

**立法會**  
***Legislative Council***

LC Paper No. CB(1)2084/03-04

(These minutes have been seen  
by the Administration)

Ref : CB1/PL/FA/1

**Panel on Financial Affairs**

**Minutes of meeting  
held on Friday, 2 April 2004 at 10:00 am  
in the Chamber of the Legislative Council Building**

**Members present** : Hon Ambrose LAU Hon-chuen, GBS, JP (Chairman)  
Hon Henry WU King-cheong, BBS, JP (Deputy Chairman)  
Hon Kenneth TING Woo-shou, JP  
Hon James TIEN Pei-chun, GBS, JP  
Dr Hon David CHU Yu-lin, JP  
Hon Albert HO Chun-yan  
Hon NG Leung-sing, JP  
Hon CHAN Kam-lam, JP  
Hon SIN Chung-kai  
Hon Jasper TSANG Yok-sing, GBS, JP

**Non-Panel Members :** Hon Mrs Selina CHOW LIANG Shuk-yee, GBS, JP  
**attending** Hon CHAN Yuen-han, JP  
Dr Hon LAW Chi-kwong, JP  
Hon LI Fung-ying, JP

**Members absent** : Hon LEE Cheuk-yan  
Dr Hon Eric LI Ka-cheung, GBS, JP  
Dr Hon David LI Kwok-po, GBS, JP  
Hon James TO Kun-sun  
Hon Bernard CHAN, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon Emily LAU Wai-hing, JP  
Hon Abraham SHEK Lai-him, JP

**Public officers  
attending**

**: Agenda Item IV**

Mr Frederick MA, JP  
Secretary for Financial Services and the Treasury

Mr Tony MILLER, JP  
Permanent Secretary for Financial Services and the Treasury  
(Financial Services)

Miss AU King-chi  
Deputy Secretary for Financial Services and the Treasury  
(Financial Services)

**Agenda Item V**

Mr Frederick MA, JP  
Secretary for Financial Services and the Treasury

Mr Tony MILLER, JP  
Permanent Secretary for Financial Services and the Treasury  
(Financial Services)

Mrs Clarie LO  
Deputy Secretary for Financial Services and the Treasury  
(Financial Services)

Mr G W E JONES  
Registrar of Companies

**Agenda Item VI**

Mrs Clarie LO  
Deputy Secretary for Financial Services and the Treasury  
(Financial Services)

**Agenda Item VII**

Mr Frederick W H HO  
Commissioner for Census and Statistics

Mr Alvin W K LI  
Assistant Commissioner (Social)  
Census and Statistics Department

Mr H Y CHEUNG  
Principal Economist  
Financial Services & the Treasury Bureau

**Attendance by invitation : Agenda Item VI**

Mandatory Provident Fund Scheme Authority

Ms Hendena YU  
Chief Operating Officer (Compliance)

Mr Darren McShane  
Executive Director (Investment Regulation)

Ms Stella YIU  
Senior Manager (Investment Regulation)

**Clerk in attendance :** Miss Salumi CHAN  
Chief Council Secretary (1)5

**Staff in attendance :** Ms Pauline NG  
Assistant Secretary General 1

Ms Connie SZETO  
Senior Council Secretary (1)4

Ms May LEUNG  
Legislative Assistant

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**I. Confirmation of minutes of meeting**

(LC Paper No. CB(1)1394/03-04 — Minutes of meeting on  
2 February 2004)

The minutes of the meeting held on 2 February 2004 were confirmed.

**II. Information papers issued since last meeting**

2. Members noted that no information paper had been issued since the last regular meeting held on 1 March 2004.

### **III. Date of next meeting and items for discussion**

(LC Paper No. CB(1)1393/03-04(01) — List of outstanding items for discussion

LC Paper No. CB(1)1393/03-04(02) — List of follow-up actions)

3. Members agreed that the following two items proposed by the Administration be discussed at the next regular meeting to be held on 3 May 2004:

- (a) Briefing on the work of the Hong Kong Monetary Authority (HKMA); and
- (b) Proposed resolution to authorize the Government to transfer \$40 billion from the Land Fund (LF) to the General Revenue Account (GRA).

4. On paragraph 3(a) above, members noted that the Chief Executive of HKMA would brief the Panel on the work of HKMA, including HKMA's Annual Report 2003.

5. As regards paragraph 3(b) above, members noted that the Administration would brief the Panel on a proposed resolution under section 29 of the Public Finance Ordinance (Cap. 2) to enable the Government to transfer \$40 billion from the LF to the GRA in June 2004 to meet anticipated cashflow shortfall in 2004-05. Mr SIN Chung-kai, on behalf of the Legislative Council (LegCo) Members of the Democratic Party, suggested that the Administration should consider dissolving the LF and transferring its balance to the GRA. He also suggested that the Administration be invited to brief the Panel on the way forward for the LF at the next meeting. The Clerk advised that the Secretariat had followed up with the Administration on its previous undertaking made in response to the request of the subcommittee formed by LegCo to study a similar resolution in 2003 that it would examine the way forward for the LF and consult the Panel in due course. Responding to the Secretariat's enquiry, the Administration had verbally confirmed that it would take the opportunity to consult members on the way forward for the LF at the next meeting. The Chairman directed that Mr SIN's views be forwarded to the Administration.

*(Post-meeting notes:*

- (a) Mr SIN Chung-kai's views on the way forward for the LF were forwarded to the Administration on 2 April 2004; and
- (b) Pursuant to the House Committee's decision at its meeting held on 23 April 2004 and with the concurrence of the Chairman, an additional item on "Regulatory regime of professional accountants" was included in the agenda for the Panel meeting on 3 May 2004 for the discussion of the policy issues relating to the Professional Accountants (Amendment) Bill 2004.)

**IV. Regulation of listing**

(LC Paper No. CB(1)1393/03-04(03) — Information note on “Consultation conclusions on proposals to enhance the regulation of listing”

LC Paper No. CB(1)2545/02-03 — Consultation paper on proposals to enhance the regulation of listing

LC Paper No. CB(1)1393/03-04(04) — Extract of the minutes (Item II) of the special meeting of the Panel on 13 June 2003

LC Paper No. CB(1)1199/02-03 — Report by the Expert Group to Review the Operation of the Securities and Futures Market Regulatory Structure

LC Paper No. CB(1)1908/02-03(03) — Information paper provided by the Administration)

Briefing by the Administration

6. The Chairman informed members that at the Panel meeting on 13 June 2003, the Administration had briefed members on its plan to conduct public consultation on the major recommendations concerning regulation of listing in the Report by the Expert Group to Review the Operation of the Securities and Futures Market Regulatory Structure. On 3 October 2003, the Administration published a consultation paper to invite public views on the proposals to enhance the regulation of listing (the Consultation Paper). The Administration then released the Consultation Conclusions on 26 March 2004.

7. Upon invitation by the Chairman, the Secretary for Financial Services and the Treasury (SFST) briefed members on the recommendations in the Consultation Conclusions and the Administration’s proposed way forward. He pointed out that there had been support from the market and the public for upgrading market quality, in particular the recommendation to give the more important listing requirements statutory backing. He also highlighted the major recommendations in the Consultation Conclusions and the implementation roadmap, as follows:

- (a) To give the more important listing requirements statutory backing  
This proposal included those important listing requirements relating to financial reporting and other periodic disclosure, disclosure of price-sensitive information and shareholders’ approval for notifiable transactions. This would be achieved by subsidiary legislation to be

made by the Securities and Futures Commission (SFC) under section 36 of the Securities and Futures Ordinance (SFO) (Cap. 571).

(b) To make breaches of statutory listing requirements a new type of market misconduct under SFO

Any persons who breached the statutory listing requirements could either be subject to civil sanctions imposed by the Market Misconduct Tribunal (MMT) under Part XIII of SFO, or criminal sanctions under Part XIV of SFO following prosecution. The SFC would be empowered to impose direct civil sanctions, namely reprimands and disqualification orders, on issuers, directors and corporate officers who were primarily accountable for corporate disclosure and other corporate activities under the listing regime. The Administration would take forward the proposals by introducing a Securities and Futures (Amendment) Bill (the Amendment Bill) into LegCo in early 2005. To facilitate consideration of the Amendment Bill by LegCo and to gauge the views of the public, SFC would endeavour to consult the market and the public on the draft rules on the more important listing requirements before end of 2004.

(c) To expand the existing dual filing system

The Stock Exchange of Hong Kong (SEHK) would continue to receive listing applications at the frontline, and no securities would be listed on SEHK unless they were approved by the SEHK Listing Committee. SFC would detect any non-compliance with the statutory listing requirements and assess whether it should exercise its statutory power to object to the listing applications.

(d) To enhance the transparency and accountability of the performance of listing functions of SFC and the Hong Kong Exchange and Clearing Limited (HKEx) through a series of measures

The measures included enhancing disclosure of decisions relating to listing, articulating in a public statement the division of responsibilities between SFC and HKEx relating to listing, publication of SFC's reports on annual audit of HKEx's performance of listing functions, and inviting the Independent Commission Against Corruption to study respective procedures and practices of SFC and HKEx for the performance of listing functions under the dual filing system. SFC and HKEx had been invited to implement these measures by phases from the second quarter of 2004 onwards.

8. SFST pointed out that the above proposed improvement measures would contribute to the enhancement of the quality of the market and further strengthen Hong Kong's position as the premier capital formation centre for the Mainland and a major international financial centre. The Administration would work closely with

SFC, HKEx and all market users in taking forward the proposals with a view to achieving these common goals.

## Discussion

### *Proposals for enhancing the regulation of listing*

9. Mr Henry WU said that while market participants welcomed the major recommendations in the Consultation Conclusions, they urged that implementation of the proposals should cater for the needs of the local market and be conducive to its future development. As details of the proposals had yet to be worked out, Mr WU stressed the importance for the Administration to consult the market on the draft rules and the Amendment Bill before presenting them to LegCo. On improving the regulatory structure for listing, Mr WU conveyed the market's support for expanding the dual filing system but he stressed that there should be a clear division of responsibilities between SFC and HKEx in administering the listing functions so as to avoid possible regulatory overlaps or gaps.

10. In response, SFST pointed out that there would be a clear division of responsibilities between SFC and HKEx in administering the listing functions and dual filing system. Under the proposal, SFC would be responsible for enforcing the new statutory listing requirements while HKEx would continue to enforce the non-statutory listing rules. SEHK would continue to receive initial public offer applications at the frontline and be responsible for administering the listing process. All documents filed with SEHK were also to be filed with SFC. In this way, SFC would be in a position to detect any breaches of the statutory listing requirements and to exercise its statutory power to object to listing applications. All applications remained to be approved by the SEHK Listing Committee. As regards the monitoring of the ongoing compliance by listed companies, the same division of labour would apply. SFC would be able to exercise statutory enforcement powers where it had reasons to believe that there were breaches of the statutory listing requirements.

11. On the proposal of empowering SFC to impose direct sanctions on issuers, directors and corporate officers for breaches of the statutory listing requirements relating to information disclosure, Mr Henry WU opined that there should be a limit on the period within which these relevant persons should be held liable for corporate disclosure. He further suggested that consideration be given to providing appropriate exemption for independent non-executive directors because they were not closely involved in decision making and management of the company. In this connection, Mr WU expressed concern about whether there would be different treatment for government officials or their representatives who were appointed as directors of listed companies. In particular, he was concerned whether they would be subject to the same sanctions for breaching of the statutory requirements as other directors, including civil sanctions imposed by SFC, and the criminal and civil sanctions under SFO.

12. SFST took note of Mr Henry WU's view and responded that there would be opportunities for members to study the draft rules and the Amendment Bill in detail when they were submitted to LegCo. As regards the question on the liability of government officials appointed as directors to listed companies, SFST agreed to provide a written response after the meeting.

*(Post-meeting note: The Administration's written response was circulated to members vide LC Paper No. CB(1)1639/03-04(02) on 27 April 2004.)*

*Monitoring of the operation of SFC and HKEx*

13. Mr Henry WU recalled that when discussing the SFC budget for 2004-05 at the Panel meeting on 1 March 2004, members had expressed concern about the proposed increase in the staff establishment of SFC despite the general trend of downsizing in the public and private sectors. Members had also noted that the Administration had expressed the same concern to SFC but it finally accepted SFC's view that the proposed increase in staff establishment was necessary to cope with the increase in workload from dual filing, and to cope with new market and product developments. Mr WU enquired how SFC would recover the additional cost. He also pointed out the need to strengthen the existing monitoring system over SFC to ensure the cost-effective deployment of its resources and to enhance checks on its powers.

14. In reply, SFST said that it remained the Administration's position that public funded bodies should, same as Government departments, exercise stringent control on their expenditure and explore measures to cut costs. As such, the Administration had urged SFC to be more vigilant in managing its staff resources. He also pointed out that under the existing arrangement, HKEx provided \$20 million per year to SFC for implementing the work relating to the dual filing system. As regards monitoring of SFC, SFST informed members that SFC consisted of executive and non-executive directors, the latter being members from the market, the business community, the academies or members of the public appointed by the Government. Hence, there was adequate public scrutiny over the operation of SFC. Moreover, SFC presented its annual budget to the Panel for information before presenting it to the Financial Secretary (FS) for approval and tabling it at LegCo. In examining SFC's budget, the Administration had sought to find out the reasons for any increases in expenditure and to ensure that SFC would carry out its functions in a cost-effective manner.

15. The Deputy Secretary for Financial Services and the Treasury (Financial Services) (DS/FST(FS)) stressed that the Administration attached great importance to enhancing the transparency of the operation of SFC and HKEx. Building on the existing administrative arrangement for SFC to conduct regular reviews on HKEx's performance of listing functions, it was recommended in the Consultation Conclusions that SFC should prepare and submit these annual audit reports to FS, who should cause the reports to be published. Moreover, in order to ensure the procedural fairness and reasonableness in conducting the audit reviews, it was also recommended in the Consultation Conclusions that SFC's regulatory oversight of



HKEx's performance of listing functions, including the conduct of annual audits, be a subject of regular review by the Process Review Panel (PRP). Through the publication of PRP reports and SFC's audit review reports on HKEx, the public would be better able to judge SFC's performance in overseeing and supervising HKEx's performance of listing-related functions.

16. Mr Henry WU pointed out that PRP's terms of reference was only limited to conducting review of SFC's internal operational procedures to ensure that the procedures were fair and reasonable, and examining whether SFC had followed the procedures in making its decisions. PRP was not empowered to take actions on any unfair decisions made by SFC. DS/FST(FS) advised that any persons who were aggrieved by SFC's decisions might apply to the Securities and Futures Appeals Tribunal (SFAT) for a review of the decisions.

17. Whilst expressing support for the recommendations for improving regulation of listing, Mr Albert HO saw the need to strengthen the oversight of SFC's regulatory power. In this connection, he enquired about the mechanism for lodging appeals against SFC's decisions to object listings under the dual filing system and to impose civil sanctions directly on the issuers, directors and corporate officers, i.e. the "primary targets", who had breached the statutory listing requirements.

18. DS/FST(FS) advised that persons who were aggrieved by SFC's decisions to object to listings under the dual filing system might apply to SFAT for a review of the decisions. As regards the appeal mechanism for persons who had breached the statutory listing requirements, the Permanent Secretary for Financial Services and the Treasury (Financial Services) (PS/FST(FS)) referred members to the three-pronged approach outlined in paragraphs 3.30 to 3.35 of the Consultation Conclusions. In brief, the first prong involved civil sanctions imposed by SFC on the "primary targets" and the SFC's decisions were subject to review by SFAT. The second prong involved civil sanctions imposed by MMT on any persons who engaged in market misconduct including, but not limited to, the "primary targets". MMT's decisions were subject to appeal to the Court of Appeal. The third prong involved criminal sanctions imposed by the Court of First Instance on persons who had committed market misconduct including, but not limited to, the "primary targets". Such decisions were also subject to appeal to the Court of Appeal.

19. Given the increase in duties and responsibilities of SFC, Mr Albert HO suggested that the Administration should consider expanding the membership of PRP. PS/FST(FS) undertook to consider the suggestion.

*Improvement of the operation of the Listing Committee*

20. Mr SIN Chung-kai expressed support for the recommendations in the Consultation Conclusions. Referring to the suggestions for improving the operation of the SEHK Listing Committee outlined in paragraphs 4.30 to 4.33 of the Consultation Conclusions, Mr SIN opined that the Administration should proactively work out concrete proposals to strengthen the listing regime rather than leaving it to SFC and HKEx to decide how to take forward the suggestions. For example, in order to address the concern about the need to avoid possible conflict of interests on the part of the members of the Listing Committee so that the listing process could be, and was seen to be, done in a fair and independent manner, the Administration should review the existing system for appointing members to the Listing Committee.

21. In reply, SFST stressed that the Administration kept an open mind on the suggestions put forward in the public consultation to improve the operation of the Listing Committee. He assured members that SFC, as the regulator of the securities market, and HKEx, as the operator of the market, would study the suggestions carefully and work out improvement proposals. SFST also pointed out that a number of changes initiated by SFC and HKEx, had already been introduced to the Listing Committee in the past ten years. For example, its composition had changed over time with more members from the investing public. Moreover, common membership for the main board and the growth enterprises market Listing Committees had been introduced a year before with the aim to achieving greater consistencies in the decisions relating to listings. SFC and HKEx should continue to work out concrete proposals for improving the listing regime.

22. Whilst appreciating that a number of changes had been introduced to the Listing Committee in the past, Mr SIN Chung-kai considered that there was room for further improvement, such as in the system for appointing its members. He reiterated that the Administration should review the appointment system. In this connection, he suggested that reference be made to the appointment systems adopted by other jurisdictions. For example, members of the Financial Services Authority in the United Kingdom (UK) were appointed through self-nomination and formal selection processes. SFST undertook to convey Mr SIN's views to SFC and HKEx.

**V. Regulation of the accounting profession**

(LC Paper No. CB(1)1393/03-04(05) — Paper provided by the Administration

LC Paper No. CB(1)2487/02-03 — Consultation Paper on the proposals to enhance the oversight of the public interest activities of auditors and to establish a Financial Reporting Review Panel

LC Paper No. CB(1)1393/03-04(06) — Extract of the minutes (Item I) of the special meeting of the Panel on 13 June 2003)

Briefing by the Administration

23. The Chairman pointed out that when the Panel was consulted on 13 June 2003 on a proposed Member's Bill sponsored by Dr Eric LI to enhance the self-regulatory regime of the accounting profession, members were informed that the Administration would consult the public on a related proposal of the Hong Kong Society of Accountants (HKSA), i.e. the proposal to set up an Independent Investigation Board (IIB) to consider complaints of alleged accounting, auditing and/or ethics irregularities committed by professional auditors involving listed companies. The Administration then issued a consultation paper on 19 September 2003. The public consultation also included a proposal to establish a Financial Reporting Review Panel (FRRP), which was initiated in the Standing Committee on Company Law Reform's Phase I Corporate Governance Review in 2001. The FRRP's ambit was to enquire into apparent departures from the law and accounting standards in the annual accounts of companies. The public consultation exercise ended on 31 October 2003.

24. At the Chairman's invitation, SFST briefed members on the results of the public consultation and sought members' views on the preliminary proposals on the way forward. He highlighted the following points:

- (a) The results of the public consultation indicated that there was overwhelming support for the establishment of IIB to deal with investigation of irregularities of the auditing profession relating to listed companies. Investigation of accounting anomalies relating to non-listed companies would continue to be undertaken by HKSA, as would decisions on discipline.
- (b) Most respondents agreed with the proposal to establish FRRP to enquire into apparent departures from the law, accounting standards and listing rules in the annual accounts of companies and to seek remedial action.

FRRP's work should cover the financial statements of all listed companies.

- (c) On the institutional arrangements of IIB and FRRP, the Administration proposed to establish an independent governing board to oversee both bodies so that there would be one independent entity overseeing auditors and financial statements preparers. The new governing board should comprise not more than ten members. They would be from the Financial Services and the Treasury Bureau and the Companies Registry (CR), persons nominated by SFC and HKEx, and persons appointed by the Government to represent public interest.
- (d) As regards funding for the new governing board, the Administration proposed that the cost be shared among SFC, HKEx, the accounting profession and the Government. The Government's contribution would be borne by the Companies Registry Trading Fund (CRTF).
- (e) The Administration would continue discussion with the relevant parties on the details regarding the structure, functions and funding of the new governing board and the preparatory work on the legislative amendments for implementing the proposal. The Administration planned to submit the legislative proposals to LegCo in the next session.

## Discussion

### *Functions and powers of IIB*

25. Responding to Mr Kenneth TING's enquiry about the functions and powers of IIB, SFST advised that as IIB aimed at enhancing oversight of the public interest activities of the auditing profession, it would concentrate on investigation of alleged accounting, auditing and/or ethics irregularities related to listed companies. As a start, IIB would act only on referrals from other regulators and on complaints. As regards investigations into alleged misconduct in respect of non-listed companies, they would continue to be carried out by the Investigation Committees of HKSA. SFST stressed that IIB would not be given disciplinary powers, which remained vested with HKSA. Upon completion of an investigation, IIB would refer the case to the relevant law enforcement agency if it appeared to involve criminal offence. If the case related only to a violation of the professional code of the auditors concerned, IIB would report the outcome of the investigation to HKSA for taking disciplinary actions as appropriate.

26. Mr Albert HO enquired about the mechanism for instigating an investigation under IIB, and the differences between such an investigation and the investigation instigated by FS under section 143 of the Companies Ordinance (CO) (Cap. 32). He also opined that the relevant legislative proposal should prescribe the regime for instigating investigations under IIB.

27. In reply, SFST said that it would be the responsibility of the new governing board to decide whether there were justifications for IIB to undertake an investigation having regard to the case concerned. Since members of the governing board would comprise professionals, prominent figures representing public interest and possibly people nominated by SFC and HKEx, the Administration had confidence in the professionalism and capability of the board in making the decision. As regards investigations under section 143 of CO, SFST explained that the investigations were instigated by FS and covered a wide range of activities of a company that had given rise to serious public concerns and affected public interests. On the mechanism for instigating investigations under IIB, DS/FST(FS) supplemented that reference would be made to the existing system adopted by HKSA for investigating its members.

28. Given that the new governing board would have a lean structure and a small budget, Mr Albert HO expressed concern that it would be difficult for the board to handle a large corporate scandal. In response, PS/FST(FS) said that the governing board might consider hiring external expertise to assist in its investigation of a large corporate scandal.

29. While expressing support for the establishment of IIB, Mr NG Leung-sing considered that the relevant legislative proposals should cover the mechanisms for ensuring transparency of investigations and accountability of members of the new governing board as well as for avoiding prolonged investigation on cases.

#### *Funding for IIB and FRRP*

30. While expressing support for the establishment of IIB and FRRP, Mr Kenneth TING considered that as the accounting profession and the listed companies would be the major parties to be benefited from the proposal, they should be responsible for the costs involved. Moreover, he had reservation over the proposal of funding the Government's share from CRTF. Given that both listed and non-listed companies had contributed to CRTF but IIB only dealt with cases relating to listed companies, Mr TING considered it unfair to require non-listed companies to share the costs. He also enquired about the funding arrangements of similar oversight bodies in overseas jurisdictions.

31. In response, SFST stressed that the enhancement of market quality would ultimately benefit the accounting profession, market participants and reinforce Hong Kong's position as an international financial centre. As such, it would be appropriate for the accounting profession, SFC, HKEx and the Government to share the costs of IIB and FRRP. Moreover, by adopting the cost-sharing approach, the Administration believed that it would facilitate the discussion and the reaching of consensus among the relevant parties so as to expedite the formation of IIB and FRRP. SFST also re-iterated that in order to minimize cost, the new governing board would consist of not more than ten members and its executive arm would employ about ten staff. With such a structure, the estimated annual operating cost would be about \$8 million to

\$10 million. The initial proposal was that the cost would be shared equally among the four parties concerned. It was unlikely that the small amount would impose a financial burden on any parties.

32. As regards Government's contribution to the costs, SFST pointed out that to be in line with the "users pay" principle, the Administration considered it inappropriate to fund its share from the general revenue. As the income of CRTF came from the business sector, it was appropriate to utilize the fund for financing the operation of IIB and FRRP. DS/FST(FS) supplemented that the major source of income of CRTF was fees paid by both listed and non-listed companies incorporated in Hong Kong. She added that among the total of 17 investigations on accounting irregularities conducted by HKSA in the past six years, 14 cases were related to listed companies while the remaining three were related to non-listed companies. The Registrar of Companies also supplemented that while there was no policy governing the utilization of CRTF for regulating listed and non-listed companies, as listed companies involved more public interest concerns, the CR had to pay more attention to listed companies when enforcing the provisions of CO. To this extent, it was true that the non-listed companies were already subsidizing the listed companies.

33. On the funding arrangements of oversight bodies for the accounting profession in overseas jurisdictions, DS/FST(FS) said that while detailed arrangements varied among jurisdictions, the costs were generally shared by several parties including the accounting profession, business sector and government. For instance, in the UK, while the annual running costs of the Financial Reporting Council were equally shared among the accounting profession, business sector and the government, the costs of investigating and prosecuting public interest disciplinary cases were borne by the professional accounting bodies. In the United States, the issuers and the accounting profession paid for the costs of the Public Company Accounting Oversight Board. In Canada, the funding for the oversight body was paid by public accounting firms, while in Australia, the funding was in practice predominantly provided by the government.

34. Mr James TIEN expressed the views of the LegCo Members of the Liberal Party that IIB and FRRP should be funded by SFC, HKEx, listed companies and the accounting profession. Noting that the vast majority of cases investigated by HKSA had involved listed companies rather than non-listed companies, and that enhancement of market quality would ultimately benefit listed companies, Mr TIEN considered it appropriate to require listed companies to share the costs of IIB and FRRP. If the Government was required to share the costs, its contribution should be borne by fees collected from listed companies in CRTF.

35. Mr Jasper TSANG asked whether SFC and HKEx would consider imposing levies on listed companies to recover their contributions to the costs. In response, SFST said that it was a matter for SFC and HKEx to decide. While SFC would consider paying its share from its income, HKEx had not yet made a decision on the

matter. Given the small amount to be contributed by each party, it was not envisaged that HKEx would recover the costs from a special levy on listed companies.

36. Mr Kenneth TING opined that the costs for IIB and FRRP should be paid by accountants or listed companies who had been found responsible for the accounting irregularities. Mr NG Leung-sing shared the view and suggested that the Administration should explore the feasibility of imposing fines on the parties involved to recover the investigation costs. Mr Albert HO however considered that since the establishment of IIB and FRRP would enhance investors' confidence and market stability, it might not be appropriate to apply the "users pay" principle in recovering the costs.

37. PS/FST(FS) said that the "abusers pay" principle applied in theory in the recovery of investigation costs, as ultimately the costs would be recoverable from the parties who were found responsible for the irregularities.

38. Mr SIN Chung-kai expressed support for the establishment of IIB and FRRP and agreed that the operating costs be shared among the four parties proposed by the Administration. He also urged that the Administration should expedite discussion with the relevant parties for reaching a consensus so that Hong Kong could keep pace with international developments as early as possible.

39. SFST took note of members' views on the institutional and funding arrangements of IIB and FRRP. He assured members that there would be opportunity for them to discuss the details when the relevant legislative proposals were introduced into LegCo.

*Proposal of expanding the membership of HKSA's Council*

40. Mr Albert HO noted from Annex A to the paper provided by the Administration that there was a proposal under the Professional Accountants (Amendment) Bill 2004 (the Bill) that the Government might appoint four lay members to HKSA's Council. Pointing out that currently there was no appointment of lay members to the governing councils of self-regulatory professional bodies, such as the Law Society of Hong Kong and the Hong Kong Medical Association, Mr HO was concerned that the proposal would depart from the general principle of self-regulation of professional bodies and might have impact on the structure of other professional bodies.

41. In reply, SFST advised that under the existing Professional Accountants Ordinance (Cap. 50), the Chief Executive (CE) might appoint two members from the academia (i.e. non-accountants) to HKSA's Council. To open up the Council, it was proposed under the Bill that CE might appoint four non-accountant members to the Council. In this connection, SFST pointed out that public confidence in the accounting profession had been affected by the corporate scandals in the United States in recent years. Given the public concern about the credibility of financial

reporting and accounting practices of corporations, a number of jurisdictions had introduced reforms in their regulatory framework governing the accounting profession. In line with international developments, HKSA had put forward a series of proposals to reform its regulatory regime under the Bill. The Administration recognized that given the significant impact of the work of the accounting profession on the financial services market and the general public as a whole, there was a need to enhance the public oversight of the profession and the transparency of HKSA's Council. The proposal of increasing the number of lay members of HKSA's Council would serve these purposes and hence was supported by the Administration.

## **VI. Review of disclosure requirements/standards for Mandatory Provident Fund investment funds**

(LC Paper Nos. CB(1)928/03-04(01) — Information note and consultation paper on the draft Code relating to review of disclosure requirements/standards for MPF investment funds) and (02)

### Briefing on the project to improve the disclosure requirements/standards for Mandatory Provident Fund investment funds

42. At the Chairman's invitation, DS/FST(FS) briefed members on the background on the project to improve the disclosure requirements/standards for Mandatory Provident Fund (MPF) investment funds. She said that since the MPF system came into operation in 2000, the Administration and MPF Schemes Authority (MPFA) had been conducting on-going reviews to further enhance the effectiveness and efficiency of the system. One of the results of the reviews, that there was a need to improve the disclosure of information on fees, charges and performance of MPF schemes, was strongly supported by the outcomes of the study conducted by the Consumer Council in 2003. With reference to practices and standards in similar disclosure regimes in overseas jurisdictions, MPFA had developed a set of general principles/standards of disclosure and the responsibilities of MPF service providers to be implemented through the Code on Disclosure for MPF Investment Funds (the Code) for compliance by the industry. DS/FST(FS) pointed out that besides publishing the Code, MPFA would continue to organize public education programmes to enhance scheme members' understanding of the information disclosed and enable them to use the information in making informed MPF investment decisions.

43. Mr Darren McShane, Executive Director (Investment Regulation), MPFA gave a power-point presentation on the draft Code. He highlighted the following points:

- (a) MPFA had observed that there was room for improvement in the existing disclosure of information about MPF schemes and constituent



funds. The information disclosed was difficult to understand, difficult to use and the practices were inconsistent across service providers.

- (b) After reviewing existing and international practices, MPFA had developed the draft Code focusing on the provision of information about fees, charges and performance of MPF funds, which was released for consultation from February to March 2004. The draft Code consisted of seven parts with the substantive proposals contained within Parts B to G. The details were as follows-

- Part B provided seven “good disclosure principles” that should guide approved trustees in preparing any information for disclosure to scheme members;
- Part C proposed the use of a standardized fee table for all registered MPF schemes. Items included joining fee and annual fee, fees and charges arising from transactions in member’s accounts, annual fund operating charges and expenses of constituent funds, etc. This part also proposed the use of on-going cost illustrations which would assist members in understanding the total effect of fees and charges;
- Part D provided guidance to approved trustees about the manner and the extent to which they should provide updated information to scheme members. It proposed that trustees should issue fund fact sheets to members at least twice a year covering at least some minimum content;
- Part E proposed that approved trustees should calculate and publish the total level of fund expenses and express that as a percentage of fund value;
- Part F provided brief guidance on the disclosure of information to members at the member account level, such as the issue of benefit statements; and
- Part G provided guidance on transitional and implementation issues.

44. Mr Darren McShane added that MPFA had received over 35 submissions during the consultation period. The submissions were generally in support of the overall approach of the Code. There were suggestions to extend the time period for implementation of the Code and on technical aspects of the Code. MPFA would consider all submissions and make appropriate amendments to the Code and aimed to issue the Code in mid 2004. He also pointed out that the proposals relating to the standardized fee table and performance figures of funds would be implemented in late

2004, the requirement on improved fund fact sheets in early 2005, and the requirements relating to expense ratios and cost illustrations at a later stage. The implementation of the Code would be complemented by corresponding education programmes to enhance scheme members' understanding of the information to be disclosed.

## Discussion

### *Declaration of interest*

45. Mr Kenneth TING declared that he was a member of the MPFA Management Board. Miss CHAN Yuen-han and Mr SIN Chung-kai declared that they were members of the MPF Schemes Advisory Committee.

### *Fees of MPF schemes*

46. While welcoming issuance of the Code as a measure to enhance disclosure of information on fees, charges and performance of MPF investment funds for better protection of interest of scheme members, Miss CHAN Yuen-han considered that the Code would not address the long-standing concern expressed by employees about the high level of fees charged by trustees. She pointed out that such concern had been raised before and after the establishment of the MPF system and there had been complaints from scheme members that the existing level of fees charged by scheme trustees in the market was on the high side. The proposal of providing scheme members with more information on fees and charges on MPF schemes would not help address the problem. Given that the MPF system was a mandatory system, Miss CHAN stressed the need to protect scheme members against the high level of fees charged by trustees. In this connection, she enquired about possible measures to resolve the problem.

47. In response, Mr Darren McShane explained that while the principal objective of improving the disclosure of information on fees and charges on MPF schemes was to enable scheme members to make more informed investment decisions, the Code also had an important subsidiary objective of bringing about more efficient pricing of MPF schemes in the market in the long run. Ms Hendena YU, Chief Operating Officer (Compliance), MPFA remarked that given the large number of service providers in the market, as a result of keen competition, there would be room for reduction in fees and charges on MPF schemes. Ms YU took note of members' views and said that this issue would be included in the on-going reviews of the MPF System.

48. Mr Henry WU indicated support for issuance of the Code to improve the disclosure of information on fees and charges to scheme members. Referring to Appendix A - "Standardized Fee Table" to the draft Code, Mr WU pointed out that the table had prescribed a standardized format for presenting fees rather than standardized fees to be charged on various items. He suggested that in order to avoid

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misunderstanding by scheme members, MPFA should consider amending the table to clarify this. Ms Hendena YU agreed to look into the suggestion.

*Sanctions for breaching the Code*

49. While welcoming the issuance of the Code, Mr SIN Chung-kai enquired about sanctions to be imposed against approved trustees for breaching the Code. In particular, he was concerned about enforcement actions that could be taken by MPFA against trustees for providing incorrect information.

50. In reply, Mr Darren McShane advised that the Code would be issued pursuant to section 6H of the MPF Schemes Ordinance (MPFSO) (Cap. 485) and would have the same status as a guideline issued under that section. There would be enforcement consequences on non-compliance with the Code by approved trustees. Sanctions could include civil or administrative remedies, such as suspension or revocation of licences granted to trustees. As regards measures to ensure compliance by the industry, Ms Hendena YU advised that as some of the information to be disclosed required prior approval of MPFA, the Authority would have the opportunity to review the information before disclosure. For other information disclosed, MPFA would examine relevant documents during regular on-site inspection visits to trustees. Where non-compliance with the Code was detected, trustees would be required to take remedial actions including issuance of notices to inform members of the mistakes.

51. Noting that breaching of the Code would not result in direct sanctions on approved trustees, Ms LI Fung-ying expressed concern about the enforceability of the Code. She considered it necessary to stipulate clearly in the Code the requirement for approved trustees to comply with the Code and the sanctions for non-compliance so as to strengthen the deterrent effect. In order to better safeguard scheme members' interest, Ms LI also suggested that MPFA should consider providing in the Code the mechanism for lodging complaints against trustees for non-compliance with the Code.

52. On the suggestion of stipulating in the Code the sanctions for non-compliance with the Code, Ms Hendena YU explained that this had to be achieved by amending the legislation. She stressed that under the existing trust laws, trustees already had the fiduciary duty to act on the interest of scheme members in administering MPF schemes. It was also one of the approval conditions for authorization of trustees that they had to comply with any guidelines or codes issued by MPFA. The maximum penalty for non-compliance with the approval conditions was revocation of licence. As such, it was believed that existing sanctions would be sufficient in commanding industry's compliance with the Code. Mr Darren McShane added that MPFA would monitor industry's compliance with the Code after its implementation. Where necessary, MPFA would review the need of providing statutory backing for the Code and introducing direct sanctions for breaching the Code.

## **VII. Plan for the 2006 Population By-census**

(LC Paper No. CB(1)1393/03-04(07) — Paper provided by the Administration)

### Briefing by the Administration

53. At the Chairman's invitation, the Commissioner for Census and Statistics (C for C&S) gave a power-point presentation on the proposed project plan of the 2006 Population By-Census (06BC) to be conducted in July/August 2006. He highlighted the proposed arrangements for the 06BC, as follows:

- (a) To reduce the sampling fraction from 1/7 in the 1996 Population By-census to 1/10 in the 06BC with a view to reducing resources requirements without compromising the precision of the survey findings;
- (b) To collect the data by sending enumerators to conduct household interviews with the sampled households in order to complete the questionnaires;
- (c) To conduct the 06BC during the 18-day period from 15 July to 1 August 2006 having considered factors including availability of manpower resources, school holidays, weather conditions and project cost; and
- (d) To adopt a total of 41 data topics listed in the Annex to the paper after consulting government bureaux and departments, prominent organizations, academic institutions, and making reference to the eight factors referred to in paragraph 16 of the paper, including usefulness of data, willingness and ability of the respondents to answer, ability of the enumerators to comprehend, recommendations of the United Nations and international practices, etc.

54. C for C&S pointed out that the Administration would continue its consultation within and outside the Government on the various aspects of the planning work for the 06BC. The Administration welcomed any views from Members on the project.

*(Post-meeting note: The presentation material was circulated to members vide LC Paper No. CB(1)1467/03-04(02) on 6 April 2004.)*

55. Members noted that the Administration planned to seek funding approval of the project from the Finance Committee in June/July 2004.

Discussion

56. Mr Henry WU declared interest as a member of the Statistics Advisory Board. He expressed concern over the appropriateness of setting the data collection period for the 06BC from 15 July to 1 August 2006, during which a lot of people might leave Hong Kong for summer holidays and would not be available for household interviews.

57. In reply, C for C&S said that the Administration had considered the concern in deciding the data collection period for the 06BC. As the proposed period would be 18 days instead of the usual 9 to 13 days as in the past censuses/by-censuses, it was expected that the number of households/persons making trips outside Hong Kong throughout the whole period should be small and it would be easier for the Administration to make arrangements for interviews with the sampled households. Generally speaking, the Administration did not envisage any problems for the enumerators to make arrangements with individual sample households catering for their needs.

58. In response to the Chairman's enquiry about the data topic of "internal migration characteristics", C for C&S explained that the topic would cover information including duration of residence in Hong Kong and place of residence five years ago. The information would be useful for studying the migration pattern of people within Hong Kong.

**VIII. Any other business**

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