立法會
Legislative Council

LC Paper No. CB(1) 719/00-01
(These minutes have been seen by the Administration)

Ref : CB1/PL/FA/1

Legislative Council
Panel on Financial Affairs

Minutes of Meeting held on
Monday, 5 February 2001 at 10:45 am
in the Chamber of the Legislative Council Building

Members present	**:**	Hon Ambrose LAU Hon-chuen, JP (Chairman) Hon Henry WU King-cheong, BBS (Deputy Chairman) Hon James TIEN Pei-chun, JP Hon LEE Cheuk-yan Hon Eric LI Ka-cheung, JP Dr Hon David LI Kwok-po, JP Hon NG Leung-sing Hon James TO Kun-sun Hon Bernard CHAN Hon CHAN Kam-lam Hon SIN Chung-kai Dr Hon Philip WONG Yu-hong Hon Jasper TSANG Yok-sing, JP
Non-Panel Member attending	**:**	Hon LI Fung-ying, JP
Members absent	**:**	Hon Albert HO Chun-yan Hon Emily LAU Wai-hing, JP

Public officers attending	:	For Item IV Financial Services Bureau Miss Susie HO Deputy Secretary (Financial Services)2 Official Receiver's Office Mr E T O'CONNELL Official Receiver Mr Edward LAU Assistant Official Receiver (Legal Services 2) For Item V Financial Services Bureau Ms Salina YAN Principal Assistant Secretary for Financial Services
Attendance by invitation	:	Securities and Futures Commission Mr Andrew PROCTER Executive Director of Intermediaries and Investment Products Mr Stephen PO Director of Intermediaries Supervision
Clerk in attendance	:	Mrs Florence LAM Chief Assistant Secretary (1)4
Staff in attendance	:	Ms Connie SZETO Senior Assistant Secretary (1)1 For Item IV Mr KAU Kin-wah Assistant Legal Adviser 6

I Confirmation of minutes of previous meeting and matters arising
(LC Paper No. CB(1) 519/00-01)

The minutes of the meeting held on 4 December 2000 were confirmed.

Overseas duty visit

2. The Chairman informed members that the LegCo Secretariat was drawing up a draft programme for the visit with the assistance of the British and US Consulates General, the Economic and Trade Offices in London and Washington D.C., and the British Parliament. Members who had indicated an interest in joining the visit would be informed of further details at a later stage.

Briefings by the Chief Executive of the Hong Kong Monetary Authority

3. On members' suggestion of conducting more regular meetings with the Hong Kong Monetary Authority (HKMA), the Chairman said that after consultation with the office of the Chief Executive (CE) of HKMA, it had been agreed that regular briefings would be held in November, February and May each year.

4. As HKMA had advised that CE/HKMA would be away on business from 5 to 13 May 2001 and therefore would be unable to attend the Panel's regular meeting on 7 May 2001, members agreed to schedule a special meeting for 3 May 2001 at 4:30 pm for HKMA to brief the Panel on its Annual Report 2000.

II Information paper issued since the last meeting

5. Members noted that no information paper had been issued since the last meeting.

III Date of next meeting and items for discussion
(LC Paper Nos. CB(1) 522/00-01(01) and (02))

6. The Chairman reminded members that the next meeting of the Panel would be held on Monday, 5 March 2001 at 10:45 am to discuss the following items:

(a) The Securities and Futures Commission Budget for 2001/02;

(b) Proposed legislative amendments to facilitate preparation of Summary Financial Statements by listed companies for their shareholders; and

(c) Amendments to the Mandatory Provident Fund Schemes Ordinance and the Mandatory Provident Fund Schemes (General) Regulation

IV Statutory Corporate Rescue Procedure
(LC Paper No. CB(1) 522/00-01(03))

7. The Deputy Secretary for Financial Services (DS/FS) introduced the information paper. She said that the Law Reform Commission (LRC) recommended in 1996 the introduction of a statutory corporate rescue procedure in Hong Kong with a view to assisting companies in financial difficulties to turn around and continue to operate as going concerns. Such procedure involved the appointment of a provisional supervisor (PS) for the company concerned to try to work out a voluntary arrangement with its creditors. A moratorium on legal action would be imposed upon the commencement of the corporate rescue process to prevent the company from being wound up. LRC's recommendation of using the Protection of Wages on Insolvency Fund (PWIF) to meet the outstanding arrears in wages and other statutory entitlements owed to its employees by a company undergoing corporate rescue was not accepted by PWIF Board and the Labour Advisory Board (LAB). The Administration hence adopted the approach of requiring a company to clear all outstanding claims of its employees before it could initiate the corporate rescue procedure. The legislative proposals on corporate rescue were introduced into the Legislative Council (LegCo) in January 2000 as part of the Companies (Amendment) Bill 2000 (the Bill). The Bills Committee scrutinizing the Bill expressed doubts on the viability of the proposed requirement to settle all arrears due and owing by the company to its employees and recommended that the draft provisions on corporate rescue should be excised from the Bill and be deferred for re-submission to LegCo at a later stage. It also suggested that the Administration should consult the PWIF Board and LAB on its proposal of providing some flexibility to the requirement. Both organizations were opposed to the flexibility proposals subsequently put forward by the Administration as set out in paragraphs 15 to 22 of the paper. Having regard to the objections of the PWIF Board and LAB and balancing the interest of all the relevant parties, the Administration decided to maintain the original proposal of requiring a company to settle all debts and liabilities it owed to its employees before the start of the rescue procedure. Separately, in the light of comments made by professional bodies and trade organizations, some of the provisions on corporate rescue would be modified. The Administration intended to re-introduce the legislative proposal on corporate rescue into LegCo within the current legislative session.

8. In reply to enquiries about details of the proposed corporate rescue procedure, the Assistant Official Receiver (Legal Services 2) advised that the initial moratorium period would be of 30 days within which a PS had to formulate a voluntary arrangement proposal for consideration of creditors at a creditors' meeting. The period could be extended by a maximum of six months with the approval of the court. Further extension beyond six months would be subject to the agreement of creditors. In order to ensure that a company initiating a corporate rescue could settle all debts and liabilities owed to its employees and that the commencement of the procedure would not be delayed, the company concerned could set up a trust account exclusively

for this purpose whereby the PS would make the necessary payments from the account to employees after the commencement of the procedure. As the PS would have to carry out a large number of tasks once he took office, the timeframe within which he had to make the payment should not be rigidly fixed by the law so as to provide him with some flexibility. There would however be provisions requiring a PS to make payments to employees prior to the convening of the creditors' meeting without regard to the outcome of the voluntary arrangement proposal. It was not envisaged that PS would deliberately delay payments to employees.

9. Mr SIN Chung-kai conveyed the support of the Democratic Party for an early introduction of a statutory corporate rescue procedure in Hong Kong. He further opined that it was necessary to enhance corporate governance in Hong Kong for the successful implementation of such procedure. Mr LEE Cheuk-yan welcomed the requirement for a company to settle all debts and liabilities owed to its employees before it could start the rescue operation as this would protect the benefits of employees. He pointed out that as a company could offset some of the statutory entitlements for employees with its contributions already made to occupational retirement schemes or the Mandatory Provident Fund schemes, the requirement should not increase the financial burden on the company. While expressing support for a statutory corporate rescue procedure, Mr Eric LI was disappointed about the result of the consultation. He remarked that a similar requirement did not exist in other jurisdictions and expressed concern that in the absence of some flexibility in the requirement, the success of the proposed rescue procedure would be undermined. He asked whether the Government would consider setting up a "corporate rescue fund" to assist companies in financial difficulties in undertaking rescue schemes.

10. Recognizing that there were limitations in the proposed corporate rescue procedure, DS/FS said that it would be the first step to improve the existing voluntary procedure and provide a meaningful statutory option for viable businesses to continue to operate. The proposal would also enable practitioners to make a start in building up the required expertise and experience. On the proposal of establishing a government "corporate rescue fund", DS/FS cautioned that it would be inappropriate to use public money to bail out companies in financial difficulties. She said that there was no similar arrangement in overseas jurisdictions which had statutory corporate rescue procedures in place.

11. Noting that unsecured creditors would not be given the option to elect whether to participate in a proposed rescue operation but would be bound by the moratorium and the terms of a voluntary arrangement that might be eventually drawn up under the rescue operation, some members expressed concern that there was inadequate protection for the rights of unsecured creditors. Mr James TIEN was concerned that in the event that a rescue operation was dragged on over a number of years and became unsuccessful in the end, unsecured creditors might end up recovering less payment than what they could get under the liquidation of the company.

12. In response, the Official Receiver (OR) clarified that under the original proposal, only major secured creditors, i.e. those holding the whole or substantially the whole of the company's property as security with $33^{1}/_{3}$% or more of the outstanding liabilities of a company, would be given the option to elect to participate in a proposed rescue or abstain from it by relying on their securities. Other minor secured creditors were not accorded the same treatment. Such proposal had been incorporated in the Bill. In view of the concern expressed that the arrangement was inconsistent with the long established secured lending practice where secured creditors, be they large or small, could not be forced to accept any "hair-cut" of debts without their consent, the Administration proposed to modify the procedure so that the existing rights of the secured creditors would remain unaffected. As such, all secured creditors, major or minor ones, would have the right to elect whether to participate in the provisional supervision of the concerned company. Their rights could not and would not be affected by the proposed voluntary arrangement except with their concurrence.

13. As regards protection for the rights of unsecured creditors, OR clarified that the proposed corporate rescue procedure would not jeopardize the rights that they were entitled to under the existing insolvency procedure. Under the existing insolvency regime, it was also the major secured creditors who held the veto power in respect of financial arrangements in the liquidation process of a company. There would be an additional safeguard for the interest of all creditors in the legislative proposal. A creditor who could prove to the satisfaction of the court that the moratorium had caused significant financial hardship on him would be exempted from the moratorium and any voluntary arrangement.

14. In this connection, Mr Eric LI remarked that experience revealed that very often little assets would be left to unsecured creditors in a liquidation of a company. Despite its limitations, the professionals concerned were supportive of the principle of a corporate rescue procedure recognizing that it would offer more benefits to a company in financial difficulties and its creditors than that of a liquidation procedure.

15. Noting that a PS would be vested with extensive power in undertaking a rescue operation, such as deciding whether a company was viable and hence worth rescuing, and laying off employees, some members opined that adequate check and balances should be put in place to ensure the professional standard and proper performance of PS.

16. OR said that the Administration recognized the important role of PS. The duties, rights and liabilities of a PS would be clearly stipulated in the law. A PS would have clear duty of care and fiduciary duties to his clients. To facilitate the implementation of a rescue operation, it was necessary for a PS to take over the full control and management of a company. Only professional practitioners with relevant experience in insolvency work would be appointed as PS. The Administration would discuss with professional bodies, such as the Hong Kong

Society of Accountants, to work out the details of the requirement on a PS and to set up a panel of practitioners who could be tasked with the job.

17. The Chairman expressed concern about the stringent requirement on a PS to be personally liable for wages and other statutory entitlements owed to employees who were newly employed or continued to be employed by him after the commencement of the rescue process. In response, DS/FS explained that the requirement would ensure that a PS would discharge his duties prudently and carefully. She said that there had been no objection from professional bodies on the requirement. A PS would first assess the financial position of a company to decide whether or not a rescue operation was worth pursuing. There would also be agreement between the concerned company and PS regarding the latter's duties and liabilities in the rescue operation before his appointment. A PS could request the company to provide indemnity for covering his liabilities arising from the rescue operation.

V Revised Financial Resources Rules
(LC Paper No. CB(1) 522/00-01(04))

18. Mr Andrew PROCTER, Executive Director of Intermediaries and Investment Products, Securities and Futures Commission (SFC) took members through the information paper reporting the implementation of the new Financial Resources Rules (RFF) since their commencement on 12 June 2000. Mr PROCTER said that there was a six-month grace period for SFC registrants to comply with the risk concentration rules under FRR. The period expired on 12 December 2000. Since June 2000, there were only a few incidents in which there was a breach of the new FRR. These had been rectified quickly. So far, SFC had issued two notices to exempt registrants from complying with certain sections of the new FRR and had given three new modification directions in respect of the special circumstances of the business of the registrants. SFC had taken a number of initiatives to familiarize registrants and related professionals with the new FRR. The initiatives included organizing seminars and briefings to explain the requirements under the new FRR, posting useful information on SFC website to facilitate computation of various returns, and implementing an electronic submission system to enable on-line submission of returns. SFC was satisfied with the implementation of the new FRR and would continue to work with market participants to ensure their compliance.

SFC

19. On the three new modification directions granted, Mr PROCTER undertook to provide relevant information for members' reference after the meeting. He explained that SFC was empowered under section 29 of the Securities and Futures Commission Ordinance (Cap. 24) to give directions to modify the requirement of FRR applicable to an applicant if it was satisfied that the requirement in question was unduly burdensome in the case of the applicant and if the granting of the direction was not contrary to the interest of the investing public. If it was considered that modification of FRR requirements would expose investors to undue risks, the

application would be rejected. Modification directions were often granted subject to conditions, such as specifications on the business allowed to be carried on and clients to be taken up by the registrants. Details of the modification directions given including the conditions attached would be published to ensure transparency in the operation of SFC.

20. Mr Henry WU remarked that market intermediaries were still concerned about difficulties in complying with the risk concentration rules under the new FRR. He enquired whether SFC would provide any assistance to intermediaries in this respect.

21. Mr PROCTER replied that SFC had gathered limited experience on the implementation of the risk concentration rules as they only came into effect in mid December 2000. The first monthly returns from registrants had just been received and were being analyzed by SFC. In view of concerns about difficulties in complying with these rules, in particular for small securities dealers, SFC had been in active discussion with the Hong Kong Stockbrokers Association and key market participants to assess what problems they faced. SFC had also been meeting system vendors to ensure that appropriate systems were put in place to facilitate computation and compilation of returns. Mr PROCTER added that SFC had just received the first application for modification of the risk concentration rules and envisaged that more would be submitted. The application was made by a small securities dealer who only had ten clients and one of whom accounted for 85% of the firm's margin book. SFC was considering the application and would publish the details of the modification if it was granted.

22. Mr Eric LI enquired about SFC's assistance to accounting professionals who assisted market intermediaries in compiling FRR returns.

23. In response, Mr PROCTER said that SFC was satisfied with the performance of accounting professionals in the implementation of the new FRR. As FRR returns filed with SFC in the first two months of implementation of the new rules were not totally satisfactory, SFC had stepped up the assistance provided to market participants and communication with accounting professionals. As a result, there had been substantial improvement in the accuracy of information provided and the presentation format of the returns received recently. Besides holding briefings and seminars, about 30 SFC staff had been designated to familiarize market participants and related professionals with the new rules in the first few months. Accounting professionals had requested SFC to prepare a list of frequently asked questions and answers about compiling FRR returns for posting on the SFC website. Moreover, the implementation of the electronic submission system in August 2000, which was user-friendly and was capable of detecting most of the potential compilation errors in the returns, had enhanced efficiency in the submission of returns and their accuracy.

VI Any other business

24. There being no other business, the meeting ended at 12:20 pm.

Legislative Council Secretariat
1 March 2001