

立法會
Legislative Council

LC Paper No. CB(1)614/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

Panel on Financial Affairs

Minutes of meeting
held on Monday, 7 November 2011 at 10:45 am
in Conference Room 3 of the Legislative Council Complex

Members present : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon CHAN Kin-por, JP (Deputy Chairman)
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon James TO Kun-sun
Dr Hon Philip WONG Yu-hong, GBS
Hon Abraham SHEK Lai-him, SBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
Hon KAM Nai-wai, MH
Hon Starry LEE Wai-king, JP
Hon Paul CHAN Mo-po, MH, JP

Members absent : Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Emily LAU Wai-hing, JP
Hon LEE Wing-tat
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Public officers attending : Agenda Item IV

Ms Doris HO
Deputy Secretary for Financial Services and the
Treasury (Treasury) 3

Mr Alan SIU
Government Property Administrator

Mr LAM Chik-man
Senior Property Manager
(Acquisition, Allocation and Disposal) Office and
Special Duty
Government Property Agency

Mr Henry CHOI
Chief Project Manager
Architectural Services Department

Agenda Item V

Ms Doris HO
Deputy Secretary for Financial Services and the
Treasury (Treasury) 3

Mr Howard CHAN
Deputy Director of Government Logistics

Mr Brian LEU
Government Counsel
Department of Justice

Agenda Item VI

Mr John LEUNG, JP
Deputy Secretary for Financial Services and the
Treasury (Financial Services) 3

Ms Teresa WONG
Official Receiver

Ms May LEE
Assistant Official Receiver
(Legal Services) 2

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

Staff in attendance : Ms Clara TAM
Assistant Legal Adviser 9

Mr Noel SUNG
Senior Council Secretary (1)5

Ms Haley CHEUNG
Legislative Assistant (1)5

Action

I Confirmation of minutes of meeting and matters arising

(LC Paper No. CB(1)180/11-12 — Minutes of the meeting on 13 October 2011)

The minutes of the meeting held on 13 October 2011 were confirmed.

II Information papers issued since the last regular meeting on 4 July 2011

(LC Paper No. CB(1)2697/10-11(01) — Administration's paper on second quarterly report of 2011 on Employees Compensation Insurance — Reinsurance Coverage for Terrorism

LC Paper No. CB(1)2704/10-11(01) — Written response jointly prepared by the Securities and Futures Commission and the Hong Kong Monetary Authority to submission regarding repurchase offers of Standard Chartered Bank (Hong Kong) to holders of equity linked notes issued by Lehman Brothers

- LC Paper No. CB(1)2798/10-11(01) — Administration's paper on the consultation process for the 2012-13 Budget
- LC Paper No. CB(1)2845/10-11(01) — Administration's paper on "Enhanced Regulation of Mandatory Provident Fund Intermediaries – Consultation Conclusions and Detailed Proposals"
- LC Paper No. CB(1)2898/10-11(01) — Second Quarter Economic Report 2011 and the press release
- LC Paper No. CB(1)128/11-12(01) — Administration's paper on third quarterly report of 2011 on Employees Compensation Insurance — Reinsurance Coverage for Terrorism)

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

III Date of next meeting and items for discussion

- (LC Paper No. CB(1)237/11-12(01) — List of outstanding items for discussion
- LC Paper No. CB(1)237/11-12(02) — List of follow-up actions)

Special meeting on 21 November 2011

3. The Chairman reminded members that as agreed at the meeting on 13 October 2011, a special meeting would be held on Monday, 21 November 2011 at 9:00 am to discuss the following items:

- (a) Briefing by the Financial Secretary on Hong Kong's latest overall economic situation;
- (b) 2012-2013 Budget consultation; and

(c) Review of the Mandatory Provident Fund Schemes Compensation Fund.

Regular meeting in December 2011

4. The Chairman informed members that the regular meeting in December 2011 was previously scheduled for 5 December 2011. As the Chief Executive, Hong Kong Monetary Authority (CE/HKMA) would be on overseas duty visit in early December 2011, the Chairman suggested and members agreed that the next regular meeting should be rescheduled for 15 December 2011 at 4:30 pm to facilitate the attendance of CE/HKMA to brief the Panel on the work of the HKMA.

IV Kai Tak Government Offices

(LC Paper No. CB(1)237/11-12(03) — Administration's paper on "Construction of Trade and Industry Tower in Kai Tak Development Area"

LC Paper No. CB(1)236/11-12 — Background brief on Kai Tak Government Offices prepared by the Legislative Council Secretariat)

5. At the invitation of the Chairman, the Deputy Secretary for Financial Services and the Treasury (Treasury)3 (DS(Tsy)3) and the Chief Project Manager, Architectural Services Department (CPM/ASD) briefed members, with the aid of photos and sketch plans, on the proposed construction of a Trade and Industry Tower (TI Tower) in the Kai Tak Development Area (KTDA), by highlighting the salient points in the paper.

Discussion

6. Given the limited access by public transport to KTDA before the completion of the MTR Shatin to Central Link in 2018, the Deputy Chairman enquired whether after the Trade and Industry Department (TID) had moved to the TI Tower in Kai Tak, the Support and Consultation Centre for Small and Medium Enterprises (SUCCESS) of TID would continue to provide services at a more convenient location.

7. Mr Andrew LEUNG said that while he supported the proposed TI Tower project, he shared the concern that KTDA would not be conveniently accessible

by public transport for some years and suggested that the SUCCESS should provide services at a location close to a MTR station in the urban area.

8. DS(Tsy)3 responded that before the completion of the Kai Tak station of the Shatin to Central Link in 2018, there would be 28 bus routes and 10 minibus routes linking up KTDA with other districts. She would convey Members' suggestion to TID to consider in consultation with the relevant trades and industries if necessary the need and feasibility of retaining the SUCCESS at a more convenient location before 2018.

9. The Deputy Chairman enquired about the future use of the TID Tower in Mongkok after the TID had moved to KTDA. The Deputy Chairman opined that in order to save public money, the TID offices in Mongkok should not be left idle and should be deployed for gainful uses. Mr Jeffrey LAM expressed support for the proposed TI Tower in KTDA. He shared the Deputy Chairman's concern and enquired about the relocation arrangements for Government offices currently accommodated in leased premises.

10. DS(Tsy)3 responded that the Government would plan in good time the future use of the existing TID Tower in Mongkok before TID moved to Kai Tak. The Government Property Administrator (GPA) supplemented that the leases for the existing shops on the ground floor of the TID Tower had already been extended to end of 2014, with an option for further extensions on a three-month basis. Subject to the market situation at the time, the TID Tower might be leased or sold for private commercial use after TID had moved to KTDA. In the long term, the Government's plan was to sell the TID Tower for development into private commercial premises.

11. In respect of leased premises, DS(Tsy)3 pointed out that only about 30% of Government offices were located in rented premises at present. The Government's policy was to avoid renting offices in prime commercial areas such as Central, Admiralty and Wan Chai, whereas the Government had to ensure that the rented offices for departments providing public services in the less prime areas were easily accessible by public transport. GPA added that rented premises for Government offices in central commercial areas had decreased from about 11,450 m² in 2006, to 7,900 m² in 2011 and would further decrease to 230 m² in 2014. The leasing of 230 m² office premises in 2014 was mainly for the provision of a Post Office and a Police Reporting Station at an MTR station.

12. The Deputy Chairman enquired whether the Government departments accommodated in the existing government office towers at the Wan Chai waterfront would be moved to KTDA as well. Mr WONG Ting-kwong also enquired about the use of the sites of the three government office towers in Wan

Chai after the offices had been vacated by the Government bureaux/departments. Mr Andrew LEUNG shared Mr WONG's concern and remarked that the Government should plan as early as possible the future use of the sites of the government office towers at the Wan Chai waterfront.

13. DS(Tsy)3 responded that two more sites adjacent to the TI Tower in KTDA had been reserved for construction of government office buildings, and one possibility was to relocate some of the Government bureaux and departments in the three government office buildings at the Wan Chai waterfront, mainly those providing services to the public, to KTDA, although details of the removal plans had yet to be worked out. DS(Tsy)3 pointed out that the three existing government office buildings at the Wan Chai waterfront had a total floor area of about 175,000 m², which was about five times the floor areas of the proposed TI Tower. A few more sites had been identified in Tseung Kwan O and Cheung Sha Wan in addition to the above two in KTDA for the relocation of the Government bureaux and departments currently located in the Wan Chai office buildings. Plans for the future use of the sites of the three government office buildings at the Wan Chai waterfront were still being formulated.

14. In response to Mr WONG Ting-kwong's enquiry regarding the use of the community hall in the TI Tower, DS(Tsy)3 remarked that the community hall would comprise, among other facilities, a conference room and a multi-purpose hall which could be used for performances. It would be designed and constructed with flexibility to enable different kinds and scales of community activities to be held therein. The community hall would mainly serve the Kowloon City district which had a population of over 360 000 but would have only one government-run community hall by 2013 until completion of the one at TI Tower in 2014.

15. In response to Mr Andrew LEUNG's request, the Administration would provide, in the submission of the project proposal to the Public Works Subcommittee, information on whether any grey water recycling system would be provided in the project.

(Post-meeting note: The information requested by Mr LEUNG has been included in the submission to the Public Works Subcommittee meeting on 14 December 2011 (PWSC(2011-12)35).)

16. The Chairman opined that more Government offices whose services involved frequent visits by the public should be included in the Government development projects in KTDA, as KTDA would become a focal development area in Hong Kong. Consideration could be given to providing the licensing and shroff offices of the Transport Department, the Water Supplies

Department, the Food and Environmental Hygiene Department and the Leisure and Cultural Services Department in KTDA. The Chairman further requested that the existing pedestrian subway linking San Po Kong and KTDA should be upgraded to tie in with the development in the area.

17. DS(Tsy)3 responded that the TI Tower was at an advanced stage of planning and there was little room for any change of the accommodation plan for the Government bureaux and departments concerned. The Government would take into consideration the Chairman's views in planning the development of the other two government office towers in the area.

V Write-off of a judgement debt

(LC Paper No. CB(1)237/11-12(04) — Administration's paper on "Report on write-off of a judgment debt"

LC Paper No. CB(1)262/11-12(01) — Extract of the minutes of special meeting on 30 June 2008

LC Paper No. CB(1)262/11-12(02) — Extract of the minutes of meeting on 6 June 2005)

Briefing by the Administration

18. At the invitation of the Chairman, DS(Tsy)3 briefed members on the proposal to write off an irrecoverable debt of \$17.03 million, inclusive of costs of action and interest, owed to the Government by an auctioneer hired by the former Government Supplies Department (GSD) (now the Government Logistics Department (GLD)) for the disposal of unserviceable or obsolete government stores and confiscated goods.

Discussion

Investigation procedures

19. Mr Jeffrey LAM enquired whether the case involved criminal elements such as fraud or corruption, and/or negligence on the part of the civil servants involved. Mr LAM further enquired why the money owed by the auctioneer could not be recovered.

20. DS(Tsy)3 responded that in the incident, GSD had taken immediate action to recover the debt. After much negotiation and considerable efforts, a Deed of Settlement was concluded with the Managing Director of Hong Kong Auctioneers & Estate Agency Ltd (HKAEAL) on 31 March 1999 with a schedule of payment for full settlement of the outstanding amounts. GSD received several payments totalling \$6 million towards the debt, after which no further payments were received. In parallel with the actions taken to recover the debt, GSD had conducted internal investigation into the case. In 1999, the Independent Commission Against Corruption (ICAC) was also invited to look into the possibility of corruption. These investigations, completed in June 2001, indicated that the case did not involve fraud or corruption but there were inadequacies in the performance of some civil servants in performing their duties. Formal disciplinary proceedings were instituted against a Senior Accounting Officer. He was punished with a severe reprimand, together with a fine equivalent to reduction in salary by two increments for 12 months and a caution of removal from the service in the event of further misconduct. In addition, five other officers who were involved were given either verbal or written warnings, having regard to the division of responsibilities and the degree of their involvement in the matter. In the light of Members' advice at the Panel meeting in June 2005, GLD referred the case to the Police to establish whether other criminal offences might have been committed by HKAEAL, or its Managing Director. The Police informed GLD in July 2007 that there was insufficient evidence to support a charge against any person.

Disciplinary actions

21. Given the severity of the case, the Deputy Chairman doubted whether the disciplinary actions taken against the civil servants involved were appropriate and sufficient to give a deterrent effect. The Chairman remarked that the case revealed that the attitude of some civil servants in performing their duties required improvement. Mr WONG Ting-kwong echoed the Chairman's view.

22. DS(Tsy)3 responded that based on the civil service disciplinary procedures, a civil servant might be punished with a reprimand, a severe

reprimand, demotion, or compulsory retirement. In the present case, formal disciplinary proceedings had been instituted and the Government considered that the punishments imposed on the officers involved were appropriate, having regard to the division of responsibilities and the degree of their involvement in the matter.

23. Mr Paul CHAN requested and the Administration agreed to provide the following information to facilitate members to assess whether the punishments imposed on the officers involved in the case were appropriate:

- (a) the procedures of taking disciplinary actions against civil servants and the criteria for determining the disciplinary actions to be taken in such cases; and
- (b) how the disciplinary actions taken in this write-off case compared with other comparable cases.

Recovery of debt

24. Mr Paul CHAN asked why action was not taken to recover the money from the Managing Director when the Managing Director of HKAEAL was found to have a fixed deposit of Thai Baht 1,008,569.86 (around HK\$244,000) as at 12 February 2008. He also asked whether the Official Receiver had any role in the discharge or otherwise of the Managing Director from the bankruptcy order in September 2011.

25. DS(Tsy)3 responded that the Managing Director, who was over 70 years of age, had explained to the Official Receiver that the fixed deposit was actually a loan to his wife from her friend for extension of his visa in Thailand, and the Official Receiver had decided not to realise the amount of money for the bankruptcy estate. The Government Counsel of the Department of Justice (GC/DoJ) supplemented that as the Official Receiver found that the bankrupt, i.e. the Managing Director, had not committed any offence under the Bankruptcy Ordinance (Cap. 6), the Official Receiver did not object to the discharge of the Managing Director from the Bankruptcy Order in September 2011.

26. Mr WONG Ting-kwong enquired about the whereabouts of the auction proceeds, e.g. whether the Managing Director of HKAEAL had lost the money in other investments, or the company became insolvent due to poor management.

27. DS(Tsy)3 responded that GSD had taken immediate action and every effort to recover the debt from HKAEAL. When ordering a judgement be

entered against HKAEAL and the Managing Director for the debt in November 1999, the Court also granted an order of inquiry to trace the auction proceeds. Based on the affirmation submitted by the Managing Director to the Court in January 2000, there was no evidence showing that the auction proceeds had been used to purchase any assets and no assets could be identified for the purpose of tracing. It might be assumed that the proceeds had been used in the operation of HKAEAL. The financial reports of HKAEAL for 1996 to 1998 showed that the company had been operating at a loss during the three years of operation.

28. Mr WONG Ting-kwong remarked that the Government should have assessed the financial situation of HKAEAL before awarding the contract for the period from 1 April 1996 to 31 August 1998 to HKAEAL. In response to Mr WONG's request, DS(Tsy)3 undertook to provide information on whether the financial situation of the HKAEAL had been assessed before the auctioneer contract was awarded to the company for the period when the debt case occurred.

Review of outsourcing arrangements

29. Mr Ronny TONG opined that in the light of the incident, the Government should review the outsourcing arrangements so that the contractors who would handle on behalf of the Government a substantial amount of money in providing the services, should be required to pay a performance bond or guarantee, a Letter of Credit or collaterals in order to protect the interest of the Government. Mr TONG opined that even if a contractor was required to deposit the proceeds from auctions into a Government bank account, the contractor might still be able to abscond with the proceeds.

30. DS(Tsy)3 responded that currently contractors engaged to undertake most Government projects were required to pay a bond or guarantee commensurate with the magnitude of the project if they would not pass the financial vetting requirement. DS(Tsy)3 concurred with Mr TONG that the terms of the contract for HKAEAL could be improved, as the retained contract deposit only amounted to \$5,000, probably because the service fees payable to HKAEAL might be of a relatively small amount. The Deputy Director of Government Logistics (DD/GLD) supplemented that since November 2002, GSD had revamped the contract service mode in that the auctioneer was hired to provide the professional service of conducting the auction only at a fee, while GLD would collect auction proceeds direct from the successful bidders on the auction day. A release note for collecting the goods would only be issued to the successful bidders upon confirmation of receipt of the proceeds or upon clearance of the relevant cheques. In 2003, the ICAC was invited to

review the practices and procedures for disposal of government properties by public auction, and ICAC found the revised procedures and arrangements generally in order. So far the revamped auction arrangements had operated smoothly.

31. At the request of the Chairman, DS(Tsy)3 undertook to provide a sample of the agreement used nowadays by the Government for the hiring of auctioneers.

Statistics on write-off cases

32. In response to the Deputy Chairman's request, DS(Tsy)3 agreed to provide information on the respective numbers of write-off cases (a) involving fraud or negligence and (b) not involving fraud or negligence, and the write-off amounts of these cases.

33. The Chairman concluded that the Panel supported the submission of the debt write-off proposal to the Finance Committee for consideration.

(Post-meeting note: The Administration's paper (LC Paper No. CB(1)477/11-12(01)) providing information in response to Members' requests in paragraphs 23, 28 and 31 to 32 was issued to Members on 29 November 2011.)

VI Modernization of corporate insolvency law

(LC Paper No. CB(1)237/11-12(05) — Administration's paper on "Modernization of corporate insolvency law"

LC Paper No. CB(1)262/11-12(03) — Extract of the minutes of special meeting on 19 July 2010

LC Paper No. CB(1)262/11-12(04) — Extract of the minutes of meeting on 7 December 2009)

Briefing by the Administration

34. At the invitation of the Chairman, the Deputy Secretary for Financial Services and the Treasury (Financial Services)3 (DS(FS)3) briefed members on the Administration's plan to modernize Hong Kong's corporate insolvency law and the proposal to extend, for a period of 24 months from 1 August 2012 to 31 July 2014, a supernumerary Administrative Officer Staff Grade B (AOSGB) post in the Financial Services and the Treasury Bureau (FSTB) (i.e. Deputy Secretary (Financial Services)3), which was due to lapse by 31 July 2012.

Discussion

35. Mr Paul CHAN said that he supported the retention of the directorate post in FSTB. Referring to the tentative timetable for the modernization exercise set out in the Administration's paper, Mr CHAN opined that the proposed timeframe for the key steps before the introduction of the legislative proposals into LegCo was too long, and the relevant processes should be expedited. Ms Starry LEE shared Mr CHAN's view and remarked that in view of the impact of the global financial crisis and the relevant developments in overseas jurisdictions, she hoped that the legislative proposals for a new statutory corporate rescue procedure would be introduced into LegCo as soon as possible.

36. DS(FS)3 responded that while the Administration had conducted preliminary study on streamlining and rationalizing the company winding-up procedures, discussions with the stakeholders/experts and public consultation on the legislative proposals would still need to be undertaken before finalising the proposals. The Government also considered it appropriate to take forward the legislative proposals on modernizing the company winding-up procedures and the new statutory corporate rescue procedure simultaneously as some of the proposals for the two sets of procedures were inter-related. The Government had made every effort to take forward the proposals as soon as possible. Given the complexity of the issues involved and the large number of parties to be consulted, the Government aimed to substantially complete the modernization exercise within the 2012-2016 LegCo term.

37. Mr Andrew LEUNG said that he had great reservation on the proposed new corporate rescue procedure, in particular the part on insolvent trading, as the proposed legislation might place unfair responsibilities on the directors of corporations. Mr LEUNG opined that only the large corporations would benefit from the proposed corporate rescue regime as the small and medium-sized enterprises (SMEs) would not be able to afford the high professional fees. Mr LEUNG pointed out that a director would face a dilemma when a limited company became insolvent. If a director declared that his

company was insolvent, banks would be reluctant to provide credit facility to the company. If the director did not disclose the insolvency of his company, he would be personally liable for insolvent trading. Mr LEUNG expressed concern that the business community had yet to reach a consensus on the proposed corporate rescue procedure, and SMEs' views had not been sought on the relevant proposals. Mr LEUNG opined that as far as corporate rescue procedures were concerned, the practices of other countries might not be suitable for adoption in Hong Kong.

38. DS(FS)3 responded that the Government had briefed the Panel in July 2010 on the feedback and conclusions of the public consultation on the corporate rescue procedure legislative proposals. All relevant parties, including SMEs, had been consulted on the legislative proposals. While sizable corporations were more likely to benefit from the rescue procedures, the legislative provisions would provide more protection to the employees and suppliers in case a corporate became insolvent. As far as the liabilities of directors were concerned, the Administration could explore the possibility of providing appropriate safe harbours in the proposed legislation to protect the interests of directors.

39. While supporting the modernization of the corporate insolvency law, Mr WONG Ting-kwong expressed concern that the fees charged by Official Receiver in individual insolvency cases could be very high. Mr WONG pointed out that in a recent case, an elderly man sought redress from court regarding the fee of \$2.31 million charged by the Official Receiver in an insolvency case in which his bankruptcy order was annulled, and the court concluded that the fee to be charged should only be \$110,000. Mr WONG opined that the high fees charged by ORO would dent into the dividends available for distribution to creditors, hence proper controls should be put in the legislation to regulate the amount of fees charged by the Official Receiver.

40. The Chairman remarked that the scale of fees to be charged by the Official Receiver was not directly related to the subject under discussion, and could be discussed at another meeting if needed. DS(FS)3 remarked that the Government had from time to time reviewed the fee scale for insolvency cases. A person who felt aggrieved regarding the fee charged by the Official Receiver for a bankruptcy case could seek redress from the court, as in the case mentioned by Mr WONG. The subsidiary legislation relating to the scale of fees to be charged for insolvency cases would also be reviewed during the exercise to modernize the corporate insolvency law.

41. The Chairman concluded that while Mr Andrew LEUNG had expressed reservation on account of the impact of the proposed new corporate rescue

procedure on SMEs, members generally supported the extension of the supernumerary AOSGB post for another 24 months.

VII Any other business

42. There being no other business, the meeting ended at 12:43 pm.

Council Business Division 1
Legislative Council Secretariat
13 December 2011