

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, 4 February 2002 at 10:45 am
in the Chamber of the Legislative Council Building

- Members present** : Hon Ambrose LAU Hon-chuen, GBS, JP (Chairman)
Hon Henry WU King-cheong, BBS (Deputy Chairman)
Hon LEE Cheuk-yan
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
Hon Jasper TSANG Yok-sing, JP
Hon Emily LAU Wai-hing, JP
Hon MA Fung-kwok
- Members absent** : Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Hon Eric LI Ka-cheung, JP
Dr Hon Philip WONG Yu-hong
- Public officers attending** : For item IV

Mr Joseph YAM, JP
Chief Executive
Hong Kong Monetary Authority

Mr David CARSE, JP
Deputy Chief Executive
Hong Kong Monetary Authority

Action

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

Mr James H LAU Jr., JP
Acting Deputy Chief Executive
Hong Kong Monetary Authority

For item V

Miss Susie HO
Deputy Secretary for Financial Services

Mr G W E JONES
Registrar of Companies

Ms Dorothy SILKSTONE
Registry Solicitor

Mr Esmond LEE
Principal Assistant Secretary for
Financial Services

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

Staff in attendance : Ms Pauline NG
Assistant Secretary General 1

Mr WONG Tin-yau, Anthony
Senior Assistant Secretary (1)8

I Confirmation of minutes of meetings and matters arising

Confirmation of minutes

LC Paper No. CB(1)875/01-02 - Minutes of meeting on 3 December
2001

LC Paper No. CB(1)923/01-02 - Minutes of meeting on 20 December
2001

LC Paper No. CB(1)937/01-02 - Minutes of meeting on 8 November
2001

Action

The minutes of the meetings held on 3 December 2001, 20 December 2001 and 8 November 2001 were confirmed.

Matters arising

Research study on fiscal reserves

LC Papers No. CB(1)880/01-02(01) - Draft research report on
and CB(1)908/01-02 "Practices of overseas
jurisdictions in building up or
maintaining their fiscal reserves"

2. The Chairman informed members that Mr James TIEN had written a letter to him on behalf of the Cross-Party Coalition of Legislative Council (LegCo) Members (the Coalition) suggesting that the Panel should commission the Secretariat to conduct a research on the level of fiscal reserves held by overseas jurisdictions. Since the Panel had already commissioned the Library & Research Services Division of the LegCo Secretariat to carry out a research study on "Practices of overseas jurisdictions in building up or maintaining their fiscal reserves" and this study was approaching completion, he had invited Panel members as well as other LegCo Panel to attend an informal meeting on 24 January 2002 to discuss the draft research report. At the informal meeting, members made the following suggestions to be considered by the Panel-

- (a) While the draft research report had included comprehensive information on how five overseas jurisdictions, namely, Singapore, Norway, New Zealand, Argentina and the United States (US) handled their fiscal reserves, more background information on Hong Kong, in particular the historical level of fiscal reserves kept by Hong Kong since the Hong Kong dollar was linked to the US dollar and views of academics and experts on fiscal reserves presented to the Panel, should be incorporated into the research report.
- (b) It would be useful to hold working meetings between interested LegCo Members and the Secretariat staff concerned to discuss the additional information to be incorporated into the research report.
- (c) The concerns of the coalition might be adequately addressed with the additional information incorporated into the report as suggested by members. A separate research study might therefore not be necessary.

3. Members agreed to the above suggestions. The Chairman accordingly directed that a circular be issued to invite interested Members to join the working meetings. Miss Emily LAU highlighted that the Financial Secretary would present the 2002-03 Budget on 6 March 2002. She hoped that the LegCo

Action

Secretariat could provide Members with the requested additional information by end February 2002.

(Post meeting note: A circular LC Paper No. CB(1)1023/01-02 dated 6 February 2002 was issued to all LegCo members inviting their participation in the first working meeting on 1 March 2002)

II Information papers issued since last meeting

LC Paper No. CB(1)848/01-02 - Mandatory Provident Fund Schemes Statistical Digest

LC Papers No. CB(1)856/01-02(01) - Press release and articles relating to the Exchange Fund 2001 results provided by the Hong Kong Monetary Authority

LC Papers No. CB(1)919/01-02(01) - Press release and paper relating to the proposal by the Hong Kong Association of Banks on the sharing of positive credit data to tackle consumer debt and bankruptcy

4. Members noted the above papers issued since last meeting.

III Date and items for discussion for next meeting

LC Paper No. CB(1)938/01-02(01) - List of outstanding items for discussion

LC Paper No. CB(1)938/01-02(02) - List of follow-up actions

5. The Chairman informed members that the Administration had proposed the following two items for discussion at the next regular Panel meeting scheduled for 4 March 2002 -

(a) The Securities and Futures Commission (SFC) Budget for 2002/03; and

(b) Review of listing rules on corporate governance.

Regarding item (b) above, the Chairman advised that a public consultation paper on the listing rules review had been published by the Hong Kong Exchange and Clearing Limited, and that the deadline for submission of views was 22 April 2002. The proposals would affect the listing rules of both the Main Board and the Growth Enterprise Market. Members agreed that the above two items should be discussed at the Panel meeting to be held on 4 March 2002.

Action

6. Miss Emily LAU said that the fallout of the Enron Corporation had given rise to serious concerns about corporate governance. She suggested that the Panel should consider what lessons could be learned from the case and what measures should be taken to strengthen the confidence of investors in listed companies in Hong Kong. In this regard, members agreed to the Chairman's suggestion of requesting the Administration to provide, in connection with the listing rules review, more information on areas pertinent to the problems revealed by the Enron case. The Chairman also directed that should there be a need to further discuss the issues arising from the Enron case upon perusal of the information, a separate discussion session for the purpose might be arranged.

7. Members noted that the item on "Development of the retail debt market" proposed by Mr SIN Chung-kai was previously scheduled for discussion at the Panel meeting on 7 January 2002. Due to insufficient time, the item was not discussed at the meeting. Mr SIN suggested that the subject be discussed at a future Panel meeting when a time slot was available, in the light that there was less urgency to examine the subject. Members agreed.

8. Members noted that Miss Emily LAU had proposed to discuss the proposal of the Hong Kong Association of Banks on the sharing of positive consumer credit data to tackle the problem of personal bankruptcy. The relevant correspondence had been circulated to members for information vide LC Paper No. CB(1)919/01-02(01) & (02) on 25 January 2002. Miss LAU said that she had informal discussions with the Consumer Council on this matter, and noted that the matter had important implications on personal data piracy. She therefore strongly recommended that the proposal be discussed in detail, such that all related issues could be satisfactorily addressed before a decision was taken on the proposal. Members agreed to tentatively schedule the discussion on the proposal on sharing of positive consumer credit data for the Panel meeting on 9 April 2002.

9. The Chairman reminded members that a special meeting would be held on 26 February 2002 at 10:45 am to discuss the subject of "Consumer protection in the banking sector".

IV Briefing by the Chief Executive of the Hong Kong Monetary Authority

LC Paper No. CB(1)1015/01-02(01) - Presentation booklet provided by the Hong Kong Monetary Authority

10. The Chairman welcomed representatives of the HKMA. At the Chairman's invitation, the Chief Executive of the HKMA (CE/HKMA) gave a presentation on HKMA's work on maintaining currency stability, promoting the safety and stability of the banking system, enhancing the efficiency, integrity and development of the financial infrastructure, and prudent management of the Exchange Fund.

Action

11. CE/HKMA highlighted that the global financial system was facing an unprecedented confluence of risks, and Argentina's current debt crisis and the weakness of the Japanese Yen were some of the manifestations of these risks. Hong Kong, being a small open economy without capital controls, might receive a disproportionate share of financial market volatility. It was crucial for HKMA to carefully identify, monitor and manage the risks posed to the local financial markets to minimize possible adverse impacts on Hong Kong. CE/HKMA then updated the Panel on HKMA's four main areas of work aforementioned, and the related issues that affected Hong Kong's economy. The details are contained in the presentation booklet tabled at the meeting.

12. In his conclusion, CE/HKMA assured members that HKMA would continue to exercise prudence and caution in performing its responsibilities. It would also continue to share its views with Members and the general public on how Hong Kong could garner strength and guard its financial markets against the unprecedented confluence of risks. CE/HKMA welcomed suggestions from Members as to how HKMA could improve/enhance its work, and he hoped that Members would continue to support HKMA in its work.

13. Miss Emily LAU expressed appreciation for the comprehensive information provided by HKMA on its major work areas, and CE/HKMA's analyses of various issues relating to the local economy. She also commended CE/HKMA on his regular 'Viewpoint' articles, which she considered had provided the general public as well as the financial services sector with thought-provoking analyses of important economic issues. She encouraged HKMA to continue its efforts on disseminating important economic information to the public and on enhancing the transparency of its work.

Returns to the fiscal reserves

14. Mr LEE Cheuk-Yan noted that the annual returns to the fiscal reserves, as a share of the returns to the Exchange Fund, had fluctuated considerably during the years from 1998 to 2001 (\$26 billion in 1998, \$45.4 billion in 1999, \$18.1 billion in 2000 and \$1.7 billion in 2001). He said that the difficulty in projecting the annual return to the fiscal reserves might be one of the reasons contributing to the unexpectedly high level of fiscal deficit for the current financial year. In the light that the compounded annual investment return to the Exchange Fund over the 8-year period from 1994 to 2001 was 6.5%, some Members, including himself, had requested the Financial Secretary to consider fixing the annual return to the fiscal reserves at 5% instead of pegging the rate of return to the fiscal reserves to the rate of return to the Exchange Fund, in order to provide a more stable revenue source to the Government. He sought HKMA's views on this suggestion.

15. In response, CE/HKMA advised that the new arrangement whereby the fiscal reserves shared in the rate of investment return of the Exchange Fund, as against placing them on deposit with the Exchange Fund, was introduced in 1998.

Action

Over the years, this new arrangement had on average generated greater return to the fiscal reserves than previously, but there was also greater year to year volatility.

16. CE/HKMA further said that if the volatility of the annual return to the fiscal reserves was found not acceptable by the community, the Government might consider the option of reverting back to the "deposit" arrangement or other alternative arrangements, for example, working a three-year moving average of the rate of investment return, which would generate more stable income for the fiscal reserves. As regards the suggestion of fixing the annual return to the fiscal reserves at 5%, CE/HKMA highlighted that while the market interest rate had been at relatively high levels over the 8-year period from 1994 to 2001 during which the Exchange Fund had been able to attain a compounded annual return of 6.5%, the interest rate was expected to remain at lower levels for an ensuing period in the light of the global economic situation. Hence, interest income was expected to be less in the foreseeable future. He therefore had doubts as to whether it would be appropriate to fix the return to fiscal reserves at 5%. He had given his views on this matter to the Financial Secretary (FS) and the Secretary for the Treasury, and the final decision was with the Financial Secretary.

17. As to whether the Exchange Fund should top up the return to fiscal reserves to a certain fixed rate when the return to fiscal reserves was below that fixed rate in a particular financial year, CE/HKMA said that under section 8 of the Exchange Fund Ordinance (Cap. 66), FS had the discretionary power to transfer such funds from the Exchange Fund to the general revenue in the manner as stipulated in the provision. CE/HKMA said that any such top-up would involve a form of subsidy from the Exchange Fund to the general revenue and might pose unquantifiable risks to currency stability. He considered that if such an arrangement was to be made, the Government should explain the arrangement to the public with absolute clarity, and that any transfer of funds should be made with a high degree of transparency.

18. Mr LEE Cheuk-yan said that what he could gather from CE/HKMA's analysis was that for the coming years, it would not be realistic to expect high returns to the fiscal reserves as in the previous few years, and that the Government should not regard the returns to the fiscal reserves as a major source of revenue in formulating its future budgetary strategy. CE/HKMA affirmed Mr LEE's understanding of his analysis. He further remarked that from a prudent financial management angle, it would not be appropriate for the Government to rely too heavily on returns to the fiscal reserves to meet its operating expenses.

Accumulated surplus of the Exchange Fund

19. On the subject of fiscal reserves, Miss Emily LAU said that while she appreciated the need to maintain adequate reserves to ensure currency stability and hence the overall stability of the local financial system, the Government's

Action

reserves should be properly utilized to provide economic relief to the general public. She observed that apart from the fiscal reserves of some \$380 billion, there was also an accumulated surplus of about HK\$300 billion in the Exchange Fund. Given these large sums of reserves/surplus, she considered that there should be room to manoeuvre and spend some of the reserves/surplus to benefit the community at this difficult time. She sought CE/HKMA's view on what levels of fiscal reserves and accumulated surplus of the Exchange Fund could be considered as adequate for maintaining the stability of the local financial system.

20. In response, CE/HKMA said that it was highly difficult, if not impossible, to determine at what respective levels the Exchange Fund surplus and the fiscal reserves could be regarded as adequate to ensure financial stability. Theoretically, under our currency board system, the basic requirement was to maintain an amount of foreign reserves to provide full backing for the monetary base. But the 1997-98 Asian financial crisis had revealed that a much higher level of foreign reserve than the theoretical minimum of 100% backing for the monetary base might need to be mobilized at times to protect the Link and stabilise the financial market.

21. CE/HKMA pointed out with the influence of globalization, financial markets were subject to swift changes and the overall situation was getting more vulnerable. After the Asian financial crisis in 1997-98, many economies in the region had introduced stringent capital control measures to protect their financial and economic systems. Hong Kong, however, could not put in place any such measures amounting to exchange controls. Therefore, the local financial markets were subject to greater risks posed by external factors than other Asian economies. Hence, there was the on-going possibility that a much higher level of funds in excess of the theoretical minimum level of foreign reserves had to be called upon to deal with contingencies when they arose. CE/HKMA said that in a nutshell, he considered that the greater amount of funds in the Exchange Fund available for disposal, the greater the protection could be afforded to the Link and the stability of Hong Kong's financial system.

22. Miss Emily LAU queried the basis for CE/HKMA's view that the accumulated surplus of the Exchange Fund should also be used to safeguard currency stability, and that it was always better to maintain as much accumulated surplus as possible in the Exchange Fund. In this regard, she queried whether there were any objective and scientific factors to support CE/HKMA's view.

23. In response, CE/HKMA advised that it was not possible to devise a scientific basis for determining the "adequate" level of funds for disposal in the Exchange Fund, given the high volatility of the global as well as local financial markets. This was evident in the 1997-98 Asian financial crisis. He was particularly worried that currency stability could be undermined if the accumulated surplus of the Exchange Fund was drawn down for economic relief measures. He also remarked that the state of public finance in Hong Kong and the ability of the Government/HKMA in maintaining robust reserves had considerable impact on market confidence in the stability of the local currency.

Action

24. Mr MA Fung-kwok enquired about the implications for the Exchange Fund in the hypothetical scenario that the Link was removed. CE/HKMA envisaged that under such a scenario, Hong Kong's economy would be exposed to economic risks of disastrous proportions, and of a magnitude comparable to the current economic crisis in Argentina. There would be formidable adverse impact on the Exchange Fund, and a hefty price would have to be paid to restore currency stability. He reiterated the importance of maintaining the Link for the stability of the Hong Kong dollar and Hong Kong's overall financial system.

Investment returns to the Exchange Fund

25. In reply to Mr Henry WU's enquires about the benchmark asset mix for the Exchange Fund, CE/HKMA said that the benchmark directed the long-term investment strategies of the Exchange Fund and was determined by FS in consultation with the Exchange Fund Advisory Committee. The existing benchmark asset mix was set in 1998 after a review by the Exchange Fund Advisory Committee. He noted that the actual investment returns to the Exchange Fund in the past three years had been higher than the benchmark returns. This to some extent reflected the ability of HKMA's fund managers in managing the Exchange Fund prudently while attaining a reasonable rate of return for the Fund.

26. As regards the need to review the benchmark asset mix, CE/HKMA advised that the benchmark was intended to guide the long-term investment strategies for the Exchange Fund. HKMA reported the actual investment results to the Exchange Fund Advisory Committee as measured against the benchmark return on a monthly basis and the Advisory Committee was at liberty to review the benchmark asset mix at any time it considered appropriate. However, he held the view that the existing benchmark asset mix continued to be appropriate and consistent with sound investment principles under current market conditions. As an illustration, he pointed out that a Hong Kong dollar invested according to the investment benchmark over the last ten years would have become \$2.1. If the dollar had been placed in a time deposit account or used to buy US dollar bonds, it would only have become \$1.6 and \$1.9 respectively.

27. In response to the Chairman's question, CE/HKMA replied that HKMA would consider including the renmanbi (RMB) as one of the currencies in the asset mix of the investment benchmark only when RMB became freely convertible, and when there was adequate credit assessment made by the market on the Mainland.

28. Mr NG Leung-sing referred to one of the investment objectives for the Exchange Fund of achieving an investment return that would preserve the long-term purchasing power of the assets, and enquired about the method for measuring the "long term purchasing power of the assets". CE/HKMA replied that there were a number of tools for measuring the "long term purchasing power of the assets" of the Exchange Fund, and an easily understood one was the Hong

Action

Kong Consumer Price Index (A). The compounded annual investment return of the Exchange Fund from 1994 to 2001 was 6.5% as against the average annual Hong Kong Consumer Price Index (A) of 2.4% over the same period.

29. Mr NG Leung-sing, Mr TO Kun-sun and Mr Henry WU shared concerns on the performance of HKMA's fund managers, both in-house and external, in managing the Exchange Fund. They enquired about their comparative performance, the percentage of the portfolio contracted out to external fund managers, and the mechanism for monitoring the performance of individual fund managers. Mr TO in this regard also asked whether with the sheer size of the Exchange Fund, HKMA's fund managers would actually be in an advantageous position to bargain and obtain preferential rates, and therefore their performance should, on the outset, be better than the performance of other balanced funds. He also enquired whether a more detailed comparison, based on types of the assets invested, with other funds in the private sector could be made.

30. CE/HKMA said that the sheer size of the Exchange Fund actually made it difficult to display similar agility as funds of smaller sizes in response to swift market changes. This obstacle should be taken into account when considering the performance of the Exchange Fund. Notwithstanding this, the Exchange Fund had achieved an investment return more favourable than those of other similar funds in the private sector over the past few years. Regarding the comparative performance between HKMA's in-house fund managers and external fund managers, CE/HKMA advised that a major portion of the funds of the Exchange Fund was managed by HKMA's in-house staff, and approximately 30%-40% of the funds was managed by external fund managers. HKMA conducted regular comparisons and the findings revealed that HKMA's in-house managers consistently out-performed external fund managers. HKMA also conducted regular reviews on the performance of individual external fund managers, and the hiring policy was strictly performance based.

Mortgage loans and credit cards

31. Mr SIN Chung-kai noted that the mortgage delinquency ratio had declined from 1.28% in September 2001 to 1.22% in December 2001, while on the other hand, the annualized charge-off ratio for credit cards had risen from 4.75% to 5.97%. Mr SIN sought explanation for the above figures. He was particularly concerned whether the mortgage delinquency ratio was mainly attributed to the increased number of foreclosures on mortgaged properties by banks, and that the number of bankruptcy cases might further increase after the Chinese New Year, reflecting a worsening financial position of the general public.

32. CE/HKMA explained that the improvement in the mortgage delinquency ratio was mainly attributed to the general decline in mortgage interest rates, which in turn had resulted in the enhanced ability of residential property owners to service their mortgage loans. While the increase in the

Action

write-off of bad debts by banks might also be a factor, he understood that the effect of this factor was less significant than the decline in interest rates on the delinquency ratio. Deputy Chief Executive, HKMA (DCE/HKMA) supplemented that the cases of mortgage loan rescheduling had increased in the last quarter of 2001, while the write-off amount of mortgage loans was about 0.04% of the total mortgage loans, which was not a significant percentage. He added that the amount of mortgage loans re-scheduled and amount of overdue mortgage loans, taken together, had declined in the last quarter of 2001. At Mr SIN's request, CE/HKMA agreed to provide members with the latest figures on residential mortgage loans (RMLs) in negative equity (as at end December 2001) when they were available.

Admin.

(Post meeting note: The information note on "Update survey on residential mortgage loans in negative equity: position as at December 2001" was circulated to members vide LC Paper No. CB(1)1334/01-02 dated 18 March 2002.)

33. Miss Emily LAU said that although the banking sector had announced some collaborative measures to facilitate negative equity owners to re-schedule their mortgage loans, she had gathered from some negative equity homeowners that certain banks were still unwilling to assist them in this regard. She therefore asked if HKMA would further liaise with the banking sector to examine what practical assistance could be provided for these negative equity homeowners.

34. CE/HKMA and DCE/HKMA advised that arranging loan restructuring/re-scheduling with homeowners in negative equity was essentially a matter of individual banks' commercial decisions. Nevertheless, HKMA understood that most banks had been putting in a lot of efforts on helping these homeowners to enable them to continue to service their mortgage loans. CE/HKMA further said that although the number of cases of RMLs in negative equity had increased slightly, which could be explained by the general decline in property prices, the interest rates for RMLs in negative equity had lowered in general and the total amount of outstanding RMLs in negative equity had reduced over the last quarter of 2001. These changes to some extent reflected the banks' efforts made in assisting negative equity homeowners. In response to Miss LAU's request for information on the number of cases where homeowners in negative equity had been rejected loan rescheduling by banks, CE/HKMA said that HKMA did not have ready information on these cases but would explore if such information could be obtained from banks.

Admin.

35. Turning to the bankruptcy situation, CE/HKMA advised that while it would be difficult to make precise projections on the personal bankruptcy situation, HKMA had anticipated that the charge-off ratio for credit cards might further increase in the near future. In this regard, HKMA was discussing with the banking industry possible measures to tackle the situation. One initiative being looked into was the sharing of positive credit data among banks so as to place banks in a better position to assess credit applications.

Action

36. In reply to Mr NG Leung-sing's enquiry about the trend of net interest margins of local banks, CE/HKMA advised that the net interest margins of local banks had narrowed since the full implementation of the interest rate deregulation, which among other factors had resulted in keener competition within the banking sector.

Financial Infrastructure

37. Mr CHAN Kam-lam said that with the Mainland's entry into the World Trade Organization, the whole Mainland market would be liberalised and he envisaged that there would be considerable increase in international transactions of Mainland institutions. He enquired about HKMA's work on enhancing the financial infrastructure to facilitate the increased financial activities of Mainland institutions conducted in Hong Kong in the future.

38. CE/HKMA advised that as long as the Mainland had exchange controls and the RMB was not freely convertible, there was obstruction to the free flow of capital from the Mainland to Hong Kong. However, he assured members that the Administration, together with HKMA, would be working closely with the Mainland authorities on the arrangements to facilitate capital flow between the Mainland and Hong Kong and the conduct of international transactions in Hong Kong by Mainland institutions. CE/HKMA said that Hong Kong was well placed to become the treasury centre for the Mainland, and assured members that HKMA would be doing a lot of work to attract a critical mass of asset management and treasury business from the Mainland to Hong Kong. The linkages that had been established in the debt clearing and payment systems of Hong Kong and the Mainland were evidence of such on-going efforts.

Salary review of HKMA staff

39. Miss Emily LAU recalled that CE/HKMA had indicated previously that he was open to salary reduction should there be such a need in the light of the general economic and employment environment. She enquired about the present position regarding the staff salary review for HKMA. CE/HKMA said that the Administration had recently commissioned a consultant to review the salary structure/levels of a number of public bodies. He and his colleagues in HKMA would respect the outcome of the review, and would accept salary adjustments as decided by FS. For 2002-03, HKMA had already budgeted a reduction of 5% in expenditure. He further said that HKMA conducted annual surveys on salary levels and trends in the financial services sector for reference by the Exchange Fund Advisory Committee and FS in deciding the annual adjustment to the salary levels of HKMA staff. Depending on the outcome of the aforesaid consultancy study, HKMA would examine whether and how the existing mechanism for annual salary adjustment for HKMA staff should be reviewed.

40. The Chairman thanked CE/HKMA and representatives of the HKMA for their presentation and attending the meeting.

Action

V Proposed reform of the registration regime for overseas companies
LC Paper No. CB(1)938/01-02(03)- Information paper provided by
the Administration

41. The Chairman welcomed representatives of the Administration to the meeting and invited the Registrar of Companies (R of C) to give the Panel a briefing on the proposed reform of the registration regime for overseas companies.

42. R of C said that the main objective of the proposed reform was to introduce a simpler and more user-friendly registration regime for overseas companies, while enhancing disclosure requirements. He said that there was a need to reform the registration regime in the light of the Mainland's entry into the WTO, which would probably give rise to an increase in the number of overseas companies seeking to register to conduct business in Hong Kong in the next few years. The details of the proposals were contained in the information paper provided to members.

43. Mr NG leung-sing noted that one of the proposals was the requirement for all overseas companies to file an annual return which should contain, among other information, the particulars of persons who, at the date of the return, were directors, secretary and authorised representative of the company. He asked how exhaustive was the information required and what the relevance of the information was in the light of public interest.

44. R of C replied that the information required for the annual return included the name (English and Chinese where applicable), address, identity card number (or passport number) of senior company personnel. These details constituted the basic information that a member of the public should have the right to know if they had any dealings with a company. The Registry Solicitor (RS) supplemented that the annual return would require no additional information than was already required under Part XI of the Companies Ordinance (the Ordinance). The proposed change was the requirement for overseas companies to file an annual return containing all the required information instead of notifying the R of C of changes only when there had been such changes. In response to Mr NG's further question, RS said that apart from registering the information, there would be no need for the Companies Registry to take any further action in respect of the information, and it would be up to the public to use the information as they deemed appropriate.

45. In reply to Mr CHAN Kam-lam's enquiry about the filing of accounts by overseas private companies, R of C clarified that under the proposal, if an overseas company, which could be a private company had to file accounts in its home jurisdiction, then it had to do so in Hong Kong as well. As such, the proposal actually increased the amount of information available to the Hong Kong public on overseas private companies registering to do business in Hong Kong.

Action

46. Mr Henry WU asked if the proposed reform measures were in line with the requirements of the registration system for overseas companies in other jurisdictions, which were comparable to Hong Kong as international financial centres. He also enquired how the arrangement in the proposed legislation would deal with a case in which an overseas company proposed to register a name under which it had been incorporated in its home jurisdiction but which was identical to the name of a local company.

47. R of C confirmed that the proposed reform measures were in line with other comparable jurisdictions. RS supplemented that the Ordinance already enabled the R of C to serve a notice on an overseas company whose corporate name was the same as or too like the name of another company already registered under the Ordinance, and to direct the company to specify a different name under which it would carry on business in Hong Kong. The proposed measure was to allow an overseas company which had been obliged to register with different corporate name when registering under Part X in such circumstances to re-register under its original corporate name where the local company having an identical name had, for example, been wound up or had otherwise released its name to the overseas company. In such circumstances, the R of C would be able to withdraw the notice previously served on the overseas company. RS continued that an overseas company whose name had already been registered by a local company currently in operation would have to operate in Hong Kong under another name, and would not be allowed to use the name already registered by the local company.

48. Mr James TO Kun-sun observed that some overseas companies merely held properties but did not have an actual place of business in Hong Kong. If there was litigation involving such a company, the fact that the company did not have an actual place of business might hamper the legal process. He was concerned that such overseas companies might abuse the system to conduct illegal activities such as money laundering. He also noted that there was an increasing number of companies which traded and conducted transactions over the Internet, but which did not have a physical place of business. He asked how the registration regime, upon reform as proposed, would apply to these companies. In response, RS said that whether an overseas company had established a place of business in Hong Kong and hence was required to register under Part XI of the Ordinance would be considered according to the particular circumstances pertinent to the company, such as whether the company had entered into leasing or employment contracts, or had entered into contracts with other companies, the company's length of operation etc. In this regard, the Administration noted Mr TO's suggestion of establishing a system whereby basic information concerning an overseas company would be readily available if the company merely held properties in Hong Kong but had not established a place of business in Hong Kong.

49. In regard to Mr TO's question as to whether the proposed reform would undermine the Administration's anti-money laundering initiatives, R of C said that the proposed reform measures in fact strengthened the regime in thwarting

Action

money laundering activities by requiring every oversea company to file proper annual returns. As such, oversea companies would be required to deliver to the Registrar copies of their accounts which they were required to publish in their home jurisdictions. The Administration noted Mr TO's suggestion to consult other regulatory bodies such as the Hong Kong Monetary Authority on the proposed reform in view of the possible impact of the reform measures on anti-money laundering initiatives.

50. As regards business operations which traded only on the Internet, R of C said that practically company law could only apply to legal entities which had a physical place of business. He highlighted that the Sub-Committee of the Standing Committee on Company Law Reform, which had reviewed the provisions regarding oversea companies, had consulted various professional bodies such as the Hong Kong Association of Banks, the Hong Kong Society of Accountants etc., and had examined the position in overseas jurisdictions on the applicability of company law to business operations which traded only on the Internet. As a result, it had been concluded that this type of business operations did not fall under the purview of company law.

51. Mr SIN Chung-kai noted that there might be ambiguity in the proposed new term 'non-Hong Kong company' to replace the existing term 'oversea company', in that the new term did not accurately reflect the fact that the oversea company, which had been incorporated outside Hong Kong, would register/had registered to have a place of business in Hong Kong. R of C agreed that the term was not completely satisfactory but pointed out that the Sub-committee had not been able to identify a better alternative. He stressed that it would not be possible to designate such companies as 'foreign companies' as this would mean that Mainland companies would be categorized as 'foreign'.

52. Mr CHAN Kam-lam noted that in paragraph 6 of the information paper that currently, an oversea company was required to deliver various documents to the Registrar within one month of the establishment of its place of business in Hong Kong. In this regard he asked how the Administration had been able to ascertain if a company had complied with this requirement, as currently, oversea companies were not required to specify the date of establishment in their documents. In response, R of C said that, while he appreciated Mr CHAN's concern, it had not been practicable for the Companies Registry to monitor if the companies concerned had complied with this requirement, because such monitoring work would have extensive resource implications.

53. The Chairman thanked the Administration for attending the meeting.

VI Any other business

Permanent accommodation for HKMA

54. ASG1 reported that to follow-up the discussion on "Permanent

Action

accommodation for HKMA" at the Panel meeting on 5 November 2001, the Secretariat was compiling information on past cases of purchase and fitting-out of government offices and on the relevant funding procedures. As the earliest purchase of government offices was made in the early 1980s, the Secretariat had been conducting research into the relevant files, and liaising with the relevant government departments to obtain the information. She expected that the paper covering the relevant information would be ready for issue in a few weeks.

55. There being no other business the meeting ended at 12:55 pm.

Legislative Council Secretariat

12 April 2002