

立法會
Legislative Council

LC Paper No. CB(1)2404/11-12
(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**

**Eighth meeting on
Friday, 27 April 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon WONG Ting-kwong, BBS, JP (Chairman)
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 LEE Cheuk-yan
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 meetings

(LC Paper No. CB(1)1697/11-12(01) — Summary of views of organizations and individuals on the Bill and the Administration's response

LC Paper No. CB(1)1697/11-12(02) — Letter from the Life Underwriters Association of Hong Kong Limited to the Mandatory Provident Fund Schemes Authority (Chinese version only)

LC Paper No. CB(1)1697/11-12(03) — Letter dated 25 April 2012 from the Mandatory Provident Fund Schemes Authority in response to the submission from the Life Underwriters Association of Hong Kong Limited (Chinese version only))

Clause-by-clause examination of the Bill (starting with section 5 of proposed Schedule 5B under clause 21)

(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

LC Paper No. CB(1)1331/11-12(01) — Letter dated 22 February 2012 from the Administration in reply to Assistant Legal Adviser's letter

LC Paper No. CB(1)1643/11-12(07) — Letter dated 5 April 2012 from Assistant Legal Adviser to the Administration)

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) review the proposed definition of the term "authorized financial institution" (認可財務機構) in the Bill in conjunction with the definition of the same term under Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) ("the Regulation"), and review the appropriateness of having the same term defined in the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO") as well as in the Regulation;
- (b) consider adding footnotes at appropriate places in Divisions 4 and 5 of the Bill to remind readers to refer to the transitional arrangements provided under proposed Schedule 5B;
- (c) review the appropriateness of waiving the fees proposed under clause 27(2) at the initial stage of the implementation of the new regulatory regime, taking into account members' views expressed at the meeting;
- (d) consider the suggestion of replacing the word "Nil" with "\$0" under the "Amount" column in respect of the fees items proposed under clause 27(2) as well as the existing fees items in Schedule 1 of the Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485 sub leg. C); and
- (e) clarify whether the policy of charging fees based on the cost-recovery principle is reflected in the existing MPFSO and the Bill.

III Any other business

Date of next meeting

3. The Chairman reminded members that the next meeting would be held on 10 May 2012 at 4:30 pm.
4. There being no other business, the meeting ended at 9:43 am.

**Proceedings of the
Bills Committee on Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011
Eighth meeting on Friday, 27 April 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000540 – 000659	Chairman	Opening remarks	
000700 – 000808	Chairman Administration	Briefing by the Administration on LC Paper No. CB(1)1697/11-12(01).	
000809 – 000934	Chairman Mandatory Provident Fund Schemes Authority ("MPFA")	Briefing by the Administration and MPFA on LC Papers Nos. CB(1)1697/11-12(02) and (03).	
000935 – 001040	Chairman ALA4	The Chairman remarked that the Administration had provided a paper, which was tabled at the meeting, on its response to an issue raised at the meeting on 15 March 2012 (i.e. LC Paper No. CB(1)1643/11-12(01)). ALA4 suggested that the paper be discussed at the next meeting. Members agreed.	
001041 – 001417	Administration	<u>Clause by Clause Examination of the Bill</u> <u>Clause 21 – Schedule 5B added</u> <i>Schedule 5B Transitional and Saving Provisions for Part IVA</i>	
001418 – 001640	ALA4 Department of Justice (DoJ)	At ALA4's request, the Administration would review the proposed definition of the term "authorized financial institution" (認可財務機構) in the Bill in conjunction with the definition of the same term under Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) ("MPFSGR"), and review the appropriateness of having the same term defined in the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO") as well as in MPFSGR.	The Administration to take action as per paragraph 2 of the minutes.
001641 – 002015	Administration	<u>Clause 21 – Schedule 5B added</u> <i>Schedule 5B Transitional and Saving Provisions for Part IVA</i>	

Time Marker	Speaker	Subject(s)	Action Required
002016 – 002433	Ms LI Fung-ying DoJ Chairman Administration	<p>Noting that sections 8 and 9 of proposed Schedule 5B would replace a number of proposed sections in earlier parts of the Bill during the transitional period, Ms LI suggested adding footnotes/remarks at the proposed sections concerned to provide cross references to proposed Schedule 5B. The Chairman concurred with Ms LI.</p> <p>DoJ agreed to consider adding editorial notes at appropriate places of the future enacted amendment ordinance to remind readers to refer to the transitional arrangements provided under new Schedule 5B. The Administration added that MPFA could inform the regulated persons concerned of the relevant information through administrative notices.</p>	The Administration to take action as per paragraph 2 of the minutes.
002434 – 003300	Administration	<p><u>Clause 21 – Schedule 5B added</u></p> <p><i>Schedule 5B Transitional and Saving Provisions for Part IVA</i></p> <p>The Administration remarked that it would move a Committee stage amendment (CSA) to section 9 of proposed Schedule 5B.</p> <p><u>Clause 22 – Schedule 6 amended (decisions which may be the subject of an appeal)</u></p> <p>Part 3</p> <p>Consequential and Related Amendments</p> <p>Division 1—Amendments to Insurance Companies Ordinance (Cap. 41)</p> <p><u>Clause 23 – Section 4A amended (functions of Insurance Authority)</u></p> <p>Division 2—Amendments to Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A)</p> <p><u>Clause 24 – Section 153 amended (duty of approved trustee on being notified of election)</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
003301 – 003456	Mr IP Wai-ming Administration ALA4	Mr IP noted out that some amendments shown in the mark-up copy of the Bill (LC Paper No. CB(1)939/11-12(01)) were not present in the Bill. ALA4 explained that such amendments were made by the Mandatory Provident Fund Schemes (Amendment) Ordinance 2009, which laid the foundation of the Employee Choice Arrangement ("ECA") and had been passed by the Legislative Council ("LegCo"). As the Mandatory Provident Fund Schemes (Amendment) Ordinance 2009 and the Bill had the same commencement date, the amendments contained in the former were included in the mark-up copy for members' reference.	
003457 – 003644	Ms LI Fung-ying Administration	In response to Ms LI's enquiry, the Administration advised that MPFA would not charge fees for registration of MPF intermediaries and use of the E-platform in the initial stage of the implementation of the ECA. The determination of the fee levels in future would be subject to the negative vetting procedure of LegCo when the relevant subsidiary legislation was introduced into LegCo for scrutiny.	
003645 – 003854	Administration	<p><u>Clause 25 – Section 206A added</u></p> <p><i>206A. How documents are to be served for purposes of section 153(1)</i></p> <p><u>Clause 26 – Schedule 4 amended (financial penalties)</u></p>	
003855 – 004028	Mr CHAN Kin-por MPFA	Mr CHAN enquired and the Administration confirmed that relevant stakeholders (e.g. MPF trustees) had been consulted on the proposed financial penalties set out in clause 26 of the Bill.	
004029 – 004320	Administration	<p>Division 3—Amendments to Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485 sub. leg. C)</p> <p><u>Clause 27 – Schedule 1 amended (prescribed fees)</u></p> <p>The Administration remarked that it would some textual CSAs to clause 27.</p>	

Time Marker	Speaker	Subject(s)	Action Required
004321 – 004600	Ms LI Fung-ying DoJ	<p>Regarding the fees items proposed under clause 27(1), Ms LI queried whether it would be more appropriate to use the expression word "Temporarily Nil" (暫時無) instead of "Nil" to reflect that the fee waiver was only a temporary arrangement. Ms LI was concerned that the present drafting might add a hurdle when the fees were to be charged in future.</p> <p>DoJ responded that legislation had to be precise and the use of the word "Nil" would be more appropriate. Besides, the amounts of fees could be amended through the relevant legislative procedures.</p>	
004601 – 005057	Mr IP Kwok-him DoJ MPFA Administration	<p>Mr IP enquired why fee items with "Nil" amount needed to be included in the Bill. DoJ advised that the Schedules of the Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485C) ("MPFSFR") contained fee items with "Nil" amount, and such items were present so that the fee amounts could be amended when needed by introducing relevant subsidiary legislation into LegCo.</p> <p>Mr IP enquired whether the following understanding was correct: clause 27 sought to provide the legal basis for the fees specified therein, and the fee waiver was a policy decision. DoJ responded that decisions on fee levels were policy matters to be determined by the relevant policy bureau and MPFA.</p> <p>Mr IP and the Chairman enquired whether the fee waiver was MPFA's policy decision. MPFA responded that certain fees would be waived in the early stage of the implementation of ECA to facilitate smooth transition from the existing administrative regulatory arrangements to the proposed statutory regime. The fee levels might be revised later if necessary and relevant subsidiary legislation would then be introduced into LegCo.</p> <p>Mr IP suggested that the Administration/MPFA consider charging a nominal amount for the proposed fee items with "Nil" amount. MPFA undertook to give consideration to the suggestion.</p>	

Time Marker	Speaker	Subject(s)	Action Required
005058 – 005622	Mr IP Wai-ming MPFA Administration Chairman	<p>Mr IP suggested that the Administration/MPFA consider either specifying a nominal amount for the fees or specifying the timeframe for the fee waiver in the Bill so as to reduce controversies when the fees were regularized in future.</p> <p>MPFA reiterated that certain fees would be waived in the early stage of implementation of ECA to facilitate the transition from the existing administrative regulatory arrangements to the proposed statutory regime. MPFA would nevertheless consider the suggestion of charging nominal fees.</p> <p>The Administration added that both the policy documents and consultation documents published before the introduction of the Bill had clearly stated that: (a) the registration fees and the fee for use of the E-platform would temporarily be waived; and (b) the charging of such fees would be made on a cost-recovery basis and through the introduction of subsidiary legislation into LegCo. MPFA had also clearly indicated such arrangement in its consultation with the industry. Besides, as the fee levels were to be charged on a cost-recovery basis, MPFA could only determine the fee levels based on the actual costs incurred after the implementation of the ECA.</p>	
005623 – 005800	Chairman Administration	The Chairman requested the Administration to consider replacing the word "Nil" with "\$0" under the "Amount" column in respect of the fees items proposed under clause 27(2) as well as the existing fees items in Schedule 1 of MPFSFR.	The Administration to take action as per paragraph 2 of the minutes.
005801 – 010304	Mr IP Kwok-him Administration Chairman DoJ	<p>Mr IP enquired whether it was specified in MPFSO or the Bill that (a) fees would be charged on a cost-recovery basis; and (b) the waiving of the relevant fees was temporary.</p> <p>The Administration replied as follows:</p> <p>(a) the principle of charging fees on a cost-recovery basis was not specified in existing legislation or the Bill, but had been stated in the policy documents; and</p> <p>(b) the Bill did not include any provision regarding the duration of the fee waiver;</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>In response to Mr IP's enquiry about the legal basis for future changes in fee levels, the Administration advised that the Bill empowered MPFA to charge relevant fees such as the registration fee and the fee for the use of the E-platform. Future changes in fee levels would be made through the introduction of subsidiary legislation into LegCo.</p> <p>Mr IP expressed concern that MPFA might have too much discretion in determining the fee levels if the cost-recovery principle was not stipulated in legislation.</p> <p>The Chairman remarked that according to his understanding, for various Government fees, the "cost-recovery" principle was adopted as a matter of policy and the principle was not specified in legislation.</p> <p>The Administration responded that the arrangement mentioned by the Chairman was adopted under the existing statutory regulatory regimes for various financial services.</p> <p>In response to Mr IP's enquiry, DoJ remarked that general interpretation of the term "fee" was "not higher than cost".</p> <p>The Administration was requested to clarify whether the policy of charging fees based on the cost-recovery principle was reflected in the existing MPFSO and the Bill.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
010305 – 010514	Mr IP Wai-ming Chairman	<p>Mr IP said that if certain proposed fees in the Bill were waived at the initial stage of the implementation of the new regulatory regime, there might be great controversies when the Administration subsequently introduced subsidiary legislation into LegCo to charge the fees. As such, he suggested the fees be charged at a reasonable level when the new regulatory regime commenced operation. He also opined that the operation of MPFA was funded by public money, which should not be used to subsidize the operational costs of MPF intermediaries and trustees.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration was requested to review the appropriateness of waiving the fees proposed under clause 27(2) at the initial stage of the implementation of the new regulatory regime, taking into account members' views expressed at the meeting.</p>	<p>The Administration to take action as per paragraph 2 of the minutes.</p>
010515 – 010609	Mr IP Kwok-him DoJ	<p>Mr IP remarked that he agreed with the Chairman's suggestion of replacing the word "Nil" with "\$0" for relevant items in the Bill. DoJ advised that under the existing MPFSFR, the word "Nil" was used for a fee item. Mr IP remarked that the Administration might consider replacing the word "Nil" with "\$0" for the existing fee item.</p>	
010610 – 010856	ALA4 Administration DoJ	<p><u>Clause 28 – Schedule 2 amended (prescribed fees)</u></p> <p>ALA4 enquired whether the term "designated electronic system" in clause 28 of the Bill was the same as the one set out in proposed section 6KA of the Bill.</p> <p>The Administration responded that ALA4 had raised the same comment in her letter to the Administration. The Administration would review the wording of relevant clauses to maintain consistency. The Administration also confirmed that the term "designated electronic system" in the clauses mentioned by ALA4 referred to the same electronic system. DoJ supplemented that clause 28 referred to the fee charged for the electronic system in accordance with section 153(1B) of MPFSGR.</p>	
010857 – 010932	Administration	<p>Division 4—Amendment to Mandatory Provident Fund Schemes (Amendment) Ordinance 2009 (11 of 2009)</p> <p><u>Clause 29 – Section 2 amended (commencement)</u></p>	
010933 – 011049	Chairman Clerk	<p>In response to the Chairman's enquiry, the Clerk advised on the outstanding matters to be dealt with by the Bills Committees.</p> <p>In response to the Chairman's enquiry, the Administration advised that its target was for the Bills Committee to complete the scrutiny of the Bill in May 2012 and have the Second Reading of the Bill resumed in early June 2012.</p>	

Time Marker	Speaker	Subject(s)	Action Required
011050 – 011257	Chairman Clerk Mr IP Kwok-him Administration	Date of next meeting Mr IP remarked the in choosing the dates of next meetings, the fact that some Council meetings might last over one day should be taken into account.	
011258 – 011421	Mr KAM Nai-wai Chairman Administration	Mr KAM remarked that he would put forward proposed CSAs for the Bills Committee's consideration at the next meeting. In response to the Chairman's enquiry, the Administration remarked that its proposed CSAs would be ready by 8 May 2012 or 9 May 2012.	

Council Business Division 1
Legislative Council Secretariat
24 July 2012