

立法會
Legislative Council

LC Paper No. CB(1)2243/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/BC/9/07/2

**Bills Committee on Mandatory Provident Fund Schemes
(Amendment) Bill 2008**

**Minutes of the first meeting
held on Friday, 27 June 2008, at 8:00 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon LEE Cheuk-yan
Hon CHAN Yuen-han, SBS, JP
Hon SIN Chung-kai, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Albert CHAN Wai-yip
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
- Members absent** : Hon Albert HO Chun-yan
Hon LEUNG Kwok-hung
Hon Ronny TONG Ka-wah, SC
Hon TAM Heung-man
- Public officers attending** : Mr Patrick HO Chung-kei, JP
Deputy Secretary for Financial Services and the
Treasury (Financial Services)
- Ms Jenny CHAN Wai-man
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)
- Mr Ryan CHIU Pit-ming
Assistant Secretary for Financial Services and the
Treasury (Financial Services)

Mr Michael LAM Siu-chung
Senior Assistant Law Draftsman
Department of Justice

Miss Amy CHAN Wing-yan
Senior Government Counsel
Department of Justice

- Attendance by invitation** : Mandatory Provident Fund Schemes Authority
- Ms Hendena YU
Chief Operating Officer (Enforcement)
- Ms Gabriella YEE
Chief Manager (Policy Development & Research)
- Clerk in attendance** : Miss Polly YEUNG
Chief Council Secretary (1)5
- Staff in attendance** : Mr KAU Kin-wah
Assistant Legal Adviser 6
- Ms Guy YIP
Senior Council Secretary (1)5
- Ms Sharon CHAN
Legislative Assistant (1)8
-

I Election of Chairman

Mr CHAN Kam-lam, the member with the highest precedence among those who were present at the meeting, 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 WONG Ting-kwong and seconded by Mr Andrew LEUNG. Mr CHAN accepted the nomination. There being no other nominations, Mr CHAN Kam-lam was elected the Chairman.

Application for late membership

3. Members noted the written application (tabled at the meeting) of Miss TAM Heung-man for late membership. According to Miss TAM, she had not signified her membership before the deadline due to staff changes in her office. The Bills Committee accepted Miss TAM's late application. The Chairman also

informed members that as the Bills Committee would henceforth consist of 12 members, four members would be required to form a quorum.

II Meeting with the Administration/Mandatory Provident Fund Schemes Authority

- | | |
|----------------------------------|---|
| (LC Paper No. CB(3)743/07-08 | —The Bill |
| LC Paper No. CB(1)2008/07-08(01) | —Marked-up copy of the Bill prepared by the Legal Service Division |
| FSB CR G6/90/8C(2008) | —The Legislative Council Brief issued by the Financial Services and the Treasury Bureau |
| LC Paper No. LS95/07-08 | —The Legal Service Division Report on the Bill |
| LC Paper No. CB(1)2009/07-08 | —Background brief on the Mandatory Provident Fund Schemes (Amendment) Bill 2008 prepared by the Legislative Council Secretariat) |

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

Declaration of interest

5. Mr WONG Ting-kwong declared that he was a member of the Committee to Oversee MPFA's Implementation of the Government Injection Project set up under the MPFA.

Follow-up actions to be taken by the Administration/Mandatory Provident Fund Schemes Authority (MPFA)

Admin/
MPFA

6. In relation to the concerns raised by members of the Bills Committee about the proposed one-off injection of \$6,000 (hereinafter referred to as the special contribution) into the Mandatory Provident Fund (MPF) accounts of employees and self-employed persons earning not more than \$10,000 a month, the Administration/the MPFA were requested to consider/respond to the following views and suggestions:

- (a) allowing eligible members of MPF schemes/MPF-exempted occupational retirement schemes (ORSO) to withdraw the special contribution at any time prior to attaining the age of 65, such as by making the special contribution as a voluntary contribution not subject to the preservation requirement;
- (b) the feasibility of using the average monthly income over the 12 months from 1 March 2007 to 29 February 2008 to assess whether an MPF/ORSO scheme member could fulfill the income eligibility criterion; and
- (c) for the purpose of determining the eligibility of MPF/ORSO scheme members, the feasibility of collecting information on their monthly income for the period from 1 March 2007 to 29 February 2008, instead of just the month of the anchored income and the two immediately preceding months.

Admin/
MPFA

7. The Administration/the MPFA were requested to confirm/advise whether and how persons under the following scenarios would be eligible for receiving the special contribution :

- (a) persons (retired or still in employment) aged between 60 and 65 and persons over 65 years of age;
- (b) an employee who passed away on or after 1 March 2008;
- (c) those employees whose employers had not duly enrolled them to an MPF scheme on or before 29 February 2008;
- (d) a person who was unemployed throughout the one-year period from 1 March 2007 to 29 February 2008; and
- (e) a person who earned more than \$10,000 a month during the first half of the one-year period in question but who became unemployed during the latter half of the one-year period.

Admin/
MPFA

8. The Administration/the MPFA were requested to provide the following information :

- (a) a breakdown of the number of MPF/ORSO scheme members earning between \$10,000 - \$10,999 and \$11,000 - \$11,999 a month and the tax rebate to which they were entitled as a result of the one-off tax reduction announced in the 2008-09 Budget;
- (b) how the MPFA's decisions on eligible cases would be disseminated for reference by the public;

- (c) if a person was aggrieved by the MPFA's decision that he was not eligible for the special contribution, the channel or mechanism, if any, for the person to lodge a complaint or an appeal against the MPFA's decision; and
- (d) details of the scenarios or hypothetical cases drawn up by the MPFA for the purpose of studying the eligibility of certain persons.

(Post-meeting note: The Administration/MPFA's response to paragraphs 6, 7 and 8 was tabled at the meeting on 30 June 2008. The Chinese and English versions of the paper were subsequently circulated to members vide LC Paper No. CB(1)2066/07-08(01) on 30 June and 8 July 2008 respectively.)

III Any other business

Legislative timetable

9. Members noted the following legislative timetable, which should have been followed if the Administration intended to resume the Second Reading debate on 9 July 2008 :

| Date for Public Officers to issue consultation letter to House Committee Chairman | Date of reporting to House Committee | Date for House Committee Chairman to give her signification | Deadline to give notice for resumption of Second Reading Debate | Deadline for giving notice of Committee Stage amendments | Date of resumption of Second Reading debate (Date of Council Meeting) |
|---|--------------------------------------|---|---|--|---|
| 17 June 2008 (Tuesday) | 20 June 2008 (Friday) | 21 June 2008 (Saturday) | 23 June 2008 (Monday) | 28 June 2008 (Saturday) | 9 July 2008 (Wednesday) |

10. Members noted that except the deadline for giving notice of Committee Stage amendments (i.e. 28 June 2008), all other deadlines had lapsed. If the Administration intended to resume Second Reading on the Bill on 9 July 2008, the President's permission had to be sought to waive the deadline for giving notice for resumption.

11. Mr LEE Cheuk-yan indicated his intention to move a Committee Stage amendment (CSA) to the Bill to the effect that the special contribution would not be subject to the preservation requirement applicable to the accrued benefits

derived from mandatory contributions under an MPF scheme. As such, the eligible persons would be able to withdraw the special contribution at any time prior to attaining the age of 65. In this connection, members noted that at present, the Administration could not give notice for resumption of Second Reading debate unless there was permission from the President to waive the deadline for giving such notice. If the Bills Committee would recommend to support the waiving of the deadline for giving notice for resumption, the usual arrangement was that it would also recommend the waiving of the deadline, if lapsed, for giving notice to move CSAs.

Date of next meeting

12. Members agreed that the next meeting of the Bills Committee would be held on Monday, 30 June 2008.

(Post-meeting note: Having regard to the meeting schedule on 30 June 2008, the Chairman instructed that the meeting would be held at 4:30 pm. Members have been duly informed of the meeting arrangement vide LC Paper No. CB(1)2066/07-08 on 27 June 2008.)

13. There being no other business, the meeting ended at 9:00 am.

Council Business Division 1
Legislative Council Secretariat
11 August 2008

**Proceedings of the
Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2008
First meeting on Friday, 27 June 2008, at 8:00 am
in Conference Room B of the Legislative Council Building**

| Time Marker | Speaker | Subject(s) | Action Required |
|--------------------|---|--|--|
| 000056 – 000212 | Mr CHAN Kam-lam Mr WONG Ting-kwong Mr Andrew LEUNG Ms LI Fung-ying | (a) Election of Chairman (b) Application for late membership by Miss TAM Heung-man | |
| 000213 – 000729 | Chairman Administration | (a) Briefing by the Administration (File Ref: FSB CR G6/90/8C(2008)) (b) Members noted the queries raised by the legal adviser on the drafting and legal aspects of the Bill and the Administration's reply thereto in LS95/07-08. | |
| 000730 – 001840 | Chairman Mr LEE Cheuk-yan Administration | (a) Mr LEE Cheuk-yan's views/queries as follow: (i) flexibility should be allowed for eligible MPF/ORSO scheme members to withdraw the special contribution at any time prior to attaining the age of 65; (ii) whether persons aged between 60 and 65 and persons over 65 years of age would be eligible for the special contribution; (iii) whether an employee who passed away on or after 1 March 2008 would be eligible for the special contribution; (iv) persons who were unemployed throughout the one-year period from 1 March 2007 to 29 February 2008 should be eligible for the special contribution; and (v) to allow reasonable time for proper scrutiny of the Bill, consideration should be given to | The Administration / MPFA to take action as required in paragraph 6(a) of the minutes. The Administration / MPFA to take action as required in paragraph 7(a) of the minutes. The Administration / MPFA to take action as required in paragraph 7(b) of the minutes. The Administration / MPFA to take action as required in paragraph 7(d) of the minutes. |

| Time Marker | Speaker | Subject(s) | Action Required |
|--------------------|---|---|---|
| | | <p>scrutinizing the Bill in the new term.</p> <p>(b) The Administration clarified that the policy objective of the injection proposal was to enhance the retirement protection of the low-income earners and therefore did not agree with Mr LEE Cheuk-yan's suggestion.</p> <p>(c) The Administration had made the best effort to expedite the preparation of the bill and hoped that members could complete scrutinizing the Bill so that it could be enacted within the current session, thereby facilitating the MPFA to start collecting information from trustees and employers to implement the exercise. The Administration also explained that there were only nine clauses in the Bill, most of which were technical in nature.</p> <p>(d) Mr LEE Cheuk-yan's indication that he was considering moving a CSA to the Bill to the effect that the special contribution would not be subject to the preservation requirement applicable to the accrued benefits derived from mandatory contributions under an MPF scheme.</p> | |
| 001841 – 003011 | Chairman Ms LI Fung-ying Administration MPFA Mr LEE Cheuk-yan | <p>(a) Ms LI Fung-ying's enquiry as follow :</p> <p>(i) whether a person who earned more than \$10,000 a month during the first half of the one-year period (1 March 2007 to 29 February 2008) but who became unemployed during the latter half of the one-year period would be eligible for the special contribution; and</p> <p>(ii) whether and how the special contribution would be made to employees whose employers had not duly enrolled them to an MPF scheme on or before 29 February 2008.</p> | <p>The Administration / MPFA to take action as required in paragraph 7(e) of the minutes.</p> <p>The Administration / MPFA to take action as required in paragraph 7(c) of the minutes.</p> |

| Time Marker | Speaker | Subject(s) | Action Required |
|----------------------------|---|---|---|
| | | <p>(b) The feasibility of using the average monthly income for the 12 months from 1 March 2007 to 29 February 2008 to assess whether an MPF/ORSO scheme member could meet the income eligibility criterion. Mr LEE Cheuk-yan's view that if an employee was not in employment for at least one month during the one-year period, he/she should be eligible for the special contribution.</p> <p>(c) The Administration explained that for budget measures that involved eligibility criteria, normally the latest information of a person at the time of announcement would be used as the basis to assess his eligibility. However, in view of the likely fluctuation of income in the year end, a more flexible approach as set out in LC Paper No. CB(1)1379/07-08(06) had been adopted.</p> <p>(d) The MPFA's advice that using the average income of 12 months to determine the income eligibility would involve voluminous data and there could be difficulty in collecting information on employees who had terminated employment during the period.</p> | <p>The Administration / MPFA to take action as required in paragraph 6(b) of the minutes.</p> |
| <p>003012 – 003431</p> | <p>Chairman Miss CHAN Yuen-han Mr WONG Ting-kwong</p> | <p>(a) Miss CHAN Yuen-han's view that flexibility should be allowed for assessing the eligibility of employees for receiving the special contribution. She called on the Administration to consider the long-time request of the Hong Kong Federation of Trade Unions that in addition to the employers' and employees' contributions, the Government should also make contributions for low-income groups when it achieved a fiscal surplus.</p> <p>(b) Miss CHAN criticized the Government for introducing the Bill into the Council as late as 18 June</p> | |

| Time Marker | Speaker | Subject(s) | Action Required |
|----------------------------|---|---|---|
| | | <p>2008 when the last Council meeting was scheduled to be held on 9 July 2008. She was gravely concerned that there was insufficient time for proper scrutiny of the Bill.</p> | |
| <p>003432 – 003917</p> | <p>Chairman Mr Albert CHAN Administration</p> | <p>(a) Mr Albert CHAN's opinion/request for information as follows :</p> <p>(i) a mechanism should be devised to ensure that the special contribution would be made to employees whose employers had not duly enrolled them to an MPF scheme on or before 29 February 2008; and</p> <p>(ii) a breakdown of the number of MPF/ORSO scheme members earning between \$10,000 - \$10,999 and \$11,000 - \$11,999, and whether the one-off injection could be extended to cover these two groups of people if the special contribution fared better than the tax rebate to which they were entitled as a result of the one-off tax reduction announced in the 2008-09 Budget.</p> <p>(b) The Administration clarified that arrangements would be made to enable employees whose employers had failed to enrol them into MPF schemes for timely inclusion into MPFA's list of eligible persons to receive the injection. Publicity programme would be launched by MPFA.</p> <p>(c) On Mr Albert CHAN's enquiry about the method to be used to determine the income eligibility, the Administration advised that the month of the last available monthly income ("anchored income") and the monthly income in the two immediately preceding months would be taken into account. If the record of the lowest monthly income identified in these three consecutive</p> | <p>The Administration / MPFA to take action as required in paragraph 7(c) of the minutes.</p> <p>The Administration / MPFA to take action as required in paragraph 8(a) of the minutes.</p> |

| Time Marker | Speaker | Subject(s) | Action Required |
|--------------------|--|---|---|
| | | <p>months did not exceed \$10,000, the person would be eligible for the one-off injection.</p> <p>(d) The Administration's explanation that there were other relief measures announced in the 2008-09 Budget to benefit other sectors of the community.</p> | |
| 003918 – 004400 | Chairman Mr SIN Chung-kai Administration MPFA | <p>(a) Mr SIN Chung-kai's enquiries as follow:</p> <p>(i) the channels, if any, that the MPFA would disseminate information on eligible cases as decided by it after consideration of appeals for reference by the public; and</p> <p>(ii) if a person was aggrieved by the MPFA's decision that he was not eligible for the special contribution, the channel or mechanism, if any, for the person to lodge a complaint or an appeal against the MPFA's decision.</p> <p>(b) The Administration's advice that the eligibility criteria would be clearly set out and made public and presented to the Finance Committee (FC). The MPFA would put in place a mechanism to review the complaint cases and would consider disclosing the decisions of the review cases taking into account the privacy concern.</p> <p>(c) The MPFA's advice that the Committee to Oversee MPFA's Implementation of the Government Injection Project had been set up under the MPFA to monitor the one-off injection exercise. The MPFA had also studied different scenarios and hypothetical cases for the purpose of determining the eligibility of certain persons.</p> | <p>The Administration / MPFA to take action as required in paragraph 8(b) of the minutes.</p> <p>The Administration / MPFA to take action as required in paragraph 8(c) of the minutes.</p> <p>The Administration / MPFA to take action as required in paragraph 8(d) of the minutes.</p> |

| Time Marker | Speaker | Subject(s) | Action Required |
|--------------------|--|---|--|
| 004401 – 005019 | Chairman Mr WONG Ting-kwong MPFA Administration | <p>(a) Mr WONG Ting-kwong's declaration that he was a member of the Committee to Oversee MPFA's Implementation of the Government Injection Project.</p> <p>(b) Mr WONG Ting-kwong's enquiry that instead of just the month of the anchored income and the two immediately preceding months, whether it was feasible to collect information on the monthly income of MPF/ORSO scheme members for a longer period, say from 1 April 2007 to 29 February 2008, for the purpose of determining the income eligibility. He was of the view that MPF/ORSO scheme members would not hesitate to provide the required information in order to ascertain their eligibility for the special contribution.</p> <p>(c) The MPFA's explanation that ORSO trustees would not usually retain the data of those employees who had already terminated employment and ceased scheme membership. However, information related to both MPF and ORSO scheme members would be required in drawing up the list of eligible recipients.</p> | The Administration / MPFA to take action as required in paragraph 6(c) of the minutes. |
| 005020 – 010000 | Chairman Mr SIN Chung-kai Mr LEE Cheuk-yan Clerk Administration Miss CHAN Yuen-han Ms LI Fung-ying | <p>(a) Discussion on the legislative timetable and the way forward.</p> <p>(b) The Administration hoped that members could support completing scrutiny of the Bill so that it could be enacted within the current session. Thereafter, the MPFA would proceed with compiling a list of eligible recipients for the preparation of a submission to FC. The implementation details of the injection exercise would be set out in the paper for FC. Subject to FC's approval, the Administration hoped that the special contribution could be made within the 2008-2009 fiscal year.</p> | |

| Time Marker | Speaker | Subject(s) | Action Required |
|------------------------|------------------------------|-----------------------------------|----------------------------|
| 010001 – 010213 | Chairman Clerk Members | Arrangement for the next meeting. | |

Council Business Division 1
Legislative Council Secretariat
11 August 2008