

立法會
Legislative Council

LC Paper No. CB(1)1536/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/11/2

**Bills Committee on Mandatory Provident Fund Schemes
(Amendment) (No. 2) Bill 2011**

**Second meeting on
Thursday, 23 February 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon WONG Ting-kwong, BBS, JP (Chairman)
Hon LEE Cheuk-yan
Hon LI Fung-ying, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon KAM Nai-wai, MH
Hon CHAN Kin-por, JP
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Hon Alan LEONG Kah-kit, SC

Members absent : Hon LEUNG Yiu-chung
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Cyd HO Sau-lan
Hon WONG Sing-chi

Public officers attending : Mr Patrick HO, JP
Deputy Secretary for Financial Services and the
Treasury (Financial Services)

Miss Emmy WONG
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)

Mr Lawrence PENG
Senior Assistant Law Draftsman
Department of Justice

Miss Selina LAU
Senior Government Counsel
Department of Justice

Attendance by invitation : Mr Darren McSHANE
Executive Director (Regulation and Policy)
Mandatory Provident Fund Schemes Authority

Mrs Janet YUEN
Consultant (Policy Projects)
Mandatory Provident Fund Schemes Authority

Ms Amelia LEUNG
Senior Manager (Policy Development)
Mandatory Provident Fund Schemes Authority

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)5

Staff in attendance : Miss Carrie WONG
Assistant Legal Adviser 4

Mr Hugo CHIU
Council Secretary (1)5

I Meeting with the Administration

Follow-up to issues arising from previous meeting

(LC Paper No. CB(1)1112/11-12(01) — List of follow-up actions arising from the discussion at the meeting on 31 January 2012

LC Paper No. CB(1)1112/11-12(02) — Administration's response to issues raised at the meeting on 31 January 2012)

Other relevant papers

(LC Paper No. CB(3)232/11-12 — The Bill

LC Paper No. CB(1)978/11-12(01) — Administration's powerpoint presentation materials for the meeting on 31 January 2012

LC Paper No. CB(1)939/11-12(01) — Marked-up copy of the Bill prepared by the Legal Service Division

LC Paper No. CB(1)1112/11-12(03) — Letter dated 9 February 2012 from Assistant Legal Adviser to the Administration on Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011)

Discussion

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

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Follow-up actions to be taken by the Administration

2. The Administration and the Mandatory Provident Fund Schemes Authority ("MPFA") were requested to:

- (a) provide details on how to ascertain that Mandatory Provident Fund ("MPF") intermediaries have acquired from the training courses attended up-to-date and adequate knowledge on the MPF system and MPF products, including whether there would be surprise checks and/or mystery shopper checks and whether the intermediaries would be required to attend periodic examinations;
- (b) review the requirements for attending non-core Continuing Professional Development ("CPD") training and consider stepping up the control over the quality of the training for fulfilling the CPD requirements;

- (c) provide details on how complaints against MPF intermediaries' misconduct would be processed under the "one-stop approach";
- (d) illustrate, in the form of flowcharts, the workflow and the demarcation of responsibilities and powers between MPFA and the frontline regulators in the processes of handling alleged cases of misconduct of MPF intermediaries. Such processes include receiving complaints, investigation, disciplinary/prosecution actions, and appeals by the MPF intermediaries concerned;
- (e) compare the broad regulatory arrangements proposed in the Bill with those currently adopted by the Hong Kong Monetary Authority regarding the sale of investment products by intermediaries in banks, particularly regarding the avenues available for investors/MPF scheme members to seek redress/compensation;
- (f) review the necessity of section 6H(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
- (g) provide information on the main contents of the new Code of Conduct for registered MPF intermediaries in due course; and
- (h) provide information on the (i) estimated number of licensed MPF intermediaries and (ii) the estimated number of responsible officers of principle intermediaries, when the Employment Choice Arrangement is implemented.

III Any other business

Date of next meeting

3. The Chairman reminded members that the next meeting would be held on 6 March 2012.
4. There being no other business, the meeting ended at 10:29 am.

**Proceedings of the
Bills Committee on Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011
Second meeting on Thursday, 23 February 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000747 – 000831	Chairman	Opening remarks	
000832 – 001000	Administration	Briefing by the Administration on LC Paper No. CB(1)1112/11-12(02).	
001001 – 001504	Ms LI Fung-ying Administration Mandatory Provident Fund Schemes Authority (MPFA)	<p>Ms LI remarked that some companies might provide training for Mandatory Provident Fund (MPF) intermediaries under their employment. Ms LI enquired whether such training would be recognized by the Mandatory Provident Fund Schemes Authority (MPFA) for fulfilling the Continuing Professional Development (CPD) requirements and, if so, whether such training would be regulated by MPFA.</p> <p>In reply, MPFA advised that:</p> <p>(a) courses for fulfilling the two-hour core training requirement would be subject to MPFA's approval; and</p> <p>(b) courses for fulfilling the eight-hour non-core training requirement would be subject to a more flexible arrangement. The course providers and individual MPF intermediaries should keep relevant records. MPFA would conduct spot checks and require production of training records and was empowered to take actions against the intermediary if he failed to comply with the continuing training requirement.</p>	
001505 – 003310	Mr KAM Nai-wai Administration MPFA Chairman	<p>Regarding the training for fulfilling the CPD requirements, Mr KAM enquired whether the following measures had been or would be put in place to ascertain that MPF intermediaries had acquired up-to-date and adequate knowledge of the MPF system and MPF products:</p> <p>(a) whether apart from attending training courses, MPF intermediaries would be required to take examinations; and</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>(b) whether there would be surprise checks and/or mystery shopper checks on the sales and marketing activities of MPF intermediaries; and if so, what would be the percentage of such activities that would be subject to such checks.</p> <p>Mr KAM considered the above measures important, because the current regulatory system in Hong Kong in respect of financial products was disclosure-based and MPF scheme members would rely heavily on the information provided by MPF intermediaries after the implementation of the Employee Choice Arrangement (ECA). The Chairman concurred with Mr KAM.</p> <p>The Administration and MPFA replied as follows:</p> <p>(a) The investment of MPF funds was subject to stringent regulation under the existing legislation, e.g. MPF funds were not allowed to invest in high-risk financial products such as structured products.</p> <p>(b) The requirement that MPF intermediaries should attend the training courses for fulfilling the CPD requirements but not subject to periodic examinations thereafter was in line with the regulatory arrangement in other financial sectors. MPF intermediaries were required to keep records of training and report CPD compliance via annual return to MPFA.</p> <p>(c) The Bill did not propose changes to the above arrangements.</p> <p>Mr KAM said that he did not accept the present arrangements. As the proposed legislation was to prepare for the implementation of ECA, he requested the Administration and MPFA to provide details on how to ascertain that MPF intermediaries had acquired from the training courses attended up-to-date and adequate knowledge on the MPF system and MPF products, including whether there would be surprise checks and/or mystery shopper checks and whether the intermediaries would be required to attend periodic examinations.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
003311 – 004652	Mr IP Wai-ming Administration MPFA	<p>Mr IP declared that he was a member of the Mandatory Provident Fund Schemes Advisory Committee.</p> <p>Noting that the proposed regulatory regime involved a number of frontline regulators (FRs), Mr IP enquired about the arrangements for handling complaints against MPF intermediaries. He was particularly concerned that complainants might need to approach and deal with different regulators in the process.</p> <p>The Administration responded that the FRs would conduct their supervision in accordance with the same set of standards for MPF intermediaries, including relevant Code of Conduct (CoC) to be issued by MPFA, and would be vested with the same investigation powers. MPFA would have regard to the information obtained by FRs from their investigations in deciding whether and what disciplinary action should be taken regarding the intermediary concerned. All appeals by MPF intermediaries against MPFA's disciplinary decisions would be handled by the Mandatory Provident Fund Schemes Appeal Board.</p> <p>MPFA added that it would receive all complaints against MPF intermediaries and conduct preliminary assessment. If a complaint involved the violation of conduct requirement by an MPF intermediary, MPFA would forward the case and the information gathered to the FR concerned for follow-up.</p> <p>Mr IP requested the Administration to provide details on how complaints against MPF intermediaries' misconduct would be processed under the "one-stop approach".</p>	The Administration to take action as per paragraph 2 of the minutes.
004653 – 011403	Mr KAM Nai-wai Administration	Mr KAM considered that the Administration had not learnt from the lessons of the "Lehman Brothers Incident" because the approach of "multiple regulators for one industry" was still adopted in the proposed regulatory regime. In this connection, he requested the Administration to illustrate, in the form of flowcharts, the workflow and the demarcation of responsibilities and powers between MPFA and	The Administration to take action as per paragraph 2 of the minutes.

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		<p>the frontline regulators in the processes of handling alleged cases of misconduct of MPF intermediaries. Mr KAM said that the Administration should also clarify whether the restrictions on official secrecy specified in section 120 of the Banking Ordinance (Cap.155) would prevent the Hong Kong Monetary Authority (HKMA) from releasing certain information to MPFA.</p> <p>The Administration undertook to provide the information requested by Mr KAM and added that:</p> <ul style="list-style-type: none"> (a) there were good reasons to model the proposed statutory regulatory regime on the existing administrative regulatory arrangement adopted by MPFA with the assistance of the FRs, which would ensure efficient use of regulatory resources; (b) the Bill provided that each MPF principal intermediary would be supervised by one FR only and the conduct of regulated activities by its subsidiary intermediaries would be subject to the same FR, hence ensuring clear line of supervisory accountability; (c) MPFA would receive information obtained from investigation from FRs and maintain close liaison with them, which would enable MPFA to maintain an oversight of system-wide regulatory issues; and (d) MPFA would be the sole authority to make disciplinary decisions on MPF intermediaries; hence ensuring consistency in disciplinary decisions. <p>Mr KAM enquired whether the existing legislation or the Bill provided avenues for MPF scheme members to seek compensation for losses resulted from the misconduct of MPF intermediaries. The Administration advised that:</p> <ul style="list-style-type: none"> (a) the Securities and Futures Ordinance (Cap. 571) (SFO) contained provisions for the filing of claims in a court of law by 	

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		<p>investors of Collective Investment Schemes which included the MPF Schemes; and</p> <p>(b) MPFA would be empowered under the Bill to, by agreement with the regulated person in appropriate case, take further action against the latter, thus providing a way to facilitate a settlement arrangement.</p> <p>Mr KAM clarified that he was concerned about the compensation arrangements for MPF scheme members suffering losses resulted from the misconduct of MPF intermediaries. He considered it undesirable to empower the relevant regulators to arrange settlement with the MPF intermediaries who had committed misconduct and the MPF scheme members concerned, as such arrangements would cover up misconduct cases and might not be fair to the MPF scheme members.</p> <p>The Administration advised that under the existing and proposed arrangements, claims filed by MPF scheme members would be handled by the courts. There would be incentives for some MPF intermediaries to consider settlement with the MPF scheme members on the issue of compensation, taking into account the potential disciplinary sanctions that MPFA might impose on them.</p> <p>The Chairman said that determinations on compensation had to be made by courts and it would be inappropriate for regulators to be empowered to make such determinations. At present, MPFA was required to file a civil claim to a court of competent jurisdiction to recover mandatory contributions in arrears.</p> <p>Mr KAM disagreed with the Chairman and remarked that if an MPF intermediary was found guilty, the regulator concerned should be empowered to require it to make compensation to the MPF scheme members concerned. This was because the mere imposition of disciplinary sanctions would not actually help the MPF scheme members concerned.</p>	

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		<p>The Administration took note of Mr KAM's view and advised that with reference to the established regulatory arrangements for financial sectors, the Bill did not contain an empowering provision to regulators to order an MPF intermediary to make compensation to an MPF scheme member.</p> <p>Mr KAM requested the Administration to compare the broad regulatory arrangements proposed in the Bill with those currently adopted by HKMA regarding the sale of investment products by intermediaries in banks, particularly regarding the avenues available for investors/MPF scheme members to seek redress/compensation.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
<p>011404 – 012115</p>	<p>Mr CHAN Kin-por MPFA</p>	<p>Mr CHAN pointed out that at present, the quality of certain training for fulfilling the CPD requirements was unsatisfactory. He urged the MPFA to review the requirements for attending non-core CPD training and consider stepping up the control over the quality of the training for fulfilling the CPD requirements.</p> <p>MPFA replied as follows:</p> <ul style="list-style-type: none"> (a) Approval from MPFA was required for core CPD training; (b) While a more flexible approach was adopted for the non-core CPD training, MPF intermediaries were required to report CPD compliance via annual returns to MPFA; (c) MPFA would conduct spot checks to verify the accuracy of training records; (d) MPFA constantly reviewed the contents of non-core CPD training to ensure that the contents were updated in a timely manner. MPFA would try to enhance the quality of such training; and (e) Principal intermediaries were required to have controls in place to ensure that their subsidiary intermediaries had received the necessary training. 	<p>The Administration to take action as per paragraph 2 of the minutes.</p>

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012116 – 012512	Administration	<p><u>Clauses-by-clause examination of the Bill</u></p> <p>Part 1</p> <p>Preliminary</p> <p><u>Clause 1 – Short title and commencement</u></p> <p><u>Clause 2 – Enactments amended</u></p>	
012513 – 013051	Mr KAM Nai-wai Administration	<p>Mr KAM enquired whether sufficient support measures would be in place when the proposed legislation commenced operation on 1 November 2012. The Administration advised that:</p> <p>(a) MPFA, in conjunction with the Administration, had commenced the relevant preparatory work since the passage of the Mandatory Provident Fund Schemes (Amendment) Bill 2009;</p> <p>(b) MPFA had liaised with MPA trustees on relevant preparatory work for the launch of ECA;</p> <p>(c) The E-platform would be ready for operation when the ECA was launched on 1 November 2012;</p> <p>(d) Relevant publicity work would be conducted;</p> <p>(e) Under the transitional arrangements provided in the Bill, all existing MPF intermediaries with valid registration with MPFA before the commencement of the statutory regime would be allowed to continue to carry on regulated activities for two years. They would need to apply to MPFA for registration under the new regime if they wanted to carry on regulated activities after expiry of this transitional period;</p> <p>(f) MPFA had been conducting "train-the-trainer" programmes to enable MPF intermediates to possess adequate knowledge in relation to ECA. MPFA would launch another round of training</p>	

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		<p>for MPF intermediaries after passage of the Bill by the Legislative Council.</p> <p>Mr KAM enquired whether a draft of the new CoC was available and requested the Administration to provide the following information:</p> <p>(a) the estimated number of licensed MPF intermediaries; and</p> <p>(b) the estimated number of responsible officers of principle intermediaries, when the ECA was implemented.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
013052 – 013359	Administration	<p>Part 2</p> <p>Amendments to Mandatory Provident Fund Schemes Ordinance (Cap. 485)</p> <p><u>Clause 3 – Long title amended</u></p> <p><u>Clause 4 – Section 2 amended (interpretation)</u></p> <p><u>Clause 5 – Section 4 amended (exemptions)</u></p>	
013400 – 013506	Mr KAM Nai-wai Administration	<p>Mr KAM enquired about the definition of the term "registered intermediary". The Administration advised that the term was defined in the proposed sections 34G and 34H.</p>	
013507 – 013635	Administration	<p><u>Clause 6 – Section 6E amended (functions of Authority)</u></p> <p><u>Clause 7 – Section 6H amended (Authority may issue guidelines)</u></p>	
013636 – 013925	Mr KAM Nai-wai Administration	<p>Mr KAM enquired whether the Administration could provide a draft of the new CoC for members' reference. The Administration advised that MPFA was consulting the frontline regulators on the draft CoC, and undertook to provide information on the main contents of the new CoC in due course.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
013926 – 014333	ALA4 Administration	<p>ALA4 remarked that section 6H(6) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (MPFSO) provided that "A person does not incur a civil or criminal liability only because the person has contravened a guideline</p>	

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		<p>under this section". ALA4 enquired whether an administrative sanction would be imposed on an MPF intermediary contravening the guidelines. The Administration replied that the Bill imposed conduct requirements on MPF intermediaries and the guidelines (i.e. the new CoC) elaborated such requirements. An MPF intermediary would be subject to disciplinary sanctions only if he failed to fulfill the requirements stipulated in the Bill whilst the new CoC mainly served to provide guidance to MPF intermediaries for fulfilling the statutory requirements. The Administration also clarified that the CoC would be administrative in nature and breaching the CoC itself would not directly result in any sanctions.</p> <p>ALA4 further pointed out that section 6H(3) of MPFSO provided that "A guideline may require persons (including persons belonging to a class) specified in the guideline to give to the Authority information or documents of a kind specified in the guideline" and enquired whether an MPF intermediary failing to provide the relevant information specified in the guideline would be subject to any sanctions. The Administration replied that non-compliance with the guidelines per se would not directly lead to sanctions because all sanctions for breaches of statutory requirements were specified in the legislation instead of the guidelines.</p>	
014334 – 015413	Mr KAM Nai-wai Administration ALA4 Chairman	<p>Mr KAM enquired whether section 6H(6) of MPFSO would deprive the public of their rights to file a civil claim against an MPF intermediary violating the CoC. Mr KAM also referred to section 6H(3) of MPFSO and enquired about the legal liability of a person not providing the relevant information specified in the guideline.</p> <p>The Administration replied as follows:</p> <p>(a) Relevant clauses of the Bill had addressed the issues raised by Mr KAM (i.e. breaching the guidelines would not per se lead to disciplinary sanctions but would be of evidential value in determining any breach of statutory requirements) and such clauses would be scrutinized by the Bills Committee in due course; and</p>	

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		<p>(b) The CoC might be considered by the court in legal proceedings in determining whether an MPF intermediary had fulfilled the statutory requirements on MPF intermediaries if the court was satisfied that CoC was relevant in determining a matter that was at issue in the proceeding. However, it would be up to the court to decide whether the CoC would be considered in the legal proceedings.</p> <p>Mr KAM's requested ALA4 to advise whether section 6H(6) of MPFSO would deprive the public of their rights to file a civil claim against an MPF intermediary violating the CoC. ALA4 replied in the negative and advised that section 6H(6) provided that a person did not incur a civil or criminal liability <i>only because</i> he had contravened a guideline issued under the section.</p>	
015414 – 015943	Ms LI Fung-ying Administration DoJ	Ms LI pointed out that the stipulated arrangement for publication of a guideline under section 6H(4) of MPFSO might cause confusion to stakeholders and affect the operation of MPFA. The Administration was requested to review its necessity.	The Administration to take action as per paragraph 2 of the minutes.
015944 – 020008	Chairman	The Chairman remarked that the next meeting would be held on 6 March 2012.	