

立法會
Legislative Council

LC Paper No. CB(1)1899/11-12
(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**

**Fourth meeting on
Thursday, 15 March 2012, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

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

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 Confirmation of minutes of meeting

(LC Paper No. CB(1)1279/11-12 — Minutes of meeting on
31 January 2012)

The minutes of the meeting held on 31 January 2012 were confirmed.

II Meeting with the Administration

Follow-up to issues arising from previous meeting

(LC Paper No. CB(1)1289/11-12(01) — List of follow-up actions arising from the discussion at the meeting on 23 February 2012

LC Paper No. CB(1)1289/11-12(02) — Administration's response to issues raised at the meeting on 23 February 2012

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

Clause-by-clause examination of the Bill (starting with clause 8)

(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)

Discussion

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

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Follow-up actions to be taken by the Administration

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

- (a) confirm that the three frontline regulators ("FRs") will rely on the powers conferred on them under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO"), to be amended by the Bill, to investigate into cases concerning Mandatory Provident Fund ("MPF") intermediaries' sales and marketing activities in relation to MPF schemes, and hence that the Hong Kong Monetary Authority may not use other legislation (such as section 120 on "official

secrecy" of the Banking Ordinance (Cap. 155)) to withhold their investigation findings from MPFA;

- (b) confirm whether MPFA will disclose details of an investigation to the complainant concerned in a non-substantiated complaint case;
- (c) provide information on the supervisory and investigation arrangements, including any performance pledge, agreed between MPFA and the FRs (e.g. the supervisory tools mentioned in paragraph 1(g) and (h) of Annex to the Administration's letter dated 12 March 2012), and advise whether application of such arrangements would be ensured through, for example, a Memorandum of Understanding;
- (d) provide examples of the legislation of other jurisdictions, if any, in which a regulator is empowered to order a person subject to its regulation to make compensation to an aggrieved party;
- (e) in respect of certain definitions under proposed section 34E, align the order of the items referring to the banking, insurance and securities industries and the respective industry regulators;
- (f) refine the drafting of the proposed section 34F(5);
- (g) provide the rationale for the penalty level specified under proposed section 34N(1)(a);
- (h) consider rephrasing proposed section 34R by using the term "Internet" ("互聯網") instead of "on-line record" ("聯機紀錄"); and
- (i) consider whether any guideline issued under section 6H of MPFSO is subsidiary legislation and whether there is a need to add a provision in the Bill to clarify this.

III Any other business

Date of next meeting

4. The Chairman reminded members that the next meeting would be held on 20 March 2012.

5. There being no other business, the meeting ended at 6:30 pm.

**Proceedings of the
Bills Committee on Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011
Fourth meeting on Thursday, 15 March 2012, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000415 – 000653	Chairman	Confirmation of minutes of the meeting on 31 January 2012. Opening remarks	
000654 – 001530	Administration	Briefing by the Administration on LC Paper No. CB(1)1289/11-12(02) ("the paper").	
001531 – 002208	Ms LI Fung-ying Administration	<p>Ms LI made the following comments:</p> <p>(a) Ms LI accepted the Administration's reply regarding section 6H(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO");</p> <p>(b) Pointing out that a number of deputations attending the public hearing on 6 March 2012 and Bills Committee members had expressed concern about the adoption of the approach of "multiple regulatory authorities for one industry" under the proposed regulatory regime, Ms LI requested the Administration to clarify:</p> <p>(i) whether a frontline regulator ("FR") could make suggestions in its investigation report submitted to the Mandatory Provident Fund Schemes Authority ("MPFA");</p> <p>(ii) the arrangement for the scenario in which MPFA and an FR disagreed on the result of an investigation conducted by the FR; and</p> <p>(iii) the appeal arrangement for MPF intermediaries.</p> <p>The Administration replied as follows:</p> <p>(a) An FR would ascertain the facts relevant to the alleged misconduct in the sales and marketing process and provide the relevant information to MPFA. The Bill did not</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>require an FR to make any recommendations on disciplinary sanctions to be imposed to MPFA;</p> <p>(b) MPFA was the sole authority to make disciplinary decisions. It could require the FR concerned to provide additional information if necessary; and</p> <p>(c) All appeals on disciplinary decisions made by MPFA would be handled by a single and independent appeal channel, i.e. the Mandatory Provident Fund Schemes Appeal Board ("MPFSAB").</p> <p>Ms LI queried whether MPFSAB could handle the appeals impartially. The Administration advised that MPFSAB is independent from MPFA executive. The membership of MPFSAB would not consist of staff of MPFA. The Government, instead of MPFA, would provide secretariat support to MPFSAB.</p>	
002209 – 003021	Mr KAM Nai-wai Chairman Administration	<p>Mr KAM pointed out that in the "Lehman Brothers Incident", the Hong Kong Monetary Authority ("HKMA") had invoked section 120 on "official secrecy" of the Banking Ordinance (Cap. 155) ("BO") to decline to release investigation details of non-substantiated complaint cases on banks. He expressed concern that the proposed regulatory regime might suffer from the same problem, and sought clarification on:</p> <p>(a) whether the three FRs could invoke other legislation to withhold their investigation findings from MPFA; and</p> <p>(b) whether MPFA would decline to disclose details of an investigation to the complainant concerned.</p> <p>The Administration replied that MPFSO provides the power of FRs to conduct investigation of alleged misconduct of MPF intermediaries. Hence, the other legislation would not be applicable to the passing of investigation information obtained by FRs in the exercise of such power to MPFA.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>Mr KAM requested the Administration to provide written information on the following:</p> <ul style="list-style-type: none"> (a) confirmation that the three FRs would rely on the powers conferred on them under the MPFSO, to be amended by the Bill, to investigate into cases concerning MPF intermediaries' sales and marketing activities in relation to MPF schemes, and hence that the HKMA might not use other legislation (such as section 120 on "official secrecy" of the BO) to withhold their investigation findings from MPFA; (b) confirmation on whether MPFA would disclose details of an investigation to the complainant concerned in a non-substantiated complaint case; and (c) the supervisory and investigation arrangements, including any performance pledge, agreed between MPFA and the FRs (e.g. the supervisory tools mentioned in paragraph 1(g) and (h) of Annex to the paper), and advise whether application of such arrangements would be ensured through, for example, a memorandum of understanding ("MoU"). 	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
<p>003022 – 003226</p>	<p>Mr IP Wai-ming Administration</p>	<p>Mr IP expressed concern that the understanding of MPFA and FRs on the disclosure of investigation findings might be different from that of the Administration. Mr IP also enquired whether the relevant MoU and performance pledge relating to the investigation of MPF intermediaries could be made public.</p> <p>The Administration confirmed that MPFA, the FRs and the Government had common understanding on the disclosure of investigation findings, and that it would liaise with MPFA to provide information on the investigation arrangements.</p>	
<p>003227 – 003808</p>	<p>Mr CHAN Kin-por Administration Chairman Mr KAM Nai-wai</p>	<p>Mr CHAN pointed out that under the Prevention of Bribery Ordinance (Cap. 201), remuneration disclosure to clients was required for insurance brokers but not insurance agents. He appreciated that for transparency consideration and to tie in with the implementation of the</p>	

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		<p>Employee Choice Arrangement ("ECA"), insurance agents would also be required to make remuneration disclosure to clients. He was however concerned about the nature and extent of remuneration disclosure required of insurance agents, and remarked that there would be practical difficulties in requiring insurance agents to disclose the actual amounts of remuneration. As such, Mr CHAN requested the Administration and MPFA to handle the issue carefully and consult the industry.</p> <p>The Administration and MPFA replied at follows:</p> <ul style="list-style-type: none"> (a) The Administration recognized the industry's concern about remuneration disclosure; (b) MPFA would prepare draft guidelines for consultation with the industry; and (c) The requirements on remuneration disclosure would be formulated according to the principle that an MPF intermediary should disclose sufficient information for an MPF scheme member to make an informed decision. <p>The Chairman remarked that clear guidelines should be provided to the industry, and instead of requiring exhaustive disclosure, a proper balance should be struck. Mr KAM considered that from the angle of safeguarding MPF scheme members' interests, it would be preferable for disclosure of commissions and fees to be as thorough as possible.</p>	
003809 – 005222	Mr KAM Nai-wai Administration Chairman Mandatory Provident Fund Schemes Authority (MPFA)	<p>Mr KAM enquired whether MPFA could, apart from imposing disciplinary sanctions, order an MPF intermediary to make compensation to the aggrieved party. He remarked that he might consider moving a Committee Stage Amendment ("CSA") if MPFA was not empowered to do so.</p> <p>The Administration confirmed that the Bill did not empower MPFA to order an MPF intermediary to make compensation to an aggrieved party. In reply to the Chairman's enquiry on how an aggrieved party could seek compensation, the Administration advised that broadly speaking, the party concerned could</p>	

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		<p>consider taking action under section 108 of the Securities and Futures Ordinance (Cap. 571) ("SFO") if he suffered loss due to relying on the fraudulent, reckless or negligent misrepresentation of another party. MPFA's determination that an MPF intermediary had committed misconduct would be of reference to the aggrieved party in considering whether to file claims in accordance with section 108 of the Securities and Futures Ordinance (Cap. 571) ("SFO").</p> <p>Mr KAM requested the Administration to provide examples of the legislation of other jurisdictions, if any, in which a regulator was empowered to order a person subject to its regulation to make compensation to an aggrieved party. Mr KAM remarked that he learnt that HSBC had recently been ordered by the relevant regulator in the United Kingdom to make compensation to elderly customers for mis-selling of investment products to these customers.</p> <p>Referring to the supervisory tools of "mystery shopper" and inspection of attendance records set out in paragraph 1(g) and (h) of Annex to the paper, Mr KAM enquired whether such supervisory tools would be specified in the Bill or the Code of Conduct for MPF Intermediaries ("CoC") to ensure their effective implementation.</p> <p>MPFA replied that the Bill provided MPFA and the FRs with powers to inspect and require provision of relevant records and documents. In addition, the Bill also set out the statutory conduct requirements for MPF intermediaries to observe, including honesty as one of such conduct requirements. A person giving false information to MPFA may breach the conduct requirement of honesty and be subject to disciplinary sanctions. Such act may also constitute a criminal offence. The Administration supplemented that a principal intermediary ("PI") was already required under the Bill to establish an internal control mechanism for ensuring compliance with the statutory conduct requirements and it was uncommon to set out the detailed supervisory tools in legislation.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>Mr KAM opined that the effectiveness of the supervisory tools would be greatly impaired if they were not specified in the legislation or CoC.</p> <p>MPFA replied as follows:</p> <ul style="list-style-type: none"> (a) Each FR would devise its own supervisory tools. "Mystery shopper" was one of the techniques for gathering information; and (b) MPFA would in due course discuss with the FRs as regards how they would roll out their supervisory practices in relation to their own regulatees through both formal and informal processes. However, it would be difficult to commit in advance how many "mystery shopper" exercises would be undertaken by the FRs. <p>Mr KAM requested the Administration to provide information on any performance pledge agreed between MPFA and the FRs regarding the supervisory tools mentioned in paragraph 1(g) and (h) of Annex to the paper and advise how the effective implementation of such tools could be ensured. The Chairman concurred with Mr KAM's view that relevant performance pledge should be set.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
<p>005223 – 005457</p>	<p>ALA4 Administration</p>	<p>ALA4 enquired whether a guideline issued under section 6H of MPFSO was subsidiary legislation and if the answer was in the negative, whether the Administration would consider specifying so in MPFSO.</p> <p>The Administration confirmed that a guideline issued under section 6H of MPFSO was not subsidiary legislation.</p> <p>The Administration was requested to consider whether there was a need to add a provision in the Bill to clarify the guidelines issued under section 6H of MPFSO were not subsidiary legislation.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
<p>005458 – 010215</p>	<p>Administration</p>	<p><u>Clauses-by-clause examination of the Bill</u></p> <p><u>Clause 8 – Section 6KA added</u></p>	

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		<p><i>6KA. Designation of electronic system by Authority</i></p> <p><u>Clause 9 – Section 19 amended (powers of Authority in relation to mandatory contributions)</u></p> <p><u>Clause 10 – Section 19A amended (power of Authority to require production of records)</u></p> <p><u>Clause 11 – Section 30A amended (general power of inspection)</u></p> <p><u>Clause 12 – Section 32 amended (investigation)</u></p> <p>Members raised no question on clauses 8 to 12.</p> <p><u>Clause 13 – Part IVA added</u></p> <p>Part IVA</p> <p>Sales and Marketing Activities, and Giving of Advice, in relation to Registered Schemes</p> <p>Division 1—Preliminary</p> <p><i>34E. Interpretation</i></p>	
010216 – 010259	Ms LI Fung-ying Administration	<p>Ms LI enquired whether the terms "appointed long term insurance agent" and "authorized long term insurance broker" in proposed section 34E were defined in legislation/the Bill.</p> <p>The Administration advised that the terms concerned were adopted from and defined in the Insurance Companies Ordinance (Cap 41).</p>	
010300 – 010430	Administration	<p><u>Clause 13 – Part IVA added</u></p> <p><i>34E. Interpretation (continued)</i></p>	
010431 – 010525	Mr IP Wai-ming Administration	<p>In respect of certain definitions under proposed section 34E, Mr IP suggested that the Administration should align the order of the items referring to the banking, insurance and securities industries and the respective industry regulators.</p>	The Administration to take action as per paragraph 2 of the minutes.
010526 – 011143	Administration	<p><u>Clause 13 – Part IVA added</u></p> <p><i>34E. Interpretation (continued)</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<i>34F. Regulated activity, material decision and regulated advice</i>	
011144 – 011415	Ms LI Fung-ying DoJ	Miss LI requested the Administration to refine the drafting of proposed section 34F(5).	The Administration to take action as per paragraph 2 of the minutes.
011416 – 011616	Mr IP Wai-ming Administration	Mr IP enquired why the word "induce" was used in proposed section 34F(1)(a). The Administration advised that the word "induce" was used to cover the scenario in which an MPF intermediary used certain means to cause an MPF scheme member to make a material decision, and pointed out that the word was also used in SFO.	
011617 – 012130	Administration	<i>34G. Principal intermediary</i> <i>34H. Subsidiary intermediary</i> <i>34I. Responsible officer and specified responsibilities</i> <i>34J. Revocation or suspension of qualification as Type A regulatee</i>	
012131 – 012554	Chairman Administration Mr IP Wai-ming	The Chairman enquired whether a person's application for registration as an MPF intermediary would be affected if the qualification of his main line of business had been revoked on disciplinary grounds by the regulator concerned. The Administration replied in the affirmative and pointed out that the Bill specified that if the person's qualification' with regard to his main line of business' had been revoked on disciplinary grounds, he would not be eligible to apply for registration as an MPF intermediary for one year starting from the time of revocation of the relevant primary qualification. Mr IP remarked that the arrangement mentioned by the Administration was not set out in proposed section 34J. The Administration advised that the arrangement was set out in proposed section 34T(4)(a)(ii).	

Time Marker	Speaker	Subject(s)	Action Required
012555 – 012702	Administration	<i>34K. Revocation or suspension of qualification as Type B regulatee</i>	
012703 – 013224	Administration	<p>Division 2—Prohibitions</p> <p><i>34L. Prohibition against carrying on regulated activities etc.</i></p> <p><i>34M. Exceptions to section 34L</i></p>	
013225 – 013400	Administration	The Administration remarked that it would move a technical CSA to proposed section 34M(5)(a)(i).	
013401 – 013623	Administration Chairman Mr CHAN Kin-por	<p><i>34N. Offence relating to prohibitions</i></p> <p>The Chairman remarked that the penalty level set out in proposed section 34N(1)(a) might be too high for individuals. Mr CHAN shared the concern and requested the Administration to provide the rationale for the penalty level specified under proposed section 34N(1)(a)</p>	The Administration to take action as per paragraph 2 of the minutes.
013624 – 013854	Administration	<p>Division 3—Investigation concerning Contravention of Prohibition</p> <p><i>34O. Initiating investigation</i></p>	
013855 – 014218	Mr IP Wai-ming Administration	<p>In reply to Mr IP's enquiry regarding the coverage of the phrase "the person so directed" in proposed section 34O(4), the Administration advised that such persons would be employees of MPFA.</p> <p>Noting that proposed section 34O(4) provided that "the Authority or the person so directed must consult the industry regulator", Mr IP enquired about the arrangement for the scenario in which the industry regulator objected to an investigation initiated by MPFA.</p> <p>The Administration advised that MPFA was the authority to decide the initiation of investigation under proposed section 34O. MPFA would notify the industry regulator concerned about the investigation but needed not seek its agreement. The Chairman considered that it was reasonable for MPFA to notify the industry regulator concerned.</p>	

Time Marker	Speaker	Subject(s)	Action Required
014219 – 014733	Administration	<p><i>34P. Investigation powers</i></p> <p>Division 4—Registration of Intermediaries and Approval of Responsible Officers</p> <p><i>34Q. Register of intermediaries</i></p> <p><i>34R. Register to be made available as on-line record</i></p> <p><i>34S. Contents of Register</i></p> <p>The Administration confirmed the Chairman's understanding that the Register of intermediaries ("the Register") would not contain records of disciplinary orders made more than five years ago.</p>	
014734 – 014934	Chairman Administration DoJ	<p>The Chairman referred to the Chinese version of proposed section 34R, and commented that the term "聯機" was rarely seen in other legislation. The Chairman recalled that during the scrutiny of the Securities and Futures (Amendment) Bill 2011, the Administration agreed to replace the term "聯機" with "互聯網". The Administration was requested to consider rephrasing proposed section 34R by using the term "Internet" ("互聯網") instead of "on-line record" ("聯機紀錄").</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
014935 – 015124	Administration Mr IP Wai-ming	<p>Noting that the word "must" was used in proposed section 34R, Mr IP enquired whether the public's right to access the hardcopy of the Register would be affected. The Administration advised that proposed section 34R only specified that the online version of the Register must be provided, and did not exclude the provision of the Register through other avenues.</p>	
015125 – 015652	Administration	<p><i>34T. Registration as principal intermediary and related matters</i></p>	
015653 – 015719	Mr CHAN Kin-por Administration	<p>Mr CHAN enquired whether the Bill specified a maximum number of subsidiary intermediaries that could be subject to the supervision of a responsible officer ("RO"). The Administration replied in the negative and advised that the Bill specified that a PI must appoint at least one RO.</p>	

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015720 – 015909	Chairman Administration	<p>The Administration remarked that it would be necessary to amend the relevant regulations under MPFSO to prescribe the application fee mentioned in proposed section 34T(3)(b), and such amendments would be subsidiary legislation subject to the scrutiny of the Legislative Council.</p> <p>In reply to the Chairman's enquiry, the Administration advised that the arrangements for the making of regulations under MPFSO and amendments to such regulations were provided for in the existing MPFSO.</p>	
015910 – 015949	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
16 May 2012