

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1789/12-13

(These minutes have been seen  
by the Administration)

Ref : CB1/PL/FA/1

**Panel on Financial Affairs**

**Minutes of meeting**

**held on Friday, 3 May 2013 at 9:00 am**

**in Conference Room 3 of the Legislative Council Complex**

**Members present :** Hon Starry LEE Wai-king, JP (Chairman)  
Hon CHAN Kin-por, BBS, JP (Deputy Chairman)  
Hon Albert HO Chun-yan  
Hon James TO Kun-sun  
Hon CHAN Kam-lam, SBS, 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, SBS, JP  
Hon NG Leung-sing, SBS, JP  
Hon Kenneth LEUNG  
Hon Dennis KWOK  
Hon Christopher CHEUNG Wah-fung, JP  
Hon SIN Chung-kai, SBS, JP

**Members attending :** Hon WONG Kwok-hing, MH  
Hon WU Chi-wai, MH  
Hon CHAN Yuen-han, SBS, JP  
Hon TANG Ka-piu

**Members absent :** Hon Ronny TONG Ka-wah, SC  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon James TIEN Pei-chun, GBS, JP

**Public officers attending** : Agenda Item IV

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

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

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

Mr Francis CHU, JP  
Acting Deputy Chief Executive (Monetary)  
Hong Kong Monetary Authority

Mr Darryl CHAN  
Executive Director  
Hong Kong Monetary Authority

Agenda Item V

Ms Esther LEUNG, JP  
Deputy Secretary for Financial Services and the  
Treasury (Treasury) 1

Ms Shirley LAU, JP  
Principal Assistant Secretary for Financial Services  
and the Treasury (Treasury)(H)

Agenda Items VI to VIII

Mr Maurice LOO  
Principal Assistant Secretary for Financial Services  
and the Treasury (Financial Services) 4

Agenda Items VI and VII

Ms Teresa WONG  
Official Receiver

Agenda Item VI

Mr Patrick HO, JP  
Deputy Secretary for Financial Services and the  
Treasury (Financial Services) 3

Mr Alan FONG  
Assistant Official Receiver (Legal Services)  
Official Receiver's Office

Agenda Item VII

Mr T C HO  
Chief Treasury Accountant  
(Financial Services)  
Official Receiver's Office

Agenda Item VIII

Mr John POON  
Chairman  
Financial Reporting Council

Mr Mark DICKENS  
Chief Executive Officer  
Financial Reporting Council

Mr CHAN Tak-shing  
Senior Director, Investigation and Compliance  
Financial Reporting Council

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

**Staff in attendance :** Ms Angel SHEK  
Senior Council Secretary (1)4

Ms Sharon CHAN  
Legislative Assistant (1)4

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

(LC Paper No. CB(1)930/12-13 — Minutes of the meeting on 4 February 2013)

The minutes of the meeting held on 4 February 2013 were confirmed.

## **II Information papers issued since the last meeting**

(LC Paper No. CB(1)938/12-13(01) — Hong Kong Monetary Authority Annual Report 2012

LC Paper No. CB(1)947/12-13(01) — Administration's paper on first quarterly report of 2013 on Employees Compensation Insurance — Reinsurance Coverage for Terrorism

LC Paper No. CB(1)962/12-13(01) — Administration's written response dated 29 April 2013 to letter from Hon KWOK Wai-keung on regulatory issues relating to travel insurance arising from the incident of hot air balloon crash in Egypt)

2. Members noted the above information papers issued since the last regular meeting held on 8 April 2013.

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

(LC Paper No. CB(1)929/12-13(01) — List of outstanding items for discussion

LC Paper No. CB(1)929/12-13(02) — List of follow-up actions)

3. Members agreed to discuss the following items proposed by the Administration at the next regular meeting scheduled for 3 June 2013:

- (a) Briefing by the Financial Secretary on Hong Kong's latest overall economic situation;

- (b) Sponsor regulation and other investor protection initiatives; and
- (c) Construction of West Kowloon Government Offices.

4. Members further agreed that the regular meeting on 3 June 2013 should commence at 9:30 am in order to allow sufficient time to discuss the above three items.

*(Post-meeting note: At the request of the Administration and with the concurrence of the Chairman, the item on "Construction of West Kowloon Government Offices" was deferred to the regular meeting in July 2013. Members were informed of the matter vide LC Paper No. CB(1)1128/12-13 issued on 27 May 2013.)*

#### **IV Briefing on the work of the Hong Kong Monetary Authority**

(LC Paper No. CB(1)929/12-13(03) — Paper provided by the Hong Kong Monetary Authority)

##### Briefing by the Administration

5. 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 Acting Deputy Chief Executive (Monetary)/HKMA ("Atg DCE(M)/HKMA") gave a powerpoint presentation to update members on the global and Hong Kong financial and economic conditions, risks assessment of the property and mortgage markets, banking supervision, financial infrastructure, development of Hong Kong as the offshore Renminbi ("RMB") Centre and performance of the Exchange Fund ("EF").

*(Post-meeting note: The notes of the powerpoint presentation (LC Paper No. CB(1)1044/12-13(01)) were issued to members vide Lotus Notes e-mail on 14 May 2013.)*

## Discussion

### *Government bonds*

6. Mr SIN Chung-kai enquired about the net income of the Government Bond Programme ("GBP") since 2009 after deducting payments of interests and other expenses for the Programme. CE/HKMA and DCE(D)/HKMA said that the Bond Fund was placed with EF for investment and attracted investment income on the basis of the "fixed rate" sharing arrangement applicable to fiscal reserves, which was about 5-6% in the past few years. The interest earnings on the Bond Fund were able to cover the interest payments and other expenses in relation to GBP so far, and achieved an overall investment gain. In response to the follow-up enquiry from Mr SIN on the detailed figures, CE/HKMA undertook to provide further information on the net investment income of the GBP since its establishment after the meeting.

*(Post-meeting note: HKMA's written response was circulated to members vide LC Paper No. CB(1)1211/12-13(01) on 4 June 2013.)*

7. Mr TANG Ka-piu considered that government bonds of long tenure were a suitable investment tool for retirement funds but he noted that few pension funds offered government bonds for investment by the Mandatory Provident Fund ("MPF") schemes. He enquired whether HKMA would consider issuing government bonds of longer tenure, say, 20 to 30 years, to specifically cater for MPF investment. He believed that this would achieve a win-win situation as MPF scheme members would be provided with more investment choices and the Government could use the bond proceeds for investment purpose. DCE(D)/HKMA said that HKMA adopted a progressive approach in taking forward GBP. While the longest tenure of the institutional government bonds was 10 years at present, it was observed that bonds of a longer tenure would appeal to insurance and pension fund companies. HKMA would consider issuing government bonds of longer tenure when appropriate, having regard to the development of GBP.

### *Exchange Fund*

8. Mr SIN Chung-kai and the Chairman noted from page 25 of the powerpoint that the investment income of EF from foreign exchange recorded losses in three consecutive years since 2010 (i.e. \$3.1 billion in 2010, \$9.1 billion in 2011 and \$1.4 billion in 2012). They enquired whether HKMA had reviewed the relevant investment strategy with a view to enhancing returns. Mr Albert HO also enquired about EF's investment strategy for foreign exchange.

9. CE/HKMA said that assets in EF were held in different currencies. The investment of EF involved the allocation of assets in equities, bonds and other asset classes. There was a need to provide full backing to the entire monetary base through holding US dollar-denominated assets with high liquidity in the Backing Portfolio as required under the Currency Board arrangements. The gain or loss position in the investment income from foreign exchange was the result of currency conversion of EF's assets held in currencies other than US dollar, and it should not be taken that HKMA was actively involved in speculative activities on foreign currencies. Given that Hong Kong dollar is linked to the US dollar under the Linked Exchange Rate System, the investment return from foreign exchange as presented in Hong Kong dollar would fluctuate having regard to cyclical movements of the US dollar against other currencies. For instance while EF's investment in Japanese equities had achieved gains in the recent period as the Nikkei 225 Index rallied, the depreciation of yen had resulted in losses in EF's assets held in yen. Having regard to volatility in the prevailing foreign exchange market, it would require careful consideration in making tactical asset allocation of EF's investment in response to currency trends. CE/HKMA further pointed out that implementation of quantitative easing measures might not necessarily lead to depreciation of a currency. For instance, while the US dollar had depreciated under the quantitative easing measures, it remained relatively strong against other currencies of economies with weaker economic conditions. The Chairman urged HKMA to closely monitor EF's investment return from foreign exchange for further review in future.

10. The Chairman observed that while EF's investment return from Hong Kong equities and other equities moved in tandem from 2010 to 2012, i.e. both recorded gains in 2010 and 2012 and sustained losses in 2011; the investment in Hong Kong equities suffered a loss of \$1.4 billion whilst the investment in other equities recorded a gain in the first quarter of 2013. She enquired whether the situation was resulted from poor performance of Hong Kong equities vis-à-vis other equities or a change in EF's investment strategy. CE/HKMA said that the performance of the Hong Kong stock market would be affected by economic conditions and investors' perception of the prospect of the equities in question. If investors perceived a greater growth potential in other equities markets, such as the US, Japan and Europe, they might switch their investment from the local equities market to other equities markets. It was not necessary for the Hong Kong equities market to resemble other markets.

11. Referring to page 26 of the powerpoint, the Chairman sought details on the components of EF's Strategic Portfolio and calculation for the item "valuation change of the Strategic Portfolio less valuation change of investment held by EF's investment holding subsidiaries" which recorded a loss of \$0.6 billion for the first quarter of 2013. Atg DCE(M)/HKMA advised that the

Strategic Portfolio included investment in the shares of the Hong Kong Exchange and Clearing Limited ("HKEx") that were acquired by the Government for the account of EF. He explained that the performance of the Strategic Portfolio should not be included in assessing EF's investment performance, whereas the investment income from EF's investment holding subsidiaries should be included. The adjustment item, "valuation change of Strategic Portfolio less valuation change of investment held by EF's investment holding subsidiaries", sought to add back the change in value of the Strategic Portfolio to, and deduct the change in value of the investment holding subsidiaries from, the reported investment income, in order to reconcile with the accounting profit of EF at the fund level (as opposed to group level). The amount of \$0.6 billion included an insignificant change in the value of the Strategic Portfolio in the first quarter of 2013 and a valuation change in EF's investment holding subsidiaries of \$0.6 billion, which corresponded to the amount of investment income reported under "Other investments" on page 25 of the powerpoint.

12. In reply to Mr SIN Chung-kai, Atg DCE(M)/HKMA said that the fees payable for the fiscal reserves placed with EF was calculated based on the average annual return of the Investment Portfolio of EF over the past six years, which was 5% for 2013.

*Private consumption and credit risks*

13. Noting HKMA's comments that housing wealth effect might have encouraged private consumption in the past few years, Mr Jeffrey LAM expressed concern about possible deterioration in the spending power of the general public with the cooling down of the overheated property market in the recent period, thus adversely affecting the local retail and catering businesses. CE/HKMA said that private consumption was influenced by changes in the economic cycles. When the property market boomed, people generally tended to spend more. However, if the asset bubble burst, as happened in the 1997 financial turmoil, families would likely reduce consumption. The magnitude of impact should the economy go down would depend on the actual circumstances.

14. Mr TANG Ka-piu enquired whether HKMA's assessment that private consumption had grown at a faster rate than that of the overall economy in the recent years had taken into account the inflation factor. In his observations, the inflationary pressure on the grass-root families had increased and their spending power had deteriorated. Notwithstanding the positive impact of the statutory minimum wage on the income of low-income individuals, most of their earnings were spent on basic necessities. Sharing Mr TANG's observation and views, the Chairman queried whether the increase in private consumption was



due to inflation and the escalating prices of raw materials and commodities, instead of housing wealth effect.

15. CE/HKMA said that the indices of private consumption and Gross Domestic Product ("GDP") shown on page 12 of the powerpoint were measured in real terms and had discounted inflation. The graph showed that the rate of growth in private consumption had indeed surpassed that of the overall economy since 2005. Under HKMA's assessment, housing wealth effect was the main factor accounting for the fast growth in private consumption in the recent years. CE/HKMA agreed to provide information on related analyses after the meeting.

*(Post-meeting note: HKMA's written response was circulated to members vide LC Paper No. CB(1)1211/12-13(01) on 4 June 2013.)*

16. Mr TANG Ka-piu expressed concern about the negative impact on households if the economic bubble burst as the overheated economy continued. While increasing the interest rate would certainly help chill exuberance in the market, it could push the household debt burden upward to above the current 61%. He enquired whether the Administration would implement measures to enable a "soft landing" of the economy to minimize the shock. The Chairman expressed concern that the surge in private consumption and the persistent decline in the current account balance towards a negative balance were warning signs preceding an economic bubble burst.

17. CE/HKMA said that economic cycles hinged on a number of factors and it was difficult to predict the trend of the current account balance and movement in other economic indicators. As observed, the exceptionally low interest rate environment, which had persisted for a long period, had fuelled the property market and given impetus to a faster growth of private consumption than the overall economy. A reversal of the low interest rate environment would likely affect the repayment ability of loan borrowers and their consumption power, which would in turn affect the economy, in particular the retail and catering sectors. As regards the measures to achieve a "soft landing" of the economy, CE/HKMA pointed out that since October 2009, HKMA had implemented six rounds of counter-cyclical macroprudential measures on property mortgage loans to enhance resilience of banks to potential credit risks in a property market downturn and address the increasing risk of a property bubble. Mortgage borrowers were reminded to be careful not to overstretch themselves and borrow excessively. DCE(B)/HKMA added that, as personal loans accounted for only some 5% of banks' lending business and the level remained stable in recent years, the associated credit risks on banks and the economy at large were relatively low vis-à-vis that of mortgage loans. To help enhance borrowers' ability to withstand interest rate risks, banks were required

to take into account the aggregate loans of a borrower including mortgage, credit card and other personal loans, as well as the credit history in assessing the credit worthiness of the borrower and his debt servicing ability. DCE(B)/HKMA supplemented that measures had been put in place to minimize risks on borrowers with potentially weaker repayment ability. For instance, the credit limit of credit cards issued to students was capped at \$10,000.

### *Renminbi business*

18. Given the narrowing of the interest rate gap between Hong Kong and the Mainland, and in view of shadow banking activities in the Mainland, Mr NG Leung-sing enquired about the measures to retain the offshore RMB funds and deposits in Hong Kong. CE/HKMA said that shadow banking activities in the Mainland, which mainly extended credits at high interest rate through non-regulated channels to enterprises having difficulties in obtaining loans, had little direct effect on the retention and growth of offshore RMB funds and deposits in Hong Kong. As observed, the Mainland authority had been taking measures to rein in shadow banking activities in addressing the associated risks on financial stability. On the other hand, interest rate gaps between Hong Kong and the Mainland as well as investors' perception of RMB's future value were two key determinants of the growth of offshore RMB deposits in Hong Kong.

### *Impact of the global financial and economic environment*

19. Mr Jeffrey LAM enquired about the impact of the depreciating yen on the Hong Kong economy. CE/HKMA said that the historical exchange rate of about 70 yen per US dollar was in fact exceptionally strong and not commensurate with the prevailing Japanese economy. It was observed that the yen had depreciated against the US dollar in the recent period to an exchange rate of about 90-100 yen per US dollar. While the devalued yen would help bring down the prices of Japan's exports whereas the cost of imports to Japan, such as energy, would increase, the depreciation of yen had hitherto no significant impact on the Hong Kong economy. Moreover, large funds inflow into Hong Kong had not been observed.

20. Mr NG Leung-sing said that HKMA should monitor whether the depreciation of yen under Japan's quantitative and qualitative monetary easing ("QQE") measures would cause an outflow of local capital to the Japanese financial market. CE/HKMA said that the recent monetary policy of Japan and the devaluation of yen had impacted the Japanese equity markets. Since the launch of QQE in Japan, some market participants, including foreign investors and Japan's local residents, had shifted their investment in other assets to Japan's equities market. With the substantial increase in the Nikkei 225 Index

since November 2012, the relative performance of equities markets of Hong Kong, US and Europe had become less satisfactory in the first quarter of 2013.

21. Noting that Hong Kong's GDP growth for 2013 was forecast at 3.5% which was only half of the target of 7.5% of that for the Mainland, Mr Jeffrey LAM was concerned whether this had indicated deterioration in Hong Kong's competitiveness in its favourable business environment. CE/HKMA said that, Hong Kong's GDP had achieved an annual growth rate as high as 10% back in the 1960s to 1980s when the economy was undergoing rapid development. While the present growth rate of 3.5% in per capita GDP was still high for a developed economy, it could not be compared on equal terms with that of developing economies like the Mainland. That said, he considered it important for Hong Kong to maintain its competitiveness, particularly in certain key sectors such as the financial services, so that it would not lose out to its regional counterparts in economic development.

*Anti-money laundering*

22. Mr Albert HO said that he had received complaints from some members of the public about the freezing of their bank accounts due to investigation and enforcement actions taken in relation to suspected money laundering activities. In some cases, the funds were frozen so abruptly resulting in disruption in transactions or even closure of business of enterprises, and the banks in question had failed to offer any explanation to the aggrieved parties on the enforcement actions. Mr HO expressed concern that the investigation and enforcement actions in relation to suspected money laundering might affect the innocent parties, and jeopardize the status of Hong Kong as an international financial centre.

23. CE/HKMA responded that given that Hong Kong was an international financial centre, a large number of transactions with substantial total value took place each day through financial intermediaries in Hong Kong. The HKMA attached great importance to anti-money laundering work. Banking institutions were required to step up efforts to prevent, detect and report money laundering activities. Recently, HKMA organized high-level seminars to update the banking industry on compliance matters and current issues of anti-money laundering. DCE(B)/HKMA said that banks were required to assist the conduct of anti-money laundering investigation and enforcement actions, including freezing the deposits/funds held in their clients' accounts under instruction of the enforcement authorities. While banks were obliged to communicate with the affected clients, they could not disclose the details of the investigation having regard to confidentiality obligation.

24. At the request of Mr Albert HO, DCE(B)/HKMA agreed to provide information on the amount of deposits/funds held in bank accounts that were

frozen due to investigation and enforcement actions taken in relation to suspected money laundering activities in the past three years.

*(Post-meeting note: HKMA's written response was circulated to members vide LC Paper No. CB(1)1211/12-13(01) on 4 June 2013.)*

## **V Electricity charges subsidy**

(LC Paper No. CB(1)929/12-13(04) — Administration's paper on "Electricity Charges Subsidy"

LC Paper No. CB(1)929/12-13(05) — Background brief on electricity charges subsidy prepared by the Legislative Council Secretariat)

### Briefing by the Administration

25. At the invitation of the Chairman, the Deputy Secretary for Financial Services and the Treasury (Treasury) 1 ("DS(Tsy)1") briefed members on the proposal to set aside \$4,500 million to provide an additional subsidy of \$1,800 by 12 installments to each of the 2.5 million residential electricity accounts, i.e. \$150 will be credited to each residential account with CLP Power Hong Kong Ltd. or The Hongkong Electric Co., Ltd. in existence on the first day of each month for 12 consecutive months starting tentatively from 1 July 2013.

### Discussion

#### *Implementation timeframe for the proposed additional electricity charges subsidy*

26. Mr WONG Kwok-hing expressed concern that the ongoing filibuster in relation to the Appropriation Bill 2013 at the Council meetings might delay passage of the Bill, and thus postponing implementation of the one-off relief measures incorporated in the 2013-2014 Budget, including the proposed additional electricity charges subsidy. He urged Members concerned to discontinue the filibuster so as not to delay implementation of the Budget-related measures to benefit the general public. Mr WONG asked about the possible impact on households eligible for the additional electricity charges subsidy if the Bill could not be passed before mid May 2013, and the Administration's contingent measures to mitigate the impact.

27. DS(Tsy)1 said that the Administration's current plan was to seek funding approval from the Finance Committee ("FC") in June 2013 on the proposal on the electricity charges subsidy if the Appropriation Bill 2013 was passed by mid May 2013. This would give the electricity companies adequate time to make necessary preparation for implementing the proposal with effect from 1 July 2013, immediately following the end date of the 2012 scheme on 30 June 2013. Should the Bill be passed in the latter half of May 2013, the effective date of the proposed additional subsidy would be postponed by about one month, thereby giving rise to a time gap between the existing schemes (i.e. 2008, 2011 and 2012 schemes) and the proposed new scheme. Under the circumstance, eligible households with insufficient unused credit in the accounts would need to pay for the amount of billed electricity charges during the time gap. However, the proposed commitment of \$4,500 million for the additional subsidy of \$1,800 per eligible household would not be affected.

28. In response to Ms CHAN Yuen-han's enquiry, DS(Tsy)1 said that the new subsidy under the 2013 scheme and those subsidies credited under the previous schemes could be used to cover billed electricity charges up to 30 June 2016 or the close of account, whichever was earlier. This would enable the subsidy under the new scheme to be used to cover billed electricity charges for three years from the first credit. With the first launch of the electricity charges subsidy in 2008, the schemes for granting electricity charges subsidies would have benefitted eligible residential households continuously for about eight years by 2016.

*Target beneficiaries of electricity charges subsidy*

29. Mr TANG Ka-piu said that, while the electricity charges subsidy could help alleviate the financial burden on the general public, the measure which had been implemented since 2008 lacked novelty. He suggested that the Administration should explore new measures to provide electricity charges subsidy to low-income persons who were not eligible for the subsidy at present, such as those living in cubicles, cocklofts or bedspaces in private permanent housing sharing a common electricity meter with other households, and who did not receive Comprehensive Social Security Assistance or pay tax. Mr TANG also observed that households living in rented premises owned by companies could not benefit from the proposed subsidy either if the electricity accounts of such premises were non-residential.

30. Sharing the views and concerns expressed by Mr TANG Ka-piu, Ms CHAN Yuen-han pointed out that residents living in cubicles and

subdivided flats held grudges against the Administration as they were deprived of the electricity charges subsidy because they did not have an individual electricity account. She urged the Government to address this long-existed problem by proactively exploring how the measure could reach out to these residents in need. She also suggested that consideration should be given to granting households similar subsidies for offsetting gas tariff.

31. DS(Tsy)1 said that the Government decided to continue implementing the initiative to provide residential electricity charges subsidy since 2008 as this relief measure could operate on a simple, non-means tested mechanism and could benefit a large number of households in the community. Besides, unused credit in a month under the subsidy scheme was allowed to be carried forward to cover billed electricity charges under the same account. As the subsidy was granted on the basis of each residential electricity account and not individuals, there would be practical difficulty in assessing the eligibility of and providing electricity charges subsidies for households without individual electricity accounts. The Administration was mindful of the need to assist households living in cubicles and subdivided flats, and other measures, such as the one-off "Subsidy for Low-income Persons who are Inadequately Housed" under the Community Care Fund ("CCF"), were proposed to address their needs.

32. Ms CHAN Yuen-han noted that the number of beneficiaries receiving the "Subsidy for Low-income Persons who are Inadequately Housed" had reached as many as over 20,000 households by 30 April 2013. She suggested that the Administration should consider providing financial assistance under CCF to these persons specifically for subsidizing residential electricity consumption. Such subsidy could be granted based on the estimated electricity consumption of these households if they did not have individual electricity accounts. DS(Tsy)1 agreed to relay the suggestion to the Home Affairs Bureau so that this could be considered by the Community Care Fund Task Force .

#### *Reducing electricity consumption*

33. Noting that there was an unspent balance of about \$2,560 million in the commitment for electricity charges subsidy as at 31 March 2013, Mr TANG Ka-piu enquired if the Administration would deploy the balance for providing subsidy that was linked to electricity consumption with a view to encouraging reduction in electricity consumption. Ms CHAN Yuen-han suggested that the Government should consult environmental groups on the incentives to promote energy saving by residential households in order to address the concern about the electricity charges subsidy encouraging electricity consumption.

34. DS(Tsy)1 said that the Government supported measures to reduce electricity consumption. While the proposal of linking electricity charges subsidy to electricity consumption had been explored, the Administration considered the suggestion infeasible because electricity consumption varied with multiple factors such as household size and weather, many of which were unrelated to the environmental awareness of households. The suggestion also aroused concerns about possible complications and disputes arising from the selection of households for granting such subsidy.

### Conclusion

35. The Chairman concluded that, subject to passage of the Appropriation Bill 2013, members had no objection to the submission of the proposal to FC to provide the additional electricity charges subsidy to residential electricity accounts. The Chairman requested the Administration to take into account members' views and concerns raised at the meeting, in particular to step up efforts to explore measures to provide electricity charges subsidy to persons living in accommodations without individual residential electricity accounts.

## **VI Public consultation on improvement of corporate insolvency law**

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| (LC Paper No. CB(1)867/12-13(01) | — Public consultation document on "Improvement of Corporate Insolvency Law Legislative Proposals"                 |
| LC Paper No. CB(1)876/12-13(01)  | — Administration's paper on "Improvement of Corporate Insolvency Law"   |
| LC Paper No. CB(1)929/12-13(06)  | — Updated background brief on review of corporate insolvency law prepared by the Legislative Council Secretariat) |

### Briefing by the Administration

36. At the invitation of the Chairman, the Deputy Secretary for Financial Services and the Treasury (Financial Services)3 ("DS(FS)3") and the Official Receiver ("OR") briefed members on the background of the legislative proposals to improve Hong Kong's insolvency law, the formation and composition of the advisory group to provide advice to the Government on related legislative proposals, and the public consultation on the proposals.

DS(FS)3 said that, subject to the outcome of the consultation, the Government planned to introduce an amendment bill into the Legislative Council ("LegCo") in 2014-2015.

37. With the aid of a powerpoint presentation, the Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) 4 ("PAS(FS)4") briefed members on the objectives of the legislative proposals, namely to streamline the winding-up process, and enhance integrity of the process and protection of creditors. He highlighted the major proposals for bringing improvements to the corporate insolvency regime.

*(Post-meeting note: The notes of the powerpoint presentation (LC Paper No. CB(1)976/12-13(01)) were issued to members vide Lotus Notes e-mail on 3 May 2013.)*

## Discussion

### *Enhancing protection for creditors*

38. Referring to page 14 of the powerpoint, Mr Kenneth LEUNG sought details on the proposed additional safeguards to reduce the risk of abuse of the special procedure as set out in section 228A of the Companies Ordinance ("CO") (i.e. "the section 228A procedure") and to enhance protection for members and creditors of the company concerned.

39. PAS(FS)4 said that the section 228A procedure was unique to Hong Kong. Under the procedure, if the directors, or a majority of the directors, had formed the opinion that the company could not by reason of its liabilities continue its business, they might resolve at a meeting of the directors and deliver to the Registrar of Companies ("the Registrar") a winding-up statement to the effect that the company could not by reason of its liabilities continue its business and should be wound up (i.e. the winding-up statement"). To reduce the risk of abuse of the section 228A procedure, changes were proposed that the winding-up statement must state that the directors had already called the meeting of the company as required under the section 228A procedure. The proposed changes would ensure that the said meeting of the company would have been convened by the time of delivery of the winding-up statement to the Registrar. As a result, members of the company would be made aware of the directors' initiation of the section 228A procedure at the earliest possible instance. Other proposed safeguards included the requirement of the winding-up statement to state the appointment of a provisional liquidator with the appointment taking effect upon delivery of the winding-up statement to the Registrar, and restriction on the power of the provisional liquidator such that he might only exercise powers conferred on a liquidator in a voluntary winding-up



under CO if and only if he had obtained the court's sanction. The exceptions were that the provisional liquidator might do things necessary for preserving the company's assets pending the appointment of the liquidator by the members and creditors of the company concerned.

40. Mr Kenneth LEUNG asked whether there was a mechanism for shareholders to object to and halt the section 228A procedure. The Chairman noted that the section 228A procedure had been a subject of concern of the shareholders and enquired if the Administration would review the procedure. The Assistant Official Receiver (Legal Services), Official Receiver's Office advised that once the section 228A procedure had commenced to wind up a company, it was irreversible. As such, the legislative proposals had included an additional safeguard to ensure members of the company would be made aware of the initiation of the procedure in time so that they could take further actions early. DS(FS)3 said that it was a proposal in the consultation document to seek public views on whether the section 228A procedure should be maintained or repealed. Allowing reversal of the section 228A procedure might give rise to complications in the restoration of the position of the company before the winding-up which needed to be studied further.

*Employee protection and consultation with labour groups*

41. Ms CHAN Yuen-han said that she welcomed the reform to improve Hong Kong's corporate insolvency law. Noting that the Administration would consult the business sectors, the legal profession, etc., on related legislative proposals, she stressed the need for the Administration to gauge the views of the labour sector on issues such as the order of priority for employees in the list of creditors, treatment of consignment transaction, and the current arrangement of using the accrued benefits of employers' contributions to MPF schemes for offsetting Severance Payment or Long Service Payment ("SP/LSP offsetting arrangement") payable to employees. She further considered that the Mandatory Provident Fund Schemes Authority ("MPFA") should examine the issue of SP/LSP offsetting arrangement in the implementation of full portability arrangement for MPF schemes, and the matter would affect the settlement of employees' outstanding entitlements by the insolvent company. Ms CHAN urged the Administration to take into account the said issues in taking forward the corporate insolvency law improvement exercise, and discuss with MPFA on the SP/LSP offsetting arrangement. Mr TANG Ka-piu shared Ms CHAN's views and called on the Administration to widely consult the labour groups on the legislative proposals.

42. DS(FS)3 advised that the Administration had approached various labour groups and was arranging consultation sessions with them. To expedite the process, he invited Ms CHAN to help relay the Administration's offer of

consultation sessions to the relevant labour groups. On the SP/LSP offsetting arrangement, DS(FS)3 said that the matter should be dealt with separately in the context of on-going discussion on measures to improve the MPF system as the legislative provisions for the offsetting arrangement were laid down in the Mandatory Provident Fund Schemes Ordinance (Cap. 485). He added that the Administration and MPFA were aware of the employees' concerns. Should there be changes in the SP/LSP offsetting arrangement in future, the Administration would consider making appropriate adjustments to the insolvency and winding-up provisions under CO as necessary. Ms CHAN urged the Administration to take the initiative to discuss with MPFA to address her concerns. The Chairman urged the Administration would consult the labour sector on the legislative proposals to improve the corporate insolvency law.

43. Mr TANG Ka-piu said that the Administration should provide a paper highlighting the parts of the legislative proposals which related to employee protection for reference of members of the Panel on Manpower. The Chairman advised that all other LegCo Members, including members of the Panel on Manpower, had been invited to join discussion on this item. DS(FS)3 said that the legislative proposals had included provisions to enhance protection for the general body of creditors including employees. He was not aware of any specific proposal that was solely related to the protection of employees' interests.

*Transaction at an undervalue*

44. Mr Albert HO enquired whether bona fide undervalue transactions would be regarded voidable by an order of the court under the legislative proposals if it was proven that the party which had entered into such transaction with a company had done so in good faith and was unaware of the financial position of the company concerned. PAS(FS)4 said that under the existing CO, appropriate protection was given to persons who had received benefits or acquired or derived interest in property in good faith and for value from an unfair preference or undervalue transaction in the winding-up context. The said protection would be maintained in the new provisions on unfair preferences and on transactions at an undervalue.

*Consistency between corporate insolvency and personal bankruptcy provisions*

45. Mr Albert HO considered that consistency should be maintained between provisions on corporate insolvency and winding-up under CO and those for personal bankruptcy proceedings under the Bankruptcy Ordinance (Cap. 6) ("BO"). For instance, as new provisions regarding "transaction at an undervalue" was proposed for the corporate insolvency law, he enquired if similar provisions would be put in place in the personal bankruptcy regime. PAS(FS)4 said that the Administration had made reference to the personal bankruptcy provisions when proposing similar provisions in the corporate insolvency law. For example, the proposal to introduce new provisions on transactions at an undervalue was modelled on similar provisions in the existing personal bankruptcy regime. As regards "unfair preferences", both CO and BO had relevant provisions. Currently, CO applied the provisions on unfair preferences in BO with modifications to winding-up cases by relying on cross-references to the relevant provisions of BO. It was proposed to introduce standalone unfair preference provisions in CO to enhance their clarity and effectiveness.

*Corporate rescue*

46. Mr Albert HO recalled that legislative proposals relating to the introduction of a statutory corporate rescue procedure had been examined during the scrutiny of the Companies (Corporate Rescue) Bill in 2001 but the relevant legislative proposals were removed from the Bill due to diverse views among stakeholders. In view of the merits of a corporate rescue over the winding-up procedures, Mr HO enquired whether the Administration had any plan to put forward a revised corporate rescue regime.

47. DS(FS)3 said that, although the legislative proposals on corporate rescue procedure eventually did not materialize in the Companies (Amendment) Bill 2000 and the Companies (Corporate Rescue) Bill 2001, the Administration had done further work on this subject since then and building on past experiences, the Administration had launched a public consultation on the conceptual framework and some key issues of a corporate rescue procedure in 2009. The Administration had been working further on the detailed proposals of a statutory corporate rescue procedure. The Administration planned to engage stakeholders on the proposals in 2013-2014.

48. Mr Kenneth LEUNG observed that the United Kingdom ("UK") had already introduced corporate rescue procedures under the Enterprise Act 2002. He enquired about the legislative timetable to introduce a corporate rescue regime in Hong Kong. The Chairman opined that corporate rescue was a more desirable remedy than winding-up as there would be less adverse impacts on

the relevant parties of the companies (e.g. its creditors, employees). As she observed, the business sector welcomed introduction of a corporate rescue regime in Hong Kong. She hoped that the Administration would conduct the consultation early in 2013-2014. DS(FS)3 said that, depending on the progress of consultation and the drafting of the relevant legislative proposals, the Administration hoped to include the corporate rescue provisions in the same amendment bill for improvement of the corporate insolvency law for introduction into LegCo in 2014-2015.

*Consumer protection*

49. The Chairman observed that from time to time there were cases where providers of services (e.g. beauty care, travel services) continued to lure customers to purchase services even when the companies concerned suffered from serious financial difficulties and was in the brim of liquidation. The customers who had made pre-payment for services would become unsecured creditors when the companies became insolvent and it was difficult for them to recover their pre-paid money. She enquired whether the problem would be tackled under the current legislative proposals.

50. DS(FS)3 noted that the issues referred to by the Chairman were outside the scope of CO and the current legislative proposals. OR said that under CO, any creditors, including aggrieved customers who had made pre-payment to an insolvent company, might make a formal proof of debt and lodge it with the OR or liquidator. Besides, there were criminal sanctions against unscrupulous or false trade practices relating to services under the Trade Descriptions Ordinance (Cap. 362) ("TDO"). The Chairman opined that the protection rendered to consumers under TDO was inadequate as it was often difficult to institute prosecution for the relevant offences and in most cases aggrieved consumers could not recover the pre-paid money due to the low priority of unsecured creditors in the list of creditors. She considered that the Administration should explore how consumers as a category of creditors could be better protected under the winding-up proceedings. The Chairman said that she would follow up the issue during scrutiny of the amendment bill by the relevant bills committee if one was to be formed.

*Other issues*

51. Mr Kenneth LEUNG enquired if the Administration would consider introducing a licensing regime for liquidators. DS(FS)3 said that, at present, the Official Receiver's Office ("ORO") had been contracting out liquidation cases to the private sector and this had provided opportunities for private firms to take up liquidation work and helped build up a pool of insolvency practitioners with the relevant expertise and experience. ORO had been

monitoring the performance of the participating firms to ensure the quality of the outsourced services, including conducting investigation upon receipt of complaints. As the outsourcing regime had so far been operating smoothly, and having regard to the relatively small size of the industry, the Administration at present did not have any plan to introduce a licensing regime for liquidators. The Administration would keep in view the developments of the industry.

## **VII Review of Statutory Fees and Charges of the Official Receiver's Office**

(LC Paper No. CB(1)781/12-13(06) — Administration's paper on "Review of Statutory Fees, Charges and Deposits of the Official Receiver's Office")

### Briefing by the Administration

52. At the invitation of the Chairman, the Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) 4 ("PAS(FS)4") said that it was Government policy that fees charged by the Government should in general be set at levels adequate to recover the full cost of providing services in order to ensure that the costs for providing services would not fall on the general taxpayers. Having regard to this policy, ORO had recently conducted a review of its statutory fees, charges and deposits. As it was projected that ORO could achieve cost recovery rate at over 100% in the financial year 2013-2014, there was room to lower the levels of ORO's fees, charges and deposits as proposed in the Administration's paper. It was estimated that, if the proposed fee adjustments were implemented, the annual revenue of ORO would be reduced by about \$17.3 million and the projected cost recovery rate for 2013-2014 would be around 100%. PAS(FS)4 said that the proposal would involve amendments to the subsidiary legislation concerned by the Chief Justice, subject to LegCo's approval by the positive vetting procedure. The Administration planned to introduce the proposed amendments to the subsidiary legislation into LegCo in June 2013.

### Discussion

53. Mr TANG Ka-piu observed that it was getting easier for individuals to obtain loans and credit nowadays. However, low-income individuals might not be able to settle loan or credit payments due to poor management of personal finances. While pursuing bankruptcy action was an option to discharge debts, debtors were often deterred by the cost of \$9,695 for filing bankruptcy petition, and instead, resorted to improper means to "solve" their financial problems,

such as moving homes or obtaining new loans to pay off debts. Hence, he did not subscribe to the Administration's view as stated in the discussion paper that there was no indication that the fees for filing bankruptcy petition was not discouraging people from recourse to bankruptcy proceedings. Referring to the submission from the Caritas Family Crisis Support Centre ("CFCSC") tabled at the meeting which expressed views and suggestions on ORO's fees, charges and deposits, Mr TANG said that the Administration should help needy debtors who wished to pursue bankruptcy but could not afford the cost by reducing/exempting the required statutory deposits and fees. Sharing Mr TANG's view, the Chairman said that ORO should consider measures to assist these needy debtors, such as setting up a bankruptcy fund for the purpose. She cautioned that the society might end up having to pay a high social cost if the debtors could not find a proper way out of their debts whilst facing the pressure or threat from debt collection agencies.

54. OR said that the current cost of \$9,695 for making a bankruptcy petition included the statutory deposits of \$8,650 charged by ORO for debtor-petition bankruptcy case and a court fee of \$1,045 for scheduling of hearing. Having regard to the principle of cost recovery and the difficulty to determine individual debtor's eligibility for offering financial assistance, it would not be practicable to reduce or exempt the statutory deposits which would also mean passing the costs onto the general taxpayers.

55. PAS(FS)4 explained that the statutory deposits collected by ORO from bankruptcy petitioners were to cover the fees and expenses to be incurred by ORO (or trustee) for processing bankruptcy petitions, including conducting information searches or making enquiries in relation to the petitioner's assets, bank accounts, etc., and advertising a Bankruptcy Order in the Gazette and newspapers. PAS(FS)4 pointed out that even the current level of statutory deposits could not fully recover the costs incurred by ORO, but in any case the Administration had proposed to reduce the level of deposits in the current exercise which should help mitigate the concern raised by Members. However, if the statutory deposits were further lowered beyond the proposed level or waived, the shortfall would need to be covered by other taxpayers.

56. The Chairman said that, while she acknowledged the difficulties faced by ORO in considering fee reduction or exemption for individual debtors, and there was concern about debtors indiscriminately seeking to apply for reduction/exemption of deposits irrespective of their financial ability, the Administration should explore measures to assist desperate debtors who had genuine difficulty affording the cost of bankruptcy petitions. In this connection, the Chairman and Mr TANG Ka-piu enquired about the overseas practices in assisting needy debtors. OR advised that there was no mechanism

granting fee reduction/exemption for filing bankruptcy petitions in other jurisdictions like UK and Singapore.

57. At the request of the Chairman and Mr TANG Ka-piu, the Administration agreed to provide a written response to CFCSC's letter on the concerns and suggestions raised therein, and copy the response for reference of Panel members; and to respond to Panel members' views for the Administration to explore possible measures to assist debtors who could not afford the cost of \$9,695 for bankruptcy petitions with reference to similar measures in other jurisdictions.

*(Post-meeting note: The Administration's response was circulated to members vide LC Paper Nos. CB(1)1136/12-13(02) and (03) on 28 May 2013.)*

### Conclusion

58. Concluding the discussion, the Chairman said that members did not have objection to the Administration's proposed amendments to the concerned subsidiary legislation for implementing the revision to ORO's fees, charges and deposits, and its plan to introduce the proposed amendments into LegCo in June 2013. She requested the Administration to take into account members' views and concerns raised at the meeting.

## **VIII Annual briefing on the work of the Financial Reporting Council**

(LC Paper No. CB(1)929/12-13(07) — Administration's paper on "Progress Report on the work of the Financial Reporting Council"

LC Paper No. CB(1)929/12-13(08) — Background brief on the work of the Financial Reporting Council prepared by the Legislative Council Secretariat)

### Briefing by the Administration

59. At the invitation of the Chairman, the Chairman, Financial Reporting Council ("Chairman/FRC") briefed members on the background, organization and membership of FRC. He highlighted the establishment of two new committees under FRC namely, the Independent Audit Oversight Reform

Committee and the Finance Committee in the past year, the recent expansion of the membership and functions of FRC's Honorary Advisory Panel, and the independent audit oversight reform undertaken by FRC.

60. The Senior Director, Investigation and Compliance, FRC ("SD(IC)/FRC") briefed members, through a powerpoint presentation, on the work of FRC in the past year.

*(Post-meeting note: The notes of the powerpoint presentation (LC Paper No. CB(1)976/12-13(02)) were issued to members vide Lotus Notes e-mail on 3 May 2013.)*

#### Declaration of interest

61. The Chairman declared that she was an accountant, and that her employer might be involved in auditing work for listed entities whose financial statements might be subject to FRC's risk-based financial statements review. Mr SIN Chung-kai declared that he was a member of the Corporate Communications Committee and the Independent Audit Oversight Reform Committee of FRC.

#### Discussion

##### *Risk-based financial statements review programme and review of modified auditor's reports*

62. Mr Kenneth LEUNG enquired about differences in the role of the Financial Reporting Review Committee ("Review Committee") and the Financial Reporting Review Panel ("Review Panel") of FRC as both were involved in financial reporting review matters. The Chairman, FRC ("Chairman/FRC") explained that, when FRC decided to conduct an enquiry into a non-compliance with financial reporting requirement on the part of a listed entity, it might appoint a Review Committee. The convenor and members of the Review Committee would be selected from the list of some 40 members of the Review Panel.

63. Mr Kenneth LEUNG noted that it was among the functions of FRC to review modified auditor's reports issued by listed entities. He relayed the suggestion from some investor groups that FRC should make available the modified auditor's reports issued by listed entities on FRC's website in order to enhance investors' knowledge of the listed entities in question, and to enhance FRC's communication with the public and transparency in its work. The Chief Executive Officer, FRC ("CEO/FRC") said that as information of listed entities (including their modified auditor's reports, if any) was currently



available on the website of the Hong Kong Exchanges and Clearing Limited ("HKEx"), FRC would consider Mr LEUNG's suggestion in consultation with HKEx.

64. Mr Kenneth LEUNG suggested that FRC should publish on its website a summary of its advice and recommendations given to listed entities and their auditors under the risk-based financial statements review programme for the reference of the accounting industry. The Chairman agreed to the suggestion. She, however, noted that information and advice for investors were currently provided on the respective websites of different financial regulators and related bodies (e.g. FRC, HKEx, Securities and Futures Commission, Investor Education Council and Financial Dispute Resolution Centre). She considered that the financial regulators/bodies including FRC should discuss among themselves the feasibility of establishing a one-stop platform for disseminating information to investors. Chairman/FRC took note of the members' suggestions.

#### *Investigations by FRC*

65. The Chairman pointed out that some accounting issues such as computation of asset depreciation were a matter of judgment based on information provided by the listed entities. She expressed concern how FRC would make a decision on whether the financial statements or modified auditor's reports under its review involved any auditing/reporting irregularities or non-compliance given the serious impact of the decision on the reputation and future career of the auditor or reporting accountant concerned.

66. Chairman/FRC said that, in respect of each pursuable complaint, the Secretariat of FRC would review information provided by complainants together with other available information, such as information collected from the listed entity and auditor concerned. The FRC Secretariat would then prepare a complaint assessment report and make recommendations to the Council of FRC ("the Council") whether there was established prima facie evidence to initiate an investigation or an enquiry; and if so, the Council would direct its Audit Investigation Board ("AIB") to conduct an investigation. To ensure sufficient checks and balances on the process, the complaint assessment report would also be reviewed by the Operations Oversight Committee ("OOC") of FRC before the Council made a decision on the case. Chairman/FRC and SD(IC)/FRC said that, to ensure procedural fairness and the conduct of investigation in a professional manner, members of AIB and certain members of the OOC were accountants. FRC would also appoint an accountant from its Honorary Advisory Panel to advise AIB on each case under investigation.

67. The Chairman enquired whether an auditor/reporting accountant under AIB's investigation would be given a chance to make representation to AIB. Chairman/FRC said that, in conducting an investigation, AIB would communicate with the auditor/reporting accountant in question, followed by a thorough review of the relevant documents and written submissions provided by the auditor/reporting accountant and other sources.

68. SD(IC)/FRC said that AIB could require the auditor/reporting accountant concerned to produce records/documents; attend interviews and answer questions; and respond to written questions issued by AIB, etc. The auditor/reporting accountant could request interviews with AIB to give explanations and views on the case in person. The investigation would usually involve examination of documents provided by the auditor/reporting accountant, such as audit working papers and other related documentation. The usual practice was to request the auditor/reporting accountant subject to investigation to provide explanation together with the requisite documents in writing first at the initial stage of investigation. After completion of the investigation, AIB would prepare a report on its findings, which would be made available to the listed entity and its auditor/reporting accountant for comments, and their comments (including contrary opinions), if any, would be incorporated in the investigation report for submission to the Council. If the Council was of the opinion that auditing/accounting irregularity or non-compliance was identified, FRC would refer the investigation report to the Hong Kong Institute of Certified Public Accountants ("HKICPA") for considering disciplinary or other follow-up actions as appropriate. The auditors/reporting accountants concerned would also be provided with an opportunity to be heard before HKICPA.

#### *Independent Audit Oversight Reform*

69. Mr Kenneth LEUNG enquired about the progress of the independent auditor oversight reform, in particular whether FRC had adequate financial and manpower resources for undertaking the reform.

70. Chairman/FRC said that FRC had made good progress in the studies relating to the relevant international standards, mainly the standards set by the International Forum of Independent Audit Regulators and the European Commission, and overseas practices including those of the US, UK, Canada, Australia and Singapore, for developing proposals on reform of the auditor oversight system in Hong Kong. FRC would discuss with the Government and HKICPA to formulate proposals. Chairman/FRC assured members that FRC had the requisite financial and manpower resources to take forward the reform, and informed members that contributions from FRC's funding parties amounted to about \$18 million for 2013-2014. Together with its reserves,

FRC's financial position would be able to meet its budget of \$24 million in 2013-2014. Chairman/FRC further said that Mr Mark DICKENS, the current CEO/FRC, had taken up appointment from 1 April 2013. FRC was currently seeking to recruit a deputy CEO to assist Mr DICKENS in his work.

71. The Chairman requested FRC to gauge the views of the accounting industry on the independent audit oversight reform proposals as early as possible as the small, medium and large accounting firms might have different concerns about the standards and requirements of audit oversight. Chairman/FRC took note of the suggestion.

**IX Any other business**

72. There being no other business, the meeting ended at 12:05 pm.

Council Business Division 1  
Legislative Council Secretariat  
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