

立法會
Legislative Council

LC Paper No. CB(1)451/08-09
(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 third meeting
held on Tuesday, 9 December 2008, at 2:30 pm
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 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 Vincent FANG Kang, SBS, JP
Hon LEUNG Kwok-hung
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon KAM Nai-wai, MH
Hon Starry LEE Wai-king
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, 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 : Dr Hon Philip WONG Yu-hong, GBS (Deputy Chairman)
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon WONG Ting-kwong, BBS
Dr Hon LAM Tai-fai, BBS, 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 Confirmation of minutes and matters arising
(LC Paper No. CB(1)356/08-09 — Minutes of meeting on
25 November 2008)

The minutes of the meeting on 25 November 2008 were confirmed.

II Papers issued since last meeting
(LC Paper No. CB(1)298/08-09(01) — Administration's response to
questions raised by Hon Mrs
Regina IP LAU Suk-yea as set out
in LC Paper No.
CB(1)188/08-09(01)

LC Paper No. CB(1)360/08-09(01) — Administration's response to
questions raised by Legislative
Council Secretariat concerning the
latest development of the
Government's "buy-back" proposal)

2. Members noted that the above papers had been issued for the Subcommittee's information.

New York State government's assistance to auction rate securities investors

3. Referring to the New York State government's experience in helping auction rate securities investors to recoup their investment, Mrs Regina IP LAU Suk-yea

said that the Administration's reply (LC Paper No. CB(1)298/08-09(01)) had not adequately addressed her concern. She would set out her further queries and request the Administration to provide further information on why the Administration had not adopted a more proactive approach in protecting the interests of affected investors in the Minibonds incident.

(Post-meeting note: The Secretariat forwarded Mrs IP's letter dated 12 December 2008, as well as the reference material provided by her, to the Administration on 12 December 2008 for response.)

Issues relating to the "buy-back" proposal for Minibonds

4. Members requested that the following information should be made available to facilitate their consideration of the "buy-back" proposal for Minibonds:

- (a) the Administration to provide details of the Government's original buy-back proposal, including the meaning of "buy-back" and the legal advice obtained on the legal feasibility of the proposal and on the claim of Lehman's legal counsel in the United States; and
- (b) the Hong Kong Association of Banks (HKAB) or its dedicated Task Force to provide details (including the documentations) of the banks' buy-back plans originally scheduled to commence in December 2008; details of the claim of Lehman's legal counsel and copy of the legal counsel's letter to Lehman Minibonds' Trustees, HSBC, conveying the claim; as well as the legal advice sought by HKAB or its Task Force on the claim of Lehman, and if such advice had been obtained, its details.

(Post-meeting note: The Secretariat sent letters to the Administration and HKAB requesting the information in paragraph 4(a) and (b) on 10 December 2008.)

III Proposed major areas of study and the approach to be adopted

(LC Paper No. LS19/08-09

— Paper on "Summary of differences in consequences for witnesses testifying before the Subcommittee upon being summoned or invited to attend" prepared by the Legal Service Division

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)

Attendance of witnesses

5. Members in general agreed that all witnesses attending before the Subcommittee should be summoned in accordance with the relevant provisions of the Legislative Council (Powers and Privileges) Ordinance (Cap. 382) and be examined on oath.

Handling of claims for public interest immunity

6. Members noted that the procedures for handling witnesses' claim for public interest immunity were set out in the Resolution passed under Cap. 382 on 25 May 1994 and amended on 20 November 1996 and further amended on 16 April 1997. They also noted ALA6's advice that :

- (a) the Resolution could be applicable to all committees vested with the powers under Cap. 382 in their handling of claims for public interest immunity;
- (b) the Resolution had been incorporated in the Subcommittee's Practice and Procedure, which had been adopted by the Subcommittee and subsequently endorsed by the House Committee on 28 November 2008; and
- (c) the procedures set out in the Resolution could only be amended by a resolution of the Council and any such amendment, if proposed by the Subcommittee, should be put before the House Committee for consideration.

7. Some members including Mr KAM Nai-wai, Dr Margaret NG, Ms Emily LAU, Ms Audrey EU, Mr CHIM Pui-chung and Mr Ronny TONG doubted whether it was appropriate for the Subcommittee to entrust the incumbent Chairman and Deputy Chairman with the determination of witnesses' claims for public interest immunity, given that both of them had not voted in favour of authorizing the Subcommittee to exercise the powers conferred by section 9(1) of Cap. 382. There was also concern about the transparency of the decision-making process. On the other hand, some members including Mr CHAN Kam-lam were of the view that the credibility of the Chairman and Deputy Chairman should not be questioned. After preliminary discussion, members agreed that the subject would be further considered during the Subcommittee's internal deliberation at the next meeting. The Secretariat was requested to prepare a paper setting out more background information on the subject for members' reference.

(Post-meeting note: The Secretariat's paper was issued vide LC Paper No. CB(1)442/08-09 on 18 December 2008.)

8. Members noted the Chairman's explanation of the considerations for his voting decision at the House Committee meeting on 17 October 2008 and at the Council meeting on 12 November 2008. The Chairman re-affirmed that he was

committed to maintaining a high degree of transparency in the Subcommittee's proceedings.

Proposed major areas of study

9. Members put forward the following suggestions and views about the Subcommittee's proposed major areas of study:

- (a) whether the Subcommittee should proceed to study possible assistance to affected investors ahead of other issues such as the regulatory framework and banks' sale practices;
- (b) the Administration and regulators should be asked to provide factual information on details of how they perform their regulatory supervision over banks and securities firms, including the actions and sanctions taken; and
- (c) regarding the approval or vetting mechanism, details of the procedures involved and the approving persons or authorities.

10. The Chairman advised and members agreed that this matter would be further discussed at the next meeting.

IV Any other business

Arrangement for discussion on the latest development of the "buy-back" proposal

11. The Chairman said that he had received letters from Mr KAM Nai-wai and Ms Audrey EU proposing to hold an urgent meeting to receive a briefing on the latest development of the "buy-back" proposal for Minibonds. He considered that it might not be appropriate for him to make a decision on whether such an urgent meeting should be held pending the Subcommittee's decision at this meeting as to whether the witnesses should attend before the Subcommittee by summons under Cap. 382 or by invitation. Moreover, as far as he understood, the Administration had indicated that it would be in a better position to brief Members on the matter around mid-December 2008. The Chairman added that the Secretariat had kept the two members informed of the development, including the possibility of the Panel on Financial Affairs holding an urgent meeting.

12. After discussion, members agreed in principle that it would be more appropriate for the Subcommittee to focus on its inquiry work in accordance with its planned phases of study. While noting that the Panel would hold a special meeting on 18 December 2008 to discuss issues related to the Government's "buy-back" proposal, some members considered that the Administration and related parties should have briefed Members on a much earlier date. Members also noted that the Panel on Financial Affairs could provide a forum for members to receive urgent briefings from the Administration on new developments in the Minibonds

incident.

(Post-meeting note: Notice of special meeting of the Panel on Financial Affairs on 18 December 2008 was issued vide LC Paper No. CB(1)336/08-09 on 10 December 2008.)

13. Members also agreed that a number of closed meetings would be held for the Subcommittee's internal deliberations. The next meeting (closed meeting) would be held on 19 December 2008, at 10:45 am.

14. There being no other business, the meeting ended at 4:33 pm.

Council Business Division 1
Legislative Council Secretariat
23 December 2008

**Proceedings of the
Subcommittee to Study Issues Arising from Lehman Brothers-related
Minibonds and Structured Financial Products
Third meeting on Tuesday, 9 December 2008, at 2:30 pm
in the Chamber of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000044	Chairman	Confirmation of minutes	
000045 – 000738	Chairman Mrs Regina IP Mr KAM Nai-wai	Mrs Regina IP's request for the Administration to make reference to the New York State government's experience in helping financial product investors to recoup their investment and to provide further information on why the Administration had not been more proactive in helping affected investors in the Minibonds incident.	The Secretariat to take action as requested under paragraph 3 of the minutes.
000739 – 012536	Dr Margaret NG Clerk Mrs Regina IP Chairman Ms Audrey EU Mr James TO Mr KAM Nai-wai ALA6 Mr CHAN Kam-lam Ms Emily LAU Mr CHIM Pui-chung Mr Ronny TONG Mr IP Wai-ming	<p>Members' request for the Administration and the Hong Kong Association of Banks to provide information on the details and legality of the Government's "buy-back" proposal for Minibonds.</p> <p>Members' agreement that all witnesses attending before the Subcommittee should be summoned in accordance with the relevant provisions of Cap. 382.</p> <p>Members' diverse views over the handling of claims for public interest immunity. Some of them were not in favour of entrusting the incumbent Chairman and Deputy Chairman to determine claims for public interest immunity, while some considered that their credibility should not be questioned.</p> <p>The Chairman's re-affirmation of his commitment to keeping the Subcommittee's proceedings transparent</p> <p>Members' suggestions on the Subcommittee's proposed major areas of study, including whether the Subcommittee should first study possible assistance to affected investors, and</p>	<p>The Secretariat to take action as requested under paragraph 4 of the minutes.</p> <p>The Secretariat to take action as requested under paragraph 7 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		request for the Administration and regulators to provide factual information on details of the actual performance of their regulatory duties.	
012537 – 020239	Chairman Clerk Mr CHAN Kam-lam Mr James TO Mr KAM Nai-wai Ms Audrey EU Mr LEUNG Kwok-hung	Members' agreement in principle that the Subcommittee should focus on its planned phases of study, while the Panel on Financial Affairs could take up issues relating to new developments of the Minibonds incident. Members noted that the Panel on Financial Affairs would hold a special meeting on 18 December 2008 to discuss the latest development of the Government's "buy-back" proposal for Minibonds.	