立法會
Legislative Council

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Report of the Panel on Financial Affairs
for submission to the Legislative Council

Purpose

This report gives an account of the work of the Panel on Financial Affairs ("the Panel") for the 2012-2013 legislative session. It will be tabled at the meeting of the Legislative Council ("LegCo") on 10 July 2013 in accordance with Rule 77(14) of the Rules of Procedure of LegCo.

The Panel

2. The Panel was formed by a resolution passed by the Council on 8 July 1998 and as amended on 20 December 2000, 9 October 2002, 11 July 2007 and 2 July 2008 for the purpose of monitoring and examining government policies and issues of public concern relating to financial and finance matters. The terms of reference of the Panel are set out in **Appendix I**.

3. For the 2012-2013 session, the Panel comprised 17 members, with Hon Starry LEE Wai-king and Hon CHAN Kin-por elected as Chairman and Deputy Chairman respectively. The membership list of the Panel is in **Appendix II**.

Major work

Macro economy

4. During the 2012-2013 session, the Panel continued to provide a forum for LegCo Members to exchange views with the Financial Secretary ("FS") on matters relating to Hong Kong's macro-economic situation. On the economic outlook for 2013, the Panel noted at the meeting on 3 June 2013 that for 2013 as a whole, the gross domestic product growth was forecast to be 1.5-3.5%, while

the forecast rates of headline and underlying consumer price inflation would be 4.5% and 4.2% respectively. Despite sustained solid growth in the Mainland economy benefitting Hong Kong's intra-regional trade, the key source of downside risks in the external economic environment were from the sovereign debt problems of the euro zone economy and uncertainty in the recovery in the US economy. The continued sluggishness in demand in the advanced economies would continue to affect Hong Kong's trade performance.

Property market and rentals

5. At the briefings by FS on the latest economic situation of Hong Kong on 3 December 2012 and 3 June 2013, Panel members noted with grave concern about the escalating residential prices which outpaced the growth of income as evidenced by the continued surge in the mortgage-to-income ratio to above 50% surpassing the long-term average of 47.9% over 1993-2012. This reflected the worsening of the home purchase affordability of the general public. Members therefore urged FS to carefully monitor the risk of a property bubble.

6. FS advised that rising flat supply through increasing land supply was the Government's top policy priority in ensuring a healthy and stable development of the property market. As a result of the Government's sustained efforts, the total supply of flats in the coming few years was expected to increase to 67 000 units which was the highest since September 2007. He reiterated that the Government rolled out measures to manage demand to forestall exuberance in the housing market in late October 2012 and late February 2013. Together with the Hong Kong Monetary Authority ("HKMA")'s sixth round of macro-prudential measures and commencement of the Residential Properties (First-hand Sales) Ordinance (Cap. 621), these measures had yielded results. The housing market had quietened down recently with the number of sale and purchase agreements for residential property received by the Land Registry plunged to 3 430 in April 2013 against a per month figure of about 6 800 in 2012. Flat prices edged down by 0.1% in March 2013, and fell further by 0.7 % in April 2013, reversing the exuberant situation in the first two months of 2013 when flat prices on average rose by 2.6% per month.

7. On the comment that the Administration should provide scientific and quantifiable indicators to help home-buyers assess the market risks and the suitable timing of purchasing properties, members noted FS's advice that prospective home-buyers should be cautious to look beyond the present economic conditions and personal circumstances, and give due regard to the eventual reversal of the low interest rate, and their job and income stability over a longer time span when deciding to purchase residential properties. They should be prudent not to overstretch themselves in obtaining mortgage loans when the property market was volatile and exuberant.

8. With a view to cooling down exuberance in the property market, the Government announced two rounds of demand management measures in late October 2012 and late February 2013, namely to adjust the duty rates and extend the holding period in respect of the Special Stamp Duty, introduce a Buyer's Stamp Duty on residential properties, and double the rates of existing ad valorem stamp duty for transactions of all types of properties and advance the charging of stamp duty on non-residential property transactions. The Panel and the Panel on Housing were briefed on these new measures at two joint meetings on 5 November 2012 and 26 March 2013.

9. While members of the two Panels generally agreed with the direction of the extraordinary measures introduced by the Government to stabilize the market, they expressed various concerns about the measures. Some members were worried that the measures would adversely affect the operation of a free market economy in Hong Kong, dampen investment sentiment of foreign investors, and aggravate the difficulties for genuine home-buyers of the middle and lower-income group in purchasing flats. The Administration stressed that the abundant liquidity of investors, the exceptionally low interest rate environment, speculative activities and irrational expectation of a persistent upward trend in flat prices had intensified the risk of a housing bubble that warranted the introduction of demand management measures to address the overheated property market. Failure to take measures would result in a high risk of a self-fulfilling upward property price spiral that could endanger the macroeconomic and financial stability of Hong Kong.

10. On the suggestion that the Administration should set targets to evaluate the effectiveness of the measures, members noted the Administration's views about infeasibility of setting an objective and quantifiable target in the price level for the residential property market, and that the Administration would continue to monitor developments in the market closely over a longer period of time taking into account factors, including flat price level, affordability ratio, demand-supply balance, circumstances of the external economic environment etc. in considering whether further measures were required.

11. In order to accord priority in meeting the housing need of local buyers and curb speculative activities, some members urged the Administration to consider measures like restricting the purchase of residential properties by non Hong Kong Permanent Residents, introducing capital gain tax on flat buyers and on owners who hoarded up flats for speculative purposes. Noting the rising trend in rentals, the Government should also consider reinstating rent control and providing tax concessions to middle class families residing in rented accommodation.

12. The Administration responded that the new measures were effective in addressing problems in the overheated property market but it would not rule out the possibility of introducing new tax measures in future when the situations warranted. As regards the suggestion on rent control, the Administration had expressed reservation due to concern about possible adverse effect of the measure deterring owners from leasing their properties, thereby reducing the number of flats available in the rental market and pushing up rentals further.

13. Panel members noted that the Administration introduced the Stamp Duty (Amendment) Bill 2012 and the Stamp Duty (Amendment) Bill 2013 into LegCo in January and April 2013 respectively to implement the demand management measures which are under scrutiny by two bills committees in LegCo.

<u>Monetary affairs</u>

14. The Panel continued to receive regular briefings by the Chief Executive of HKMA and his colleagues on the work of HKMA. At these briefings, HKMA provided information on the global/regional/local financial and economic conditions, assessment of risk to Hong Kong's financial stability, banking supervision, performance of the Exchange Fund ("EF"), development of financial infrastructure and the work of the Hong Kong Mortgage Corporation.

The Exchange Fund

15. The Panel noted that the investment income of EF for 2012 amounted to $1161.6 billion, and the investment income for the first quarter of 2013 was $17.1 billion. The Accumulated Surplus increased by $56 billion in 2012, and further by $4.2 billion in the first quarter of 2013. The fixed rate for calculating the payment to the fiscal reserve for 2012 was 5.6%, based on which EF paid $37.8 billion to the fiscal reserves in 2012.

16. Some members expressed concerns about the investment income of EF and the assets classes held, and enquired if HKMA would review the investment strategy of EF to further diversify the investment. HKMA responded that EF comprised the Long-Term Growth Portfolio ("LTGP"), the Investment Portfolio, and the Backing Portfolio each with different purposes and held different classes of assets. Private equity and real estate were among the assets held in LTGP for medium and long-term investment, which was an arrangement made since 2008 to diversify EF's investment into more asset classes. The investment of LTGP was capped at a level equivalent to one-third of the Accumulated Surplus of EF. The Backing Portfolio mainly held US dollar-denominated assets with high liquidity in order to provide full backing to the Monetary Base. The Investment Portfolio held assets including equities

and Renminbi ("RMB"). In view of the positive outlook on RMB assets for long-term investment, HKMA would consider increasing the asset allocation in RMB assets.

Banking stability

17. Given the volatility in the external economic environment and increasing risk from a developing property bubble in the local economy, some members were concerned about measures taken or to be introduced by HKMA in maintaining a robust banking system, in particular ways to address risks in property mortgage lending market on banks.

18. HKMA advised that the low interest rate environment had increased the inflow of capital into Hong Kong and fuelled the property boom. While a reversal in the low-interest rate environment would certainly impact on the property market, it was difficult to predict future interest rate movements. Mortgage borrowers should be alert to the associated risks arising from a possible rise in interest rate and be careful not to overstretch themselves and borrow excessively. In face of an exuberant property market, HKMA had implemented measures to strengthen banks' risk management on mortgage lending through the several rounds of countercyclical macro-prudential measures in the past few years, which would increase the investment cost for flat purchase, help potential property buyers to assess the risks involved prudently before buying a property, and constrain excessive demand for mortgage loans.

Development of Renminbi business in Hong Kong

19. The Panel exchanged views with HKMA on the prospect of growth of RMB business in Hong Kong. Members noted that as at end of February 2013, RMB customer deposits and outstanding RMB certificates of deposits amounted to RMB 650 billion and RMB 127 billion respectively which represented a 8% growth compared to the end of 2012. Noting that the circulation of RMB funds between Hong Kong and the Mainland would be enhanced with the cross-border lending arrangement under the development of Qianhai, some members urged HKMA to increase its involvement in the financial development of Qianhai. HKMA responded that the Qianhai co-operation was a pilot project for the granting of cross-border RMB loans and would serve as a channel for opening up of cross-boundary capital flow. The development would provide new opportunities for banks in Hong Kong to expand their RMB cross-border lending business. HKMA would be ready to discuss with the relevant Mainland authorities on related matters when appropriate.

Securities and futures market

Introduction of after-hours futures trading

20. In view of grave concern expressed by some market practitioners about Hong Kong Exchanges and Clearing Limited ("HKEx")'s proposal to introduce after-hours futures trading ("AHFT proposal"), the Panel discussed with the Administration, HKEx and the Securities and Futures Commission ("SFC") on the proposal, and received views from 21 deputations from the industry at a special meeting on 28 January 2013.

21. The Panel noted that the deputations had expressed diverse views on the AHFT proposal. While some market practitioners objected to the proposal due to serious concerns about possible market manipulation and excessive price movement, as well as risks on investors and their protection; a number of market practitioners and securities firms were supportive to the proposal on the benefits of bringing new business to the futures industry, enabling investors to manage their risk exposures during the night time, and enhancing Hong Kong's competitiveness vis-à-vis other overseas derivative exchanges. Members noted that in response to industry's concerns and having regard to the prevailing minimum client margin requirement at 6% of the value of the futures contracts in general as well as international practices, HKEx would impose a price limit at +/-5% during AHFT session to address possible excessive price movement.

22. Members emphasized the importance to maintain Hong Kong's financial safety and urged SFC and the Administration to ensure adequate measures were in place to address risks and price volatility in the AHFT session. Some members called on the relevant authorities to discuss further with stakeholders on the AHFT proposal and take into account the different views of the deputations in making the final decision. A member considered that the concerned authorities had not fully addressed the concerns/queries raised by deputations about the proposal, and stressed the need for the authorities to re-consider the proposal in a prudent manner. SFC pointed out that HKEx had put in place suitable and adequate risk management measures. The Administration noted that HKEx had conducted adequate consultation on the AHFT proposal, and while different views were expressed by some stakeholders, HKEx had endeavoured to strike a balance in the proposal and related risk management measures.

23. The Panel noted that HKEx implemented AHFT with effect from 8 April 2013.

Budget of the Securities and Futures Commission for the financial year of 2013-2014

24. The Panel discussed SFC's proposed budget for the 2013-2014 financial year at the meeting on 4 February 2013. The Panel noted that SFC had accumulated a reserve of $7,237.6 million by 31 March 2013, which was 5.6 times of the projected expenditure of 2012-2013. As in accordance with section 396 of the Securities and Futures Ordinance (Cap. 571), SFC shall consult FS with a view to recommending to the Chief Executive in Council that the rate or amount of levy be reduced if the reserves of SFC are more than twice its operating expenses for that financial year, some members urged SFC to reduce its levies, which would benefit the ordinary investors by lowering the investment cost and in turn would enhance the business opportunities for securities firms. Some members also suggested that SFC should use the abundant reserves to strengthen its enforcement manpower in coping with the increasing caseload and enhancing regulation of the market. After discussion at the meeting, the Panel passed a motion to demand SFC to lower its levies.

25. SFC advised that it had conducted an in-depth review when finalizing its budget for 2013-2014. It should be noted that the market conditions had remained volatile, and there was a projected deficit of $232.13 million for 2012-2013 due to lower-than-expected market activities. In view of the projected budget deficit of $435.16 million for 2013-2014, and the deficit might continue for some years ahead, SFC considered it prudent that the reserves be carefully used in order to cover the "rainy days". The board of SFC had discussed in detail the issue of levy reduction, and concluded that it was not the appropriate time to reduce the levy rate having regard to market uncertainties and the operating deficit. The Administration pointed out that the levy was the principal source of income for SFC. The current levy rate had reached a rather low level after two rounds of previous reductions. In addition, a two-year annual licence fee holiday was offered last year until early 2014. SFC assured members that it would closely monitor the market developments and conduct a review of its reserves and levy again towards the end of 2013.

Regulation of the over-the-counter derivatives markets

26. At the meeting on 4 March 2013, the Administration, HKMA and SFC consulted the Panel on the legislative proposals for regulating the over-the-counter ("OTC") derivatives market before finalizing the amendment bill for introduction into LegCo. The Panel noted that the key features of the regulatory regime included mandatory reporting and clearing of OTC derivative transactions conducted by market players.

27. The Panel discussed a number of issues relating to the proposed regulatory regime, including product coverage, reporting thresholds and requirements, and investor protection measures. Members noted that the proposed regulatory regime would initially apply to interest rate swaps and non-deliverable forwards which respectively accounted for 18% and 17% of the notional value of OTC derivative transactions in Hong Kong. The Panel noted the Administration's views that the proposed regulatory regime would help monitor the build-up of exposures that might threaten the market or the wider economy, thus helping to strengthen the stability and resilience of the financial system, and reduce the potential of contagion risks affecting general investors arising from the global nature of the OTC derivative transactions and interconnectedness of market players. The proposed regulatory regime would also enhance investor protection in the area of licensing of intermediaries relating to OTC derivative transactions.

Regulation of automated trading services

28. The incident of Hong Kong Mercantile Exchanges Limited ("HKMEx incident") surrendering the authorization for provision of automated trading services ("ATS") granted by SFC in May 2013 aroused grave public concerns. The Panel discussed with SFC and the Administration issues relating to regulation of ATS at the meeting on 3 June 2013.

29. Members were concerned about the regulatory regime of ATS providers, including the standards and requirements on authorized ATS providers and SFC's on-going supervision on them. Some members queried why SFC had not revoked HKMEx's authorization earlier as there had been rumours over the past year about HKMEx running into financial trouble and that it had already announced a share placement exercise in January 2013 to raise new capital for its operation. There were also concerns about whether SFC had given special treatment to HKMEx in handling the matter and whether there had been Government intervention in the HKMEx incident. Some members stressed the need for SFC to carry out its functions in a professional and impartial manner, and maintain the integrity of the regulatory system. As the HKMEx incident had damaged SFC's credibility, some members considered that SFC should clarify the matter to dispel public concerns.

30. SFC explained that the regulatory focuses of ATS providers were different from those of securities brokers. For ATS providers, the focuses of regulation were on the stability, transparency and operational integrity of the trading platform, while those for brokers were on the financial resources and risks as they held and deal with client money. As regards the HKMEx incident, SFC pointed out that it could not disclose the details as both investigations by SFC and the Police were underway. However, it stressed that there was no

delay in SFC taking action on the case and that SFC was obliged to provide HKMEx an opportunity to respond to SFC's intention to withdraw the authorization before SFC giving the formal withdrawal notice. There was no special treatment on HKMEx in its ATS withdrawal process, nor did SFC receive at any stage direction or instruction from the Government as to how to handle the case. SFC further clarified that should HKMEx reapplied for ATS authorization, it would be treated on the same basis as any other applicants.

Establishment of the Financial Services Development Council

31. The Administration announced the establishment of the Financial Services Development Council ("FSDC") in January 2013. The Panel received a briefing by FSDC and the Administration on the subject at the meeting on 4 February 2013.

32. While some members indicated support for the establishment of FSDC to promote the development of the financial services industry of Hong Kong and enhance its competitiveness, some other members expressed concern about possible hidden objectives of FSDC, in particular whether it would be vested with powers to decide on or execute government policies.

33. The Administration advised that FSDC was a high-level, cross-sector advisor to the Government on measures to complement the internationalization of the financial market of the Mainland and further development of the financial services industry of Hong Kong. It was tasked to bring about cross-sectoral collaboration and coordinate the views of various segments of the financial market, and would serve as an advisory body of the Government and would not take on any decision-making or execution of government policies functions. Furthermore, it was not the intention of FSDC to set up a sovereign fund, nor to secure private donations at the current stage. As regards concern about the name of FSDC, FSDC pointed out that the rendition "局" was used as the Chinese names of the English equivalent of "policy bureau", "authorities" "boards" and "councils", and also adopted in the Chinese names of some other government advisory bodies. Given that there was no standardized or established practice within the Government in determining the names of the advisory bodies, FSDC considered it appropriate to continue using the rendition "局" in its Chinese name.

34. There was query from some members about the need for FSDC to be set up as a company limited by guarantee while some members were of the view that FSDC should be set up as a statutory body. After deliberations at the meeting, the Panel passed a motion suggesting that FSDC should be set up as an advisory body and urging the Government to study the feasibility of developing FSDC into a statutory body in the future.

35. FSDC explained that the proposal had taken on board the recommendations of the Preparatory Task Force on the Financial Services Development Council in the light of overseas and local experiences, and aimed to facilitate better governance of and lend greater flexibility to the operation of FSDC as well as project a clear image of FSDC. Taking into account the wide public concern, and the priorities of FSDC, FSDC and the Administration considered that issues relating to the organization structure of FSDC would be studied at a later stage after it had come into operation for a longer period.

36. On the future work of FSDC, the Panel noted that FSDC would prepare its work plan and had set up five committees to undertake tasks on five areas, namely financial development research, mainland opportunities, new business, human capital, and market development. There were suggestions from members that FSDC should explore the strategies for developing headquarters economy in Hong Kong, promoting offshore RMB business, creating a level playing field for small-and-medium sized enterprises securities firms and assist their access into the Mainland financial market. Some members also stressed the need for FSDC to set concrete targets for its work, ensure transparency in its operation and appraise the public of its work, as well as report on the work progress to the Panel on a regular basis. FSDC took note of members' views and suggestions.

<u>Mandatory Provident Fund System</u>

Mandatory Provident Fund Schemes Authority's consultancy study on trustees' administration cost

37. In view of growing public concern about the high level of fees of Mandatory Provident Fund ("MPF") schemes and low investment returns, the Panel discussed with the Administration and Mandatory Provident Fund Schemes Authority ("MPFA") measures to address the issue of high MPF fees at the meeting on 7 January 2013. The Panel noted that according to the consultancy on trustees' administration costs ("Cost Study") commissioned by MPFA, implementation of the initiatives recommended in the Cost Study would enable reduction in MPF administration costs by 0.35% of assets under management per annum. On the long-term approaches to bring fundamental improvements to the MPF System, members noted that MPFA had put forth four proposals for consideration by the Government, namely capping the fees of MPF funds; mandating the provision of low-fee funds in MPF schemes; providing a basic, low-fee, default fund arrangement; and/or introducing a not-for-profit operator to operate a simple and low-fee MPF scheme.

38. Members generally supported the initiatives recommended in the Cost Study and the reform directions proposed by MPFA. Some members expressed support on the proposals of capping the fees of MPF funds and

introducing a not-for-profit operator to operate MPF schemes. MPFA advised that a not-for-profit operator would exercise greater social responsibility in operating MPF scheme at low fees and this would increase competition to drive other trustees to lower their fees. The not-for-profit operator could be a public organization, a social enterprise or an operator from the relevant industries. On some members' suggestion for HKMA to take up the role of a public trustee, the Administration advised that HKMA was responsible for maintaining currency stability within the framework of Linked Exchanged Rate System and the integrity of the financial system of Hong Kong. Such change to the existing arrangement could undermine HKMA in discharging its statutory functions. MPFA pointed out that the principle of introducing a not-for-profit MPF operator would require further study and a consensus from the community on the principle would need to be reached before discussing further details including identifying suitable operators.

39. Some members called on the Administration to abolish the current arrangement whereby employers could use the accrued benefits of their contributions to offset the Severance Payment or Long Service Payment ("SP/LSP offsetting arrangement") payable to their employees. Some members concurred that abolition of the SP/LSP offsetting arrangement was necessary for implementing the full portability arrangement for the MPF system which would enable employees to choose trustees on their own and reduce the number of accounts held by scheme members and managed by trustees/employers, thus achieving substantial reduction in the MPF fees in the long run. The Panel noted MPFA's views that the issue of SP/LSP offsetting arrangement needed to be examined before the full portability arrangement for employees could be implemented, and there would be additional administrative burden in the implementation of full portability arrangement if the arrangement was not abolished. The Administration responded that there were diverse views among different stakeholders on the SP/LSP offsetting arrangement and joint efforts of the relevant bureaux were required to further study the matter and resolve issues involved.

Review of the minimum and maximum relevant income levels for Mandatory Provident Fund contributions

40. The Panel discussed on 4 March 2013 the findings of MPFA's interim review on the minimum ("Min RI") and maximum ("Max RI") relevant income levels for MPF contributions, and its recommendations of increasing the Min RI from $6,500 to $7,100 having regard to the new Statutory Minimum Wage ("SMW") of $30; increasing the Max RI from $25,000 to $30,000; and implementing both adjustments simultaneously for administrative efficiency three months from the approval of the relevant subsidiary legislation by LegCo.

41. The Panel supported MPFA's recommendations in principle. On whether the timing of future reviews of Min RI and Max RI would align with that of the SMW rate which was currently reviewed every two years, the Administration pointed out that during the review exercise conducted in 2010, there were views that the adjustment mechanism should be reviewed having regard to the implementation of SMW. To this end, MPFA was currently conducting a comprehensive review of the statutory adjustment mechanism. Subject to progress of review and consultation, the new adjustment mechanism might be in place after 2014. In respect of the implementation of new Min RI and Max RI, the Administration subsequently proposed the two new levels to take effect on 1 November 2013 and 1 June 2014 respectively.

Commencement of the new Companies Ordinance

42. The new Companies Ordinance ("CO") was passed by LegCo in July 2012. The Administration has identified 13 pieces of subsidiary legislation which are required to be made under the new CO for bringing the new CO into operation in the first quarter 2014. At the meeting on 7 January 2013, the Administration briefed the Panel on the details of the 13 pieces of subsidiary legislation, among which 12 pieces were subject to the negative vetting procedure of LegCo and one piece was subject to the positive vetting procedure. The Administration advised members of its plan to introduce the subsidiary legislation into LegCo in three batches from February 2013 onwards. To facilitate Members and enable scrutiny work to be conducted in a more efficient and effective manner, the Panel agreed with the Administration's suggestion for LegCo to consider setting up one single subcommittee to study the 13 pieces of subsidiary legislation. The House Committee agreed at its meeting on 8 February 2013 to form a single subcommittee to scrutinize the subsidiary legislation.

43. The new CO contains provisions on a new arrangement to protect the personal information of directors of companies by restricting public access to their full identification numbers and residential addresses which are currently available for inspection in the Companies Register ("the new inspection arrangement"). The Companies (Residential Addresses and Identification Numbers) Regulation to be made under the new CO will specify those persons who may make an application to the Registrar of Companies for access to the protected information. Due to public concerns and diverse views from stakeholders on the new inspection arrangement, the Panel discussed with the Administration on the way forward at the meeting on 8 April 2013.

44. While some members expressed support for the Administration's proposal to suspend the new inspection arrangement and conduct fresh consultation with stakeholders in improving the new arrangement, some members had reservation on concerns that the existing inspection arrangement

was privacy intrusive and would breach the relevant data protection principle under the Personal Data (Privacy) Ordinance (Cap. 468), there were problems of abuse in using the information by a third party, and possible nuisances caused to directors and their families. In working out an improved inspection arrangement, members stressed the needs for the Administration to strike a reasonable balance between privacy protection and enhancing transparency of company operation, engage the public, the relevant stakeholders and the Office of the Privacy Commissioner for Personal Data extensively, and sort out the related issues as soon as possible.

45. The Administration reiterated that as the complex issues in question could not be resolved under the tight schedule of introducing the relevant subsidiary legislation into LegCo by end of May 2013 and completing the vetting procedure within the 2012-2013 legislative session, the Administration thus proposed to accord priority to the tasks necessary for commencing the new CO and consider matters relating to the new inspection arrangement thereafter. Hence, the Administration would not proceed making the Companies (Residential Addresses and Identification Numbers) Regulation at this stage and would not include the relevant provisions in the commencement notice to be made in the fourth quarter of 2013.

Modernization of corporate insolvency law

46. In April 2013, the Administration launched a three-month public consultation on the legislative proposals to improve the corporate insolvency law which aim to streamline the existing winding-up procedures under the CO, enhance the integrity of the winding-up process as well as the protection of creditors during the winding-up of companies. The Panel was briefed on the details at the meeting on 3 May 2013.

47. Pointing out that corporate rescue would be a more desirable option for creditors and employees than winding-up in saving a financially troubled company, some members opined that the Administration should make reference to experience of overseas jurisdictions and consider introducing a statutory corporate rescue regime in Hong Kong. The Administration explained that it had launched a public consultation on the conceptual framework and key issues of corporate rescue in 2009 and published the consultation conclusions in July 2010. Since then, the Administration had been working on the detailed proposals of a new corporate rescue procedure. The Panel noted the Administration's plan to consult the stakeholders on the proposals in 2013-2014 and take forward the proposals in the corporate insolvency law improvement exercise. Subject to the outcome of the consultation, the Administration planned to introduce the relevant amendment bill into LegCo in the 2014-2015 session to implement the proposals.

Exchange of tax information arrangements

48. At the meetings on 5 November 2012 and 4 February 2013, the Panel discussed matters relating to the expansion of Hong Kong's network of comprehensive avoidance of double taxation agreements ("CDTAs") and the legislative proposal to provide a legal framework for Hong Kong to enter into Tax Information Exchange Agreements ("TIEAs") with other jurisdictions as an alternative to CDTAs under the exchange of tax information arrangements ("EoI").

49. While some members supported the proposal on TIEAs to expand the EoI regime to avoid Hong Kong being labeled as an uncooperative jurisdiction because of its restrictive position in the area of tax types and limitation on disclosure, some members had reservation and expressed concern that the proposal might undermine the competitiveness of Hong Kong's simple tax regime in attracting foreign direct investment since there were great differences between the tax regime of Hong Kong and those of other jurisdictions. There were also concerns about availability of a TIEA regime might hamper the ongoing efforts in the negotiation of CDTAs with potential partners, and protection of confidentiality of the tax information exchanged with other jurisdictions under the expanded EoI regime.

50. The Administration explained that the latest international standard for EoI arrangements was reflected in the 2012 version of EoI article in the Model Tax Convention and its Commentary of the Organization for Economic Cooperation and Development. Hong Kong would only meet the minimum requirements even if the legislative proposal was passed. Furthermore, the legislative proposal still upheld the policy of no retrospectivity for EoI as it only relaxed the limitation on disclosure slightly by allowing the Commissioner of Inland Revenue to disclose information in response to an EoI request only if he was satisfied that such information related to tax assessments in respect of any period after the date on which the relevant CDTA/TIEA came into operation. The Administration further assured members that, given the economic benefits of CDTAs, it would remain the policy priority of the Administration in future to expand Hong Kong's network of CDTAs with its major trading and investment partners.

51. The Panel noted that the Administration had introduced the Inland Revenue (Amendment) Bill into LegCo in April 2013 to implement the TIEAs proposal.

Other work

52. During the 2012-2013 legislative session, the Panel also discussed with the Administration on the following subjects -

(a) initiatives to further develop the local bond market, including proposed legislation to facilitate the issuance of Islamic bonds in Hong Kong, and the proposal to raise the maximum amount of borrowings under the Government Bond Programme;

(b) establishment proposals, including proposed retention of supernumerary directorate post to deal with matters concerning companies- and bankruptcy- related legislation, and proposed extension of a directorate post for the establishment of an independent Insurance Authority and a Policyholders' Protection Fund;

(c) funding proposals, including the 10^{th} replenishment of the Asian Development Fund, electricity charge subsidy, and relocation of the printing workshop of Government Logistics Department;

(d) legislative proposals, including proposed legislation on trust law reform, enhancement of regulation of sponsors and investor protection, a Member's bill to amend the Professional Accountants Ordinance (Cap. 50), and review of statutory fees and charges of the Official Receiver's Office;

(e) briefing by FS on the launch of the public consultation on the 2013-14 Budget;

(f) briefing by the Secretary for Financial Services and the Treasury on the relevant policy initiatives in the Chief Executive's 2013 Policy Address; and

(g) briefing by the Financial Reporting Council on its work in 2012.

53. From October 2012 to June 2013, the Panel has held a total of 13 meetings, including two joint meetings with the Panel on Housing.

Council Business Division 1
Legislative Council Secretariat
5 July 2013

Appendix I

Legislative Council

Panel on Financial Affairs

Terms of Reference

1. To monitor and examine Government policies and issues of public concern relating to financial and finance matters.

2. To provide a forum for the exchange and dissemination of views on the above policy matters.

3. To receive briefings and to formulate views on any major legislative or financial proposals in respect of the above policy areas prior to their formal introduction to the Council or Finance Committee.

4. To monitor and examine, to the extent it considers necessary, the above policy matters referred to it by a member of the Panel or by the House Committee.

5. To make reports to the Council or to the House Committee as required by the Rules of Procedure.

Appendix II

Legislative Council
Panel on Financial Affairs

Membership list for 2012 - 2013 session

Chairman	Hon Starry LEE Wai-king, JP
Deputy Chairman	Hon CHAN Kin-por, BBS, JP
Members	Hon Albert HO Chun-yan Hon James TO Kun-sun Hon CHAN Kam-lam, SBS, JP Hon Abraham SHEK Lai-him, GBS, JP Hon Jeffrey LAM Kin-fung, GBS, JP Hon Andrew LEUNG Kwan-yuen, GBS, JP Hon WONG Ting-kwong, SBS, JP Hon Ronny TONG Ka-wah, SC Hon Mrs Regina IP LAU Suk-yee, GBS, JP Hon James TIEN Pei-chun, GBS, JP Hon NG Leung-sing, SBS, JP Hon Kenneth LEUNG Hon Dennis KWOK Hon Christopher CHEUNG Wah-fung, JP Hon SIN Chung-kai, SBS, JP
	(Total：17 members)
Clerk	Ms Connie SZETO
Legal Adviser	Miss Winnie LO