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Panel on Financial Affairs

**Minutes of special meeting
held on Thursday, 8 November 2007 at 8:30 am
in the Chamber of the Legislative Council Building**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon Ronny TONG Ka-wah, SC (Deputy Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Bernard CHAN, GBS, JP
Hon SIN Chung-kai, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
- Members attending:** Hon WONG Kwok-hing, MH
Dr Hon KWOK Ka-ki
- Members absent** : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon WONG Ting-kwong, BBS
Hon CHIM Pui-chung
Hon TAM Heung-man
- Public officers attending** : Agenda Item I
Mr Joseph YAM, GBS, JP
Chief Executive
Hong Kong Monetary Authority

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

Mr Y K CHOI, JP
Deputy Chief Executive
Hong Kong Monetary Authority

Mr Eddie YUE, JP
Deputy Chief Executive
Hong Kong Monetary Authority

Agenda Item II

Mr Albert LAM
Deputy Secretary for Financial Services and the Treasury
(Financial Services)

Ms Jenny CHAN
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)

Mr Ryan CHIU
Assistant Secretary for Financial Services and the
Treasury (Financial Services)

Attendance by invitation : Mr Darren MCSHANE
Executive Director (Regulation & Policy)
Mandatory Provident Fund Schemes Authority

Ms Gabriella YEE
Senior Manager (Policy & Development)
Mandatory Provident Fund Schemes Authority

Clerk in attendance: Miss Polly YEUNG
Chief Council Secretary (1)5

Staff in attendance : Ms Pauline NG
Assistant Secretary General 1

Mr KAU Kin-wah
Assistant Legal Adviser 6 (Agenda Item II)

Ms Rosalind MA
Senior Council Secretary (1)8

Mr Justin TAM
Council Secretary (1)3

Ms Sharon CHAN
Legislative Assistant (1)8

Action

I. Briefing on the work of the Hong Kong Monetary Authority

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| (LC Paper No. CB(1)160/07-08(01)(Updated version) | No. — Paper provided by the Hong Kong Monetary Authority (Updated version of pages 28, 43, 44 and 45 of the paper tabled at the meeting were issued to members vide LC Paper No. CB(1)226/07-08 on 9 November 2007) |
| LC Paper No. CB(1)226/07-08(01) | — Speaking note of Mr Joseph YAM, Chief Executive of the Hong Kong Monetary Authority (tabled at the meeting and issued to members on 9 November 2007)) |

Briefing by the Hong Kong Monetary Authority

At the invitation of the Chairman, the Chief Executive of the Hong Kong Monetary Authority (CE/HKMA) gave a power-point presentation on HKMA's key areas of work, as follows:

- (a) On currency and monetary stability, the surge in stock market transactions and a series of well-received Initial Public Offerings (IPOs) in recent months resulted in increased equity-related demand for the Hong Kong dollar and capital inflow. The Hong Kong dollar strengthened to near the strong-side Convertibility Undertaking (CU) of 7.7500 and HKMA conducted active market operation by buying HK\$775 million worth of United States (US) dollars on 23 October to normalize the relationship between interest rates and exchange rates. Passive operations were subsequently conducted on 26 and 31 October 2007 when the strong-side CU was triggered against the background of a number of factors including equity-related capital inflows and unfounded market rumours about the Link Exchange Rate (LER) System. The Government's commitment to the LER System was firm and clear.

- (b) The monetary and financial conditions of Hong Kong remained basically stable notwithstanding recent financial market volatility. There were nevertheless a number of uncertainties confronting Hong Kong's economy and financial markets, including the development of the sub-prime crisis in US and the economic and financial developments on the Mainland.
- (c) On the sub-prime crisis, the sub-prime mortgage market had developed against the background of rapid financial innovation and the search-for-yield behaviour in a low-interest-rate environment in recent years. With the cooling US housing market amid successive interest rate increases since mid-2005 and housing price depreciation in 2007, the delinquency and foreclosure rates were on the rise and difficulties in the US sub-prime mortgage and related structured product markets set off the present financial market turbulence. In response, major central banks had to inject liquidity into the interbank market, lower policy rates or put the rates on hold. The recent financial turbulence had had limited impact on Hong Kong's banking system and economy. Nevertheless, given the uncertainties regarding the outlook for the global financial markets as well as the global economy, Hong Kong could be affected through both the real economy and the financial-market channels.
- (d) As to the Mainland factor, the inter-related development of the monetary and financial conditions on the Mainland would create different pulling forces and it was important to manage these forces in order to avoid out-of-control development, which would be disruptive to financial markets. Rising inflation and interest rates, large demand for investment instruments by the non-state sector and the rapid accumulation of foreign exchange reserves were some of the issues which had drawn considerable concerns. It was inevitable that the financial markets in Hong Kong would be volatile in response to different news and developments on the Mainland. However, it was unlikely to cause systemic problems to the robust financial system in Hong Kong
- (e) Regarding inflation in Hong Kong, the surge in food prices on the Mainland, appreciation of Renminbi (RMB) and the impact of the weakening US dollar on the prices of imports had created inflation pressures on the economy. However, strong labour productivity growth had kept Hong Kong's inflation in check. Returning wealth to the people through fiscal relief measures such as waiving of Rates and increasing Government investment in infrastructure, as well as other policy measures would help to relieve the inflation pressure faced by the general public.

- (f) On banking sector performance, recent stress testing on the banking system conducted by HKMA had shown that the risk-bearing capacity and capital position of the banking system was strong. The robust growth in domestic lending continued while the negative effects of the spill-over from the US sub-prime problem had been limited so far. The number of residential mortgages in negative equity continued to decline, standing at the historical low since the compilation of such statistics. The soundness of the banking system had been achieved through on going reforms undertaken by HKMA in collaboration with the banking industry, such as the deregulation of interest rate rules, launch of the Deposit Protection Scheme, sharing of credit data and the implementation of Basel II. HKMA was planning to conduct a "health check" on the banking system with a view to identifying how HKMA could best discharge its function in promoting the general stability of the banking system.
- (g) On the financial market infrastructure, the payment system maintained its smooth and efficient operation in handling the high average daily Hong Kong dollar real time gross settlement turnover of over \$1,000 billion. HKMA's other market infrastructure projects were in good progress.
- (h) On maintaining the status of Hong Kong as an international financial centre, HKMA's work focused on enhancing regional and Mainland cooperation. Hong Kong should assume a more proactive role in developing a mutually-assisting, complementary and interactive relationship with the Mainland using a five-pronged strategy to enhance Hong Kong's status as the international financial centre in China. Failing that, Hong Kong might become marginalized.
- (i) On management of the Exchange Fund (EF), it should be noted that EF was not a pure investment fund and its investment strategy had to be consistent with the statutory objectives of the Fund. On 7 September 2007, the Financial Secretary (FS) announced the increase in shareholding in the Hong Kong Exchanges and Clearing Limited (HKEx) to 5.88%, which was a strategic use of EF. The HKEx shares so acquired would be part of the strategic portfolio of EF. From January to September 2007, the net investment income of EF was \$106.7 billion and the Treasury's share was \$20.2 billion (with a fixed annual rate of return of 7% for 2007 under the new income-sharing arrangement which came into effect on 1 April 2007). As at end-September 2007, the accumulated surplus and of EF was \$594.2 billion and the total asset was \$1319.1 billion.

Discussion

Maintaining monetary and financial stability

2. Dr KWOK Ka-ki observed that following recent press reports about the tenure of office of the incumbent CE/HKMA, there was much speculation on changes to the existing monetary policy, such as the LER System. In the light of the volatility of the financial markets, Dr KWOK enquired about the measures or mechanism in place for maintaining Hong Kong's monetary and financial stability when there were changes in top-level personnel of HKMA.

3. In reply, CE/HKMA advised that FS was responsible for determining the monetary policy objectives and the structure of the monetary system of Hong Kong and the Monetary Authority (MA) was responsible for achieving the objectives. Under section 5A of the Exchange Fund Ordinance (EFO)(Cap. 66), FS was empowered to appoint a person to be MA and other persons to assist in the performance of the functions of MA. CE/HKMA pointed out that the appointment of senior staff of HKMA was decided by FS and he was not in a position to comment on the subject. CE/HKMA stressed that given the Government's clear and firm position on its monetary policy, he did not consider that staff changes, if any, in HKMA would result in any changes in the established policy.

4. Mr Albert HO questioned whether there was room for improving the anchoring arrangement under the LER System, having regard to the close link between the economy of Hong Kong and that of the Mainland and the possible distortion caused by the weak US dollar to the relationship between the exchange rates of the Hong Kong dollar and RMB. He enquired whether HKMA would explore the feasibility of improving the LER System in the long run by say, linking the Hong Kong dollar to a basket of foreign currencies.

5. CE/HKMA confirmed that while there was always room for improving the operation of the LER System, any change in the anchor currency would be a fundamental policy change. At present, there was no plan for such a change. He pointed out that HKMA had monitored closely the operation of the LER System and would make necessary refinements to strengthen the effectiveness and robustness of the System, such as the refinements introduced in 2005 for HKMA to conduct market operations within the Convertibility Zone. Responding to Mr Albert HO's concern about the pressure brought about by the rising value of RMB on the Hong Kong dollar, CE/HKMA advised that the business cycle synchronization between Hong Kong and US was in fact greater than that between Hong Kong and the Mainland. As such, the US dollar remained a suitable anchor for the Hong Kong dollar. He undertook to provide the research report prepared by HKMA on the subject for members' information.

(Post-meeting note: Members were provided with the link to view and/or download the research report from HKMA's website vide LC Paper No. CB(1)248/07-08 on 14 November 2007.)

6. Mr Ronny TONG was concerned about measures to alleviate the impact of external factors such as the weakening US dollar on the financial stability of Hong

Kong. In this regard, CE/HKMA advised that HKMA would monitor closely the ability of banks to manage the risks arising from market volatility to prevent any systemic problem which might pose a threat to the financial stability of Hong Kong. As to Mr TONG's enquiry on recent reports on the imposition of an upper limit (i.e. 30%) on Mainland funds investing in the Hong Kong financial market, CE/HKMA advised that as far as he was aware of, the 30% cap was the approach adopted by some institutional investors on the Mainland to limit the investment in the Hong Kong stock market, and was not an official policy promulgated by the Mainland authorities.

Inflationary pressure faced by Hong Kong

7. Mr Ronny TONG expressed concern about the inflationary pressure brought about by factors such as the surge in stock prices, drop in unemployment, rising prices of foodstuff and other imported goods etc. He was concerned about the possible adverse impact of inflation brought about by the weakening US dollar under the currency peg on the economy of Hong Kong and enquired about the alleviating measures, if any. Mr Albert HO shared Mr TONG's concern and pointed out that lower-income earners and other disadvantaged groups in society would be most hard hit. Mr James TIEN also expressed concern about the inflationary pressure resulting from rising prices of imports from the Mainland in the face of a strong RMB.

8. In response, CE/HKMA said that the externally oriented economy of Hong Kong would be confronted by a number of uncertainties such as the economic and financial outlook for the Mainland and the US. The outcome of the US sub-prime crisis and its impact on the global economy were yet to be ascertained. Market participants should therefore keep a close watch on developments. There were also uncertainties in the economic development on the Mainland under China's socialist market economy. Whilst there was little scope under the LER System for an autonomous interest rate policy to achieve consumer-price stability or economic growth, CE/HKMA pointed out that the robust growth in productivity in recent years could alleviate inflation pressure.

9. Responding to Mr Albert HO's further enquiry on the inflationary outlook, CE/HKMA said that global inflation was expected to be low in the long run and Hong Kong would therefore be on a similar trend. He nevertheless agreed that the Government should monitor closely the impact of inflation on people's livelihood, particularly the low-income and underprivileged groups. CE/HKMA said that he was supportive of having appropriate fiscal measures and other policy initiatives to relieve the difficulties faced by these groups at times of rising inflation.

10. Ms Emily LAU pointed out that the Government had accumulated a substantial amount of surplus taking into account the \$377.7 billion in the fiscal reserve account and the \$594.2 billion accumulated surplus of EF. Noting that CE/HKMA was supportive of appropriate measures to alleviate the impact of inflation on people's livelihood, Ms LAU sought his view on the use of the available

surplus for implementing additional relief measures for the low-income and underprivileged groups. Mr James TIEN expressed similar concern.

11. In this connection, CE/HKMA said that in principle, he considered it appropriate for the Government to return wealth to the people at times of fiscal surplus. As to the formulation of concrete measures, he would defer to other experts in the Government. While noting Ms Emily LAU's view that the fiscal reserves and the accumulated surplus of EF were public resources owned by the people of Hong Kong, CE/HKMA pointed out that pursuant to EFO and the Public Finance Ordinance (Cap. 2), the authority for determining the use of EF and the management of public finances vested with FS.

12. Regarding ongoing concerns about the appropriate level of fiscal reserves required for maintaining the stability of the Hong Kong currency, CE/HKMA advised that from a prudential point of view, it would be desirable to maintain as much reserves as possible for this purpose. He nevertheless said that other policy objectives had to be taken into consideration when considering the proper use of EF. On the suggestion to transfer part of the accumulated surplus of EF to the General Revenue Account to fund public expenditure, CE/HKMA advised that under section 8 of EFO, FS might, after consulting the Exchange Fund Advisory Committee (EFAC) and with the prior approval of the Chief Executive in Council, transfer from EF to the general revenue or to such other fund or funds of the Government any sum in excess of the amount required to maintain a 105% backing of the total monetary base. Given that there was a fiscal reserves amounting to \$377.7 billion as at end-September 2007, he did not anticipate the need to transfer funds from EF to the General Revenue Account for the time being.

Management of the Exchange Fund

13. Referring to Charts 43 and 45 of the power-point presentation material on the investment income and assets of EF, Mr James TIEN noted with concern that the investment gain derived from Hong Kong equities had significantly outperformed that of bonds in the first nine months of 2007. Noting that \$857.6 billion and \$180.4 billion of EF assets were held in debt securities and Hong Kong equities respectively, Mr TIEN opined that given the surge in local stock prices in 2007, the investment of EF could have achieved a higher return should the asset mix of EF be adjusted by increasing the investment of assets in Hong Kong equities. He enquired whether there was any flexibility to allow HKMA, in its management of EF, to invest in new financial products with a view to achieving a higher investment return.

14. In response, CE/HKMA advised that EF's long-term asset allocation strategy was governed by the investment benchmark approved by FS after consultation with EFAC. Under the current benchmark, 77% of EF assets had to be allocated to bonds and 23% to equities. The investment benchmark represented the optimal mix of assets designed to meet the statutory objectives of EF (a) to preserve capital; (b) to ensure that the Monetary Base at all times would be fully backed by highly liquid US dollar-denominated securities; (c) to ensure that sufficient liquidity would be

available for the purposes of maintaining monetary and financial stability; and (d) subject to (a)–(c), to achieve an investment return that would preserve the long-term purchasing power of EF. The current asset mix of EF was considered appropriate having regard to the above objectives. While new financial products might yield higher investment return, higher investment risks might also be incurred. In the management of EF, HKMA could deviate from the investment benchmark within the limits approved by FS so as to take advantage of market developments to achieve a higher return. The percentage of permissible deviation was market-sensitive information and could not be disclosed. CE/HKMA added that the Investment Sub-Committee of EFAC monitored the investment management work of HKMA and would make recommendations to FS through EFAC on the investment benchmark and investment strategy of EF where appropriate.

15. Mr James TIEN asked whether the revised income-sharing arrangement between the fiscal reserves and EF would place the Treasury in a better position to share the investment income of EF during years of good returns. In response, CE/HKMA advised that under the revised income-sharing arrangement, the fiscal reserves placed with EF would be paid an annual fee at a pre-determined rate fixed each year, being the higher of the average annual rate of return of EF's investment portfolio in the past six years, or the average annual yield of three-year EF Notes of the preceding year. The fixed rate of fee payment to Treasury for 2007 was 7% and the estimated total payment for 2007 was \$26 billion. The revised income-sharing arrangement would provide stability and predictability to the Treasury's share of the investment income as the fixed rate of payment would not be affected by fluctuations in EF's investment return during the financial year in question. CE/HKMA added that the rate of return for 2007 would be reflected in the computation of the fixed rate of fee payment to the Treasury for 2008 and subsequent years.

Soundness of the banking system

16. Noting the comprehensive analysis given by CE/HKMA on the US sub-prime crisis, Mr Albert HO opined that the impact of the sub-prime crisis on the banking system of Hong Kong would hinge on the sub-prime mortgage exposure of banks and sought information in this regard. Ms Emily LAU also expressed concern about the impact of the US sub-prime crisis on the soundness of the banking system in Hong Kong and urged HKMA to monitor the developments closely. In this connection, Ms LAU noted HKMA's plan to conduct a "health check" on banks and sought information on details of the plan.

17. In reply, CE/HKMA informed members that based on the information submitted by locally incorporated banks, their aggregate exposure to the US sub-prime mortgage market was limited, constituting less than 1% of the total capital of the banking sector. While there were variations in the amount of such mortgage held by individual banks, it would be unlikely for the US sub-prime crisis to have systemic implications on the banking sector of Hong Kong. HKMA would monitor closely the development of the sub-prime problem. CE/HKMA nevertheless cautioned that if the US sub-prime problem worsened and caused an adverse impact

on consumer spending and the US economy, Hong Kong and the rest of the global economy would inevitably be affected. As to the plan to conduct a "health check" on the banking sector, CE/HKMA highlighted that HKMA had been conducting stress tests for the banking sector from time to time. The forthcoming "health check" would not generate too much additional work for banks in providing the requisite data to HKMA. As HKMA was still working out details of the exercise, it would provide further details to the public when available.

(Post-meeting note: HKMA's press release dated 6 December 2007 on the review of its work on banking stability was circulated to members via LC Paper No. CB(1) 412/07-08 on 10 December 2007.)

18. Ms Emily LAU said that she was informed that about 10% of investors were engaged in stock trading through margin financing. As such, she was concerned about the consequences of market volatilities on the investing public and the banking sector. In response, CE/HKMA said that the margin financing activities of banks were subject to strict regulation and risk control. Out of the total lending of banks, such margin financing constituted only a small percentage and should not pose any serious threat to the banking sector.

Investors' risk management

19. Noting that sub-prime mortgage loans were usually repackaged into highly-rated asset-backed securities or structured products through securitization and other innovative means, the Chairman sought CE/HKMA's view on the securities and credit derivatives with a sub-prime component and how investors could better assess the market risks. In reply, CE/HKMA said that it was not easy for investors to understand the market risks when making investment in exotic credit and debt instruments, given the complexity of the underlying structure and operations of the assets involved. He pointed out that while ratings given by credit rating agencies could provide some reference, the current rating methodology did not place sufficient emphasis on the assessment of the combined market risks arising from the dynamic interaction between different securities and credit instruments. He suggested that more work should be done in this regard by rating agencies.

II. Proposed amendments to the Mandatory Provident Fund Schemes Ordinance (Cap 485)

(LC Paper No. CB(1)160/07-08(02) —Administration's paper on proposed amendments to Mandatory Provident Fund Schemes Ordinance)

Briefing by the Administration and the Mandatory Provident Fund Schemes Authority

20. At the invitation of the Chairman, the Deputy Secretary for Financial Services and the Treasury (Financial Services) (DS/FS) gave a brief introduction on the background and purposes of the proposed amendments to the Mandatory Provident Fund Schemes Ordinance (MPFSO) (Cap.485). DS/FS advised that since the launch of the Mandatory Provident Fund (MPF) System in 2000, it had been subject to review from time to time to ensure that the System continued to serve the needs of existing and potential scheme members. The present proposed amendments, which were recommended by the Mandatory Provident Fund Schemes Authority (MPFA), covered different aspects of the operation, in particular the enforcement, of the MPF System.

21. At the invitation of the Chairman, Mr Darren MCSHANE, the Executive Director (Regulation & Policy), MPFA (ED(RP)/MPFA) briefed members on the major proposals:

- (a) Under the existing MPFSO, where an employer had failed to enrol an employee in an MPF scheme and thus had not been making mandatory contributions for the employee, while criminal prosecution could be brought against the employer for non-enrolment, no legal action could be taken against the employer for non-payment of mandatory contributions. To close this loophole and ensure that employees in non-enrolment cases would not be deprived of their entitlement to mandatory contributions, MPFA proposed to amend the MPF legislation to make it clear that an employer who did not enrol its relevant employee in an MPF scheme would still be liable to pay mandatory contributions for the employee. To facilitate effective enforcement, MPFA also proposed to amend the MPFSO so that in cases of non-enrolment or non-payment of mandatory contributions, the court would have a discretionary power to compel the employer to enrol its employees in an MPF scheme and to pay the outstanding contributions and contribution surcharges as appropriate.
- (b) In response to concerns that default in making MPF contributions was akin to default in wage payment and hence, the maximum penalty for default contributions should be adjusted upward to align with that for wage defaults under the Employment Ordinance (EO) (Cap. 57), MPFA proposed to increase the maximum penalty for non-enrolment and non-payment of MPF contributions to bring it on par with that for wage defaults under the EO, i.e. a fine of \$350,000 and imprisonment for three years.
- (c) The sanctions provided under the existing MPF legislation against default contributions did not distinguish between cases where any employer had deducted MPF contributions from an employee's wage for its own use and cases where no such deduction had been made. Concerns had been expressed that employers who had deducted an

employee's wage but made no mandatory contributions should be subject to heavier punishment. In this connection, MPFA proposed a higher maximum penalty of a fine of \$450,000 and imprisonment for four years on employers who did not remit to the trustee mandatory contributions deducted from employees' wages.

- (d) At present, employers were required to give monthly pay-records to their employees who were MPF scheme members. However, there was concern that some employers could deliberately provide false or misleading contribution details in the pay-records to deceive their employees. To safeguard the interests of scheme members, MPFA proposed to create a new offence against the employer which, in its pay-record provided to an employee, knowingly or recklessly provided false or misleading information in a material respect.
- (e) Under the existing MPF legislation, a trustee must first be approved by MPFA if it intended to conduct MPF business. Subsequent to MPFA's approval, any new appointment of chief executive officer and directors in respect of the trustee required the prior consent of MPFA. However, there was no similar requirement for prior consent in respect of subsequent appointment of indirect controllers and minority shareholder controllers. Moreover, once MPFA had given consent to the appointment of a chief executive officer or director of the trustee, MPFA was not empowered to withdraw the consent even if the chief executive officer or director was no longer suitable to continue performing his role. MPFA considered that for better supervision of trustees, it should be empowered to withdraw the consent previously given to any chief executive officers or directors as well as other types of controllers from continuing to hold such positions if they were no longer suitable. In addition, MPFA considered that a person who had become the controller of a trustee by virtue of his acquiring the voting shares of an approved trustee exceeding the threshold of 15% should be prohibited from exercising the voting rights conferred by the shares until and unless consent was given by MPFA to the person to be a controller of the trustee. To address the above issues, MPFA proposed to amend the MPF legislation to set out clearly the approval requirements in respect of indirect controllers and minority shareholder controllers and the withdrawal of approval of controllers under specified circumstances.

Discussion

Strengthening the enforcement of the MPF System

22. Mr WONG Kwok-hing stated his support for the proposed amendments to enhance the enforcement of the MPF System. In particular, he welcomed the proposal to increase the maximum penalty for non-enrolment and non-payment of

MPF contributions by employers to bring it on par with that for wage defaults under the EO, as had been urged by the Hong Kong Federation of Trade Unions for many years. In order to ensure that the enforcement measures could be implemented effectively, he enquired how employees could check whether contributions had been made by their employers.

23. In response, ED(RP)/MPFA advised that the principal mechanism embodied in the law for detecting and recovering default contributions was for the trustee to provide reports. Nevertheless, a central enquiry hotline had been put in place since August 2007 for employees to access their MPF account information through an interactive voice response system. Moreover, MPFA was working with trustees to improve the content of the Annual Benefit Statement so that it would be easier for employees to verify the information provided by their employers. In addition, if the legislative proposal to create a new offence for providing false or misleading pay-records to employees was enacted, it would help ensure the accuracy of the pay-record information so that employees could check whether contributions had been duly made by their employers.

24. Given that some employees were reluctant to lodge complaints against their employers for fear of reprisal or other predicament such as losing their jobs, Mr WONG Kwok-hing and Mr Albert HO considered that MPFA should also take action on anonymous complaints and make proactive investigation into alleged offences. Mr HO further said that if an employee was required to provide personal information to substantiate his complaint, the information received should be treated in strict confidence. ED(RP)/MPFA noted members' views and responded that MPFA had formulated a proposal to offer protection to employee who had given information to the MPFA for enforcement of the MPF legislation. After being endorsed by the MPF Schemes Operation Review Committee, the proposal was sent to the Government for consideration.

25. Mr WONG Kwok-hing was concerned whether the legislative amendments, if enacted, would have retrospective application in order to achieve greater deterrent effect and provide better protection for employees. In response, ED(RP)/MPFA explained that some proposed amendments would be retroactive while some were not. Under the proposed amendments, employers in non-enrolment cases would be required to make mandatory contributions in respect of their employees' past period of service starting from 1 December 2000 or a later date. However, for proposed amendments creating new offences, such as failure of employers to remit to the trustee the employee's deducted wages as mandatory contributions and providing false pay-records to employees, the provisions would only take effect upon enactment. The proposed increase in the maximum penalty for non-enrolment to MPF schemes and non-payment of contributions would also take effect upon enactment.

26. The Chairman remarked that where an employer had failed to enrol an employee in an MPF scheme, it necessarily followed that he would also fail to make MPF contributions for the employee. As such, instead of imposing a penalty on

default contributions in respect of non-enrolled employees, consideration might be given to imposing a much higher penalty for the offence of non-enrolment. ED(RP)/MPFA responded that under the current proposal, the employer would be subject to more sanctions as he could be prosecuted for both offences of non-enrolment and non-payment of contributions. Moreover, for each of these offences, the employer might be liable, upon conviction, to an increased maximum penalty of a fine of \$350,000 and imprisonment for three years. As such, ED(RP)/MPFA said that the proposed legislative amendments would provide stronger deterrence against non-compliance. In this connection, the Chairman said that the matter could be further considered by the relevant Bills Committee in due course.

Controllers of approved trustees

27. While welcoming the proposed amendment in respect of the approval of controllers of approved trustees, Mr WONG Kwok-hing enquired about the penalty for non-compliance. In response, ED(RP)/MPFA advised that the proposed amendment only sought to improve the regulatory arrangement for approving MPF trustees. Where there was collusion by parties to mislead MPFA to gain control of the approved trustee in question, MPFA might consider revoking the approval previously granted.

28. Mr Ronny TONG said that Members of the Civic Party supported in principle the proposed amendments. Noting that MPFA would be empowered to withdraw its consent to the appointment of controllers or indirect controllers of approved trustees, he sought information on the circumstances under which consent would be withdrawn. In response, ED(RP)/MPFA advised that MPFA should be empowered to withdraw consent if such persons were no longer suitable. In determining suitability, MPFA would give due regard to a number of factors such as the controller's knowledge of and experience in administering MPF schemes, whether the individual had been convicted of any offence or declared bankrupt etc.

29. Mr Ronny TONG noted that one of the current proposals was to amend the MPF legislation to set out clearly the approval requirements in respect of indirect controllers and minority shareholder controllers and the withdrawal of approval of controllers under specified circumstances. However, since the circumstances in question would not be specified explicitly in the legislation per se, Mr TONG was concerned that MPFA's decision to withdraw consent might be regarded as being arbitrary. He therefore asked MPFA to consider specifying the circumstances in law for the sake of transparency and fairness. ED(RP)/MPFA took note of Mr TONG's views and said that MPFA might consider whether relevant guidelines should be issued.

Other concerns

30. Mr Albert HO said that Members of the Democratic Party were supportive of the policy objective of the proposed amendments. Nevertheless, he was concerned that currently, employees could not apply to claim arrears of MPF contributions from the Protection of Wages on Insolvency Fund when their employers became insolvent. He called on the Administration to introduce legislative amendments to the relevant Ordinance to better protect employees' entitlements.

31. Mr SIN Chung-kai recalled that a motion had been passed by the Legislative Council (LegCo) earlier this year urging the Government to, inter alia, allow employees to choose their preferred MPF trustees. The Chairman of MPFA had also made a similar suggestion. However, this proposal was neither included in the Mandatory Provident Fund Schemes (Amendment) Bill 2007 being examined by LegCo, nor under this latest set of proposals. Mr SIN therefore enquired whether the relevant legislative amendment would be submitted to LegCo within the current session. In reply, DS/FS advised that the Administration had received a proposal from MPFA on this subject in October 2007. The Financial Services and the Treasury Bureau was now studying the proposal in conjunction with the Department of Justice and would revert to the Panel on Financial Affairs in due course. As the proposal was still being examined, DS/FS said that he was not in a position to specify a timetable for submitting the relevant legislative proposal.

Summing up

32. In conclusion, the Chairman said that the Panel supported in principle the introduction of the proposed amendments and requested the Administration to submit the relevant bill early.

III. Any other business

33. There being no other business, the meeting ended at 10:45 am.