

立法會
Legislative Council

LC Paper No. CB(1)2106/99-00

(These minutes have been seen
by the Administration and
cleared with the Chairman)

Ref : CB1/SS/3/99/1

**Subcommittee on subsidiary legislation
relating to Mandatory Provident Fund Schemes**

**Minutes of the third meeting
held on Tuesday, 16 May 2000, at 4:30 pm
in the Chamber of the Legislative Council Building**

Members present : Hon Ronald ARCULLI, JP (Chairman)
Hon HO Sai-chu, SBS, JP
Hon NG Leung-sing
Hon CHAN Yuen-han
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon SIN Chung-kai
Hon Ambrose LAU Hon-chuen, JP

Members absent : Hon LEE Cheuk-yan
Hon Andrew CHENG Kar-foo
Hon FUNG Chi-kin

**Public officers
attending** : For items I to III
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 Greoffrey FOX
Senior Assistant Law Draftsman

Miss Shandy LIU
Senior Government Counsel

For item I

Education and Manpower Bureau

Miss Erica NG
Principal Assistant Secretary for Education and Manpower

Labour Department

Mrs Jennie CHOR
Assistant Commissioner for Labour

**Attendance by
invitation**

: **For item II**

**The Bank of Bermuda Limited & Bermuda Trust
(Far East) Limited**

Mr Simon P MACLEAN
Director, Operations

Butterfield Trust (Hong Kong) Limited

Mr Alastair E MURRAY
Managing Director

Citibank N.A.

Mr Anthony GALLIANO
Head, Asia Pacific Region

Mr Steven YEO
Regional Counsel, Transaction Services, Asia Pacific

Mr Howard SINGLETON
Vice President

Ms Margaret LAW
Assistant Vice-President

Deutsche Bank

Mr Woosup BJ CHUNG
Regional Business Manager

HSBC International Trustee Limited

Mr Philip G DUCKWORTH
Head, Corporate Trust Services

State Street Bank and Trust Company

Ms Lily Vanessa KWOK
Assistant Vice-President, Marketing and Sales

Standard Chartered Bank

Ms Linda CHOI
Senior Vice-President

Clifford Chance

Mr Mark SHIPMAN
Solicitor

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

Action

Members noted that the House Committee had referred on 5 May 2000 the following three Commencement Notices to the Subcommittee for consideration:

- (a) Mandatory Provident Fund Schemes Ordinance (80 of 1995) (Commencement) Notice 2000;
- (b) Provident Fund Schemes Legislation (Amendment) Ordinance 1998 (4 of 1998) (Commencement) Notice 2000; and
- (c) Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 Sub. Leg.) (Commencement) Notice 2000.

2. Members agreed that the Subcommittee be renamed as "Subcommittee on subsidiary legislation relating to Mandatory Provident Fund Schemes", and that the three Commencement Notices be discussed under agenda item III of the meeting.

I. Meeting with the Administration on the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 1) Notice 2000

(LC Paper No. CB(1)1569/99-00(01) — Administration's response to members' points of concern raised at the second meeting on 26 April 2000)

3. At the Chairman's invitation, Deputy Secretary for Financial Services (DSFS) briefed members on the Administration's response to members' points of concern raised at the second meeting on 26 April 2000.

4. On members' concern about the definition of "continuous contract" under the Employment Ordinance (EO) (Cap. 57), Principal Assistant Secretary for Education and Manpower (PASEM) pointed out that the need to extend the coverage of EO and to amend the definition of "continuous contract" had been fully discussed at the meeting of the Legislative Council Panel on Manpower on 27 January 2000. The Administration maintained the view that there was no need to extend the coverage of EO and to amend the definition of "continuous contract".

5. As regards some members' view that a review of EO should be conducted to address the various employment issues that might arise from the implementation of the

Mandatory Provident Fund (MPF) system, DSFS advised that the Administration did not see the need to conduct such a review. However, the Administration would review the operation of the MPF system after its full implementation in December 2000. Responding to the Chairman, DSFS and PASEM confirmed that the Financial Services Bureau and the Education and Manpower Bureau would monitor closely the implementation of the system.

II. Meeting with the Administration and representatives of a group of custodians/trustees on the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2000

- (LC Paper No. CB(1)1569/99-00(01) — Administration's response to members' points of concern raised at the second meeting on 26 April 2000
- LC Paper No. CB(1)1430/99-00(02) — Second submission dated 20 April 2000 from Clifford Chance
- LC Paper No. CB(1)1569/99-00(02) — Administration's response to the second submission dated 20 April 2000 from Clifford Chance
- LC Paper No. CB(1)1569/99-00(03) — Third submission dated 10 May 2000 from Clifford Chance
- LC Paper No. CB(1)1430/99-00(03) — Submission dated 21 April 2000 from Baker & McKenzie
- LC Paper No. CB(1)1569/99-00(04) — Administration's response to the submission dated 21 April 2000 from Baker & McKenzie)

6. The Chairman welcomed the group of custodians/trustees (the Group) comprising representatives of the Bank of Bermuda Limited & Bermuda Trust (Far East) Limited, Butterfield Trust (Hong Kong) Limited, Citibank N.A., Deutsche Bank, HSBC International Trustee Limited, State Street Bank and Trust Company and Standard Chartered Bank, and the representative of Clifford Chance to the meeting.

7. At the Chairman's invitation, DSFS briefed members on the Administration's responses to members' points of concern raised at the second meeting and to the second submission from Clifford Chance.

Permitted encumbrance of scheme assets
(Section 65 of the General Regulation)

8. Members noted the Administration's response but still considered that the drafting of section 65(2)(b)(iii) of the General Regulation did not reflect the policy intent that the borrowing period could be extended for reasons beyond the control of the custodians or subcustodians. The Chairman reiterated his view expressed at the

Action

second meeting that the extension of the borrowing period might not satisfy the requirement that "the borrowing is not part of a series of borrowings" under section 65(2)(b)(ii). In response, DSFS and Senior Assistant Law Draftsman undertook to revise the drafting of section 65(2) and make consequential amendments to section 3 of Schedule 3.

Indemnity for indirect losses

(Section 5 of Schedule 3 of the General Regulation)

9. As regards the Group's concern about the requirement upon the custodians/subcustodians to indemnify for indirect losses, DSFS advised that where the requirement caused undue hardship, the Mandatory Provident Fund Schemes Authority (MPFA) might, under the proposed new section 11 of Schedule 3 of the General Regulation, exercise its discretion and waive the requirement. The Chairman queried whether it was justified for the Administration to impose such a requirement, having regard to the fact that there was no reference to "indirect losses" in the principal ordinance and that the requirement was contrary to prevailing practices in the major overseas financial market. In this connection, Mr Steven YEO, speaker of the Group, quoted the examples that Chapter 4 (Client Money and Custody Rules) of the rules issued by the United Kingdom Securities and Futures Authority only referred to direct losses, and that Chapter II (Securities and Exchange Commission) of the Rules and Regulations of the Investment Company Act of 1940 in the United States did not refer to direct or indirect losses.

10. To address the concern of members and the Group, DSFS undertook to consider removing the reference to indirect losses from section 5 of Schedule 3.

Requirements in respect of custodial and subcustodial agreements

(Schedule 3 of the General Regulation)

11. On the Group's request for disapplication of Schedule 3 to subcustodial agreements, DSFS advised that the Administration maintained the view that there was a need to ensure that subcustodial agreements also complied with the principles in respect of the safeguarding of scheme assets. Where the provisions in Schedule 3 created operational difficulties and undue hardship, the Administration was prepared to rectify the problematic provisions by way of legislative amendments.

12. Mr Philip DUCKWORTH, Head of Corporate Trust Services, HSBC International Trustee Limited, reiterated the Group's view that the application of Schedule 3 to subcustodial agreements would result in a difficult, time-consuming and costly process for the trustees/custodians to renegotiate new subcustodial agreements with each of their subcustodians for compliance with Schedule 3. In response to the Chairman's enquiry, Mr Mark SHIPMAN of Clifford Chance pointed out that the Group anticipated difficulties in renegotiating their agreements with the subcustodians in respect of the requirements under sections 3, 5(a), 6(1)(a) and (2), and 7(a) of

Action

Schedule 3.

Action

13. On sections 3 and 5 of Schedule 3, members noted that the Group's points of concern had been discussed in paragraphs 8 to 10 above.

14. On sections 6 and 7 of Schedule 3, Mr Philip DUCKWORTH, Head of Corporate Trust Services, HSBC International Trustee Limited, pointed out that in practice, subcustodians were only safekeepers and were not expected to understand the implications of the Mandatory Provident Fund Schemes Ordinance (Cap. 485). It would therefore be difficult for subcustodians:

- (a) under section 6(1)(a) of Schedule 3, to report to their custodians any material changes affecting their eligibility to be subcustodians;
- (b) under section 6(2) of Schedule 3, to lodge periodically a report stating whether any material events having occurred during the period to which the report related; and
- (c) under section 7(a) of Schedule 3, to provide a statement as to whether or not each of their delegates satisfied the eligibility requirements as those applicable to subcustodians.

15. As suggested by members, DSFS undertook to further discuss the issue with the Group and consider introducing appropriate amendments.

Treatment of scheme assets as trust property
(Section 1 of Schedule 3 of the General Regulation)

16. DSFS advised that it was of paramount importance for MPF scheme assets to be managed under trust arrangement. The General Regulation did not require the assets held in a jurisdiction where there was no trust law to be held on trust. In places where there was no trust law, the assets should be held in quasi-trust. Mr Philip DUCKWORTH, Head of Corporate Trust Services, HSBC International Trustee Limited, pointed out that it would be difficult for the trustees to comply with the requirement, having regard to the fact that no trust law was in force in a number of countries, such as those in continental Europe.

17. As suggested by members, DSFS undertook to further discuss the issue with the Group and consider introducing appropriate amendments.

(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)1640/99-00(01) on 22 May 2000.)

III. Meeting with the Administration on three Commencement Notices

- (— Legislative Council Brief issued by the Financial Services Bureau (Ref: FSB CR G6/9/32C(99)Pt. 7) on 27 April 2000
- Legal Service Division Report (LC Paper No. LS 126/99-00) issued vide LC Paper No. CB(2)1876/99-00 on 4 May 2000)

18. Members noted that the Mandatory Provident Fund Schemes Ordinance (80 of 1995) (Commencement) Notice 2000, Provident Fund Schemes Legislation (Amendment) Ordinance 1998 (4 of 1998) (Commencement) Notice 2000 and Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 Sub. Leg.) (Commencement) Notice 2000 would enable the full implementation of the MPF system, and in particular, mandatory contributions would become payable, on 1 December 2000.

19. Referring to paragraph 18 of the Legislative Council Brief, Mr SIN Chung-kai was concerned about the slippage of the Information Management System (IMS) project of MPFA. Given the large volume of data in respect of schemes and scheme members that would flow into MPFA, Mr SIN considered that an effective and reliable IMS was crucial for MPFA to perform its regulatory and enforcement functions efficiently. In response, DSFS and the Executive Director of MPFA advised that the contractor had devoted additional effort to recover the slippage and that it seemed possible that the IMS Core System could be delivered in September 2000. As a contingency measure and to prepare for the unlikely event that the project could not be completed in time, separate interim systems were being developed by MPFA to handle critical functions. DSFS assured members that with the development of the interim systems, MPFA was ready for full implementation of MPF system on 1 December 2000 even if the IMS Core System was not ready for use by that date. In the light of the Administration's assurance, members accepted that 1 December 2000 be appointed as the day on which the MPF system would be fully implemented.

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20. At the request of members, DSFS undertook to provide the Legislative Council Panel on Financial Affairs with a progress report on the IMS project and the development of the interim systems by the end of June 2000.

21. As agreed by members, the Chairman would present a verbal report on the Subcommittee's deliberations on the three Commencement Notices to the House Committee on 19 May 2000, to be followed by a written report on 26 May 2000.

IV. Any other business

Arrangements for the fourth and fifth meetings

22. Members agreed that the fourth meeting of the Subcommittee be held on Tuesday, 23 May 2000 at 2:30 pm. Representatives of the Administration and the

Action

Group would be invited to attend the meeting.

23. Members also agreed that the fifth meeting of the Subcommittee be held on Friday, 2 June 2000 at 8:30 am.

(*Post-meeting note* : As directed by the Chairman, the fifth meeting of the Subcommittee was rescheduled for 29 May 2000 at 8:30 am.)

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

Legislative Council Secretariat

10 October 2000