

立法會
Legislative Council

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by the Administration)

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Legislative Council
Panel on Financial Affairs

Minutes of meeting held on
Monday, 7 January 2002 at 10:45 am
in Conference Room A of the Legislative Council Building

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

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**Public officers
attending**

: For item IV

Mrs Alice LAU MAK Yee-ming
Commissioner of Inland Revenue

Mr Raymond LUK
Deputy Commissioner of Inland Revenue

Miss Erica NG
Principal Assistant Secretary for the Treasury

Miss Adeline WONG
Principal Assistant Secretary
Information Technology and Broadcasting

Mr Y Y CHU
Assistant Commissioner of Inland Revenue (Unit 2)

Mr H M CHAU
Chief Assessor (Computer)
Inland Revenue Department

Mrs Brenda LEE
Chief Assessor (Unit 2)
Inland Revenue Department

Mr Richard LEUNG
Chief System Manager
Inland Revenue Department

Mr Beaumont MAY
Manager (Project Management), PCCW

Ms Lonnie NG
Senior Government Counsel

Mr M Y CHEUNG
Senior Government Counsel

For item V

Miss Susie HO
Deputy Secretary for Financial Services (2)

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Mrs Diana CHAN
Chief Operating Officer (Corporate Affairs)
Mandatory Provident Fund Schemes Authority

Mr Raymond TAM
Executive Director (Policy and Development)
Mandatory Provident Fund Schemes Authority

Mr Ernest LEE
Executive Director (Enforcement)
Mandatory Provident Fund Schemes Authority

Clerk in attendance : Ms Anita SIT
Chief Assistant Secretary (1)6

Staff in attendance : Mr WONG Tin-yau, Anthony
Senior Assistant Secretary (1)8

I Confirmation of minutes of meeting and matters arising

LC Paper No. CB(1)634/01-02 - Minutes of meeting on 5 November 2001

The minutes of the Panel meeting held on 5 November 2001 were confirmed.

II Information papers issued since last meeting

LC Paper No. CB(1)584/01-02(01) - Consultation Paper on "Review of market entry criteria and the three-tier authorisation system" published by the Hong Kong Monetary Authority (English version only) and the relevant press release

LC Paper No. CB(1)588/01-02(01) - Information paper on "Supplementary provision for payment of interest on Tax Reserves Certificates" provided by the Finance Bureau

LC Paper No. CB(1)644/01-02(01) - Extract of minutes of meeting between LegCo Members and Shatin District Council Members on 29 November 2001 regarding

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the recovery of debts by banks and other authorised institutions from personal referees

LC Paper No. CB(1)626/01-02(01) - Research paper on Protection for Banking Consumers in the United Kingdom and the United States of America: "Fees and Charges" provided by the Research and Library Division of the Legislative Council Secretariat

LC Paper No. CB(1)626/01-02(02) - "Reference materials for deliberation on the protection for consumers in the banking sector" prepared by the Legislative Council Secretariat

LC Paper No. CB(1)654/01-02 - 2001 Annual Report of the Office of the Commissioner of Insurance

LC Paper No. CB(1)692/01-02 - Publications on the 2001 Population Census - Basic tables and maps for District Council Districts and the relevant press release

LC Paper No. CB(1)728/01-02 - Leaflet on equity-linked notes published by the Securities and Futures Commission

2. Members noted the above information papers issued since last meeting.

III Date and items for discussion for next meeting

LC Paper No. CB(1)716/01-02(01) - List of outstanding items for discussion

LC Paper No. CB(1)716/01-02(02) - List of follow-up actions

3. The Chairman informed members that the next regular Panel meeting was scheduled for 4 February 2002, starting at 10:45 am. As regards the discussion items for the meeting, he advised that the Chief Executive of the Hong Kong Monetary Authority (CE/HKMA) had offered to give the Panel a briefing on the work of the Hong Kong Monetary Authority (HKMA) at the meeting. The Chairman also consulted members on the following proposed discussion items-

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- (a) Consumer protection in the banking sector (an item on the Panel's list of outstanding discussion item);
- (b) Charges for credit card transactions in foreign currencies; and
- (c) Proposed reform of the registration regime for oversea companies.

Members noted that item (b) was proposed by Hon SIN Chung-kai and item (c) was proposed by the Financial Services Bureau.

4. Miss Emily LAU said that in line with the agreed arrangement that the CE/HKMA would brief the Panel on the work of HKMA on a regular basis, the briefing should be held at the meeting of 4 February 2002 as scheduled. Miss LAU also suggested that a special meeting should be arranged to discuss the subject of consumer protection in the banking sector, and that relevant industry bodies and the Consumer Council should be invited to take part in the discussion. In this regard, she suggested that the public should also be invited to express views on the subject. Members agreed to Miss LAU's suggestions and that the Chairman would decide on the timing of the special meeting.

5. Mr SIN Chung-kai agreed that as the issue of "charges for credit card transactions in foreign currencies" was related to consumer protection in the banking sector, the issue would be taken up at the aforesaid special meeting.

6. Members also agreed that the subject of "proposed reform of the registration regime for oversea companies" should be discussed at the regular Panel meeting on 4 February 2002.

(Post meeting note: A special meeting to discuss the subject of consumer protection in the banking sector has been arranged to be held on Tuesday 26 February 2002 at 10:45 am. The Hong Kong Association of Banks, the Consumer Council, the DTC Association and the Administration have been invited to attend the special meeting. Additionally, letters have been issued to the 18 District Councils and a notice has been posted on LegCo's website to invite views from the public on the subject.)

Panel meeting in April 2002

7. The Chairman advised members that as the date scheduled for the regular Panel meeting in April 2002 fell on a public holiday, two alternative meeting dates, 9 April and 15 April 2002, had been proposed for the meeting. Members agreed that the regular Panel meeting should be held on 9 April 2002 at 10:45 am as there was no other committee meeting scheduled for this time slot.

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IV Submission of tax returns by electronic means and by telephone with the use of a password

LC Paper No. CB(3)119/01-02 - Inland Revenue (Amendment) (No. 2) Bill 2001

Legislative Council Brief on "Inland Revenue (Amendment) (No. 2) Bill 2001"

LC Paper No. CB(1)716/01-02(03) - Paper on "Security aspects on the use of password in electronic filing of tax returns" provided by the Administration

8. The Chairman welcomed representatives from the Administration. He advised that discussion of this item by the Panel was arranged pursuant to the advice of the House Committee at its meeting on 23 November 2001 that policy issues relating to the Inland Revenue (Amendment) (No. 2) Bill 2001 should be considered by the Panel, before the House Committee decided whether a Bills Committee should be formed to scrutinise the Bill.

9. At the Chairman's invitation, the Commissioner of Inland Revenue (C of IR) gave a powerpoint presentation on "Electronic filing of tax returns with the use of password". The notes for the presentation were tabled at the meeting and issued to members vide LC Paper No. CB(1)749/01-02 dated 8 January 2002. In her introduction, C of IR said that taxpayers would be able to use the proposed new services in a secure and stable environment, with the technical and administrative measures put in place by the Administration. The salient points of her presentations were as follows-

- (a) The filing of tax returns through the Internet under the Electronic Service Delivery (ESD) Scheme and through telephones were part of the package of new services scheduled to be launched by the Inland Revenue Department (IRD) in April 2002. These new services would provide alternative channels and greater convenience to taxpayers for filing tax returns and making tax enquiries;
- (b) The use of a password for authentication was widely adopted on the internet for most internet banking services. Internet filing of tax returns with the use of a password and telefiling had already been successfully implemented in other tax jurisdictions such as the United States of America (US), Australia, Canada and Singapore. IRD had made extensive reference to the standards, approaches and best practices successfully adopted by these other tax jurisdictions and the commercial sector in developing the proposed new services; and

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- (c) IRD in consultation with the Information Technology Services Department had developed technical and administrative measures to ensure that electronic filing of tax returns using a password would be conducted in a secure manner.

Security aspects

10. Mr SIN Chung-kai expressed support for providing taxpayers with new channels for filing tax returns. He considered that the proposed legal framework for the filing of tax returns by electronic means with the use of a password and by telephones constituted a policy change by extending the possible methods for authentication for effecting e-transactions. He further said that although the use of a password for effecting e-transactions did not provide the same level of security as the use of digital certificates, the use of a password for the purposes of filing tax returns was acceptable given the technology available to ensure data security and the measures put in place by the Administration.

11. Mr CHAN Kam-lam said that as the use of a password for authentication had been widely adopted in other tax jurisdictions and for most internet banking services, he considered that the proposed new filing channels should not give rise to security problems provided that the Administration exercised prudent monitoring of the systems.

12. In response, C of IR advised that the Administration did not intend to equate the legal status of digital signatures with passwords. However, the Administration was confident that with the relevant technical and administrative measures put in place, using passwords for authentication could achieve a comparable standard of security as using digital signatures.

13. Mr NG Leung-sing noted that IRD had proposed a security measure whereby a password would be revoked should the number of unsuccessful attempts to gain access exceeded five. In reply to his enquiry about the basis for setting the number of failed attempts at five but not otherwise for revoking a password, C of IR said that the limit of failed attempts was set at five having regard to the practices of both the public and commercial sectors for access to Internet and telephone services. IRD was open to suggestions and would review this security measure if required.

Cost-effectiveness and efficiency of the proposed new services

14. Members noted that according to IRD's estimate, some 800 000 taxpayers in Hong Kong would meet the criteria for telefiling of tax returns. Mr NG Leung-sing enquired about IRD's estimate of the future usage level of the telefiling service. Mr SIN Chung-kai and Mr Henry WU expressed concern about the cost-effectiveness of establishing and maintaining a telefiling system considering that the service would probably be used by individual taxpayers only once a year, and the utilization rate of this service by eligible taxpayers might

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turn out to be low. Mr WU was also concerned that if telefiling was a complicated process, taxpayers would be deterred from using the service. In this connection, he enquired about the time required to complete the filing of a tax return by telephone, and whether there was any way for taxpayers to verify the accuracy of the information they had submitted.

15. In response, C of IR said that it normally took a relatively long incubation period before a new electronic service became popular. For example, the initial utilization rate of the electronic tax payment service had been low, but this had subsequently increased to over 40% of the total number of tax payments received by IRD. Hence, unless the first step was taken to launch the new services, it would not be possible to reap the benefits of the new services. While the Administration could not at this stage provide a precise estimate of the utilisation rate of the telefiling system, and the utilization rate might be low during the initial implementation period as in the case of other Government electronic services, implementation of the proposed new services was an important step forward in enhancing IRD's services. IRD would closely monitor the response and feedback from the public after the launch of the service and make ongoing improvement to the service. In this regard, C of IR noted Mr CHAN Kam-lam's suggestion of providing users of the new services with some form of rebate to encourage usage.

16. C of IR further advised that the proposed new channels for filing tax returns formed part of a comprehensive package of new electronic services to be launched by IRD. The use of a password for authentication would also be applicable to other electronic services of IRD including the interactive tax enquiry services on the Internet and through the telephone. By keying in their passwords and identification numbers, taxpayers would be able to check whether tax bills had been sent to them, the amount of tax outstanding, and to request copies of the tax returns issued to them etc. Besides, taxpayers might also make use of the mathematical programmes on IRD's web site to calculate the tax amounts payable under different assessment methods.

17. As regards the time required for completion of returns through the proposed telefiling service, C of IR advised that normally, it would take approximately five minutes to complete the filing process for individual tax returns, and about four minutes for property tax returns. IRD would be issuing a guidance note to taxpayers who had registered with IRD for the new services to facilitate their use of the new services.

18. In reply to Mr James TIEN's enquiry about the staffing implications of the proposed new services, C of IR advised that the proposed new services formed part of the IRD's second five-year project to capitalise on information technology to enhance IRD's services. It was envisaged that staff savings would be generated upon full implementation of the project. She also confirmed that there was no plan to create any additional directorate post in IRD for the new services.

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Interface with other electronic transaction-related legislation

19. Members noted from C of IR's introductory presentation that the Electronic Transactions Ordinance (Cap. 553) (ETO) provided a generic legal framework for electronic transactions. Section 14 of the ETO provided scope for specific situations to be dealt with in a "self-contained" manner in another ordinance. C of IR further explained that while the use of a password for authentication might not be broadly applicable to all types of electronic transactions, it could be suitably applied to electronic filing of tax returns provided that there were proper measures in place to ensure data security. The Inland Revenue (Amendment) (No. 2) Bill 2001 (the Bill) sought to provide a self-contained and comprehensive legal framework to facilitate internet filing and telefiling with the use of a password for authentication.

20. Mr SIN Chung-kai said that the Import and Export (Electronic Transactions) Bill, which sought to provide for the use of an electronic service in submitting cargo manifests, had been introduced into the Legislative Council in June 2001. In this regard, he suggested that the Import and Export (Electronic Transactions) Bill 2001 and the Bill should be examined together to ensure they were consistent and synchronised where appropriate. The Principal Assistant Secretary of the Information Technology & Broadcasting Bureau (PAS/ITBB) said that the Administration would follow up accordingly.

21. On the concern about the interface of the Bill with ETO, PAS/ITBB advised that the Administration was undertaking a review of ETO, and the relevant public consultation paper would be published in one to two months. ITBB planned to brief the Panel on Information Technology and Broadcasting on this subject in March 2002. C of IR added that should the review of the ETO identify any necessary amendments to the Inland Revenue Ordinance, IRD would be prepared to accommodate any such changes.

Views of professional bodies

22. Members noted two letters addressed to C of IR from the Hong Kong Society of Accountants (HKSA) and the Professional Information Security Association (PISA) setting out their views on the submission of tax returns with the use of a password. (These letters were tabled at the meeting and issued after the meeting vide LC Papers Nos. CB(1)749/01-02(02) and (03) dated 8 January 2002.)

23. Mr Eric LI advised the Panel of the position of HKSA with regard to the proposed new services. He highlighted the following points-

- (a) HKSA in principle supported the early implementation of the proposed new services as additional channels to facilitate the submission of tax returns;

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- (b) For the integrity of the legal framework governing electronic transactions, HKSA considered it preferable to have provided for in the ETO the changes sought to be effected by the Bill;
- (c) However, HKSA accepted that internet filing and telfiling of tax returns with the use of a password warranted specific arrangement as provided for under section 14 of ETO;
- (d) The Administration should review ETO as a matter of priority to examine whether and how the ETO should cater for cases where the use of password might be accepted for satisfying the alternative requirement in other ordinances. In the course of the review of the ETO, any inadequacies in the IRO in relation to electronic transactions should also be addressed; and
- (e) HKSA had made some suggestions regarding the terminology and some drafting aspects of the Bill. HKSA hoped that the Administration would initiate the relevant Committee Stage Amendments in response to these suggestions. However, if the Administration did not agree with HKSA's suggestions, HKSA would not for this reason object to the Bill.

24. Taking note of the views of HKSA and PISA, Mr SIN Chung-kai pointed out the need to review the practical arrangements for C of IR to approve a user's password and the propriety of using the term "affix" in proposed section 51AA(6)(b) of Clause 8, which provided that C of IR might by notice published in the Gazette specify requirements as to how a digital signature or password or any other signing device was to be affixed to a return furnished under this section. Mr SIN also queried the necessity of including "any other signing device" in this proposed section, as this might add uncertainties to the scope of powers conferred on C of IR with regard to the specification of devices for authentication for filing of tax returns.

25. In regard to the drafting of the Bill, C of IR said that care had been taken to ensure that the Bill was in order. To this end, the Department of Justice had made extensive study on comparable statutory provisions in overseas tax jurisdictions and in other local ordinances. She also noted that the Legal Service Division of the Legislative Council had not raised any objection to the terms used in the Bill.

26. C of IR further said that she disagreed with HKSA's suggestion that C of IR should only be empowered to approve the policies and standards to which passwords should conform, instead of being empowered to approve passwords as such. She explained that the process of a taxpayer selecting number to become an accepted password for the purpose of filing tax returns on the Internet involved a number of steps. Apart from conforming to specific requirements (e.g. having 6 digits), the six-digit number would have to be successfully

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transmitted, verified, validated and recorded in IRD's computer system in order to successfully become a password. In view of the fairly complicated process, the original wording of the Bill empowering C of IR to approve passwords was considered more appropriate. The Senior Government Counsel (SGC) supplemented that if C of IR was only given the power to approve the policies and standards to which passwords used for filing tax returns should conform, there would be no clear authority for handling and settling dispute situations with regard to particular passwords.

27. In regard to the term 'affix', SGC said that for enforcement purposes, a tax return, irrespective of the form of its submission, should bear a signature, which signified that the signatory was cognisant and responsible for its contents. The policy intent of the Bill was to recognize passwords as a form of signature for filing tax returns. It was precisely for this reason that section 51 AA (6) (b) provided that a digital signature or password should be affixed to a return. Replacing 'affix' by 'used to authenticate' as suggested by HKSA therefore might not provide an adequate legal basis for enforcement purposes.

28. C of IR and Principle Assistant Secretary for the Treasury (PAS/Try) said that the Administration would review the drafting of the Bill in the light of the comments from members and professional bodies.

Powers conferred on C of IR by the Bill

29. Mr SIN Chung-kai and Mr Eric LI expressed concern on the availability of checks on the additional powers conferred on C of IR by the Bill. In response, C of IR advised that the relevant tax authorities in overseas jurisdictions were given similar powers in electronic filing and telefiling of tax returns. The powers conferred on C of IR by the Bill were administrative in nature and pertinent to the implementation of the proposed new services. The existing legal framework under the IRO had already provided adequate checks on C of IR's powers. For example, approval from the Board of Inland Revenue was required in respect of certain procedural and administrative matters as specified in the IRO.

Timing for launch of the new services

30. Members noted that IRD planned to launch the proposed services in April 2002. Mr SIN Chung-kai, Mr Eric LI and Mr CHAN Kam-lam considered it appropriate to launch the new services as scheduled, but cautioned that this might not be a realistic schedule should the House Committee decide to form a Bills Committee to scrutinise the Bill. Mr James TIEN considered that there was no urgent need to implement the proposed new services. He opined that issues relating to the Bill should be thoroughly considered to ensure propriety of the proposed legal framework and the security and reliability of the technical infrastructure.

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31. In response to Mr James TIEN's enquiry, C of IR clarified that for taxpayers who had registered to use the new services for filing their tax returns, there would not be any implication that they had given consent to the tax assessments made by IRD. She assured members that taxpayers who had filed their tax returns using the proposed new services would still receive a tax assessment notice, and have the right to dispute the amount of tax as assessed by IRD.

32. Members noted that the Panel would report to the House Committee on its deliberation on the subject on 11 January 2002. C of IR said that IRD would do its best to respond to members' concerns in writing prior to the House Committee meeting, and hoped members would give their support for the Bill.

(Post meeting note: The letter from C of IR dated 11 January 2002 to the Panel Chairman responding to questions and concerns of members raised at this meeting was issued to members vide LC Paper No. CB(1)797/01-02 (English version) dated 11 January 2002 and LC Paper No. CB(1)831/01-02 (Chinese version) dated 17 January 2002. The reply letters from C of IR dated 11 January 2002 to PISA and HKSA were circulated to members vide LC Paper No. CB(1)805/01-02 dated 14 January 2002.)

V Mandatory Provident Fund Schemes - Proposed amendments to legislation and situation of default contributions

LC Paper No. CB (1) 716/01-02(04) - Information paper provided by the Administration

33. The Chairman welcomed representatives of the Administration and invited the Deputy Secretary for Financial Services (DS/FS) to brief members on the proposed legislative amendments relating to Mandatory Provident Fund (MPF) Schemes.

34. DS/FS advised that the Mandatory Provident Fund (MPF) Schemes Operation Review Committee (the Review Committee) established by the Mandatory Provident Fund Schemes Authority (MPFA) in August 2001 was undertaking a comprehensive review of the MPF legislation in relation to the administrative and operational aspects of MPF schemes. The Review Committee had completed the first phase of its work. In the light of the recommendations of the MPFA, the Administration intended to put forward proposals to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (MPFSO). The proposed amendments had been set out in the information paper (CB(1)716/01-02(04)). DS/FS highlighted that one of the proposed amendments was to increase the minimum level of relevant income for MPF contributions from \$4,000, which was set in 1995 with the enactment of the MPFSO, to \$5,000 in the light of changing economic conditions.

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35. Mr Bernard CHAN declared interest that he was a representative of an MPF trustee company and a member of the Mandatory Provident Fund Schemes Advisory Committee.

Minimum and maximum levels of MPF contribution

36. Mr Andrew CHENG said that those earning a monthly income of \$5,000 in Hong Kong could barely make ends meet. While he did not dispute against the principle of saving for the future, he considered that the MPF contribution should not cause undue financial hardship to the lower wage earners. He asked if the Administration would consider raising the current minimum level of relevant income from 50% to 55% or 60% of the monthly median employment earnings of the working population.

37. Mr LEE Cheuk-yan pointed out that with a worsening unemployment problem, many previously dual-income families now only had one source of income, and therefore those earning a monthly income of \$6,000 or below would be driven into serious hardship having to make MPF contributions. He therefore reiterated the suggestion of the Confederation of Trade Unions made to the Review Committee that the minimum level of relevant income for MPF contributions should be 60%, i.e. \$6,000, of the monthly median employment earnings.

38. DS/FS said that in determining the minimum level of relevant income for MPF contributions, there was a need to strike a balance between achieving the maximum coverage of the workforce under the MPF Schemes, and causing minimum immediate financial pressure on the lower-paid employees. She said that if the minimum level of relevant income were to be increased to a higher percentage than 50% of the monthly median income, the amounts of savings for a portion of the working population for their retirement would be progressively reduced. In this regard, the Administration was of the view that setting the minimum level at 50% of the median income could suitably strike the balance.

39. As regards the maximum level of relevant income for MPF contributions, Mr LEUNG Fu-wah asked if retaining the maximum relevant income level at \$20,000 instead of adjusting it to \$30,000 according to the proposed adjustment basis of 90% scheme coverage would set an undesirable precedent for future reviews of the maximum level. DS/FS replied that the retention of the maximum relevant income at the existing level on this occasion was an exceptional arrangement to avoid imposing additional financial burden on employers and employees in the light of the current economic situation. The decision had also taken into account the fact that many employees in the income bands between \$20,000 and \$30,000 per month (\$30,000 was the income of 90 percentile of the working population) were members of MPF schemes receiving voluntary contributions on top of mandatory contributions and some were exempted from the MPFSO altogether. In reply to Mr James TIEN's enquiry, DS/FS advised that maintaining the maximum relevant income level at \$20,000

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would result in a coverage of about 83% of the working population under the MPF Schemes.

40. As regards the frequency of conducting reviews of the minimum and maximum levels, ED(P&D)/MPFA explained that MPFA took into consideration that each time the minimum and maximum relevant income levels for MPF contributions were adjusted, it would require costly system adjustments on the part of employers and trustees. On the other hand, it was necessary to ensure that the minimum and maximum levels could duly reflect the overall wage trend. After reviewing options between conducting reviews ranging from three to five years, the MPFA decided that four years would be an appropriate interval.

41. Mr NG Leung-sing expressed support for the bases for future adjustment of the minimum and maximum levels of relevant income for MPF contributions as proposed by the MPFA, as well as the decision to retain the maximum level at \$20,000 in the light of the current economic climate. Since it had been proposed that 90% of the scheme coverage would be adopted as the basis to adjust the maximum relevant income level, whereas the Administration had decided to maintain the maximum relevant income level at \$20,000, instead of adjusting to \$30,000 according to the aforesaid adjustment basis, under the current review, Mr NG suggested that if the proposed adjustment bases were to be incorporated into the MPF legislation, the wordings of the relevant provisions should accordingly provide the option and flexibility to maintain the maximum relevant income level where appropriate. DS/ES said that the Administration would duly consider Mr NG's suggestion.

42. Mr CHAN Kam-lam observed that volatile economic conditions could cause substantial fluctuations in the minimum and maximum levels of relevant income for MPF contributions, if the latter were to be adjusted according to the prevailing income levels of the working population at the time of the review. As the MPFA had proposed to review the minimum and maximum levels every four years, he suggested that the average income levels over the four years before each review be used as the adjustment bases to better reflect the overall wage trend. DS/ES said that the Administration would consider Mr CHAN's suggestion.

Enforcement of the MPFSO

43. Mr HO Chun-yan said that the proposed legislative amendments did not address the issues relating to the need to strengthen protection for employees under the MPFS. For example, there were employees who were coerced by employers to switch to a self-employed status. There were also cases in which employers not only evaded MPF contributions, but also absconded with their employees' MPF contributions. These contributions were unlikely to be salvaged if the company had wound up. He suggested that the Administration should urgently review the legislation in relation to the Insolvency Fund in this connection, and take comprehensive measures such that employees were fully protected in respect of their MPF contributions.

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Admin. 44. DS/FS replied that the current proposed legislative amendments were based on the first phase of the Review Committee's work and the Review Committee would continue its review work covering a wider scope of issues relating to MPFS. As to whether the existing legislation concerning the Insolvency Fund should be amended to provide protection for employees in respect of their MPF contributions, DS/FS agreed to provide a written response to the Panel after the meeting.

45. In regard to enforcement actions against those employers who defaulted on their MPF contributions, the Executive Director (Enforcement), MPFA (ED(E)/MPFA) advised that MPFA had been expeditious and stringent in dealing with such cases. The time taken to study and resolve a case varied according to the nature and complexity of individual cases, and on some occasions MPFA needed to seek legal advice before taking follow-up enforcement actions. Past experience revealed that most cases could be resolved within three months. He reported that in 2001, out of the 160 reported cases of employees being forced by employers to switch to a self-employed status, only 13 cases were found substantiated, and all the employers concerned had been convicted. For employers who defaulted on MPF contributions, 172 summons had been issued in 2001 and 26 employers had been prosecuted. He remarked that taking prosecution action was the last resort. MPFA had put a lot of efforts on improving employers' and employees' knowledge of MPF legislation and their respective responsibilities, and in assisting both parties to resolve MPF-related problems.

46. Mr LEUNG Fu-wah asked if the time limit of 6 months for taking prosecution action on default contribution cases could be extended so as to reduce the number of lapsed cases in this regard. In response, ED(E)/MPFA pointed out that the Magistrates Ordinance (Cap. 227) imposed a requirement that information or summons in respect of an offence must be laid within 6 months of the occurrence of that offence. Hence, it would not be appropriate to amend the Magistrates Ordinance specifically for cases of default MPF contributions. To tackle non-enrolment and default contributions more effectively, MPFA proposed that MPFA be empowered to serve a statutory notice on an employer who had failed to enrol employees on a MPF scheme, as well as to impose a surcharge on contributions in arrears. Employers would be required to make necessary rectification or to pay the stipulated surcharge within a specified period, or MPFA might take follow-up enforcement action.

47. Noting that there were on average 5 700 employers whose MPF contributions remained in arrears per month, Mr LEE Cheuk-yan asked if MPFA would step up enforcement actions against these employers. ED(E)/MPFA clarified that in regard to these 5 700 cases, some of the companies had already wound up. He explained that MPFA could not initiate prosecution action against employers defaulting on MPF contributions or collect outstanding payments unless the employee concerned came forward to officially file a complaint against his employer. Unfortunately, many employees were not

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willing to come forward to lodge a complaint. In view of this problem, MPFA would monitor employers' enrollment in MPFS more proactively and would consider if legislation could be put in place to summon employees to stand as witnesses against employers defaulting on MPF contributions, and to provide employees with legal protection while doing so.

48. Mr LEE Cheuk-yan expressed concern with the frequent occurrence of cases where employers absconded with their employees' MPF contributions. He felt that the severity of these cases warranted a harsher penalty and prompt handling. He opined that these cases should be reported to the Police and sought MPFA's view in this regard. ED(E)/MPFA responded that employees had the option to report such cases to the Police if not to the MPFA, and MPFA would work closely with the Police on these cases. He also advised that the severity of the penalty to be imposed on the employers concerned depended on the circumstances of individual cases.

Other issues

49. Mr Bernard CHAN sought clarification on the proposed amendments regarding "simplification of 30-day contribution holiday" as set out in paragraphs 16 to 18 of the Administration's information paper. ED(P&D)/MPFA explained that the current 30-day contribution holiday arrangement for new employees under section 7A of the MPFS had resulted in a cumbersome administrative process in relation to a new employee's first MPF contributions. To simplify the arrangement, MPFA had proposed that for employees with monthly payroll or more frequent than monthly payroll (e.g. weekly), the employee contributions for the first incomplete employee payroll period should be waived. As for employees with less frequent than monthly payroll, their contributions would be waived for the incomplete calendar month immediately following the first 30 days of employment. The contribution period for employers would remain unchanged, i.e. employers' contributions would continue to count from the first day of employment.

50. DS/FS noted Mr Andrew CHENG 's request to introduce the proposed legislative amendments to the Legislative Council as soon as possible with a view to completing the legislative process within the current legislative session.

VI Development of the retail debt market in Hong Kong
LC Paper No. CB(1)716/01-02(05) - Information paper provided by the Administration

51. In view of insufficient time, members agreed to defer discussion of this item to a future Panel meeting.

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VII Any other business

52. There being no other business, the meeting ended at 1:15 pm.

Legislative Council Secretariat

26 March 2002