

立法會
Legislative Council

LC Paper No. CB(1)497/16-17
(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

Panel on Financial Affairs

Minutes of meeting
held on Monday, 5 December 2016 at 9:00 am
in Conference Room 1 of the Legislative Council Complex

Members present : Hon Christopher CHEUNG Wah-fung, SBS, JP
(Chairman)
Hon Kenneth LEUNG (Deputy Chairman)
Hon James TO Kun-sun
Hon LEUNG Yiu-chung
Hon Abraham SHEK Lai-him, GBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Kin-por, BBS, JP
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
Hon WU Chi-wai, MH
Hon Charles Peter MOK, JP
Hon CHAN Chi-chuen
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Hon Dennis KWOK Wing-hang
Dr Hon Fernando CHEUNG Chiu-hung
Hon Alvin YEUNG
Hon CHU Hoi-dick
Hon HO Kai-ming
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon CHAN Chun-ying
Hon Tanya CHAN
Hon CHEUNG Kwok-kwan, JP

Hon HUI Chi-fung
Hon LUK Chung-hung
Dr Hon YIU Chung-yim

Members absent : Hon Frankie YICK Chi-ming, JP
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon Kenneth LAU Ip-keung, MH, JP
Hon Nathan LAW Kwun-chung

**Public officers
attending** : Agenda Item III

Ms Eureka CHEUNG
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services)5

Mr Raymond CHAN
Executive Director (Banking Supervision)
Hong Kong Monetary Authority

Mr SHOU Fugang
Chief Executive
Bank of Communications Co., Ltd. Hong Kong
Branch

Ms Nancy CHAN
Alternate Chief Executive
Bank of Communications Co., Ltd. Hong Kong
Branch

Mr Alan LIU
Alternate Chief Executive
Bank of Communications Co., Ltd. Hong Kong
Branch

Ms Virginia LEE
Partner
Clifford Chance

Ms Cherry HO
Associate
Clifford Chance

Mr James TAM
Partner
PricewaterhouseCoopers

Mr Simon CHENG
Partner
PricewaterhouseCoopers

Agenda Item IV

Mr John C TSANG, GBM, JP
Financial Secretary

Mr Raymond WU
Administrative Assistant to Financial Secretary

Mrs Helen CHAN, JP
Government Economist

Clerk in attendance : Ms Connie SZETO
Chief Council Secretary (1)4

Staff in attendance : Mr Stephen LAM
Senior Assistant Legal Adviser 2

Ms Clara TAM
Assistant Legal Adviser 9

Mr Hugo CHIU
Senior Council Secretary (1)4

Mr Keith WONG
Council Secretary (1)4

Ms Sharon CHAN
Legislative Assistant (1)4

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(As the Chairman was engaged in other business, the Deputy Chairman chaired the meeting from 9:00 am to 9:49 am.)

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I Information papers issued since the meeting on 15 November 2016

(LC Paper No. CB(1)194/16-17(01) — Letter dated 25 November 2016 on "Arrangements of disposal of mobile tablets of the 2016 Population By-census" from the Census and Statistics Department

LC Paper No. CB(1)206/16-17(01) — Information note on "Construction of Inland Revenue Tower in Kai Tak Development Area"

LC Paper No. CB(1)221/16-17(01) — Information note on "Implementation of New Measures to Tackle Money Lending-related Malpractices")

Members noted the information papers issued since the regular meeting held on 15 November 2016.

II Date of next meeting and items for discussion

(LC Paper No. CB(1)190/16-17(01) — List of outstanding items for discussion)

2. Members agreed to discuss the following items proposed by the Administration at the next regular meeting scheduled for 3 January 2017:

- (a) Briefing on the work of the Financial Services Development Council;
- (b) Proposed amendments to the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615) to enhance the regulation of certain designated non-financial businesses and professions, and the Companies Ordinance (Cap. 622) to enhance transparency of the beneficial ownership of companies;

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- (c) Asian Development Bank – Contribution of Hong Kong to the 11th Replenishment of the Asian Development Fund;
 - (d) Proposed creation of one post of Administrative Officer Staff Grade C in the Treasury Branch of the Financial Services and the Treasury Bureau and one post of Chief Assessor in the Stamp Office of the Inland Revenue Department; and
 - (e) Charging Mandatory Provident Fund intermediaries registration, approval and annual fees and revision of fees in relation to Occupational Retirement Schemes.
3. Members further agreed that the meeting on 3 January 2017 would be held from 9:00 am to around 1:00 pm to allow sufficient time for discussion of the above five items.

III Briefing on the proposed Members' Bill — Bank of Communications (Hong Kong) Limited (Merger) Bill

(LC Paper No. CB(1)190/16-17(02) — Paper on "Bank of Communications (Hong Kong) Limited (Merger) Bill" provided by Hon CHAN Chun-ying's office

LC Paper No. CB(1)190/16-17(03) — Background brief on the Bank of Communications (Hong Kong) Limited (Merger) Bill prepared by the Legislative Council Secretariat)

Declaration of interest

4. The Deputy Chairman declared that he was a senior consultant of Clifford Chance, the legal advisor of Bank of Communications Co., Ltd. Hong Kong Branch ("BCOM, Hong Kong Branch"), and said that he would not speak or vote on the agenda item as he might have direct or indirect pecuniary interest relating to the item. Members had no objection to the Deputy Chairman chairing the item.

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Briefing on the Bill

5. At the invitation of the Deputy Chairman, Mr CHAN Chun-ying gave a brief introduction on the Bank of Communications (Hong Kong) Limited (Merger) Bill ("the Bill"). He explained that the purpose of the Bill, which he would introduce into the Legislative Council ("LegCo") as a private Member's bill, was to provide for the transfer of the retail banking business and private banking business of Bank of Communications Co., Ltd. ("BCOM") currently operated through a branch in Hong Kong (i.e. BCOM, Hong Kong Branch) to Bank of Communications (Hong Kong) Limited ("BCOM (Hong Kong)") which was a wholly-owned subsidiary within the Bank of Communications group of companies. BCOM (Hong Kong) had been incorporated in Hong Kong since 2014 and had been granted a bank licence by the Hong Kong Monetary Authority ("HKMA"). The corporate governance, business operations and capital requirements of BCOM (Hong Kong) would be subject to the regulatory requirements under the Banking Ordinance (Cap. 155) applicable to locally-incorporated authorized institutions. Mr CHAN added that a same bill had been introduced in the Fifth LegCo but was lapsed upon the prorogation of the Fifth LegCo. A Bills Committee had been formed to study that bill, and issues like the capital adequacy ratio of, property and liabilities to be transferred to, and protection of customers' interests and employees' benefits of BCOM (Hong Kong) had been thoroughly discussed. Subject to the President's ruling and the Chief Executive's consent, the Bill would be introduced during the current LegCo term. The provisions of the Bill were similar to those of the bank merger ordinances previously passed by LegCo, and therefore he recommended the Bill to Members.

6. Upon the Deputy Chairman's invitation, Mr SHOU Fugang, Chief Executive, Bank of Communications Co., Ltd. Hong Kong Branch briefed members on the Bill. He highlighted the following points:

- (a) The Bill formed part of BCOM's strategy to continue building on a strong foundation in Hong Kong by expanding and intensifying its business and product offerings. The proposed merger would further affirm its long-term service commitment to customers, employees, business partners as well as members of the public in Hong Kong;
- (b) The proposed business merger was in line with the rising trend for international financial institutions to transfer their retail and private banking businesses to locally-incorporated subsidiaries. BCOM (Hong Kong) was a licensed bank incorporated in Hong Kong, with a corporate governance structure consisted of the

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board of directors, board committees and senior management in accordance with the regulatory requirements. This would strengthen the internal governance of the bank and enhance the transparency of its operation; and

- (c) It was intended that the relevant employees would be transferred from BCOM, Hong Kong Branch to BCOM (Hong Kong), and the terms of their contracts of employment would be in line with those with BCOM, Hong Kong Branch. The employees would not suffer any losses in respect of accrued benefits, including annual leave and long service leave. The continuity of their employment would not be interrupted as a result of the merger.

(*Post-meeting note:* The speeches delivered by Mr CHAN Chun-ying and Mr SHOU Fugang (LC Paper Nos. CB(1)256/16-17(01) and CB(1)256/16-17(02)) were issued to members vide Lotus Notes e-mail on 6 December 2016.)

Discussion

Financial soundness of Bank of Communications (Hong Kong) Limited

7. Mr CHAN Kin-por expressed support for the proposed Bill and said that the Bills Committee formed during the Fifth LegCo should have already discussed and clarified issues relating to the Bill.

8. In relation to the transfer of the retail and private banking businesses of BCOM, Hong Kong Branch to BCOM (Hong Kong) under the proposed Bill, Mr WU Chi-wai requested BCOM, Hong Kong Branch to provide information demonstrating the financial soundness (e.g. its capital base and asset allocation) and relevant to the operation of the retail and private banking businesses of BCOM (Hong Kong) in order to ensure that customers' interests would be protected during the transfer. Mr SHOU undertook to provide the information as requested by Mr WU.

(*Post-meeting note:* BCOM, Hong Kong Branch's supplementary information was issued to members vide LC Paper No. CB(1)358/16-17(02) on 22 December 2016.)

9. Dr KWOK Ka-ki asked if the proposed business transfer would affect HKMA's regulatory oversight of banks. He also expressed concern about possible difference in the regulatory standards and requirements applicable to

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BCOM, Hong Kong Branch and BCOM (Hong Kong), for example, in relation to securities business.

10. Executive Director (Banking Supervision), Hong Kong Monetary Authority ("ED(BS)/HKMA") advised that the proposed business transfer would not affect the HKMA's regulatory oversight of banks. He added that BCOM, Hong Kong Branch and BCOM (Hong Kong) would be subject to the same regulatory requirements when engaging in securities business and/or other regulated activities as defined under the Securities and Futures Ordinance (Cap. 571). He supplemented that foreign banks in Hong Kong might carry out their banking businesses in the form of a locally-incorporated subsidiary or a branch. Although BCOM, Hong Kong Branch was a non-locally incorporated bank, it was still required to comply with the capital standards promulgated by the Basel Committee on Banking Supervision at the Head Office level. HKMA would continue to co-ordinate closely with the China Banking Regulatory Commission to ensure that BCOM, Hong Kong Branch would meet the relevant regulatory standards on an on-going basis.

Scope of banking businesses to be transferred

11. Mr WU Chi-wai and Mr Holden CHOW enquired whether BCOM, Hong Kong Branch had any plan to transfer other banking businesses besides retail and private banking businesses to BCOM (Hong Kong). Mr CHOW further enquired about the procedure for transferring other businesses from BCOM, Hong Kong Branch to BCOM (Hong Kong) in future.

12. Mr SHOU advised that BCOM was a nationwide state-owned commercial bank, establishing in China for over 100 years. BCOM operated the retail banking business, private banking business, corporate banking business and institutional banking business in Hong Kong through BCOM, Hong Kong Branch. After the proposed business transfer, the retail and private banking businesses would be carried out by BCOM (Hong Kong), whereas the corporate banking and other businesses would remain in BCOM, Hong Kong Branch. The proposed business transfer demonstrated the bank's long-term commitment to its customers, employees and business partners, and was in line with the international trend for international financial institutions to transfer their retail and private banking businesses to locally-incorporated subsidiaries. With a more transparent mode of operation, better division of work and stringent control under Hong Kong's regulatory regime, customers' assets and interests would be better protected after the transfer. Mr SHOU added that BCOM, Hong Kong Branch and BCOM were regarded as one single legal person and hence would be in a better position, especially in terms of capital size, to operate corporate and institutional banking businesses. In reply to

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Mr Holden CHOW, Ms Virginia LEE, Partner, Clifford Chance advised that future business transfer could be effected by way of novation and assignment or by introducing a private Member's bill into LegCo if a large number of agreements between BCOM, Hong Kong Branch and its customers and other counterparties were involved in the transfer.

Excluded property and liabilities

13. While indicating support for the proposed Bill, Mr CHEUNG Kwok-kwan expressed concern about the power conferred to BCOM for designating certain property and liabilities of the retail or private banking business of BCOM, Hong Kong Branch to be excluded from the proposed business transfer.

14. ED(BS)/HKMA said that the purpose of providing BCOM with the power to designate such exclusions was to allow flexibility for it to retain certain selected customer accounts with BCOM, Hong Kong Branch whom were considered appropriate to be retained by the Branch. Provisions of similar nature were also found in previous bank merger ordinances. Ms Virginia LEE supplemented that BCOM would exercise the said power only in very limited cases. For example, for some foreign law governed contracts, steps were required to be taken under the relevant foreign law to individually transfer the contract to BCOM (Hong Kong) and hence would be required to be excluded from the proposed business transfer.

Interests in land

15. Dr YIU Chung-yim sought clarification on the effect of Clause 15(1)(e) of the proposed Bill, in particular how BCOM, Hong Kong Branch would ensure that the vesting or deemed vesting in BCOM (Hong Kong) of an interest in land would comply with requirements stipulated under section 41(3) of the Conveyancing and Property Ordinance (Cap. 219) and whether stamp duty would be required under such circumstances.

16. Ms Virginia LEE explained that operation of Clause 15 was intended to be limited to the premises leased by BCOM, Hong Kong Branch immediately before the proposed business transfer. The Clause ensured that the tenancy agreements entered into by, made with, given to or by or addressed to BCOM, Hong Kong Branch would be construed as if BCOM (Hong Kong) had been a party instead of BCOM, Hong Kong Branch or BCOM after the proposed business transfer, and hence would ensure there would be no breach of the relevant tenancy agreements. She added that all interests in land of BCOM, Hong Kong Branch and BCOM would be excluded from the operation

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of Clause 15. With regard to stamp duty, Ms LEE said that nothing in Clause 15 would exempt either BCOM (Hong Kong) or BCOM, Hong Kong Branch from provisions of the Stamp Duty Ordinance (Cap. 117).

Conclusion

17. The Deputy Chairman said that members could write to the Panel should they require further information or clarification on the proposed Bill from BCOM, Hong Kong Branch.

IV Briefing by the Financial Secretary on Hong Kong's latest overall economic situation

(LC Paper No. CB(1)123/16-17(01) — Third Quarter Economic Report 2016 and the press release

LC Paper No. CB(1)190/16-17(04) — Administration's paper on Hong Kong's recent economic situation and near-term outlook)

Briefing by the Administration

18. At the invitation of the Deputy Chairman, the Financial Secretary ("FS") briefed members on Hong Kong's latest overall economic situation. He added that the Government commenced on 2 December 2016 legal proceedings against Ms LAU Siu-lai, Mr YIU Chung-yim, Mr Nathan LAW Kwun-chung and Mr LEUNG Kwok-hung, and requested the Court to declare their oaths purportedly taken as invalid ("the Proceedings"). According to the advice of the Department of Justice, public officers including he himself should, pending the final determination of the Proceedings by the Court, follow the stance set out in the Chief Secretary for Administration's letters dated 31 October 2016 and 8 November 2016 to the President of LegCo. In this connection, he would not respond to the questions or comments from the four persons.

(At 9:49 am, the Chairman took the chair.)

(Post-meeting note: The press release containing the speaking note of FS (Chinese version only) was issued to members vide LC Paper No. CB(1)256/16-17(03) on 6 December 2016.)

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The Administration's position of not responding to the questions or comments of the four Members

19. Mr LEUNG Kwok-hung raised a point of order. He said that the Court had not yet granted leave to the Proceedings against the four Members. The four Members were thus still qualified for their office and could exercise their powers as stipulated in Article 73 of the Basic Law ("BL"). He strongly opposed to the Government's position of not responding to the questions or comments of the four Members, and considered that the meeting should be adjourned. Ms Tanya CHAN suggested that the Chairman should suspend the meeting to allow the Panel to seek the advice of the Legal Adviser of LegCo on the matter.

(At 10:02 am, the Chairman ordered that the meeting be suspended for 10 minutes. The meeting resumed at 10:35 am.)

20. At the invitation of the Chairman, Senior Assistant Legal Adviser 2 ("SALA2") said that while the Proceedings had commenced, the Court had yet to grant leave for the Judicial Review Proceedings. The Legal Service Division of LegCo Secretariat ("LSD") had not been provided with the Government's legal advice on this matter. SALA2 added that the preliminary view of LSD was that the four Members were still qualified for their office as LegCo Members unless the Court decided otherwise.

21. The Chairman said that he would allow members to speak on the matter, and each member should speak once for not more than two minutes.

22. Dr KWOK Ka-ki, Dr Fernando CHEUNG, Mr Dennis KWOK, Mr HUI Chi-fung, Mr WU Chi-wai, Mr Charles Peter MOK, Mr CHAN Chi-chuen, Dr YIU Chung-yim, Mr Alvin YEUNG, Ms Tanya CHAN and Mr LEUNG Kwok-hung expressed strong discontent with the Government's position of not responding to the questions or comments of the four Members. They stressed that the four Members, who had taken their oaths in accordance with the relevant provisions of the Oaths and Declarations Ordinance (Cap. 11) and the Rules of Procedures ("RoP"), were qualified for their office. The Government's position would unduly deprive the four Members of their rights to exercise the powers set out in Article 73 of BL. Dr KWOK, Dr CHEUNG, Dr YIU, Mr YEUNG and Ms CHAN queried the legal basis of the Government's position as the Court had not yet granted leave to the Proceedings. They considered that the Government had breached the principle of "presumption of the innocence" and the position amounted to passing sentence on the four Members without trial. Dr KWOK and Dr CHEUNG expressed the view that the Government's position was a serious disrespect to

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LegCo. Mr MOK queried whether the ulterior motive of the Government was to influence the 2017 Chief Executive Election.

23. Mr Charles Peter MOK, Mr HUI Chi-fung and Ms Tanya CHAN considered that the Government's position had violated the rule of law and BL. Mr Dennis KWOK, Mr WU Chi-wai, Mr CHAN Chi-chuen and Dr YIU Chung-yim urged the Government to rescind its position, and called on FS to withdraw his remarks. Otherwise, it would be difficult to maintain the smooth operation of LegCo. Mr KWOK further remarked that he would move a motion to adjourn further proceedings of the Panel if FS did not withdraw his remarks.

24. Ms Starry LEE said that while she supported the Proceedings, she considered that the Administration should act in accordance with the law. She was concerned about the political consequence of the Government's position which could have adverse impact on the smooth operation of LegCo and compromise the overall public interest.

25. Mr Abraham SHEK considered that government officials had the right to decide whether to respond to the questions or comments of the four Members because their qualification for the office was subject to legal challenge. The Chairman concurred that FS could have his own views on the matter.

26. FS said that what he said earlier was the position of the Government. The advice of the Department of Justice was that he should not respond to questions or comments from the four persons.

27. The Clerk to the Panel said that there were four items for discussion at today's meeting and FS was responsible for two items (i.e. the items IV and V). As regards the stance of government officials participating in the remaining two discussion items (i.e. items VI and VII), pursuant to the Chairman's instruction, the Secretariat had contacted the relevant officials and learnt that they would follow FS's position of not responding to the questions or comments of the four Members when attending the relevant items.

Motion that further proceedings of the Panel be now adjourned

28. At 11:06 am, Mr Dennis KWOK moved a motion that further proceedings of the Panel be now adjourned. The wording of the motion was as follows:

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"Based on the statement made by the Financial Secretary at the beginning of this meeting, that this Panel be immediately adjourned".

29. The Chairman said that he would allow members to speak on the motion. He asked and members agreed to deal with the motion moved by Mr Dennis KWOK. The Chairman advised that each member could speak once for not more than two minutes.

30. Mr Paul TSE considered it inappropriate to adjourn the meeting solely based on the Government's aforesaid position, and that members supporting the motion should elaborate the rationale.

31. Mr Abraham SHEK spoke against the motion. He was concerned that adjourning the meeting would deprive Members of their rights to raise questions on the work of the Government.

32. Mr LEUNG Kwok-hung, Dr KWOK Ka-ki, Mr WU Chi-wai, Dr YIU Chung-yim and Dr Fernando CHEUNG spoke in support of the motion. They reiterated that the Government's position was in violation of the rule of law and BL, and hence was unacceptable. They stressed that under Article 64 of BL, the Government must be accountable to LegCo and shall answer questions raised by Members. The Government's position was to pass sentence on the four Members without trial and would deprive of these Members' rights to exercise their powers under Article 73 of BL. They strongly urged the Administration to rescind its position.

33. Mr Jeffrey LAM remarked that if the motion was passed, the meeting would be adjourned and Members could not raise questions on the Administration's work which was vital to the livelihood of the public. He suggested that the Chairman should suspend the meeting for members to consider how to vote on the motion. Mr CHAN Kin-por agreed to Mr LAM's suggestion.

(At 11:22 am, the Chairman ordered that the meeting be suspended for 10 minutes. The meeting resumed at 11:40 am.)

34. Mr Paul TSE remarked that pending the Court's determination on the Proceedings, the four Members were still qualified for their office. However, he had reservation about adjourning the meeting based solely on the Government's aforesaid position. Mr Holden CHOW shared Mr TSE's view that the four Members were still qualified for their office pending the final determination of the Proceedings by the Court. He added that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong

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Kong called on the Administration to re-consider the aforesaid position. They considered it inappropriate to adjourn the meeting as this would deprive Members of the opportunities to raise important questions on the work of the Administration. He did not support the motion.

35. The Deputy Chairman said that he was opposed to the Government's aforesaid position which he considered would be detrimental to the relationship of the Administration and LegCo. He called on the Administration to rescind its position.

36. At 11:47 am, the Chairman put the motion to vote. At the request of Ms Starry LEE, the Chairman ordered a division and the division bell rang for five minutes. 14 members voted for and nine members voted against the motion. The Chairman declared that the motion was carried. The votes of individual members were as follows –

For

Mr James TO
Mr WU Chi-wai
Mr CHAN Chi-chuen
Dr KWOK Ka-ki
Dr Fernando CHEUNG
Mr CHU Hoi-dick
Mr HUI Chi-fung
(14 members)

Mr LEUNG Kwok-hung
Mr Charles Peter MOK
Mr Kenneth LEUNG
Mr Dennis KWOK
Mr Alvin YEUNG
Ms Tanya CHAN
Dr YIU Chung-yim

Against

Mr Abraham SHEK
Mr WONG Ting-kwong
Mr Paul TSE
Mr CHAN Chun-ying
Mr LUK Chung-hung
(9 members)

Mr Jeffrey LAM
Ms Starry LEE
Mr Holden CHOW
Mr CHEUNG Kwok-kwan

37. At 11:54 am, the Chairman declared that the meeting be adjourned.