

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1028/07-08  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/07/2

**Bills Committee on Mandatory Provident Fund Schemes  
(Amendment) (No.2) Bill 2007**

**Minutes of the third meeting  
held on Monday, 25 February 2008, at 2:30 pm  
in the Chamber of the Legislative Council Building**

- Members present** : Hon James TIEN Pei-chun, GBS, JP (Chairman)  
Hon CHAN Kam-lam, SBS, JP (Deputy Chairman)  
Hon Albert HO Chun-yan  
Hon CHAN Yuen-han, SBS, JP  
Hon SIN Chung-kai, SBS, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP  
Hon Alan LEONG Kah-kit, SC  
Hon Ronny TONG Ka-wah, SC
- Members absent** : Hon LEE Cheuk-yan  
Hon TAM Yiu-chung, GBS, JP  
Hon LI Fung-ying, BBS, JP  
Hon WONG Kwok-hing, MH  
Hon WONG Ting-kwong, BBS
- Public officers attending** : 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)

The Hong Kong Chinese Importers' and Exporters'  
Association

Mr CHAN Fung-ping  
Vice President

Hong Kong Small and Medium Enterprises Association

Mr Danny LAU  
Chairman

Hong Kong Confederation of Trade Unions

Mr IU Chung-yiu  
Chairperson of Labour Committee

Mr MUNG Siu-tat  
Organizing Co-ordinator

The Democratic Party

Mr CHAN Ka-wai  
Vice-spokesperson on Labour Policy

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

**Staff in attendance :** Mr KAU Kin-wah  
Assistant Legal Adviser 6

Ms Rosalind MA  
Senior Council Secretary (1)8

Ms Sharon CHAN  
Legislative Assistant (1)8

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Action

**I Confirmation of minutes and matters arising**

(LC Paper No. CB(1)855/07-08 — Minutes of meeting on 31 January 2008)

The minutes of the meeting held on 31 January 2008 were confirmed.

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

Submissions from deputations attending the meeting

(LC Paper No. CB(1)906/07-08(01) — The Hong Kong Chinese Importers' & Exporters' Association

LC Paper No. CB(1)906/07-08(04) — Hong Kong Small and Medium Enterprises Association

LC Paper No. CB(1)877/07-08(01) — Hong Kong Confederation of Trade Unions

LC Paper No. CB(1)906/07-08(03) — The Democratic Party)

Submissions from organizations/individuals not attending the meeting

(LC Paper No. CB(1)877/07-08(02) — The Chinese General Chamber of Commerce

LC Paper No. CB(1)877/07-08(03) — Employer's Federation of Hong Kong

LC Paper No. CB(1)854/07-08(01) — Hong Kong Chinese Enterprises Association

LC Paper No. CB(1)854/07-08(02) — The Federation of Hong Kong & Kowloon Labour Unions

LC Paper No. CB(1)906/07-08(02) — Hong Kong Federation of Trade Unions (Rights and Benefit Committee)

- LC Paper No. CB(1)854/07-08(03) — Law Society of Hong Kong
- LC Paper No. CB(1)854/07-08(04) — Dr CHAN Tung, SBS, JP, Sham Shui Po District Council Chairman
- LC Paper No. CB(1)854/07-08(05) — Ms KO Po-ling, MH, JP, Yau Tsim Mong District Council member
- LC Paper No. CB(1)854/07-08(06) — Mr YEUNG Wai-sing, MH, Eastern District Council member)

Meeting with the Administration/MPFA

- (LC Paper No. CB(1)854/07-08(07) — Administration/MPFA's response to members' views and concerns raised at the meeting held on 31 January 2008 (Part)
- LC Paper No. CB(3)261/07-08 — The Bill
- LC Paper No. CB(1)654/07-08(01) — Marked-up copy of the Bill prepared by the Legal Service Division
- FSB CRG4/51C(2007) — 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/ Mandatory Provident Fund Schemes Authority (MPFA)

Admin/  
MPFA

3. In addition to the initial response given at the meeting, the Administration/MPFA would provide a more detailed written response to the views and concerns raised by organizations/individuals at the meeting and in their written submissions for the consideration of the Bills Committee.

Admin/  
MPFA

4. The Administration/MPFA would provide a written response to address members' concerns raised at the meeting held on 31 January 2008 about the proposal on issuance of court order (proposed section 43BA of the Mandatory Provident Fund Schemes Ordinance (MPFSO) (Cap. 485)) and the employers' and employees' liability in respect of the outstanding contributions in non-enrolment cases.

Admin/  
MPFA

5. To address members' concern about whether the employees' entitlements would be jeopardized as a result of a convicted employer's inability to settle the outstanding contributions after payment of the fine to the Government, the Administration/MPFA were requested to-

- (a) illustrate the extent of the problem by providing information on the amount of outstanding contributions settled or still defaulted by the convicted employers in those prosecution cases in 2006-2007 under which 13 directors/managers were convicted for default contributions and were imposed fines by the court; and
- (b) advise on the feasibility of the further suggestion of stipulating in the MPFSO that employers convicted of default contributions must fulfill their obligation to settle the outstanding MPF contributions before paying the fine to the Government.

### **III Any other business**

#### Meeting arrangements

6. Members noted that the next meeting was scheduled for Thursday, 13 March 2008 at 8:30 am for meeting with the Administration/MPFA.

7. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1  
Legislative Council Secretariat  
12 March 2008

**Proceedings of the  
Bills Committee on Mandatory Provident Fund Schemes  
(Amendment) (No.2) Bill 2007  
Third meeting on Monday, 25 February 2008, at 2:30 pm  
in the Chamber of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000722	Chairman	Confirmation of minutes of the 2 <sup>nd</sup> meeting held on 31 January 2008 (LC Paper No. CB(1)855/07-08)	
000723 – 000904	Chairman	Welcoming and introductory remarks	
000905 – 001356	(1) The Hong Kong Chinese Importers' & Exporters' Association (HKCIEA)	Presentation of views	
001357 – 001609	(2) Hong Kong Small and Medium Enterprises Association (HKSMEA)	Presentation of views	
001610 – 002125	(3) Hong Kong Confederation of Trade Unions (HKCTU)	Presentation of views	
002126 – 002419	(4) The Democratic Party	Presentation of views	
002420 – 003157	Chairman Administration	The Administration's initial response to views of deputations on the following:  (a) Proposed increase in the maximum penalties for certain Mandatory Provident Fund (MPF)-related offences  (b) New offence for providing false and misleading pay-records to employees	The Administration/MPFA to take follow-up actions as required in paragraph 3 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		<p>(c) Enforcement actions of the Mandatory Provident Fund Schemes Authority (MPFA) to recover arrears of MPF contributions from non-compliant employers</p> <p>(d) Proposal to increase employees' control over MPF investment</p>	
003158 – 004443	Miss CHAN Yuen-han Administration MPFA	<p>(a) Miss CHAN Yuen-han's reference to the case of Sing Pao Daily News in which employees were still unable to recover the unpaid MPF contributions despite the conviction of their employer by the court. Miss CHAN's concern that the proposed increase in maximum penalties under the Bill might not tackle the existing problem faced by employees.</p> <p>(b) The Administration's advice that the MPFA had set up a special team to deal with the Sing Pao case and had been assisting the employees of Sing Pao Daily News to recover the outstanding contributions through various means. Legal proceedings were still underway and the MPFA was working closely with the Labour Department on the case.</p> <p>(c) The MPFA's advice that the proposed increase in maximum penalties in the Bill (together with the amendments brought about by the Mandatory Provident Fund Schemes (Amendment) Ordinance 2008) would provide a more robust framework to motivate employers to better comply with the MPF legislation.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>While the proposed legislative amendments could not guarantee that there would not be employers defaulting on contributions in the future, the MPFA would continue focusing on arrears recovery through civil proceedings.</p> <p>(d) Miss CHAN Yuen-han's view that measures such as the use of account passbook would facilitate employees' checking of account balance and hence help them to detect irregularities in the mandatory contributions in a timely manner.</p> <p>(e) The MPFA's advice that the proposal under the Bill to create a new offence against an employer for providing false and misleading pay-records to employees could to some extent protect the interest of employees. Besides, default contribution reports submitted by the approved trustees to the MPFA and direct complaints made by scheme members could help detect default contribution cases. Provision of updated information through "account passbooks" might be difficult for certain trustees which were not associated with banking services groups. In examining measures to provide account information to scheme members, it was necessary to consider whether the administration costs incurred were commensurate with the benefits to be achieved. As the majority of employers were in compliance with the requirements under the</p>	



Time Marker	Speaker	Subject(s)	Action Required
		<p>MPFSO, the provision of updated MPF account information through a central enquiry hotline was considered a more cost-effective solution.</p>	
004444 – 005616	<p>Mr Albert HO MPFA Chairman Administration ALA6</p>	<p>(a) Mr Albert HO's concern about:</p> <ul style="list-style-type: none"> <li>(i) the means for scheme members to obtain MPF account information and the reasons for not imposing mandatory requirements on the dissemination of such information through electronic means.</li> <li>(ii) views expressed by some deputations that prosecutions should not be instituted against an employer who had committed an MPF offence inadvertently.</li> </ul> <p>(b) The MPFA's response that mandatory requirements were in place for scheme trustees to provide account information to members through the annual benefits statement. Nevertheless, individual trustees had put in place other channels through which scheme members could check their account balance, such as monthly statement, enquiries through the electronic platform or telephone.</p> <p>(c) The Administration's advice that employers' obligation to deduct employee contributions from employees' income and to make employer and employee mandatory contributions was clearly stipulated in the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>MPFSO and employers should be fully aware of such obligation after seven years of implementation of the MPF System. The MPFA would accord priority to the recovery of outstanding contributions for the employees and would take prosecution action where warranted.</p> <p>(d) ALA6's advice that under the proposed section 43B(1) of the Bill, an employer would only commit an offence if he had failed to comply with the statutory requirement without reasonable excuse. Oversight or an inadvertent mistake might be considered a reasonable excuse.</p> <p>(e) Responding to Mr Albert HO's further enquiry on the enforcement actions taken by the MPFA for arrears recovery, the Administration's advice that section 18 of the MPFSO empowered the MPFA to take civil proceedings for recovery of the mandatory contributions in arrears. The MPFA's supplementary advice that in considering taking criminal action against an employer, the MPFA would take into consideration the circumstances of individual cases, public interest and the interest of the employees concerned.</p>	
005617 – 010449	Mr Ronny TONG Administration MPFA HKSMEA	(a) Mr Ronny TONG's view that negligence might only be a mitigating factor for the court to consider, and not a reasonable excuse for failure to comply with the statutory requirement.	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) Mr TONG's query of whether employers would encounter any practical difficulties in complying with the enrolment and payment requirements, such as employees' refusal to enrol.</p> <p>(c) The Administration's and the MPFA's explanation that the MPFSO required an employer to enrol his employees into MPF schemes and to deduct an amount from the employees' income as employee mandatory contributions. In practice, the employer had the necessary information for enrolling his employees into MPF schemes into which employer and employee mandatory contributions were paid.</p> <p>(d) HKSMEA's view that business owners were under considerable pressure as the onus of making mandatory contributions and enrolling employees into MPF schemes was placed on them, failing which they would be subject to criminal prosecution.</p> <p>(e) In relation to HKSMEA's enquiry about the withdrawal of accrued benefits by expatriate employees, the MPFA's advice that under the MPFSO, scheme members might withdraw their accrued benefits under the scheme before 65 years of age on grounds of permanent departure from Hong Kong.</p>	
010450 – 011230	Mr CHAN Kam-lam HKSMEA MPFA	(a) Mr CHAN Kam-lam's view that SME operators might be more willing to support the	

Time Marker	Speaker	Subject(s)	Action Required
	Chairman	<p>proposed increase in maximum penalties under the Bill if they could understand better the provisions under MPFSO.</p> <p>(b) HKSMEA shared Mr CHAN's view and doubted whether the proposed increase in maximum penalties was necessary given that only a small number of employers were non-compliant.</p> <p>(c) Mr CHAN Kam-lam's view that the MPFA should step up publicity and public education on the MPF System. In response, MPFA took note of Mr CHAN's view and would actively consider stepping up publicity and education efforts to SMEs.</p> <p>(d) The Chairman's comment that in scrutinizing legislative proposals, Members had to take public interest into consideration. Increasing the level of penalties for deterrence against breaches might still be necessary even if the number of non-compliance cases was small.</p>	
011231 – 012412	Mr Andrew LEUNG HKCIEA HKSMEA Chairman MPFA HKCTU	<p>(a) View shared by Mr Andrew LEUNG, HKCIEA and HKSMEA that measures should be introduced to facilitate the checking of account balance by scheme members. HKCTU's view that scheme trustees should be required to provide benefits statements to members at least on a monthly basis.</p> <p>(b) The MPFA's advice that provision of the annual benefits statement to scheme</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>members was a statutory requirement. To provide the required information to scheme members in a cost-effective manner, the existing central enquiry hotline for scheme members to make enquiries on their account balance was considered appropriate.</p> <p>(c) Mr Andrew LEUNG's view that the Administration/MPFA should consider providing information to the public on the measures adopted by different trustees to enable MPF scheme members to check their account balance. This would help the public in making their choices of scheme trustees.</p> <p>(d) HKCIEA's view that account passbook was a preferred option to facilitate scheme members to check their account balance.</p> <p>(e) The Chairman's remark that the administrative costs incurred in providing account information to scheme members should not be overlooked as they would ultimately be borne by scheme members.</p>	
012413 – 013112	Chairman Mr Albert HO Administration ALA6	(a) On the proposed new offence of employers providing false and misleading pay-records to employees, the Administration's advice that under the existing MPFSO, employers' provision of false information to the MPFA was an offence but their provision of false and misleading pay-records to employees was not.	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) ALA6's advice that while non-payment of mandatory contribution was an offence, the provision of false or misleading contribution details to the employee was a separate offence to be provided under the Bill.</p>	
013113 – 014611	<p>Chairman Administration Mr Albert HO MPFA</p>	<p>(a) The Administration's briefing on the written response to members' views and concerns raised at the meeting held on 31 January 2008 (LC Paper No. CB(1)854/07-08(07))</p> <p>(b) Discussion on a further suggestion to examine feasibility of stipulating in the MPFSO that employers convicted of default contributions must first fulfill their obligation of settling the outstanding mandatory contributions before paying the fine to the Government.</p> <p>(c) The Administration's response that in the light of past sentences imposed by the court, it was unlikely that the quantum of fines imposed would render a convicted employer unable to settle the outstanding MPF contributions. The Chairman's suggestion might mean according priority to the payment of debts in civil proceedings over the payment of fines imposed in criminal proceedings. This suggestion had to be further examined in consultation with the Department of Justice (DoJ).</p> <p>(d) The MPFA's advice that the suggestion might bring about practical difficulties, as the prosecution against an employer's default might relate</p>	<p>The Administration/MPFA to take follow-up actions as required in paragraph 5(b) of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>to outstanding contributions of several employees in respect of different periods.</p> <p>(e) The Chairman's view that information on cases in which directors/managers were convicted in 2006-2007 might shed some light on the impact of the fines imposed by the court on the ability of the convicted employers to settle the outstanding contributions.</p>	<p>The Administration/MPFA to take follow-up actions as required in paragraph 5(a) of the minutes.</p>
014612 – 020034	<p>Administration Chairman Mr Albert HO MPFA ALA6</p>	<p>(a) Regarding the legal liability of the employee and the employer in paying the retrospective default contributions to the MPFA under the proposed section 7AE, the Administration's response that according to DoJ's advice, the existing section 7A of the MPFSO imposed an obligation on the employer to pay both the employer and the employee contributions to the approved trustee.</p> <p>(b) The Administration's further response that according to legal advice, where the employer had not deducted from the employee's wages the amount of the employee's MPF contributions during his past period of service, the employer could not deduct the said amount from the future wages of the employee. However, the employer was at liberty to recover from the employee, through civil proceedings, the amount of employee mandatory contributions so paid.</p> <p>(c) Concern shared by the Chairman and Mr Albert HO that employers, in particular</p>	<p>The Administration/MPFA to take follow-up action as required in paragraph 4 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>small and medium enterprises, might consider the legal responsibility for the convicted employer to pay both the retrospective employer and the employee mandatory contributions inequitable. There might also be hardship caused to the employer as he might not be able to recover the amount from the employees. The Chairman's view that the convicted employer should only be required to pay his portion of the outstanding MPF contribution.</p> <p>(d) The MPFA's view that by design, the MPF System placed a statutory responsibility on employers to make mandatory contributions as required. Removing the obligation of employers to settle employee mandatory contributions in arrears would have implications on the MPFA's arrears recovery mechanism under which enforcement actions were taken against non-compliant employers.</p> <p>(e) ALA6's advice that proposed section 7AA, as currently drafted and when read in conjunction with existing section 7A, did not appear to have the effect of making the employer liable to pay the employee's part of the outstanding contributions retrospectively.</p> <p>(f) The Chairman's remark that the drafting of the proposed section 7AA should be further examined during the clause-by-clause examination of the Bill.</p>	



<b>Time Marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action Required</b>
020035 – 020234	Administration ALA6 Mr Alan LEONG	<p>(a) The Administration's initial report that according to the advice of the DoJ, "the court" referred to in the proposed section 43BA of the MPFSO could be interpreted as any level of court including the Magistrates' Court where offences related to the proposed section was tried.</p> <p>(b) ALA6's remark that members' concern raised at the meeting on 31 January 2008 about the proposed discretionary power under new section 43BA was in respect of the fact that lower courts such as a Magistrates' Court was not empowered to proceed against a defendant for "contempt of the court" when the latter had failed to comply with a magistrate's order.</p>	The Administration/MPFA to take follow-up actions as required in paragraph 4 of the minutes.
020235 – 020311	Chairman	Meeting arrangements	