

立法會
Legislative Council

LC Paper No. CB(1)356/08-09
(These minutes have been
cleared with the Chairman)

Ref : CB1/HS/1/08/1

**Subcommittee to Study Issues Arising from Lehman Brothers-related
Minibonds and Structured Financial Products**

**Minutes of the second meeting
held on Tuesday, 25 November 2008, at 10:45 am
in the Chamber of the Legislative Council Building**

Members present : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP (Chairman)
Dr Hon Philip WONG Yu-hong, GBS (Deputy Chairman)
Dr Hon Margaret NG
Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon LEUNG Kwok-hung
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Dr Hon LAM Tai-fai, BBS, JP
Hon Paul CHAN Mo-po, MH, JP
Dr Hon Priscilla LEUNG Mei-fun
Dr Hon LEUNG Ka-lau
Hon IP Wai-ming, MH
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Members absent : Hon Vincent FANG Kang, SBS, JP
Hon Starry LEE Wai-king
Hon CHAN Kin-por, JP

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)7

Staff in attendance : Mrs Constance LI
Assistant Secretary General 1

Mr KAU Kin-wah
Assistant Legal Adviser 6

Mr Thomas WONG
Senior Council Secretary (1)9

Mr KWONG Kam-fai
Council Secretary (1)4

Ms Sharon CHAN
Legislative Assistant (1)10

I Matters arising from last meeting

Withdrawal of membership

The Chairman informed members that Miss Tanya CHAN and Mr Albert HO had informed him in writing of their withdrawal from the Subcommittee with effect from 30 October 2008 and 17 November 2008 respectively. The Subcommittee now comprised 24 members and eight members were required to form a quorum.

Membership size of the Subcommittee

2. The Chairman reported that at the informal closed meeting held on 24 November 2008, members noted and exchanged views on a joint letter from 23 Members suggesting to reduce the Subcommittee's membership to about 13 members. Members generally understood that under the existing procedural arrangement, there was no mechanism for reducing the membership size of a subcommittee formed under the House Committee, unless individual members withdrew from the subcommittee on their own accord.

(Note : The joint letter was circulated to Subcommittee members on 24 November 2008 vide LC Paper No. CB(1)270/08-09).

3. Members discussed whether the Subcommittee should consider reducing its membership size. Members who supported a downsizing held the following views :

- (a) a smaller membership was consistent with the practice of select committees vested with the powers under the Legislative Council (Powers and Privilege) Ordinance (Cap. 382); and
- (b) a large membership might adversely affect the efficiency of the Subcommittee's works and prolong the hearings and meetings to be conducted.

4. Members who did not consider it appropriate or necessary for the Subcommittee to reduce its membership were of the following views :

- (a) a large membership did not necessarily mean lower efficiency as long as members would actively participate in and remain focused on the study; and
- (b) there should not be any undue restriction on membership for the Subcommittee, and members with professional backgrounds would provide useful input to the Subcommittee's work.

5. Summing up, the Chairman said that as members had divergent views over the existing membership size of the Subcommittee and there was currently no standing arrangement for determining the maximum membership of a subcommittee formed under the House Committee, he considered that discussion on the Subcommittee's membership size should end. Members did not raise any further question on the issue.

II Proposed practice and procedure for the Subcommittee

(LC Paper No. CB(1)236/08-09 — Paper on proposed practice and procedure prepared by the Legislative Council Secretariat)

Confidentiality of information and evidence

6. The Subcommittee noted that paragraphs 19 to 22 set out the handling of information contained in classified documents or obtained at closed hearings.

7. On whether a witness's request for confidentiality should be acceded to, members noted Assistant Legal Adviser 6 (ALA6)'s advice that each case should be considered by the Subcommittee on its merits. To supplement the general requirements set out in paragraphs 19 to 22, the Secretariat was requested to provide further guidance on the principles for deciding whether certain information and evidence should be classified as confidential and the procedures to be followed in handling information and evidence classified as confidential.

Signing of confidentiality undertaking

8. The Subcommittee discussed the need or otherwise for each member to sign a confidentiality undertaking and whether such a requirement, if put in place, would effectively safeguard against unauthorized leakage of information.

9. After discussion, members agreed in principle that it was more important for individual members to exercise prudence and self-discipline, than to rely on their signing of a confidentiality undertaking. Members also noted that issues related to the unauthorized disclosure of information were currently being studied by the Committee on Rules of Procedure. In view of the above, the Chairman concluded that the subject of signing a confidentiality undertaking would not be pursued for the time being, but could be re-visited if such a need arose.

Disclosure of interests

10. The Chairman advised that Rules 83A and 84 of the Rules of Procedure relating to the declaration of pecuniary interests also applied to members of the Subcommittee. In addition, members noted that members might also consider it appropriate to declare their non-pecuniary interests to avoid any real or perceived conflict of interest or roles.

Other issues

11. The Chairman advised that if necessary, consideration might be given to inviting experts to brief members on complicated structured financial products.

The way forward

12. On the need to submit the Subcommittee's proposed Practice and Procedure to the House Committee for endorsement, members noted that pursuant to Rule 75(18) of the Rules of Procedure, the practice and procedure of the Subcommittee (being a subcommittee under the House Committee) shall be determined by the House Committee. They also noted ALA6's advice that currently, no provisions for the exercise of the powers conferred by Cap. 382 were set out in the House Rules applicable to the Subcommittee. The House Committee's endorsement of the Subcommittee's proposed Practice and Procedure would safeguard the legality of practice and procedure in accordance with which the Subcommittee would conduct its work. ALA6 supplemented that paragraph 38 of the proposed Practice and Procedure, if endorsed, would authorize the Subcommittee to determine its own practice and procedure without prejudice to the Rules of Procedure, the House Rules and the Subcommittee's practice and procedure as endorsed by the House Committee.

13. Members noted that the Subcommittee was the first of its kind to be vested with the powers under Cap. 382. After discussion, members generally considered that the Subcommittee's practice and procedure, being endorsed by the House

Committee, would provide a useful precedent on the procedural practice for a subcommittee vested with the powers under Cap. 382. They also agreed that the Subcommittee should submit its proposed Practice and Procedure in its current form to the House Committee for endorsement as soon as practicable.

(Post-meeting note : The Subcommittee's proposed Practice and Procedure was endorsed by the House Committee on 28 November 2008).

14. Members noted that there was division of labour among members of past Select Committees such as the Select Committee to Inquire into the Circumstances Leading to the Problems Surrounding the Commencement of the Operation of the New Hong Kong International Airport at Chek Lap Kok since 6 July 1998 and Related Issues. The Chairman advised that the division of labour among members could be further discussed at future internal meetings of the Subcommittee.

the
Secretariat

15. Ms Emily LAU requested the Secretariat to prepare a comparison table setting out the practices and procedures adopted by a select committee, the Subcommittee and a subcommittee under the House Committee not vested with the powers under Cap. 382.

(Post-meeting note : The Secretariat circulated the comparison table to members on 3 December 2008 vide LC Paper No. CB(1)335/08-09).

Internal briefing for members on 4 December 2008

16. Members noted that the Secretariat would hold an internal briefing on 4 December 2008 for members on the practice and procedure of conducting inquiries under Cap. 382. Members generally agreed that questions on operational matters such as the handling of classified information could be raised at that briefing.

III Proposed work schedule

(LC Paper No. CB(1)237/08-09

— Paper on proposed work schedule prepared by the Legislative Council Secretariat)

17. Members noted and raised no objection to the proposed work schedule which had been drawn up with reference to the experience of previous select committees. They noted that with the concurrence of the Chairman and with a few exceptions, every Tuesday morning (9:00 am to 12:45 pm) and Friday morning (10:45 am to 12:45 pm) from January to July 2009 had been reserved for meetings and hearings. Regarding the need to hold closed meetings, the Chairman said that meetings and hearings would be held in public as far as practicable. However, based on past experience, the Subcommittee would also need to hold quite a number of closed meetings for internal deliberation on procedural matters and other meeting arrangements.

IV Proposed major areas of study

(LC Paper No. CB(1)150/08-09(01) — Paper on proposed major areas of study (as at 25 November 2008) prepared by the Legislative Council Secretariat)

18. Members noted the proposed major areas of study (as at 25 November 2008) which had been revised by incorporating members' views raised at the last meeting held on 27 October 2008. In this connection, the Chairman advised that the list might be further revised in the light of new developments, if any.

19. On the question of whether all witnesses should be summoned to attend before the Subcommittee, or whether some or all of them should be invited in the first instance, members expressed different views. In this regard, they noted a paper prepared by the Legal Service Division summarizing in table form the differences in consequences for witnesses testifying before the Subcommittee upon being summoned or invited to attend (LS19/08-09 tabled at the meeting and subsequently issued to members vide LC Paper No. CB(1)289/08-09 on 26 November 2008). Members agreed that this issue should be discussed at the next meeting.

V Proposed indexing system for Subcommittee papers

(LC Paper No. CB(1)238/08-09 — Paper on proposed indexing system for Subcommittee papers prepared by the Legislative Council Secretariat)

20. Members noted and raised no objection to the proposed indexing system for Subcommittee papers. They were also briefed by the Clerk on the relevant indexing arrangements.

(Post-meeting note: The Secretariat dispatched a folder with the prefix "L" for Subcommittee papers to the office of each member immediately after the Subcommittee meeting on 25 November 2008).

VI Any other business

21. Members noted and agreed that similar to the arrangement adopted by past select committees, the Secretariat would arrange to reserve a reference room for Subcommittee members to peruse documents of the Subcommittee. The Secretariat would also look into Ms Emily LAU's enquiry on the feasibility of storing members' Subcommittee related folders in the Legislative Council Building.

(Post-meeting note: Room 003A on the ground floor of the Legislative Council Building has been allocated to the Subcommittee for use as a reference room for members' perusal of Subcommittee documents. A circular on the use of the reference room was circulated to members on 8 December 2008 vide LC Paper No. CB(1)350/08-09).

22. There being no other business, the meeting ended at 12:44 pm.

Council Business Division 1
Legislative Council Secretariat
8 December 2008

**Proceedings of the
Subcommittee to Study Issues Arising from Lehman Brothers-related
Minibonds and Structured Financial Products
Second meeting on Tuesday, 25 November 2008, at 10:45 am
in the Chamber of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000322	Chairman	Report on withdrawal of membership by Miss Tanya CHAN and Mr Albert HO	
000323 – 001639	Ms Emily LAU Chairman Mr CHAN Kam-lam Mr KAM Nai-wai Mr Jeffrey LAM Dr Priscilla LEUNG	Deliberation on membership size of the Subcommittee Members noted that there was currently no standing arrangement for determining the maximum membership of a subcommittee.	
001640 – 002209	Chairman Mr LEUNG Kwok-hung Mr James TO Dr Margaret NG Mr Abraham SHEK Ms Emily LAU ALA6 Mr WONG Ting-kwong Mr Ronny TONG Deputy Chairman Mr Jeffrey LAM Mr CHIM Pui-chung	Deliberation on handling requests for confidentiality of information and evidence and whether each member should sign a confidentiality undertaking Members' requests for further guidance on handling information and evidence classified as confidential Members' view that exercising prudence and self-discipline in handling confidentiality was more important than signing a confidentiality undertaking Chairman's advice to members on the declaration of members' pecuniary and non-pecuniary interests	The Secretariat to take action as requested under paragraph 7 of the minutes
002210 – 014631	Chairman Mr James TO Clerk Ms Emily LAU Mr Abraham SHEK Mr CHAN Kam-lam Deputy Chairman ALA6 Dr Margaret NG Mr LEUNG Kwok-hung Dr Priscilla LEUNG Dr LEUNG Ka-lau Mr Paul CHAN Mr Ronny TONG	Members' agreement to submit the Subcommittee's proposed Practice and Procedure to the House Committee for endorsement as soon as practicable Members' views on division of labour among Subcommittee members Ms Emily LAU's request for a comparison table on the practices and procedures adopted by a select committee, this Subcommittee and a subcommittee under the House Committee not vested with the powers under Cap. 382	The Secretariat to take action as requested under paragraph 15 of the minutes

Time Marker	Speaker	Subject(s)	Action Required
		Internal briefing for members on 4 December 2008	
014632 – 015102	Mrs Regina IP LAU Chairman Mr Abraham SHEK Clerk Mr KAM Nai-wai	Chairman's advice that consideration might be given to inviting experts to brief members on structured financial products	
015103 – 015423	Chairman Clerk Mr Abraham SHEK	Proposed work schedule noted by members	
015424 – 015532	Chairman	Proposed major areas of study (updated as at 25 November 2008) noted by members	
015533 – 015654	Clerk	Proposed indexing system for Subcommittee papers noted by members	
015655 – 015746	Chairman Clerk Ms Emily LAU Mr Abraham SHEK	Reference room for members' perusal of Subcommittee papers	