

立法會
Legislative Council

LC Paper No. CB(1)497/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

Panel on Financial Affairs

Minutes of meeting
held on Friday, 21 November 2008 at 10:45 am
in the Chamber of the Legislative Council Building

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon Vincent FANG Kang, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon CHIM Pui-chung
Hon KAM Nai-wai, MH
Hon Starry LEE Wai-king
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, JP
Hon CHAN Tanya

Members attending: Dr Hon Margaret NG
Hon WONG Kwok-hing, MH
Hon LEE Wing-tat
Hon LEUNG Kwok-hung

Members absent : Dr Hon David LI Kwok-po, GBM, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Abraham SHEK Lai-him, SBS, JP

Public officers attending : Agenda Item IV

Mr Joseph YAM, GBS, JP
Chief Executive
Hong Kong Monetary Authority

Mr Peter PANG, JP
Deputy Chief Executive (Development)
Hong Kong Monetary Authority

Mr CHOI Yiu-kwan, JP
Deputy Chief Executive (Banking)
Hong Kong Monetary Authority

Mr Eddie YUE, JP
Deputy Chief Executive (Monetary)
Hong Kong Monetary Authority

Agenda item V

Mr CHENG Yan-chee
Deputy Secretary for Financial Services and the Treasury
(Financial Services)

Ms Angelina KWAN
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)

Clerk in attendance: Ms Rosalind MA
Chief Council Secretary (1)5

Staff in attendance : Mr Noel SUNG
Senior Council Secretary (1)4

Miss Haley CHEUNG
Legislative Assistant (1)8

Action

Application for late membership

The Panel accepted Mr Vincent FANG's application for late membership.

I Confirmation of minutes of meeting and matters arising

(LC Paper No. CB(1)173/08-09 — Minutes of meeting on 14 October 2008)

2. The minutes of the meeting held on 14 October 2008 were confirmed.

II Information papers issued since the last meeting

(LC Paper No. CB(1)82/08-09(01) — Administration's paper on third quarterly report of 2008 on Employees Compensation Insurance — Reinsurance Coverage for Terrorism

LC Paper No. FS08/08-09 — A summary of local press reports on the rescue packages introduced by places outside Hong Kong to cope with the current financial crisis from 3 August 2007 to 5 November 2008 prepared by the Legislative Council Secretariat (Chinese version only)

LC Paper No. FS10/08-09 — A summary of local press reports on the measures introduced by Hong Kong in connection with and its responses to the current financial crisis from 15 September 2008 to 5 November 2008 prepared by the Legislative Council Secretariat (Chinese version only)

LC Paper No. CB(1)215/08-09 — Administration's paper on third Quarter Economic Report 2008 and the press release

LC Paper No. CB(1)243/08-09(01) — Administration/Mandatory Provident Fund Schemes Authority's paper on the impact of the financial turmoil on the Mandatory Provident Fund System)

3. Members noted the information papers issued since the last meeting.

III Date of next meeting and items for discussion

(LC Paper No. CB(1)179/08-09(01) — List of outstanding items for discussion

LC Paper No. CB(1)179/08-09(02) — List of follow-up actions)

4. Members agreed that the following items be discussed at the regular meeting scheduled for 1 December 2008:

- (a) Briefing by the Financial Secretary on Hong Kong's latest overall economic situation;
- (b) 2009-2010 Budget Consultation;
- (c) Arrangement for the Vote on Account Resolution under section 7(1) of the Public Finance Ordinance (Cap. 2); and
- (d) Enhancing employee control over Mandatory Provident Fund investment – proposed legislative amendments.

5. Members also agreed that, to allow sufficient time for dealing with the discussion items, the starting time of the meeting should be advanced to 8:30 am, i.e. the meeting would be held from 8:30 am to 12:45 pm.

IV Briefing on the work of the Hong Kong Monetary Authority

(LC Paper No. CB(1)179/08-09(03) — Paper provided by Hong Kong Monetary Authority)

Briefing by the Hong Kong Monetary Authority

6. At the invitation of the Chairman, the Chief Executive of the Hong Kong Monetary Authority (CE/HKMA) gave a power-point presentation on HKMA's work. CE/HKMA focused his briefing on HKMA's work in maintaining monetary and financial stability during the current once-in-a-century financial crisis. The salient points in his presentation were summarized below:

- (a) On Hong Kong dollar exchange rate, the highly volatile global foreign exchange market was unfavourable to the stability of the Hong Kong dollar exchange rate. However, Hong Kong dollar had strengthened and stayed near the level of strong-side Convertibility Undertaking (CU) for three reasons, namely, the deleveraging of earlier interest rate arbitrage activities involving short selling of the Hong Kong dollar; repatriation of funds by different economic sectors from overseas markets; and foreign banks resorting to selling US dollars

and purchasing Hong Kong dollars to satisfy their funding requirements.

- (b) On credit tightness in the money market, banks were unwilling to lend because of concerns about the credit worthiness of counterparties, following the collapse of the Lehman Brothers, leading to the sharp increases in interbank interest rates and affect the normal functioning of the interbank market. HKMA responded promptly by purchasing US dollars and selling Hong Kong dollars when the exchange rate strengthened, consistent with the Currency Board principles. Up to 20 November 2008, HKMA had actively purchased a total of US\$3.2 billion within the Convertibility Zone and injected a total of HK\$24.8 billion into the banking system. In addition, HKMA passively purchased a total of US\$7.1 billion as the strong-side CU was triggered repeatedly, injecting a total of HK\$54.8 billion into the banking system. The Aggregate Balance would increase to HK\$84.3 billion on 24 November 2008, exceeding the record high of around HK\$55 billion in 2004 when the market speculated on the strengthening of the Hong Kong dollar on the appreciation of the renminbi (RMB). HKMA introduced five temporary measures on 30 September 2008 to provide individual banks in need with collateralized liquidity. The total amount of liquidity provided by these five measures had been about HK\$6.2 billion.
- (c) On banking stability, banking system in Hong Kong remained robust despite the financial crisis. At the outbreak of the crisis, local banks had an average capital adequacy ratio of about 14%, well above the international minimum requirement of 8%. HKMA implemented the temporary 100% deposit guarantee arrangement in October 2008 to enhance depositor confidence. HKMA would continue to conduct broad-based consultation on the longer-term deposit protection arrangement after the end of 2010, and then make suggestions and propose relevant amendments to the law. The Contingent Bank Capital Facility had also been implemented on 14 October 2008 to provide locally incorporated banks with capital in case of need.
- (d) On banking business, in order to encourage banks to continue lending, HKMA would adopt a flexible approach towards setting the minimum supervisory capital adequacy ratios applicable to individual banks if necessary, so that there would be room for them to conduct lending business.
- (e) On Lehman Brothers-related issues, HKMA continued to concentrate on handling the complaints received and preparing the report to be submitted to the Financial Secretary (FS). HKMA had also appointed an independent financial consultant to make sure the appraisal of the value of minibonds and the buy-back arrangement were operating

fairly. HKMA had introduced the mediation and arbitration scheme to help facilitate settlement of dispute between investors and banks. As for the progress of complaint investigation, more than 7 700 cases had gone through initial processing while 166 cases had been referred to the Securities and Futures Commission (SFC) for further investigation and follow-up.

- (f) On the performance of the Exchange Fund (EF), EF continued to record valuation loss in the third quarter of 2008 (amounting to HK\$48.3 billion) under the extremely unfavourable investment environment. Together with the HK\$35 billion loss recorded in the first half of the year, the loss in the first nine months of the year was HK\$83.3 billion, i.e. a rate of return of -5.8%. The negative return was relatively small compared with the overall market situation, showing that the conservative investment strategy of the EF was appropriate. Excluding the HK\$56.9 billion loss incurred from the investment in Hong Kong equities, which was a passive portfolio held as long-term investment due to historical reason, the rate of return of other investment portfolios in EF in the first three quarters of the year was only -1.9%.

(Post-meeting note: CE/HKMA's speaking note was circulated to members vide LC Paper No. CB(1)265/08-09(01) on 24 November 2008.)

Discussion

Lending to small and medium-sized enterprises

7. Ms Emily LAU expressed concern that small and medium-sized enterprises (SMEs) had great difficulties in obtaining loans and credit facilities from banks despite various measures introduced by the Government/HKMA to provide banks with liquidity and to restore the confidence of financial institutions in SMEs, such as the SME Loan Guarantee Scheme. As the failure of SMEs would have adverse impact on the economy of Hong Kong, Ms LAU enquired whether and what further measures would be introduced to provide support for SMEs in obtaining loans/credits during this difficult time. Noting that financial institutions in some overseas jurisdictions were asked to grant loans and credit facilities to SMEs when provided with liquidity by their governments, Ms LAU asked whether similar measures would be implemented in Hong Kong.

8. Miss Tanya CHAN expressed concern about actions taken by HKMA to encourage banks to provide credits to SMEs. Miss CHAN asked whether the liquidity released by the banks through selling the mortgage loans to the Hong Kong Mortgage Corporation Limited (HKMC) could be used for lending to SMEs.

9. In response, CE/HKMA advised that the provision of credit to SMEs and the terms upon which it was provided were commercial decisions of banks, subject to

prudent credit assessment. It would not be appropriate for HKMA to lay down the lending policies for banks. To encourage lending to SMEs, CE/HKMA said that HKMA had urged banks to adopt a supportive attitude towards their SME customers and had issued a circular to this effect. HKMA had also reminded banks of their important role in supporting financial intermediation amid the financial crisis, and the need to avoid the development of a vicious cycle of credit crunch and economic downturn. He agreed that more assistance could be provided to SMEs through other Government measures. To address Ms Emily LAU's concern, CE/HKMA undertook to provide information to the Panel on measures taken by other jurisdictions to assist SMEs.

(Post-meeting note: The information required by Ms Emily LAU was circulated to members vide LC Paper No. CB(1)339/08-09(02) on 4 December 2008.)

10. Mr Vicent FANG noted with concern that banks had tightened their credit risk management in respect of both bank and non-bank counterparties, despite the injection of liquidity into the banking system. Hence, SMEs were still facing great difficulties in obtaining credit from banks. Moreover, Mr FANG pointed out that banks had lengthened the settlement period for credit card transactions for some SMEs, in some cases up to 90 to 100 days after the transactions, which had seriously affected their cash flow.

11. CE/HKMA said that banks were still cautious about interbank lending and lending to other business enterprises given the various difficulties posed by the current financial crisis. For example, some local banks were concerned about the counterparty risks of foreign banks which were subject to the impact of the volatile financial situation in their home countries. However, banks had assured HKMA that they would assess the extensions of credits to SMEs on a case by case basis and would not curtail credit indiscriminately. On the settlement period for credit card transactions, Deputy Chief Executive (Banking)/HKMA (DCE/B) explained that one of the reasons for the card-issuing banks to lengthen the settlement period was that they would have to compensate the card-holders concerned if the service-providing entity (e.g. a travel agency) became insolvent before the service was delivered. Whilst the Travel Industry Council had set up a compensation fund for customers of registered travel agencies, compensations were made to the customers but not the card-issuing banks. HKMA was liaising with the Hong Kong Association of Banks (HKAB) and the relevant service industries to address the concerns.

12. Mr CHIM Pui-chung shared the concern that although the Government tried hard to provide a conducive business environment for banks, they were still reluctant to lend and provide credits/loans to SMEs. He wondered whether the Government would consider directly taking up the role of financial intermediation and become directly involved in the provision of loans and credits to SMEs.

13. In response, CE/HKMA explained that it was vital to maintain the smooth functioning of the banking sector since the other two channels of financial intermediation, namely, the equity and debt markets, had not been functioning properly. However, banks should be left to manage their business prudently. As regards Mr CHIM's proposal for the Government to directly provide credits to SMEs, CE/HKMA advised that it should be a policy matter for the Government to consider.

14. Mr James TO was concerned that as a number of banks had suffered significant losses during the financial turmoil, they might be reluctant to extend credit. Hence, measures to provide liquidity to the banking system and to allow flexibility to the setting of the supervisory minimum capital adequacy ratios might not achieve the desired effect of alleviating the credit crunch. In response, CE/HKMA said that individual banks had their own considerations in conducting lending business. If individual banks were constrained by their capital adequacy in the provision of credits, HKMA would, upon request of the banks, adopt a flexible approach towards setting the minimum supervisory capital adequacy ratios to alleviate the concerns.

Mortgage lending

15. Mr LEE Wing-tat expressed concern that many property buyers had difficulties in obtaining sufficient mortgage loans to complete their property transactions because of the significant decrease in the valuations of the properties. In view of the impact of the downfall of the property market on the economy, Mr LEE asked whether HKMA had discussed with banks issues relating to mortgage lending, and whether HKMC could offer assistance to the property buyers. Mr Paul CHAN was also concerned that banks had increased the interest rates and tightened credit for mortgage loans. Mr CHAN opined that given the efforts of HKMA to enhance the liquidity of banks, they should be reminded of their important role in financial intermediation, particularly in lending to various sectors of the economy such as the real estate market.

16. DCE/B advised that banks had not particularly tightened their mortgage lending policies. However, with the decline in property prices as a result of the economic downturn, the valuations of individual residential units might be much lower than the purchase prices, especially for units which were purchased earlier in the year. The Deputy Chief Executive (Development)/HKMA supplemented that HKMC had been providing mortgage insurance to facilitate purchase of properties by buyers while keeping banks' risk to below 70% of the valuations of the properties concerned. HKMC was considering enhancing the Mortgage Insurance Programme by lowering the threshold above which insurance would be made available from the current 70% loan-to-value ratio.

17. Given the low rate of default of mortgage loans purchased by HKMC, Miss Tanya CHAN asked whether there was scope for HKMC to expand its mortgage purchase business in order to release more liquidity to banks for fresh lending to the

property market. In response, CE/HKMA said that HKMA had been discussing with HKMC the feasibility of expanding the scope of mortgage loans to be purchased by HKMC, subject to proper credit-risk management by HKMC.

Regulation of the banking industry

18. Mr Albert HO enquired whether, under the existing regulatory framework, there were requirements for banks to make timely disclosure of substantial losses in their investments, and what sanctions were available if they failed to comply with such disclosure requirements. Citing the Bank of East Asia as an example, Mr HO noted with concern the substantial differences in investment losses disclosed by the bank at different times. He pointed out that the failure in timely disclosure of price sensitive information, such as the issuance of "profit warning" notices, might lead to a confidence crisis for the banking system. Mr HO was also concerned about the sanction for breaches of the disclosure requirements under the Listing Rules, which was only limited to reprimanding the bank concerned. Mr KAM Nai-wai shared Mr HO's concern and asked whether it was a compulsory requirement for banks to make immediate disclosure when they anticipated substantial losses in their business.

19. CE/HKMA advised that adequate disclosure was a key requirement in the supervisory process. The importance of transparency was highlighted in the basic principles for the reform of the international financial system agreed at the G-20 Summit. DCE/B added that as required under HKMA's Supervisory Policy Manuals, banks had to disclose their profits and losses in their half-yearly and annual reports. For banks that were listed on the Hong Kong Exchanges and Clearing Limited, they were subject to the further disclosure requirements under the Listing Rules which provided for timely disclosure by listed issuers of any price sensitive information, such as "profit warning" notices. The Board of Directors of a listed company was responsible for ensuring compliance with the disclosure requirements under the Listing Rules.

20. Mr LEUNG Kwok-hung expressed concern that while banks had received support from the Government with measures such as full deposit guarantee and Contingent Bank Capital Facility, they had been tightening credits and lending to SMEs and property buyers. Moreover, banks were not subject to compulsory requirements for disclosure of major events which would have significant impact on their business including profitability. Mr LEUNG was dissatisfied that while banks were allowed to sell complicated structured financial products to their customers, which had attracted numerous complaints about alleged mis-selling, the only sanction available would just be a public reprimand by SFC even if the complaint was substantiated.

21. In response, CE/HKMA said that there was no sufficient power for HKMA to impose sanctions in respect of mis-selling of investment products by banks under the Banking Ordinance (BO) (Cap. 155), although the Securities and Futures Ordinance (Cap. 571) had empowered SFC to take disciplinary actions against the banks. This was an issue addressed in Mr David Carse's report on the review of HKMA's work on

banking stability, which pointed out that there was scope for enhancing the investigative and sanctioning power of HKMA under BO. Responding to Mr LEUNG Kwok-hung's enquiry about disclosure of the records of the Council of Financial Regulators and Financial Stability Committee, CE/HKMA said that the decision should rest with the chairmen concerned, i.e. FS and the Secretary for Financial Services and the Treasury.

22. Mr WONG Kwok-hing expressed concern about massive layoff of banking staff despite the Government's support and assistance offered to the banking sector. He wondered whether HKMA could request banks not to lay off their staff under the current difficult economic environment.

23. CE/HKMA responded that he would certainly like to see all parties, including the employers and employees, working together to meet the challenges posed by the current financial turmoil in order to minimize the adverse impacts on Hong Kong and prevent the creation of a vicious cycle. While HKMA had no authority to influence the business decisions of banks, including manpower planning, it would maintain a dialogue with the banking sector on their community responsibility amid the current difficult economic environment.

24. Mr WONG Kwok-hing expressed concern about the slow progress in the investigation of complaints against banks' alleged mis-selling of the Lehman Brothers-related minibonds. So far only about 160 cases had been referred to SFC for further investigation. He asked whether HKMA could expedite the process. In response, CE/HKMA said that HKMA had already looked into over 7 000 cases and stressed that the investigation work had to be conducted in a fair and objective manner. HKMA would consider employing additional staff to speed up the investigation work.

Challenges facing the economy of Hong Kong

25. Noting that the US Government might not provide assistance to the car-making industry, Ms Emily LAU was concerned about the adverse impact of failure of the US car manufacturers on the global economy. In response, CE/HKMA said that while he was not in a position to predict the US Government's policy on handling the crisis involving the car-making industry, his personal view was that the collapse of the US car-making industry could have profound adverse implications for the US and the global economy, as a significant portion of the credit default swaps market in the US was related to its car-making industry.

26. Mr Paul CHAN enquired about the impact of a strong Hong Kong dollar, which stayed near the level of the strong-side CU, on the economy of Hong Kong. In reply, CE/HKMA said that a strong Hong Kong dollar at present was beneficial to the economy as it would help maintain an easy monetary environment in Hong Kong.

27. Mr Albert HO was concerned about the impact of the closer cooperation between Taiwan and the Mainland on Hong Kong's economy, especially the financial market. He asked whether CE/HKMA had any plan to visit Taiwan and discuss with the relevant authorities on financial issues of mutual concern.

28. In response, CE/HKMA believed that the Hong Kong economy would benefit from the closer cooperation between the Mainland and Taiwan, especially in the financial market because both Taiwan and the Mainland had maintained some form of exchange control and Hong Kong could play an intermediary role between the two places. He added that he had no plan to visit Taiwan but informal channel of communication was in place between Hong Kong and Taiwan financial authorities to discuss supervisory issues.

Cooperation with the Mainland

29. The Chairman asked whether agreement had been signed with the People's Bank of China (PBoC) for provision of liquidity to Hong Kong banks operating on the Mainland. He also sought information on details of the arrangement, such as the interest rates and the geographical coverage of the arrangement on the Mainland. In reply, CE/HKMA said that the arrangement had been implemented based on the current platform of cooperation: Hong Kong banks operating on the Mainland could approach PBoC or HKMA to borrow collateralized liquidity if they needed liquidity support.

30. Mr James TO asked whether the Hong Kong Special Administrative Region Government had made any specific proposals to the Central Government on providing support to the development of the financial sector in Hong Kong. In response, CE/HKMA said that there were already 80 recommendations in the proposed action agenda submitted by the Focus Group on Financial Services under the Economic Summit on "China's 11th Five-year Plan and the Development of Hong Kong", which were being actively pursued. Further discussions with the Mainland authorities on measures to boost Hong Kong's economy would be held in face of the global financial crisis, including expansion of RMB business in Hong Kong.

Performance of the Exchange Fund

31. Noting that EF had recorded a substantial loss of HK\$83.3 billion in the first three quarters of 2008 (i.e. a rate of return of -5.8%), the Deputy Chairman and Mr James TO were concerned whether HKMA's performance in the investment of EF was comparable to those of similar public funds in overseas jurisdictions. In view of the volatilities in the financial market, the Deputy Chairman was concerned whether EF investment would suffer more significant losses in the fourth quarter of 2008.

32. In reply, CE/HKMA said that in the extremely unfavourable investment environment amid the global financial crisis, the rate of return of -5.8% of EF was relatively low compared with other public funds in overseas jurisdictions. Based on available information, a number of these public funds had recorded double-digit

negative rate of return in the same period. As regards the investment return in the fourth quarter of 2008, CE/HKMA advised that given the worsening global financial markets in October and November 2008, HKMA anticipated that the investments of EF would continue to incur losses in the last quarter of 2008 and the outcome of investments in 2008 might not be favourable. Responding to the Deputy Chairman's further enquiry on whether losses incurred in the first three quarters of 2008 was only mark-to-market losses on Hong Kong equities held by EF as long-term investment, the Deputy Chief Executive (Monetary)/HKMA advised that most of the losses incurred were mark-to-market losses.

33. At the request of Mr James TO, CE/HKMA undertook to provide information on the investment returns of a number of public funds in other jurisdictions in the first three quarters of 2008.

(Post-meeting note: The information provided by HKMA on investment returns of a number of public funds in other jurisdictions was circulated to members vide LC Paper No. CB(1)339/08-09(01) on 4 December 2008.)

Appointment and remuneration for the Monetary Authority

34. Mr CHIM Pui-chung was concerned whether there was a proper succession plan for CE/HKMA to ensure that the regulatory regime would remain effective after the retirement of the incumbent CE/HKMA. Noting that EF was likely to incur a substantial loss of about \$100 billion this year and that the senior management of many large financial institutions had indicated that they would forfeit their bonus, Mr LEE Wing-tat asked whether CE/HKMA would consider doing the same. Mr KAM Nai-wai echoed this view and asked CE/HKMA whether, in his personal opinion, he should receive any bonus in 2008, and whether he should resign from his post, in view of the very heavy loss incurred in the investment of EF, and the numerous complaints received in relation to banks' alleged mis-selling of structured financial products. Mr KAM believed that these matters were of public interest and CE/HKMA should respond directly to his questions.

35. CE/HKMA said that the appointment and remuneration for the Monetary Authority were determined by FS based on the advice of the Governance Subcommittee of the Exchange Fund Advisory Committee. It would not be right for him to comment on his own remuneration. As far as issues relating to alleged mis-selling of structured financial products were concerned, the matter would be pursued at the LegCo subcommittee specifically formed to study the related issues and he had no comment to offer at this stage.

V Creation of a Supernumerary Administrative Officer Staff Grade C Post with respect to Anti-Money Laundering and Counter Financing of Terrorism Regime in Hong Kong

(LC Paper No. CB(1)179/08-09(04) — Administration's paper on creation of a supernumerary administrative officer staff grade C post with respect to anti-money laundering and counter financing of terrorism regime in Hong Kong)

Briefing by the Administration

36. At the invitation of the Chairman, the Deputy Secretary for Financial Services and the Treasury (Financial Services) (DS/FS) gave a brief introduction on the staffing proposal. He advised that the proposed supernumerary post of Administrative Officer Staff Grade C (AOSGC) (D2) to be created in the Financial Services Branch (FSB) under the Financial Services and the Treasury Bureau (FSTB) would undertake the policy work in relation to the enhancement of the anti-money laundering (AML) and counter financing of terrorism (CFT) regime in Hong Kong. The Financial Action Task Force (FATF) had conducted mutual evaluation (ME) on Hong Kong and published a ME Report in July 2008. To follow up the recommendations raised in the ME Report for submission of the first progress report to the FATF in June 2010, a supernumerary AOSGC post was proposed to be created to head a new policy team. The post was proposed to be created from January 2009 to end 2010 for a period of 24 months. Subject to members' views, the Administration would submit the proposal to the Establishment Subcommittee for consideration at its meeting on 17 December 2008.

37. Noting that the incumbent of the supernumerary post would coordinate and prepare legislation for addressing the deficiencies identified in the ME Report, Dr Margaret NG enquired about the timing and scope of the proposed legislation and whether the proposed legislation would affect the legal profession. Dr NG pointed out that legal practitioners had expressed concern about compliance with the new requirements for client identification and information gathering under the Law Society of Hong Kong (the Law Society)'s guidelines for combating money laundering and terrorist financing issued in July 2008. She was concerned that apart from practical difficulties in information gathering (particularly where overseas clients were involved), the new requirements might infringe on personal data privacy.

38. In reply, DS/FS said that FATF encouraged the issuance of AML/CFT guidelines for various designated non-financial businesses and professions, including the legal profession. The AML/CFT guidelines issued called for voluntary compliance amongst members of the concerned business and profession. As highlighted in the Administration's paper, the initial phase of work would focus on the AML/CFT regulation for the financial sector. AML/CFT regulation for legal profession would not be covered in the proposed legislative work. DS/FS advised that as far as he understood, the AML/CFT guidelines for the legal profession were drawn up by the Law Society on its own initiative. The Administration noted the concerns raised on specific requirements stipulated in the guidelines. The Security

Bureau (SB), which oversaw AML/CFT matters concerning the designated non-financial businesses and professions, would suitably follow up the concerns of legal practitioners on compliance with the AML/CFT guidelines with the Law Society and the Privacy Commissioner for Personal Data.

39. Noting Dr Margaret NG's concern, the Chairman said that issues relating to the AML/CFT guidelines for the legal profession could be pursued at meetings of the Panel on Security, if Members so wished.

40. Mr James TO remarked that he did not support the staffing proposal as the workload involved did not justify the creation of one AOSGC post. Mr TO recalled that when the Narcotics Division (ND) of SB was in charge of the overall coordination for AML/CFT policies, there were no dedicated directorate resources to take care of such policies and the Principal Assistant Secretary (PAS) concerned had to undertake other duties. Pointing out that there were six PASs in FSB, Mr TO queried why the work of the proposed post could not be absorbed by the existing officers. Alternatively, the Administration should consider reverting to the arrangement for ND to coordinate AML/CFT policies.

41. In response, DS/FS said that in examining the need for the supernumerary post, the Administration had explored alternatives including whether the existing PASs in FSB could absorb the new task on the overall coordination of AML/CFT policies. As the existing six PASs were fully occupied with their current duties, in particular the follow-up of the global financial turmoil, they could not take up the new task on the AML/CFT policies without affecting their existing duties. DS/FS advised that as far as he recalled, one supernumerary post had been created under ND to undertake time-limited task when Hong Kong took up the presidency of FATF in 2001. He pointed out that as Hong Kong was required to submit the first progress report to FATF in June 2010, the follow-up of the recommendations in the ME Report had to be taken forward as soon as possible. In view of the range and complexity of the work involved and the tight timeframe for delivery, the Administration proposed to create a time-limited AOSGC post in FSB for a period of 24 months, starting from January 2009.

42. Mr James TO did not subscribe to the Administration's explanation and maintained his objection to the proposal. Ms Emily LAU shared Mr TO's concern about the justification for creation of the supernumerary post. Mr TO and Ms LAU were concerned that while the proposed post would take up the responsibilities from ND on coordination of AML/CFT policies, the Administration had not put forward a corresponding proposal to transfer or trim down the existing resources in ND. Ms LAU also doubted the need to retain the supernumerary AOSGC post until end of 2010 since the progress report would be submitted to FATF in June 2010.

43. DS/FS advised that the Administration had to make substantial effort to address the deficiencies identified in the ME Report, including incorporating the key elements of the customer due diligence process into law for the financial sector and putting in place an AML/CFT regulatory regime for remittance agents and money

changers. He pointed out that after transfer of the overall coordinating role to FSB, ND would continue to deal with AML/CFT matters relating to non-financial sectors under FSB's coordination. DS/FS added that the proposed supernumerary AOSGC post would head a new policy team in FSB to coordinate AML/CFT policies and liaise with the concerned bureaux/departments to follow up the recommendations in the ME Report. It was proposed to retain the supernumerary post for six more months after the submission of the progress report to follow up any comments and advice of FATF on the first progress report submitted by Hong Kong till end of 2010.

44. In view of Members' views and concerns about the staffing proposal, the Chairman remarked that he would not conclude that the Panel was in support or otherwise of the Administration's proposal. He asked the Administration to re-consider its proposal having regard to Members' views/suggestions before submitting it to the Establishment Subcommittee.

VI Any other business

45. There being no other business, the meeting ended at 1:09 pm.

Council Business Division 1
Legislative Council Secretariat
31 December 2008