

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 2276/06-07  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/6/06/1

**Bills Committee on Mandatory Provident Fund Schemes  
(Amendment) Bill 2007**

**Minutes of the first meeting  
held on Tuesday, 17 July 2007, at 10:45 am  
in the Chamber of the Legislative Council Building**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)  
Hon LEE Cheuk-yan  
Dr Hon LUI Ming-wah, SBS, JP  
Hon CHAN Yuen-han, SBS, JP  
Hon SIN Chung-kai, SBS, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon Audrey EU Yuet-mee, SC, JP  
Hon WONG Kwok-hing, MH  
Hon LI Kwok-ying, MH, JP  
Hon Alan LEONG Kah-kit, SC  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon WONG Ting-kwong, BBS  
Hon TAM Heung-man
- Members absent** : Hon LEUNG Yiu-chung  
Hon LI Fung-ying, BBS, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP
- Public officers attending** : Mr Albert LAM  
Deputy Secretary for Financial Services and the  
Treasury (Financial Services)
- Ms Jenny CHAN  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services)

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

Miss Monica LAW  
Senior Assistant Law Draftsman  
Department of Justice

**Attendance by invitation** : Mandatory Provident Fund Schemes Authority

Mr Darren MCSHANE  
Executive Director (Regulation & Policy)

Ms Maria CHEUNG  
Manager (Policy & Development)

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

**Staff in attendance** : Mr Kelvin LEE  
Assistant Legal Adviser 1

Mr Justin TAM  
Council Secretary (1)3

Ms Sharon CHAN  
Legislative Assistant (1)8

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Action

**I Election of Chairman**

Mr LEE Cheuk-yan, the member present who had the highest precedence in the Council among all members of the Bills Committee, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Mr CHAN Kam-lam was nominated by Mr TAM Yiu-chung and seconded by Mr WONG Ting-kwong. Mr CHAN accepted the nomination. There being no other nominations, Mr CHAN Kam-lam was elected the Chairman. Mr CHAN took over the chair. Members agreed that there was no need to elect a Deputy Chairman for the Bills Committee.

**II Meeting with the Administration/Mandatory Provident Fund Schemes Authority (MPFA)**

- (LC Paper No. CB(3)710/06-07 —The Bill
- LC Paper No. CB(1)2107/06-07(01) —Marked-up copy of the Bill prepared by the Legal Service Division
- FSB CRG4/51C(2007) Pt.17 —The Legislative Council Brief issued by the Financial Services and the Treasury Bureau
- LC Paper No. LS98/06-07 —The Legal Service Division Report on the Bill
- LC Paper No. CB(1)2106/06-07 —Background Brief on major proposals of the Mandatory Provident Fund Schemes (Amendment) Bill 2007 prepared by the Secretariat
- LC Paper No. CB(1)2144/06-07(01) —Powerpoint presentation material on proposed amendments to Mandatory Provident Fund Schemes Ordinance (tabled at the meeting and soft copy subsequently issued to members on 17 July 2007))

3. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration/MPFA

Admin/  
MPFA

4. The Administration/MPFA agreed to provide information on cases in which prosecution was instituted against employers who had evaded their responsibility to pay MPF contributions in full by intentionally designating a portion of the employee's wages as housing allowance. The information should include the number of convicted cases and the reasons for the verdict.

Admin/  
MPFA

5. The Administration/MPFA were requested to note and study the views and suggestions of some members, including but not limited to the following:

- (a) According to a recent study conducted by the Consumer Council on MPF schemes, the average asset-weighted Fund Expense Ratio of

constituent funds was on the high side at 2%. In this connection, there was a suggestion that the legislation should provide a cap on the fees and charges on MPF funds.

- (b) Employees should be given the right to choose their MPF service providers.
- (c) At present, employers who had made severance payment or long service payment to their employees in accordance with Employment Ordinance (Cap. 57) could offset the corresponding amounts from the employees' vested benefits which were attributable to the employers' contributions. There was a suggestion that consideration should be given to abolishing such offsetting arrangements.

6. As the issues listed in paragraph 5(a) to (c) were not covered in the current Bill, some members (including Mr Tommy CHEUNG, Mr WONG Kwok-hing and Mr LEE Cheuk-yan) indicated that they might consider moving Committee Stage amendments (CSAs) to the Bill to provide for some or all of the proposals in paragraph 5(a) to (c). In this connection, the legal adviser to the Bills Committee was requested to provide advice, where practicable, on the scope of CSAs that could be moved to the Bill.

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7. Members noted that MPFA had commenced discussion with the industry and stakeholders on the feasibility of allowing employees to choose their own MPF service providers. MPFA aimed to complete its study on the subject and put forward recommendations to the Government by end 2007.

### **III Any other business**

#### Invitation for views

8. Members agreed that the Bills Committee should invite deputations (proposed list of invitees at Appendix III to LC Paper CB(1)2107/06-07) to submit views on the Bill and that a general invitation for submissions would be posted on the website of the Legislative Council (LegCo) on the Internet. They further agreed that the Bills Committee would schedule the second meeting in early September for the purpose of meeting with deputations. Given that the Chamber in the LegCo Building would be under renovation till end September 2007 and would not be available for use until October 2007, the Chairman advised that members should also be invited to consider a proposed time-slot in early October 2007. In this connection, a circular would be issued to request members to indicate their availability for the second meeting and the Bills Committee Chairman would finalize the date of the next meeting having regard to members' response.

*(Post-meeting note: Members have been invited to indicate their availability for the second meeting vide LC Paper No. CB(1)2147/06-07 issued on 18 July 2007. Having regard to members' returns, the second meeting has been scheduled for Thursday, 6 September 2007. Members were informed of the meeting arrangement vide LC Paper No. CB(1)2201/06-07 on 26 July 2007)*

9. There being no other business, the meeting ended at 12:45 pm.

Council Business Division 1  
Legislative Council Secretariat  
16 August 2007

**Proceedings of the  
Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2007  
First meeting on Tuesday, 17 July 2007, at 10:45 am  
in the Chamber of the Legislative Council Building**

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 – 000325	Mr LEE Cheuk-yan Mr TAM Yiu-chung Mr WONG Ting-kwong Mr CHAN Kam-lam	Election of Chairman	
000326 – 004405	Chairman Administration Mandatory Provident Fund Schemes Authority (MPFA)	(a) Briefing by the Administration  (b) Briefing by MPFA	
004406 – 005055	Mr SIN Chung-kai Administration MPFA	(a) Mr SIN Chung-kai's enquiry on whether MPFA's web-based Fee Comparative Platform (FCP) would provide information on the rates of return and the fees and charges of individual MPF funds since the establishment of MPF System.  (b) The Administration's response that the FCP would be launched in two phases. Phase I of the FCP was launched on 13 July 2007 which provided the average / highest / lowest expenses of six main MPF funds. Phase II of the FCP would be launched after passage of the Bill.  (c) The MPFA's advice that Phase II of the FCP would provide detailed information on current fees and charges for each MPF constituent fund. Fund Expense Ratio ("FER") information on MPF constituent funds was first calculated and available after the issuance of the Code on	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Disclosure for MPF Investment Funds in 2004 which set out, amongst other things, the disclosure requirements for FER.</p> <p>(d) Mr SIN Chung-kai's suggestion that employees should be given the right to choose their MPF service providers.</p> <p>(e) The Administration's response that the suggestion would involve a significant policy change which would require more in-depth discussion. MPFA had commenced discussion with the industry and stakeholders on the feasibility of allowing employees to choose their own MPF service providers, and would aim to complete its study on the subject and put forward recommendations to the Government by end 2007.</p>	
005056 – 005632	Mr WONG Kwok-hing Administration MPFA	<p>(a) Mr WONG Kwok-hing's view that the MPF arrears recovery mechanism should be brought in line with that for recovering outstanding wages under the Employment Ordinance (Cap. 57), i.e. an employer who had failed to pay MPF contributions within 7 days after they became due committed an offence and might be liable to prosecution.</p> <p>(b) The Administration's and MPFA's response that the proposed removal of the 30-day settlement period would prevent employers from taking advantage of the 30 days to delay payment.</p>	

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		<p>Unlike wages, employers would require some lead time to complete the necessary paper work and arrange payments of MPF contributions to trustees.</p> <p>(c) Mr WONG Kwok-hing's dissatisfaction with the response and his strong view on the need to tighten up the mechanism of arrears recovery.</p>	
005633 – 010101	Miss TAM Heung-man Chairman Administration	<p>(a) Miss TAM Heung-man's view that in addition to enhancing the transparency of fees and charges of individual MPF funds, employees should be given the right to choose their own MPF service providers.</p> <p>(b) The Administration's reiteration that the proposal was a fundamental change from the existing arrangement and had to be examined carefully.</p>	
010102 – 010819	Mr LEE Cheuk-yan Administration MPFA	<p>(a) Mr LEE Cheuk-yan's enquiry on whether the rates of return of individual MPF funds would also be included in the FCP.</p> <p>(b) The MPFA's response that the FCP would provide interactive and live information on the fees and charges of each MPF fund. However, the investment performance of individual MPF funds would not be provided as MPF trustees were already required to provide such information to their scheme members twice a year.</p> <p>(c) Mr LEE Cheuk-yan's</p>	



Time Marker	Speaker	Subject(s)	Action Required
		<p>further enquiry on whether the information on repeat offenders who had defaulted payment of MPF contributions could be disclosed.</p> <p>(d) The MPFA's advice that if the relevant proposals in the Bill were passed, such information could be disclosed.</p> <p>(e) Mr LEE Cheuk-yan's remark that Hong Kong Confederation of Trade Unions welcomed the proposal to remove housing allowance and other housing benefit from the definition of "relevant income".</p> <p>(f) The Administration agreed to provide further information on cases in which prosecution was instituted against employers who had evaded their responsibility to pay MPF contributions in full by intentionally designating a portion of the employee's wages as housing allowance. The information should include the number of convicted cases and the reasons for the verdict.</p> <p>(g) Mr LEE Cheuk-yan's further enquiry on whether MPF contributions in arrears could be recovered after the extension of the prosecution time bar to within six months after the offence was discovered by, or came to the notices of MPFA.</p>	<p>The Administration / MPFA to take action as required in paragraph 4 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>(h) The MPFA's advice that for civil proceedings to recover the MPF contributions in arrears, the time bar was six years.</p>	
010820 – 011827	Ms Audrey EU ALA1 Administration MPFA	<p>(a) ALA1's confirmation that the marked-up copy had been prepared and would be circulated to members after the meeting.</p> <p>(b) Ms Audrey EU shared the view that employees should be allowed to choose their own MPF service providers and enquired about the Administration's stance.</p> <p>(c) The Administration's further explanation that one of the considerations was that the proposal might lead to a proliferation of accounts, transfers and administrative work, hence increasing the operating costs of MPF funds. It was therefore necessary to study the feasibility of the proposal in detail before making a decision.</p> <p>(d) On Ms Audrey EU's enquiry on whether there would be mandatory disclosure of information on fund performance on the FCP regularly, MPFA's response that under the Code on Disclosure for MPF Investment Funds, MPF trustees were already required to provide such information to their scheme members at least twice a year.</p> <p>(e) On Ms Audrey EU's further enquiry about savings in the use of paper, if any, MPFA's</p>	

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		<p>advice that the proposal on streamlining the unclaimed benefits process would reduce the use of paper and that this could also be achieved by streamlining the arrears recovery process and increasing the use of electronic communications.</p>	
011828 – 012337	<p>Mr WONG Ting-kwong Administration MPFA</p>	<p>(a) Mr WONG Ting-kwong declared that he was a Non-Executive Director of MPFA. He considered it important to strengthen enforcement against non-compliance and to step up publicity and public education on MPF investments to enable scheme members to make informed choices.</p> <p>(b) The MPFA's commitment to strengthening enforcement action to protect the interest of scheme members and to embarking on a long-term public education programme.</p>	
012338 – 013350	<p>Miss CHAN Yuen-han Administration MPFA Chairman</p>	<p>(a) Miss CHAN Yuen-han's indication of support for the legislative proposals. However, she raised concerns on the following issues:</p> <p>(i) Besides housing allowance, other types of allowances (i.e. meal and transport allowances) should count towards "relevant income".</p> <p>(ii) The offsetting arrangements for severance payment or long service payment should be abolished so as to avoid reducing the accrued benefits of MPF</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>scheme members upon their retirement in the long run, thereby defeating the purpose of the MPF System to provide retirement protection for the workforce.</p> <p>(iii) For capital preservation products, there should be an arrangement that if the investment return could not meet the inflation rate, the Government should top up the shortfall.</p> <p>(b) The Administration's explanation that under section 2 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), housing allowance and other housing benefit were expressly excluded from the scope of "relevant income". Other types of allowances would form part of the employee's "relevant income".</p> <p>(c) The Administration's further advice that the existing offsetting arrangements for severance payment and long service payment were a consensus reached after considerable negotiation prior to the passage of the MPF Schemes Bill in 1995. The current Bill did not seek to change the existing arrangements.</p> <p>(d) MPFA's advice that the capital preservation products were intended to act as a substitute for bank savings accounts. According to</p>	

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		<p>the review conducted last year by the MPFA, capital preservation funds had succeeded in this respect as they had generated a net annualized return exceeding the bank deposit interest rate for savings account.</p>	
013351 – 014114	<p>Mr Tommy CHEUNG Administration ALA1 Chairman</p>	<p>(a) Mr Tommy CHEUNG's remark that the offsetting arrangements had been discussed thoroughly prior to the introduction of the MPF System. Having regard to the concerns of small and medium-sized enterprises about increased costs, the offsetting arrangement was extended to MPF schemes so that employers would not have to pay "double benefit" in respect of the same period of service. He opined that following the introduction of the MPF System, consideration should be given to removing the long service payment.</p> <p>(b) Mr Tommy CHEUNG's remark that according to a recent study conducted by Consumer Council on MPF schemes, the average asset-weighted FER of all schemes was on the high side at 2%. In this connection, the legislation should provide for a ceiling on the fees and charges on MPF funds.</p> <p>(c) Members noted that MPFA's present focus was to enhance the transparency of fees and charges for MPF funds, which would have the effect of lowering fee levels through market competition.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(d) Mr Tommy CHEUNG urged the Government to take measures to regulate the management fees for MPF funds. Otherwise, he might consider moving Committee Stage amendments (CSAs) in this regard.</p> <p>(e) ALA1's preliminary advice that in considering whether the proposed CSAs were within the scope of the Bill, apart from the objects of the Bill as set out in the long title of the Bill, other factors such as the explanatory memorandum also had to be taken into account. He undertook to provide further advice, where practicable, on the scope of CSAs that could be moved to the Bill.</p>	<p>ALA1 to take action as required in paragraph 6 of the minutes.</p>
014115 – 014443	Mr WONG Kwok-hing Administration	<p>(a) Mr WONG Kwok-hing's view that even if the fees and charges of individual MPF funds were disclosed, the interest of employees could still not be protected if they were not allowed to choose their own MPF service providers. In addition, some employers had chosen to enroll their employees in MPF schemes operated by their associated companies. The practice might not be in the interest of employees and might give rise to conflict of interests.</p> <p>(b) The Administration's reiteration that MPFA was studying the feasibility of allowing employees to choose their own MPF service providers and would aim to put forward</p>	

Time Marker	Speaker	Subject(s)	Action Required
		recommendations to the Administration by end 2007.	
014444 – 014848	Miss CHAN Yuen-han Administration Chairman	<p>(a) Miss CHAN Yuen-han's remark that there was no consensus over the offsetting arrangements when the MPF System was introduced. The capital preservation products referred to by the Government had failed to preserve capital. She enquired about the timeframe for the review of the offsetting arrangements.</p> <p>(b) The Administration's advice on its policy stance and that at present there was no immediate plan to review the offsetting arrangements.</p> <p>(c) The Chairman's remark that MPF-related issues not currently covered in the Bill might be discussed at the Panel on Financial Affairs if members so wished.</p>	
014849 – 015234	Mr LEE Cheuk-yan Chairman MPFA	<p>(a) Mr LEE Cheuk-yan's view that there should be disclosure of the investment performance of all constituent MPF funds so that employees could make a comparison in making investment decisions.</p> <p>(b) Mr LEE Cheuk-yan's enquiry about whether it was mandatory for MPFA to disclose the information on repeat offenders to scheme members. The MPFA's advice that if the relevant proposals in the Bill were passed, the disclosure of information on repeat offenders could and would be considered.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		(c) Mr LEE Cheuk-yan invited ALA1 to provide his early advice so that members could consider whether to move CSAs on various issues, including abolition of the offsetting arrangements, etc.	
015235 – 015442	Mr WONG Ting-kwong	Mr WONG Ting-kwong's advice that the employee's entitlements would not be affected by the offsetting arrangements because where the amount of MPF benefits or long service/severance payment could not offset the other benefit, the employer had to top up the shortfall. The current Bill sought to plug the loopholes of the MPF System and other controversial issues could be separately followed up.	
015443 – 015807	Mr WONG Kwok-hing Administration ALA1	<p>(a) Mr WONG Kwok-hing's strong view that employees should be given the right to choose their own MPF service providers. If there was no timetable for introducing the arrangement, he might consider moving CSAs in this regard.</p> <p>(b) The Administration's reiteration that the proposal would give rise to a significant policy change and it was therefore necessary to study the feasibility and implications of the proposal carefully before making a decision.</p> <p>(c) ALA1's remark that he would provide the advice on the scope of CSAs that could be moved to the Bill after meeting.</p>	



<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
015808 – 020201	Chairman Mr LEE Cheuk-yan Mr WONG Kwok-hing	(a) Invitation of deputations  (b) Date of next meeting	

Council Business Division 1  
Legislative Council Secretariat  
16 August 2007