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Legislative Council

LC Paper No. CB(1) 1460/00-01
(These minutes have been seen
by the Administration)

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Legislative Council
Panel on Financial Affairs

Minutes of Meeting held on
Wednesday, 7 March 2001 at 10:00 pm
in the Chamber of the Legislative Council Building

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

Public officers attending : For Item IV

Mr M M GLASS
Deputy Secretary for the Treasury

Mr Allen LEUNG
Principal Assistant Secretary for the Treasury

For Item V

Miss K C AU
Deputy Secretary for Financial Services (1)

Ms Salina YAN
Principal Assistant Secretary for Financial Services (Securities)

For Item VI

Mr Esmond LEE
Principal Assistant Secretary for Financial Services (Companies)

Mr G W E JONES
Registrar of Companies

For Item VII

Miss Maureen TO
Principal Assistant Secretary for Financial Services (Retirement Schemes and Insurance)

Attendance by invitation : For Item V

Securities and Futures Commission

Mr Andrew SHENG
Chairman

Mr David SO
Financial Controller

For Item VI

Mr John BUSH
Secretary, Standing Committee on Company Law Reform

Mr Charles GRIEVE
Director of Accounting Policy, Securities and Futures Commission

For Item VII

Mandatory Provident Fund Schemes Authority

Mr Raymond TAM
Executive Director (Services Supervision)

Ms Gabriella YEE
Senior Manager (Services Supervision)

Clerk in attendance : Mrs Florence LAM
Chief Assistant Secretary (1)4

Staff in attendance : Ms Connie SZETO
Senior Assistant Secretary (1)1

For Items VI and VII

Mr KAU Kin-wah
Assistant Legal Adviser 6

I Confirmation of the minutes of the previous meetings and matters arising
(LC Paper Nos. CB(1) 717, 718, & 719/00-01)

The minutes of the meetings held on 10 November 2000, 11 January and 5 February 2001 were confirmed.

Research on "Consumer Protection for Bank Customers"

(LC Paper No. CB(1) 744/00-01(01))

2. The Chairman said that pursuant to the decision at the Panel meeting held on 11 January 2001, the Research and Library Services Division had been requested to conduct a research into the captioned subject. Members endorsed the draft outline of the proposed research and noted that the research would commence in March and be completed in June 2001.

II Information papers issued since the last meeting

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

III Date of next meeting and items for discussion

(LC Paper No. CB(1) 732/00-01(01) & (02))

4. The Chairman reminded members that the next regular meeting had been re-scheduled for Thursday, 29 March 2001 at 10:45 am.

5. Mr SIN Chung-kai proposed to discuss the review of the Growth Enterprise Market Listing Rules and the proposal to set up a Commercial Credit Reference Agency at the next meeting. After discussion, members agreed that the agenda of the next meeting would be worked out in consultation with the Administration.

(*Post-meeting note*: The agenda for the meeting was issued vide LC Paper No. CB(1) 819/00-01 on 15 March 2001.)

IV Government fees and charges

(LC Paper No. CB(1) 700/00-01(01))

6. The Deputy Secretary for the Treasury (DS/Tsy) briefed members on the Administration's information paper which explained the rationale for the "user pays" principle in relation to government fees and charges, the factors included in the computation of costs for government services governed by the principle, and the relevant guidelines for bureaux and departments in this respect. Members noted that the Government also adopted a global costing method to calculate the costs for services provided by some departments involving a large number of fees items. Examples of a cost computation statement for a specific licence fee and of the global costing method were provided in Annexes A and B of the paper respectively.

7. While members generally supported the adoption of the "user pays" principle, some of them expressed concern about the methodology in computing the costs.

Computation of costs

8. Some members questioned the inclusion of indirect costs, such as electricity charges and rental, in the computation of costs. They asked for additional information on the nature and method of calculation for each cost element listed in Annexes A and B of the information paper.

9. In response, DS/Tsy explained that it was necessary to take into account all direct and indirect costs attributable to the provision of a service in order to compute the full costs for providing the service. Direct costs comprised mainly material and staff costs. Indirect costs, such as electricity charges and rental, were those not fully attributable to the provision of a service but could be apportioned on a reasonable basis. For those costs which did not involve cash flow expenditure on the part of the Government, for instance accommodation cost for a service provided in government-owned premises, a "notional" cost estimated on the basis of market rental was included in the cost calculation to reflect the opportunity cost incurred by the Government. The Principal Assistant Secretary for the Treasury (PAS/Tsy) supplemented that information on the notional accommodation costs for all government-owned premises was provided in the Costing Manual issued by the Treasury to help departments conduct their costing exercises. The information was updated regularly to reflect changes in market rentals. Upon members' request, he undertook to provide further information on Annexes A and B of the paper and a copy of the Costing Manual for members' reference after the meeting.

(*Post meeting note*: The information was circulated to members vide LegCo Paper No. CB(1)931/00-01 dated 29 March 2001.)

10. As regards the reasons for some departments to charge different fees for similar services, DS/Tsy explained that the cost factors to be included for services of a similar nature might vary, for example, some photocopying services provided by some departments involved higher cost as they included searching and vetting of the information requested. PAS/Tsy added that for simple self-service photocopying service, the charge per copy usually ranged from $1 to $1.5.

11. Noting that the estimated demand for a service was one of the elements taken into account in the costing exercise, Mr TSANG Yok-sing expressed concern that any underestimation of the caseload could result in higher unit cost and hence could increase the fee for a service.

12. DS/Tsy advised that since bureaux and departments had to devote time and resources to undertake detailed costing computations, detailed costing exercises for services were only conducted once every four years. The adjustment in fees and

charges for services during the intervening years was index-linked to the annual Government Consumption Expenditure Deflator. Unlike departments operating under Trading Fund principles which were expected to balance their revenues with expenditures on a year-on-year basis, the expenditures of other vote-funded departments were not directly related to the revenues they generated from fees and charges for services. A shortfall in the revenue of a department in a particular year would not affect its level of expenditure for the year. On the other hand, if results of a full costing exercise revealed that the cost for a service had been reduced, say as a result of an increase in the caseload, the Government would consider reducing the fees for the service in order to realize the benefit of the costing exercise. DS/Tsy assured members that the estimation of the caseload was made with reasonable assumptions and with reference to the best information available to the departments. It had to be justified in the light of past patterns, current and projected economic situations. He further stressed that the detailed cost calculation would be presented for consideration of the relevant Panel and the Subcommittee of the Legislative Council (LegCo) in connection with specific proposals for fees increase.

Containing costs in the provision of Government services

13. Members considered that the Government should endeavour to contain costs, in particular staff cost which accounted for over 80% of the total costs involved in providing Government services, so as to reduce the pressure for increasing fees and charges.

14. Responding to the enquiry about cost-saving measures undertaken by the Government, DS/Tsy stressed that the Government was committed to improving its productivity and efficiency with a view to reducing costs. Implementation of the Enhanced Productivity Programme, the Civil Service Reforms, and other cost-saving measures in the past two years had resulted in significant savings. The benefits had been reflected in the modest revision in the level of fees and charges. The Voluntary Retirement Scheme and the general recruitment freeze for the civil service in the last two years had contained the size of the civil service. Investment in office automation and computerization had also increased productivity and reduced staff cost.

15. DS/Tsy said that Bureau Secretaries and Department Heads were controlling officers under the Public Finance Ordinance (Cap. 2). They were responsible for accounting for revenues and expenditures under their control and for improving efficiency and controlling costs. In addition, all departments were subject to the scrutiny of the Director of Audit who could conduct inquiries into their accounts and make reports on them.

V The Securities and Futures Commission Budget for 2001-02

(LC Paper No. CB(1) 732/00-01(03)&(04))

16. Mr Andrew SHENG, Chairman of the Securities and Futures Commission (SFC) presented the main features of SFC budget for 2001-02. He advised that SFC's estimated revenue and operating expenditure for the coming financial year were $448 million and $473 million respectively. Coupled with an estimated depreciation of $28 million, a deficit of $52.9 million would be expected. The budgetary strategy for expenditure was to devote resources to further promote regulatory cooperation with international markets and the Mainland, to continue to modernize SFC's information technology (IT) equipment and to develop the Securities and Derivatives Network (SDNet) project. The commitments in IT development would enhance SFC's internal efficiency and would facilitate the electronic communication and order routing among market operators, their participants and the regulators. The SDNet would form part of the single and unified financial infrastructure called "FinNet" for the whole financial sector in Hong Kong.

17. The Deputy Secretary for Financial Services (DS/FS) said that the Administration had examined SFC budget for 2001-02 and was satisfied that SFC had made efforts to reduce expenditure without undermining the delivery of its services or the performance of its regulatory functions. It was the ninth consecutive year that SFC had not requested for Government funding for its operations. Notwithstanding the $52.9 million deficit in the estimate which would be absorbed by SFC's reserves, the Administration considered that SFC's financial position remained at a prudential level.

Estimated revenue and expenditure for 2001-02

18. Noting that SFC had expected a deficit of $41 million in 2000-01 budget but the latest estimates indicated that there would be a surplus of $50 million by the end of the current financial year, Mr Henry Wu questioned the bases for arriving at a deficit budget for 2001-02.

19. Mr SHENG explained that the 2001-02 budget had been worked out on the basis of the estimated revenue and expenditure for the year. On the revenue side, the actual amount to be generated in 2001-02 from the two main sources of SFC's income, i.e. transaction levies and fees and charges, would depend on market performance in the year and was beyond the control of SFC. The projected levy income of about $268 million was mainly based on an assumption of an average daily turnover of $11 billion on the Stock Exchange of Hong Kong (SEHK). This estimated level of turnover was the actual average figure for the past 10 months from April 2000 to January 2001 in SEHK. On the other hand, SFC envisaged a reduction in income from fees and charges for 2001-02 as a result of an expected decrease in corporate finance activities. It was worth noting that at the prevailing levy rate of 0.005%, any change of $1 billion in the average daily turnover would result in a fluctuation of

about $24.4 million in SFC's levy income and hence could reduce or enlarge the projected deficit for 2001-02.

20. On the estimated expenditure for 2001-02, Mr SHENG reiterated SFC's commitment to continue exercising tight control in spending. For instance, SFC had only deployed 42 staff for intermediaries supervision function to cope with the increased regulatory responsibility for exchange participants following the merger of the exchanges and clearing houses in March 2000. It was noted that the two exchanges had employed a total of 71 staff to perform the same supervision function before the merger. Moreover, increasing application in IT systems and the proposed single-licensing regime for market intermediaries under the Securities and Futures Bill (SF Bill) would enhance SFC's internal efficiency and help to minimize growth in staff structure. The biggest expenditure item for 2001-02 was personnel expenses which accounted for about 76% of the total expenditure. With the gradual recovery of the financial sector in 2000, SFC had experienced a high staff turnover rate of 17% as compared to only 6% in 1999. SFC had also encountered difficulties in recruitment for some posts due to competition from the private sector. SFC had frozen the fixed pay for staff since 1998-99. In 2001-02, SFC had budgeted for a provisional 4.5% increase in fixed pay for staff. As staff had been working under extreme work pressure, SFC would continue to provide performance-related variable pay to retain experienced and high quality staff. Hence, there would be an increase of 9% or $30 million in personnel expenses in 2001-02.

21. Mr TSANG Yok-sing expressed concern about the high staff turnover rate in 2000 and enquired about the measures which SFC would take to address the problem. In response, Mr SHENG said that the overall staff turnover rate of 17% was one percent lower than that for the financial services sector in Hong Kong. But SFC recorded a turnover rate of 30% for its managerial grade staff in 2000 which was much higher than that in the financial services sector for the same period. Apart from providing pay increase and variable pay to retain high quality staff, there would be an increase of $2.51 million in the provision for staff training and development programmes in 2001-02 which would include overseas training courses to widen staff's exposure. To address the high turnover rate of managerial grade staff, SFC would introduce a new manager trainee programme with a view to grooming a group of executives to become professional regulators.

22. On Mr Henry WU's enquiry about possible reduction in manpower requirement after implementation of the proposed single-licensing regime for market intermediaries, Mr David SO, Financial Controller, SFC, said that licensing duty was taken up by SFC's Intermediaries and Investment Products Division which was also responsible for supervision of intermediaries and authorization and regulation of investment products. Whilst the proposed single-licensing regime and SDNet project would help to enhance the efficiency of the Licensing Department, the workload of the Intermediaries Supervision Department (ISD) would depend on the number of registered intermediaries. Due to resources constraints, ISD was only able to conduct a comprehensive inspection of each registered intermediary once in

every three years. Mr SHENG added that SFC had adopted a risk-based supervisory approach to assess the level of risk exposure of registrants and to identify issues of particular concern for follow-up. Such an approach had reduced the number of staff deployed for intermediaries supervision.

23. Responding to Mr CHAN Kam-lam' enquiry about the reasons for the substantial increase of 51% in the provision for external professional services over the for latest estimates 2000-01, Mr SHENG explained that this was mainly due to the projected increase in the demand for external professional services to assist divisions to discharge their functions. In view of the impact of market technology on regulation, SFC would outsource IT support services and SDNet project. The increased provision also included fees for external legal services, such as employment of outside counsels for work related to SF Bill. Mr SHENG remarked that outsourcing of services and employment of temporary contract staff had provided SFC with greater flexibility in delivering its services and in appointment of staff. In turn, these measures had helped to achieve greater cost-effectiveness in the discharge of SFC's functions.

Regulatory costs on the market

24. Mr Eric LI noticed that there was a substantial increase of 14% in SFC's estimated operating expenditure over the latest estimates for 2000-01. This was attributed in part to increased regulation over the market. He pointed out that this was not in line with the common approach adopted by regulators of international markets to deregulate and to remove unnecessary regulatory measures with a view to reducing the burden and compliance cost on market participants.

25. In response, Mr SHENG said that SFC was heading in the same direction as other overseas regulators to reduce regulatory cost and compliance burden in order to benefit market participants. Initiatives taken in recent years included, inter alia, rationalizing the market regulatory function between SFC and the exchanges under the merger reform so as to remove duplication in intermediaries supervision, and implementing an electronic system for on-line submission of Financial Resources Rules returns. The SF Bill would also modernize the regulatory regime for the securities and futures markets and introduce a single-licensing regime to facilitate market intermediaries. Despite the fact that SFC had tried to adopte a full cost recovery principle as far as possible when setting the level of its fees and charges, SFC was only achieving a cost recovery rate of 80% and it had not revised its fees and charges since 1994. Having regard to the local economic conditions following a review in 2000, SFC had decided to maintain the existing level of fees and charges and to re-examine the matter in 2001-02. SFC would review the registration fees for market intermediaries in the light of any changes to its operational costs following the implementation of the single-licensing regime.

26. On whether SFC would consider studying the impact of its regulatory measures on the market, Mr SHENG indicated that SFC had planned to commission an independent consultancy for a study on market's perception of the regulatory work performed by the SFC. The Panel would be informed of the findings when these were available.

SFC

VI Proposed legislative amendments to facilitate preparation of Summary Financial Statements by listed companies for their shareholders

(LC Paper No. CB(1) 732/00-01(05))

27. The Principal Assistant Secretary for Financial Services (Companies) (PAS/FS(C)) briefed members on the proposed amendments to the Companies Ordinance (CO) (Cap. 32) which would enable a listed company to send a summary financial statement (SFS) (instead of the full set of financial statements required under CO) by post or electronically to entitled persons (primarily shareholders), and to issue, circulate, or publish a SFS generally to members of the public. A SFS would contain a summary directors' report, a summary profit and loss account and balance sheet, and other specified information. The Administration was making preparations for introducing the legislative amendments into LegCo in the current session.

Sending summary financial statements to entitled persons

28. Mr Eric LI supported the legislative proposal as the current practice of issuing to shareholders lengthy annual reports and complex financial statements by listed companies was not environmentally-friendly and had discouraged retail investors from trying to read the information.

29. Mr James TIEN said that the Liberal Party was supportive of the proposal. He was of the view that companies had to publicize the new arrangement widely and to inform entitled persons of the options and possible means through which they could elect to receive a SFS or a full set of the financial statements.

30. PAS/FS(C) said that appropriate publicity would be arranged to publicize the proposed arrangement. A SFS would include a clear statement, to be exhibited in a prominent position, as to how entitled persons could obtain a free copy of the company's last full accounts and reports, and how they might elect in writing or electronically to receive the full set of financial statements in place of the SFS for future financial years.

31. On the proposal of sending the SFS by electronic means, PAS/FS(C) advised that this would include posting a SFS on the website of the listed company and advising the entitled persons of such an arrangement. An entitled person could still be entitled to elect to receive a printed copy of the statement if he so desired and

had indicated his wish to the company. This would ensure that he could receive a printed copy in case he could not download a copy from the website. Mr Charles GRIEVE, Director of Accounting Policy, SFC supplemented that it was up to the individual entitled person to decide whether he should indicate by post or through electronic means as to whether he would like to receive the SFS. Unless it had been previously agreed by the entitled person, the company could not send him the SFS through electronic means.

Ascertainment of entitled person' wishes

32. As regards ways to ascertain the entitled persons' wishes in receiving either the full set of financial statements or the SFS, PAS/FS(C) advised that the proposal was for the company to send the entitled person a notice in writing or electronically (if this had been agreed previously by the person) two months before the annual report was due to be despatched. The company would be considered to have sufficiently ascertained the wishes of the entitled person if it had given the notice but did not receive a response by a date which was one month from the date on which the annual general meeting was fixed. Under such circumstances, the entitled person was deemed to have agreed to receive a SFS.

33. Mr SIN Chung-kai expressed the Democratic Party's strong reservation over the proposed arrangement to deem an entitled person who had not responded to the company's notice to have agreed to receive a SFS, as this would take away an important right of the entitled person to receive the full set of financial documents. Mr SIN urged the Administration to consider amending the proposed arrangement to the effect that unless the entitled person had confirmed in writing that he wished to receive a SFS, a company had to provide him with the full set of financial statements.

34. In response, PAS/FS(C) clarified that entitled persons would continue to have the right to choose to receive the full set of financial statements if they so desired and could at any time notify the company in writing or electronically of their wish to do so.
FSB Nonetheless, the Administration would take Mr SIN's views into consideration.

Obligation for companies to provide summary financial statements

35. On Mr Henry WU's concern about the financial burden of sending SFS electronically for small-sized companies with few shareholders. Mr Charles GRIEVE explained that under the current proposal, listed companies would be provided with flexibility in providing financial statements to their shareholders. It would be entirely up to individual companies to decide whether it should provide a SFS or to maintain the existing practice of sending the full set of financial statements to shareholders. Experience in other jurisdictions with practices similar to the above proposal revealed that those companies which opted to provide their shareholders with SFS were large listed companies.

Overseas practices

36. Regarding overseas practices in respect of allowing listed companies to issue SFS to shareholders, PAS/FS(C) advised members that the current proposal was in line with practices in several other jurisdictions including the United Kingdom, Australia and Singapore. With regard to Mr SIN Chung-kai's enquiry about the practices in the United States (US), the Registrar of Companies said that, as company laws varied from state to state, the US practices were very varied. PAS/FS(C) undertook to provide information on the US practices after the meeting.

(*Post-meeting note*: The information was circulated to members vide LC Paper No. CB(1) 1197/00-01 dated 10 May 2001.)

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

(LC Paper No. CB(1) 732/00-01(06))

37. The Principal Assistant Secretary for Financial Services (Retirement Schemes and Insurance) (PAS/FS(RS&I)) took members through the proposed amendments to the Mandatory Provident Fund Schemes Ordinance (MPFSO) (Cap.485) and the MPFS (General) Regulation. The proposed amendments were aimed at facilitating the operation of the MPF System, enhancing the effectiveness of the regulation of MPF schemes by the Mandatory Provident Fund Schemes Authority (MPFA) so as to promote protection of the interests of scheme members, and removing ambiguities in the MPF legislation. The majority of the amendments were of a technical nature, such as clarifying terms contained in section 2 of MPFSO, while some amendments were to provide MPFA with power to initiate prosecution against contravention of MPFSO. MPFA was considering other amendments to the MPF legislation to enable MPFA to properly regulate voluntary contributions and to deter the late enrolment of employees to schemes by the employers. MPFA was consulting employers groups and industry organizations on these amendments. Depending on the result of the consultation, such proposals could be incorporated into the amendment bill which was expected to be introduced into LegCo in the current session.

Power to prosecute offences

38. While members generally supported the proposed technical amendments to the MPF legislation, some of them expressed reservation over the proposal to provide MPFA with prosecution power. Mr James TIEN pointed out that the results of both the consultation with employer groups and industry organizations and the extensive debate in LegCo when the MPF Schemes Bill was passed in 1994-95 were not supportive of providing MPFA with prosecution power. He questioned the need to re-open the issue given that the MPF System was only launched on 1 December 2000.

His views were shared by Mr Henry WU who considered it more appropriate to review the issue later in the light of longer implementation of the MPF System.

39. In response, PAS/FS(RS&I) stressed that the purpose of providing MPFA with prosecution power was to strengthen its law enforcement ability against non-compliance with MPFSO. She explained that the existing provisions i.e. sections 30A and 32 of MPFSO provided MPFA with general inspection and investigation powers relating to the contravention of MPFSO but did not provide it with prosecution power. Prosecutions had to be initiated through the Police and the Department of Justice (D of J). As ensuring compliance with MPFSO was one of the essential functions of MPFA, the Administration proposed to add a new section to MPFSO empowering MPFA to prosecute offences in its own name. Mr Raymond TAM, Executive Director (Services Supervision), MPFA supplemented that as existing provisions provided that a prosecution had to be initiated within six months after contravention of the legislation, the current procedure of routing non-compliance cases through the Police and D of J might delay the prosecution process. The proposed arrangement could streamline the procedure and expedite the handling of MPF-related cases. Currently, regulators including SFC, Labour Department, and Food and Environmental Hygiene Department were provided with similar prosecution power, and experience indicated that the arrangement had worked well. Mr TAM added that the MPFA was consulting relevant parties including employer groups on the proposal.

40. As regards MPFA's capability in handling prosecution on its own, Mr TAM advised members that at present there were five legal counsels providing support services to the three compliance divisions of MPFA, some with prosecution experience. Depending on operational experience, MPFA might need to increase one or two legal counsel posts to cope with increased workload arising from the proposal.

41. Mr James TIEN remained concerned about providing MPFA with direct prosecution power. He considered that MPFA should step up its publicity efforts in enhancing public awareness of the MPF System and the penalties for non-compliance before taking the drastic action to initiate prosecution.

42. PAS/FS(RS&I) reiterated that while the Administration and MPFA would continue publicizing and educating the public about their obligation under the MPF System, the proposed prosecution power would enhance MPFA's efficiency in making prosecution against non-compliance with the MPF legisaltion.

43. Mr SIN Chung-kai remarked that the Democratic Party supported strengthening MPFA's law enforcement power provided that such power was restricted to minor or summary offences.

Power to impose conditions

44. Responding to Mr LEE Cheuk-yan's enquiry, Mr TAM explained that currently, MPFA had imposed conditions on trustees regarding the conduct of their business and registered schemes by the implicit power derived from the Interpretation and General Clauses Ordinance (Cap. 1). It was proposed to amend MPFSO to expressly provide MPFA with such power. Under the proposal, a trustee would be provided with an opportunity to make representations and an appeal mechanism against the MPFA's decision would be provided.

45. Referring to complaints received by Mr LEE Cheuk-yan about employers delaying contributions for causal employees under the industry schemes in order to reduce their MPF liabilities, Mr TAM said that the complaints might have resulted from misunderstanding of the MPF System. He clarified that employers' obligation for contributions was the same under different types of MPF schemes.

VIII Any other business

46. There being no other business, the meeting ended at 12:30 pm.

Legislative Council Secretariat
7 June 2001