

立法會
Legislative Council

LC Paper No. CB(1)2556/10-11
(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

Panel on Financial Affairs

Minutes of meeting
held on Monday, 9 May 2011 at 2:30 pm
in the Chamber of the Legislative Council Building

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon CHAN Kin-por, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, SBS, JP
Hon Vincent FANG kang, SBS, JP
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon KAM Nai-wai, MH
Hon Starry LEE Wai-king, JP
Dr Hon LAM Tai-fai, BBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Members absent : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon David LI Kwok-po, GBM, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, JP
Hon WONG Ting-kwong, BBS, JP
Hon Paul CHAN Mo-po, MH, JP

Public officers attending : Agenda Item IV

Ms Julia LEUNG, JP
Acting Secretary for Financial Services and
the Treasury

Mrs Lisa LAM
Chief Executive Officer (Special Duties)
Financial Services and the Treasury Bureau

Agenda item V

Ms Alice LAU, JP
Deputy Secretary for Financial Services and
the Treasury (Treasury) 1

Ms Shirley LAU, JP
Principal Assistant Secretary for Financial Services
and the Treasury (Treasury)(H)

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

Staff in attendance : Mr Hugo CHIU
Council Secretary (1)5

Ms Haley CHEUNG
Legislative Assistant (1)5

Action

I Confirmation of minutes of meetings and matters arising

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| (LC Paper No. CB(1)1853/10-11 | — Minutes of the meeting on
21 February 2011 |
| LC Paper No. CB(1)2085/10-11 | — Minutes of the joint meeting
on 28 February 2011 |
| LC Paper No. CB(1)2105/10-11 | — Paper on Deputy Chairman's
proposed amendment of the
minutes of joint meeting on
28 February 2011 |

LC Paper No. CB(1)2037/10-11 — Minutes of the meeting on 7 March 2011)

The Chairman informed members that subsequent to the issue of the minutes of the joint meeting with the Panel on Transport held on 28 February 2011 (vide LC Paper No. 2086/10-11), the Clerk had received proposed amendments from the Deputy Chairman, and members had been informed of the proposed amendments (vide LC Paper No. CB(1)935/10-11). Mr KAM Nai-wai remarked that he had attended the joint meeting on 28 February 2011, and his attendance should be recorded on the relevant meeting minutes. Members agreed to confirm the minutes of the joint meeting held on 28 February 2011 subject to the amendments proposed by the Deputy Chairman and Mr KAM Nai-wai, and to confirm the minutes of the meetings held on 21 February and 7 March 2011 without amendment.

II Information papers issued since the last meeting

(LC Paper No. CB(1)1975/10-11(01) — Administration's paper on "Latest Developments in Relation to Positive Mortgage Data Sharing in Hong Kong"

LC Paper No. CB(1)2010/10-11(01) — Hong Kong Monetary Authority Annual Report 2010

LC Paper No. CB(1)2021/10-11(01) — Administration's paper on first quarterly report of 2011 on Employees Compensation Insurance — Reinsurance Coverage for Terrorism)

2. Members noted the information papers issued since the last regular meeting on 4 April 2011.

III Date of next meeting and items for discussion

(LC Paper No. CB(1)2040/10-11(01) — List of outstanding items for discussion

LC Paper No. CB(1)2040/10-11(02) — List of follow-up actions

LC Paper No. CB(1)2104/10-11(01) — Letter dated 5 May 2011 from
Hon James TO Kun-sun
(Chinese version only)

Meeting in June 2011

3. Members agreed to discuss the following items proposed by the Administration at the next regular meeting scheduled for 9 June 2011:

- (a) Briefing by the Financial Secretary (FS) on Hong Kong's latest overall economic situation; and
- (b) Briefing on progress of implementation of Basel II enhancements and plan to implement Basel III.

Suspension of trading of four derivative warrants linked to the Nikkei 225 Index issued by Goldman Sachs Structured Products (Asia) Limited and subsequent developments

4. The Chairman drew members' attention to the letter from Mr James TO dated 5 May 2011 requesting for discussion of issues relating to the suspension of trading on 31 March 2011 of four derivative warrants linked to the Nikkei 225 Index issued by Goldman Sachs Structured Products (Asia) Limited, and the subsequent developments. Mr James TO said that the listing of the warrants was approved by the Securities and Futures Commission (SFC) and the Stock Exchange of Hong Kong. In order to uphold Hong Kong's status as an international financial centre, the Government should ensure that a fair system was in place to regulate the listing and trading of financial products.

5. Mr Andrew LEUNG opined that the Panel should review the policy issues relating to the listing of derivative warrants, rather than discuss individual incidents involving particular financial products. Mr James TO remarked that in line with the arrangements in the past, the relevant policy and procedures should be reviewed with reference to the facts about the incident in question.

6. The Chairman remarked that he and the Clerk would work out the arrangements for discussion of the matter, and members would be notified of the arrangements in due course. In the meantime, the Administration would be requested to provide information on the relevant issues for discussion.

(*Post-meeting note:* Members were informed vide LC Paper No. CB(1)2154/10-11 on 11 May 2011 that the discussion item had been included in the agenda of the special Panel meeting on 23 May 2011 and the Administration had been requested to provide an information paper on the issue.)

IV Funding proposals for the setting up of the Financial Dispute Resolution Centre and its operating expenses in the first three years

(LC Paper No. CB(1)2040/10-11(03) — Administration's paper on "Proposed Establishment of a Financial Dispute Resolution Centre"

LC Paper No. CB(1)2049/10-11 — Background brief on proposed establishment of a Financial Dispute Resolution Centre prepared by the Legislative Council Secretariat)

Briefing by Administration

7. At the invitation of the Chairman, the Secretary for Financial Services and the Treasury (Acting) (SFST (Atg)) briefed members on the proposed funding arrangement for the establishment of a Financial Dispute Resolution Centre (FDRC), by highlighting the salient points in the paper.

Discussion

Scope of work

8. Mr Albert HO enquired whether it was due to pressure from the financial sector that the Government had proposed to set up a FDRC instead of a financial services ombudsman to deal with financial disputes.

9. SFST (Atg) responded that the FDRC model using mediation and then arbitration was in line with the overseas practice in similar mechanisms. Comparing the functions and powers of an ombudsman and an arbitrator, an arbitrator had the same power as an ombudsman in collecting information from the parties concerned. Yet an arbitrator enjoyed much wider power than an ombudsman as stipulated in the respective legislations.

10. Mr Albert HO pointed out that for other similar schemes, such as the Deposit Protection Fund, the maximum compensation amount usually covered about 90% of the stakeholders involved. He enquired why the maximum claimable amount per case of the FDRC was set at \$500,000 but not a higher amount. Mr HO further enquired whether claimants of cases involving a claimable amount of more than \$500,000 would have to seek redress in court.

11. SFST (Atg) responded that with reference to similar overseas jurisdictions, it was considered necessary to impose a limit on the maximum amount that a consumer could claim. The maximum claimable amount was set at \$500,000 each case after consulting the industry and the public. A review on the maximum claimable amount, among others, would be conducted having regard to the experience gathered over time and the evolving market development. The existing arrangements for dealing with claims of more than \$500,000 would continue.

12. Mr James TO remarked that the Democratic Party supported the setting up of a financial services ombudsman with investigative powers to deal with financial disputes, although the Party did not object to the establishment of the FDRC. Mr TO enquired whether the FDRC would provide mediation and arbitration services for cases with a claimable amount exceeding \$500,000, if both the claimant and the financial institution had agreed to refer their dispute case to the FDRC. Mr TO remarked that for such cases, the claimants and financial institutions concerned might be required to pay higher fees to the FDRC.

13. SFST (Atg) responded that she personally would be open to having FDRC dealing with cases with a maximum claimable amount exceeding \$500,000 if both the claimant and the financial institution concerned agreed to resolving their dispute through the FDRC. However, as the current maximum claimable amount of \$500,000 was an outcome of the public consultation, she saw the need to discuss the issue with stakeholders again. This could take some time. Mr James TO requested the Administration to provide a written response to his suggestion.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)2334/10-11 on 30 May 2011.)

14. Mr Ronny TONG enquired about the calculation of maximum claimable amount, e.g. whether the claimable amount would cover both the investment amount and the amount of compensation claimed. SFST (Atg) responded that the claimable amount covered all components of a claim including any compensation sought.

Fee level

15. Mr Ronny TONG enquired whether a scale of fees would be set for the services provided by FDRC. SFST (Atg) responded that a schedule of fees for the FDRC had been drawn up. If the claimable amount was \$100,000 or below, the claimant and the financial institution concerned would be required to pay a fee of \$1,000 and \$5,000 respectively for a mediation of four hours. The fees would be doubled if the claimable amount was between \$100,000 and \$500,000. The fees for arbitration service were \$5,000 for the claimant and \$20,000 for the financial institution. SFST (Atg) pointed out that the fees charged by the FDRC were much lower than those charged by private mediators and arbitrators.

Staffing and operating expenses of FDRC

16. Mr Jeffrey LAM expressed concern whether the FDRC had the required resources to deal with the mediation and arbitration cases, as according to the Administration's estimate, the 20 core staff of the FDRC would have to handle some 2 000 financial disputes each year. Mr LAM further enquired about the arrangement for provision of arbitration services by the FDRC. Mr CHIM Pui-chung shared Mr LAM's concern, and pointed out that, based on the estimated staff and caseload, the FDRC would have to complete mediation of a case within three days. Given that the estimated expenditure of FDRC would be \$55 million and 2 000 cases would be handled in a year, Mr CHIM was concerned that the average expenditure for handling a case amounted to \$28,000, which he considered was high especially for cases involving a claimable value of \$100,000 or less.

17. SFST (Atg) responded that the FDRC would have six to seven full-time professional mediators to handle financial disputes the claimable amount of which was less than \$100,000. Financial disputes involving a claimable amount from \$100,000 to \$500,000, and arbitration cases would be handled by qualified mediators/arbitrators through outsourcing.

18. Mr CHIM Pui-chung enquired whether a mechanism would be put in place to regulate the outsourcing of mediation/arbitration work by FDRC. SFST (Atg) responded that the FDRC would maintain a roster of private mediators and arbitrators to handle the outsourced cases. Training on knowledge and skills to handle financial disputes would be required as a pre-condition of mediators and arbitrators. The appointment of private mediators/arbitrators would be subject to the mutual agreement of the financial institution and the claimant concerned in each case.

19. Noting that the set-up cost for the FDRC was \$15 million and the annual budget for the FDRC was about \$55 million, Mr Jeffrey LAM enquired about the location of the FDRC office and the estimated rental for the office.

20. SFST (Atg) responded that the FDRC would be located outside the prime commercial areas so that the expenditure on rental could be reduced. The major part of the set-up cost was for provision and installation of information technology systems as well as promotion and publicity programmes. FDRC would receive income from its services to support part of its operation.

21. Noting that the annual operation costs of the FDRC was estimated to be \$55 million, and financial institutions were expected to shoulder the operation costs of FDRC from 1 January 2015 onwards, the Deputy Chairman expressed concern about the financial situation of FDRC if there were less than 2 000 cases a year, or when there was a sudden increase in caseload resulting from a major financial incident. The Deputy Chairman pointed out that as a result of the Lehman Brothers Minibonds Incident, measures had been taken by the regulators to tighten up the regulation of the sale of financial products, and given the level of fees charged by the FDRC, the caseload of FDRC might be less than 2 000 a year.

22. SFST (Atg) responded that there were fixed overhead costs for the FDRC, such as office rental. To keep down the operating costs, the FDRC would start with the modest provisions, and would maintain a slim establishment as far as possible. The arrangement to outsource cases to private mediators/arbitrators also provided flexibility to FDRC on resources deployment having regard to the caseload at any particular point of time. The FDRC would have contingency plans to meet any sudden upsurge in the number of cases, such as utilizing the offices of related organizations. SFST (Atg) pointed out that the fees charged by FDRC were lower than the market rates charged by private mediators and arbitrators. Based on the "pay-as-you-use" principle, the fees collected from users of the FDRC's services would be able to support part of the operating expenses of FDRC. The FDRC would review its operation and staffing level having regard to the actual operational experience and caseload.

23. Mr CHIM Pui-chung was concerned that the setting up of the FDRC might encourage clients of the financial institutions to make more complaints, especially when the clients were not satisfied with the resolution proposed by the financial institutions.

24. SFST (Atg) responded that FDRC was set up to provide an affordable avenue for consumers to resolve monetary disputes with financial institutions. Its establishment would in a way encourage the financial institutions to better handle their disputes with consumers through their internal complaint handling mechanisms and seek resolutions at an early stage.

Collaboration with regulatory bodies

25. Mr Ronny TONG enquired about the role of the regulatory bodies, such as the HKMA and SFC, in the work of the FDRC. Mr TONG asked whether the regulators would provide preliminary advice on whether there was a prima facie case of regulatory breach to the claimants and the financial institutions concerned.

26. SFST (Atg) responded that the role of the regulators would remain unchanged with the establishment of the FDRC. Regulators would deal with regulatory breaches while FDRC deal with monetary disputes. While the claimants could seek mediation/arbitration with the financial institutions through the FDRC, the claimants might simultaneously make complaints to the regulatory bodies if breach of the relevant legislation/regulations was suspected. The FDRC would also sign a Memorandum of Understanding (MOU) with the regulatory bodies, which would set out, inter alia, the delineation of roles between FDRC and regulators as well as the arrangements for referral of suspected cases of regulatory breaches to the regulatory bodies for investigation. SFST (Atg) said that the relevant complaints sections of the regulatory bodies would also, where appropriate, advise the parties concerned to seek the FDRC's assistance if the matter in dispute concerned monetary elements.

27. Given that the mediators would play the role of a facilitator during mediation at FDRC, and the information provided to the FDRC for mediation or arbitration purpose would be kept confidential, Mr Albert HO enquired, in cases where FDRC suspected that the financial institutions had breached the relevant legislation or regulations, whether the FDRC would forward the relevant information to the regulatory bodies for follow-up action.

28. SFST (Atg) responded that FDRC should not be, or give the impression that the confidentiality of its process would become a regulatory blind spot. If there were numerous complaints concerning the same financial institutions and/or same type of malpractice, and/or if there was any suspicion of a breach of the relevant legislation/regulation, based on the MOU signed between the FDRC and the regulatory bodies, the FDRC would share its observations and

information with regulators for the latter to take forward the investigations into regulatory breaches.

General

29. The Chairman said that while the Democratic Alliance for the Betterment and Progress of Hong Kong supported the proposal of establishing a FDRC, the operation of the FDRC should be highly transparent so that investors would fully understand the role and service scope of FDRC. Since small investors would be in a comparatively weaker position in negotiating a resolution with financial institutions in a financial dispute, and notwithstanding the establishment of the FDRC, the regulatory bodies should continue to perform their supervisory and enforcement functions on the financial institutions in accordance with the relevant legislation and regulations. The Chairman said that the Administration should provide more information about the FDRC in the funding proposal to the Finance Committee, in particular details relevant to the queries and concerns raised by members during this discussion.

V Electricity charge subsidy

(LC Paper No. CB(1)2040/10-11(04) — Administration's paper on "Electricity Charges Subsidy"

LC Paper No. CB(1)2050/10-11 — Background brief on electricity charge subsidy prepared by the Legislative Council Secretariat)

Briefing by the Administration

30. The Deputy Secretary for Financial Services and the Treasury (Treasury)1 (DS(Tsy)1) highlighted the salient points in the paper on the proposal to provide an additional subsidy of \$1,800 to each residential electricity account.

Discussion

31. Mr KAM Nai-wai expressed concern that when the electricity subsidy scheme was implemented in 2008, electricity consumption in 2008-2009 and 2009-2010 had shot up by 9% and 3.5% respectively. When compared with the figures in 2007-2008, electricity consumption had surged significantly.

Mr KAM enquired whether the Government had conducted any research to find out whether the provision of electricity subsidy had led to more consumption of electricity. Mr KAM enquired whether consideration would be given to implementing the Democratic Party's proposal that an additional subsidy of \$1,200 would be provided to those households whose electricity consumption in any half-year period was 5% or more below that for the same period of the preceding year.

32. DS(Tsy)1 responded that the purpose of the proposal to provide a subsidy of \$1,800 to each residential electricity account was to ease the pressure of inflation on households. The Government had considered suggestions to link the proposed subsidy to electricity consumption and concluded that it was not feasible, mainly because electricity consumption varied with a host of factors, many of which were unrelated to whether a household was environmentally conscious, e.g. change in household size. DS(Tsy)1 pointed out that overall electricity consumption had continued to increase since 2003. No conclusion could be drawn as to what factors or how different factors might have contributed to the increase. DS(Tsy)1 quoted as an example that in July 2009, a summer month when electricity subsidy was being credited to accounts, the average electricity consumption of residential accounts had dropped by 21% in comparison with that in July 2007. Comparing these two months, one would note that the temperature in July 2009 had been lower than that in the same month of 2007.

33. The Chairman opined that the increase in electricity consumption was attributable to a number of factors, such as an increase in population, hotter weather, and/or division of households, and it would be infeasible to conclude whether the higher electricity consumption was a result of the provision of an electricity subsidy and/or other factors. As such, it would not be justified to deploy substantial resources to study the issue. The Chairman said that he disagreed to the proposal that the electricity subsidy should be tied to electricity consumption, as such an arrangement would only complicate the electricity subsidy scheme, which was essentially a relief measure.

34. Mr KAM Nai-wai requested that the Administration should provide, before the proposal was considered at the Finance Committee, readily available data on electricity consumption and relevant analysis to address the concern about the impact of the electricity charge subsidy on electricity consumption.

(Post-meeting note: The Administration's response was issued to members vide LC Paper No. CB(1)2373/10-11 on 2 June 2011.)

VI Any other business

35. There being no other business, the meeting ended at 3:40 pm.

Council Business Division 1
Legislative Council Secretariat
22 June 2011