2004 for the National Social Security Fund to invest in overseas markets. Major measures to be implemented in 2004-05 included the followings -
 - (i) To step up co-operation with the Mainland authorities to promote the investment of Mainland funds in Hong Kong and encourage Mainland enterprises to use Hong Kong as the platform for global investment;

 - (ii) To introduce a Securities and Futures (Amendment) Bill and relevant rules (to be made by the Securities and Futures Commission (SFC)) into the Legislative Council (LegCo) for

improving the regulation of listing and giving statutory backing to important listing requirements;

- (iii) To introduce a bill into LegCo for establishing an Independent Investigation Board and a Financial Reporting Review Panel with a view to enhancing the oversight of auditors of listed companies and the compliance of companies' financial statements with the relevant accounting standard;
- (iv) To explore with the Mainland authorities on further expansion of personal renminbi business in Hong Kong; and
- (v) To implement new capital adequacy standards for banks in Hong Kong (i.e. Basel II) through introducing the Banking (Amendment) Bill 2005 into LegCo.

(Post-meeting note: The speaking notes of SFST were issued to members vide LC Paper No. CB(1)753/04-05(01) on 20 January 2005.)

Discussion

Listing of the Link Real Estate Investment Trust

2. Referring to the unsuccessful listing of the Link Real Estate Investment Trust (Link REIT) in December 2004, Ms Emily LAU enquired about the role and involvements of FSTB in the listing process.

3. SFST pointed out that the Housing Authority (HA), being a statutory body, had full autonomy in disposing of its assets. During the initial stage, HA had briefed FSTB on the proposed divestment of its shopping malls and car parks. Recognizing the benefits of the proposal in addressing the fiscal problem of HA and promoting the development of the financial market in Hong Kong, FSTB expressed its support for the proposal. The details of the project were then worked out by HA. In this connection, HA had engaged financial consultants and legal advisers to take forward the project and had established a Supervisory Group on Divestment (SGD) to steer and monitor the project. Two LegCo Members, who were members of HA, and the Permanent Secretary for Housing, Planning and Lands (Housing) were members of SGD. In November 2004, FSTB was briefed on the tentative arrangements of the listing programme, including the pricing strategy. Knowing that HA faced legal challenge to its divestment project, SFST said that he and other senior officials of FSTB had, during the weekend immediately before the scheduled listing date on 20 December 2004, participated in various meetings with representatives from HA and the Housing, Planning and Lands Bureau, offering advice on relevant issues and trying to resolve the problem in order to facilitate the listing of the Link REIT as scheduled. Given the uncertainties caused by the legal challenge, HA finally decided at late 19 December 2004 not to proceed with the listing on 20 December 2004. The

financial market reacted calmly and maintained its smooth running on 20 December 2004.

4. Mr Albert HO considered that given the uncertainties involved, HA had made the right decision to withhold the listing of the Link REIT. If the Link REIT were listed but HA subsequently lost in the judicial review, it would give rise to more complicated problems. Mr HO however pointed out that the unsuccessful listing of the Link REIT had aroused concern of the local and international community and had adversely affected Hong Kong's reputation as an international financial centre. He asked whether the incident was caused by loopholes in the existing listing regime.

5. SFST considered that the incident was not due to any loopholes in the existing listing regime. He advised that it was his understanding that before the application for the listing of the Link REIT was approved, the regulatory bodies had ensured that the issuer had complied with all the necessary requirements. Given that the judicial review was filed after the issue of the prospectus of the Link REIT, there should be no question of the issuer breaching the disclosure requirements for listing.

6. SFST also pointed out that although the listing of Link REIT was unsuccessful, the incident had demonstrated to the international community that the rule of law had been upheld in Hong Kong, which was an important element for maintaining Hong Kong's status as an international financial centre. In this connection, SFST referred to a comment made by a prominent international press that the incident was only a "minor issue" as far as Hong Kong's position as an international financial centre was concerned. Nevertheless, SFST said that the Administration would review the incident and HA would take appropriate follow-up actions.

7. Mr Albert HO was of the view that the crux of the problem was whether HA had the legal power to divest its assets rather than whether the issuer had complied with the necessary disclosure requirements to reveal in the prospectus any potential law suit that it was subject to. Mr HO considered that the Administration should consider amending the Housing Ordinance (Cap. 283) to explicitly provide HA with the power to divest its assets.

8. In reply, SFST stressed that the disclosure-based regulatory regime was important in enhancing investor protection and market quality. As regards the issue of the legality of HA to divest its assets, SFST advised that HA and the Secretary for Housing, Planning and Lands had given their comments on the issue.

9. Notwithstanding that the "Link" incident had not damaged Hong Kong's reputation as an international financial centre, Mr CHAN Kam-lam pointed out that the local financial services sector and small investors had expressed grave concern over the incident. With a view to maintaining the rule of law, ensuring smooth operation of the financial market and enhancing confidence of investors, Mr CHAN suggested that the Administration should examine how to prevent the recurrence of

similar incidents and explore the feasibility of stipulating rules to specify a deadline for filing law suit against a listing applicant prior to the listing.

10. Ms Emily LAU and Mr Albert HO also considered that the Administration should learn from the experience of the “Link” incident and examine how to prevent the recurrence of similar incidents. SFST said that both the Administration and HA would learn from the experience of the incident. He welcomed views and suggestions from Members and the public for making improvements in the re-launching of the Link REIT in future.

Development of bond market in Hong Kong

11. Responding to Mr CHAN Kam-lam’s enquiry, SFST advised that the two government bond issuing exercises conducted in 2004-05 had helped promote the development of Hong Kong’s bond market. This was evidenced by the increase in over-the-counter trading activities in bonds and the rising number of bond issuing exercises since the second half of 2004. SFST re-iterated the Administration’s commitment to promoting the local bond market with the aim to encourage more issuers to use Hong Kong as a platform for issuing bonds and to attract more international investors to Hong Kong.

Admin

12. To better monitor the development of Hong Kong’s bond market, Mr CHAN Kam-lam suggested that the Administration should assess the benefits and impacts of the two government bond issuing exercises conducted in 2004-05 on the local financial market.

Review of the Mandatory Provident Fund Schemes Ordinance

13. Given that the Mandatory Provident Fund (MPF) system had been put in place for five years and that a number of problems had been identified, Mr CHAN Kam-lam enquired whether the Administration would conduct a comprehensive review of the system and the Mandatory Provident Fund Schemes Ordinance (MPFSO) (Cap. 485); and if it would, the timetable for the review.

14. On the review of the operation of the MPF system, the Permanent Secretary for Financial Services and the Treasury (Financial Services) (PS/FST(FS)) advised that since the implementation of the MPF system in 2000, the Mandatory Provident Fund Schemes Authority (MPFA) had been conducting on-going reviews of the system to ensure its smooth operation. These included reviews of disclosure requirements on MPF trustees relating to fees, charges and performance of MPF funds; permissible investments of MPF investment funds; employers’ compliance with MPF requirements; and measures to recover MPF contributions, etc. Improvement measures had been identified and where appropriate, legislative amendments had been made to put them into implementation. As the MPF system was subject to on-going reviews, PS/FST(FS) said that it was difficult for the Administration to commit a timetable for conducting an overall review.

Nevertheless, he assured members that the Administration would continue to work closely with MPFA in identifying areas for improving the MPF system.

15. Pointing out that the Link REIT should be a good investment for MPF funds, Miss CHAN Yuen-han expressed concern that the existing MPFSO had prevented MPF funds from investing in the Link REIT. She enquired why FSTB had not noticed the problem and amended the Ordinance before the attempted listing of the Link REIT in December 2004.

16. SFST explained that with a view to protecting scheme members, permissible investments for MPF funds were prescribed in MPFSO. Being a SFC-authorized REIT, the Link REIT was already a permissible investment which could be acquired by an MPF scheme. Nonetheless, there was concern about the unintended restriction of the current legislation which would prevent the acquisition of the Link REIT under the Hong Kong Public Offering at the pre-listing stage, although MPF schemes could subscribe for units in the Link REIT under the International Offering. The Administration would review the need to amend the relevant provisions.

17. Miss CHAN Yuen-han was not satisfied with the Administration's response. The Chairman requested the Administration to provide a written response to address Miss CHAN's concern, including the clarification on whether MPF investment funds were permitted under MPFSO to invest in the Link REIT; and if not, the need for amending the Ordinance to allow the investment of MPF funds in such type of investment product.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)911/04-05(02) on 16 February 2005.)

Corporate governance of public bodies

18. Referring to the Administration's proposal to split the chairman post of SFC into a chairman post and a Chief Executive Officer post in order to enhance the corporate governance of SFC, Ms Emily LAU enquired about the Administration's plans to enhance the corporate governance of other regulatory bodies, such as the Hong Kong Monetary Authority.

19. In reply, SFST pointed out that while the Administration considered that the proposal would enhance the corporate governance of SFC, the proposal might not be suitable for other regulatory bodies in the financial services sector given the differences in background and set-up between SFC and other regulatory bodies. At the present stage, the Administration had no plan to implement the proposal in other regulatory bodies. As regards the proposal for SFC, the Administration had consulted the Panel at the meetings on 10 November 2004 and 3 January 2005, and would report progress at the meeting to be held on 17 February 2005. SFST said that he was pleased to discuss with members on issues relating to corporate governance of regulatory bodies at the meeting on 17 February 2005.

20. Miss TAM Heung-man enquired whether the Administration would consider establishing an independent body to supervise listed companies in complying with corporate governance standards and to inquire into suspected breaches.

21. In response, SFST re-iterated the Administration's commitment to upgrading the corporate governance standards of listed companies for enhancing investor protection and market quality. He advised that concrete progress had been achieved in implementing various initiatives set out in the Corporate Governance Action Plan announced by the Administration in collaboration with SFC and Hong Kong Exchanges and Clearing Limited (HKEx) in January 2003. Various initiatives, including devising a new code on corporate governance practices for listed companies and amending the Listing Rules to increase the number of independent non-executive directors in the board of directors of listed companies, had been implemented. Given that SFC and HKEx were performing their regulatory roles effectively, it was not necessary to establish an independent body for supervising corporate governance practices of listed companies. Moreover, the Administration was not aware of similar bodies set up in other jurisdictions. SFST stressed the importance of building up a corporate governance culture in Hong Kong and the need for shareholders to strengthen monitoring of the work of management boards of companies, instead of only relying on sanctions to foster good corporate governance.

Addressing the fiscal deficit problem

22. Mr Ronny TONG expressed concern about the Administration's target to restore fiscal balance by 2008-09. He was of the view that since the CE had admitted in the Policy Address 2005 that government policies and measures to deal with the serious fiscal deficit had caused the public pain and unease (paragraph 17 of the Policy Address 2005), the Administration should consider reviewing the target for achieving fiscal balance so as to allow more breathing space for the public and to replenish the fiscal reserves which had been brought down for meeting operating deficits in previous years. In order to meet the needs of the community, Mr TONG further suggested that the Government should consider maintaining the percentage of total public expenditure to GDP at a level comparable to that before 1997.

23. In reply, SFST re-iterated the need for the Administration to tackle the problem of fiscal deficit so as to ensure the healthiness of public finances and stability of the monetary and financial systems. Nonetheless, he undertook to convey Mr Ronny TONG's views to the Financial Secretary (FS).

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)911/04-05(02) on 16 February 2005.)

24. On the subject of introducing a goods and services tax (GST) in Hong Kong, Mr Ronny TONG noticed that there was an apparent difference in the Government's position in the Administration's paper and the Policy Address 2005. He noted that

while the Administration had accepted the recommendation of the Advisory Committee on New Broad-based Taxes in 2000 that a GST was the most viable option to broaden the tax base and had set up the Internal Study Committee in 2004 to study how the tax might be introduced in Hong Kong (paragraph 22 of the Administration's paper), the CE, in the Policy Address 2005, had pointed out that the GST proposal was put forwarded by some LegCo Members. The CE had also indicated that the Government would definitely not implement the tax in the next two and a half years because the economy was still at the early stage of post-recovery consolidation and that overseas experience had suggested that this was not the appropriate time to introduce a GST (paragraph 63 of the Policy Address 2005). Mr TONG requested SFST to clarify the Government's stance.

25. In response, SFST advised that the subject of introducing a GST in Hong Kong was among the 11 issues most concerned by the public and LegCo Members which the CE had responded in the Policy Address 2005. He said that the CE had clearly stated the Government's stance on the subject in the Policy Address 2005. SFST added that since implementation of a GST in Hong Kong would have far-reaching impact on the general public and the business sector, the Administration had taken a prudent approach to establish the Internal Study Committee to conduct in-depth studies on related issues. The Committee had completed its study and submitted a report to FS. FS was considering the recommendations carefully and would announce his plan on how the issue would be taken forward in the 2005-06 Budget. SFST stressed that the Administration would consult the public if it decided to pursue the GST proposal.

26. Mr SIN Chung-kai said that he had raised a number of questions on the 2005 Policy Address relating to the policy area of financial services and the treasury (LC Paper No. CB(1)740/04-05(01)) and had requested the Administration to provide written responses. Referring to the first question of the list, Mr SIN sought SFST's views on which of the policies and measures implemented by FSTB had caused public pain and unease, as well as the experience gained and lessons learnt from the failures of such policies and measures.

(Post-meeting note: The Administration's responses were issued to members vide LC Paper No. CB(1)911/04-05(02) on 16 February 2005.)

27. SFST pointed out that while the measures for increasing salaries tax and reducing public expenditure might have impact on the public, these measures had helped address the problem of fiscal deficit and would be beneficial to Hong Kong's continuous development in the long run. As regards the experience gained and the lessons learnt, SFST assured Members that FSTB would endeavour to identify areas for improvement in the implementation of policies and measures.

Operation of Closer Economic Partnership Arrangement

28. Miss TAM Heung-man pointed out that the Agreement on the Mutual Examination Paper Exemptions for Mainland and Hong Kong Accountants (the Agreement) only covered accountants who had acquired the qualification of the qualifying programme of the Hong Kong Institute of Certified Public Accountants. She expressed concern that the majority of accountants in Hong Kong could not benefit from the Agreement and enquired about the Administration's plan to facilitate accountants in Hong Kong to enter the Mainland market.

29. SFST advised that since the implementation of Closer Economic Partnership Arrangement (CEPA) in early 2003, FSTB had been pursuing discussions with the relevant Mainland authorities to facilitate accountants in Hong Kong to acquire professional qualifications in the Mainland. The Agreement was one of the concrete achievements. FSTB would continue with its efforts to step up discussion with the Mainland authorities for extending the scope of the Agreement so as to facilitate accountants in Hong Kong to gain access to the Mainland market.

30. Miss CHAN Yuen-han enquired about the employment opportunities for local professionals and workers, such as the number of jobs expected to be created, upon further expansion of CEPA. SFST responded that the implementation of CEPA had benefited many sectors in Hong Kong. He undertook to provide information on the employment opportunities created and expected to be created for the financial services sector under phase I of CEPA and upon its further expansion.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)911/04-05(02) on 16 February 2005.)

Re-write exercise of the Companies Ordinance

31. In response to Ms Emily LAU's enquiry about the progress of the re-write exercise of the Companies Ordinance (Cap. 32), SFST said that due to complexity of the issued involved, the Administration had taken longer time than originally expected to work out the framework of the exercise. He assured members that the re-write exercise was one of the on-going initiatives of FSTB in the 2004 Policy Agenda. The Administration was actively pursuing the task and would report progress to the Panel in due course.

Admin

Protection for workers employed by government contractors

32. Miss CHAN Yuen-han expressed concern that although the Administration had implemented a new mandatory requirement on the wage level for non-skilled workers (except construction workers) engaged by government contractors of service contract since May 2004, there was no uniform practice across departments in implementing the requirement. As a result, the problem of exploitation of workers' interests had not been rectified. With a view to enhancing protection for workers and preventing abuses by government contractors, Ms CHAN suggested that the Administration should consider putting in place a standard system for the

determination of wage rates and working hours for these workers. She further called on the Administration to work out a timetable for putting in place the system.

33. SFST reiterated that the aim of the new mandatory requirement was to enhance protection for non-skilled workers employed by contractors of government outsourced services. He said that the Administration was aware of the concerns raised by some Members and had noted the suggestions put forward by the Panel on Manpower for improving the situation. The Chairman invited the Administration to take note of Miss CHAN's views and respond to her suggestion in writing.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)911/04-05(02) on 16 February 2005.)

II. Any other business

34. There being no other business, the meeting ended at 9:35 am.

Council Business Division 1
Legislative Council Secretariat
4 March 2005