

立法會
Legislative Council

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Panel on Financial Affairs

Minutes of special meeting
held on Monday, 16 October 2006 at 4:35 pm
in the Chamber of the Legislative Council Building

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Bernard CHAN, GBS, JP (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon James TO Kun-sun
Hon SIN Chung-kai, JP
Hon Emily LAU Wai-hing, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon CHIM Pui-chung
- Member attending** : Hon LEE Wing-tat
- Members absent** : Hon Albert HO Chun-yan
Dr Hon David LI Kwok-po, GBS, JP
Hon Abraham SHEK Lai-him, JP
Hon TAM Heung-man

- Public officers attending** : Mr Frederick MA, JP
Secretary for Financial Services and the Treasury
- Mr Alan LAI, GBS, JP
Permanent Secretary for Financial Services and the Treasury (Treasury)
- Mr Kevin HO, JP
Permanent Secretary for Financial Services and the Treasury (Financial Services)
- Clerk in attendance** : Miss Salumi CHAN
Chief Council Secretary (1)5
- Staff in attendance** : Ms Pauline NG
Assistant Secretary General 1
- Ms Rosalind MA
Senior Council Secretary (1)8
- Ms May LEUNG
Legislative Assistant (1)8
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Action

I. Briefing by the Secretary for Financial Services and the Treasury on the relevant policy initiatives featuring in the Chief Executive's 2006-2007 Policy Address

(LC Paper No. CB(1)41/06-07(01) — Paper provided by the Administration

Relevant documents

- (a) Address by the Chief Executive at the Legislative Council meeting on 11 October 2006 — "Proactive, Pragmatic, Always People First"; and
- (b) The 2006-07 Policy Address — "Policy Agenda")

Briefing by the Secretary for Financial Services and the Treasury

At the Chairman's invitation, the Secretary for Financial Services and the Treasury (SFST) briefed members on the initiatives relating to the Financial Services and the Treasury Bureau (FSTB) in the Chief Executive (CE)'s Policy Address

2006-07 and the progress in implementing the relevant on-going policy initiatives. SFST advised that the Administration would continue to implement policy initiatives and supportive measures to enhance Hong Kong's position as a major international financial centre (IFC) and the premier capital formation and investment platform for the Mainland. SFST highlighted the progress and upcoming plans in connection with the major policy initiatives of FSTB in two main areas, as follows-

(a) Promoting market development

- (i) To identify ways to broaden the source of corporations seeking to use Hong Kong as a platform for listing, with a view to facilitating listings of quality overseas companies;
- (ii) To consider ways in developing commodity futures contracts and foreign exchange futures contracts trading with the potential presented by recent development of the Mainland economy;
- (iii) To explore ways to develop the insurance and reinsurance industries in Hong Kong, leveraging on rapid economic growth in the Mainland and its gradual integration with the global financial market;
- (iv) To further promote our asset management business with a view to strengthening Hong Kong's position as an international asset management centre;
- (v) To enhance bond market development so as to encourage more local and international issuers to use Hong Kong's platform for issuing bonds;
- (vi) To promote co-operation with other provinces and region in the Pan-Pearl River Delta (Pan-PRD) Region to facilitate the financial services providers of Hong Kong in tapping the opportunities in the Pan-PRD Region;
- (vii) To further promote the expansion of renminbi business in Hong Kong. ; and
- (viii) To promote internationally Hong Kong's position as an IFC. In this connection, preparation was underway for staging an Asian Financial Forum in end of March 2007.

(b) Improving market quality

(i) Progress of major initiatives to enhance the regulatory regime in the financial markets were as follows -

- Establishing the Financial Reporting Council (FRC) as early as possible;
- The Administration planned to introduce two amendment bills in the 2006-07 session. These included the Securities and Futures (Amendment) Bill which aimed to give statutory backing to major listing requirements and the Mandatory Provident Fund (MPF) Schemes (Amendment) Bill which aimed to give effect to a number of proposals to enhance the administration and operation of MPF schemes;
- Preparatory work for implementing the new capital adequacy standards (i.e. Basel II) ;
- The Administration was formulating proposals on the setting up of an independent Insurance Authority (IA) for consultation with stakeholders; and
- To take forward the major exercise of rewriting the Companies Ordinance (CO) (Cap. 32), the Companies Bill Team (CBT) was established in mid-2006.

(ii) Closely linked to market quality was investor and depositor protection, which was essential to the stability of the financial markets. The progress of the on-going initiatives in this regard were set out below:

- The Deposit Protection Scheme was launched on 25 September 2006;
- SFC had devised a three-pronged action plan to enhance protection of brokers' clients; and
- The Mandatory Provident Fund Schemes Authority continued to consult the industry and the public on its proposals, including the possibility of setting up a comparative platform for MPF funds and measures to improve the member benefit statements.

2. SFST advised that the Focus Group on Financial Services under the Economic Summit on “China’s 11th Five-year Plan and the Development of Hong Kong” (the Economic Summit) convened by CE on 11 September 2006 had formed three working groups to devise strategies and action plans with particular respect to development of the equity market, foreign exchange, futures and commodities trading and the insurance and reinsurance as well as asset management industries.

3. SFST assured members that the Administration pledged to continue the strive to achieve a fiscal balance, in line with the principle of keeping expenditure within the

limits of revenue in the management of public finances. The operating expenditure had been kept below \$200 billion in the past two years.

Discussion

Furthering the development of foreign exchange, futures and commodities trading

4. Mr CHIM Pui-chung was concerned that the transaction volume in foreign exchange had decreased significantly in recent years since the imposition of the minimum capital requirement of \$30 million on authorized corporations engaging in foreign exchange trading. He urged the Administration to take proactive steps to facilitate the development of foreign exchange trading in Hong Kong.

5. SFST explained that statistics on transaction volume of foreign exchange trading might not give a true reflection of the role of Hong Kong, as some of the transaction orders originated from Hong Kong were completed in other jurisdictions and hence not counted towards the transaction record of Hong Kong. Nevertheless, the Administration would undertake a detailed study on the development of the foreign exchange market, including measures to facilitate a more active role of Hong Kong in the global markets. Responding to Mr CHIM Pui-chung's concern about the Government's continued efforts in developing the financial market, SFST assured members that the on-going policy initiatives for promoting market development would be taken forward regardless of any changes in appointment of principal officials in the next term of the Government.

6. Pointing out that the Chinese Gold and Silver Exchange Society (CGSES) had been operating as an exchange for gold and playing a vital role in Hong Kong's gold market, Mr CHIM Pui-chung was concerned whether the Administration would take proactive steps to provide recognition to CGSES as a controller of gold trading with a view to putting in place a regulatory regime for investor protection and future development of the gold and precious metals market. In this connection, Mr CHIM suggested that reference be made to the role of the Hong Kong Exchanges and Clearing Limited (HKEx), a recognized exchange controller under the Securities and Futures Ordinance (Cap. 571), for the establishment of an exchange controller for gold and precious metals so that any person carrying on a business of dealing in gold and precious metals had to be registered as a participant of this exchange. Mr CHIM added that given the traditional preference for purchase of gold ornaments in the Mainland and other Asian countries, a prudent regulatory regime would facilitate Hong Kong in becoming the international or regional centre for gold trading and storage.

7. SFST appreciated Mr CHIM Pui-chung's view and advised that CGSES had submitted a report to the Administration in mid-2006 on its reorganization proposal to make its existing membership-based operation on a par with international practice. The Administration was supportive to the development of CGSES in line with the global trend and had maintained close communication with CGSES in this respect.

SFST also advised that the working group under the Economic Summit to advise on the development of Hong Kong's foreign exchange, futures and commodities trading would examine relevant issues on market development and if the need for an exchange for commodities was confirmed (for example an exchange for gold and precious metals), relevant legislative proposals might have to be introduced for the purpose. Nevertheless, the propriety or otherwise of such an arrangement and the details of the proposal had yet to be worked out. On the provision of storage facility for gold and precious metals, SFST advised that the Administration was supportive of the joint effort by the Airport Authority Hong Kong and CGSES for the establishment of a gold depository at the Hong Kong International Airport.

Regulation of equity market and derivative warrants market

8. Pointing out that the development of the Growth Enterprise Market (GEM) had been far from satisfactory, Mr CHIM Pui-chung was of the view that HKEx as the sole operator of the stocks and futures exchanges was not performing its role effectively in respect of the operation of GEM. In this connection, Mr CHIM enquired whether the Administration would consider introducing competition in the operation of exchanges instead of giving HKEx the status as the sole operator.

9. SFST advised that the Board of Directors of HKEx was aware of the concern about operation of GEM and actively examining measures in this regard. He explained that given the volatility of the market and rapid market development, it might not be a straightforward matter for HKEx to ensure the success of GEM. Nevertheless, the corporate governance structure of HKEx would enable it to balance its public functions and its commercial profit making objective as a listed company. As to the introduction of other exchanges, SFST said that the Stock Exchange of Hong Kong Limited (Stock Exchange), which was now a wholly-owned subsidiary of HKEx, was established in the 1980s to unify four exchanges and strengthen market regulation. Market operation under the exchange merger model had proved to be effective since the 1980s, one of the advantage being minimizing confusion to investors with a number of exchanges.

10. Referring to three recent cases of broker misconduct, Mr SIN Chung-kai expressed concern about the time taken by the administrators to verify the claims and return the assets to the affected clients. In this connection, Mr SIN enquired whether the Administration and the relevant regulators (i.e. the Securities and Futures Commission (SFC) and HKEx) would work out effective enhancement and preventive measures to safeguard investor interest in the light of the three cases.

11. In response, SFST said that the Administration and SFC had, at the special meeting of the Panel held on 29 September 2006, provided detailed response to members' concern about regulation of securities firms arising from the three recent cases of broker misconduct. SFST pointed out that SFC was working out a series of measures to enhance investor protection, including liaising with HKEx to enhance the user-friendliness of the Investor Participant Accounts in the Central Clearing and

Settlement System and discussing with the Hong Kong Institute of Certified Public Accountants on more effective use of circularization to detect fraud. While SFC would continue with its rigorous supervision of brokers, as explained by the Chief Executive Officer of SFC at the meeting on 29 September, not even the best laws could prevent deliberate fraud and misconduct. The Administration appreciated the concern of the affected clients of securities firms involved in the three recent cases of broker misconduct and had conveyed to SFC the need to urge the administrators to return the assets to the clients expeditiously.

12. Noting the increased activity in the derivative warrants (DWs) market in the past two years or so, Mr LEE Wing-tat was concerned whether there were adequate safeguards under the current regulatory regime to protect the interest of retail investors. In this connection, Mr LEE enquired whether FSTB and/or SFC had received complaints and/or comments from investors on the operation of the DWs market.

13. In reply, SFST said that as far as he could recall, FSTB had not received any complaints from the public on the DWs market. Nevertheless, the Administration was aware of the concern and comments from Members of the Legislative Council (LegCo) on the issue of investor protection in the DWs market. In this connection, SFST pointed out that at the Panel meeting on 5 January 2006, SFC had presented the key findings and proposals set out in its report issued in November 2005 after a review of the DWs market in Hong Kong. The report contained a series of proposed measures for improving the regulatory regime for DWs in Hong Kong and enhancing investors' understanding about DWs and their operation.

14. Mr LEE Wing-tat recalled that the report issued by SFC in November 2005 contained a six-point plan for strengthening the existing regulation of the DWs market. In this connection, Mr LEE expressed concern about the progress of the proposals in the report, in particular, the proposals of tightening the requirements on liquidity providers and making their operations more transparent; banning commission rebates and other incentive schemes; and publishing new guidelines on marketing of DWs. At the request of Mr LEE, SFST undertook to liaise with SFC for provision of a progress report on the proposals put forward by SFC in its report issued in November 2005.

(Post-meeting note: The progress report provided by SFC was issued to members vide LC Paper No. CB(1)228/06-07(03) on 3 November 2006.)

Reinforcing the development of insurance and reinsurance industry

15. Referring to paragraph 19 of the Policy Address, Mr Bernard CHAN enquired about the measures to be employed by the Administration to reinforce the development of the insurance and reinsurance industry. Pointing out that most of the world's top reinsurance companies had established their presence in Hong Kong and some other companies had their base in tax-free offshore havens such as Bermuda, Mr

CHAN doubted whether there were any effective measures to attract more reinsurance companies to Hong Kong.

16. In response, SFST said that the Administration had invited an experienced and senior officer of the insurance industry to lead an in-depth study on the development of the industry. The Administration would not forecast the findings of the study at the present stage and would maintain an open mind in considering the recommendations arising from the study. Responding to Mr Bernard CHAN's further enquiry, SFST assured members that the Administration would consult relevant industry stakeholders on the findings and recommendations of the study.

Setting up of an independent IA

17. Ms Emily LAU referred to the proposal of setting up of an independent IA in paragraph 18 of the paper provided by the Administration and expressed her support for the proposal. In this connection, Ms LAU was concerned about the estimated timeframe for taking forward the proposal and whether the Administration would expect any obstacles and/or difficulties in the process. Noting the Administration's plan to bring the regulatory regime in Hong Kong in line with international practice, Ms LAU enquired about the proposed governance structure of the independent IA, including whether it would be governed by a Board of Directors and whether there would be separation of roles and responsibilities between the chairman and the executive arm.

18. SFST advised that IA was presently a public officer who exercised his statutory regulatory functions on the insurance industry through the Office of the Commissioner of Insurance (OCI) as part of the government structure. To bring the regulatory regime in line with international practice and practices of the financial services regulators, the Administration was formulating proposals on the setting up of an independent IA outside the government structure. SFST explained that the Administration would take some time to work out the details of the proposal, including the governance structure and operational and funding arrangements for the independent IA, in consultation with staff (involving some 50 staff in OCI) and stakeholders of the insurance industry. Responding to Ms Emily LAU's enquiry on the legislative timetable, SFST said that details of the proposal had yet to be formulated and the Administration would brief the Panel on the details, including the legislative timetable, in due course.

Rewrite of CO

19. Referring to paragraph 19 of the paper provided by the Administration, Ms Emily LAU commented that the rewrite of CO was a major exercise involving considerable amount of financial and manpower resources. Ms LAU was concerned about the progress of the exercise, including the work plan and timeframe for undertaking various tasks at different stage of the exercise; the amount of expenditure

incurred so far and the number and rank of officers appointed for performing the tasks.

20. In response, SFST said that the Administration had provided details of the financial and manpower implications for the rewrite exercise in its funding proposal to the Finance Committee (FC) in early 2006. In general, the rewrite exercise was progressing as planned. The Permanent Secretary for Financial Services and the Treasury (Financial Services) supplemented that in accordance with the work plan in the paper to FC, a CBT was established in mid-2006 to take forward Phase I of the rewrite exercise. In addition, a consultant had been identified to study and recommend proposals to reform some of the more complex areas of CO. To gauge views of the stakeholders, four dedicated advisory groups (AGs) had been established, comprising representatives of relevant professional bodies and the business sector, and academics. Two of the AGs had already started work in October 2006. According to the work plan, a White Bill would be published in 2009 for public consultation. Prior to the publication of the White Bill, CBT would roll out several topical public consultations, with the first consultation on reforms for the accounting and auditing provisions of CO to be launched in early 2007. At the request of Ms Emily LAU, the Administration undertook to provide a paper to update the Panel on the progress of the rewrite exercise, including the following items:

- (a) Work plan and timeframe for undertaking various tasks at different stages of the exercise, and the progress made so far;
- (b) Financial resources allocated for the exercise and the amount of expenditure incurred so far; and
- (c) Number and rank of posts created for the exercise, and the number and rank of officers appointed so far.

(Post-meeting note: The information provided by the Administration as per (a) to (c) above was issued to members vide LC Paper No. CB(1)228/06-07(02) on 3 November 2006.)

Consultation on reform of tax system

21. Ms Emily LAU expressed her dissatisfaction about the comments made by SFST at a radio programme the day before that some LegCo Members were short-sighted in opposing the Goods and Services Tax (GST) and that their opposition was for the purpose of getting votes rather than for the benefit of the community as a whole in the long run. Ms LAU said that while LegCo Members and government officials might have different views on the subject, any criticism and speculation made on the motive of Members' opposition would have adverse impact on the relationship between the executive arm and the legislature. Mr LEE Wing-tat and Mr SIN Chung-kai expressed similar views. They opined that the Administration should convince the community of the merits of implementing GST through rational

discussion instead of degrading opposing Members and political parties with unfair criticisms on their motives.

22. SFST clarified that in making the comments at the radio programme, he was not attempting to speculate the motives of Members. Instead, the comments reflected his concern that for the benefit of future generations, the consultation on tax reform proposal should not be discontinued as suggested by some Members. SFST stressed that it would be irresponsible if the Administration did not consult the public on proposals to stabilize tax revenue in the long run.

Money Lenders' Ordinance (MLO)

23. Mr James TO said that there were loopholes in MLO in that many money lenders were bypassing the provision on prohibition of excessive interest rate (i.e. interest rate which exceeded 60% per annum) through various means, such as providing loans through an intermediary or charging a handling fee. The exemption of mortgage loans from the provision on prohibition of excessive interest rate was also subject to abuse by some money lenders. Mr TO therefore urged the Administration to carry out a comprehensive review of MLO with a view to making necessary amendments to prevent abuse. SFST responded that the subject was of a complicated nature straddling across the purview of various bureaux/departments. At the suggestion of SFST, Mr TO agreed to forward his written views to SFST so that the latter might refer the views to the relevant bureaux/departments for consideration.

II. Any other business

24. There being no other business, the meeting ended at 5:30 pm.