

**立法會**  
***Legislative Council***

LC Paper No. CB(1)1344/16-17  
(These minutes have been seen  
by the Administration)

Ref : CB1/PL/FA/1

**Panel on Financial Affairs**

**Minutes of meeting held on  
Tuesday, 18 April 2017 at 10:15 am  
in Conference Room 3 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 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 Frankie YICK Chi-ming, JP  
Hon Charles Peter MOK, JP  
Hon Dennis KWOK Wing-hang  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai  
Hon CHAN Chun-ying  
Hon Tanya CHAN  
Hon CHEUNG Kwok-kwan, JP  
Dr Hon YIU Chung-yim

**Members absent :** Hon WU Chi-wai, MH  
Hon CHU Hoi-dick  
Dr Hon Junius HO Kwan-yiu, JP

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

**Public officers  
attending** : Agenda Item IV

Mr Andrew WONG  
Permanent Secretary for Financial Services and the  
Treasury (Financial Services)

Mr Paul WONG  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services)

Mr LI Shu Pui  
Executive Director (Financial Infrastructure)  
Hong Kong Monetary Authority

Mr Charles D'HAUSSY  
Head of Fintech  
InvestHK

Agenda Item V

Ms Polly KWOK  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services) International and  
Mainland Affairs

Mr Eamonn WHITE  
Head, Resolution Office  
Hong Kong Monetary Authority

Mr Ben PLANT  
Senior Manager, Resolution Office  
Hong Kong Monetary Authority

Mr Tony CHAN  
Ag Assistant Commissioner of Insurance (Policy and  
Development)  
Office of the Commissioner of Insurance

Agenda Item VI

Ms Mable CHAN, JP  
Deputy Secretary for Financial Services and the  
Treasury (Financial Services)<sup>1</sup>

Ms Ada CHAN  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services)<sup>2</sup>

**Attendance by  
invitation** : Agenda Item IV

Dr Toa CHARM  
Chief Public Mission Officer  
Hong Kong Cyberport Management Company Limited

Agenda Item V

Mr Eugene GOYNE  
Strategic Operations Coordinator and Senior Director,  
Enforcement  
Securities and Futures Commission

Ms TAN Poh Hiang  
Associate Director, Supervision of Markets  
Securities and Futures Commission

Agenda Item VI

Mr Brian HO  
Executive Director, Corporate Finance Division  
Securities and Futures Commission

Ms Cecilia LIEW  
Director, Corporate Finance Division  
Securities and Futures Commission

Mr Paul YEUNG  
Commission Secretary  
Securities and Futures Commission

Mr David GRAHAM  
Chief Regulatory Officer and Head of Listing  
Hong Kong Exchanges and Clearing Limited

Ms Grace HUI  
Managing Director, Chief Operating Officer, Listing  
Hong Kong Exchanges and Clearing Limited

Ms Kelly LEE  
Assistant Vice President, Listing Department  
Hong Kong Exchanges and Clearing Limited

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

**Staff in attendance :** Mr Hugo CHIU  
Senior Council Secretary (1)4

Ms Sharon CHAN  
Legislative Assistant (1)4

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Action

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

(LC Paper No. CB(1)755/16-17 — Minutes of the meeting on  
3 January 2017

LC Paper No. CB(1)788/16-17 — Minutes of the meeting on  
6 February 2017)

The minutes of the meetings held on 3 January and 6 February 2017 were confirmed.

Action

**II Information papers issued since the regular meeting on 16 March 2017**

(LC Paper No. CB(1)703/16-17(01) — Submission dated 7 March 2017 from Oxfam on the Administration's public consultation on the Companies Ordinance regarding the enhancement of transparency of the beneficial ownership of companies (Chinese version only))

2. Members noted the information paper issued since the regular meeting held on 16 March 2017.

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

(LC Paper No. CB(1)777/16-17(01) — List of outstanding items for discussion

LC Paper No. CB(1)777/16-17(02) — List of follow-up actions)

3. The Chairman said that members were informed earlier that the regular meeting for May 2017 would be re-scheduled to be held on Monday, 29 May 2017. Members agreed to discuss the following items proposed by the Administration at the meeting:

- (a) Briefing on the work of Hong Kong Monetary Authority ("HKMA"); and
- (b) Developments after implementation of the four-pronged approach for tackling money lending-related malpractices.

4. Members further agreed that the meeting on 29 May 2017 would be held from 10:00 am to around 12:30 pm to allow sufficient time for discussion of the above two items.

Action

**IV Development of financial technologies**

(LC Paper No. CB(1)777/16-17(03) — Administration's paper on "Development of financial technologies"

LC Paper No. CB(1)777/16-17(04) — Background brief on development of financial technologies in Hong Kong prepared by the Legislative Council Secretariat)

Briefing by the Administration

5. At the invitation of the Chairman, Permanent Secretary for Financial Services and the Treasury (Financial Services) ("PS(FS)") updated the Panel with the aid of a powerpoint presentation on the developments of the local financial technologies ("Fintech") landscape and measures to support the development of the industry since the Government's last briefing on the strategies and measures to support the development of Fintech at the Panel meeting on 11 April 2016. Head of Fintech, InvestHK, Chief Public Mission Officer, Hong Kong Cyberport Management Company Limited ("CPMO/Cyberport") and Executive Director (Financial Infrastructure), Hong Kong Monetary Authority ("ED/HKMA") then highlighted the relevant initiatives taken by InvestHK, the Hong Kong Cyberport Management Company Limited ("Cyberport") and HKMA respectively.

*(Post-meeting note: The powerpoint presentation materials (LC Paper No. CB(1)843/16-17(01)) were issued to Members vide Lotus Notes e-mail on 19 April 2017.)*

Discussion

*Regulation of Fintech in Hong Kong*

6. While noting the good progress in Fintech development during the past year, Mr CHAN Chun-ying referred to the results of the 2<sup>nd</sup> Global FinTech Survey recently conducted by PricewaterhouseCoopers which had reflected concerns about regulatory uncertainty by Fintech industry, information security and privacy threats posed by Fintech, and low investment on Fintech infrastructure in Hong Kong. Mr CHAN enquired how the Administration would address these concerns, and whether it would review the "technology neutral" approach in regulating Fintech development.

Action

7. Referring to the Administration's past remarks that many services provided by Fintech companies could operate under the existing legal framework, Mr CHAN Kin-por pointed out that the financial services sector had expressed concern that the present regulatory regimes could not cope with the rapid development in Fintech. He enquired whether the Administration and financial regulators would review the regulatory regimes to promote Fintech development.

8. While appreciating the Administration's efforts in promoting Fintech development in the past year, Mr Charles MOK considered that the establishment of respective Fintech liaison platforms by HKMA, the Securities and Futures Commission ("SFC") and the Office of the Commissioner of Insurance ("OCI") was inadequate in addressing Fintech industry's concern about regulatory uncertainty. He was concerned how the Administration would collaborate efforts of HKMA, SFC and OCI in promoting Fintech development. He expressed disappointment that SFC and OCI had not sent representatives to the meeting, and called on the two regulators to develop platforms similar to HKMA's Fintech Supervisory Sandbox ("FSS") to enable pilot trials of Fintech projects in the securities and insurance sectors. He also enquired about the Administration's plans in formulating regulatory regimes for Fintech products, such as peer-to-peer lending and crowdfunding, and conducting relevant consultations.

9. PS(FS) advised that HKMA, SFC and OCI had set up respective Fintech liaison platforms to enhance communication with the Fintech industry. He explained that the "technology neutral" approach meant that the Government's regulation of the industry should not result in giving any preference to those using technology. The Government would review its policy on Fintech development where necessary. The rapid development in stored value facilities ("SVF") and retail payment systems since the enactment of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584) ("SVFO") in 2015 had demonstrated that substantial progress in the application of Fintech solutions could be achieved when the corresponding legislative framework was in place. PS(FS) agreed to relay Mr Charles MOK's views to SFC and OCI regarding measures to support Fintech development in their work. He stressed that SFC and OCI had rolled out a number of measures to promote Fintech development. For instance, several SFC-licensed corporations had started providing services to clients that involved robo-advice. OCI had been collaborating with the Hong Kong Federation of Insurers in promoting Fintech in the insurance industry. ED/HKMA added that regulators had been engaging relevant stakeholders proactively to gauge their views on Fintech development and help them resolve problems encountered. Apart from establishing the Fintech liaison platforms and organizing outreaching activities, the various regulators had rolled out a number of relevant measures.

Action

10. As regards the regulatory regime for Fintech development, ED/HKMA advised that since emergence of online banking service years ago, HKMA had developed a regulatory framework facilitating the banking industry in using new technologies in the business process. HKMA had enhanced flexibility of the regulatory framework to cater for Fintech development. For instance, HKMA's FSS allowed banks to test Fintech solutions without fully complying with HKMA's usual supervisory requirements during the trial period. As observed, FSS had helped expedite the development of new Fintech solutions by banks. On measures the Government would take to address the industry's concern about cybersecurity and privacy protection in Fintech development, ED/HKMA advised that HKMA attached importance to enhancing cybersecurity. HKMA's Fintech Facilitation Office ("FFO") had launched the Cybersecurity Fortification Initiative to strengthen the cyber resilience of all banks in Hong Kong.

11. Mr Dennis KWOK relayed the concern of some Fintech start-ups that they could not benefit from FSS as it was catered for use by large financial institutions ("FIs"). He pointed out that some start-ups had moved to Singapore due to the latter's more vibrant Fintech ecology and better provision of auxiliary facilities for Fintech companies. Mr KWOK remarked that some small start-ups had developed applications of payment method involving small-value transactions. He was concerned that such applications would be subject to the SVF regulatory regime, hence affecting the operation of small start-ups.

12. ED/HKMA clarified that FSS was developed for banks to test new Fintech solutions. Fintech start-ups were therefore not required to go through FSS if their solutions were not used by banks. He pointed out that under SVFO, an SVF with a float size of not more than one million Hong Kong Dollar and limited usage would be exempt from the licensing requirement. Thus it was unlikely that the applications mentioned by Mr Dennis KWOK would be subject to the SVF regulatory regime. ED/HKMA supplemented that HKMA welcomed Fintech start-ups to approach its FFO for advice on their operations, and FFO had reached out to start-ups explaining to them the relevant regulatory requirements.

*Challenges arising from the development of Fintech*

13. Mr Kenneth LEUNG observed that traditional FIs held a conservative attitude towards Fintech start-ups and even regarded them as their potential competitors. He stressed the need for the Administration to change the mindset of traditional FIs, and sought details of the Administration's work in this regard.

14. PS(FS) advised that Cyberport had been organizing programmes to facilitate communication and promote cooperation of FIs and Fintech start-ups. CPMO/Cyberport added that certain initiatives like the Haccelerator programme



Action

had strengthened the cooperation between FIs and start-ups. Under the Haccelerator programme, FIs like Citibank Hong Kong and Hang Seng Bank would raise business problems, and Fintech start-ups were invited to propose solutions to the problems. It was noted that the programme had been successful in changing the attitude of FIs on Fintech development.

15. Mrs Regina IP expressed concern that application of Fintech (e.g. blockchain, algorithmic trading and machine learning) would require talents and would inevitably phase out existing jobs in the financial services sector. She considered it important for the Government to tackle these issues in collaboration with local universities in developing courses for nurturing Fintech talents and training existing practitioners in the financial services sector. She enquired about the Administration's work in this area.

16. PS(FS) advised that the Government had liaised with industry bodies in addressing the impacts of Fintech development on the industry, including possible phasing out of certain intermediary services. He said that the Government would step up training for existing practitioners to enhance their skill-sets in using Fintech so that they could stay competitive.

*Strategies for the development of Fintech*

17. Mr CHAN Kin-por enquired how Hong Kong could compete with Fintech centres, such as Shenzhen, and sought details of the Administration's plan to nurture Fintech talents, including development of Fintech-related degree programmes by local universities. Mr Charles MOK remarked that the emergence of new Fintech centres like Shenzhen and San Francisco demonstrated that there was opportunity for Hong Kong to develop into a Fintech hub. He considered that Hong Kong should leverage on its link with and knowledge of the Mainland to add impetus to the development of Fintech. He enquired whether the Administration would consider setting up offices in the Silicon Valley to support local Fintech start-ups in establishing business there.

18. PS(FS) responded that Hong Kong would cooperate with other Fintech centres rather than compete with them. Cyberport and InvestHK had been organizing various activities to enhance cooperation with other economies on Fintech development, including setting up InvestHK's dedicated Fintech team in San Francisco and launching Cyberport's University Partnership Programme for local university students to join the Entrepreneurship Bootcamp in Silicon Valley. HKMA and Cyberport had been organizing various programmes to nurture Fintech talents. Local institutions and universities had also been offering programmes/courses on Fintech. The details were set out in paragraph 10 of the Administration's paper. The Government would continue to step up efforts in

Action

strengthening cooperation with other economies and regulators on Fintech development as well as enhancing market access for Fintech start-ups in Hong Kong.

19. Mr Holden CHOW enquired about measures to promote the use of Fintech in various government operations and processes, and to further develop Hong Kong's payment infrastructure with a view to converting Hong Kong into a cashless society.

20. PS(FS) said that currently about half of government bills and fees items were settled through electronic payment. The Financial Secretary had announced in his 2017-2018 Budget Speech the Government's initiative to actively explore new payment channels for settling government bills and fees in order to encourage more people to make use of innovative payment products and services.

*Study on the central bank digital currency*

21. Dr YIU Chung-yim enquired about HKMA's initiative of launching central bank digital currency ("CBDC"), and sought its assessment on the impacts of CBDC on the linked-exchange rate system ("LER system"), Hong Kong's money supply and inflation rate. Dr YIU opined that HKMA should study the potential impacts of CBDC on the LER system and Hong Kong's financial stability.

22. ED/HKMA responded that HKMA commenced a research and a proof-of-concept work on CBDC in collaboration with stakeholders in late March 2017. The first stage of the study which focused on technical issues was expected to complete by the end of 2017. He stressed that there was yet any decision to implement CBDC. HKMA would carefully examine the benefits of CBDC and feasibility issues, as well as other relevant issues including the impacts on Hong Kong's financial stability and monetary policy.

*Development of the stored value facilities and payment systems*

23. Mr Holden CHOW noted that HKMA had granted 13 SVF licences since SVFO commenced full operation in November 2016. He enquired whether HKMA would consider granting more SVF licences in the light of demand of the payment system industry.

24. ED/HKMA advised that Hong Kong had a relatively high number of SVFs in operation compared with other Southeast Asian countries. It was aware that some Mainland companies had expressed interest to apply for SVF licences in Hong Kong in order to use Hong Kong as a platform to access overseas

Action

markets. At the same time, some overseas retail payment companies planned to use the Hong Kong platform to access the Mainland market.

25. Mr Kenneth LEUNG enquired about the impacts of HKMA's proposed Faster Payment System ("FPS") on the daily life of the public. Mr Holden CHOW asked whether all banks and SVF operators would be required to participate in FPS.

26. ED/HKMA explained that FPS aimed to provide convenience to users enabling real-time small-value payment services all day round. For instance, through FPS, a member of the public could make payment to a party using the mobile phone number or email address instead of existing means like bank account numbers. FPS would be developed as a payment platform and would not constrain the payment technologies adopted by banks. Individual banks could collaborate with SVF licensees in developing their own applications involving FPS.

*Development of Fintech in the securities industry*

27. The Chairman considered that the Government should strengthen efforts in promoting the use of Fintech in the securities industry and sought details of the measures to be taken. He pointed out that since the proposal of using online authentication to open securities accounts for clients was initiated in 2016, the local securities industry had been proactively pursuing the matter but the Administration had yet to grant the approval. He stressed that implementation of the proposal would help local securities firms to promote their business to overseas clients, and enquired about the Administration's progress in considering the proposal. The Chairman further expressed concerned that authentication of the Mainland investors by the relevant authorities of the People's Republic of China was still not recognized in Hong Kong, which could hinder the participation of the local securities industry in the development of the Guangdong-Hong Kong-Macao Big Bay Area.

28. PS(FS) responded that SFC had been maintaining close liaison with the securities industry on the use of Fintech. SFC was studying the matter mentioned by the Chairman. While SFC welcomed the use of Fintech in fulfilling the know-your-client ("KYC") requirement, it had to ensure proper conduct of the KYC process. He undertook to relay the Chairman's views to SFC. He added that SFC had also initiated an internal Regtech project to actively assess the technologies that SFC could adopt and use to supplement its operations.

Action

**V Financial Institutions (Resolution) Ordinance — Commencement Notice and Protected Arrangements Regulation**

(LC Paper No. CB(1)777/16-17(05) — Administration's paper on "Financial Institutions (Resolution) Ordinance (Cap.628) - Commencement Notice and Protected Arrangements Regulation"

LC Paper No. CB(1)777/16-17(06) — Background brief on Financial Institutions (Resolution) Ordinance - Commencement Notice and Protected Arrangements Regulation prepared by the Legislative Council Secretariat)

Briefing by the Administration

29. With the aid of a powerpoint presentation, the Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) International and Mainland Affairs ("PAS(FS)IMA") and the Head, Resolution Office of the Hong Kong Monetary Authority ("HRO/HKMA") briefed members on the background of the Financial Institutions (Resolution) Ordinance (Cap. 628) ("FIRO") and the key features of the proposed Protected Arrangements Regulation ("PAR") to be made under FIRO. HRO/HKMA explained that PAR was important because financial market participants relied on a variety of financial arrangements to both mitigate credit risk exposure to counterparties and provide sources of liquidity and financing. The proposed PAR aimed at providing legal certainty and safeguarding the economic effect of protected arrangements if a resolution authority ("RA") were to exercise its resolution powers. Six types of financial arrangements were identified as protected arrangements under FIRO, namely clearing and settlement systems arrangements, secured arrangements, structured finance arrangements, netting arrangements, set-off arrangements and title transfer arrangements. The Government's target was to table PAR and the commencement notice of FIRO before the Legislative Council ("LegCo") for negative vetting in the second quarter of 2017 with a view to bringing FIRO and PAR into operation within 2017.

Action

(*Post-meeting note:* The powerpoint presentation materials (LC Paper No. CB(1)843/16-17(02)) were issued to Members vide Lotus Notes e-mail on 19 April 2017.)

Discussion

*The Protected Arrangements Regulation*

30. Mr CHAN Chun-ying noted that the proposed approach to PAR was largely modeled on that adopted by the United Kingdom ("UK") and that required by the European Union's Bank Recovery and Resolution Directive ("BRRD"). He enquired about resolution actions taken by RAs in the UK and member states of the European Union ("EU") so far and the impact of such actions on the relevant stakeholders.

31. HRO/HKMA advised that so far there had been limited number of bank failure cases in the EU countries which required the use of resolution tools after the passage of BRRD. He said that partial property transfer, subject to the protected arrangements provisions as set out in BRRD, had been effected by the RA in Portugal in resolving a failing bank. A bridge bank was then established to which certain "good" assets and liabilities of the failing bank had been transferred with the remainder left in a residual "bad" bank.

32. Mr Kenneth LEUNG enquired if there were other pieces of subsidiary legislation to be made under FIRO besides PAR for the commencement of the Ordinance. He also sought information on how issues relating to conflict of law, in particular that related to the legal concept of "universal succession", would be dealt with by PAR.

33. PAS(FS)IMA said that the Government considered it important that PAR should be put in place and ready to become operational at the same time as FIRO commenced operation in order to provide legal certainty for treatment of protected arrangements. The Government would continue to work on other rules and regulations to be made under FIRO (e.g. on loss-absorbing capacity requirements, contractual recognition requirements, etc.). As regards the conflict of law issues, HRO/HKMA explained that under PAR, where an RA was unable to transfer foreign property under, for example, a secured arrangement because the transfer of that foreign property was restricted by the property's governing law (e.g. as a result of a decision of a foreign court) the inability to transfer that foreign property with the other constituent parts of the protected arrangement would not be treated as an action that was inconsistent with the objectives of PAR. This issue highlighted the importance of effective *ex ante* cross-border resolution planning to avoid such potential challenges in the event of resolution being

Action

initiated. In order to ensure that cross-border FIs were resolvable and cross-border resolution strategies were feasible and credible, RAs in Hong Kong would work together with foreign RAs to identify and remove significant impediments to an orderly cross-border resolution in the conduct of cross-border resolution planning.

34. Dr YIU Chung-yim asked why RAs would be restricted under the proposed PAR from transferring some, but not all, of the property, rights and liabilities, which were, or form part of, a structured finance arrangement. He also sought clarification on whether financial products such as accumulators, minibonds, collateralized debt obligations and credit default swap would be regarded as structured finance arrangements under the proposed PAR and the negative impacts of transferring these financial products, if any, during resolution.

35. HRO/HKMA explained that structured finance arrangements, defined under PAR as securitizations, provided a means of refinancing and allowing risk diversification for financial market participants through the transfer of credit risk to other market participants by, for example, issuing securities to the market that would usually be secured against a pool of underlying assets. If the constituent parts of a structured finance arrangement could be disrupted as a result of a partial property transfer of only some but not all of a failed FI's assets, rights and liabilities that were part of such an arrangement, the functioning of the arrangement could be significantly affected and damage could be caused to the structured finance market because participants would be uncertain as to the efficacy of any structured finance arrangements they entered into in which a within scope FI played a material role. That said, RAs would have the discretion to determine whether a structured finance arrangement would need to be transferred at all in meeting the resolution objectives. In response to Dr YIU's further enquiry, HRO/HKMA said that any deposits which formed part of a structured finance arrangement would be carved out from the protection so that an RA could transfer the critical financial function of deposit-taking without the need to take into account the role of those deposits in a structured finance arrangement, so as to secure continuity of the critical financial function, including continued access to deposits for depositors.

*The resolution regime and cross-border resolution actions*

36. Mr CHAN Chun-ying noted that when initiating resolution of a within scope FI in Hong Kong, its business transactions with overseas counterparts might also be affected, particularly when the FI was within a cross-border group. He asked if overseas jurisdictions would also be required to have a resolution regime in place to ensure smooth implementation of cross-border resolution

Action

actions, and whether the orderly resolution of the FI in Hong Kong would be impeded if the relevant overseas jurisdiction had not developed a resolution regime.

37. HRO/HKMA responded that FIRO empowered RAs in Hong Kong to undertake resolution planning for within scope FIs, which could include, amongst other things, the development of cross-border resolution strategies and plans together with foreign RAs to ensure cross-border resolution actions could be carried out in an coordinated and orderly manner, and thereby seeking to protect local financial stability. He added that HKMA was a member of the Crisis Management Groups ("CMGs") of a number of global systemically important banks ("G-SIBs") designated by the Financial Stability Board and had been working in these CMGs to develop effective cross-border resolution plans for those G-SIBs with the greatest systemic presence in Hong Kong with a view to improving their resolvability.

38. In response to Mr Holden CHOW's enquiry, HRO/HKMA advised that the resolution regime provided for under FIRO was designed as a mechanism to deal with any failure of systemically important FIs and to be complementary to existing insolvency proceedings. Where an RA was satisfied that the failure, or likely failure, of a within scope FI did not pose risks to the stability and effective working of the financial system of Hong Kong, then resolution under FIRO would not be initiated and existing failure mechanisms, including winding-up proceedings, could be initiated as appropriate. To prevent competing proceedings, FIRO prohibited the filing of a winding-up petition to the court against a within scope FI or its holding company unless the relevant RA had been notified and afforded time to assess whether resolution should instead be initiated.

*Public consultation*

39. Mr Abraham SHEK noted that a two-month public consultation had been conducted on the proposed PAR and asked whether respondents had made comments or suggestions to the proposals which the Government had not taken into account in finalizing the proposed PAR. He was of the view that the Government should incorporate such comments and its responses in the paper, including the reason for not accepting these comments.

40. HRO/HKMA advised that respondents' comments and the Government's responses had been set out in the consultation conclusion which included, among others, comments relating to the definitions of "derivative contract" and "financial contract", the scope of the clearing and settlement systems arrangement, the "sweeper" and "walk-away" clauses, and "written" contractual set-off, netting or title transfer arrangements. PAS(FS)IMA supplemented that a few respondents

Action

had proposed expanding the scope of the definition of clearing and settlement systems arrangement to cover clearing arrangements between an entity in resolution and a clearing house that was not a recognized clearing house but which was authorized as an automated trading service under the Securities and Futures Ordinance (Cap. 574). However, the Government considered it not necessary to do so for the reasons as set out in the consultation conclusion.

Conclusion

41. Panel members had no objection to the Government's plan to table PAR and the commencement notice of FIRO before LegCo in the second quarter of 2017.

**VI Progress report on joint consultation on the proposed enhancements to The Stock Exchange of Hong Kong Limited's decision-making and governance structure for listing regulation**

(LC Paper No. CB(1)777/16-17(07) — Securities and Futures Commission and The Stock Exchange of Hong Kong Limited's paper on "Progress report on joint consultation on the proposed enhancements to The Stock Exchange of Hong Kong Limited's decision-making and governance structure for listing regulation"

LC Paper No. CB(1)777/16-17(08) — Background brief on the consultation on proposed enhancements to The Stock Exchange of Hong Kong Limited's decision-making and governance structure for listing regulation prepared by the Legislative Council Secretariat)



Action

Briefing by the Administration

42. At the invitation of the Chairman and with the aid of a powerpoint presentation, the Executive Director, Corporate Finance Division of the Securities and Futures Commission ("ED/SFC") and the Chief Regulatory Officer and Head of Listing of the Hong Kong Exchanges and Clearing Limited ("CRO/HKEX") briefed members on the progress of the joint consultation on the proposed enhancements to The Stock Exchange of Hong Kong Limited's decision-making and governance structure for listing regulation ("the Consultation") conducted by SFC and The Stock Exchange of Hong Kong Limited ("SEHK") in 2016. ED/SFC said that over 8 500 submissions had been received and SFC and SEHK were carefully considering and analyzing the submissions to prepare the Consultation conclusions and decide the way forward.

(*Post-meeting note:* The powerpoint (LC Paper No. CB(1)843/16-17(03)) was issued to members vide Lotus Notes e-mail on 19 April 2017.)

Discussion

*The proposed enhancements to the listing regulatory structure*

43. Mr Jeffery LAM said that he and the Hong Kong General Chamber of Commerce did not support the proposals in the Consultation. The business sector was concerned that the proposed creation of the Listing Regulatory Committee ("LRC") and the Listing Policy Committee ("LPC") would make the existing listing regulatory structure cumbersome, pose more hurdles for listing applicants, slow down the approval process of listing applications, and turn the existing disclosure-based regulatory regime into a regulation-based regime.

44. Mr CHEUNG Kwok-kwan remarked that while he supported in principle the direction of the reform outlined in the Consultation, he was aware that many law firms had reservation over the proposals in tackling existing issues in the decision-making structure of the listing regulatory regime. He asked whether consideration would be given to expand the membership size of the current Listing Committee ("LC") to include representatives from SFC so as to allow early engagement of SFC in the decision-making process.

45. ED/SFC responded that Hong Kong had never adopted a purely disclosure-based approach and the suitability concept had been in Listing Rule 8.04 for a long time. The proposed LRC would streamline the vetting and approval process for initial public offering ("IPO") applications that had suitability concerns or broader policy implications as these applications would be decided on by LRC. Other listing applications would continue to be determined

Action

by LC and the Listing Department of SEHK. The objectives of the proposals were about market quality, transparency, accountability and efficiency. It would be necessary to consider whether the proposed incorporation of SFC representatives into LC would achieve such objectives. He reassured members that SFC and SEHK were still analyzing the submissions received. They would adopt an open attitude to all views and would not have preconceived conclusion on the way forward.

46. Mr Abraham SHEK and Mrs Regina IP questioned the legality of the proposals. They were concerned that the proposed establishment of LRC and LPC would usurp the power of LC and contravene the Securities and Futures Ordinance (Cap. 571) ("SFO") as pointed out by some academics. They stressed that appropriate amendments to SFO should be made before increasing SFC's power in listing regulation, and requested SFC and the Administration to provide a paper addressing the legal issues relating to the proposals. Mr Holden CHOW concurred that the Administration should explain the legal issues raised by members in writing.

47. Mr Dennis KWOK said that while he agreed to the objective of the Consultation enhancing the listing regulatory regime, there were a number of uncertainties associated with the proposals, including the definitions of "suitability concerns" and "broad policy implications" when handling listing applications.

48. ED/SFC clarified that it was not the objective of the Consultation to increase SFC's power in listing regulation, and SFC did not envisage the need to make amendments to SFO for implementing the proposals in the Consultation. He pointed out that under the proposals, LC's power would be maintained as it would continue to be the decision-maker of IPO applications and matters involving listed issuers that do not involve suitability concerns or broader policy implications, which should constitute the large majority of cases. He said that SFC and SEHK would deal with members' comments about the legal issues of the proposals in the Consultation conclusions. CRO/HKEX supplemented that there was no intention to make any legislative changes. The main objective of the proposals was to enhance the listing regulatory regime to enable SFC and SEHK to work more closely together. Regarding the concept of suitability, he advised that there was clear explanation of the concept in the existing Listing Rules.

*The consultation process*

49. The Chairman noticed that a large number of the some 8 000 individual responses received were classified as "template-style" submissions. He enquired about the reason for classifying the submissions as "template-style" and how SFC

Action

and SEHK would consider the views therein. He was concerned that SFC and SEHK might not pay due attention to these submissions.

50. ED/SFC responded that the "template-style" submissions were similar in format and content, mostly contained two to three lines without detailed explanations of the reasons for their stance. He added that the purpose of classifying submissions into various categories was to provide a clearer picture on the response to the Consultation from various sectors. He assured members that SFC and SEHK would consider all submissions carefully.

51. Mr Abraham SHEK and Mrs Regina IP noted from the progress report that no merchant bankers had made submissions on the Consultation, and asked whether this was due to actions taken by SFC or the Administration to discourage merchant bankers to give comments. They stressed the importance for SFC and the Administration to remain neutral in the Consultation, and requested SFC to confirm whether SFC had discouraged merchant bankers from making comments on the Consultation.

52. ED/SFC responded that it was a common practice for SFC to engage with stakeholders on matters regarding regulatory issues. On the present Consultation, SFC had met with merchant bankers to explain the details of the proposals. SFC had not discouraged merchant bankers from making submissions. Deputy Secretary for Financial Services and the Treasury (Financial Services)<sup>1</sup> ("DS/FSTB") pointed out that the Consultation was jointly conducted by SFC and SEHK, and that the Government maintained a neutral stance.

53. Mr Kenneth LEUNG said that the accounting sector was generally supportive to the proposals. Regarding the submissions from brokerage firms and law firms, he asked whether views from local firms were different from those of overseas firms. He also enquired about the number of submissions from Members of LegCo and political parties.

54. CRO/HKEX said that the responses from brokerage firms and law firms did not suggest any pattern relating to the size and type of business of the firms. As regards submissions from LegCo Members and political parties, ED/SFC said that seven LegCo Members had made submissions. DS/FSTB supplemented that Hon Regina IP had raised an oral question on the Consultation at the LegCo meeting of 9 November 2016, and the Chairman had also moved a motion on the subject which was passed at the LegCo meeting of 30 November 2016. SFC and SEHK had taken note of the views expressed by Members at these meetings.

Action

*Way forward*

55. Noting that the submissions were under analysis by SFC and SEHK in preparing the Consultation conclusions, Mr CHAN Chun-ying asked whether the two parties had any plans to implement improvement measures on listing regulation regime in the interim before working out the way forward.

56. ED/SFC said that SFC and SEHK had respectively taken measures to address problems associated with the quality and governance of listed companies. These included issuance of joint statements by SFC and SEHK in December 2016 on rights issues and open offers, which noted that SEHK released two listing decisions where it published the rationale for its refusal to grant approval in two recent cases involving proposed rights issue and share subdivision respectively; and the joint statement in January 2017 regarding price volatility of stocks listed on the Growth Enterprise Market ("GEM") to address concerns about GEM IPO placing.

57. The Chairman said that the financial services sector was in general supportive to the direction of the Consultation to enhance the listing regulatory regime with a view to tackling problems associated with the quality and governance of listed companies, which in turn would strengthen protection for investors and their confidence in the local stock market. He pointed out that local brokerage firms were against the proposals in the Consultation as they had been misled that the proposals were aimed at expanding the powers of SFC. He said that while he had reservation over the proposed LRC as he opined that SFC should not interfere with the front-line operation of the market and the smaller and fixed membership of LRC could give rise to concentration of power, he supported the proposed establishment of LPC to provide a joint platform for SFC, SEHK and the stakeholders to discuss important listing policies and tackle listing issues, as well as to promote sustainable development of the market. He considered that the proposed LPC should expand its membership to include more representatives from the industry.

*(At 12:25 pm, the Chairman ordered that the meeting be extended for 15 minutes to 12:45 pm to allow sufficient time for discussion.)*

Action

**VII Any other business**

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

Council Business Division 1  
Legislative Council Secretariat  
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