

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1152/09-10

(These minutes have been seen  
by the Administration)

Ref : CB1/PL/FA/1

**Panel on Financial Affairs**

**Minutes of meeting**  
**held on Monday, 4 January 2010 at 10:45 am**  
**in the Chamber of the Legislative Council Building**

- Members present** :
- Hon CHAN Kam-lam, SBS, JP (Chairman)
  - Hon Albert HO Chun-yan
  - Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
  - Dr Hon David LI Kwok-po, GBM, GBS, JP
  - Hon James TO Kun-sun
  - Hon Emily LAU Wai-hing, JP
  - Hon Abraham SHEK Lai-him, SBS, 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, JP
  - Hon CHIM Pui-chung
  - Hon KAM Nai-wai, MH
  - Hon Starry LEE Wai-king
  - Dr Hon LAM Tai-fai, BBS, JP
  - Hon Paul CHAN Mo-po, MH, JP
  - Hon CHAN Kin-por, JP
  - Hon Mrs Regina IP LAU Suk-ye, GBS, JP
- Members absent** :
- Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
  - Dr Hon Philip WONG Yu-hong, GBS
  - Hon CHAN Tanya

**Public officers  
attending**

: Agenda Item IV

Mr John LEUNG, JP  
Deputy Secretary for Financial Services and the Treasury  
(Financial Services)

Miss Grace KWOK  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services)

Ms Ada CHUNG, JP  
Registrar of Companies

Miss Kitty TSUI  
Senior Solicitor (Company Law Reform)  
Companies Registry

Agenda Item V

Mr Clement LEUNG  
Deputy Secretary for Financial Services and the Treasury  
(Treasury)

Mr Kenneth CHENG  
Principal Assistant Secretary for Financial Services and  
the Treasury (Treasury)

Mr Simon YIP  
Clerk to the Board of Review

Mrs Teresa CHU  
Deputy Commissioner (Operations)  
Inland Revenue Department

Mr Tam Tai-pang  
Chief Assessor (Appeals)  
Inland Revenue Department

Agenda Item VI

Mr Kenneth CHENG  
Principal Assistant Secretary for Financial Services and  
the Treasury (Treasury)

Ms Mary WONG  
Assistant Secretary for Financial Services and the Treasury  
(Treasury)

Ms Linda TSUI  
Senior Staff Officer  
(Dutiable Commodities Administration) (Acting)  
Customs and Excise Department

**Clerk in attendance:** Ms Anita SIT  
Chief Council Secretary (1)5

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

Miss Joanne FONG  
Senior Council Secretary (1)7

Ms Haley CHEUNG  
Legislative Assistant (1)8

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Action

**I Confirmation of minutes of meeting and matters arising**

(LC Paper No. CB(1)764/09-10 — Verbatim record of the special meeting on 22 October 2009)

The verbatim record of the special meeting held on 22 October 2009 was confirmed.

**II Information papers issued since the last meeting**

(LC Paper No. CB(1)680/09-10(01) — Administration's information Note on Exemption from Profits Tax (Renminbi Sovereign Bonds) Order

LC Paper No. CB(1)687/09-10(01) — Hong Kong Mortgage Corporation Limited 's written response to the questions raised by Hon Mrs Regina IP's letter dated 27 November 2009 (English version only))

2. Members noted the information papers issued since the last regular meeting on 7 December 2009.

### **III Date of next meeting and items for discussion**

(LC Paper No. CB(1)765/09-10(01) — List of outstanding items for discussion

LC Paper No. CB(1)765/09-10(02) — List of follow-up actions)

#### Meeting in February 2010

3. Members noted that the Administration had proposed the following items for the next regular meeting scheduled for 1 February 2010:-

- (a) Briefing on the work of the Hong Kong Monetary Authority;
- (b) Review of the Deposit Protection Scheme; and
- (c) Development of a scripless securities market.

The Chairman remarked that in order to allow sufficient time for members to discuss the items, the meeting on 1 February 2010 would start at 10:00 am.

#### Hong Kong Mortgage Corporation

4. Mrs Regina IP said that she was not satisfied with the response from the Hong Kong Mortgage Corporation (HKMC) (LC Paper No. CB(1)687/09-10(01)) to her questions on the operation of the corporation. She requested that representatives of HKMC be invited to further discuss with the Panel issues relating to the corporation.

5. The Chairman suggested and members agreed that an item on the role and operation of HKMC be added to the Panel's list of outstanding discussion items. The Chairman added that Mrs IP and other members might forward their further queries to HKMC, and when the item was discussed at the Panel, representatives of the banking sector might also be invited to express their views on relevant issues.

### **IV Companies Ordinance rewrite**

(LC Paper No. CB(1)765/09-10(03) — Administration's paper on Companies Ordinance rewrite

LC Paper No. CB(1)722/09-10(01) — Administration's consultation paper on first phase consultation on draft Companies Bill

LC Paper No. CB(1)762/09-10 — Updated background brief on the Companies Ordinance rewrite exercise prepared by the Legislative Council Secretariat)

6. The Deputy Secretary for Financial Services and the Treasury (Financial Services) (DS(FS)) briefed members, through a Powerpoint presentation, on the latest progress of the Companies Ordinance (CO) (Cap. 32) rewrite exercise and the public consultation on the draft Companies Bill (CB).

*(Post-meeting note: The notes of the Powerpoint presentation (LC Paper No. CB(1)813/09-10(01)) were issued to members vide a Lotus Note e-mail on 4 January 2010.)*

#### Other legislative proposals involving amendments to Companies Ordinance

7. Mrs Regina IP enquired whether the CO rewrite exercise would cover the legislative amendments resulting from the Lehman-Brothers Minibonds Incident, such as the proposed transfer of the relevant provisions on vetting of the offer documents for structured financial products from the CO to the Securities and Futures Ordinance (SFO) (Cap. 571), as mentioned in the consultation paper issued by the Securities and Futures Commission (SFC) in late 2009, and the arrangements for the safe harbour provisions for private allocation of shares.

8. In response, DS(FS) advised that the respective consultation exercises carried out by the Administration and the SFC covered different provisions in the CO. The consultation exercise being conducted by SFC was related to the regulation of public offerings of structured financial products in Hong Kong. Depending on the results of SFC's consultation exercise, the Administration would consider, in consultation with SFC, whether the legislative amendments related to the regulation of public offerings of structured financial products should be submitted to Legislative Council (LegCo) for consideration separately or should be incorporated into the CB. DS(FS) added that the Administration had been in close liaison with SFC regarding legislative amendments relating to the CO and SFO.

9. Mrs Regina IP opined that there was an urgent need to amend the legislation on the regulation of structured financial products. Since the Financial Services and the Treasury Bureau (FSTB) was the policy bureau responsible for financial affairs, it should undertake overall responsibilities in taking forward legislative amendments involving the CO. She was concerned that there was a lack of co-ordination between the Administration and relevant regulatory authorities in handling the amendments of the CO.

10. While sharing Mrs Regina IP's concern about the lack of co-ordination between the Administration and relevant regulatory authorities in taking forward the legislative proposals involving the CO, Ms Emily LAU expressed grave concern that, in view of the complex legal and technical issues involved in the CO rewrite exercise, there might not be sufficient time for members to complete scrutiny of the CB within the current LegCo term if the Bill was introduced into LegCo in late 2010/early 2011. Ms LAU asked whether the Administration was satisfied with the progress of the consultation exercise, and whether it anticipated that consensus could be reached on the more controversial issues. Ms LAU also expressed concern that since the CO rewrite exercise had started in 2006, by the time the CB was introduced, the proposed legislation might already be outdated. In this connection, Ms LAU requested the Panel Clerk to provide a list to set out all the outstanding legislative proposals involving amendments to the CO.

*(Post-meeting note: Subsequent to the meeting, on the advice of the Panel Chairman, the Panel Clerk has written to the Administration requesting for a list of the relevant reviews and consultations conducted by the Administration and the regulators of the financial market, together with details about the progress of these exercises and the respective timetables for introduction of relevant legislative proposals. The information was circulated to members vide LC Paper No. CB(1)1004/09-10(01) on 27 January 2010.)*

11. DS(FS) responded that the Administration was aware of the complexity and magnitude of the CO rewrite exercise, and the need to allow sufficient time for LegCo to scrutinize the CB. In order to gauge the views of the public on the legislative amendments and minimize controversies, the Administration had conducted three consultation exercises in 2007 and 2008, and the broad framework for the CB had been formulated based on the outcome of the consultation exercises. The draft provisions of the CB were being put forward for public consultation in two phases, with a view to attaining a general consensus on the major proposed provisions and facilitating LegCo to complete scrutinizing the Bill before the end of the current legislative term in July 2012. Subsequently, subsidiary legislations to be made under the new CO could be introduced into LegCo in due course. DS(FS) pointed out that while the CO should be regularly updated to keep it in tandem with time, countries like the United Kingdom had taken over a decade to research, rewrite and enact their Companies Acts.

#### Objective and guiding principles for the rewrite exercise

12. Mr Albert HO expressed concern that there might be contradiction between the objective of enhancing Hong Kong's competitiveness and attractiveness as a major international business and financial centre and the guiding principle of enhancing corporate governance, as the former would inevitably involve relaxation of the rules and regulations on companies whereas the latter was aimed at protecting the interest of investors through enhancement of the disclosure and transparency requirements. Mr HO pointed out that many investors had asked for enhancement of the disclosure requirements for listed companies and the legal backing for investors to

seek remedies for damages arising from the misconduct of company directors, etc. Many investors were concerned that the senior executives/managing directors of some listed companies were receiving excessive remuneration. Mr HO asked how the proposals in the consultation paper would help enhance corporate governance of companies as well as the protection of the interest of investors.

13. DS(FS) responded that the objective and guiding principles for rewriting the CO were not contradictory. The rewrite exercise aimed at updating and modernizing the legal framework for companies in Hong Kong, so as to facilitate the conduct of business on the one hand and enhance corporate governance and the use of information technology on the other. The Administration would analyse the views of the public on the proposals in the consultation paper, taking into account the need for facilitating the conduct of business and protecting investors.

#### Business facilitation

14. Mr Paul CHAN referred to the proposed legislative amendments to enable small private and guarantee companies to take advantage of simplified accounting and reporting requirements so as to save their compliance and business costs. Highlighting the importance to protect the interest of the public, rather than only that of the business sector, he enquired what measures would be taken by the Administration to ascertain that adequate public consultation would be undertaken regarding the accounting requirements to be drawn up by the relevant professional bodies for compliance by small private and guarantee companies. Mr CHAN also expressed concern that many charitable organizations were incorporated as guarantee companies and there were cases where problems had been found in the corporate governance, accounting and internal audit procedures of such organizations. He pointed out that the operations of charitable organizations were even less transparent if they operated as a trust fund, and enquired about the measures to enhance the governance of charitable organizations.

15. DS(FS) responded that the Administration would liaise closely with the relevant professional bodies in working out the simplified accounting and reporting requirements for small private and guarantee companies, and draw up appropriate provisions in the CO to cater for such changes. Guarantee companies would be required to comply with more stringent disclosure requirements regarding their financial situation and submit their financial reports to the Companies Registry for scrutiny. As regards the regulation of charitable organizations, the Law Reform Commission was conducting a review of the relevant legislation.

#### Enhancing corporate governance

16. Mr Jeffrey LAM expressed support for the proposals in the consultation paper to enhance corporate governance, business facilitation, disclosure of company information etc. He enquired about the details of the codification of the standard of directors' duty of care, skill and diligence, and the sanctions for breaches of such

provisions. He also enquired whether there would be differences in the "skills" required of directors of large companies and those of small companies.

17. DS(FS) explained that currently cases relating to breach of directors' duties were dealt with under the common law, and the proposed codification would enhance the clarity on the requirement regarding the directors' duty of care, skill and diligence, based on the reasonable expectations of the public and shareholders on the performance of directors of listed and private companies. Similar to the existing arrangement under the common law, any company directors who had breached the future statutory provisions would be liable to civil litigation actions. The proposed provisions in the CO would only state the general principles rather than the detailed requirements of the directors' duty of care, skill and diligence.

18. Mr Abraham SHEK enquired why a grace period was given for companies to appoint at least one individual director. DS(FS) responded that at present, the directors of some companies were all legal entities. For the purpose of improving the accountability and transparency of company operations and the enforceability of directors' obligations, one of the proposals in the consultation paper was to require the companies to appoint at least one individual director, and the companies concerned would be given a grace period to make such an appointment. The initial thinking was to allow a six-month grace period.

#### "Headcount test"

19. Ms Starry LEE expressed concern about the impact on protection of the interest of small investors if the "headcount test" was to be abolished. She enquired about the way the Administration had conducted the consultation exercises in 2007 and 2008, leading to the finding that market participants supported the abolishment of the "headcount test". Ms LEE opined that in view of the significance of the issue, the Administration and SFC should work together in reviewing the "headcount test" arrangements. Noting that the Australian government had recently amended the legislation on "headcount test" to give the court the discretion to dispense with the test, Ms LEE asked the Administration to provide information regarding the number of privatization cases in Australia after the amendment of relevant legislation, and the average time taken to investigate into each privatization scheme. Ms LEE remarked that given the difficulties in investigating "vote splitting" cases in the privatization of listed companies, the Administration should consider making reference to the guidelines issued by overseas securities regulators in reviewing its measures for prevention of "vote splitting".

20. In response, DS(FS) said that although some members of the Standing Committee on Company Law Reform (Standing Committee) were inclined to support the abolition of the "headcount test", the Standing Committee and the Administration had yet to finalize their stance on the issue. There were complications in carrying out the "headcount test" as proxies might be appointed by the investors in voting for/against a privatization scheme. The Australian government had amended the relevant legislation on "headcount test" in 2007, but

there was no information in hand regarding the number of cases which involved a court decision to retain or dispense with the "headcount test". The Australian government had also reviewed the approach for members' schemes of non-listed companies, covering options for the "headcount test" arrangements, and issued a consultation paper in June 2008. The Australian government, nevertheless, had yet to make a decision on the issue. Ms Starry LEE requested the Administration to provide information on the "headcount test" arrangements in Australia and the new developments since the amendment of the legislation on "headcount test" in 2007.

*(Post-meeting note: The information on implementation of the Headcount Test for approving a Scheme of Arrangement or Compromise in Australia was circulated to members vide LC Paper No. CB(1)1004/09-10(02) on 27 January 2010.)*

21. Mr James TO said that he objected to the abolition of the "headcount test". As regards the proposal of giving the court the discretion to dispense with the test, he opined that the relevant guiding principles and detailed arrangements should be drawn up very carefully. The "one share one vote" principle should not be upheld as under the principle, the major shareholders would have overall control of the companies, and small investors might be discouraged from investing in listed companies.

Disclosure of residential address of directors and identification numbers of directors and company secretaries

22. Mr CHAN Kin-por opined that in order to protect privacy and in view of the arrangement in the United Kingdom to remove directors' information from the public register, the residential addresses of company directors and identification numbers of directors and company secretaries should not be disclosed on the public register. Mr Abraham SHEK shared Mr CHAN's view.

23. Mr James TO was of the view that the requirement for directors' residential addresses to be made available for public inspection on the public register should be retained, as it was in the public interest that regulatory and enforcement agencies, and stakeholders like creditors and liquidators, or even small investors, should be able to contact directors easily through their residential addresses, especially when the company was being wound up or dissolved. Mr TO pointed out that even the particulars of owners of small residential units and owners of vehicles were put on public registers. As Hong Kong was a relatively safe city, there was no strong justification to withhold the residential addresses of directors and identification numbers of directors and companies secretaries from the public register.

24. DS(FS) said that the public's views on the arrangement for disclosure of directors' residential addresses and identification numbers of directors and company secretaries would be gauged during the consultation exercise.

Small investors to appoint non-executive directors

25. Highlighting the need to safeguard the interests of small investors, Mr Paul CHAN asked whether consideration would be given to allowing small shareholders to appoint non-executive directors. Mr James TO shared Mr Paul CHAN's view.

26. In response, DS(FS) said that the proposal for appointment of non-executive directors by small shareholders had not been included in the consultation paper as the CO rewrite exercise was not the appropriate forum for dealing with issues purely related to listed companies. It would be more appropriate to include the proposal in the review of SFO being undertaken by SFC. At the request of Mr Paul CHAN, DS(FS) said that he would relay the proposal to SFC for consideration.

#### Principles for assessing feedback

27. Mr CHAN Kin-por expressed concern about the principles based on which the Government would assess the views collected during the consultation exercise. He opined that the following principles should be adopted: the CO should be in tandem with the corresponding legislation in other international business and financial centres; the CO should be able to cater for the needs of the future development of Hong Kong as a business and financial centre; and the CO should be suitably revised notwithstanding that technical difficulties in implementation were envisaged.

28. DS(FS) expressed concurrence with Mr CHAN Kin-por regarding the guiding principles for assessing the feedback in the consultation exercise.

#### Consultant fee

29. Commenting that the consultation paper was well written, Mr Abraham SHEK asked whether the paper was prepared in-house or written by a consultant, and the amount of consultant fees involved. DS(FS) responded that the consultation paper was prepared by FSTB, although on some more complicated issues, a consultant had been invited to give advice and provide input. No extra charges were paid to the consultant as the service was provided by the consultant as part of the service for a consultancy study. The fee for the consultancy study was about \$14 million.

**V Legislative proposals to enhance the efficiency of the existing tax appeal mechanism**

(LC Paper No. CB(1)765/09-10(04) — Administration's paper on legislative proposals to enhance the efficiency of the existing tax appeal mechanism

LC Paper No. CB(1)763/09-10 — Background brief on legislative proposals to enhance the efficiency of the existing tax appeal mechanism prepared by the Legislative Council Secretariat)

30. Deputy Secretary for Financial Services and the Treasury (Treasury) (DS(Tsy)) briefed members on the following two legislative proposals to enhance the efficiency of the existing tax appeal mechanism, details of which were set out in the Administration's paper (LC Paper No. CB(1)765/09-10(04)) -

- (a) to empower the Board of Review (BoR) to give pre-hearing directions for tax appeal hearings and to sanction non-compliance; and
- (b) to allow taxpayers and the Inland Revenue Department (IRD) to appeal directly to the court against the BoR's decisions on questions of law, without having to ask the BoR to state a case to the court.

31. DS(Tsy) advised that the Administration had consulted the Joint Liaison Committee on Taxation (JLCT) and the Judiciary on the proposals and obtained their support in principle. Subject to members' views, the Administration planned to introduce the relevant legislative amendments in the latter half of the 2009-2010 legislative session.

Proposal to empower BoR to give pre-hearing directions and sanction non-compliance

32. Mr Paul CHAN said that while he supported in principle the proposal to empower the BoR to give pre-hearing directions for tax appeal hearings and to sanction non-compliance, he was concerned that the appellants representing themselves at the tax appeal hearings would be disadvantaged under the revised pre-hearing directions and arrangements of the proposal. Noting that the nature of most tax appeals was simple and straight-forward, Mr CHAN urged the Administration to draw up the pre-hearing directions for tax appeals and the appeal application procedure the simplest way possible so as to save the appellants from unnecessary administrative and financial burdens. Mr CHAN further requested the Administration to conduct consultation with the relevant parties on the draft pre-hearing directions and appeal application procedure.

33. In response, DS(Tsy) advised that in formulating the proposal, the Administration had taken into account the situation where the appellant opted to lodge an appeal without legal/professional representative. In working out the detailed arrangements, the Administration would be mindful to institute flexibility, for example, by establishing a mechanism for appellants to apply for extension of the deadline for submission of documents.

34. Mr Albert HO said that although he had no strong objection to the proposal, he did not see the justification for the Administration to empower the BoR to give pre-hearing directions and to sanction non-compliance given that most tax appeal cases had been dealt with administratively all along. Noting that the BoR was not empowered to authorize litigation cost in the case of non-compliance like court proceedings, Mr HO was concerned that BoR would dismiss any document not submitted in compliance with its pre-hearing directions. He cautioned that this would likely give rise to controversies at the subsequent stage of the appeal as the documents which had been dismissed by the BoR might turn out to be an important piece of evidence in the appeal.

35. DS(Tsy) said that BoR members rendered assistance to the Board as part of their community service. By providing a proper legal basis for the BoR to make pre-hearing directions, the efficiency and effectiveness of the Board's work could be enhanced. He assured members that flexible measures would be in place to ensure that the rights of the appellants were safeguarded in the pre-hearing phase of the appeal system.

36. Mr James TO expressed concern that the proposal might have undue effects on taxpayers in seeking tax appeals, particularly on those who had no access to legal assistance in preparing appeal documents. He asked whether the proposal was made to tackle specifically the appeal cases lodged by those appellants which sought to obtain substantial benefits through repeated deferral requests. DS(Tsy) replied that BoR had revealed to the Administration that there were indeed incidents of repeated deferrals of submission of documents by appellants which were represented by legal/professional representatives. Empowering the BoR to give pre-hearing directions and sanction non-compliance would enhance the efficiency of the BoR's operation.

37. Taking note of DS(Tsy)'s reply, Mr James TO suggested that the Administration should categorize the repeated deferral cases by analyzing the underlying reasons and consider devising different legal provisions for application to the respective categories of cases. In this connection, he asked the Administration to provide information on -

- (a) the number of hearings of the Board which had been deferred due to late submission of documents; and
- (b) the number of wasted days of the Board resulting from the late submission of documents.

DS(Tsy) agreed to locate the requested information, and provide it to members if available.

Proposal to abolish the case stated procedure

38. Mr Paul CHAN said that he welcomed the proposal to abolish the case stated procedure. The trade also saw the merits in the proposal for enhancing the efficiency of the tax appeal system.

39. Responding to Mr Albert HO's enquiry on whether there would be an increase/decrease in the number of tax appeal cases with the change in the appeal procedure under the proposal, DS(Tsy) advised that while the Administration expected that the efficiency in processing an appeal case could be enhanced with the abolition of the case stated procedure, which took at least three months to complete under the existing appeal system, it did not envisage any major difference in the number of appeal cases. Under the proposed mechanism, the appealing parties would have to apply to the Court of First Instance or Court of Appeal for leave to appeal against BoR's decisions on questions of law. It would then be up to the court to decide whether to grant leave or not.

40. In closing, the Chairman asked the Administration to take into account members' views expressed at the meeting in working out the detailed arrangements for the proposals, and to substantiate its future submission on legislative amendments by including the information requested by members, if such information was available.

**VI Proposal to revise fees and charges for certain public services under the purview of the Customs and Excise Department**

(LC Paper No. CB(1)765/09-10(05) — Administration's paper on revision of fees and charges for certain public services under the purview of the Customs and Excise Department)

41. Noting that government revenue would increase by only \$0.5 million a year as a result of the proposed revision of fees and charges, Mr WONG Ting-kwong expressed concern that the proposed revision would set a bad example leading to increases in other fees and charges, and hence increase the inflationary pressure. Given the small amount of extra revenue involved, Mr WONG asked whether the Administration would consider withholding the revision.

42. In response, the Principal Assistant Secretary for Financial Services and the Treasury (Treasury) (PAS(T)) explained that the proposals were made based on the long standing cost recovery and the "user pays" principles. The fees and charges

involved did not directly affect people's livelihood or general business activities. Out of the 28 items listed, the service of 12 items was no longer required, and any increase in fees and charges in these 12 items would not affect any persons/companies. Most of the 28 items were last revised in 2006-2007. As a result of the proposed revision of fees and charges, the Government would still be subsidizing the users of the services indirectly, as the costs of providing the services were not yet fully recovered.

43. Mr WONG Ting-kwong reiterated that since the amount of extra revenue collected was relatively small, and the relevant trades might make use of the revision as an excuse to increase the prices of their services/products, especially those related to the use of fuels, the Government should be cautious in revising the fees and charges.

44. PAS(T) responded that in order to alleviate the impact of the revision of fees and charges on people's livelihood and general business activities, the proposed revision was quite modest, and thus would only generate a relatively small amount of additional revenue.

## **VII Any other business**

45. There being no other business, the meeting ended at 12:35 pm.