

立法會
Legislative Council

LC Paper No. CB(1)1178/17-18
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by the Administration)

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Panel on Financial Affairs

**Minutes of meeting held on
Tuesday, 3 April 2018, at 9:30 am
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon Kenneth LEUNG (Chairman)
Hon Christopher CHEUNG Wah-fung, SBS, JP
(Deputy Chairman)
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Starry LEE Wai-king, SBS, JP
Hon CHAN Kin-por, GBS, JP
Hon WU Chi-wai, MH
Hon Charles Peter MOK, JP
Hon CHU Hoi-dick
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
Hon SHIU Ka-fai
Hon CHAN Chun-ying
Hon CHEUNG Kwok-kwan, JP

Members absent : Hon James TO Kun-sun
Hon Abraham SHEK Lai-him, GBS, JP
Hon WONG Ting-kwong, GBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon Dennis KWOK Wing-hang
Ir Dr Hon LO Wai-kwok, SBS, MH, JP
Hon Alvin YEUNG
Hon LUK Chung-hung

**Public officers
attending** : Agenda Item IV

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

Mr Chi Wang TE
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)

Mr Charles D'HAUSSY
Head of Fintech
InvestHK

Mr Nelson CHOW
Chief Fintech Officer, Fintech Facilitation Office
Hong Kong Monetary Authority

Agenda Item V

Mr Chris SUN, JP
Deputy Secretary for Financial Services and the
Treasury (Financial Services)¹

Ms Estrella CHEUNG
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) International and
Mainland Affairs

Mr Francis CHENG
Assistant Director (Cross-boundary and International)
Environmental Protection Department

Agenda Item VI

Mr Chris SUN, JP
Deputy Secretary for Financial Services and the
Treasury (Financial Services)¹

Ms Estrella CHEUNG
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) International and
Mainland Affairs

Mr Rob PROBYN
Senior Manager, Resolution Office
Hong Kong Monetary Authority

Ms Helen CHAN
Manager, Resolution Office
Hong Kong Monetary Authority

Mr CHIU Kwok Kit, JP
Deputy Commissioner (Technical)
Inland Revenue Department

Ms WONG Pui Ki
Senior Assessor (Research)2
Inland Revenue Department

Agenda Item VII

Mr Chris SUN, JP
Deputy Secretary for Financial Services and the
Treasury (Financial Services)1

Ms Ada CHAN
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)2

**Attendance by
Invitation** : Agenda Item IV

Ms Julia LEUNG
Deputy Chief Executive Officer and Executive Director
of Intermediaries Division
Securities and Futures Commission

Mr Tony CHAN
Associate Director, Policy and Development Division
Insurance Authority

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

Agenda Item VII

Mr Ashley ALDER, JP
Chief Executive Officer
Securities and Futures Commission

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

Mr Charles LI
Chief Executive
Hong Kong Exchanges and Clearing Limited

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

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

Action

I Confirmation of minutes of meeting and matters arising

(LC Paper No. CB(1)727/17-18 — Minutes of the meeting on
5 January 2018)

The minutes of the meeting held on 5 January 2018 were confirmed.

Action

II Information papers issued since the regular meeting on 5 March 2018

(LC Paper No. CB(1)748/17-18(01) — Fourth quarterly report of 2017 on "Employees Compensation Insurance Reinsurance Coverage for Terrorism")

2. Members noted the information paper issued since the regular meeting held on 5 March 2018.

III Date of next meeting and items for discussion

(LC Paper No. CB(1)724/17-18(01) — List of outstanding items for discussion

LC Paper No. CB(1)724/17-18(02) — List of follow-up actions)

3. Members agreed to discuss the following items proposed by the Administration at the regular meeting in May 2018 which had been re-scheduled for Tuesday, 15 May 2018, from 10:00 am to 12:45 pm:

- (a) Briefing on the work of Hong Kong Monetary Authority ("HKMA");
- (b) Annual briefing on the work of the Financial Reporting Council; and
- (c) Proposed amendments to the Securities and Futures (Professional Investor) Rules.

IV Development of financial technologies

(LC Paper No. CB(1)724/17-18(03) — Administration's paper on "Development of financial technologies"

LC Paper No. CB(1)724/17-18(04) — Updated background brief on development of financial technologies in Hong Kong prepared by the Legislative Council Secretariat)

Action

Briefing by the Administration

4. 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 development of the local financial technologies ("Fintech") landscape and measures to facilitate Fintech development. Head of Fintech, InvestHK, Chief Public Mission Officer, Hong Kong Cyberport Management Company Limited ("CPMO/Cyberport"), Chief Fintech Officer, Fintech Facilitation Office of the Hong Kong Monetary Authority ("CFO/HKMA"), Deputy Chief Executive Officer and Executive Director of Intermediaries Division, Securities and Futures Commission ("DCEO/SFC") and Associate Director, Insurance Authority highlighted the relevant initiatives taken by InvestHK, the Hong Kong Cyberport Management Company Limited ("Cyberport"), HKMA, the Securities and Futures Commission ("SFC") and the Insurance Authority ("IA") in facilitating and promoting Fintech development.

(Post-meeting note: The powerpoint presentation materials (LC Paper No. CB(1)764/17-18(01)) were issued to Members vide Lotus Notes e-mail on 3 April 2018.)

Discussion

Strategies for developing Fintech and application of Fintech in Hong Kong

5. While welcoming the Administration's work in promoting Fintech development in Hong Kong, Mr Jeffrey LAM considered that the Administration and financial regulators should step up their efforts in relaxing regulation and attracting Fintech talents. For instance, regulators should examine the feasibility of streamlining and digitalizing trade and trade finance processes, and the Administration should attract overseas Fintech talents by enhancing the relevant auxiliary facilities like providing more international school places for the children of expatriates.

6. PS(FS) advised that the Government had launched various measures to nurture local Fintech talents and attract foreign talents. For instance, two local universities had launched dedicated programmes in Fintech starting from the 2017-18 academic year. InvestHK and Cyberport had been encouraging and assisting overseas Fintech start-ups to establish and develop in Hong Kong. Cyberport had also set up the Creative Micro Fund to nurture local Fintech talents. On the regulatory front, the Government and financial regulators were mindful of the need to streamline the relevant regulations and rules to facilitate

Action

Fintech development. It was envisaged that the Government's initiative on smart city development could help expedite Fintech development. HKMA was also exploring ways to simplify the "Know your client" requirements in the account opening process.

7. Mr WU Chi-wai suggested that the Administration should set concrete targets (e.g. turning Hong Kong into a cashless society by enhancing the use of e-wallets) and devise an implementation timetable on the application of Fintech in Hong Kong. He also enquired about the difficulties encountered by the Administration in promoting the use of Fintech, including the areas for making improvement in the work of various bureaux/departments ("B/Ds") as well as the Administration's measures to further promote the development of Fintech and turn Hong Kong into a prominent Fintech hub.

8. PS(FS) responded that the Government was fully aware of the benefits of Fintech including increasing efficiency in operation, reducing the transaction costs of economic activities, and enhancing the experience of customers. He reiterated that the Government and regulators had been launching various measures to facilitate Fintech development. However, it might not be appropriate to set concrete targets on the application of Fintech. For instance, setting a target in turning Hong Kong into a cashless society might be inconsistent with the objective of promoting financial inclusion. Members of the public could make their own decisions in whether to adopt Fintech applications and the types of applications to be adopted.

9. Mr Charles Peter MOK called on the Administration to expedite its efforts in promoting the application of Fintech in Hong Kong like the use of distributed ledger technology (commonly known as blockchain) ("DLT"), particularly in various Government operations such as digitization of deeds on properties and patients' records. He enquired about the relevant B/Ds involved in the initiative to settle Government bills through the use of e-wallets and the timetable for implementation. He also suggested that the Administration should report the progress of application of these technologies by various B/Ds at the briefing to the Panel in the future. Mr Jeffrey LAM enquired about the problems the Administration had encountered in exploring the use of e-wallets in settling Government bills.

10. On DLT, PS(FS) advised that HKMA had been exploring with the banking industry on issues relating to application of the technology including conducting testing on the application of DLT. CFO/HKMA added that HKMA had issued two whitepapers on DLT, and the Hong Kong Trade Finance Platform (an application using DLT) was under development. HKMA was also developing a cross-border DLT infrastructure with the Monetary Authority of Singapore. As

Action

regards the use of e-wallets for settling Government bills, PS(FS) pointed out that departments including the Inland Revenue Department, the Water Supplies Department, and the Rating and Valuation Department had been involved in developing the relevant platforms. He pointed out that it would take time for relevant B/Ds to upgrade their computer systems, and the Government would continue to enhance its efforts in this regard.

11. Dr Junius HO expressed concern that the development in electronic payment systems in Hong Kong had lagged behind other jurisdictions including the Mainland. He called on the Administration to step up its effort in promoting the development of payment systems making reference to the successful experience of the two major retail payment systems in the Mainland (i.e. Alipay and WeChat Pay).

12. PS(FS) responded that rapid development in stored value facilities ("SVFs") and retail payment systems had been observed since the enactment of the Payment Systems and Stored Value Facilities Ordinance (Cap. 584) in 2015. It was noted that consumers in Hong Kong were in general more cautious in accepting new Fintech services or products vis-à-vis Mainland consumers. CFO/HKMA added that the two major retail payment operators in the Mainland were also SVF licensees in Hong Kong. Together with other SVF licensees, they had already launched a variety of electronic payment services in Hong Kong.

13. Dr Junius HO enquired whether there was a clear division of responsibilities and authorities among the various B/Ds on Fintech development. The Chairman enquired whether the Financial Services and the Treasury Bureau ("FSTB") or the Innovation and Technology Bureau ("ITB") was the lead bureau in promoting Fintech development.

14. PS(FS) advised that given the wide scope of Fintech, a number of B/Ds and regulators were involved in the development and promotion of Fintech. While FSTB was the lead bureau in promoting Fintech development, other B/Ds including ITB were responsible for promoting and supporting upstream research and development ("R&D"). FSTB and regulators in the financial services industry would collaborate and cooperate with other parties like Cyberport and the Hong Kong Science Park in taking forward their initiatives.

Benefits brought by Fintech development on Hong Kong

15. Mr CHAN Chun-ying noted that Hong Kong's cumulative investment in Fintech companies for the period from 2014 to 2017 exceeded that of Australia and Singapore, and considered that the Administration should provide details on such investments, like the number of Fintech start-ups established in Hong Kong

Action

and the businesses they engaged in. Mr Charles Peter MOK considered that the Administration should step up its work in promoting the application of Fintech in Hong Kong and monitoring the development.

16. Mr CHAN Kin-por requested the Administration to provide information on the quantitative economic benefits brought by the development of Fintech to the Hong Kong economy, such as the number of jobs created and Fintech companies or start-ups established in or attracted to Hong Kong. He also suggested that the Administration should arrange a presentation on or a visit to the successful Fintech companies in Hong Kong to enable Legislative Council ("LegCo") Members to better understand the benefits generated for Hong Kong. The Chairman welcomed Mr CHAN's suggestion, and said that the Panel might consider conducting a visit in the 2018-2019 session.

17. PS(FS) took note of members' views and agreed to provide information as requested by members including seeking the assistance of the Census and Statistics Department where appropriate.

(Post-meeting note: The Administration's supplementary information was circulated to members vide LC Paper No. CB(1)881/17-18(02) on 26 April 2018.)

Fintech development in the banking, securities and insurance sectors industry

18. Mr CHAN Kin-por enquired about Fintech development in the banking, securities and insurance sectors, in particular how the Administration and financial regulators could help Fintech companies in catering for the needs of banks, securities firms and insurance companies.

19. PS(FS) advised that regulators including HKMA, SFC and IA had been liaising with their respective regulatees on the application of Fintech, and implementing a number of measures to promote cooperation between the industries and Fintech start-ups. This was helpful as the industries would see the start-ups as their partners rather than potential competitors. CPMO/Cyberport supplemented that Cyberport had organized a number of activities like the Hackathon programme to strengthen the cooperation between Fintech start-ups and the financial sector. Under the Hackathon programme, financial institutions ("FIs") would raise business problems on which Fintech start-ups were invited to innovate and propose solutions. CPMO/Cyberport also pointed out that local Fintech start-ups had developed a number of successful applications which were being used by the financial sector.

20. Mr Christopher CHEUNG urged SFC to expedite its work in exploring the feasibility of allowing: (a) investors to place securities transaction orders

Action

through instant messaging applications like WhatsApp; and (b) remote onboarding (including the use of biometric authentication) of accounts by investors.

21. DCEO/SFC advised that SFC was liaising with the brokerage industry on the use of instant messaging applications for placing securities transaction orders. It was envisaged that the use of such applications would be permitted provided that they could meet the relevant requirements of central record keeping in the Code of Conduct and that transaction records could be properly maintained. It would take time for SFC to formulate the relevant guidance. As regards remote onboarding and the use of biometric authentication, DCEO/SFC advised that it would be prudent to impose more stringent regulatory requirements on first-time remote onboarding, and SFC would allow securities firms to rely on certification authorities recognized under the Electronic Transactions Ordinance (Cap. 553) to conduct facial authentication. The Government's smart city initiative would also study the feasibility of using digital authentication in the securities industry.

22. Mr CHAN Chun-ying sought the progress of HKMA's initiative in developing a common QR code standard which would facilitate merchants to accept different payment schemes, and whether the standard QR code would be compatible with that used in the Mainland. He also enquired about measures taken by HKMA to enhance security and privacy protection of its proposed Open Application Programming Interface ("API") framework.

23. CFO/HKMA advised that HKMA was working with the industry in developing a standard QR code. It was envisaged that the QR code developed would not be an impediment to cross-border usage. He also stressed that HKMA attached importance to the security of the proposed Open API framework and had proposed a number of security-related standards in its consultation paper on the Open API framework.

24. In response to Mr Jeffrey LAM's enquiry about the Faster Payment System ("FPS") to be launched by HKMA in September 2018, CFO/HKMA advised that FPS could be used by all banks in Hong Kong. Around 20 banks and eight SVF operators would participate at its launch. It was envisaged that more banks and SVF operators would use FPS in the future.

25. On HKMA's initiative to promote virtual banking in Hong Kong, Mr Holden CHOW enquired about the difference between virtual banks and internet banking services currently provided by banks. He opined that banks should cater for the needs of senior citizens, who preferred using physical banks to virtual banks. He further asked if HKMA's guidelines on virtual banking would remind banks of the importance to promote financial inclusion.

Action

26. CFO/HKMA advised that it was not envisaged that the introduction of virtual banking would necessarily lead to reduction in the number of physical bank branches or automatic teller machines. Overseas experience had revealed that virtual banking could enhance financial inclusion and services provided to small and medium enterprises. HKMA had received enquiries relating to the establishment of virtual banks from a number of local and overseas banks during its public consultation on the Authorization Guideline of Virtual Banks in March 2018. CFO/HKMA stressed that HKMA attached importance to the promotion of financial inclusion. Local banks had launched a number of relevant measures in this regard including the provision of mobile bank branches.

27. At the request of the Chairman, CFO/HKMA agreed to provide information on the progress of the initiative on allowing senior citizens to withdraw cash at designated outlets (e.g. supermarkets and convenience stores) without the need for making purchase.

(Post-meeting note: HKMA's supplementary information was circulated to members vide LC Paper No. CB(1)881/17-18(02) on 26 April 2018.)

28. Mr CHAN Chun-ying asked whether SFC planned to introduce a licensing regime for initial coin offerings ("ICOs"), and enquired whether SFC would pay heed to the market's views that participation in ICOs should be restricted to certain types of investors (like professional investors) so as to enhance investor protection.

29. DCEO/SFC advised that if issuers of ICOs applied to SFC for licences in launching ICO exercises, SFC could consider imposing conditions on such licences to ensure proper protection for investors including setting eligibility criteria for investors.

V Development of green finance

(LC Paper No. CB(1)724/17-18(05) — Administration's paper on "Development of green finance")

Briefing by the Administration

30. At the invitation of the Chairman, Deputy Secretary for Financial Services and the Treasury (Financial Services)¹ ("DS(FS)1") briefed members on

Action

the key initiatives for promoting and facilitating the development of green finance in Hong Kong, which included:

- (a) establishment of a local certification scheme for green finance products;
- (b) introduction of the Government Green Bond Programme ("GBP") with a proposed borrowing ceiling of HK\$100 billion;
- (c) introduction of the Green Bond Grant Scheme ("GBGS") with a grant ceiling of HK\$800,000 per issuance; and
- (d) promotion of international collaboration to facilitate cross-border investment in green bonds.

The Government would submit a resolution to LegCo as soon as possible to take forward GBP.

Discussion

Development of green finance in Hong Kong

31. Pointing out that Mainland enterprises had been actively carrying out large-scale green projects in recent years, Mr CHAN Kin-por considered that by promoting green finance, Hong Kong would complement Mainland's development in green industry and increase its level of participation in Mainland's green projects. He enquired about the Administration's plan to further promote green finance in Hong Kong, in particular its measures for developing the green bond market, and whether the Administration would consider setting a target for the issuance of green bonds in Hong Kong within five years.

32. Mr CHAN Chun-ying opined that the proposed GBGS would help promoting the development of Hong Kong's green bond market. He asked whether the Administration would make reference to major overseas bond markets to establish a new "green bond index" in Hong Kong which would help further enhance Hong Kong's green bond market.

33. DS(FS)1 said that with increasing public awareness over environment protection issues and global warming, investment by institutional investors in the global green financial market had been growing in recent years. Riding on the increasing global demand for green financial products, Hong Kong was well-equipped to develop green finance, in particular serving as a premier financing platform for international and Mainland green enterprises/projects in

Action

raising funds through issuing bonds and initial public offerings. The proposed GBGS was to subsidize qualified green bond issuers in obtaining green bond certification under the Green Finance Certification Scheme ("GFCS") established by the Hong Kong Quality Assurance Agency, and aimed to attract more corporate green bond issuance in Hong Kong. The Government would offset 100% of the cost of obtaining an external review under GFCS for qualifying green bond issuances, with a grant ceiling of HK\$800,000 per issuance. The Government considered that the level of grant would be competitive when comparing to similar assistance schemes offered by major bond markets in the region. DS(FS)1 added that the Government currently had no plan to establish a "green bond index", or set a target on the development of the local green bond market.

Government Green Bond Programme

34. Mr CHAN Chun-ying enquired about the actual issuance size of green bonds under GBP. He also suggested including the green bonds to be issued by the Government in the Southbound Trading of the Bond Connect Scheme so as to attract Mainland investors on the bonds and help promoting GBP. To increase the attractiveness of GBP, Mr CHAN Kin-por further suggested that the Government should consider offering a high coupon rate for the green bonds to be issued.

35. DS(FS)1 responded that Government green bonds would be issued in tranches. The terms of the inaugural issuance, such as the tenor, size and the coupon rate, would be determined having regard to the financing and re-financing needs of the commitments of green public works projects and the market situation. It was estimated that the inaugural issue size would be around US\$0.5 billion to US\$1 billion which was expected to be fully subscribed by institutional investors. He added that the Government was currently exploring the feasibility of extending the Bond Connect Scheme to cover Southbound Trading, and would consider including Government green bonds under the Scheme.

36. Mr Christopher CHEUNG conveyed the brokerage industry's support for issuance of Government green bonds. Pointing out that the distribution of Government bonds was often taken up by banks, he asked whether securities firms could participate in the distribution of Government green bonds, and if the Administration would consider allowing the listing of Government green bonds in the Stock Exchange of Hong Kong so that retail investors could invest in this financial product.

37. Given that risks involved in the investment of Government green bonds was expected to be relatively lower than other bond products and should therefore

Action

be suitable for retail investors, Mr WU Chi-wai enquired why the Administration only targeted Government green bonds at institutional investors.

38. DS(FS)1 explained that green bonds were more sophisticated when comparing to their conventional counterparts. Besides, the majority of the green bonds issued in the global and domestic markets so far were mainly targeted at institutional investors. For the sake of prudence, the Government considered that, at least for the initial tranches, Government green bonds to be issued should target at institutional investors. The Government would review the arrangement with more experience gained on green bond issuance, and would take note of the views expressed by the brokerage industry. As regards the placing arrangement for Government bonds, DS(FS)1 said that securities brokers would be allowed to act as placing institutions for the Silver Bonds to be issued by the Government and the Silver Bonds were targeted at the retail investors.

39. Noting that the proceeds of issuances under GBP would be credited to the Capital Works Reserve Fund for funding green public works projects which could provide positive environmental benefits, Mr CHU Hoi-dick and Mr WU Chi-wai enquired whether the Government would publish a list of relevant green public works projects to be financed by the proceeds when issuing a tranche of Government green bonds, and whether the green public works projects included in the list would be given priority in their implementation. Mr Holden CHOW enquired if there would be differences between the funding procedures for green public works projects and other public works projects.

40. DS(FS)1 pointed out that green public works projects would continue to be subject to the same established mechanism for seeking funding approval from the Finance Committee of LegCo. When issuing Government green bonds, investors would be provided with details of the categories of public works projects to be financed by Government green bonds.

41. Mr CHU Hoi-dick opined that GBP was only an investment tool in the financial market and would bring no positive impacts to the environment. In order to demonstrate the Government's commitment in supporting sustainable development and combating climate change, he urged that the Administration should stop investing the assets in the Capital Works Reserve Fund on items which could bring negative environmental impacts, such as oil drilling activities.

42. DS(FS)1 responded that GBP would provide a new source of funding for financing green public works projects which were envisaged to bring positive benefits to the environment. Moreover, introduction of GBP would enhance public awareness of the Government's green public works projects. He added that

Action

he was not in the position to comment on the investment strategy of the Capital Works Reserve Fund.

43. Mr Junius HO noted that the Government was proactively promoting green public works projects, such as installing renewable energy facilities at government buildings. He enquired whether the Government would consider providing subsidy for the public to invest in renewable energy facilities, such as installing solar panels at the rooftop of village houses.

44. Assistant Director of Environmental Protection (Cross-boundary and International) responded that the Government attached great importance to promoting renewable energy ("RE") including solar energy. As announced in the 2018-2019 Budget, the Government would take the lead to implement small-scale RE projects in government buildings by the \$1 billion funding earmarked. A "Feed-in Tariff" ("FiT") scheme would be introduced under the new Scheme of Control Agreements signed between the Government and the two power companies. Under the FiT scheme, power generated from RE facilities owned by the private sector could be sold to the power companies at a rate higher than the normal electricity tariff rate. The public could also show its support for RE through purchasing RE Certificates. Details of the FiT scheme and RE Certificates would be finalized and announced in the near future.

VI Legislative proposals on loss-absorbing capacity requirements under the Financial Institutions (Resolution) Ordinance (Cap. 628)

(LC Paper No. CB(1)724/17-18(06) — Administration's paper on "Legislative proposals on loss-absorbing capacity requirements under the Financial Institutions (Resolution) Ordinance (Cap. 628)"

LC Paper No. CB(1)724/17-18(07) — Background brief on legislative proposals on loss-absorbing capacity requirements under the Financial Institutions (Resolution) Ordinance (Cap. 628) prepared by the Legislative Council Secretariat)

Action

Briefing by the Administration

45. At the invitation of the Chairman, Senior Manager, Resolution Office, Hong Kong Monetary Authority ("SM(RO)/HKMA") briefed members on the background of the resolution regime for FIs in Hong Kong, the purpose of the proposed rules on loss-absorbing capacity ("LAC") requirements for authorized institutions ("AIs") to be made as subsidiary legislation under the Financial Institutions (Resolution) Ordinance (Cap. 628) ("FIRO LAC Rules"), the key provisions of such rules, in particular the calibration of the external and internal LAC requirements, and proposed amendments to the Inland Revenue Ordinance (Cap. 112) ("IRO") in relation to LAC debt instruments.

(Post-meeting note: The notes of the powerpoint presentation (LC Paper No. CB(1)764/17-18(02)) were issued to members vide Lotus Notes email on 3 April 2018.)

Discussion

46. Mr CHAN Chun-ying noted that as explained by the Administration, IRO was amended in 2016 to provide debt-like tax treatment to Additional Tier 1 and Tier 2 capital instruments issued by AIs but other LAC-eligible liabilities were not covered in that amendment exercise as FIRO and FIRO LAC Rules were not then in place. Hence the Government proposed to amend IRO to remove tax uncertainty over other LAC-eligible liabilities to facilitate implementation of the FIRO LAC Rules. Mr CHAN enquired whether there was any other type of debt instruments set by the Basel Committee on Banking Supervision that had not been implemented in Hong Kong and would require further amendments to IRO in the future; and whether the proposed tax treatment would cover LAC debt instruments (i.e. Additional Tier 1 and Tier 2 capital instruments and other LAC-eligible liabilities) issued by global systemically important banks ("G-SIBs") in Hong Kong.

47. Deputy Secretary for Financial Services and the Treasury (Financial Services)¹ said that the Government would keep in view the development of relevant international regulatory standards and amend IRO for effective implementation of new international standards and requirements where necessary. As regards the tax treatment of LAC debt instruments, Deputy Commissioner (Technical), Inland Revenue Department said that the amendment in 2016 covered both Hong Kong incorporated AIs and overseas AIs with branches in Hong Kong, i.e. regulatory capital securities issued by overseas AIs and Hong Kong incorporated AIs would receive the same tax treatment. In this amendment exercise, the proposed tax treatment would also cover

Action

Hong Kong incorporated clean holding companies of AIs which are subject to LAC requirement.

48. In response to Mr CHAN Chun-ying's enquiry, SM(RO)/HKMA advised that 10 responses were received during the two-month public consultation on the legislative proposals on LAC, including a number of responses from the banking industry. SM(RO)/HKMA said that respondents from the banking industry had stressed that FIRO LAC Rules should be consistent with the relevant international standards previously issued by the Financial Stability Board, and that HKMA should closely liaise with overseas resolution authorities when implementing LAC requirements for cross-border AIs. SM(RO)/HKMA explained that some respondents had also sought clarification on the types of FIs to be covered under FIRO LAC Rules. He said that further guidance on the implementation of LAC requirements for AIs would be set out in a code of practice HKMA intended to issue for consultation in the summer.

VII Consultation of the Stock Exchange of Hong Kong Limited on the proposed new listing regime for emerging and innovative companies

(LC Paper No. CB(1)724/17-18(08) — The Stock Exchange of Hong Kong Limited's paper on "Report on consultation on listing regime for companies from emerging and innovative sectors")

Briefing by the Hong Kong Exchanges and Clearing Limited

49. At the invitation of the Chairman, Chief Executive, Hong Kong Exchanges and Clearing Limited ("CE/HKEX") briefed members on the consultation of the Stock Exchange of Hong Kong Limited ("SEHK") on the proposed new listing regime for emerging and innovative companies. Members noted that the SEHK, a subsidiary of Hong Kong Exchanges and Clearing Company Limited ("HKEX"), published on 23 February 2018, a Consultation Paper on a Listing Regime for Companies from Emerging and Innovative Sectors. The proposals in the consultation paper closely tracked the way forward set out in the conclusions to the New Board Concept Paper released in December 2017 seeking to expand Hong Kong's listing regime to: (a) permit listings of biotech issuers that did not meet any of the financial eligibility tests of the Main Board; (b) permit listings of companies with weighted voting right ("WVR") structures ("WVR companies"); and (c) establish a new concessionary secondary listing route for Greater China and international companies that wished to secondary list

Action

in Hong Kong. The paper proposed separate new chapters in the Main Board Listing Rules for biotech, WVR structures and the new concessionary secondary listing route. CE/HKEX highlighted the rationale of the proposed new listing regime, measures on investor protection and interface of the proposed regime with the Mainland's recent reform on its listing regime.

(Post-meeting note: The speaking note of CE/HKEX was issued to members vide LC Paper No. CB(1)767/17-18(01) on 4 April 2018.)

Discussion

Arrangements for the listing of biotech companies

50. Mr CHAN Chun-ying declared that he was a shareholder of HKEX and expressed support for SEHK's proposals. Noting that biotech companies which could not meet the continuing obligation under the Listing Rules to maintain sufficient operations or assets would be given a period of 12 months to re-comply with this requirement, failing which SEHK would cancel their listing, he enquired whether investors would be given any warning about the non-compliance of the biotech companies concerned.

51. Chief Regulatory Officer and Head of Listing, Hong Kong Exchanges and Clearing Limited ("CRO/HKEX") replied that if a listed company (including biotech companies under the proposed new listing regime) failed to meet the continuing obligation under the Listing Rules, trading in its stock would be suspended and market participants would be informed of the suspension.

Safeguards for investors of companies with weighted voting right structures

52. Mr CHAN Chun-ying noted that SEHK's consultation had proposed requiring WVR beneficiaries of WVR issuers to demonstrate that they had been materially responsible for the growth of the business, by way of their skills, knowledge and/or strategic direction when they applied for listing. He enquired if WVR beneficiaries would be subject to assessments (say, every five years) on whether they continued to possess the skills, knowledge and/or strategic direction concerned. Mr Holden CHOW remarked that some WVR companies might lose their competitive edges a few years after listing. He asked if HKEX and SFC would examine whether the WVR beneficiaries should still be permitted to hold WVRs then.

53. Chief Executive Officer, Securities and Futures Commission ("CEO/SFC") advised that SEHK and the Listing Committee would carefully assess founders of WVR issuers in determining their eligibility to be the WVR

Action

beneficiaries. The WVR beneficiaries would also be required to be closely involved in the business of the WVR companies concerned on an on-going basis. The initial vetting on the WVR beneficiaries would be important but it would be impractical to conduct continuous assessments on WVR beneficiaries.

54. Mr Holden CHOW expressed concern about protection for the interests of the minority shareholders in WVR companies in the absence of a class action regime in Hong Kong. He also enquired if there would be requirement on the period of track record for WVR issuers when they applied for listing, and the sanctions for misconduct of WVR beneficiaries.

55. Mr Charles Peter MOK noted that there were criticisms towards WVR companies in the United States ("US") and that Singapore had imposed a sunset clause requirement on WVR companies. He was concerned whether there would be sufficient safeguards for investors of WVR companies. He also raised query if the proposed new listing regime was tailored made for new economy companies in the Mainland. Mr WU Chi-wai expressed concern that the proposed listing regime for WVR companies might be abused by associates of WVR beneficiaries.

56. Mr Christopher CHEUNG declared that he was a shareholder of HKEX and welcomed SEHK's proposals. He considered that Hong Kong should strike a balance between protecting investors and maintaining the competitiveness of its listing regime. It would be more appropriate for HKEX and SFC to strengthen investor education and enhance disclosure requirements on issuers and listed companies in lieu of introducing stringent rules in the new listing regime. He further stressed the need for HKEX and SFC to carefully examine and verify the information submitted by listing applicants. He remarked that while there was no class action regime in Hong Kong, SFC could invoke section 213 of the Securities and Futures Ordinance (Cap. 571) ("SFO") to require listed entities committing misconduct to pay compensations to their investors.

57. CEO/SFC advised that while there was currently no class action regime in Hong Kong, it should not be assumed that WVR companies would be likely to act against the interests of public shareholders. As observed, many class action cases in the US were on matters relating to disclosure of information by companies rather than abuse of control under WVR structures. He also pointed out that there was market support for WVR structures as long as relevant safeguards were in place to provide appropriate shareholder protection. The proposed new listing regime had introduced a number of safeguards for investors in WVR companies, including limits on WVR power and measures to protect non-WVR holders' rights to vote, enhanced corporate governance requirements as well as enhanced disclosure requirements. WVRs would fall away if WVR beneficiaries transferred their WVR shares, if they died or became incapacitated or if they

Action

ceased to be directors. This would result in a "natural" sunset for WVRs. CE/HKEX added that WVR beneficiaries would not enjoy more economic benefits of the company than other shareholders, rather they were given the ability to manage the company for the benefit of the shareholders. The proposed listing regime only sought to provide an alternative way for founders of new economy companies to manage their companies and reach control. Regarding the suggestion on continuous assessments on WVR beneficiaries, he emphasised the importance of stability, predictability and the rule of law.

58. Regarding the misconduct of WVR beneficiaries, CRO/HKEX pointed out that WVR beneficiaries concerned would be subject to sanctions if they breached the Listing Rules. They might be deemed unsuitable as directors and hence would no longer be permitted to hold WVRs. CRO/HKEX also advised that the track record requirement for WVR issuers was three years.

59. The Chairman expressed concern that the proposed "natural" sunset arrangement for WVR companies might not provide adequate protection for investors when founders of WVR companies continued as directors of the companies but became less involved in the business of the companies. He asked whether HKEX and SFC would consider introducing a time-defined sunset clause.

60. CEO/SFC cautioned that a sunset clause requirement would likely discourage new economy companies from listing in Hong Kong as there was no similar requirement in the US. The proposed "natural" sunset arrangement had already struck the right balance. He added that investors had various means to express dissatisfaction with the performance of WVR beneficiaries.

61. Mr CHAN Chun-ying enquired whether HKEX and SFC would provide training for the independent non-executive directors ("INEDs") of WVR companies enabling them to enhance their roles in corporate governance. The Chairman asked if HKEX would consider increasing the number and power of INEDs in WVR companies.

62. CRO/HKEX advised that there were enhanced corporate governance requirements in relation to INEDs. There would be mandatory requirement for the establishment of a Corporate Governance Committee to help ensure that the WVR company was operated and managed for the benefit of all shareholders and complied with the Listing Rules. Important corporate matters including the appointment of INEDs would be voted on a "one-share, one-vote" basis. There were currently no specific training requirements set out in the Listing Rules for INEDs (that would possibly end up as a tick box exercise), but INEDs were required, when they took up their role, to be appropriate for the job they were

Action

asked to do. SEHK did not envisage that it would set out specific training courses for INEDs, but would endeavor to ensure that only qualified persons who were fully aware of their obligations could take up the position of INEDs. On the number and power of INEDs, CRO/HKEX advised that HKEX had no immediate plan to increase the number of INEDs in WVR companies. It would also be difficult for HKEX to change the legal responsibilities of INEDs through the Listing Rules, but the proposed regime had enhanced the responsibilities of INEDs through the establishment of the Corporate Governance Committee.

63. The Chairman sought details of the Administration's work in formulating a class action regime in Hong Kong, and whether listed companies would be covered by the regime.

64. Regarding the introduction of a class regime in Hong Kong, Deputy Secretary for Financial Services and the Treasury (Financial Services)1 ("DS(FS)1") advised that having regard to the Law Reform Commission's ("LRC") recommendation in 2012 that Hong Kong should adopt an incremental approach to implement a class action regime, the Department of Justice had established a working group to study the matter. Given the complexity of the issues involved, it would take time to complete the study. Under LRC's recommendation, the proposed class action regime in Hong Kong should start with consumer cases and the Government had no plan to expand the scope at the moment. As regards coverage of the proposed class action regime, CEO/SFC said that conventional shareholder lawsuits involved substantial litigation costs, and as a result there was a focus on SFC invoking section 213 of SFO so that some investors could be compensated for the misconduct of listed companies. SFC would focus on regulating corporate misconduct.

65. In response to the enquiry by the Chairman and Mr Holden CHOW as whether the Administration would consider setting up a litigation fund for investors before a class action regime was put in place in Hong Kong, DS(FS)1 advised that he was not aware of such plan from the Government at the moment.

Coverage and eligibility criteria of the proposed new listing regime

66. Mr Charles Peter MOK said that a number of local new economy companies had expressed disappointment that the proposed new listing regime could not cater for their needs as many new economy companies in Hong Kong were not biotech companies. He pointed out that there was no proposal in the New Board Concept Paper to limit the scope of "emerging companies that could not meet the financial eligibility tests for the Main Board" to biotech companies. Yet the scope of pre-revenue companies was confined to biotech companies in the proposed new listing regime. He enquired whether HKEX would consider

Action

lowering the minimum market capitalization and revenue requirement, and expanding the scope of eligible companies (including those engaging in R&D of artificial intelligence) so that more local pre-revenue emerging and innovative companies could benefit from the proposed new listing regime.

67. Sharing Mr MOK's concern, Mr WU Chi-wai sought SEHK's plan in expanding the proposed new listing regime to cover local companies from other new economy sectors besides biotech sector. Mr WU also enquired about the reasons for imposing different minimum market capitalization requirements on WVR issuers (HK\$ 10 billion at listing) and biotech issuers (HK\$ 1.5 billion at listing), and whether different formula would be adopted in calculating the market capitalization of local and overseas companies.

68. Regarding the scope of the proposed new listing regime, CE/HKEX said that HKEX was mindful of the need to help local small companies in other new economy sectors. The whole consultation process started with the New Board Concept Paper to establish a New Board with lower listing requirements and a light-handed regulatory regime. However, there was no market support for a New Board as many respondents to the consultation considered that most investors in Hong Kong were retail investors and the establishment of a New Board would be too risky and too early. The biotech sector was finally chosen as the initial focus in widening market access for pre-revenue companies because in light of the drug regulatory system, HKEX could reach the level of comfort that was needed to bring the early stage companies to the market. The proposed regime needed to strike a right balance between attracting as many innovative companies to list and protecting interests of investors, in particular retail investors, who were not equipped to handle the risk in some of those early startup companies. He stressed that HKEX would continue to improve the listing regime for start-ups, including expanding the coverage of the proposed listing regime, and explore the use of relevant third party benchmarks to widen market access for pre-revenue companies in other sectors apart from the biotech sector. As some pre-profit new economy companies might generate a considerable amount of revenue, they could apply for listing in the Main Board under the existing listing regime as long as they could meet the revenue test requirements.

69. CE/HKEX further explained that biotech issuers and WVR issuers were subject to different minimum market capitalization requirements due to their different nature. Most biotech companies had not reached a stage in generating revenue as they were mainly engaged in R&D activities. Thus they would be subject to a lower minimum market capitalization requirement. In vetting the listing applications from such companies, HKEX would examine the progress of their R&D. The proposed minimum market capitalization requirement of HK\$1.5 billion had struck a right balance between risk, liquidity and stages of

Action

development of the company. As regards the market capitalization requirement of WVR issuers, as WVR gave founders a disproportional power relative to the money they invested in the company, HKEX had to ensure WVR beneficiaries were visionary leaders in helping a company to grow, therefore an applicant which proposed to list with a WVR structure had to demonstrate that it was able to develop the company to a large scale.

Interface with the Mainland's reform on its listing regime

70. Mr Christopher CHEUNG expressed concern about the impact on Hong Kong's listing regime arising from the recent reform in the Mainland to allow unicorns with WVR structures in the new economy sectors to access the Mainland's capital market through the issuance of Chinese depositary receipt ("CDR") that would be listed in the Shenzhen Stock Exchange and the Shanghai Stock Exchange. He further enquired whether HKEX and SFC would make reference to the corresponding investor protection measures adopted by the Mainland.

71. CE/HKEX responded that HKEX did not envisage that the Mainland's reform would necessarily reduce the incentive of new economy companies to seek listing in Hong Kong. He explained that many issuers permitted to list in the Mainland were foreign incorporated companies and they would be potentially considering CDR. For the underlying shares to be primary listed, they would probably choose an international listing venue, and Hong Kong would be their primary choice. He added that Hong Kong could also be an attractive secondary listing venue for some US listed companies. CE/HKEX stressed that the Mainland's reform was conducive to the growth of its new economy sector, which would create a larger market for both Hong Kong and the Mainland. Thus, HKEX would collaborate rather than compete with its counterparts in the Mainland. Hong Kong would be a net beneficiary of the overall development. CEO/SFC added that cross-boundary trading would likely expand with the reforms in the Hong Kong and Mainland listing regimes.

Timetable for implementing the proposed new listing regime

72. Mr Christopher CHEUNG enquired about market feedback to SEHK's consultation on the proposed new listing regime, the timetable for implementing the new regime, and whether the implementation would be delayed by the development of a class action regime.

73. On the feedback to SEHK's consultation, CRO/HKEX advised that over 280 responses had been received and HKEX was analyzing the views. The preliminary responses indicated broad support for SEHK's proposals. There were

Action

views from respondents to enhance the proposed new listing regime and to seek clarification on related issues. As for the implementation timetable, CE/HKEX advised that it was SEHK's target to publish the consultation conclusions and effect the revised Listing Rules in late April 2018, and start accepting applications thereafter. CEO/SFC said that development of a class action regime was the responsibility of the Government. SFC would ensure that sufficient safeguards were in place when the proposed new listing regime was launched.

(At 12:30 pm, the Chairman ordered that the meeting be extended for 15 minutes to 1:00 pm.)

VIII Any other business

74. There being no other business, the meeting ended at 12:55 pm.

Council Business Division 1
Legislative Council Secretariat
25 June 2018