立法會
Legislative Council

LC Paper No. CB(1)1871/11-12
(These minutes have been seen by the Administration)

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Panel on Financial Affairs

Minutes of meeting
held on Friday, 2 March 2012 at 9:00 am
in Conference Room 1 of the Legislative Council Complex

Members present :	Hon CHAN Kam-lam, SBS, JP (Chairman) Hon CHAN Kin-por, JP (Deputy Chairman) Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP Hon James TO Kun-sun Hon Emily LAU Wai-hing, JP Hon Abraham SHEK Lai-him, SBS, JP Hon Jeffrey LAM Kin-fung, GBS, JP Hon Andrew LEUNG Kwan-yuen, GBS, JP Hon WONG Ting-kwong, BBS, JP Hon CHIM Pui-chung Hon KAM Nai-wai, MH Hon Starry LEE Wai-king, JP Hon Paul CHAN Mo-po, MH, JP Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Member attending :	Hon WONG Kwok-hing, MH
Members absent :	Hon Albert HO Chun-yan Dr Hon David LI Kwok-po, GBM, GBS, JP Dr Hon Philip WONG Yu-hong, GBS Hon LEE Wing-tat Hon Ronny TONG Ka-wah, SC

Public officers attending : Agenda Item IV

Miss Salina YAN
Deputy Secretary for Financial Services and the Treasury (Financial Services) 1

Agenda Item V

Mr Norman CHAN, SBS, JP
Chief Executive
Hong Kong Monetary Authority

Mr Peter PANG, JP
Deputy Chief Executive (Development)
Hong Kong Monetary Authority

Mr Eddie YUE, JP
Deputy Chief Executive (Monetary)
Hong Kong Monetary Authority

Mr Arthur YUEN, JP
Deputy Chief Executive (Banking)
Hong Kong Monetary Authority

Agenda Item VI

Mr Darryl CHAN
Deputy Secretary for Financial Services and the Treasury (Financial Services)

Mr Maurice LOO
Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)

Ms Ada CHUNG, JP
Registrar of Companies

Agenda Item VII

Miss Natalie LI
Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) 5

Ms Meena DATWANI
Executive Director (Banking Conduct)
Hong Kong Monetary Authority

Mr Trevor KEEN
Head (Payment Systems Oversight and Licensing)
Hong Kong Monetary Authority

Attendance by invitation :

Agenda Item IV

Mr Ashley ALDER
Chief Executive Officer
Securities and Futures Commission

Mr Andrew WAN
Chief Financial Officer and Senior Director
Corporate Affairs
Securities and Futures Commission

Clerk in attendance :

Ms Anita SIT
Chief Council Secretary (1)5

Staff in attendance :

Mr Noel SUNG
Senior Council Secretary (1)5

Ms Haley CHEUNG
Legislative Assistant (1)5

Action

I Confirmation of minutes of meeting and matters arising

(LC Paper No. CB(1)1145/11-12 — Minutes of the meeting on 6 January 2012)

The minutes of the meeting held on 6 January 2012 were confirmed.

II Information paper issued since the last meeting

(LC Paper No. CB(1)1192/11-12(01) — Administration's information note on Scheme $6, 000)

2. Members noted the information paper issued since the last regular meeting held on 6 February 2012.

III Date of next meeting and items for discussion

(LC Paper No. CB(1)1147/11-12(01) — List of outstanding items for discussion

LC Paper No. CB(1)1147/11-12(02) — List of follow-up actions

LC Paper No. CB(1)1125/11-12(01) — Letter dated 17 February 2012 from Hon Albert CHAN on issue of commemorative banknotes by the Bank of China (Hong Kong) Limited (Chinese version only))

Meeting in March 2012

3. Members agreed to discuss the following items proposed by the Administration at the next regular meeting scheduled for 2 April 2012:

(a) Consultation on the detailed proposals on trust law reform; and

(b) Annual briefing on the work of the Financial Reporting Council.

Letter from Mr Albert CHAN

4. The Chairman referred to the letter from Mr Albert CHAN dated 17 February 2012 regarding the arrangements for the issue of commemorative banknotes by the Bank of China (Hong Kong) Limited. He said that there were laid down procedures for issue of new or commemorative banknotes and the Administration had been requested to give a written response on Mr CHAN's letter. Upon receipt of the response from the Administration, members might consider whether it was necessary for the Panel to discuss the relevant issues.

(*Post-meeting note*: The Administration's response, LC Paper No. CB(1)1245/11-12(01), was issued to members on 7 March 2012.)

IV Budget of Securities and Futures Commission for the 2012-13 financial year

(LC Paper No. CB(1)1147/11-12(04) — Paper provided by the Administration)

Declaration of interest

5. The Chairman declared interest that he was an independent non-executive director of the Securities and Futures Commission (SFC). In order to avoid conflict of interest, the Chairman requested the Deputy Chairman to take over the chair of the meeting for discussion of this item. The Deputy Chairman then took over the chair.

Briefing by the SFC

6. At the invitation of the Deputy Chairman, the Chief Executive Officer, SFC (CEO/SFC) briefed members on SFC's revised budget for 2012-13. CEO/SFC remarked that the revised budget was approved by the Board of SFC after taking into account Members' views and comments made at the last Panel meeting.

Discussion

Levies and reserves

7. Mr KAM Nai-wai enquired whether SFC would contravene section 396 of the Securities and Futures Ordinance (Cap. 571) (SFO), if it did not consult the Financial Secretary (FS) on the reduction of transaction levies, given that its reserves were more than twice its annual expenditure. Mr KAM opined that even if an operating deficit of $240 million might be incurred in 2012-13 if the levy rate for securities transactions was reduced from 0.003% to 0.002%, the impact on the overall reserves would be small. Mr KAM also queried the propriety of using the reserves for purchase of office accommodation.

8. The Deputy Secretary for Financial Services and the Treasury (Financial Services)1 (DS(FS)1) responded that under section 396 of SFO, SFC had the flexibility to, after consultation with FS, recommend to the Chief Executive in Council as to whether the rate of a levy should be reduced, when its reserves had reached a level more than twice its estimated operating expenses for the financial year. SFC had effected a levy reduction of 20% in December 2006 and a further reduction of 25% in October 2010. SFC could

use its reserves to support its operation, including purchase or renting of office accommodation.

9. CEO/SFC said that having regard to the size of the reserves, the Board of SFC had considered whether a reduction of the levy should be made, and concluded that it was not the opportune time to further reduce the levy, as the existing levy rate of 0.003% was already extremely low and the levy rate had been reduced in 2006 and 2010. The Board of SFC would review the deployment of the reserves, including the suitability of using part of the reserves to purchase offices for SFC.

10. Mrs Regina IP expressed objection to SFC using its reserves to purchase offices. She opined that the regulatory body should rent its offices so that it would be aware of the impact of the rise or drop in office rental on the securities industry. Mrs IP was of the view that SFC should not follow Hong Kong Monetary Authority (HKMA)'s example, as HKMA had bought its own offices and its senior officers were provided with extremely luxurious offices in the International Finance Centre. The offices of public bodies should be furnished for practical use only. SFC could liaise with the Development Bureau with a view to relocating its offices in the building(s) to be developed on the site of the former West Wing of the Central Government Offices. SFC's reserves could be used on matters related to the securities market, such as funding part of the settlement between the banks and the investors of Lehman Brothers-related investment products.

11. While welcoming SFC's proposal to waive its licensing fees for two years, Mr CHIM Pui-chung opined that SFC should consider reducing the levy rate if the level of its reserves still exceeded two times of its operating expenditure at the end of 2012-13. Ms Starry LEE expressed the same view. DS(FS)1 noted that the Board of SFC would review the deployment of the reserves in 2012-13, and the purchase of office accommodation was one of the options to be considered. The Government would liaise with SFC on the matter.

12. Mr CHIM Pui-chung opined that as a regulatory body, SFC should consider purchasing its own offices although the offices should not be luxurious. Mr Abraham SHEK, Ms Starry LEE and Ir Dr Raymond HO expressed the same view.

13. Mr Abraham SHEK expressed support for SFC's revised budget for 2012-13, and remarked that in face of the uncertain financial situation in the coming years, SFC should exercise stringent control on its expenditure.

14. Ms Starry LEE expressed concern about the significant increase in the expenditure of SFC in 2012-13 and whether there was adequate oversight in the budget preparation process. DS(FS)1 said that the Administration had closely liaised with SFC to ensure that SFC would exercise prudent control on its expenses, and impressed upon SFC that the expenditure proposals in the budget should be fully justified. In reviewing the use of its reserves, she noted that SFC would also consider the level of levies.

15. The Chief Financial Officer and Senior Director, Corporate Affairs, SFC (CFO&SD/SFC) said that the different divisions of SFC worked out their expenditure proposals for the coming year based on the estimated workload of the respective divisions. The Executive Committee of SFC would carefully consider and where appropriate, revise the proposals from the divisions. The consolidated budget proposal would then be considered by the Budget Committee and finally by the Board of SFC. Only the expenses and manpower proposals which were fully justified would be included in the budget. The Financial Services and the Treasury Bureau (FSTB) would then be invited to review the proposed budget before it was submitted to FS for approval. CFO&SD/SFC pointed out that about 40% of the increase in estimated recurrent expenditure in 2012-13 was due to the increase in rental payment as a result of the expiration of existing leases that were first signed during the SARS period in 2003. Another 40% increase in the estimated expenditure was for salary adjustment of existing staff and for recruitment of additional staff to meet the increased workload, whereas the remaining 20% increase was to cover the additional office expenses.

16. Given the large reserves of SFC, Ir Dr Raymond HO remarked that SFC should step up its efforts in investor education and publicity. Ir Dr HO suggested that SFC should provide free investor education courses to the public on different investment-related subjects, and to facilitate the public's attendance, the courses should be held in various districts.

17. DS(FS)1 responded that a cross-sectoral investor education body would be established as a wholly-owned subsidiary of SFC to provide comprehensive investor education programmes to enhance the financial literacy of the public.

18. Mr KAM Nai-wai remarked that SFC's refusal to reduce the levy level was unacceptable, given its huge reserves. He opined that SFC should consult this Panel if it planned to purchase its own offices. He requested that the Legal Adviser to the Panel should give advice on the following:

(a) whether SFC had contravened section 396 of SFO in not consulting FS on the reduction of transaction levies, given that its reserves were and would be more than twice its annual expenditure;

(b) whether there were any restrictions under the SFO on the way the reserves were spent.

(*Post-meeting note*: The relevant paper prepared by the Legal Service Division of the Legislative Council Secretariat was issued to members vide LC Paper CB(1)1463/11-12 on 30 March 2012.)

Approval of financial products

19. The Deputy Chairman said that there were complaints that SFC had taken a long time in approving the issue of new financial products. He enquired whether additional manpower would be provided for processing applications for issue of new financial products.

20. CEO/SFC responded that 12 additional staff would be provided to the Policy, China & Investment Products Division to meet the regulatory challenges and increase in workload arising from increasing number of Renminbi products, product complexity and Mainland-related work. CEO/SFC pointed out that international financial regulatory bodies such as the International Organization of Securities Commissions were reviewing the arrangements relating to the approval of the issue of new financial products. SFC would ensure that Hong Kong would go along with international practices in approving the issue of new financial products.

V Briefing on the work of Hong Kong Monetary Authority

(LC Paper No. CB(1)1147/11-12(03) — Paper provided by the Hong Kong Monetary Authority)

(The Chairman took over the chair of the meeting from the Deputy Chairman at this juncture.)

Presentation

21. At the invitation of the Chairman, the Chief Executive, Hong Kong Monetary Authority (CE/HKMA), the Deputy Chief Executive (Development)/HKMA (DCE(D)/HKMA), the Deputy Chief Executive (Banking)/HKMA (DCE(B)/HKMA) and the Deputy Chief Executive (Monetary)/HKMA (DCE(M)/HKMA) gave a Powerpoint presentation on the work of HKMA, covering an assessment of risk to Hong Kong's financial stability, banking supervision, Hong Kong as an offshore Renminbi centre,

investment of the Exchange Fund in 2011 and the Hong Kong Mortgage Corporation (HKMC).

Discussion

European sovereign debt

22. Mr WONG Kwok-hing remarked that the Chief Executive of the HKSAR had stated in an international forum that he was very worried about the sovereign debt crisis in Europe, and hoped that the crisis, if any, would break out within his term of office so that he could handle it as he had the experience in handling such crises. Mr WONG enquired what measures would be taken by HKMA to meet the challenges of any such crises.

23. CE/HKMA responded that banking stability was underpinned by prudent credit risk management and liquidity management of Authorized Institutions (AIs), which the HKMA had been closely monitoring. He referred to the global financial crisis in 2008 and the subsequent credit crunch, and said that a region's ability to combat financial instability depended heavily on the availability of liquidity in the banking system amongst other things As Hong Kong had sound and robust financial and banking systems, the AIs in Hong Kong were able to tide over the crisis. He said that it would be more important to ensure that the banking system of Hong Kong was prepared to withstand financial shocks than to forecast the timing of occurrence of such shocks. With the various counter-cyclical macro-prudential supervisory measures implemented by the HKMA since 2009, he was confident that the banking system of Hong Kong remained robust and resilient. HKMA would continue to take every necessary step to ensure that the AIs exercised prudent risk management to overcome challenges of any possible financial shocks.

Exchange fund

24. Noting that the fixed rate of fee payment to the fiscal reserves was 6% in 2011 and 6.3% in 2010, Ir Dr Raymond HO enquired whether consideration would be given to increasing the amount of payment from the investment return of the Exchange Fund to the fiscal reserves.

25. CE/HKMA responded that the rate of payment to the fiscal reserves was set as the average investment return of the Exchange Fund's Investment Portfolio for the six preceding years or the average annual yield of three-year Exchange Fund Notes for the previous year, whichever the higher, and subject to a minimum of zero percent. The arrangement sought to maintain a more stable payment stream to the fiscal reserves. CE/HKMA pointed out that section 8 of the Exchange Fund Ordinance (Cap. 66) provided that subject to

the relevant statutory requirements, the FS had the authority to transfer funds from the Exchange Fund to the general revenue or other funds of the Government.

26. While welcoming the diversification of the investment of the Exchange Fund, Ir Dr Raymond HO enquired whether HKMA would consider using part of the Exchange Fund to invest in technological research and development projects of tertiary education and other related institutions.

27. CE/HKMA said that the diversification of the investment of the Exchange Fund was made on a global basis. Currently, the Investment Portfolio included investments in private equity funds but not any technological development projects undertaken by local tertiary education and other related institutions.

28. Mrs Regina IP declared interest that she held some US securities but in the past 20 years, she had not possessed any securities listed in Hong Kong. Mrs IP opined that the investment return of the Exchange Fund was far from satisfactory, especially in the investment in securities. At the request of Mrs Regina IP, CE/HKMA agreed to provide information on the rates of return (before and after discounting the inflation factor) of the investment of the Exchange Fund in the past four years.

(*Post-meeting note*: HKMA's response was issued to members vide LC Paper No. CB(1)1391/11-12 on 23 March 2012.)

29. Given the statutory goal of the Exchange Fund to support Hong Kong's monetary and financial stability, and the substantial proportion of the Fund's investment in United States (US) assets, Mrs Regina IP doubted whether HKMA could effectively diversify the Investment Portfolio of the Exchange Fund. Mrs IP enquired why HKMA did not consider, similar to the practice of some other jurisdictions, using part of the Exchange Fund to set up a separate investment fund, e.g. a City Wealth Fund, so that a more flexible investment strategy could be adopted, including direct investment in individual projects.

30. CE/HKMA responded that ' in order to diversify the investment of the Exchange Fund, part of the Exchange Fund had been invested into private equity funds, real estate and emerging markets equities and bonds. On the establishment of a separate investment fund, CE/HKMA said that the HKMA had, subsequent to the request made by some Members at the last briefing, brought the proposal of setting up an investment fund to the FS for consideration. CE/HKMA said that the diversification made under the Exchange Fund had effectively achieved part of the purpose of establishing such a separate investment fund, and that FS had maintained the view that it

was not necessary to set up an investment fund separate from the Exchange Fund. In response to Mrs Regina IP's question on diversification of investments, DCE(M)/HKMA said that the long-term benchmark of the Exchange Fund was that 81% of the Fund's assets should be invested in US dollar and Hong Kong dollar denominated assets, and that 75% should be invested in fixed income securities. As regards diversification of investments, he said that the portfolio was not subject to such benchmark. The investments under the diversification programme were separately allocated and were not subject to this benchmark.

31. Mr James TO enquired about the amount of investment in private equity funds and real estate projects. Mr TO further enquired whether the investments of the private equity funds and real estate projects could be given more transparency and disclosed to the public. Mr TO requested that consideration be given to disclosing, on an annual basis, details of the investments under the diversification arrangement. Mrs Regina IP echoed Mr TO's view. She pointed out that even the US Federal Reserve disclosed its deliberations on the fixing of the interest rates and a large pension fund in California also made public its investment portfolios.

32. DCE(M)/HKMA responded that the amounts of investments in private equity funds and real estate projects were HK$14.7 billion in 2010 and HK$31.1 billion in 2011. CE/HKMA said that it would not be appropriate to disclose details of the investments under the Exchange Fund because of market sensitivity. An investment operation of the Exchange Fund could be misinterpreted as HKSAR Government's assessment of the performance of individual sector or economy, while they might be, indeed, actions merely to rebalance the portfolio or to cash out for meeting certain obligations of the Exchange Fund. That said, CE/HKMA noted the request for enhanced disclosure.

Risk to Hong Kong's financial stability

33. Noting that the European Central Bank had introduced two rounds of three-year Longer-Term Refinancing Operations (LTRO) on 22 December 2011 and 29 February 2012 respectively to provide 489 billion euros and 529.5 billion euros of liquidity to the banks, the Deputy Chairman expressed concern about the impact of the exit arrangement of the LTRO on Hong Kong's financial stability three years later.

34. CE/HKMA responded that the LTRO aimed to relieve the imminent liquidity crunch in some European countries. He considered that subject to the recovery of European markets in the coming few years, the gradual exit of LTRO funds should not give rise to financial instability.

35. In response to the Deputy Chairman's enquiry as to whether HKMA had specified a loan-to-deposit ratio (LDR) for banks, DCE(B)/HKMA responded that the HKMA had not set any rigid benchmark on LDR for banks due to practical constraints. For example, the operation of foreign bank branches might be financed by funds from their head offices outside Hong Kong and this usually translated into a high LDR. It would not be meaningful to set rigid quantitative restrictions on LDR in light of varying business and financing models. That said, the HKMA had been keeping a close watch over the LDR of banks as part of its supervisory work, and would take necessary prudential measures as appropriate.

Regulation of banks

36. The Deputy Chairman expressed concern that if Hong Kong implemented the Basel III requirements faster than other jurisdictions, it might hamper the competiveness of the banking sector and customers might turn to other places such as Singapore for banking services. The Deputy Chairman enquired whether HKMA had made an assessment of the progress of implementation of the Basel III requirements in Hong Kong vis-à-vis other jurisdictions.

37. DCE(B)/HKMA responded that a subcommittee under the Basel Committee on Banking Supervision (Basel Committee) had been conducting peer reviews to assess the implementation of the Basel III requirements in Europe, the US and Japan with a view to ensuring that major financial markets would follow the implementation timetable set by the Basel Committee. He said that Hong Kong would seek to comply with Basel Committee's implementation time frame. He said that while the Singapore authorities had yet to announce the full implementation plan, it had stated publicly a few months ago that it would impose capital requirements on banks which would be more stringent than those under Basel III.

Lehman Brothers-related investment products

38. Mr CHIM Pui-chung opined that both the European sovereign debt problem and the "quantitative easing" policy of the US government were deception cases as investors outside the US and the European countries had to shoulder the major share of the adverse impact of the global financial crisis. The former CE/HKMA had also wrongly predicted that there would be a second and/or third wave of the global financial crisis which had never materialized. Given that there were still some 2,000 investors who had not received any compensation from the distributing banks of Lehman Brothers-related minibonds and structured financial products, Mr CHIM was

of the view that the HKMA should liaise with the banks in order to strive for a settlement with the investors concerned, with a view to upholding the confidence of investors and Hong Kong's status as an international financial centre.

39. CE/HKMA responded that with efforts from the HKMA and relevant parties, a significant proportion of the Lehman-related complaint cases received had been resolved through settlement. DCE(B)/HKMA supplemented that the HKMA published on a weekly basis progress of handling of the Lehman-related complaints. Out of some 21,000 complaints received, more than 18,900 cases, i.e. about 87%, had reached settlement with the bank concerned. About 10% of the complaints received were not substantiated and had been closed. About 500 complaints (about 2%) were outstanding, most of which were received only in 2011. The HKMA would continue its work in this respect in collaboration with relevant authorities.

40. Mr KAM Nai-wai enquired whether HKMA would investigate the cases again if the complainants of those unsubstantiated cases requested HKMA to do so. Mrs Regina IP shared Mr KAM's concern.

41. CE/HKMA responded that investigation of Lehman-related complaints was undertaken based on available evidence. The HKMA was prepared to review any unsubstantiated and closed case if the complainant(s) concerned could produce new evidence to support the complaint.

Hong Kong Mortgage Corporation

42. Mrs Regina IP remarked that since its incorporation in 1997, HKMC had progressively diversified its business portfolio offering a variety of new financial services which had gone beyond the original business scope stated in its Memorandum and Articles of Association (M&A), such as the SME Financing Guarantee Scheme and the Reverse Mortgage Scheme. The enactment of the Competition Bill might also impact on HKMC's operation. Mrs IP asked whether the Government would review the title and functions of HKMC and present a paper to the Panel for discussion.

43. CE/HKMA pointed out that the scope of HKMC's business had evolved over time to meet Hong Kong's changing needs. Some of the new services such as the reverse mortgage programme were closely related to the Corporation's core business. Others were either in early stage of development such as the SME Financing Guarantee Scheme or in the form of a pilot scheme such as the Microfinance Pilot Scheme. CE/HKMA agreed to consider whether there was a need to modify the name of the HKMC in due course.

44. Mr KAM Nai-wai enquired whether the insurance premiums for the Reverse Mortgage Scheme could be reduced so as to enhance the attractiveness of the Scheme. CE/HKMA responded that the insurance coverage provided by the HKMC served to insure the banks concerned against fluctuations in property prices and interest rates. The insurance premiums received by the HKMC would provide the necessary funds to absorb such risks should they materialise.

Declaration of interest

45. Mr KAM Nai-wai remarked that the recent incident involving the Chief Executive of the HKSAR accepting hospitality treatment and advantages had given rise to wide public concern. Mr KAM enquired whether HKMA had laid down any guidelines on officers accepting hospitality treatment/advantages and declaration of interest. Mr KAM enquired to whom the CE/HKMA would make a declaration of interest and/or seek approval for acceptance of hospitality treatment/advantages, and whether information of such declarations/acceptance was accessible to the public. Mr KAM further enquired whether CE/HKMA had accepted any hospitality treatment on private yachts or private planes.

46. CE/HKMA responded that all HKMA staff were subject to the Prevention of Bribery Ordinance. They were also bound by the HKMA's Code of Conduct, which included restrictions and reporting requirements concerning investment holdings/transactions as well as receipts and disposals of gifts. The requirements were largely similar to those applicable to civil servants. CE/HKMA said that he had complied with the relevant rules. CE/HKMA said that he had never travelled on private jets or private yachts to places outside Hong Kong.

47. At the request of Mr KAM Nai-wai, CE/KMA agreed to provide information on declaration of interest requirements of the HKMA after the meeting.

(*Post-meeting note*: HKMA's response was issued to members vide LC Paper No. CB(1)1391/11-12 on 23 March 2012.)

VI Proposal to abolish capital duty levied on Hong Kong companies

(LC Paper No. CB(1)1147/11-12(05) — Paper provided by the Administration)

Briefing by the Administration

48. The Deputy Secretary for Financial Services and the Treasury (Financial Services) (DS(FS)) briefed members on the proposal in the 2012-13 Budget to abolish capital duty currently levied on Hong Kong companies that had a share capital under the Companies Ordinance (Cap. 32) (CO), by highlighting the salient points in the paper.

Discussion

49. Mr KAM Nai-wai said that while he supported the proposal to abolish capital duty levied on Hong Kong companies, he was concerned that small and medium sized enterprises (SMEs) were facing a difficult business environment and whether additional measures would be introduced to support SMEs, such as waiving the business registration fees. DS(FS) responded that FS had included in the 2012-13 Budget a number of measures to support SMEs, including waiving the business registration fees for 2012-13. The payment of business registration fee was however outside the purview of the CO.

50. The Chairman remarked that members generally supported the proposal to abolish capital duty levied on Hong Kong companies that had a share capital under the CO.

VII Review of market entry criteria - proposed amendments to the Seventh Schedule to the Banking Ordinance

(LC Paper No. CB(1)1147/11-12(06) — Paper provided by the Administration

LC Paper No. CB(1)1146/11-12 — Background brief on market entry criteria for the banking industry prepared by the Legislative Council Secretariat)

Briefing by the Hong Kong Monetary Authority

51. The Executive Director (Banking Conduct), Hong Kong Monetary Authority (ED(BC)/HKMA) briefed members on the results of the review of the market entry criteria specified in the Seventh Schedule to the Banking Ordinance (Cap. 155) (BO) and the proposed amendments to the Seventh Schedule.

Discussion

52. Noting that the US$16 billion asset size criterion for foreign bank applicants had been replaced in 2002 by the size criteria for local bank applicants, viz. HK$3 billion for deposits and HK$4 billion for assets, Mr KAM Nai-wai was concerned that the proposed removal of the size criteria might lead to higher risk of banks becoming insolvent. Mr KAM enquired whether other additional measures would be introduced to protect the interest of bank customers. Mr KAM further enquired whether the removal of the size criteria was in line with the relevant international practice.

53. ED(BC)/HKMA responded that the regulatory regime for banks in Hong Kong was sound and robust, and was in line with the Basel requirements. The introduction of the new Basel III requirements would further enhance the oversight of banks. ED(BC)/HKMA stressed that there were many requirements under the BO specifying the criteria for banks entering Hong Kong market, including the fitness and propriety of persons acting as directors and chief executives of the banks and the capital adequacy requirements. The Deposit Protection Scheme also provided protection to Hong Kong depositors. The size criteria and the "three-year requirement" (i.e. that overseas banks which wished to establish a locally incorporated banking subsidiary in Hong Kong should have operated as branches, or as deposit-taking companies or restricted licence banks for three continuous years before applying for establishing a locally incorporated subsidiary with a full banking licence), which had been introduced in Hong Kong in the past to prevent the proliferation of small banks, were not included in the market entry criteria in other international financial centres, nor in the Basel standards. Since many well-run financial institutions and banks did not take deposits as a part of their normal business, the removal of the size criteria would enable these financial institutions to enter the Hong Kong Market. As the proliferation of small banks was no longer a major concern in Hong Kong, the removal of the three-year requirement was also proposed. The lifting of the size criteria and the three-year requirement would further enhance the competitiveness of the banking sector in Hong Kong.

54. Mr KAM Nai-wai enquired about the estimated number of new banks or a subsidiary of a bank incorporated outside Hong Kong which would enter the Hong Kong market as a result of the removal of the size criteria and the three-year requirement. ED(BC)/HKMA responded that it was difficult for the HKMA to estimate the additional number of banks which would operate in Hong Kong after the relaxation of the market entry requirements for banks.

55. Mrs Regina IP enquired whether the Administration had assessed the number of high level jobs which might be created as a result of the relaxation of the market entry criteria for banks. She also enquired whether, as a frontline regulator for the banking sector, HKMA would recommend to the Government the establishment of a standing committee to review the taxation policies with a view to fostering the development of the banking sector in Hong Kong.

56. ED(BC)/HKMA remarked that previously some applicants were not able to apply for a banking licence because they could not meet the size criteria and/or the three-year requirement. The relaxation of the market entry criteria would facilitate overseas incorporated banks to enter the Hong Kong market and hence create more job opportunities, although the exact number of the resultant job vacancies could not be ascertained, as the business of banks was subject to the influence of the economic environment as well.

57. Regarding whether a tax policy review committee should be established, the Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)5 (PAS(FS)5) said that FSTB had, in liaison with the regulatory bodies and relevant trades and industries, regularly reviewed the taxation policies, with a view to fostering the competiveness of Hong Kong as an international financial centre. For example, in 2011 the Government had introduced measures to enhance the qualifying debt instrument scheme. PAS(FS)5 remarked that she would relay Mrs IP's suggestion of setting up a tax policy review committee to the relevant branch of FSTB.

58. Mr CHIM Pui-chung enquired whether other jurisdictions adopted similar relaxation of the market entry criteria for banks. Mr CHIM was concerned that if many foreign banks entered the Hong Kong market as a result of the relaxation of the market entry requirements, they would have a stronger say than local banks regarding the seat in the Legislative Council for the functional constituency of the banking sector. The small local banks might also be forced to close their business if and when a large number of foreign banks entered the Hong Kong market.

59. ED(BC)/HKMA responded that all major economies in the world, including Hong Kong, adopted the Basel standard for the market entry criteria for banks. Hong Kong had a sound and robust system in the regulation of banks, which met the relevant international standards. The effects of the relaxation of the market entry requirements for foreign banks had yet to be seen, and local banks might also benefit as the large foreign banks might seek to establish their presence in Hong Kong through joint ventures with local banks. The future development of the banking sector would be subject to market forces. The Head (Payment Systems Oversight and Licensing)/HKMA added that the size criteria and the three-year requirement were not included in

the Basel standard nor adopted by other major economies. The removal of the criteria would not increase the risk of banks operating in Hong Kong, because the current regulation regime to ensure the stability of the banking sector was mainly based on other criteria such as the capital adequacy ratio of banks. HKMA would continue to closely monitor the banks through the supervisory process. PAS(FS)5 said that Members' concern regarding the representation arrangement for the banking sector at the Legislative Council as a result of the relaxation of the market entry criteria would be relayed to the relevant Government bureau for consideration.

60. At the request of the Chairman and Mr KAM Nai-wai, ED(BC)/HKMA agreed to provide the following information:

(a) what existing measures were in place and/or what additional measures would be introduced to regulate the incorporation of banks in Hong Kong in order to ensure the stability of the banking sector, if the size criteria and the three-year requirement were to be removed;

(b) a comparison of the market entry criteria for the banking industry in Hong Kong and those adopted in other international financial centres including the United Kingdom, the US and Singapore; and

(c) the relevant legislative amendments.

(*Post-meeting note*: The information provided by Administration was circulated to Members vide LC Paper No. CB(1)1356/11-12(01) on 20 March 2012.)

VIII Any other business

61. There being no other business, the meeting ended at 11:48 am.

Council Business Division 1
Legislative Council Secretariat
15 May 2012