

**立法會**  
**Legislative Council**

LC Paper No. CB(1)271/07-08  
(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 fourth meeting  
held on Thursday, 1 November 2007, at 2:30 pm  
in Conference Room A 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 LEUNG Yiu-chung  
Hon SIN Chung-kai, SBS, JP  
Hon TAM Yiu-chung, GBS, JP  
Hon LI Fung-ying, BBS, 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  
Hon WONG Ting-kwong, BBS  
Hon TAM Heung-man

**Members absent** : Hon CHAN Yuen-han, SBS, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP  
Dr Hon Fernando CHEUNG Chiu-hung

**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

Miss Selina LAU  
Senior Government Counsel  
Department of Justice

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

Mr Darren MCSHANE  
Executive Director (Regulation & Policy)

Ms Gabriella YEE  
Senior Manager (Policy & Development)

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

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

Ms Rosalind MA  
Senior Council Secretary (1)8

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**I Confirmation of minutes and matters arising**

(LC Paper No. CB(1)136/07-08 — Minutes of meeting on 4 October 2007)

The minutes of the meeting held on 4 October 2007 were confirmed.

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

### Clause-by-clause examination of the Bill

- (LC Paper No. CB(1)166/07-08(01) — Marked-up copy of the Administration's proposed Committee Stage amendments to the Bill prepared by the Legal Service Division
- 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
- LC Paper No. CB(1)135/07-08(01) — Letter dated 19 September 2007 from Assistant Legal Adviser (ALA) to the Financial Services and the Treasury Bureau
- LC Paper No. CB(1)135/07-08(02) — Administration's response to the observations of the ALA on the Bill
- LC Paper No. CB(1)135/07-08(03) — Proposed Committee Stage amendments provided by the Administration
- LC Paper No. CB(1)135/07-08(04) — Administration's response to views expressed by the Hong Kong Bar Association and the Law Society of Hong Kong on the Bill
- LC Paper No. CB(1)2403/06-07(01) (Revised) — Administration/MPFA's response to views submitted by various organizations/individuals on the Mandatory Provident Fund Schemes (Amendment) Bill 2007
- FSB CRG4/51C(2007) Pt.17 — The Legislative Council Brief issued by the Financial Services and the Treasury Bureau)
2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

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

Clauses 3 to 10 (Part 2 of the Bill)

3. To address members' concern about the propriety of the form of written undertakings given to MPFA as provided in the proposed amendments in clauses 3 to 10 (Part 2 of the Bill) i.e. a written undertaking given to the Authority by deed, or by like form acceptable to the Authority, the Administration undertook to:

- (a) provide information on the current practice of the Securities and Futures Commission in relation to the form of undertakings required from entities in overseas jurisdictions; and
- (b) re-examine the drafting of the proposed amendments having regard to Mr Alan LEONG's view that the drafting should achieve the purpose of requiring written undertakings which would give the "like effect", instead of the "like form", of an undertaking by deed.

Clauses 20 to 22 (Part 7 of the Bill) and Clause 37 (Part 12 of the Bill)

4. To address members' concern that the proposed amendments seeking to specify the purposes of the public registers established and maintained by MPFA might inadvertently impose additional restrictions on public access to information in the registers, the Administration would seek further comments from the Privacy Commissioner for Personal Data as to whether the proposed amendments in clauses 20 to 22 (Part 7 of the Bill) were necessary for the protection of personal data privacy. In the light of the above concern, the Administration would also re-examine its proposed Committee Stage amendment to clause 37 (Part 12 of the Bill) which sought to specify the purpose of the unclaimed benefits register.

Clause 41(4) (Part 14 of the Bill)

5. In relation to clause 41(4) (Part 14 of the Bill) (proposed amendments of adding a subsection (g) to section 42(1) of the Mandatory Provident Fund Schemes Ordinance (MPFSO) (Cap. 485)) which sought to enable MPFA to disclose information relating to provident fund schemes or constituent funds or approved pooled investment funds, some members considered that details of the information to be disclosed should be itemized for the sake of clarity. The Administration agreed to re-examine the drafting of proposed section 42(1)(g) of MPFSO (clause 41(4)), taking into consideration a member's suggestion that expressions like "such information should include but not limited to" could be used to circumvent the need for legislative amendments in the event of additional information to be disclosed. MPFA also agreed to advise members of the difficulties it had encountered under the existing provisions of MPFSO which necessitated the addition of the proposed section 42(1)(g)(i) to (iii) to MPFSO.

(*Posts-meeting note:* The Administration's response to members' views in paragraphs 3 to 5 was issued vide LC Paper CB(1)272/07-08(01) on 16 November 2007.)

### **III Any other business**

#### Arrangements for the next meeting

6. Members noted that the next meeting of the Bills Committee would be held on Thursday, 22 November 2007 at 2:30 pm for the Bills Committee to continue with clause-by-clause examination of the Bill from clause 43 (Part 16 of the Bill) onwards.
7. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1  
Legislative Council Secretariat  
21 November 2007

**Proceedings of the  
Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2007  
Fourth meeting on Thursday, 1 November 2007, at 2:30 pm  
in Conference Room A of the Legislative Council Building**

<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 – 000203	Chairman	Confirmation of minutes of the 3 <sup>rd</sup> meeting held on 4 October 2007 (LC Paper No. CB(1) 136/07-08)	
000204 – 000449	Chairman Administration	<p><b>Clause-by-clause examination</b></p> <p><u>Clause 1- Short title</u></p> <p><u>Clause 2 – Commencement</u></p> <p>The Administration's advice that it intended to move a Committee Stage amendment (CSA) to amend clause 2 to defer the commencement of sections 35 to 38, section 60 and sections 62 to 72 of the Mandatory Provident Fund Schemes (Amendment) Bill 2007 to allow sufficient lead time for the relevant parties to make the necessary preparation before the provisions could come into operation.</p> <p>Members raised no query</p>	
000450 – 001506	Chairman Administration Mr SIN Chung-kai Mr Alan LEONG	<p><u>Clause 3 – What is continuous financial support for the purposes of the Regulation?</u></p> <p><u>Clause 4 – Eligibility requirements for company incorporated outside Hong Kong</u></p> <p><u>Clause 5 – Undertaking to comply with requirements and standards</u></p> <p><u>Clause 6 – Independence of investment manager</u></p> <p><u>Clause 7- Investment management contract</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 8 – Eligibility for appointment as custodian</u></p> <p><u>Clause 9 – Custodial agreement</u></p> <p><u>Clause 10 – Minimum standards applicable to trustees, etc. of schemes</u></p> <p>(a) The Administration's advice that where the entity giving the undertaking was an overseas entity, MPFA had to consider the form of undertaking on a case by case basis. It would be difficult to specify/prescribe a form in respect of each and every overseas jurisdiction to take forward the Assistant Legal Adviser (ALA)'s suggestion of using "prescribed/specified forms" instead of "deed or like form".</p> <p>(b) Mr SIN Chung-kai's concern about the propriety of the form of written undertakings given to MPFA. His view that reference should be made to the practice adopted by other regulators such as the Securities and Futures Commission in relation to the form of undertaking required from entities in overseas jurisdictions.</p> <p>(c) Mr Alan LEONG's view that the drafting should achieve the purpose of requiring written undertakings which would give the "like effect" instead of the "like form", of an undertaking by deed.</p>	<p>The Administration to take follow-up action as required in paragraph 3(a) of the minutes</p> <p>The Administration to take follow-up action as required in paragraph 3(b) of the minutes</p>

Time Marker	Speaker	Subject(s)	Action Required
001507 – 002138	Chairman Administration	<p><u>Clause 11- Approved trustee to ensure that scheme assets are not improperly encumbered</u></p> <p><u>Clause 12 – Temporary custodian</u></p> <p><u>Clause 13 – Investment of Scheme Funds</u></p> <p><u>Clause 14 – Contents of custodial agreements</u></p> <p><u>Clause 15- Approval of trustees</u></p> <p><u>Clause 16 – Application for registration as employer sponsored scheme or master trust scheme</u></p> <p><u>Clause 17 – Applications for registration of schemes as industry schemes</u></p> <p><u>Clause 18 – Mandatory conditions</u></p> <p><u>Clause 19 – Certain ORSO registered schemes which are not relevant ORSO registered schemes may be treated as relevant ORSO registered schemes</u></p> <p>Members raised no query on clauses 11 to 19</p>	
002139 – 003854	Chairman Administration Mr SIN Chung-kai ALA1 Mandatory Provident Fund Schemes Authority (MPFA) Mr Alan LEONG Dr LUI Ming-wah	<p><u>Clause 20 – Register of exempt schemes to be kept</u></p> <p><u>Clause 21 – Register of approved trustees to be kept</u></p> <p><u>Clause 22 – Register of schemes to be kept</u></p> <p>(a) Mr SIN Chung-kai's concern that the proposed amendments of adding subsection 2(A) to sections 5A, 20C and 21B of MPFSO seeking to specify the purposes of the public</p>	



Time Marker	Speaker	Subject(s)	Action Required
		<p>registers established and maintained by MPFA might inadvertently impose additional restrictions on public access to information in the registers.</p> <p>(b) The Administration's advice that the proposed amendments sought to specify the purposes of the registers and were not expected to have impact on public access to information in the registers.</p> <p>(c) ALA's advice that the current legislation did not impose any restrictions on public inspections of information in the registers. By adding subsection 2(A), the purposes of public inspections would be restricted to those specified in the new subsection.</p> <p>(d) Responding to Mr SIN Chung-kai's enquiry on the rationale behind the proposed amendments, MPFA's confirmation that the amendments did not seek to address any practical difficulties encountered by MPFA in making available the registers for public inspection. As the three registers in question contained only information on exempt schemes, approved trustees and registered schemes respectively, the proposed subsection 2(A) sought to set out in clear terms the purposes of these registers but would not affect the information made available to the public.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(e) View shared by Mr SIN Chung-kai, Mr Alan LEONG and Dr LUI Ming-wah that as the registers in question only contained information on fund schemes or trustees which fell within the scope of the purposes of the registers, the proposed amendments in clauses 20 to 22 were unnecessary.</p> <p>(f) The Administration's advice that the proposed amendments had been put forward having regard to comments by the Privacy Commissioner for Personal Data that it was advisable to specify the purposes of the information made available to the public.</p> <p>(g) View shared by Mr SIN Chung-kai and Dr LUI Ming-wah that unless personal information which would give rise to concern about protection of personal data privacy was available in the registers, the proposed amendments would not be required.</p>	<p>The Administration to take follow-up actions as required in paragraph 4 of the minutes</p>
<p>003855 – 004247</p>	<p>Administration Mr SIN Chung-kai MPFA</p>	<p><u>Clause 23 – Employer to arrange for employees to become scheme members, etc.</u></p> <p><u>Clause 24 – Duty of self-employed person to become scheme member</u></p> <p>(a) The Administration's advice that it intended to move a CSA to amend clause 23 and to delete clause 24. The CSA sought to better clarify the application of MPFSO to the employer and the</p>	

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		<p>employee as well as a self-employed person.</p> <p>(b) Responding to Mr SIN Chung-kai's enquiry on the purpose of the proposed amendments, explanation of the Administration and MPFA that the amendments sought to clarify the date on which enrolment and contribution requirements under MPFSO applied when an employee or a self-employed person reached the age of 18.</p>	
004248 – 004426	Administration	<p><u>Clause 25 – Division heading amended</u></p> <p><u>Clause 26 – When sections 7, 7A and 7B of the Ordinance apply to exempted employee</u></p> <p><u>Clause 27 – When section 7C of the Ordinance applies to exempted self-employed person</u></p> <p>Members raised no query on clauses 25 to 27</p>	
004427 – 010146	<p>Administration Mr SIN Chung-kai MPFA Chairman</p> <p>Mr WONG Ting-kwong ALA1</p>	<p><u>Clause 28 – Transfer of accrued benefits of member of employer sponsored scheme</u></p> <p><u>Clause 29 – Transfer of accrued benefits of member of master trust scheme or industry scheme (other than a casual employee who is a member of an industry scheme)</u></p> <p>(a) Noting that it was a criminal offence for employees to give wrong information in a statutory declaration, Mr SIN Chung-kai's enquiry on the circumstances under which MPFA would prosecute an employee for false or misleading information</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>contained in a notice given to the trustee.</p> <p>(b) The Administration's advice that provision of false or misleading information to a trustee was a criminal offence under MPFSO. Whether or not prosecution would be initiated against the offender would depend on the circumstances of individual case.</p> <p>(c) Responding to Mr WONG Ting-kwong's enquiry on the accrued benefits of the employee concerned if notice of cessation of employment had not been given to the trustee, MPFA's advice that the employee would not be able to transfer the benefits from the current scheme to other schemes.</p> <p>(d) Responding to Mr SIN Chung-kai's enquiry, ALA's advice that the offender convicted of an offence of giving false or misleading information in a statutory declaration was subject to a maximum penalty of two years imprisonment and a fine.</p> <p>(e) Mr SIN Chung-kai's concern that employees who had inadvertently committed an offence by giving false or misleading information in the notice of cessation of employment would be subject to a high level of penalty which did not commensurate with the severity of the offence.</p>	

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		<p>(f) MPFA's advice that under the general prosecution policy, cases would be examined in terms of relevant factors such as the harm caused by the act in question, the intention of the person concerned etc.. Hence, MPFA would not prosecute every employee whose statutory declaration contained false or misleading information. Nevertheless, an enforcement mechanism had to be put in place to provide deterrent effect against employees making false or misleading declaration.</p>	
010147 – 010415	Administration	<p><u>Clause 30 – Financial Penalties</u></p> <p><u>Clause 31 – Additional classes of persons entitled to be paid accrued benefits</u></p> <p><u>Clause 32 – Claim for payment of small balance</u></p> <p>Members raised no query on clauses 30 to 32</p>	
010416 – 010726	Administration Mr SIN Chung-kai ALA1	<p><u>Clause 33 – What is an approved pooled investment fund for the purposes of this Regulation?</u></p> <p><u>Clause 34 – Scheme may consist of a single constituent fund or of separate constituent funds</u></p> <p>Members raised no query on clauses 33 to 34</p>	
010727 – 011246	Administration Mr SIN Chung-kai Chairman	<p><u>Clause 35 – Sections substituted</u></p> <p>(a) Mr SIN Chung-kai's concern about the difficulties in the application of sections 170 and 171 of the Mandatory</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) and the need for the proposed amendments.</p> <p>(b) The Administration's advice that the effectiveness of the existing requirements for the approved trustee to publish a notice in the newspaper to invite a member who could not be located to lodge a claim for the payment of the accrued benefits were far from satisfactory. The proposed amendments sought to enhance the effectiveness of the arrangements by requiring approved trustees to make other efforts to contact the scheme member as required by MPFA.</p> <p>(c) In response to the Chairman's enquiry, the Administration's advice that information of the accrued benefits of scheme members who could not be located would be kept in an unclaimed benefits register for the members concerned to lodge their claims with the trustees at a later date.</p>	
011247 – 011447	Administration	<p><u>Clause 36 – Approved trustee to notify scheme member of entitlement</u></p> <p>Members raised no query</p>	
011448 – 011721	Administration	<p><u>Clause 37 – Sections added</u></p> <p>In the light of members' concern about the proposed amendments in clauses 20 to 22, the Administration undertook to</p>	<p>The Administration to take follow-up actions required in paragraph 4 of the</p>

Time Marker	Speaker	Subject(s)	Action Required
		re-examine its proposed Committee Stage amendment to clause 37 which sought to specify the purpose of the unclaimed benefits register.	minutes
011722 – 012027	Administration	<p><u>Clause 38 – Financial Penalties</u></p> <p><u>Clause 39 – Approved trustee to appoint investment manager</u></p> <p><u>Clause 40 – Investment of Scheme Funds</u></p> <p>Members raised no query on clauses 38 to 40</p>	
012028 – 015357	<p>Administration Mr SIN Chung-kai MPFA Chairman Mr WONG Ting-kwong Mr Alan LEONG</p>	<p><u>Clause 41 – Authority may disclose certain information despite section 41</u></p> <p>(a) Mr SIN Chung-kai's enquiry on whether the provisions in subsection (g) to section 42(1) of MPFSO could adequately enable MPFA to disclose all information relating to MPF funds and whether the disclosure would be subject to agreement by the trustees concerned.</p> <p>(b) MPFA's response that consensus had been reached between MPFA and trustees on disclosure of information relating to funds such as information on the fees and charges of MPF funds to facilitate the public in understanding the fund schemes and making informed decisions.</p> <p>(c) Responding to Mr SIN Chung-kai's further concern about trustees' objection to disclose certain information, MPFA's advice that it</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>would discuss further with trustees concerned in that circumstances with a view to making disclosure arrangements in the public interest.</p> <p>(d) Mr SIN Chung-kai's view that details of information to be disclosed by MPFA should be itemized for the sake of clarity and to avoid future disputes of trustees.</p> <p>(e) The Chairman's enquiry on the statutory power of MPFA to require information from trustees.</p> <p>(f) MPFA's advice that it had been obtaining information from trustees both through mandatory and voluntary means. The proposed provisions to section 42(1) only sought to enable MPFA to disclose the information it had obtained. MPFA's view that itemizing details of information in the legislation would reduce flexibility in including additional information to be disclosed.</p> <p>(g) Mr WONG Ting-kwong's observation that the provisions in clause 41 qualified different conditions under which MPFA would disclose information, i.e. in relation to certain person with his/her consent or in relation to funds for public interest.</p> <p>(h) Mr Alan LEONG's suggestion that expressions like "such information</p>	<p>The Administration/MPFA to take follow-up action as required in paragraph 5 of the minutes</p>



<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
		should include but not limited to" could be used to circumvent the need for legislative amendments in the event of additional information to be disclosed.	
015358 – 015826	Administration	<u>Clause 42 – Claim for payment on ground of permanent departure from Hong Kong</u>  Members raised no query	
015827 – 015938	Chairman	Arrangements for the next meeting	

Council Business Division 1  
Legislative Council Secretariat  
21 November 2007