

立法會
Legislative Council

LC Paper No. CB(1)1410/08-09

(These minutes have been seen
by the Administration)

Ref : CB1/PL/FA/1

Panel on Financial Affairs

Minutes of meeting
held on Monday, 6 April 2009 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)
Dr Hon David LI Kwok-po, GBM, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Vincent FANG kang, SBS, JP
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon KAM Nai-wai, MH
Hon Starry LEE Wai-king
Hon Paul CHAN Mo-po, MH, JP
Hon CHAN Kin-por, JP
Hon Mrs Regina IP LAU Suk-yea, GBS, JP

Members attending : Hon Mrs Sophie LEUNG LAU Yau-fun, GBS, JP
Hon IP Wai-ming, MH

Members absent : Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon CHIM Pui-chung
Hon Tanya CHAN

**Public officers
attending**

: Agenda Item IV

Mr Kenneth CHENG
Principal Assistant Secretary for
Financial Services and the Treasury (Treasury)

Mr Simon YIP
Clerk to the Board of Review
(Inland Revenue Ordinance)

Mrs Teresa CHU
Deputy Commissioner (Operations)
Inland Revenue Department

Mr CHIU Kwok-kit
Assistant Commissioner, Unit Two
Inland Revenue Department

Mr YIM Kwok-cheong
Senior Assessor (Research) 1
Inland Revenue Department

Agenda item V

Ms Selene TSOI
Principal Assistant Secretary for
Financial Services and the Treasury
(Financial Services)

Agenda item VI

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

**Attendance by
invitation**

: Agenda item V

Ms Sophia KAO
Chairman
Financial Reporting Council

Mr M T SHUM
Chief Executive Officer
Financial Reporting Council

Ms Velma CHEUNG
Director, Investigation and Compliance
Financial Reporting Council

Agenda item VI

Ms Hendena YU
Chief Operating Officer (Enforcement)
Mandatory Provident Fund Schemes Authority

Clerk in attendance: Ms Rosalind MA
Chief Council Secretary (1)5

Staff in attendance : Mr Noel SUNG
Senior Council Secretary (1)4

Ms Jenny YIU (Agenda items I to IV)
Senior Council Secretary (1)8

Ms Haley CHEUNG
Legislative Assistant (1)8

Action

I Confirmation of minutes of meeting and matters arising

(LC Paper No. CB(1)1105/08-09 — Minutes of special meeting on
30 December 2008

LC Paper No. CB(1)1174/08-09 — Minutes of meeting on
2 February 2009)

The minutes of the meeting held on 30 December 2008 and 2 February 2009 were confirmed.

II Information papers issued since the last meeting

(LC Paper No. CB(1)939/08-09(01) — Letter from Mrs Regina IP concerning the underlying assets for the Lehman Brothers – related Minibonds (English version only)

LC Paper No. CB(1)940/08-09 — Mandatory Provident Fund Schemes Statistical Digest — December 2008

LC Paper No. CB(1)769/08-09(01) — Securities and Futures Commission's reply to the letter from Mr Albert CHAN Chun-wai (English version only)

LC Paper No. CB(1)1094/08-09(01) — Hong Kong Monetary Authority (HKMA)'s reply to the submission on "sharing of consumer credit data" (English version only)

LC Paper No. CB(1)1184/08-09(01) — Administration's information paper on computer equipment and services for the 2011 Population Census

LC Paper No. CB(1)1217/08-09(01) — Submission on the increase of tobacco duty from the Committee on Youth Smoking Prevention (Chinese version only)

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

III Date of next meeting and items for discussion

(LC Paper No. CB(1)1177/08-09(01) — List of outstanding items for discussion

LC Paper No. CB(1)1177/08-09(02) — List of follow-up actions)

Regular meeting on 4 May 2009

3. Members agreed to discuss the following item proposed by the Administration at the next regular meeting scheduled for 4 May 2009:

-Extending the network of agreements for avoidance of double taxation

4. Ms Emily LAU suggested that the Administration should also be invited to brief the Panel on the funding proposal for computer equipment and services for the 2011 Population Census (LC Paper No. CB(1)1184/08-09(01)) before seeking funding approval from the Finance Committee (FC). Members agreed.

5. Referring to the recent concern arising from the G20 Summit on Hong Kong's taxation regime to prevent tax avoidance, Ms Emily LAU said that the Administration should be requested to provide background information on the subject, including its plans to address such concern. Mr Paul CHAN considered that Ms LAU's concern was related to the discussion item on extending the network of agreements for avoidance of double taxation proposed by the Administration. Noting members' views, the Chairman directed the Clerk to invite the Administration to address the concern raised by Ms LAU when preparing the information paper for the meeting on 4 May 2009.

Special meeting on 18 May 2009

6. Members noted that the Chief Executive, Hong Kong Monetary Authority (CE/HKMA) would be out of town in the first half of May and would not be available to attend the regular meeting scheduled for 4 May 2009. Members agreed that a special meeting be held on 18 May 2009 at 9:00 am to facilitate the attendance of CE/HKMA for the regular briefing on the work of HKMA.

(Post-meeting note: Notices of the meetings on 4 May and 18 May 2009 were issued to members vide LC Paper Nos. CB(1)1252/08-09 and CB(1)1254/08-09 on 7 April 2009.)

Market misconduct activities

7. The Chairman informed the meeting that Mr Jeffrey LAM had sent in a letter expressing concern about the possible abusive short selling activities or market irregularities during the period when some international investment banks released analysis reports on the target share price of the HSBC Holdings PLC, causing an abrupt drop in the price of the share at this time.

8. Dr Philip WONG shared Mr LAM's concern. Dr WONG opined that to protect the interest of the investing public, the regulators should enhance the safeguards and step up actions against market misconduct activities by individuals/institutions using false or misleading information. this was more important than imposing together trading restrictions on directors of listed issuers through extension of the "black out" period between the year/period end and result announcement. Mr Paul CHAN pointed out that analysis reports released by broker firms could also have considerable market impact, and would affect the price of structured financial products, such as equity-linked notes, distributed by these firms. Mr CHAN said that the distribution of structured financial products should be

covered in examining the measures/safeguards under the existing regulatory regime against market misconduct activities.

9. The Chairman said that Mr Jeffrey LAM's letter would be forwarded to the Administration/SFC for a written response.

(Post-meeting note: Mr Jeffrey LAM's letter was forwarded to the Administration/SFC for a written response.)

***IV Inland Revenue (Amendment) (No. 2) Bill 2009**

(LC Paper No. CB(1)1177/08-09(03) — Paper provided by the Administration)

Briefing by the Administration

10. At the invitation of the Chairman, the Principal Assistant Secretary for Financial Services and Treasury (Treasury) (PAS(Tsy)) gave a brief introduction on the Inland Revenue (Amendment) (No. 2) Bill 2009 (the Bill). PAS(Tsy) highlighted a number of technical amendments proposed through the Bill to smoothen the operation of the Board of Review (Inland Revenue Ordinance) (the Board) and to improve the administration of the Inland Revenue Ordinance (IRO) (Cap. 112) related to the following:

- (a) Profits tax;
- (b) Salaries tax and tax under personal assessment;
- (c) Property tax;
- (d) IRD staff breaching secrecy provisions; and
- (e) Tax reserve certificates (TRCs).

A number of minor textual amendments would also be proposed to IRO for the sake of consistency.

Amendments relating to the operation of the Board

11. Noting that members of the Board would receive remuneration for serving in the hearing panel, Mr WONG Ting-kwong enquired about the computation of such remuneration. In reply, PAS(Tsy) advised that, in line with the practice of some other statutory boards/committees, the chairman, deputy chairmen and members of the Board would be remunerated for performing their duties. The Finance Committee had deliberated on the remuneration for Board members in the past. Responding to Mr WONG's further enquiry about the need for the chairman or a deputy chairman of the Board to have the casting vote on an appeal case, PAS(Tsy) said that as the hearing panel might comprise three or more members of the Board, it might be necessary for the presiding member to have a casting vote if the number of members in a panel was an even number.

12. Mr Paul CHAN raised concern about the proposed amendment for the chairman of the Board to nominate members to hear appeals. Mr CHAN questioned

whether a proper nomination mechanism would be put in place to ensure the fairness and objectivity of the nominations made by the chairman. The Clerk to the Board of Review (Inland Revenue Ordinance) advised that as stipulated in IRO, the Board should consist of a chairman and ten deputy chairmen, who should be persons with legal training and experience, and not more than 150 other members, all of whom should be appointed by the Chief Executive. To facilitate the even allocation of appeal cases to members of the Board, the chairman would nominate members to the hearing panels having regard to the number of hearings they had handled previously. At the request of Mr CHAN, the Administration would provide further information on the mechanism for nomination of members to the hearing panels.

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(1)1419/08-09(01) on 27 April 2009.)

Profits tax

13. Mr Paul CHAN supported the proposed amendment to allow interest expenses incurred in purchasing plant and machinery for research and development or environmental-friendly plant and machinery to be deductible under profits tax. Mr CHAN nevertheless highlighted the concerns of the business and professional sectors about the existing provision under section 39E of IRO in which the initial and annual allowances for profits tax would not be provided for leased plant or machinery used wholly or principally outside Hong Kong. Mr Chan enquired whether IRD had any plan for review and amendment of the relevant provision. Ms Starry LEE shared Mr CHAN's concern. Ms LEE stated that given the business integration between Hong Kong and the Mainland, the business sector had been concerned about the need for a critical review of the taxation legislation to cope with the changing circumstances.

14. In response, Deputy Commissioner (Operations) Inland Revenue Department (DC(Ops), IRD) advised that amendments to the provision mentioned by Mr CHAN would involve taxation policy instead of only technical amendments, and would not be dealt with in the present Bill. PAS(Tsy) added that the Administration was aware of the concern of the business sector about the taxation policy and had explained the existing policy at different forums. Any legislative proposals which involved changes in taxation policy would be examined and discussed in detail with the relevant stakeholders but not be incorporated into proposals for technical amendments.

15. Responding to Ms Starry LEE's further enquiry about the procedure and lead time for putting forward proposed technical amendments to IRO, PAS(Tsy) explained that amendments had been made to IRO from time to time for implementation of policy initiatives, e.g. Budget initiatives. Where minor issues requiring technical amendments to the legislation were detected, the Administration would try to handle them through administrative measures initially pending

introduction of legislative proposal under which a number of such technical amendments would be grouped in batches in a bill.

Salaries tax and tax under personal assessment

16. Mr CHAN Kin-po noted with concern the proposed amendment to plug the loophole that in case a taxpayer withheld claiming the home loan interest deduction for a particular year until the sixth year after, and revoked the claim within six months after the deduction was allowed, there might not be sufficient time legally for the IRD to raise additional assessment for that year. Mr CHAN questioned whether the existence of such a loophole had in the past resulted in loss of tax revenue. DC(Ops), IRD said that no report of cases resulting in loss of revenue had been received. She stressed that the proposed amendment aimed to plug the potential loophole which IRD had detected in processing cases involving revocation of home loan interest deduction claims.

Property tax

17. Noting the difficulty in raising a property tax assessment on each and every owner of a building in respect of rental income received for the use of common areas, Mr CHAN Kin-po asked whether this had resulted in a loss of revenue in the past. DC(Ops), IRD replied that there was no loss in revenue in this respect as IRD had raised property tax assessment on the Owners' Corporation or all owners of the buildings concerned for collection of the property tax in respect of rental income received for the use of common areas. In some difficult cases, property tax had been collected only after taking the cases to the Board of Review.

18. Mr KAM Nai-wai enquired about the need for proposing the technical amendment if IRD could successfully collect property tax in respect of rental income for the use of common areas in the past. Mr KAM was concerned that IRD would raise more property tax assessments on Owners' Corporations after enactment of the Bill. DC(Ops), IRD advised that the proposed technical amendment aimed to provide clarity and avoid unnecessary dispute. Under the current practice, IRD would raise tax assessment on the Owners' Corporation concerned or on all the owners of a building where there was no Owners' Corporation. Both the owners and IRD had experienced inconvenience under the latter circumstances, in particular where there were a large number of owners and the owners had not been involved in the renting of the common areas. The proposed amendment would address the above-mentioned problem.

IRD staff breaching secrecy provisions

19. Mr KAM Nai-wai enquired about the cases of which IRD could not take legal actions against its staff in breach of the secrecy provisions due to the expiry of six-month period. DC(Ops), IRD said that there was only one case where consideration had been given as to whether there was a breach of the secrecy

provisions but no legal action had been taken after seeking legal advice. Instead, disciplinary action had been taken against the staff concerned.

Tax Reserve Certificates

20. Pointing out that taxpayers might not have the incentive to surrender their Tax Reserve Certificates (TRCs) which might provide higher interest returns, Mr Paul Chan suggested the Administration consider returning to them the remaining balance of their TRCs without any interest or to impose a financial penalty on failure to claim the remaining balance upon expiry of a specified period. Mr CHAN opined that this could reduce the Administration's difficulty and resources required in handling the unclaimed money in the TRC deposit account. In response, DC(Ops), IRD advised that taxpayers who purchased TRCs were not required to surrender their TRCs except for cases where they were asked to purchase TRCs as security for the holdover of the tax in dispute when they lodged objections to their tax assessments. The proposed amendment could help clear the unclaimed money more effectively after finalization of objections.

V Progress report on the work of the Financial Reporting Council

(LC Paper No. CB(1)1177/08-09(04) — Paper provided by the Financial Reporting Council

LC Paper No. CB(1)1175/08-09 — Background Brief on the work of the Financial Reporting Council prepared by the Legislative Council Secretariat)

Briefing by the Financial Reporting Council

21. At the invitation of the Chairman, Ms Sophia KAO, Chairman of the Financial Reporting Council (C/FRC) gave a brief introduction on the work of FRC. She informed members that FRC had provided updates on its work through its website. The second annual report of FRC for the year 2008 had been published recently, copies of which had been distributed to all Legislative Council Members.

22. Mr SHUM Man-to, Chief Executive Officer of FRC (CEO/FRC) said that FRC was established on 1 December 2006 and became fully operational on 16 July 2007. Its main functions were to conduct investigations of auditing irregularities and enquiries into non-compliance with accounting requirements in relation to listed entities. CEO/FRC gave a brief account of FRC's work in the past year in respect of complaint handling, investigation, enquiry, measures to enhance transparency and accountability, as well as the financial position of FRC. He also highlighted the measures taken to address members' concerns raised at the last briefing on 8 April 2008.

Power and resources

23. Noting that some listed entities had suffered hefty losses from their investments in derivatives amid the financial tsunami, Mr Jeffrey LAM was concerned whether the existing accounting requirements were adequate in terms of listed entities' reports of investments in derivatives. Mr LAM enquired whether FRC had, in the course of its enquiries, identified any systemic problems in the current requirements and referred to the relevant regulator for follow up.

24. CEO/FRC advised that there were clear and detailed requirements for listed entities to disclose their investment risks, including risks of investment in derivatives, in the notes to the financial statements. The existing accounting requirements were considered adequate in previous discussion between FRC and the major accounting firms. CEO/FRC pointed out that the accounting requirements of Hong Kong aligned with the international standard. There should be sufficient disclosure of the investment risks of listed entities to the investing public if the accounting requirements had been complied with in full. The auditors of the listed entities were responsible for ensuring compliance with the requirements in the preparation of the auditor's reports. FRC had taken a proactive approach since July 2008 to review all the modified auditor's reports on financial statements of listed entities as and when they were issued to identify potential non-compliances. While non-compliance of disclosure requirements had not been identified in the complaints received by FRC, FRC would monitor news and discussions relating to listed entities in the public domain to see if there was any possible auditing irregularity or non-compliance with accounting requirements.

25. Ms Starry LEE also expressed concern about the disclosure of investment risks in relation to derivatives and the timely issue of profit warnings by listed entities. Ms LEE enquired about the arrangement to facilitate cooperation between FRC and other regulators, such as the Securities and Futures Commission (SFC), in respect of handling of cases involving non-compliance with the disclosure requirements.

26. CEO/FRC said that to avoid overlap of work with other regulatory bodies, FRC had signed Memoranda of Understanding (MoU) with the relevant bodies, setting out in clear terms the agreed mode of cooperation and protocols for referring cases/complaints to FRC for investigation and enquiry. In its day-to-day work, FRC maintained close liaison with regulatory bodies such as SFC and the Stock Exchange of Hong Kong Limited to ensure the effective use of resources. For example, FRC would liaise with SFC for information sharing on cases of profit warnings related to investments in derivatives. Responding to Ms Starry LEE's further enquiry on the frequency of formal meetings between FRC and other regulatory bodies, CEO/FRC and C/FRC advised that meetings were arranged at least once a year to review the functioning of MoU and contact in relation to operational matters took place as often as required.

27. Referring to the scandals involving large corporations such as Enron during the Asian financial crisis, Mr Andrew LEUNG was concerned about the emergence of similar problems relating to regulation of the accountancy profession under the current financial tsunami. Mr LEUNG asked whether FRC was provided with adequate statutory power and manpower resources to uphold the standard of financial reporting by listed entities for protection of investors' interests, particularly when there was an increase in the number of complaint cases under the global financial crisis.

28. C/FRC advised that the key functions of FRC were to conduct enquiries in non-compliances with accounting requirements and conduct independent investigations into possible auditing and reporting irregularities related to listed entities. Given the complexity of the information provided in the financial statements of listed entities, investor education might have to be stepped up to enhance the ability of the investing public in understanding the information. While investor education fell outside the ambit of FRC, FRC would spare no efforts in increasing public awareness of the importance of investor education at appropriate public forums. On the adequacy of resources, C/FRC pointed out that there was no significant increase in the number of complaints up to the present stage. She advised that the manpower resources of FRC could cope with the existing workload, including the handling of complaints, proactive review of modified auditor's reports on financial statements of listed entities, and monitoring of news and discussions relating to listed entities in the public domain. C/FRC said that FRC had devised plans to cope with sudden surge in workload, such as outsourcing arrangement.

29. The Chairman enquired whether FRC would seek additional resources in order to meet demands for expansion of its scope of work in the future. In response, C/FRC said that the estimated expenditure of FRC for 2009 was \$13.6 million which had exceeded the original estimated annual expenditure of \$10 million for FRC before it was in operation. She advised that the funding model for the first three years of operation of FRC had been agreed among the four funding parties before FRC's establishment. FRC had provided its views on the funding model beyond 2009 to the Financial Services and the Treasury Bureau for discussion with the four funding parties having regard to the actual operational experience of FRC.

Investigation and enquiry work

30. Ms Emily LAU expressed concern that FRC had taken 13 months to complete the investigation arising from a complaint. She urged FRC to expedite the complaint handling process and asked whether the long lead time required had resulted from manpower constraints.

31. C/FRC responded that FRC had taken a longer time of 13 months to complete the work on its first investigation during the initial operation of FRC. She assured members that with more work experience, the investigation process would be expedited. C/FRC nevertheless pointed out that to ensure a due process for the investigation, FRC had to allow time for parties concerned to provide the

information required, respond to the queries raised by FRC, and raise objection to the findings of the investigation. As such, about seven to nine months would have to be allowed for completing the investigation of a case.

32. Ms Emily LAU noted with concern that FRC received only four complaints in the first two months of 2009, whilst the Independent Commission Against Corruption reported at the special meeting of FC that the number of complaints related to the financial sector had increased by about 30% in the same period. Ms LAU doubted whether there was a lack of awareness of the role and functions of FRC in the community. She opined that publicity on the work of FRC should be stepped up. Mr KAM Nai-wai also commented that FRC should step up publicity of its work.

33. C/FRC said that apart from handling complaints, FRC had been proactively conducting review on auditor's reports to identify potential non-compliances. Since July 2008, 33 auditor's reports containing modifications were reviewed and four of them involved possible non-compliance. After preliminary assessment by the FRC Secretariat, an enquiry was initiated in November 2008. C/FRC noted Ms Emily LAU's view about publicity and advised that FRC would consider measures to publicize the work of FRC. Responding to Ms Emily LAU's further enquiry, C/FRC advised that FRC did not have in hand objective information on public understanding of its work, and would consider conducting surveys to gauge public views in this regard.

34. Mr KAM Nai-wai expressed concern about the independence of FRC in investigation of auditing irregularities, given that the Hong Kong Institute of Certified Public Accountants (HKICPA) was one of the four parties which provided funding for FRC. Mr KAM noted that FRC would act on complaints in conducting investigations into possible auditing irregularity and asked whether it would assume a more proactive role by conducting random checking of accounting firms. Mr KAM opined that random checking might help detect auditing irregularity timely and prevent further worsening of the problem.

35. CEO/FRC responded that apart from acting on complaints, FRC would follow up liquidation cases of listed entities, and examine whether there were auditing irregularities in the cases, such as whether the auditors had provided suitable warnings to investors on the financial position of the listed entities in previous reports on financial statements. FRC was nevertheless not empowered to conduct random checking on accounting firms, which was the responsibility of HKICPA. HKICPA would refer cases of auditing irregularities and/or non-compliance of accounting requirements to FRC for investigation/enquiry.

36. Mr Paul CHAN pointed out that the accountancy profession in Hong Kong was subject to the oversight of a number of regulatory bodies, such as FRC, SFC and HKICPA. He advised that HKICPA would conduct regular on-site inspections of the accounting firms on a biannual basis. Noting that FRC had reviewed auditor's reports on financial statements of listed entities since July 2008, Mr CHAN asked

whether any listed entities had been/would be required to remove non-compliances identified in these reports. Ms Starry LEE also expressed concern about FRC's work in respect of identifying non-compliances with accounting requirements. Ms LEE was of the view that FRC's review of only the modified auditors' reports would unduly hamper the effectiveness of its work in identifying non-compliance. Mr CHAN and Ms LEE urged FRC to consider conducting random review of auditor's reports which did not contain modifications.

37. C/FRC advised that during FRC's review of the modified auditor's reports, possible non-compliance had been identified and FRC had initiated an enquiry after preliminary assessment by the FRC Secretariat. The listed entity concerned would be required to remove the non-compliance in the report, where appropriate, upon completion of the enquiry. CEO/FRC supplemented that as there were about 1 300 listed entities each issuing two financial statements annually, FRC did not have the resources to review the auditor's reports which did not contain modifications.

Cross-border cooperation

38. Mr KAM Nai-wai and Mr Paul CHAN expressed concern about the difficulties in conducting investigation on locally listed companies which were incorporated in the Mainland and conducting most of their business activities in the Mainland. They stressed the importance of putting in place an effective mechanism for cross-border investigations.

39. CEO/FRC said that FRC had been handling many cases of complaints involving listed entities incorporated or with business operations in the Mainland. Agreement had been made with the Ministry of Finance for assistance in FRC's investigation or enquiry work in relation to these listed entities. CEO/FRC stressed that to uphold their corporate image and credibility in the market of Hong Kong, locally listed entities, irrespective of whether they were incorporated in Hong Kong or elsewhere, would normally cooperate with regulatory bodies in Hong Kong and hence respond to FRC's investigations/enquiries.

40. Mr Paul CHAN remained concerned about the cross-border investigation and enquiry work of FRC, in particular where the listed entities concerned were engaging overseas accounting firms for their financial reporting. Mr CHAN expressed concern about the regulation of those accounting firms. Mr CHAN opined that it was of paramount importance that a mechanism could be put in place for cooperation between FRC and relevant authorities overseas for effective regulation of overseas accounting firms providing services to listed entities in Hong Kong. Referring to the analysis of complaints received in FRC's 2008 Annual Report, Mr CHAN suggested FRC to provide further breakdown for the analysis by size of accounting firms related to the complaints on audit irregularities, e.g. Big 4, medium-sized and small-sized firms, so as to provide a clearer picture to the public.

41. CEO/FRC said that the difficulty in taking investigation and enforcement action in other jurisdictions was a problem faced by all regulatory and enforcement

bodies. FRC would require the accounting firms concerned to respond to its questions in the investigation of auditing irregularities, and would take the case to the court if the firms concerned refuse to cooperate. For accounting firms which wanted to continue serving as auditors of Hong Kong listed entities, they would be obliged to respond to FRC's questions. In line with international practice, the relevant regulatory bodies for the accountancy profession would establish agreements for cooperation in their work, but such agreement between FRC and relevant regulatory bodies overseas could not be established. C/FRC supplemented that the establishment of a formal mechanism for cooperation with overseas regulatory bodies for the accountancy profession would require a change in the accounting sector regulatory framework in Hong Kong, which would be beyond the ambit of FRC to decide.

42. The Chairman remarked that it would be for the Administration to consider whether to examine the policy issue involved in future, having regard to further operational experience of FRC.

***VI Government injection into Mandatory Provident Fund accounts of eligible persons**

(LC Paper No. CB(1)627/08-09(01) — Administration's paper on Government injection into Mandatory Provident Fund accounts of eligible persons – arrangements for handling requests for review of eligibility

LC Paper No. CB(1)1177/08-09(05) — Paper provided by the Administration/Mandatory Provident Fund Schemes Authority

LC Paper No. CB(1)1176/08-09 — Background Brief on Government injection into Mandatory Provident Fund accounts of eligible persons prepared by the Legislative Council Secretariat)

Briefing by the Administration and the Mandatory Provident Fund Schemes Authority

43. At the invitation of the Chairman, Deputy Secretary for Financial Services and the Treasury (Financial Services) (DS(FS)) apprised the meeting of the progress of implementing the Government's one-off injection of \$6,000 into the Mandatory Provident Fund (MPF) accounts of eligible persons. Following the approval of

funding for implementing the injection exercise, the Mandatory Provident Fund Schemes Authority (MPFA) had commenced the injection procedures. As at 30 March 2009, over 1.3 million (93%) of a total of around 1.404 million eligible persons had received the injection to their MPF accounts. MPFA expected that the injection stage of the exercise would be completed by end April 2009.

44. The Chief Operating Officer (Enforcement), MPFA (COO/MPFA) briefed the Panel on the special cases identified recently in the course of implementing the injection exercise and the mechanism to handle these cases. As at 30 March 2009, MPFA identified about 2 300 cases where ineligible persons had received the injection. In accordance with the amended Mandatory Provident Fund Schemes Ordinance, MPFA had been provided with the power to direct the trustee concerned to withdraw the special contribution from the accounts to which injection should not have been made. MPFA would notify the persons concerned in writing within the week of 6 April 2009 that the injection would be withdrawn, and the persons concerned could make a request to the MPFA within three weeks from the date of the notifications to review their eligibility. Subject to no request for review of eligibility, MPFA would commence the withdrawal procedures for these cases in end April 2009. As at 2 April 2009, MPFA had received about 1 600 enquiries on the injection arrangements through the enquiry hotline. Of these, about 300 cases involved individuals having received notification of injection who believed that they were not eligible for the injection. The other cases involved those who considered themselves to be eligible but had not yet received the notification of injection.

Declaration of interests

45. Mr CHAN Kin-por declared that he was a member of the MPF Schemes Advisory Committee.

Eligibility criteria

46. Mr CHAN Kin-por noted that during the scrutiny of the relevant amendment bill for implementation of the injection exercise, some members had suggested that the average monthly income of the 12 months from 1 March 2007 to 29 February 2008 be used for assessing the income eligibility of scheme members. Mr CHAN opined that this suggested assessment methodology might help reduce the number of cases of which the eligibility of the persons concerned was in doubt. He asked why the suggestion had not been taken forward.

47. DS(FS) advised that the Administration and MPFA had examined the suggestion and explained to the Bills Committee concerned that it would not be feasible to collect the income information of each and every member of MPF Schemes and MPF – exempted Occupational Retirement Schemes (ORSO Schemes) over a 12-month period, especially in relation to ORSO Schemes as their employers were not required by law to maintain the salary records of individual employees for as long as 12 months. Moreover, employers might not keep the income records of employees who had terminated their employment during the 12-month period.

Taking into consideration Members' views and operational feasibility, the conclusion was that it was a reasonable and flexible approach to decide eligibility by making reference to the income of scheme members in the three consecutive months preceding 1 March 2008 or the income in the last three months of account holders' last employment/self-employment during the one-year period from 1 March 2007 to 29 February 2008. An individual would be eligible for the injection of \$6,000 if his monthly income did not exceed \$10,000 in any one of the three months in reference.

48. Ms Starry LEE was of the view that it would be more equitable to use the average monthly income over a 12-month period to ascertain the income eligibility of a person for the injection. Ms LEE pointed out that employers should have maintained the income records of their employees for a period longer than 12 months and questioned why it was not feasible to adopt a 12-month average for the income eligibility assessment.

49. DS(FS) pointed out that there was no guarantee that all necessary data for such a long period was available and in the absence of available records, it would not be practicable for the scheme trustees/employers to reconstruct the income information of all employees. DS(FS) added that if the "12-month average income", arrangement had been considered possible and merited further consideration last year, it would have had to go through detailed examination by the MPFA to assess if it would create other unintended problems or implications. This process had not been done because this arrangement was not pursued. COO/MPFA supplemented that while trustees of ORSO defined contribution schemes maintained income records of their scheme members, those of ORSO defined benefits schemes did not maintain similar records. Moreover, employers of ORSO Schemes were only required under the law to keep the salary records of their employees for a period of six months. Requiring these employers to furnish information on the salaries of their serving and past employees over a past 12-month period would impose onerous administrative burden on them.

50. Referring to cases of low-income elderly workers who claimed to be eligible but had not received the injection, Mrs Regina IP asked the Administration to examine the reasons behind such cases. She was concerned whether some of the elderly workers had been unable to receive the injection due to their employers' failure in enrolling them in and making contributions to the MPF Schemes.

51. DS(FS) advised that the cases of elderly workers mentioned by Mrs IP might result from a number of possible scenarios and these had been foreseen and discussed at the Bills Committee. They could be persons who were not holders of an MPF contribution account or preserved account on 29 February 2008, i.e. the day of announcement of the injection exercise; who had withdrawn all the accrued benefits from their MPF accounts at the age of 65; or whose employers had failed to comply with the mandatory requirement to enroll them in an MPF Scheme and make contributions to their accounts. The eligibility criteria as agreed by the Legislative Council Finance Committee had taken into account all these scenarios. For cases involving non-compliance with the mandatory requirement under the MPF

legislation, MPFA had stepped up enforcement actions against the employers concerned since the second half of 2008 and followed up on the relevant cases.

52. The Deputy Chairman noted that under the assessment methodology adopted by MPFA, some individuals might have been considered eligible for the injection even though their average monthly income in the one-year period had exceeded \$10,000, if their income in any one of the three months in reference did not exceed \$10,000. He enquired about the number of such cases in the injection exercise and whether MPFA had any means or power under the existing legislation to withdraw the special contribution from the accounts to which injection had been made in respect of these cases.

MPFA

53. COO/MPFA said that MPFA had received about 300 requests for review of eligibility for the injection which involved individuals having received written notification of injection who believed that they were not eligible for the injection. She advised that MPFA only required the scheme trustees to provide income information of specified months to verify individual persons' eligibility for receiving the injection and hence did not have comprehensive information on the income of individual persons for the full one-year period. Responding to the Deputy Chairman's request, COO/MPFA said that information on the number of such cases would be made public upon completion of the injection exercise.

54. DS(FS) noted that the Administration/MPFA would be aware of the cases mentioned by the Deputy Chairman if the persons concerned reported to MPFA for review of eligibility voluntarily, and that if the individuals concerned requested for a review and were willing to return the \$6,000 injection, a mechanism was in place for MPFA to recover the money.

Administration of scheme members' information

55. Mr IP Wai-ming was concerned whether the administering of scheme members' information had been under effective monitoring by MPFA as he was concerned that cases where ineligible persons had received the injection might have been caused by errors in retrieving and consolidating stored information from the database used by trustees and employers,

56. COO/MPFA explained that the database used by trustees and employers in storing income information and other personal particulars of the employees was primarily established for maintaining contribution records of the MPF Schemes and ORSO Schemes, and was not designed to cater for the injection exercise whereby the income information of specified months was required to verify individual persons' eligibility for receiving the injection. The errors identified in the injection exercise were due to transformation of the source data in the MPF database to a new database for assessing one's income eligibility, therefore there was no issue about the integrity of the MPF database. COO/MPFA advised that scheme trustees were required to report cases to the MPFA where employers failed to make the mandatory contributions before the stipulated deadline, so that actions could be

taken timely against non-compliant employers. At the request of Mr IP Wai-ming, the Administration/MPFA agreed to provide further breakdown information on the 2 300 cases where ineligible persons had been identified for the injection of by the number of cases involving members of MPF Schemes and members of ORSO Schemes respectively.

(Post-meeting note: The Administration/MPFA's response was circulated to members vide LC Paper No. CB(1)1421/08-09(01) on 27 April 2009.)

Arrangements to handle requests for review

57. Ms Emily LAU enquired about the arrangements to handle request for review, notably the mechanism for individuals to lodge their appeals. Noting that the panel to handle appeal against a decision made by MPFA on a request for review (the Appeal Panel) comprised non-executive directors of the MPFA as members and chaired by the Chairman of the MPF Schemes Advisory Committee, Ms LAU asked what measures would be in place to ensure the independence of the panel.

58. In reply, COO/MPFA said that upon receipt of requests for review of eligibility, MPFA would check the accuracy of the available information, examined additional information (if any) provided by the persons concerned, and where necessary, sought further information from the trustees and employers concerned. MPFA would then make a decision on the request for review and inform the person concerned of the decision. If an individual was not satisfied with the decision on his request for review, he might, within three weeks after written notification of MPFA's decision, lodge an appeal with the Appeal Panel. The Appeal Panel would consider the case within about one month from the lodging of the appeal. Responding to Ms LAU's further enquiry, COO/MPFA advised that no appeal had been lodged at this stage as MPFA had just received the requests for review in the past week, and was in the process of verifying the eligibility status of the persons concerned for decisions on the review cases.

VII Any other business

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

Council Business Division 1
Legislative Council Secretariat
30 April 2009