

立法會
Legislative Council

LC Paper No. CB(1)2104/99-00
(These minutes have been seen
by the Administration and
cleared with the Chairman)

Ref : CB1/SS/3/99/1

Subcommittee on
Mandatory Provident Fund Schemes Ordinance
(Amendment of Schedule 1) Notice 2000 and
Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2000

Minutes of the first meeting
held on Wednesday, 12 April 2000, at 8:30 am
in the Chamber of the Legislative Council Building

Members present : Hon Ronald ARCULLI, JP (Chairman)
Hon HO Sai-chu, SBS, JP
Hon LEE Cheuk-yan
Hon NG Leung-sing
Hon CHAN Yuen-han
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon Andrew CHENG Kar-foo
Hon FUNG Chi-kin

Members absent : Hon SIN Chung-kai
Hon Ambrose LAU Hon-chuen, JP

Public officers attending : **Financial Services Bureau**
Miss Susie HO
Deputy Secretary for Financial Services

Mandatory Provident Fund Schemes Authority

Mr Raymond TAM
Executive Director

Mr Gregory WILLIS
Legal Advisor

Department of Justice

Mr Geoffrey FOX
Senior Assistant Law Draftsman

Miss Shandy LIU
Senior Government Counsel

Clerk in attendance : Miss Salumi CHAN
Chief Assistant Secretary (1)5

Staff in attendance : Mr LEE Yu-sung
Senior Assistant Legal Adviser

Mr Matthew LOO
Senior Assistant Secretary (1)7

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I. Election of Chairman

Election of Chairman

Mr HO Sai-chu, the Member who had the highest precedence in the Legislative Council among the Members on the membership list of the Subcommittee, presided over the election of the Chairman.

2. Mr Ronald ARCULLI was nominated by Mr CHAN Kam-lam and the nomination was seconded by Mr Andrew CHENG. Mr Ronald ARCULLI was elected Chairman of the Subcommittee. He then took the chair.

Declaration of interests

3. The Chairman declared that he was a director of CEF Trustees Limited and Butterfield Trust (Hong Kong) Limited. Mr Bernard CHAN also declared that he was a director of Asia Commercial Bank (Trustee) Limited.

Late membership

4. The Chairman advised that Mr LEE Cheuk-yan had applied for late membership on the grounds that he had been out of town before the deadline for joining the Subcommittee. A letter from Mr LEE was tabled for members' information.

5. In accordance with House Rule 23, the Chairman accepted Mr LEE Cheuk-yan's application.

II. Meeting with the Administration

Briefing by the Administration

6. At the Chairman's invitation, Deputy Secretary for Financial Services (DSFS) briefed members on the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 1) Notice 2000 (the Amendment of Schedule 1 Notice) and the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2000 (the Amendment Regulation). In essence, DSFS advised that the Amendment of Schedule 1 Notice sought to amend Schedule 1 of the Mandatory Provident Fund Schemes Ordinance (MPFSO) (Cap. 485) to put it beyond doubt that only relevant employees (other than casual employees) who had been employed for a period of less than 60 days would be exempted from MPFSO, and that relevant employees who had been employed for not less than 60 days under a continuous contract would not be exempted. As regards the Amendment Regulation, it aimed at addressing the concern of the MPF industry over some of the provisions of the General Regulation which might give rise to operational problems.

Clause-by-clause examination of the Amendment of Schedule 1 Notice

7. Referring to the proposed amendment to item 7(1) of Part I of Schedule 1, the Chairman expressed concern about whether the term "is terminated" implied that an employer must take certain steps to achieve the termination of employment of the relevant employee. Senior Assistant Law Draftsman (SALD) appreciated the Chairman's concern and proposed that the term be replaced by "ceases". Members supported his proposal.

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8. Some members were concerned that the proposed amendment to item 7(1) might not achieve its purpose, and that the contribution requirement could still be circumvented, for example, in a situation where a relevant employee was employed by a company for 59 days and then by its subsidiary company or by the same company under a different name for another 59 days. They were also concerned that the relevant employers and employees might break up the contracts so as to avoid being caught by the definition of "continuous contract" provided under the Employment Ordinance (EO) (Cap. 57). DSFS advised that the relevant employees would then bear the risk of foregoing the benefits for employees employed under a continuous contract, such as paid holidays and annual leave, maternity leave, severance and long service payments etc. Mr Andrew CHENG suggested the Administration to consider improving the drafting of the proposed item 7(1), for example, by adding a subitem (c) to the effect that a relevant employee who had been employed by a company for more than a certain number of days in total within a year would not be exempted from MPFSO. DSFS undertook to provide a written response to address members' concern.

9. Referring to the close relationship between MPFSO and EO, Miss CHAN Yuen-han pointed out that EO was enacted more than 30 years ago and its legislative intent and provisions, such as the definition of "continuous contract", were not meant to cover the various employment issues that might arise from the implementation of the MPF system. She therefore called for a review of EO to address these issues. Mr LEE Cheuk-yan supported Miss CHAN's views. DSFS expressed reservation about the need of conducting the proposed review but agreed to review the operation of the MPF system after its full implementation in December 2000.

Clause-by-clause examination of the Amendment Regulation

Section 2 of the General Regulation

10. The Chairman considered it inappropriate to use the word "delegate" to refer to a subcustodian. In response, Executive Director of Mandatory Provident Fund Schemes Authority (ED/MPFA) undertook to consider the need to replace "delegate" with another word.

Section 7 of the General Regulation

11. The Chairman noted that the drafting of the proposed section 7(1)(b)(ii) was not in line with the definition of "net assets" in section 2 of the General Regulation. In response, SALD undertook to consider revising either the drafting of the proposed section 7(1)(b)(ii) or the definition of "net assets".

Sections 8, 11, 12, 31, 37, 44, 45, 46, 47 and 66 of the General Regulation

12. Members noted the Administration's proposed amendments to sections 8, 11,

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12, 31, 37, 44, 45, 46, 47 and 66 of the General Regulation.

Section 65 of the General Regulation

13. The Chairman drew members' attention to a submission dated 11 April 2000 from Clifford Chance, on behalf of 11 custodians/trustees, on section 65 and Schedule 3 of the General Regulation. DSFS advised that the Administration had discussed with the 11 custodians/trustees before but noted that they had raised some new points in the submission. She undertook to provide the Subcommittee with the Administration's response to the submission.

(Post-meeting note : The Administration's response was circulated to members vide LC Paper No. CB(1)1430/99-00(01) on 25 April 2000.)

14. Members agreed to examine section 65 after meeting with the representatives of the 11 custodians/trustees.

Proposed new section 66A of the General Regulation

15. The Chairman and Mr CHAN Kam-lam noted that under the proposed new section 66A, the approved trustee was required to ensure that a reasonable rate of interest was received for scheme assets placed on deposit. They considered that whether an interest rate was "reasonable" might be subject to debates, as different banks might offer different interest rates to different customers. DSFS advised that the proposed new section 66A was necessary to safeguard the interest of scheme members. Whilst members supported the Administration's policy intent, they saw the need to revise the drafting of the proposed new section 66A. Moreover, they did not consider it justified to make it a criminal offence for failure to comply with the requirement under the proposed new section. DSFS undertook to provide a written response to address members' concern.

(Post-meeting note : The Administration's response to address members' points of concern raised at the meeting was circulated to members vide LC Paper No. CB(1)1430/99-00(04) on 25 April 2000.)

III. Any other business

Arrangements for the second meeting

16. The Subcommittee agreed to meet the representatives of Clifford Chance and the 11 custodians/trustees, and the representatives of the Administration at the second meeting to be held on Wednesday, 26 April 2000 at 8:30 am.

17. There being no other business, the meeting ended at 10:30 am.

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25 September 2000