

立法會
Legislative Council

LC Paper No. CB(1)1900/11-12
(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**

**Fifth meeting on
Tuesday, 20 March 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon WONG Ting-kwong, BBS, JP (Chairman)
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 CHAN Kin-por, JP
Hon WONG Sing-chi
Hon Alan LEONG Kah-kit, SC

Members absent : Hon LEE Cheuk-yan
Hon Cyd HO Sau-lan
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP

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

Clause-by-clause examination of the Bill (starting with section 34U of clause 13)

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

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

LC Paper No. CB(1)1331/11-12(01) — Letter dated 22 February 2012 from the Administration in response to Assistant Legal Adviser's letter on Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011)

Discussion

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

Admin

Follow-up actions to be taken by the Administration

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

- (a) clarify the relationship among "principal intermediary" ("PI"), "subsidiary intermediary" ("SI") and "responsible officer" ("RO") as defined in the Bill, and advise whether a person could be a PI, a SI and a RO at the same time;
- (b) elaborate the criteria that MPFA would adopt in determining compliance with respect to "sufficient authority" and "sufficient resources and support" in proposed section 34W(3)(b), and advise whether more concrete criteria would be laid down for the purpose of this provision;
- (c) clarify whether the RO of a PI would be responsible for misconduct committed by SIs attached to the PI, and if so, the sanctions that may be imposed on the RO;
- (d) provide information on the expected processing time for the registration of PIs and SIs and approval of ROs, assuming that the applicants have submitted all the necessary information for processing their applications;
- (e) refine the heading of proposed section 34Y to better reflect the scope of the section;

- (f) explore means through which employers and scheme members will easily know which frontline regulator ("FR") has been assigned to an MPF intermediary;
- (g) review the Chinese text of the heading of Division 5;
- (h) review the offence provision under proposed section 34ZI; and
- (i) consider adding a requirement that a registered intermediary should keep records on his fulfillment of the conduct requirements stipulated in proposed section 34ZL(1)(a) to (h); and that such records should be made available for inspection by the FR concerned and be available to clients of the intermediary as appropriate.

II Any other business

Date of next meeting

3. The Chairman reminded members that the next two meetings would be held on 26 March 2012 and 29 March 2012. He also remarked that if the Council meeting of 28 March 2012 needed to be resumed in the morning of 29 March 2012 to continue unfinished business, the Bills Committee meeting on 29 March 2012 would have to be cancelled.

4. There being no other business, the meeting ended at 10:38 am.

Council Business Division 1
Legislative Council Secretariat
16 May 2012

**Proceedings of the
Bills Committee on Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011
Fifth meeting on Tuesday, 20 March 2012, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000238 – 000403	Chairman	Opening remarks	
000404 – 000645	Administration	<p><u>Clauses-by-clause examination of the Bill</u></p> <p><u>Clause 13 – Part IVA added</u></p> <p>Division 4—Registration of Intermediaries and Approval of Responsible Officers</p> <p><i>34U. Registration as subsidiary intermediary</i></p>	
000646 – 000812	Chairman Administration	<p>The Chairman referred to proposed section 34U(4)(c) and asked under what circumstances the qualification of the principal applicant as a Type B regulatee would be suspended. The Administration advised that if a regulatee committed misconduct in his primary business, the industry regulator concerned would impose sanction on the regulatee. The type of sanction to be imposed depended on the seriousness of the misconduct. If the misconduct committed was not serious to the extent that required revocation, the industry regulator might suspend the qualification of the regulatee.</p> <p>The Chairman enquired whether it was possible that a regulatee's qualification was suspended when he was being investigated for alleged misconduct in his primary business. The Administration advised that in general, an industry regulator would only impose disciplinary sanction, which might be suspension of qualification, on a regulatee after the investigation concerned had been completed.</p>	
000813 – 001452	Ms LI Fung-ying Administration Chairman Department of Justice (DoJ) of	Ms LI remarked that the term of "主要申請人" ("principal applicant") was not easy to understand and might be easily confused with the term "主事中介人" ("principal intermediary") ("PI"). She asked whether the Administration would consider using an alternative term to replace "principal applicant".	

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		DoJ advised that proposed sections 34T and 34U were about registration as PI and registration as subsidiary intermediary ("SI") respectively. Each of the application for registration would involve a principal applicant and some accompanying applications. As some of the subsections of proposed sections 34T and 34U applied to the principal applicant only, the term "principal applicant" was used.	
001453 – 001703	Administration	<i>34U. Registration as subsidiary intermediary</i>	
001704 – 002512	Ms LI Fung-ying Administration Mr CHAN Kin-por	<p>Ms LI noted that a person applying for registration as a SI must be employed by a PI and had the support of the PI for his application. Ms LI expressed concern that the person might have difficulty in registering as an SI if his relation with the employer (i.e. the PI) was poor. Ms LI was also concerned that the arrangement would create an unnecessary barrier for new entrants to the industry.</p> <p>The Administration advised that under the proposed statutory regulatory regime, a PI was required to establish an internal control mechanism and the SIs attaching to the PI were subject to the control mechanism. As different PIs would offer different Mandatory Provident Fund ("MPF") products, it was necessary for a PI to ensure that the SIs attached to it understand its MPF products before conducting sales and marketing activities. Thus, to ensure effective regulation of SIs, it was necessary for a person to be attached to a PI in order to be eligible to apply for registration as an SI.</p> <p>Mr CHAN concurred with the Administration's view.</p>	
002513 – 002634	Administration	<i>34V. Approval of attachment of subsidiary intermediary to principal intermediary</i>	
002635 – 002832	Chairman Administration	<p>The Chairman enquired about the arrangements for an SI planning to attach to more than one PI.</p> <p>The Administration advised that the person concerned needed to apply for registration as an SI once only. However, separate applications had to be made for attachment to each of the PIs</p>	

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		concerned. An SI must not conduct regulated activities for a PI unless his application for attachment to that PI had been approved.	
002833 003018	Administration	<i>34W. Approval as responsible officer</i>	
003019 003527	Chairman Administration Mr CHAN Kin-por Mandatory Provident Fund Schemes Authority (MPFA)	<p>The Chairman asked whether a responsible officer ("RO") could be an SI simultaneously.</p> <p>The Administration replied that a RO must be an SI himself and being attached to the PI.</p> <p>Mr CHAN remarked that currently a person conducting sales and marketing activities of MPF products must obtain a registration number from Mandatory Provident Fund Schemes Authority ("MPFA") first. Mr CHAN enquired whether the RO had to obtain a registration number from MPFA.</p> <p>MPFA confirmed that a person would need to be registered as a SI in order to be approved as an RO. For conducting regulated activities, that person must obtain a registration number first as an SI. His concurrent capacity as an RO was on supervision which was separate from sales and marketing business.</p>	
003528 005404	Mr KAM Nai-wai Administration Chairman MPFA	<p>Mr KAM asked whether a person could be a PI, an SI and an RO at the same time. The Administration advised that:</p> <ul style="list-style-type: none"> (a) the Bill specified that if a person had the qualification of both a Type A regulatee and a Type B regulatee, that person's application must be for registration as a PI; (b) a PI could not be an SI at the same time. However, an RO must be an SI and being attached to the relevant PI; and (c) an SI attaching to a PI would be eligible for appointment by the PI as its RO, subject to his meeting the relevant statutory criteria and MPFA's approval. <p>Mr KAM requested the Administration to provide the following information in writing:</p>	The Administration to take action as

Time Marker	Speaker	Subject(s)	Action Required
		<p>(a) clarification on the relationship among "PI", "SI" and "RO" as defined in the Bill, and advise whether a person could be a PI, a SI and a RO at the same time;</p> <p>(b) elaboration on the criteria that MPFA would adopt in determining compliance with respect to "sufficient authority" and "sufficient resources and support" in proposed section 34W(3)(b), and advise whether more concrete criteria would be laid down for the purpose of this provision;</p> <p>(c) clarification on whether the RO of a PI would be responsible for misconduct committed by SIs attached to the PI, and if so, the sanctions that might be imposed on the RO; and</p> <p>(d) the expected processing time for the registration of PIs and SIs and approval of ROs, assuming that the applicants had submitted all the necessary information for processing their applications.</p> <p>In reply to the Chairman's enquiry, the Administration advised that the term "主事中介機構" was not used for PI because insurance agents (保險代理人) who are to be registered as SIs could either be a natural person or an institution.</p>	<p>per paragraph 2 of the minutes.</p>
005405 – 005511	Administration	<p><i>34X. Authority may impose conditions on registration or approval</i></p>	
005512 – 011055	<p>Chairman Administration Ms LI Fung-ying Administration MPFA DoJ</p>	<p>The Chairman enquired whether the conditions imposed by MPFA under proposed section 34X would affect the qualifications of the existing registered MPF intermediaries. The Administration and MPFA replied in the negative and advised that such conditions would only apply to individual or a class of MPF intermediaries taking into account their circumstances as determined by MPFA instead of having general application to all MPF intermediaries.</p> <p>Ms LI pointed out that the heading of the proposed section 34Y seemed to have a broad scope of application, but the provisions under</p>	

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		<p>proposed section 34Y were only concerned with certain situations of the processing of applications.</p> <p>The Administration advised that proposed section 34Y served to address issues of procedural fairness. Consideration would be given to improving the heading of this proposed section.</p> <p>Ms LI suggested that the Administration refine the heading of proposed section 34Y to better reflect the scope of the section. The Chairman concurred with Ms LI.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
011056 – 011451	Administration	<p><i>34Y. Procedural requirement for processing application etc.</i></p> <p><i>34Z. Assignment of frontline regulator for principal intermediary</i></p>	
011452 – 011751	Ms LI Fung-ying Administration	<p>In reply to Ms LI's enquiry, the Administration advised that information on the frontline regulator ("FR") assigned to a PI would be available in the Register of intermediaries ("the Register"). The Administration also confirmed that decisions on the assignment of FRs to PIs would be solely made by MPFA.</p>	
011752 – 012429	Mr KAM Nai-wai Administration MPFA	<p>Mr KAM enquired how members of the public could know which FR had been assigned to an MPF intermediary. The Administration advised that such information would be set out in the Register. MPFA would provide convenient access of the Register by the public, including uploading the Register to its website. The public could use the registration number of an MPF intermediary to check which FR had been assigned to supervise the intermediary.</p> <p>Mr KAM remarked that the Administration should explore means through which employers and scheme members would easily know which FR had been assigned to supervise an MPF intermediary. In this connection, the Administration could consider reflecting such information in the registration numbers of MPF intermediaries.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>

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		<p>MPFA remarked that MPF intermediaries were required to include their registration number in their business cards. While MPFA would consider Mr KAM's suggestion, it pointed out that the implementation of the suggestion might have practical difficulties.</p> <p>The Chairman enquired whether an MPF intermediary was required under the Bill to disclose which FR had been assigned to it and the Administration replied that there was no such statutory requirement.</p>	
012430 – 012748	Mr CHAN Kin-por MPFA Chairman	<p>Mr CHAN queried whether it was practical and worthwhile to pursue the suggestion of amending the registration numbers of MPF intermediaries in order to indicate the assigned FRs. He pointed out that under the suggested arrangement, all existing MPF intermediaries would have to change their business cards. He also pointed out that the main line of business of most MPF intermediaries was straightforward and the number of MPF intermediaries whose main line of business straddled more than one industry might be very small. MPFA advised that the latter type of MPF intermediaries mentioned by Mr CHAN accounted for less than 1% of MPF intermediaries.</p> <p>The Chairman remarked that the views of Mr KAM Nai-wai and Mr CHAN should both be considered.</p>	
012749 – 012829	Administration	<p><i>34ZA. Assignment of frontline regulator for subsidiary intermediary</i></p> <p><i>34ZB. Assignment of frontline regulator for responsible officer</i></p>	
012830 – 012900	Mr KAM Nai-wai Administration	In reply to Mr KAM's enquiry, the Administration confirmed that the same FR would be assigned to supervise a PI and its SIs and RO(s).	
012901 – 013111	Administration	<p>Division 5—Change in Status or Circumstances after Registration or Approval</p> <p><i>34ZC. Principal intermediary ceasing to be Type A regulatee etc.</i></p>	

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		<i>34ZD. Principal intermediary without responsible officer</i>	
013112 – 013234	Ms LI Fung-ying DoJ	<p>Ms LI referred to the heading of Division 5 and enquired about the difference between the terms "狀況" ("status") and "情況" ("circumstances").</p> <p>DoJ advised that a change in "status" referred to the scenario in which an existing MPF intermediary was no longer qualified to be a registered MPF intermediary while a change in "circumstance" referred to other scenarios, e.g. a scenario in which a PI no longer had an RO. DoJ undertook to review the Chinese text of the heading of Division 5.</p>	The Administration to take action as per paragraph 2 of the minutes.
013235 – 013449	Mr CHAN Kin-por MPFA	<p>Mr CHAN enquired about the arrangement for the scenario in which the RO of a PI took sick leave or died. MPFA replied that to cater for such possibilities, the "Guide to Registration" compiled by MPFA would encourage a PI to appoint more than one person as its ROs.</p> <p>The Chairman enquired whether a PI appointing more than one person as its ROs had to assign ranking to such persons. MPFA advised that there was no such requirement in the Bill.</p>	
013450 – 014210	Administration Mr CHAN Kin-por Ms LI Fung-ying MPFA	<p><i>34ZE. Other change in relation to principal intermediary</i></p> <p><i>34ZF. Subsidiary intermediary ceasing to be Type B regulatee etc.</i></p> <p>The Administration remarked that taking into account the relevant practice of the insurance industry, it would move a Committee Stage amendment ("CSA") to proposed section 34ZF to the effect that if a registered SI lost one of his Type B qualifications, his attachment to the relevant PI would cease to have effect but he would lose his registration status as an SI only if and when he had not been attached to any PI for over 90 days. In addition, if the SI concerned was attached to a PI again within three years, he would not be required to take the qualifying examination for registration.</p>	

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		<p>Ms LI enquired whether the industry had been consulted on and agreed with the proposed arrangement, and whether the Administration had taken into account the fact that the employment situation of the financial sector fluctuated greatly.</p> <p>MPFA advised that the Securities and Futures Commission had implemented similar arrangements, and the industry had been consulted on the proposed arrangements and there were no adverse reactions to the proposal.</p>	
014211 – 014446	Administration	<p><i>34ZG. Subsidiary intermediary without principal intermediary</i></p> <p><i>34ZH. Subsidiary intermediary whose principal intermediary having registration revoked</i></p> <p><i>34ZI. Other change in relation to subsidiary intermediary</i></p>	
014447 – 014619	Chairman Administration	<p>The Chairman noted that proposed section 34ZI(3) was an offence provision and enquired whether the Administration had consulted the industry on proposed section 34ZI(3).</p> <p>The Administration replied as follows:</p> <p>(a) similar offence provisions existed in the legislation of other financial regulatory regimes; and</p> <p>(b) the Administration had not received comments from the industry regarding proposed section 34ZI(3) since publication of the Bill.</p>	
014620 – 015222	Mr CHAN Kin-por Administration DoJ	<p>In response to Mr CHAN's enquiry, the Administration confirmed that the sanction under proposed section 34ZI(3) would result in a criminal record.</p> <p>Mr CHAN considered that changes in relation to an SI should be reported by the PI to which the SI attached. There was also no similar requirement in the existing administrative regulatory arrangements. Mr CHAN queried the necessity of proposed section 34ZI(3). The Administration replied that proposed section 34ZI covered information specific to an SI and the SI</p>	

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		<p>concerned should be required to report the matters specified in proposed section 34ZI(1) such that MPFA would have up-to-date information about the SI.</p> <p>Mr CHAN considered that it was probable that SIs might fail to report a matter specified in proposed section 34ZI(1) inadvertently, particularly a change in address or contact details. The Administration responded that it was necessary for an SI to report any change in his address or contact details so that he could be contacted if MPFA received a complaint against him. The Administration also confirmed that the proposed section was a new statutory requirement since the existing regulation of MPF intermediaries was conducted through administrative means.</p> <p>Mr CHAN remarked that he would consult the industry on the requirement and sanction under proposed section 34ZI. The Administration was also requested to review the offence provision under proposed section 34ZI. The Chairman remarked that the Bills Committee would revisit the issue at a future meeting.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
015223 – 015352	Administration	<p><i>34ZJ. Responsible officer no longer attached to principal intermediary</i></p> <p><i>34ZK. Responsible officer ceasing to have sufficient authority within principal intermediary etc.</i></p>	
015353 – 015549	Mr KAM Nai-wai Administration	<p>Mr KAM enquired why no sanction was provided under proposed section 34ZJ in respect of ROs.</p> <p>The Administration replied that an RO must himself be an SI. Thus the requirements and sanctions specified in proposed section 34ZI were applicable to ROs.</p>	
015550 – 015840	Administration	<p>Division 6—Conduct and Other Requirements for Intermediaries and Responsible Officers</p> <p><i>34ZL. Conduct requirements for registered intermediary</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
015841 – 020734	Mr KAM Nai-wai Administration Chairman	<p>Mr KAM made the following remarks:</p> <ul style="list-style-type: none"> (a) the Administration should elaborate how certain terms such as "best interests", "care" and "appropriate" in proposed sections 34ZL(1)(a), 34ZL(1)(b) and 34ZL(1)(d) respectively would be interpreted legally; and (b) a registered MPF intermediary should be required to keep a written record of his fulfillment of the conduct requirements. The clients of the MPF intermediary should be allowed to have access to such written record. <p>The Administration replied as follows:</p> <ul style="list-style-type: none"> (a) MPFA would provide guidelines on how the conduct requirements could be fulfilled; and (b) an SI would be required to provide certain records such as records of risk assessments to his clients. He would also be required to keep certain records for inspection by the FR concerned. <p>Mr KAM remarked that MPFA should provide the draft guidelines to the Bills Committee when it was available.</p> <p>The Chairman enquired about the "rules" referred in proposed section 34ZL(1)(h). The Administration advised that the purpose of proposed section 34ZL(1)(h) was to provide flexibility in the future and there were no such "rules" at the moment.</p> <p>The Chairman enquired whether the term "conduct" ("操守") was used in other legislation. The Administration advised that under SFO, there were business conduct rules which were subsidiary legislation.</p> <p>Mr KAM requested the Administration to consider adding a requirement that a registered intermediary should keep records on his fulfillment of the conduct requirements stipulated in proposed section 34ZL(1)(a) to (h); and that such records should be made available for</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>

Time Marker	Speaker	Subject(s)	Action Required
		inspection by the FR concerned and be available to clients of the intermediary as appropriate.	
020735 – 020848	Administration	<i>34ZL. Conduct requirements for registered intermediary</i>	
020849 – 020924	Chairman	The Chairman remarked that the next two meetings would be held on 26 March 2012 and 29 March 2012 respectively.	

Council Business Division 1
Legislative Council Secretariat
16 May 2012