

立法會
Legislative Council

LC Paper No. CB(1)1381/07-08

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by the Administration)

Ref : CB1/PL/FA/1

Panel on Financial Affairs

**Minutes of meeting
held on Tuesday, 8 April 2008 at 10:45 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
Dr Hon David LI Kwok-po, GBM, GBS, JP
Hon James TO Kun-sun
Hon Bernard CHAN, GBS, JP
Hon SIN Chung-kai, SBS, JP
Hon Emily LAU Wai-hing, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon CHIM Pui-chung
Hon TAM Heung-man
- Members attending** : Hon LEE Cheuk-yan
Hon WONG Kwok-hing, MH
- Members absent** : Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon Abraham SHEK Lai-him, SBS, JP
- Public officers attending** : Agenda Item IV
Financial Reporting Council

Ms Sophia KAO
Chairman

Mr M T SHUM
Chief Executive Officer

Ms Joyce WOO
Director, Investigation & Compliance

Ms Clara YU
Director, Investigation & Compliance

Financial Services and the Treasury Bureau

Mr Leslie Wai-kong TANG
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) 7

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Financial Services and the Treasury Bureau

Mr Patrick HO
Deputy Secretary for Financial Services and the Treasury
(Financial Services)

Ms Jenny CHAN
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) 3

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Financial Services and the Treasury Bureau

Miss Grace KWOK
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) 6

Companies Registry

Ms Ada CHUNG
Registrar of Companies

Mr Kenneth SIU
Business Manager

Miss Hilda CHANG
Deputy Registry Manager (Public Search)

Attendance by invitation : Mandatory Provident Fund Schemes Authority

Mr Darren MCSHANE
Executive Director (Regulation & Policy)

Ms Gabriella YEE
Chief Manager
(Policy Development & Research)

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

Staff in attendance: Mr KAU Kin-wah
Assistant Legal Adviser

Ms Rosalind MA
Senior Council Secretary (1)8

Mr Justin TAM
Council Secretary (1)3

Ms Sharon CHAN
Legislative Assistant (1)8

Action

I. Confirmation of minutes of meeting and matters arising

(LC Paper No. CB(1)1165/07-08 — Minutes of meeting on 29 January 2008

LC Paper No. CB(1)1166/07-08 — Minutes of meeting on 28 February 2008)

The minutes of the meetings held on 29 January 2008 and 28 February 2008 were confirmed.

II. Information papers issued since the last meeting

(LC Paper No. CB(1)1057/07-08 — Mandatory Provident Fund Schemes Statistical Digest — December 2007

LC Paper No. CB(1)969/07-08 — Securities and Futures Commission Quarterly Report (October – December 2007)

LC Paper No. CB(1)1151/07-08(01) — Progress report on the implementation of Travel Insurance Agents Registration System)

2. Members noted that the above papers had been issued for the Panel's information.

III. Date of next meeting and items for discussion

(LC Paper No. CB(1)1163/07-08(01) — List of outstanding items for discussion

LC Paper No. CB(1)1163/07-08(02) — List of follow-up actions)

Special meeting in April 2008

3. Members noted that as agreed at the last meeting held on 28 February 2008, a special meeting was scheduled on Monday, 28 April 2008 at 8:30 am to discuss the following items:

- (a) Briefing on the work of the Hong Kong Monetary Authority; and
- (b) The appointment and tenure of office of the Monetary Authority.

Regular meeting in May 2008

4. Members agreed that the following items be scheduled for discussion at the next regular Panel meeting to be held on Monday, 5 May 2008 at 10:45am:

- (a) Impact of banks' branch closure and fee-charging on the public;
- (b) Rewrite of the Companies Ordinance; and
- (c) Electricity charge subsidy.

(Post-meeting note: Notice of the meeting to be held on 5 May 2008 was issued to members vide LC Paper No. CB(1)1216/07-08 on 9 April 2008. At the request of the Administration and with the concurrence of the Chairman, item (b) above had been replaced by the item "Proposal on government injection into accounts of members of the Mandatory Provident Fund Schemes and Occupational Retirement Schemes". The revised agenda was issued to members vide LC Paper No. CB(1)1302/07-08 on 18 April 2008.)

Re-scheduling of meeting in June 2008

5. The Chairman advised that according to the established arrangement, the Financial Secretary (FS) would brief the Panel on Hong Kong's latest overall economic situation at the meeting to be held in June 2008. However, the FS's Office had informed the Secretariat earlier on that FS would not be able to attend the regular meeting scheduled on 2 June 2008 due to official duties overseas. The Chairman suggested and members agreed that the regular meeting for June be re-scheduled to be held on **Tuesday, 10 June 2008 at 2:30 pm** to receive the briefing by FS.

(Post-meeting note: Members were informed of the re-scheduling of meeting in June 2008 vide LC Paper No. CB(1)1234/07-08 on 11 April 2008.)

IV. Update on the work of the Financial Reporting Council

(LC Paper No. CB(1)1163/07-08(03) — Financial Reporting Council's progress report on its work

LC Paper No. CB(1)1164/07-08 — Updated Background Brief on the work of the Financial Reporting Council prepared by the Legislative Council Secretariat

LC Paper No. CB(1)1203/07-08(01) — Powerpoint presentation material provided by the Financial Reporting Council (tabled at the meeting and soft copy issued to members on 8 April 2008)

Briefing by the Financial Reporting Council

6. At the invitation of the Chairman, Ms Sophia KAO, Chairman of the Financial Reporting Council (C/FRC) gave a brief update on the work of FRC. She informed members that after FRC became fully operational on 16 July 2007, it had provided updates on its work through its website. FRC published its first annual report for 2007 in March 2008, copies of which had been distributed to all Legislative Council Members.

7. Mr SHUM Man-to, Chief Executive Officer of FRC (CEO/FRC) then gave a power-point presentation on the operation of FRC and highlighted the following:

- (a) Four committees had been established to advise the Council of FRC (the FRC Council) on different areas of work. Since commencement of full operation in July 2007, FRC had been working closely with other regulators and law enforcement agencies. It had also established cooperation channels with the Mainland authorities.

- (b) On the procedure for handling complaints, the FRC Secretariat would first conduct a preliminary internal assessment to determine whether the allegation was within the jurisdiction of FRC and if so, would proceed to review the allegation in detail. The FRC Secretariat would review the information provided by the complainants, the information available in the public domain and where necessary, seek additional information from the parties under complaint. A preliminary assessment report would then be prepared by the FRC Secretariat for the FRC Council to decide whether an investigation or enquiry was required.
- (c) To assist FRC in discharging its investigatory function, the Audit Investigation Board chaired by CEO/FRC with three professional Secretariat staff as members had been set up. FRC had also invited three highly experienced certified public accountants to serve on an Advisory Panel as honorary advisers for investigations of audit irregularities. A Financial Reporting Review Committee comprising not less than five members drawn from the Financial Reporting Review Panel would be appointed to conduct enquiries into non-compliance in financial reporting. Upon completion of an investigation or enquiry, a written report would be submitted to the FRC Council for consideration. The Council might adopt the report or direct more work to be done.
- (d) After completion of an investigation, the report might be referred to the Hong Kong Institute of Certified Public Accountants or other regulatory bodies for disciplinary actions. After completion of an enquiry, the Council might require the listed entity concerned to remove the non-compliance identified. If no follow-up action was required, the Council might determine to publish the report in accordance with the criteria in the Financial Reporting Council Ordinance (FRCO)(Cap.588).
- (e) Since commencement of full operation, FRC had received 21 complaints as at 31 March 2008. Seven involved audit irregularities and 14 were about non-compliance in financial reporting. Among these complaints, 11 had been concluded and no further action was required. Two were referred to other law enforcement agencies; while two were under investigation or enquiry and six still under preliminary assessment. On average, it took six weeks to complete reviewing a complaint.
- (f) The FRC, at its members' meeting on 31 October 2007, initiated one investigation and one enquiry. Both cases were near completion.
- (g) FRC had developed internal control and operation procedures to ensure proper corporate governance.

- (h) In developing investigation and enquiry procedures and guidelines on complaint handling, FRC had made reference to the practice of other local and overseas regulators and enforcement agencies. A person performing a function under FRCO was required to declare his or her interests in a case, if any. In addition, all staff of the FRC Secretariat were required to report details of investments in listed securities on an annual basis. There were also restrictions on the trading of securities relating to companies under complaint.
- (i) For the period 1 December 2006 to 31 December 2007, the total expenditure of FRC was \$5.46 million, the bulk of it being staff cost. For the same period, the total income was \$31 million, which included the annual contribution of \$10 million from the four funding parties, their one-off contribution setting up a reserve fund of \$20 million plus an interest income of \$1 million. FRC expected that the annual contribution of \$10 million should be adequate to cover the expenditure for the year 2008.

Discussion

Investigation and enquiry work of FRC

8. Miss TAM Heung-man was pleased to note that FRC had demonstrated efficiency in the handling of complaints. She enquired about the follow-up actions taken in respect of the two concluded complaint cases relating to audit irregularities. In reply, C/FRC advised that no follow-up action was required for the two cases on audit irregularities as the subjects under complaint had provided satisfactory explanation to FRC.

9. As FRC had only become fully operational since July 2007, Miss TAM Heung-man was concerned that the expenditure of about \$5.5 million in 2007 only represented the expenditure of some 5½ months up to the end of the financial year on 31 December 2007. She therefore doubted whether the modest budget of \$10 million for the year 2008 would be sufficient for FRC's full year operation. In this connection, Miss TAM recalled that during the scrutiny of the Financial Reporting Council Bill (the FRC Bill), concern had been raised about the adequacy of resources to enable FRC to carry out its work effectively. Ms Emily LAU echoed Miss TAM's view. She highlighted that to meet public expectations on FRC's role in maintaining the integrity of auditing and financial reporting, it was essential that FRC must not be constrained by limited resources when performing its functions.

10. In response, C/FRC said that FRC had been established on 1 December 2006 although it only became fully operational in July 2007. Therefore, the expenditure of about \$5.5 million actually covered the start up phase to the full functioning phase of FRC from 31 December 2006 to 31 December 2007. Based on the operational experience, she considered that the recurrent annual funding of \$10 million would be

adequate to cover the recurrent expenditure for the year 2008. C/FRC added that the current funding arrangement would cover the first three years of operations up to 2009 and the funding beyond 2009 would be worked out in collaboration with the Administration and the four funding parties having regard to the actual operational needs of FRC.

11. Ms Emily LAU expressed concern about the role of the FRC Council in overseeing the work of investigation and enquiry. In this regard, C/FRC explained that upon receipt of a complaint, the FRC Secretariat would perform preliminary assessment to determine whether the allegation was within the jurisdiction of FRC, and then prepare a preliminary assessment report for presentation to the FRC Council. The FRC Council would review and discuss the case and then decide whether an investigation or enquiry was required. Upon completion of an investigation or enquiry, a written report would be submitted to the FRC Council for consideration.

12. Miss TAM Heung-man was concerned whether FRC would take the initiative to enquire into non-compliance of listed entities' financial reports, instead of acting on complaint only. C/FRO responded that to avoid overlap of work with other regulatory bodies, FRC had reached agreements with other regulators including the Securities and Futures Commission (SFC) and the Hong Kong Exchanges and Clearing Limited (HKEx) on the protocols for referring cases/complaints to FRC for investigation or enquiry. While the law empowered the FRC to act on complaint as well as to proactively conduct investigations or enquiries, as the FRC was still at the early stage of operation, the current focus was on complaint-handling.. Miss TAM Heung-man recalled that during scrutiny of the FRC Bill, some members of the Bills Committee considered that FRC should carry out investigations or enquires on its own initiative. She therefore urged FRC to consider taking a more proactive approach in handling investigations or enquiries.

FRC

Corporate governance of FRC

13. Ms Emily LAU noted with concern that staff of the FRC Secretariat were only required to report their investment in listed securities once a year. To boost public confidence in FRC's impartiality and credibility, Ms LAU considered that the safeguards against conflict of interests should be enhanced to impose more stringent requirements for declaration of interests on staff members. Mr Albert HO expressed a similar view.

14. In response, CEO/FRC advised that in developing FRC's corporate governance framework, reference had been made to the requirements adopted by the Administration and other financial regulators, including SFC and HKEx. However, unlike SFC and HKEx which played an active role in monitoring and regulating the securities and futures markets, FRC was tasked to conduct investigations and enquiries in response to complaints. Moreover, the majority of complaints received related to listed entities of small market capitalization. It was therefore less likely for FRC Secretariat staff to access or obtain important market-sensitive information in

the course of their work. As such, FRC considered it appropriate for FRC Secretariat staff to report their investment in securities on an annual basis. Moreover, provisions relating to dealings in securities under the Securities and Futures Ordinance (Cap. 571) would also be applicable to staff of the FRC Secretariat. For example, they had to observe the provisions prohibiting insider dealing, the breach of which would be a criminal offence.

FRC 15. Mr Albert HO did not subscribe fully to CEO/FRC's explanation. He called on FRC to review the existing mechanism for declaration of interests by staff of the FRC Secretariat with a view to strengthening safeguards against any real, potential or perceived conflict of interests in their investigation or enquiry work.

Admin/
FRC 16. Ms Emily LAU enquired whether a mechanism was in place to ensure that staff of the FRC Secretariat would conduct investigations and enquiries independently. C/FRC advised that all FRC staff members were subject to a Code of Conduct which placed them under specific obligations of ethics and principles while performing their official functions. The standards of conduct, covering conflict of interests, confidentiality, and personal investments, were set out in the Code of Conduct. Moreover, to strengthen FRC's accountability and transparency, a Process Review Panel (PRP) would be established in the latter half of 2008 to begin work in 2009. It would review the operating procedures to ensure that they were fair and reasonable, and to determine whether FRC had followed its internal procedures in handling cases. In this regard, Mr Albert HO urged the Administration/FRC to consider strengthening the role of PRP by making reference to the work of the Operations Review Committee of the Independent Commission Against Corruption.

17. Mr Ronny TONG expressed his disappointment that FRC had not provided details of the concluded cases, in particular those without investigations or enquiries. In this connection, he urged that without prejudice to the rights and privacy of the parties concerned and having regard to public interest, FRC should consider making public the report or any part thereof upon conclusion of an investigation or enquiry. Mr TONG opined that this would enhance transparency and increase the awareness of the accountability profession of the auditing and financial reporting requirements. Ms Emily LAU and Mr Albert HO shared Mr TONG's view.

FRC 18. In response, C/FRC advised that upon completion of an investigation or enquiry, FRC might decide to publish the investigation or enquiry report, or only a summary of the findings of the investigation or enquiry. Under the FRCO, FRC was required to consider whether or not to publish the report taking into account factors such as public interest, the impact of such publication on any ongoing disciplinary or legal proceedings or relevant parties. She took note of Mr TONG's suggestion for consideration.

Appointment of the FRC members

19. Referring to FRC's Annual Report 2007, Ms Emily LAU noted with concern that the attendance rate of some FRC members was below 60%. She doubted

whether the FRC members had devoted adequate time to participate in FRC's affairs. In reply, C/FRC said that FRC members were all very committed and had made every effort to participate in the work of FRC. While clashes were sometimes inevitable, the FRC Secretariat would try to facilitate attendance of FRC members by scheduling meetings on dates convenient to them.

20. Mr Albert HO opined that in appointing members to the FRC, the Administration should take into consideration the commitment and capability of the candidates in addition to their professional qualifications so as to ensure that the appointees could devote adequate time to participate in the work of FRC. Sharing a similar view, Miss TAM Heung-man pointed out that the Public Accounts Committee had previously considered that the Administration should take into account the attendance record of members when considering their appointment to public bodies. She was of the view that the Administration should be able to identify suitable candidates for appointment to the FRC from the large pool of some 26 000 practitioners in the accountancy profession. In this connection, Ms Emily LAU requested the Administration to review the criteria for appointment of members to the FRC, having regard to their calibre and preparedness to actively participate in the work of FRC. In response to Ms Emily LAU's further enquiry, the Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) confirmed that the appointment of members to the FRC was consistent with the "six-board rule" while the "six-year rule" would not apply until 2012. Ms Emily LAU urged the Administration to strictly observe the "six-year rule" and the "six-board rule" for appointment of members to the FRC.

Admin

The way forward

21. Summing up, the Chairman said that since FRC had only commenced full operation for less than one year, it needed time to fine-tune its procedures in the light of operational experience. He requested FRC to brief the Panel on its work progress on an annual basis.

FRC/
Admin

V. Increasing employees' control over Mandatory Provident Fund investment

(LC Paper No. CB(1)1163/07-08(04) — Administration/Mandatory Provident Fund Schemes Authority's paper on increasing employees' control over Mandatory Provident Fund investment

LC Paper No. CB(1)1203/07-08(02)

Powerpoint presentation material provided by the Mandatory Provident Fund Schemes Authority (tabled at the meeting and soft copy issued to members on 8 April 2008)

Briefing by the Mandatory Provident Fund Schemes Authority

22. At the invitation of the Chairman and with the aid of a powerpoint presentation, Mr Darren MCSHANE, Executive Director (Regulation & Policy), Mandatory Provident Fund Schemes Authority (ED(RP)/MPFA) briefed members on the proposal to increase employees' control over their Mandatory Provident Fund (MPF) investment. In formulating the proposal, the MPFA had taken into account a number of key considerations. These included the need to increase employees' control over their mandatory contributions made during their current employment, and at the same time to avoid creating cumbersome procedures and to minimize the scope of legislative changes.

23. ED(RP)/MPFA advised that under the proposal, the Mandatory Provident Fund Schemes Ordinance (MPFSO) (Cap. 485) would be amended to allow an employee to transfer the accrued benefits derived from the employee mandatory contributions from the employer-chosen MPF scheme to an employee's personal account in a scheme of his own choice at least once a year. Such transfer should be made on a lump-sum basis and each transfer should be completed in 30 days. Trustees could only charge the actual and reasonable expenses incurred during the transfer process. An MPF scheme member could keep the accrued benefits, whether derived from his former or current employment, under the new portable personal account to be created under the proposal. Meanwhile, new contributions would still be made by the employer to the employer's chosen scheme. In respect of the personal accounts, a trustee would be required to provide Annual Benefit Statements for personal accounts to the scheme members and to report details of scheme members who had newly set up personal accounts and of those who closed their personal accounts to the MPFA on a monthly basis. ED(RP)/MPFA advised that according to the MPFA's assessment, the proposal could be implemented under existing processes and infrastructure and would not add substantially to the administrative burden on trustees and employers. Upon implementation, the proposal would result in around 60% of MPF benefits being portable between trustees.

24. On alternative arrangements, ED(RP)/MPFA confirmed that the MPFA had examined the following options:

- (a) to allow employees to also transfer all the accrued benefits derived from employer mandatory contributions from the employer-chosen schemes to MPF schemes of their own choice; or
- (b) to allow employees to choose the trustees for making contributions in respect of both the employer's and the employee's portions.

However, it was found that both alternatives would increase the complexity of the offsetting of Severance Payment (SP) and Long Service Payment (LSP), and would need to impose an obligation on the employees to keep their employers informed of all transfers of the employers' portion of mandatory contributions. Alternative (a) would require more record keeping by employers and trustees. Alternative (b) would bring about a fundamental change to the MPF System, increase the workload of employers substantially, and make enforcement of default contributions by the MPFA more difficult, more costly and less effective. The current proposal was also supported by the MPF Schemes Operation Review Committee (SORC) and the MPF Schemes Advisory Committee (the Advisory Committee).

Discussion

Pros and cons of the current proposal and alternative arrangements

25. Mr WONG Kwok-hing expressed dissatisfaction towards the proposal as it would not allow the employees to fully control their accrued benefits in their MPF accounts. Pointing out that an employee's accrued benefits were derived from both the employer and employee mandatory contributions, Mr WONG considered it unreasonable that the employee concerned would only be allowed to transfer the benefits derived from the employee mandatory contributions to a scheme of his own choice under the current proposal. He urged the Administration/MPFA to further consider the alternative arrangements in paragraph 24(a) and (b) instead of only highlighting the difficulties involved.

26. Mr LEE Cheuk-yan was also not supportive of the current proposal which fell short of giving the employees full control of their MPF investment. Mr LEE was of the view that employees should be allowed to transfer all the accrued benefits derived from both the employer and employee mandatory contributions to MPF schemes of their own choice, i.e. paragraph 24(a). If the alternative would increase the complexity of the arrangement for offsetting of SP/LSP, Mr LEE was of the view that the offsetting arrangement should be abolished altogether. As for the alternative in paragraph 24(b), Mr LEE appreciated that the option would require further study due to the enforcement difficulties involved in the recovery of contribution arrears.

27. In this connection, ED(RP)/MPFA stressed that the current proposal was considered a pragmatic improvement over the existing arrangement which could be implemented within a reasonable timeframe. He also highlighted that the proposed transfer procedure would be very similar to the existing transfer mechanism upon cessation of employment, whereby the employee could transfer the accrued benefits to a preserved account after the offsetting of SP/LSP. The preserved account however would be renamed as personal account.

28. Miss TAM Heung-man criticized the Administration/MPFA for the slow progress in formulating proposals to increase employees' control over their MPF investment. She urged the Administration to allow employees to have full control

over the accrued benefits derived from both the employer and employee mandatory contributions. In this way, employees could choose to invest in schemes of their choice based on the investment performance of the schemes, instead of merely relying on the choice of their employers. She enquired on the timetable, if any, to give employees full control of their MPF investment.

29. The Deputy Secretary for Financial Services and the Treasury (Financial Services) (DS/FS) reiterated that the Administration/MPFA had examined the pros and cons of other alternatives and had come to the view that the current proposal would allow employees greater control over their MPF investment without creating cumbersome procedures nor substantial legislative changes which would facilitate early implementation. DS/FS said that subject to the Panel's support, the Administration would proceed to draft the necessary legislative amendments with a view to giving effect to the improvements as early as possible.

30. Miss TAM Heung-man maintained her strong view that the Administration had not responded positively to public aspiration for better protection of the retirement benefits of MPF scheme members. She disapproved of the piecemeal improvements made to the existing arrangement instead of tackling the fundamental issues holistically.

31. Mr Andrew LEUNG, Mr Jeffrey LAM and Mr James TIEN supported the proposal. They considered that as a pragmatic approach, any proposal to increase the portability of MPF benefits should be one which could balance the interests of different stakeholders. As mandatory contributions comprised the portion funded by the employer and the portion deducted from the employee's relevant income, Mr Andrew LEUNG said that a fair and reasonable proposal should be formulated having regard to both the demand of employees to increase control over their MPF benefits and the right of employers to offset SP/LSP with the accrued benefits attributable to the employer mandatory contributions. As such, Mr LEUNG opined that allowing employees' full control of accrued benefits derived from both the employer and employee mandatory contributions should only be considered if LSP was abolished.

32. Mr Jeffrey LAM pointed out that the alternative arrangement to allow employees to have full control over their MPF benefits derived from both the employer and employee mandatory contributions would increase the administrative burden and operating cost of employers, a majority of them being small and medium sized enterprises (SMEs) with limited resources. Mr Andrew LEUNG expressed similar concern. Mr Jeffrey LAM further enquired whether the MPFA had estimated the possible increase in administrative costs and workload on the part of the employers upon implementation of its current proposal. He also pointed out that, in choosing the trustees, investment performance had always been a major factor in the employers' consideration.

33. Mr James TIEN was of the view that employees' interests would best be protected at times of strong economic growth when employers had to offer attractive

packages to compete for staff in the labour market. Referring to the background of the development of the MPF System, Mr TIEN said that it remained the employers' concern that the implementation of both the MPF System and LSP might amount to an obligation on employers to provide double retirement benefit for their employees. Now that the MPF System was up and running, Mr TIEN considered it timely to critically re-examine whether LSP should remain. In Mr TIEN's view, the alternatives to allow employees even greater control in their MPF investment might have their downside. Where an employee chose to invest all the contributions in highly risky investments and sustained losses, employers would be required to top up the shortfall in the offsetting of LPS. Notwithstanding that SMEs might have concern about the increased administrative burden and cost, Mr TIEN called on employers to give their support to the current proposal.

34. ED(RP)/MPFA said that the current proposal was a more moderate option and could be implemented under the existing processes and infrastructure without causing substantial changes to the work of scheme trustees. DS/FS added that the concern of employers of SMEs about the administrative burden and operating costs had been taken into consideration in formulating the proposal. Responding to Mr James TIEN's enquiry, ED(RP)/MPFA confirmed that the current proposal had been endorsed by the SORC and the Advisory Committee, both of which comprised representatives from relevant stakeholders including employer and employee bodies.

Fees and charges of MPF funds and management of accounts

35. Mr LEE Cheuk-yan and Miss TAM Heung-man recalled that one of the major reasons underlying any proposal to increase employees' control over their MPF investment was the need to lower exorbitant fees and charges of MPF funds which would eventually erode scheme members' accrued benefits upon retirement. Pointing out that scheme trustees might adopt marketing strategies such as lucky draw or welcome gifts to compete for business after the implementation of the proposal, Mr LEE was concerned whether the intended purpose of driving down fees and charges could in fact be achieved. He sought the MPFA's assessment on the impact, if any, of the proposal on fees and charges of MPF funds.

36. ED(RP)/MPFA responded that given the number of factors in the market which might affect the setting of MPF fees and charges, it would be difficult for the MPFA to attribute any adjustment in fees and charges to the current proposal. The MPFA's key strategy in devising the proposal was to make market forces work better so as to pull down the level of fees and charges. He believed that public discussions on the level of fees and charges of MPF funds would help increase the awareness of scheme members on the long-term impact of such fees on their accrued benefits and reinforce the MPFA's public education programme on fees and charges.

37. Mr Andrew LEUNG enquired about the cost for effecting transfers under the current proposal. In response, ED(RP)/MPFA confirmed that trustees could not charge fees to defray their administrative cost but only the actual transaction cost for the transfer. It was however difficult to quantify the transaction cost incurred as this

would vary between funds and over time, depending on the nature of the funds and their underlying assets. In actual practice, most funds maintained some liquidity to cope with redemption applications and if the transferred amount could be dealt with through the existing liquidity facility, no transactions for liquidation would be required and hence no material cost might be incurred for the transfer. In general, the transaction cost incurred for transfer was expected to be on the low side. As to Mr LEUNG's concern about employees' awareness of the cost for transfer, ED(RP)/MPFA advised that if the current proposal was adopted, the MPFA would, in its future publicity and educational materials, draw scheme members' attention to this factor, which was one of the factors when considering whether or not to transfer the accrued benefits. Regarding the requirement on the frequency of transfer, ED(RP)/MPFA advised that under the proposal, it would be a mandatory requirement for trustees to arrange transfer for members upon the latter's request at least once a year. Nevertheless, trustees were at liberty to provide more flexible services to their scheme members by allowing transfer more frequently than once a year in their schemes rules.

38. Responding to Mr WONG Kwok-hing's concern about measures to facilitate the consolidation of preserved accounts by employees, ED(RP)/MPFA said that the creation of the portable personal account under the current proposal was expected to instill a greater sense of ownership of MPF accounts by the employees and hence, encourage them to take a more active interest in managing their MPF accounts.

39. Noting the new portable personal accounts to be created under the proposal, Mr WONG Kwok-hing enquired whether the MPFA would require scheme trustees to facilitate scheme members' checking of account balance by using account passbooks. In reply, ED(RP)/MPFA advised that at present, individual scheme trustees could decide on the most appropriate means for disseminating account information to meet the needs of their scheme members. While the MPFA could provide some guidance to scheme trustees on the format or channels for information dissemination, it might not be useful for the MPFA to prescribe a particular format for trustees to follow as trustees having discretion could decide what would best meet the needs of their members.

Public consultation and the way forward

40. Mr SIN Chung-kai was concerned that the current proposal fell far short of public expectation for full control over MPF investment by employees. Notwithstanding that the proposal had been considered and endorsed by the SORC and the Advisory Committee, Mr SIN considered it prudent for the MPFA to conduct a wider public consultation. Alternatively, the Panel should consider holding a special meeting to receive views on the current proposal. He opined that the policy aspects of the legislative amendments had to be further discussed before commencing on the drafting exercise.

41. Ms Emily LAU shared Mr SIN's concern about the need for public consultation in the formulation of any improvement proposal. Referring to the

divergent views expressed by members on the proposal, Ms LAU doubted whether the MPFA had also been presented with dissenting views in its consultation process and if not, whether the existing consultative machinery was effective.

42. In reply, DS/FS advised that as the regulator of the MPF System, the MPFA had formulated the current proposal for members' consideration after careful examination of all relevant factors. The current proposal had already been considered and endorsed by the SORC and the Advisory Committee. If the MPFA were to conduct another round of public consultation, the Administration might not be able to take forward the legislative process as planned and any intended improvement to the MPF System would inevitably be delayed. However, he said that the Panel was at liberty to decide whether or not to invite views on the proposal. In this regard, ED(RP)/MPFA supplemented that the current proposal was a compromised approach which could bring about improvement without causing great practical difficulties.

43. Noting the Administration's and the MPFA's response, Mr SIN Chung-kai suggested that the Panel should hold a special meeting within the current legislative session to receive views on the proposal. Ms Emily LAU supported Mr SIN's suggestion.

44. Summing up, the Chairman said that the current proposal was a compromised approach representing only a small step forward in increasing employees' control over their MPF investment. The Chairman noted that most of the members who had spoken on the proposal seemed to be in favour of allowing employees greater or full control over their MPF investment. In this connection, the Chairman stated his view that the MPFA might have put too much emphasis on the practical difficulties arising from improving the existing arrangements while overlooking the benefits which would result. On the suggestion of receiving deputations, since there was no objection from members present, the Chairman said he would convene a special meeting and work out the arrangement with the Clerk.

(Post-meeting note: With the concurrence of the Chairman, a special meeting was scheduled for Monday, 30 June 2008 at 2:30pm to meet with deputations, the Administration and the MPFA. Members were informed of the meeting arrangement vide LC Paper No. CB(1)1228/07/08 on 14 April 2008.)

VI. Introduction of search fees for new incorporation forms for local companies

(LC Paper No. CB(1)1163/07-08(05) — Administration's paper on proposal to introduce search fees for new incorporation forms for local companies)

45. At the invitation of the Chairman, the Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)⁶ briefed members on the proposal to introduce search fees for new incorporation forms for local companies upon the commencement of the provisions in Schedule 2 to the Companies (Amendment) Ordinance 2004 (the Amendment Ordinance). Section 7 of Schedule 2 to the Amendment Ordinance would introduce incorporation forms for any person to apply to the Registrar of Companies (the Registrar) to incorporate a company in Hong Kong. In gist, the introduction of incorporation forms aimed to streamline the incorporation procedures. Considering that the new incorporation forms for local companies were comparable to the existing specified form on "Particulars of a Non-Hong Kong Company Registered in Hong Kong" in terms of contents and document size, the Administration proposed that the search fees for the two forms should be the same. The proposed fees were also set on the basis that customers on average would not pay more than at present for obtaining similar information relating to a company. The Registrar consulted its Customer Liaison Group on the proposed search fees in March 2008 and members of the group generally considered the proposed fees fair and reasonable. The Administration aimed to gazette and then table an order to amend the Eighth Schedule to the Companies Ordinance (Cap. 32) for the proposed new search fees at the Legislative Council in the second quarter of 2008.

46. As members did not raise any questions or objection, the Chairman concluded that the Administration could proceed with its legislative proposal.

VII. Any other business

47. There being no other business, the meeting ended at 12:50 pm.

Council Business Division 1
Legislative Council Secretariat
2 May 2008