

**立法會**  
**Legislative Council**

LC Paper No. CB(1) 2863/10-11  
(These minutes have been seen  
by the Administration)

Ref : CB1/SS/14/10/1

**Subcommittee on Mandatory Provident Fund Schemes Ordinance  
(Amendment of Schedule 2) Notice 2011**

**Minutes of the first meeting  
held on Thursday, 23 June 2011, at 8:30 am  
in Conference Room B of the Legislative Council Building**

**Members present** : Hon WONG Ting-kwong, BBS, JP (Chairman)  
Hon LEE Cheuk-yan  
Hon LI Fung-ying, SBS, JP  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon Andrew LEUNG Kwan-yuen, GBS, JP  
Hon IP Wai-ming, MH  
Hon Alan LEONG Kah-kit, SC

**Members attending** : Hon CHIM Pui-chung  
Hon Paul TSE Wai-chun

**Member absent** : Hon IP Kwok-him, GBS, JP

**Public officers attending** : **For item II**  
  
Ms Julia LEUNG, JP  
Under Secretary for Financial Services and the  
Treasury  
  
Ms Katherine NG  
Political Assistant to Secretary for Financial Services  
and the Treasury

Miss Emmy WONG  
Principal Assistant Secretary for Financial Services  
and the Treasury (Financial Services)<sup>3</sup>

Ms Henden YU, JP  
Chief Operating Officer (Enforcement)  
Mandatory Provident Fund Schemes Authority

Miss Elaine NG  
Government Counsel  
Department of Justice

**Clerk in attendance :** Miss Becky YU  
Chief Council Secretary (1)<sup>1</sup>

**Staff in attendance :** Miss Evelyn LEE  
Assistant Legal Adviser 10

Mrs Mary TANG  
Senior Council Secretary (1)<sup>1</sup>

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## **I. Election of Chairman**

Ms LI Fung-ying, the member who had the highest precedence among those present at the meeting, presided at the election of Chairman of the Subcommittee. Ms LI Fung-ying invited nominations for the chairmanship of the Subcommittee.

2. Ms LI Fung-ying nominated Mr WONG Ting-kwong, and the nomination was seconded by Mr Tommy CHEUNG. Mr WONG Ting-kwong accepted the nomination.

3. There being no other nominations, Mr WONG Ting-kwong was declared Chairman of the Subcommittee.

## **II. Meeting with the Administration**

(LC Paper No. CB(1) 2555/10-11(01) — Background brief on  
Mandatory Provident Fund  
Schemes Ordinance  
(Amendment of Schedule 2)

Notice 2011 and Mandatory  
Provident Fund Schemes  
Ordinance (Amendment of  
Schedule 3) Notice 2011)

Background information

Mandatory Provident Fund Schemes Ordinance (Amendment of  
Schedule 2) Notice 2011

Ref: G6/9/44/1C(2011)Pt.9

LC Paper No. LS81/10-11

— The Legislative Council Brief  
— Legal Service Division  
Report)

4. The Subcommittee deliberated (Index of proceedings attached in **Annex**).
5. As the Subcommittee had completed scrutiny of the Amendment Notice, members agreed that the Chairman should make a verbal report on the deliberations of the Subcommittee at the upcoming House Committee meeting on 24 June 2011, to be followed by a written report the following week. It was also agreed that the Subcommittee would not propose any amendments to the Amendment Notice. Since the Administration had given notice to move a resolution on the Amendment Notice at the Council meeting on 29 June 2011, the Chairman reminded members that the deadline for giving notice to amend the Amendment Notice had already expired, and that individual members who wished to do so would have to apply leave from the President.

**IV. Any other business**

6. There being no other business, the meeting ended at 10:20 am.

Council Business Division 1  
Legislative Council Secretariat  
5 August 2011

**Subcommittee on Mandatory Provident Fund Schemes Ordinance  
(Amendment of Schedule 2) Notice 2011**

**Proceedings of the first meeting  
on Thursday, 23 June 2011, at 8:30 am  
in Conference Room B of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
<i>Agenda Item I - Election of Chairman</i>			
000320 - 000432	Ms LI Fung-ying Mr Tommy CHEUNG Mr WONG Ting-kwong	Mr WONG Ting-kwong was elected Chairman of the Subcommittee.	
<i>Agenda Item II - Meeting with the Administration</i>			
000433 - 000544	Chairman Ms LI Fung-ying Mr IP Wai-ming Mr Tommy CHEUNG	Declaration of interests -  (a) the Chairman declared that he was a former non-executive director of the Mandatory Provident Fund Schemes Authority (MPFA);  (b) Ms LI Fung-ying declared that she was a non-executive director of MPFA; and  (c) Mr IP Wai-ming declared that he was a member of Mandatory Provident Fund (MPF) Schemes Advisory Committee.	
000545 - 002050	Chairman Mr Tommy CHEUNG Clerk Ms LI Fung-ying Mr IP Wai-ming Mr Andrew LEUNG Mr LEE Cheuk-yan	Discussion on the need to invite views from deputations.  Mr Tommy CHEUNG's enquiry on whether deputations had been invited to express views on the minimum level of relevant income (Min RI) and if so, whether they were supportive of proposed adjustment.  Ms LI Fung-ying's remark that at the special meeting of the Panel on Financial Affairs (FA Panel) on 20 April 2011, deputations were invited to express views on the proposal to increase the Min RI. There was general consensus that the Min RI for MPF contributions should be increased to \$6,500 per month, taking into account the effects of the statutory minimum wage (SMW).	

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		<p>Mr IP Wai-ming's view that deputations had raised no objection to the proposed increase of the Min RI to \$6,500.</p> <p>Declaration by Mr Andrew LEUNG as a non-executive director of MPFA. As there was general consensus on the proposed increase of Min RI to \$6,500, there might not be a need to hold another meeting to invite deputations' views. However, the Administration should endeavour to advance the commencement date for the Min RI from 1 November 2011 to 1 September 2011.</p> <p>As there was general consensus on the proposed Min RI, Mr LEE Cheuk-yan agreed that it might not be necessary to invite deputations' views. Nevertheless, there was a need to expedite the implementation schedule.</p> <p>Chairman's conclusion that the majority of members did not consider it necessary to invite deputations' views on the proposed Min RI.</p>	
002051- 002711	<p>Chairman Mr Tommy CHEUNG Administration Mr Andrew LEUNG</p>	<p>Mr Tommy CHEUNG's view/enquiry-</p> <p>(a) the Administration should have submitted the legislative proposal earlier to allow sufficient time for scrutiny by the Legislative Council; and</p> <p>(b) whether divergent views on the level of Min RI had been received at the public hearing held by the FA Panel and if so, there might be a need to invite views from deputations again.</p> <p>Administration's response -</p> <p>(a) deputations attending the FA Panel meeting on 20 April 2011 generally supported the setting of the Min RI at \$6,500; and</p> <p>(b) there was also support for the early commencement of the proposed Min RI.</p>	
002712 - 003627	<p>Chairman Administration</p>	<p>Administration's explanation on the MPF Schemes Ordinance (Amendment of Schedule 2) Notice 2011 (the Amendment Notice), and the justifications for setting the</p>	

Time marker	Speaker	Subject(s)	Action required
		commencement date of the proposed Min RI on 1 November 2011 (LegCo Brief ref: G6/9/44/1C(2011)Pt.9).	
003628 - 004600	<p>Chairman Mr Tommy CHEUNG Administration Assistant Legal Adviser 10 (ALA10) Chief Operating Officer (Enforcement), MPFA (COO(E), MPFA)</p>	<p>Mr Tommy CHEUNG's queries/concerns -</p> <p>(a) whether it was appropriate to adopt eight hours as the median working hours of the working population, given that most people in Hong Kong worked more than eight hours each day;</p> <p>(b) whether the Administration was confident that employers under an industry scheme, particularly those in the catering industry who employed large numbers of casual workers, could cope with the proposed Min RI on 1 November 2011, given that November was the peak season for the catering industry;</p> <p>(c) there might be cases where employers of small businesses, such as eateries, were not aware of the new arrangement and continued to use the obsolete Min RI for employees' contribution; and</p> <p>(d) MPFA should obtain a list of licensed eateries from the Food and Environmental Hygiene Department, and issue letters to alert the licencees of the new arrangement; and</p> <p>(e) whether MPFA had put in place a refund mechanism to return the excess contributions to employees.</p> <p>COO(E), MPFA's explanation -</p> <p>(a) efforts would be stepped up to enhance public awareness of the commencement of the proposed Min RI on 1 November 2011;</p> <p>(b) emails had been sent to employers' associations in June 2011 advising them of the proposed Min RI and Max RI;</p> <p>(c) would take on board members' suggestion of sending letters to licensed eateries to notify them of the proposed Min RI on</p>	

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		<p>1 November 2011; and</p> <p>(d) generally, arrangements on the refund of excess MPF contribution should be worked out among trustees, employers and employees. MPFA would discuss with trustees of the industry schemes on the refund arrangement for casual workers as they had details of these workers.</p> <p>ALA10's remark that the Legal Services Division would provide a note on the liability of employers who continued to use the obsolete Min RI for employees' contribution.</p>	
004601 - 005516	<p>Chairman Mr Andrew LEUNG Administration COO(E), MPFA</p>	<p>Mr Andrew LEUNG's concerns/views -</p> <p>(a) there was a need to expedite the implementation of the proposed Min RI for the benefit of employees;</p> <p>(b) the rationale for allowing more than sufficient time for the implementation of the proposed Min RI while the same was not applicable to SMW; and</p> <p>(c) trustees should have the responsibility and financial capability to adjust their systems within a very short time, given that this was not the first time when Min RI was revised.</p> <p>Administration's response -</p> <p>(a) reasonable time should be allowed for more than 200 000 employers to adjust their systems in the light of the proposed increase in Min RI; and</p> <p>(b) close to seven months were allowed in the last revision of Min RI in 2002.</p>	
005517 - 005939	<p>Chairman Ms LI Fung-ying Administration</p>	<p>Ms LI Fung-ying's views -</p> <p>(a) employers and employees should be well aware of the new Min RI because there would be extensive media coverage after this was approved by the Legislative Council. However, more efforts should be made to alert small business operators of the commencement of the new Min RI; and</p>	

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		<p>(b) there was room for expediting the implementation of the proposed Min RI since this was not the first time when Min RI was revised.</p> <p>Administration's explanation -</p> <p>(a) the commencement date of 1 November 2011 was worked out on the advice of MPFA after extensive consultation with trustees and survey with employers conducted by MPFA; and</p> <p>(b) there was a need to allow sufficient time for trustees and employers to adjust and test their systems.</p>	
005940 - 010540	<p>Chairman Mr IP Wai-ming Administration COO(E), MPFA</p>	<p>Mr IP Wai-ming's views -</p> <p>(a) the implementation schedule could be further compressed by making reference to past experience in adjusting Min RI; and</p> <p>(b) it should not be too difficult for employers and trustees to adjust their systems as the proposal only involved an adjustment of MPF contributions.</p> <p>COO(E), MPFA's response -</p> <p>(a) the implementation schedule had been compressed from close to seven months to four months based on the survey with employers and consultation with trustees;</p> <p>(b) it would take time for trustees and employers to update user requirements and test the systems; and</p> <p>(c) some employers would need to engage service providers in the market to adjust their systems, and there might not be adequate supply of service providers at the same time.</p>	
010541 - 010715	<p>Chairman Mr Alan LEONG</p>	<p>Mr Alan LEONG's views -</p> <p>(a) Members belonging to the Civic Party would support advancing the implementation of the proposed Min RI to</p>	



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		<p>1 September 2011, if possible; and</p> <p>(b) allowance should be given for employers to adjust to the new level of MPF contributions during the transition.</p>	
010716 - 012120	<p>Chairman Mr LEE Cheuk-yan Administration COO(E), MPFA Ms LI Fung-ying</p>	<p>Mr LEE Cheuk-yan's views -</p> <p>(a) trustees should be required to provide a better and more efficient service, given the high management fees charged by them; and</p> <p>(b) as the change in MPF contributions should not be difficult to implement, trustees should endeavour to adjust their systems expeditiously to enable the implementation of the proposed Min RI on 1 September 2011.</p> <p>Administration's explanation -</p> <p>(a) while 25% of employers were currently using systems provided by trustees, the remaining 75% employers were using their own systems and some of them had to engage service providers in the market to adjust their systems; and</p> <p>(b) a lead time of about four months was required to allow employers and trustees to adjust their systems if the Administration was to announce the revised levels in June 2011, as advised by MPFA.</p> <p>Chairman's comments -</p> <p>(a) judging from his own experience, changes had to be made to the payroll systems in the event of changes in MPF contributions;</p> <p>(b) it would be easy to adjust the payroll system but not the one for MPF contributions which would require a change in the computer programme; and</p> <p>(c) service providers had to be engaged in adjusting MPF contributions.</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>COO(E), MPFA's explanation -</p> <p>(a) both the payroll and MPF contribution systems had to be adjusted in the light of the proposed increase in Min RI; and</p> <p>(b) trustees were prepared to assist employers to make changes to their own computer systems.</p>	
012121 - 012449	<p>Chairman Administration COO(E), MPFA</p>	<p>Chairman's enquiries -</p> <p>(a) whether trustees and employers organizations had agreed to the implementation of the proposed Min RI on 1 November 2011; and</p> <p>(b) whether refund mechanism was in place to return excess contribution to employees.</p> <p>Administration's confirmation that as advised by MPFA after consultation with trustees and survey with employers, the implementation of Min RI could be set at 1 November 2011 which would allow reasonable time for trustees and employers to adjust their systems.</p> <p>COO(E), MPFA's explanation that arrangements would be made for trustees and employers to return excess contribution to employees.</p>	
012450 - 013349	<p>Mr Tommy CHEUNG ALA10 COO(E), MPFA Mr LEE Cheuk-yan Chairman</p>	<p>Mr Tommy CHEUNG's enquiry/concern -</p> <p>(a) whether employers would commit an offence if they continued to use the obsolete Min RI for employees' contribution due to unawareness of the proposed Min RI; and</p> <p>(b) trustees should be required to return the excess MPF contributions to employees, as they had details of employees' addresses and bank accounts.</p> <p>ALA10's explanation on the requirements for employers to contribute MPF under sections 7A and 7AA of the MPF Schemes Ordinance (Cap. 485) (MPFSO), and the offences for non-compliance under section 43B.</p>	

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		<p>COO(E), MPFA's response that as the case did not involve failure to make MPF contributions, the employers would not contravene MPFSO. The excess contribution could be returned to the employees.</p> <p>Mr LEE Cheuk-yan's view that if employers had inadvertently contravened labour laws, they would not be liable to prosecution so long as the act was not carried out deliberately or without reasonable excuse.</p>	
013350 - 013657	<p>Chairman Mr Tommy CHEUNG Mr LEE Cheuk-yan Ms LI Fung-ying Mr IP Wai-ming Administration ALA10</p>	<p>Discussion on the need to hold a meeting to receive deputations' views on the proposed adjustment to Min RI.</p> <p>Mr LEE Cheuk-yan, Ms LI Fung-ying and Mr IP Wai-ming considered it not necessary to hold another meeting to invite deputations' views, while Mr Tommy CHEUNG had reservations for not inviting deputations.</p> <p>Chairman's conclusion that it would not be necessary to hold a meeting to receive deputations' views.</p>	
013658 - 014057	<p>Chairman Mr Tommy CHEUNG Ms LI Fung-ying Mr LEE Cheuk-yan Administration</p>	<p>Discussion on the implementation of the proposed Min RI.</p> <p>Chairman's request for the Administration to consider advancing the implementation of the proposed Min RI to 1 October 2011.</p> <p>Mr Tommy CHEUNG's support for implementing the proposed Min RI on 1 November 2011 as scheduled to allow sufficient time for employers and trustees to make the necessary adjustments.</p> <p>Administration's reiteration that the proposed implementation date of 1 November 2011 had been set on the advice of MPFA after consultation with trustees and survey with employers, and there was little room for further compressing the implementation schedule.</p> <p>Members' agreement that the Subcommittee would not propose any amendments to the Amendment Notice, and that it would be for individual members to decide whether they would wish to do so.</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
014058 - 014542	Chairman Administration	Clerk's explanation on the legislative timetable -  (a) a verbal report on the deliberations of the Subcommittee would be made to the House Committee at its meeting on 24 June 2011, to be followed by a written report the following week;  (b) members who wished to make amendments were required to apply leave from the President as the deadline for giving notice to amend the Amendment Notice had already expired; and  (c) notice for amendment should preferably be given before noon of 25 June 2011 to allow time for the necessary procedures to be completed before the Administration moved the resolution on the Amendment Notice at the Council meeting on 29 June 2011.	
014543 - 014710	Mr LEE Cheuk-yan Administration	Mr LEE Cheuk-yan's request for MPFA to expedite the review of the statutory adjustment mechanism under MPFSO to tie in with the review of SMW.	
014711- 015110	Chairman Administration	Clause-by-clause examination of the Amendment Notice.	