

立法會
Legislative Council

LC Paper No. CB(1)1853/10-11

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by the Administration)

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Panel on Financial Affairs

Minutes of meeting
held on Monday, 21 February 2011 at 8:30 am
in the Chamber of the Legislative Council Building

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon CHAN Kin-por, JP (Deputy Chairman)
Hon Albert HO Chun-yan
Ir Dr Hon Raymond HO Chung-tai, SBS, S.B.St.J., JP
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Vincent FANG kang, SBS, JP
Hon LEE Wing-tat
Hon Jeffrey LAM Kin-fung, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, BBS, JP
Hon Ronny TONG Ka-wah, SC
Hon KAM Nai-wai, MH
Dr Hon LAM Tai-fai, BBS, JP
Hon Paul CHAN Mo-po, MH, JP
Hon Mrs Regina IP LAU Suk-ye, GBS, JP
- Members attending** : Hon LEE Cheuk-yan
Hon WONG Kwok-hing, MH
Hon IP Wai-ming, MH
- Members absent** : Dr Hon David LI Kwok-po, GBM, GBS, JP
Dr Hon Philip WONG Yu-hong, GBS
Hon CHIM Pui-chung
Hon Starry LEE Wai-king, JP

**Public officers
attending**

: Agenda Item III

Miss AU King-chi, JP
Permanent Secretary for Financial Services and the
Treasury (Financial Services)

Mr CHENG Yan-chee, JP
Deputy Secretary for Financial Services and the
Treasury (Financial Services)

Agenda Item IV

Miss Emmy WONG
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services) 3

**Attendance by
invitation**

: Agenda Item III

Mr Brian HO
Executive Director
Corporate Finance Division
Securities and Futures Commission

Mr Charles GRIEVE
Senior Director
Corporate Finance Division
Securities and Futures Commission

Mr Mark DICKENS
Head of Listing
Hong Kong Exchanges and Clearing Limited

Agenda Item IV

Mr Darren MCSHANE
Executive Director (Regulation and Policy)
Mandatory Provident Fund Schemes Authority

Ms Gabriella YEE
Chief Manager (Policy Development and Research)
Mandatory Provident Fund Schemes Authority

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)5

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Mr Noel SUNG
Senior Council Secretary (1)5

Mr Hugo CHIU
Council Secretary (1)5

Ms Clara LO
Legislative Assistant (1)10

Action

I Confirmation of minutes of meeting and matters arising

(LC Paper No. CB(1)1035/10-11 — Minutes of joint Panel meeting on 22 November 2010)

The minutes of the joint Panel meeting held on 22 November 2010 were confirmed.

II Information papers issued since the last meeting

(LC Paper No. CB(1)963/10-11(01) — Administration's paper on "Legislative Proposals to Enhance the Efficiency of the Existing Tax Appeal Mechanism"

LC Paper No. CB(1)1008/10-11(01) — Fourth quarterly report of 2010 on "Employees Compensation Insurance — Reinsurance Coverage for Terrorism" provided by the Administration

- IN03/10-11 — Information note on "The Development of Shanghai as an International Financial Centre" prepared by the Research Division of the Legislative Council Secretariat
- LC Paper No. CB(1)1031/10-11(01) — Three further submissions to (03) regarding charges on provision of account statements by banks from a member of public dated 24 December 2010, 3 and 5 January 2011
- LC Paper No. CB(1)1032/10-11(01) — Submission from Mr David M WEBB on 3 January 2011 requesting a review of the minimum relevant income for Mandatory Provident Fund contribution
- LC Paper No. CB(1)1203/10-11(01) — Hong Kong Monetary Authority's reply to the submissions from a member of the public regarding charges on provision of account statements by banks
- LC Paper No. CB(1)1314/10-11(01) Information note on "Provision to Head 106 – Miscellaneous Services Subhead 284 – Compensation in 2011-12" provided by the Administration)

2. Members noted the information papers issued since the last regular meeting on 3 January 2011.

III Consultation conclusions on the proposed statutory codification of certain requirements to disclose price sensitive information by listed corporations

(LC Paper No. CB(1)1284/10-11(01) — Administration's paper on "Consultation Conclusions on the Proposed Statutory Codification of Certain Requirements to Disclose Price Sensitive Information by Listed Corporations"

LC Paper No. CB(1)1284/10-11(02) — Administration's paper on "Proposed Statutory Codification of Certain Requirements to Disclose Price Sensitive Information by Listed Corporations -- Consultation Conclusions"

LC Paper No. CB(1)2143/09-10 — Minutes of Panel meeting on 3 May 2010 (Item IV is relevant))

Briefing by the Administration

3. The Permanent Secretary for Financial Services and the Treasury (Financial Services) (PS(FS)) said that the respondents to the public consultation generally supported the objective of the proposed statutory codification of certain requirements on listed corporations to disclose price sensitive information (PSI). Respondents generally believed that a statutory regime could cultivate a continuous disclosure culture among listed corporations and enhance market transparency, which would help enhance the competitiveness of the Hong Kong stock market. There was also a consensus on introducing civil sanctions to the statutory disclosure regime. Based on the views collected during the public consultation, the Government would refine the legislative proposals and planned to introduce the relevant Bill into the Legislative Council in the current legislative session. The Deputy Secretary for Financial Services and the Treasury (Financial Services) (DS(FS)) briefed members, through a Powerpoint presentation, on the consultation conclusions on the proposed statutory codification of certain requirements to disclose PSI by listed corporations.

(*Post-meeting note:* The slides of the Powerpoint presentation were circulated to members by e-mail (Lotus Notes) on 21 February 2011.)

Declaration of interest

4. Mr Jeffrey LAM, Mr Andrew LEUNG and Mr Paul CHAN declared interest that they were non-executive directors of listed corporations.

Discussion

Obligations of listed corporations and officers

5. Mr Jeffrey LAM remarked that while the Hong Kong General Chamber of Commerce generally supported the Administration's proposal, it had reservation as to the obligation of individual directors and high level staff responsible for managing the listed corporation (hereafter referred to as "officers") in disclosing corporation information. Mr LAM opined that if an "officer(s)" had acted in good faith, he or they should not be held liable for breaching the disclosure requirement. While expressing concern about the expression of an "officer" "ought reasonably to have come into possession of" the PSI, Mr LAM pointed out that the non-executive directors of a listed corporation might not be aware of some of the work of the administrative and operation staff, e.g. the sourcing of materials or investments of the company. Mr LAM opined that an "officer" "ought reasonably to have come into possession" of PSI might not mean that the "officer" actually had the knowledge of the information. Mr LAM opined that there should be clear definition of "absolute obligation" on the part of the "officers" in the proposed legislation. He was of the view that it might not be appropriate that the "officers" of a corporation should have "absolute obligation" for disclosure of PSI.

6. PS(FS) responded that the objective of the current exercise was to cultivate a continuous disclosure culture among listed corporations and to encourage compliance with the statutory disclosure requirements. The legislative proposals took into account whether an individual "officer" concerned had the intention to breach the disclosure requirements. An "officer" would not be held liable under the proposed legislation if he had taken reasonable measures from time to time to ensure that proper safeguards existed to prevent a breach of the disclosure requirement in relation to the corporation. She said that a listed corporation should disclose PSI to the public as soon as reasonably practicable. While a listed corporation should ensure confidentiality of the information when relying on a safe harbour, it should make disclosure as soon as reasonably practicable when it became aware of the

leakage of information. PS(FS) pointed out that public consultation had been conducted on a set of indicative draft legislative provisions, and the Administration did not use the term "absolute obligation". Based on respondents' suggestions, the proposed legislation had been amended to require a listed corporation to disclose PSI "as soon as reasonably practicable". An "officer" would only be held responsible if the Securities and Futures Commission (SFC) could provide evidence to prove that the breach in relation to a listed corporation was a result of the intentional, reckless or negligent act of that "officer", or that "officer" had not taken reasonable measures to prevent the breach in relation to the listed corporation.

7. Mr Jeffrey LAM reiterated his concern about the wording - the "officers" "ought reasonably to have come into possession" of PSI in the proposed indicative draft legislative provisions, and pointed out that there was a demarcation of the responsibilities of supervisory and operational staff in a corporation, and directors of a listed corporation might not be provided with information about matters such as the ordering of raw materials. Mr LAM requested the Administration to confirm that the SFC would be required to provide evidence to prove that a director had intentionally breached the disclosure requirements.

8. PS(FS) responded that "officers" would not be held responsible for breaches of the disclosure requirements if they had exercised reasonable care in the discharge of their duties to the listed corporation, and had taken reasonable measures to ensure that proper safeguards were in place to prevent the breach. The phrase "ought reasonably to have come into possession" was to prevent other staff of the listed corporation deliberately keeping the PSI away from being accessed by the "officers". "Officers" of a listed corporation should establish proper procedures within the corporation to ensure that PSI could be identified and reported to the "officers" promptly. The SFC would have the burden to prove that individual "officer(s)" concerned had breached the disclosure requirement in a relevant case.

9. Mr Paul CHAN echoed Mr Jeffrey LAM's concern and enquired about the liability of other officers of the listed corporation who were not directors or high-level management staff in leaking PSI.

10. PS(FS) reiterated that a director or a high-level management staff of a listed corporation would be held liable only if SFC could provide evidence to prove that the breach of the disclosure requirements was a result of the intentional, reckless or negligent act of the individual "officer", or the individual "officer" had not taken reasonable measures to prevent the breach in relation to the listed corporation. PS(FS) pointed out that the current

legislative proposal focused on the obligation of the directors and high-level management staff of listed corporations for timely disclosure of PSI, since they had the knowledge to assess whether the relevant piece of information was price sensitive or not and had the authority to decide whether a disclosure should be made.

11. Ms Emily LAU supported the legislative proposal as it would help upholding Hong Kong's status as an international financial centre. Ms LAU opined that the provisions regarding the obligation of directors and high level staff of listed corporations for disclosure of PSI, including the phrase "ought reasonably to have come into possession", were reasonable, although the Government should explain the proposal more clearly to the parties concerned. Ms LAU enquired whether, based on the feedback to the public consultation, the proposed provisions relating to the directors and high level staff's obligations were supported by the public, and whether the respondents considered that the proposed codification should have been introduced earlier.

12. PS(FS) responded that the Administration had received support during the public consultation for the provisions relating to the obligations of company directors and high-level staff in disclosure of PSI. There were also suggestions that the statutory requirements should be implemented as soon as possible. The legislative proposal provided that a breach on the part of an individual "officer" did not amount to a breach on the part of all other "officers", so long as the other "officers" had acted reasonably and had taken reasonably measures to prevent the listed corporation from breaching the disclosure requirements.

Safe harbours

13. While expressing his general support, Mr Andrew LEUNG remarked that sometimes the non-executive directors of a listed corporation might be the last group of persons being informed of the acquisition and/or merger plans of the corporation. Instead, relevant professionals such as accountants and lawyers, and banks would be aware of the acquisition and/or merger plans, and these persons might be involved in the leakage of PSI. Mr LEUNG was concerned that the proposed legislation only focused on the directors and high-level management staff of listed corporations.

14. PS(FS) responded that a safe harbour was provided for information concerning an incomplete negotiation or proposal. Since the directors and high-level management staff of a listed corporation were the persons who best knew their corporation, they should be the one to assess whether a piece of information was PSI. Professionals hired by a listed corporation for provision

of services should be bound by the third party confidentiality clauses in the agreements with the corporation. Professionals who had breached the confidentiality agreement with a listed corporation might be subject to disciplinary proceedings under the licensing and/or registration requirements applicable to these professionals. The Executive Director, Corporate Finance Division, SFC (ED(CF)/SFC) supplemented that the Code on Takeovers and Mergers was already applying strict requirements on listed corporations and the professionals regarding the confidentiality of information. In recent years, SFC had put in extra efforts in taking enforcement actions against persons breaching the professional and confidentiality obligations, which might also involve insider dealing activities. Recently there were a number of successful prosecution cases in this respect.

15. With regard to the safe harbour for information concerning the provision of liquidity support by the Exchange Fund or a central bank, Mr Paul CHAN commented that the regulatory bodies should be accountable for such provision of liquidity support. Mr CHAN enquired about the timing and mechanism for the Hong Kong Monetary Authority (HKMA) to report such incidents.

16. PS(FS) responded that the Government had discussed with HKMA regarding the safe harbour on information concerning the provision of liquidity support by the Exchange Fund or a central bank, and considered that the stability of the banking sector might be adversely affected if such incidents were disclosed to the public, even in the aftermath of the liquidity incidents. Disclosure of such incidents might also incur moral hazard in that the public might be misled to believe that the Government would always provide liquidity support to a troubled financial institution. Taking into consideration the advantages and disadvantages of disclosure, the Government considered that such incidents should be kept confidential.

17. Mr Paul CHAN requested that, in relation to the proposed safe harbour for information concerning provision of liquidity support by the Exchange Fund or a central bank, the Administration should provide information on the considerations of the HKMA in deciding whether and when such incidents should be disclosed to the public, and in the case of deciding to keep such incidents confidential, the accountability arrangements that HKMA would be subject to for the operation of the Exchange Fund and its other regulatory activities conducted in such incidents.

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(1)1574/10-11 on 11 March 2011.)

Sanctions

18. Dr LAM Tai-fai supported the legislative proposals in view of the need to enhance the transparency of the stock market. Dr LAM expressed concern about the transparency of the operation of some listed companies incorporated in other places such as the Mainland and Russia.

19. The Head of Listing, Hong Kong Exchanges and Clearing Limited (H(L)/HKEx) responded that all listing applications from companies incorporated in Hong Kong and other places would be vetted by the Listing Committee based on the same set of criteria, such as the examination of the suitability of the directors and the management structure of the companies. An overseas company listed in Hong Kong was required to appoint, in the first year of listing in Hong Kong, a compliance adviser licensed by SFC to advise the company on the Listing Rules and obligations under the law. Where necessary, the Listing Committee would require an overseas corporation to appoint the listing adviser for a period longer than one year. Records showed that there was no significant difference between the compliance situation of local and overseas companies.

20. Dr LAM Tai-fai was concerned that since its inception in 2003, the Market Misconduct Tribunal (MMT) had only dealt with four cases. He enquired about the reasons for the few cases handled by MMT, and expressed concern whether MMT had the capacity to deal with an increased number of cases resulting from the implementation of the proposal.

21. PS(FS) responded that MMT was charged to handle market misconduct cases that happened after the commencement of the Securities and Futures Ordinance in 2003. Following SFC's investigation, MMT heard the first case in 2007. So far, the MMT had dealt with five cases. Based on the existing legislation, market misconduct cases might be dealt with through criminal or civil proceedings. Some market misconduct cases were handled by criminal proceedings, not by the MMT. The Government would monitor the operation of MMT and where necessary, would allocate additional resources to MMT to meet an increased workload.

22. Dr LAM Tai-fai opined that instead of setting the maximum ceiling of regulatory fine at \$8 million, it would only be fair to set different ceilings of fines based on the capital size of the listed corporations. Dr LAM enquired whether this could be done. Dr LAM also enquired about the timing and plan for introduction of criminal sanctions for breach of PSI disclosure requirements.

23. PS(FS) responded that persons suffering pecuniary loss as a result of others breaching the disclosure requirements might rely on the results of MMT proceedings to take civil actions for remedies. PS(FS) stressed that "\$8 million" was proposed as the ceiling for regulatory fines. The legislation would require the MMT to comply with the principle of proportionality when determining the amount of regulatory fines to be imposed in a particular case, and consider a number of factors, such as the financial resources of the individual and/or the listed corporation involved, records of their past breaches, seriousness of the breach and its impact on the investing public, etc. In addition to the regulatory fine, other sanctions would also be considered, such as ordering an "officer" to undergo training, or ordering a corporation to appoint an independent professional adviser to advise on compliance matters, etc. PS(FS) added that at present, there was no timetable for introducing criminal sanctions for breach of the disclosure requirements, but the Administration would keep in view the effectiveness of the statutory regime.

Simultaneous disclosure of price sensitive information

24. Mr Paul CHAN enquired about the number of cases relating to breach of the requirement for corporations listed on more than one exchange to make simultaneous disclosure in Hong Kong of information announced in an overseas market.

25. H(L)/HKEx responded that all announcements made by a listed corporation in an overseas jurisdiction were required to be made in Hong Kong as well or the corporation would have breached the Listing Rules, and the proposed legislation if the announcement involved PSI. SFC and/or HKEx would take follow-up action against the listed corporation which had breached the disclosure requirements. A listed corporation might request for suspension of the trading of its listed securities, pending simultaneous announcement in Hong Kong and in an overseas jurisdiction. ED(CF)/SFC supplemented that the simultaneous announcement requirement was already in the Listing Rules and also included in the proposed guidelines on disclosure of inside information.

26. Mr Paul CHAN requested that the Administration should provide information on past cases in which corporations listed on more than one exchange failed to make simultaneous disclosure in Hong Kong of information announced in an overseas market, and the outcome of investigation by the SFC or the HKEx.

(Post-meeting note: The Administration's response was circulated to members vide LC Paper No. CB(1)1574/10-11 on 11 March 2011.)

Timing for disclosure of price sensitive information

27. Mr Paul CHAN opined that listed corporations should be required to disclose PSI outside the trading hours of the Hong Kong stock market so as to allow time for digestion of the relevant information by the market.

28. PS(FS) responded that the SFC's guidelines on disclosure of inside information would set out in more detail the operational arrangements with respect to the timing of disclosure.

Enforcement against non-Hong Kong residents

29. Mr Paul CHAN expressed concern about enforcement actions against "officers" of listed corporations who were not Hong Kong residents and/or residing in other jurisdictions.

30. PS(FS) responded that it had always been a challenge to take enforcement actions against people outside Hong Kong, but the SFC would seek assistance from its overseas counterparts through the existing mechanism.

Legislative timetable

31. Ms Emily LAU enquired about the legislative timetable for the proposals. Ms LAU opined that the legislative proposals should take into account the views of all stakeholders so as to facilitate scrutiny of the legislative proposals by the Legislative Council.

32. PS(FS) responded that the Administration had been striving to draw up a legislative proposal which could facilitate compliance by listed corporations and at the same time would not compromise investor protection. For example, the Administration considered the threshold of "in good faith" was too low and hence not appropriate. She said that the Administration's plan was to introduce the relevant Bill into Legislative Council before the end of the current legislative session.

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

(LC Paper No. CB(1)1291/10-11(01) — Administration's paper on "Review of the Minimum and Maximum Relevant Income Levels for Mandatory Provident Fund Contributions"

- LC Paper No. CB(1)1329/10-11(01) A letter dated 17 February 2011 from the Mandatory Provident Fund Schemes Authority enclosing a press release relating to the review of the minimum and maximum relevant income levels for Mandatory Provident Fund contributions
- LC Paper No. CB(1)1290/10-11 — Background brief on review of the minimum and maximum relevant income levels for Mandatory Provident Fund contributions prepared by the Legislative Council Secretariat)

Briefing by the Administration and Mandatory Provident Fund Schemes Authority

33. At the invitation of the Chairman, the Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) (PAS(FS)) introduced the item. She said that Members were welcomed to comment on the review report on the minimum and maximum relevant income levels for Mandatory Provident Fund (MPF) contributions prepared by the Mandatory Provident Fund Schemes Authority (MPFA). The Government would then draw up a proposal taking into account the interests of various parties and introduce the relevant Bill into the Legislative Council (LegCo).

34. The Executive Director (Regulation and Policy), Mandatory Provident Fund Schemes Authority (ED(RP)/MPFA) then gave a power-point presentation on the review of the minimum and maximum relevant income levels for MPF contributions. He said that MPFA had submitted the review report to the Government in July 2010 and the report was updated with the latest available data which were of the third quarter of 2010. He recapitulated the points set out in the press release issued by MPFA on 16 February 2011 that MPFA conducted and completed the review of the minimum and maximum relevant income levels as required under the Mandatory Provident Fund Schemes Ordinance ("the Ordinance"). While MPFA must consider the two statutory adjustment factors stipulated in the Ordinance, MPFA might also consider other relevant factors including the statutory minimum wage. The review report of MPFA was factual and did not make any recommendations to

the Government. The Government would make policy decisions upon consultation with key stakeholders. ED(RP)/MPFA then briefed Members on the review mechanism, results of the previous reviews in 2002 and 2006 and the following findings of the current review:

- (a) Based on the statutory adjustment factors, the minimum and maximum levels of relevant income might be adjusted from \$5,000 to \$5,500 per month and from \$20,000 to \$30,000 per month respectively; and
- (b) Upon taking other relevant factors and views gathered in consultation into account, there would appear to be general support for increases in the two levels as set out in (a) above. Regarding the minimum level of relevant income, some stakeholders suggested an increase beyond \$5,500. As for the maximum level of relevant income, some stakeholders suggested a phased approach.

35. ED(RP)/MPFA also briefed Members on the reasons for the findings, the impacts of increases as suggested by the statutory adjustment factors, if implemented, on employees and self-employed persons and the consultations conducted. He welcomed Members' views on the report of MPFA.

36. The Chairman said that the discussion under this agenda item should focus on the minimum and maximum relevant income levels for MPF contributions; other issues relating to the MPF System such as the Employee Choice Arrangement should not be raised.

Discussion

37. Mr CHAN Kin-por declared that he was a member of the Mandatory Provident Fund Schemes Advisory Committee.

Minimum level of relevant income and its relation with the statutory minimum wage

38. Mr WONG Kwok-hing criticised that an increase in the minimum level of relevant income from \$5,000 to \$5,500 per month was out of touch with the reality. He considered that the use of 50% of monthly median employment earnings as the statutory adjustment factor was not appropriate because it would be lower than the statutory minimum wage of \$5,824 (computed with the statutory minimum wage at \$28 per hour and based on the assumption that an employee would work 26 days per month at 8 hours per day). As such, the

review mechanism should be re-examined and that employees receiving the statutory minimum wage should be exempted from making MPF contributions. He further quoted the monthly income threshold of \$6,500 under the "Work Incentive Transport Subsidy Scheme" proposed by the Government to illustrate that the statutory adjustment factor was not appropriate. He concluded that the Government should set the minimum level of relevant income for MPF contributions at least at \$5,824 to align with the statutory minimum wage.

39. In response, PAS(FS) said that under the review mechanism laid down in the Ordinance, apart from the statutory adjustment factor of 50% of monthly median employment earnings, other relevant factors could also be taken into account in determining the minimum level of relevant income. The impacts of the statutory minimum wage would be reflected in the future salary data and such impacts would be taken into account in the next review of the minimum level of relevant income. Regarding Mr WONG Kwok-hing's suggestion that the minimum level of relevant income should be linked with the statutory minimum wage, PAS(FS) said that the MPF System and the statutory minimum wage served different policy objectives. With the minimum level of relevant income raised to \$5,500, there would be more lower income earners exempted from making MPF contributions, and there would not be cases that lower income earners currently exempted from making MPF contributions would suffer from a reduction in take-home pay owing to the need to pay MPF contributions after the statutory minimum wage came into effect.

40. Mr Jeffrey LAM concurred that the minimum level of relevant income should be increased so that it would not be lower than a monthly income computed based on the statutory minimum wage. Mr Paul CHAN also remarked that the Government should reconsider the minimum level of relevant income and take the effects of the statutory minimum wage into account.

41. Mr IP Wai-ming expressed dissatisfaction with the Government's response to Mr WONG Kwok-hing's views. He opined that for the current review, the Government should take into account the effects of the statutory minimum wage and make reference to other relevant schemes such as the "Work Incentive Transport Subsidy Scheme". As such, the minimum level of relevant income should be increased to \$6,000 or \$6,500.

42. PAS(FS) said that MPFA had considered the factor of statutory minimum wage in its review and the Government had also taken into account the impacts of the statutory minimum wage. A balance should be struck between short-term relief and long-term retirement need.

43. Mr Albert HO remarked that the statutory minimum wage at \$28 per hour was determined in November 2010, while the review report was submitted by MPFA to the Government in July 2010. He suspected that MPFA had not been able to comprehensively evaluate the impacts of statutory minimum wage and factor it into the review because the issue was complex and the statutory minimum wage had not yet been announced when MPFA prepared the review report. He supported an increase in the minimum level of relevant income, but considered the level of \$5,500, which was better than \$5,000, might no longer be appropriate in light of new developments. He suggested that the Government reconsider the adjustment level and consult relevant stakeholders proactively.

44. PAS(FS) said that the issue of statutory minimum wage had been discussed with stakeholders from different sectors at the consultation stage of the review. Upon the Government's announcement that the statutory minimum wage would be set at \$28 per hour, both the Government and MPFA had considered the impacts of this factor. MPFA had updated the review report with data for the third quarter of 2010 and its consideration of the impacts of the statutory minimum wage.

45. Mrs Regina IP remarked that the Government should not just concentrate on the statutory adjustment factors in the review. She was concerned that the actual take-home pay of some lower income earners might be reduced if the factor of statutory minimum wage was not fully considered in determining the minimum level of relevant income.

46. Mr LEE Cheuk-yan remarked that the underlying premises should be considered in the review. He pointed out that the minimum level of relevant income was previously set at \$5,000 per month because employees with income below this level could barely make ends meet and thus would have difficulties in making MPF contributions. He further pointed out that the reason for enacting the Minimum Wage Ordinance was to ensure that the wages of the workforce in Hong Kong would not be too low. Having regard to the underlying premises of the two measures, the statutory minimum wage (i.e. at \$28 per hour) should form the basis for determining the minimum level of relevant income. The issue at stake was how to translate the statutory minimum wage (which was an hourly wage) into a monthly income for the purpose of determining the minimum level of relevant income. He suggested the Government should compile data on the distribution of working hours of full-time lower income earners. With such data, a suitable methodology (like the use of median or a certain percentile) could then be worked out for translating the statutory minimum wage into a monthly income.

Maximum level of relevant income

47. Mr Jeffrey LAM expressed reservation on raising the maximum level of relevant income, pointing out that many small and medium enterprises (SMEs) were already affected by the implementation of statutory minimum wage.

48. In response, PAS(FS) remarked that the review findings based on the statutory adjustment factor was that the maximum level of relevant income should be increased from \$20,000 to \$30,000. Regarding the impacts on SMEs, PAS(FS) stated that during the review, employees and employers had been consulted through the Labour Advisory Board and other channels, and there were suggestions made during the consultation that a phased approach could be adopted to implement the increase in the maximum level of relevant income.

49. Mr CHAN Kin-por said that he supported raising the maximum level of relevant income to \$30,000 but the Government should consult employees and employers on whether a one-off or a phased increase should be made. He also considered that the increase might be made in two phases so that the process would not be too complex and result in huge administrative costs. Mr Albert HO also supported raising the maximum level of relevant income to \$30,000. Regarding whether the change had to be implemented in phases, he considered that the Government should consult relevant stakeholders first.

50. Mr LEE Cheuk-yan supported raising the maximum level of relevant income to \$30,000 because there would not be many high income earners in SMEs. Mr Ronny TONG and Mr Paul CHAN also supported increasing the maximum level of relevant income to \$30,000. Mr Paul CHAN opined that there was no need to implement the increase in phases.

Review mechanism

51. Pointing out that the Government would conduct review in the first year of the implementation of the statutory minimum wage and the "Work Incentive Transport Subsidy Scheme", Mr WONG Kwok-hing opined that the review of the minimum and maximum relevant income levels for MPF contributions should be conducted more frequently to enable timelier adjustments to the relevant income levels. Mr Ronny TONG also expressed concern about the review mechanism and considered that other relevant factors like inflation had not been thoroughly considered. In response, PAS(FS) said that MPFA could conduct a review on the minimum and maximum relevant income levels in less than four years' time, such as when there had been significant changes in the salary levels of the workforce.

Other concerns

52. Mr Jeffrey LAM said that since members of the public were generally not satisfied with the MPF System due to the poor investment returns, high management fees and the lack of transparency of MPF Schemes, he had doubts about the usefulness of the review on the minimum and maximum relevant income levels for MPF contributions. He opined that the Government should first tackle the problems of the MPF System. In response, PAS(FS) said that the current review was conducted in accordance with the Ordinance. Besides, the livelihood of lower income earners would be affected if the minimum level of relevant income was not adjusted.

53. In response to Mr IP Wai-ming's remark that the Government should withdraw its paper provided for this discussion, PAS(FS) advised that at this stage the Government was conducting consultation on the review results and the paper provided a useful basis to facilitate Members' discussions.

54. Mr CHAN Kin-por asked when the Government would consult the insurance sector and other relevant stakeholders like MPF intermediaries. PAS(FS) replied that apart from consultation with organizations like the Mandatory Provident Fund Schemes Advisory Committee and the Labour Advisory Board, the Government and MPFA would also keep consulting various relevant sectors to collect their views as appropriate.

55. Mr LEE Cheuk-yan suggested that the Government pay the MPF contributions on behalf of lower income earners. In this way, the lower income earners would not need to apply for the Comprehensive Social Security Assistance upon retirement. Mr Ronny TONG said that as lower income earners would suffer from reduced accrued benefits if they were exempted from making MPF contributions and given the huge fiscal reserves of the Government, he supported Mr LEE's suggestion.

Receiving public views

56. Mr WONG Kwok-hing, Mr IP Wai-ming, Mr Albert HO and Mr Ronny TONG suggested that a public hearing should be arranged to receive public views on the subject.

57. In response to Mr CHAN Kin-por's enquiry about the timeframe for the relevant legislative work, PAS(FS) advised that the Government would introduce the relevant Bill when a general consensus was reached among stakeholders. The Government's plan was to complete the legislative process within the current legislative session.

58. The Chairman requested the Government to submit a paper to the Panel to report on the decisions/proposals of the Administration before it introduced the relevant Bill so that the Panel could decide whether it was necessary to hold a public hearing on the subject. He remarked that when the relevant Bill was scrutinized by a Bills Committee, there was still the opportunity for Members to receive public views on the subject.

V Any other business

59. There being no other business, the meeting ended at 10:35 am.

Council Business Division 1
Legislative Council Secretariat
11 April 2011