

立法會
Legislative Council

LC Paper No. CB(1)1417/11-12

(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

Panel on Financial Affairs

Minutes of meeting

**held on Monday, 6 February 2012 at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon CHAN Kin-por, JP (Deputy Chairman)
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 LEE Wing-tat
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon CHIM Pui-chung
Hon KAM Nai-wai, MH
Hon Starry LEE Wai-king, JP
Hon Paul CHAN Mo-po, MH, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP

Members absent : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Albert HO Chun-yan
Dr Hon Philip WONG Yu-hong, GBS
Hon Ronny TONG Ka-wah, SC

Public officers attending : Agenda Item IV
Miss Salina YAN
Deputy Secretary for Financial Services and the
Treasury (Financial Services) 1

Agenda Items V and VI

Ms Jennifer CHAN
Acting Deputy Secretary for Financial Services and
the Treasury (Financial Services)

Ms Annie CHOI, JP
Commissioner of Insurance

Attendance by invitation : Agenda Item IV

Mr Ashley ALDER
Chief Executive Officer
Securities and Futures Commission

Mr Andrew WAN
Chief Financial Officer and Senior Director
Corporate Affairs
Securities and Futures Commission

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

Staff in attendance : Mr Noel SUNG
Senior Council Secretary (1)5

Ms Haley CHEUNG
Legislative Assistant (1)5

Action

As the Chairman could not attend the meeting, the Deputy Chairman chaired the meeting.

I Confirmation of minutes of meeting and matters arising

(LC Paper No. CB(1)975/11-12 — Minutes of the special meeting on 21 November 2011)

2. The minutes of the special meeting held on 21 November 2011 were confirmed.

II Information paper issued since the last meeting

(LC Paper No. CB(1)987/11-12(01) — Fourth quarterly report of 2011 on "Employees Compensation Insurance — Reinsurance Coverage for Terrorism" provided by the Administration)

3. Members noted the information paper issued since the last regular meeting held on 6 January 2012.

III Date of next meeting and items for discussion

(LC Paper No. CB(1)959/11-12(01) — List of outstanding items for discussion

LC Paper No. CB(1)959/11-12(02) — List of follow-up actions)

Meeting in March 2012

4. Members agreed to discuss the following items proposed by the Administration at the next regular meeting scheduled for 1 March 2012:

- (a) Briefing on the work of Hong Kong Monetary Authority;
- (b) Proposal to abolish capital duty levied on Hong Kong companies; and
- (c) Review of Market Entry Criteria - Proposed amendments to the Seventh Schedule to the Banking Ordinance.

IV Budget of Securities and Futures Commission for the financial year of 2012 – 2013

(LC Paper No. CB(1)959/11-12(03) — Administration's paper on "Securities and Futures Commission Budget for the Financial Year 2012-13"

LC Paper No. CB(1)957/11-12

— Background brief on the annual budgets of the Securities and Futures Commission prepared by the Legislative Council Secretariat)

Briefing by the Securities and Futures Commission and the Administration

5. At the invitation of the Deputy Chairman, the Chief Financial Officer and Senior Director, Corporate Affairs, Securities and Futures Commission (CFO&SD/SFC) briefed members on the budget of the Securities and Futures Commission (SFC) for 2012-13, by highlighting the salient points in the paper.

6. The Deputy Secretary for Financial Services and the Treasury (Financial Services)1 (DS(FS)1) remarked that the Financial Services and the Treasury Bureau was examining the SFC budget and would consider the views from Members before presenting the budget to the Financial Secretary (FS) for consideration.

Discussion

Reserves, levies and fees

7. Mr CHIM Pui-chung expressed grave concern that the reserves of SFC as at end December 2011 were about \$7.4 billion which was about seven times the expenditure of SFC in 2011-12. Mr CHIM pointed out that based on an agreement between the Government and SFC reached some years ago, SFC should consider waiving or reducing the transaction levies and licence fees when the reserves reached a certain level. Mr CHIM enquired why SFC and the Government did not reduce or waive the levies and fees given SFC's large reserves. Mr KAM Nai-wai, Ms Starry LEE, Mr Jeffrey LAM, Mr Andrew LEUNG and the Deputy Chairman expressed similar concerns. Mr KAM enquired, in view of the large reserves held by SFC, whether the Government had requested SFC to reduce or waive the levies. Ms LEE remarked that in view of the uncertain economic situation in 2012, the Government had introduced relief measures to "leave wealth with the people". Ms LEE enquired why, under the circumstances, SFC did not consider reducing or waiving the levies. The Deputy Chairman remarked that SFC should waive the levies until the reserves reached the level of just two times of its annual operating expenses.

8. DS(FS)1 remarked that according to section 396 of the Securities and Futures Ordinance (SFO) (Cap. 571), SFC might, after consultation with FS, recommend to the Chief Executive in Council that the rate or amount of a levy

be reduced if the reserves of SFC had reached a level more than twice its estimated operating expenses for the financial year. The Government would take into consideration Members' views and discuss with SFC regarding its proposed budget for 2012-13.

9. The Chief Executive Officer/SFC (CEO/SFC) responded that the existing levy rate of 0.003% (i.e. \$3 for a transaction of \$100,000) on securities transactions was already extremely low. If the rate of levy was adjusted downward, say to 0.0025%, and given the uncertainty of the turnover situation of the securities market in the coming years, SFC might incur a deficit in its annual budget soon after 2012-13. The Board of SFC had endorsed the 2012-13 budget as presented to the Panel. The attention of the Board would be drawn to the views expressed by Members regarding the reserves and the level of levies, and the need to review the purpose and the use of the reserves.

10. Pointing out that Members had raised queries in the past years regarding the suitability of SFC maintaining large reserves, Mr James TO requested that SFC withdraw the proposed budget for 2012-13, and revise it before submitting it to the FS. Mr TO remarked that representatives of the Government and Members of the Legislative Council sitting on the Board of SFC should carefully consider whether SFC should hold such large reserves. Mr TO opined that in view of Members' concerns raised in the past years about the large amount of reserves held by SFC, the CEO/SFC should resign if he maintained that the proposed SFC budget for 2012-13 should be submitted to FS without amendment. If FS accepted the proposed budget from SFC, he should step down as well. Mr TO remarked that while SFC should maintain the reserves at a healthy level, any proposal for the regulatory body to maintain excessive reserves would lead to serious political consequences. Mr TO commented that even if there were uncertainties over the turnover of the stock market in the coming year, the existing reserves should be able to cope with any shortfall in income.

11. CEO/SFC responded that the proposed budget had been endorsed by the Board of SFC which comprised a majority of non-executive directors. In view of the position of the reserves and taking into consideration Members' views on the reserves, the Board would be requested to review the purpose and the deployment of the reserves. DS(FS)1 said that SFC had effected a levy reduction of 20% in December 2006 and a further reduction of 25% in October 2010, thus giving an accumulated reduction rate of 40%. In anticipation of a volatile securities market in the coming year, SFC did not propose any change to the rate of levy in 2012-13. CFO&SD/SFC added that any reduction in the local market turnover levels would have a serious impact on the income of SFC and hence the reserve level. Based on SFC's budget for 2012-13, the reserve level was at about 5.4 times of the annual expenditure of the Commission.

Estimated expenditure

12. Mr CHIM Pui-chung doubted the desirability of SFC increasing its expenditure in 2012-13 by about 34%, in view of the unstable economic situation in the year both in overseas countries and in Hong Kong. Mr CHIM doubted whether SFC had considerably increased its expenditure mainly because of the large reserves held by the Commission. Ms Starry LEE expressed the same concern and remarked that SFC should attempt to reduce its expenditure in view of the uncertain economic situation.

13. CEO/SFC responded that SFC had worked out the proposed budget based on an assessment of the scope and volume of work of the Commission in 2012-13. The workload of regulatory bodies would normally increase when the investment environment became more risky.

Office accommodation

14. Mr CHIM Pui-chung doubted the need for SFC to be located at Grade A offices in Cheung Kong Centre. He enquired about the justifications for the office accommodation arrangement.

15. CEO/SFC responded that in order to discharge its functions efficiently, SFC, as the regulatory body for the securities market, should be located in the central financial area.

16. Mr KAM Nai-wai remarked that the rental of offices in Sheung Wan and Wan Chai, which were also part of the central financial area, was much lower than that of Cheung Kong Centre in Central. Mr KAM enquired whether SFC had considered office premises in Sheung Wan or Wan Chai so as to cut down the expenses on office accommodation. Ms Starry LEE enquired whether the management of SFC had proposed alternative office accommodations in different districts for consideration by the Board.

17. CEO/SFC reiterated that as the regulatory body for the securities market, SFC offices should be located in the heart of the central financial area, and the decision to relocate SFC offices to Cheung Kong Centre was made before he assumed his post. CEO/SFC remarked that in future SFC would consider other options as its office location, such as the future re-development at the site of the former Government West Wing offices in Central and sites in the new Kai Tak development area.

Staff expenses

18. Noting that SFC proposed the provision of 43 new posts for 2012-13, Mr KAM Nai-wai enquired whether investigation into cases relating to the Lehman Brothers Minibonds Incident had been completed and whether the staff involved in the investigation work could be re-deployed in order to fill some of the proposed new posts.

19. CEO/SFC responded that SFC would still have to deal with cases relating to the Lehman Brothers Minibonds Incident. The 43 new posts were required to cope with additional regulatory workload arising from the increasing number of Renminbi products and product complexity, work relating to liaison/co-operation with the Mainland, increase in the number of licensed corporations, increased inspections of sponsors of initial public offerings, investigation and prosecution work relating to the anti-money laundering legislation and increased civil litigation cases, etc.

20. Noting that 12 new posts would be created at the Policy, China & Investment Products Division, the Deputy Chairman remarked that the process for approving the issue of new investment products should be expedited. He enquired whether additional staff would be provided for dealing with applications for issue of new investment products.

21. CEO/SFC responded that the 12 new posts were mainly for processing applications for issue of new investment products.

Investment return

22. The Deputy Chairman expressed concern about the low investment return of the reserves, i.e. estimated at only about 1.5% for 2012-13.

23. CEO/SFC responded that SFC was restricted under the relevant guidelines to certain types of investment it could make for the reserves. SFC was looking into the feasibility of appointing external fund manager(s) to handle the investment of the reserves.

Office furniture

24. Noting that the estimated expenditure on office furniture and fixture amounted to about \$77 million in 2012-13, Mr Jeffrey LAM enquired about the criteria for replacing the furniture in SFC offices.

25. CFO&SD/SFC responded that in practice SFC would not usually replace its office furniture unless the items were no longer usable, although based on accounting policy, office equipment and furniture should be fully depreciated within five years according to the lease terms. The increase in office furniture

and fixture expenditure in 2012-13 was mainly due to the relocation of SFC offices to Cheung Kong Centre when the old furniture would be replaced and new office fixture and leasehold improvements were put into place.

Additional information

26. Ms Starry LEE requested SFC to provide the following additional information relating to its budget for 2012-13:

- (a) whether SFC had looked into other options for relocation of its current offices in Li Po Chun Chambers and Chater House, and the evaluation of the various options leading to the selection of Cheung Kong Center for the relocation;
- (b) whether SFC had considered other alternatives, e.g. using of in-house lawyers and translation officers, in order to reduce its expenses on professional and other services;
- (c) justifications for proposing a contingency fund of \$6 million for 2012-13; and
- (d) reasons for the proposed increase in funding for external parties for 2012-13.

(Post meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)1168/11-12 on 24 February 2012.)

Motion moved by Mr James TO

27. The Chairman read out the following motion moved by Mr James TO and seconded by Mr CHIM Pui-chung:

"本委員會對證監會提出的預算表示非常不滿，認為在現階段不應上呈財政司司長批准；本委員會要求證監會在短期內重新提出預算給本委員會省覽後，才上呈財政司司長批准。"

(Translation)

That this Panel expresses great dissatisfaction with the budget put forward by the Securities and Futures Commission (SFC) and considers that it should not be submitted to the Financial Secretary for approval at the present stage; and that this Panel requests SFC to put forward its budget afresh within a short time for consideration by the Panel before it is submitted to the Financial Secretary for approval.

28. In view that the Panel did not have a quorum at the material time, the Deputy Chairman instructed the Clerk to ring the quorum bell to summon members to the meeting. A quorum was formed after ringing of the quorum bell. The Deputy Chairman said that he considered that the proposed motion was directly related to the agenda item under discussion, and members agreed that the motion should be dealt with at the meeting. The Deputy Chairman put Mr James TO's motion to vote. Of the members present, five members voted for the motion, one member abstained from voting, and no member voted against the motion. The Deputy Chairman declared that the motion was passed.

V Proposed establishment of a Policyholders' Protection Fund - Consultation conclusions

(LC Paper No. CB(1)941/11-12(01) — Administration's paper on "Proposed establishment of a Policyholders' Protection Fund - Consultation conclusions"

LC Paper No. CB(1)958/11-12 — Background brief on the proposed establishment of a policyholders' protection fund prepared by the Legislative Council Secretariat)

Briefing by the Administration

29. At the invitation by the Deputy Chairman, the Deputy Secretary for Financial Services and the Treasury (Financial Services) (Acting) (DS(FS)(Ag)) briefed members on the consultation conclusions and the final proposals on the proposed establishment of a Policyholders' Protection Fund (PPF) in Hong Kong, by highlighting the salient points in the paper.

Discussion

Public consultation

30. Mr KAM Nai-wai expressed concern that only 49 responses were received during the public consultation exercise. He enquired why the response was so disappointing.

31. The Commissioner of Insurance (C of I) responded that the consultation paper had been uploaded onto the Internet to invite the public to express their views on the proposal. Apart from industry forums, public consultation forums had also been conducted to receive the views of the public on the PPF proposals. In addition, consultation sessions with the Consumer Council and the Small and Medium-Enterprises Committee (SMEC) had been held as well. Views collected from the public were generally in favour of establishing the PPF.

Levy

32. Noting that the levy rate would be set at 0.07%, Mr KAM Nai-wai enquired about the factors which would be taken into consideration in adjusting upward or downward of the levy rate. Mr KAM pointed out that few insurance companies had become insolvent in the past years. Mr WONG Ting-kwong shared Mr KAM's concern and pointed out that although the levies would be collected from insurers, the additional costs would inevitably be transferred to policyholders.

33. C of I responded that the levy of 0.07% was calculated based on the applicable premiums instead of the sum insured, and the levies would be collected from insurers. Based on the current market situation, the initial target fund size was planned to be achieved in 15 years. The target fund size would be reviewed regularly after the PPF had commenced operation. The levy rate might be adjusted upward or downward based on the prevalent situation at the time. C of I remarked that two insurance companies had become bankrupt in the past twelve years. The PPF would enhance the protection for policyholders and minimize additional burden on the insurance industry in the event of an insurer becoming insolvent.

Coverage

34. Mr KAM Nai-wai enquired whether the PPF would cover insurance policies taken out with overseas insurance companies.

35. C of I responded that the PPF would cover all insurance businesses conducted in Hong Kong by authorized insurance companies, including companies incorporated in overseas countries with branches in Hong Kong.

Administration cost

36. Mr WONG Ting-kwong was concerned that the cost for administering the PPF might be high. The Deputy Chairman remarked that the procedures for self-declaration of status by small and medium enterprises (SMEs) should not be complicated in order to minimize the administration cost.

37. DS(FS)(Ag) responded that the PPF Board would only employ a small team of professionals for administering the fund. The Board would be empowered to engage consultants and temporary professional staff to assist in the arrangements for disbursement of compensation in the event of an insurer becoming insolvent. PPF would adopt a simple definition for SMEs with user-friendly procedures, such as self-declaration of status by SME policyholders, to minimize the administrative cost impact on insurers.

Life insurance

38. Given that there was a large variety of life insurance policies, and some of which might involve savings elements, Mr WONG Ting-kwong enquired whether there would be different treatment for life insurance policies made before and after the establishment of the PPF.

39. C of I responded that the PPF would cover all existing in-force and new insurance policies at the time of the establishment of the PPF. Insurers would be required to pay levies in respect of the existing insurance policies upon the commencement of the operation of the PPF. Under the arrangement, the number of in-force policies taken out before the establishment of PPF and covered by the fund would diminish over time.

Owners' corporations

40. Ms Starry LEE remarked that many owners' corporations (OCs) had encountered problems in obtaining insurance coverage, particularly for third party risks insurance. She enquired whether any measures had been taken to assist the OCs.

41. C of I responded that the Office of the Commissioner of Insurance (OCI) had maintained close liaison with the Hong Kong Federation of Insurers (HKFI) and the Home Affairs Bureau regarding insurance coverage for OCs. In some cases, the relevant OCs had to carry out appropriate maintenance work

on their buildings in order to secure insurance coverage. Any OCs which encountered difficulties in obtaining mandatory insurance coverage, such as third party risks insurance and employees' compensation coverage, might approach the OCI or the HKFI for assistance, and follow-up actions would be taken to ensure that the OCs could obtain appropriate insurance coverage. The Deputy Chairman supplemented that OCs which encountered difficulties in obtaining insurance coverage for employees' compensation could seek coverage under the Employees' Compensation Insurance Residual Scheme.

42. At the request of Ms Starry LEE, C of I undertook to provide information on the number of OCs which had encountered difficulties in obtaining third party risks insurance coverage for their buildings.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)1175/11-12 on 27 February 2012.)

Government funding support

43. The Deputy Chairman expressed concern as to whether the Government would provide financial support to the PPF if the fund had not reached the target size and/or was insufficient to compensate the affected policyholders when an insurance company became insolvent.

44. C of I responded that the PPF Board would be empowered to raise funds, either through loans from the Government or through commercial lending which the Government might act as guarantor, depending on the prevailing market situation, if the fund was insufficient to meet the compensation payments to eligible policyholders in case of an insurer insolvency. The Legislative Council would be consulted if the PPF Board needed to raise such loans in order to pay off any compensation.

Level of compensation

45. The Deputy Chairman remarked that the attention of SMEs should be drawn to the fact that the maximum amount of compensation under the PPF was only \$1 million, and might not be adequate to cover the full amount of the insurance policy.

46. C of I responded that based on industry data in previous year, the proposed compensation limit of \$1 million would be able to meet 90% to 100% of the claims arising from some 90% of life policies, and fully meet the claims of some 96% of non-life policies. The OCI would step up education work regarding the compensation limit of the PPF.

Uniform insurance terms and policies

47. Given the large variety of insurance policies, Ms Starry LEE was concerned that the terms and conditions varied among different insurance policies. Ms LEE enquired whether uniform definitions for the terms and conditions of insurance policies, in particular those commonly used terms and conditions which had led to arguments in claims, could be drawn up in order to protect the interests of consumers.

48. C of I responded that an insurance policy was a contract between the policyholder and the insurer, and the scope of coverage, which was closely linked to the amount of insurance premium payable by the policyholder, was subject to the agreement of both parties. Given the large variety of insurance policies, the different needs of policyholders and the commercial strategy of individual insurance companies, it would not be feasible to draw up uniform definition on coverage of the terms and conditions for each type of insurance policies. However, in view of public concern in this regard, the OCI had requested the HKFI to explore the possibility of drawing up clearer definitions of some common terms adopted.

VI Proposed creation of a supernumerary post of Assistant Commissioner of Insurance

(LC Paper No. CB(1)959/11-12(04) — Administration's paper on "Creation of a Supernumerary Directorate Post in the Office of the Commissioner of Insurance of the Financial Services and the Treasury Bureau (Financial Services Branch) for Enforcing the Anti-Money Laundering Regime and Regulating Relevant Mandatory Provident Fund Intermediaries")

49. C of I briefed members on the proposal to create a supernumerary post of Assistant Commissioner of Insurance (ACI) (D2) in OCI for a period of 24 months, by highlighting the salient points in the paper.

50. The Deputy Chairman expressed concern about the need to have adequate staff to undertake the work of the OCI during the transition period before the independent Insurance Authority (IIA) was formally established. The Deputy Chairman enquired about the arrangement for the OCI staff who were on supernumerary and/or contract terms when the IIA was established.

51. C of I responded that OCI would continue to perform all its functions until the establishment of the new IIA, including the additional work arising from new legislation relating to the regulation of Mandatory Provident Fund intermediaries and the enhancement of the anti-money laundering regulatory regime. The Administration was discussing internally the arrangement for the existing OCI staff.

VII Any other business

52. There being no other business, the meeting ended at 12:46 pm.

Council Business Division 1
Legislative Council Secretariat
26 March 2012