

立法會
Legislative Council

LC Paper No. CB(1)2107/99-00
(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 fourth meeting
held on Tuesday, 23 May 2000, at 2:30 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 Kam-lam
Hon Ambrose LAU Hon-chuen, JP
Hon Andrew CHENG Kar-foo
Hon FUNG Chi-kin

Members absent : Hon LEE Cheuk-yan
Hon CHAN Yuen-han
Hon Bernard CHAN
Hon SIN Chung-kai

**Public officers
attending** : *For items I to II*

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

**Attendance by
invitation** : ***For item I***

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

Mr Simon P MACLEAN
Director, Operations

The Chase Manhattan Bank

Ms Bonny LANDERS
North Asia Business Executive Global Investor Services

Brown Brothers Harriman (Hong Kong) Limited

Mr Joseph TSE
Vice President

Butterfield Trust (Hong Kong) Limited

Mr Alastair E MURRAY
Managing Director

Citibank N.A.

Mr Steven YEO
Regional Legal Counsel, Transaction Services, Asia Pacific

Deutsche Bank

Mr Woosup B J CHUNG
Regional Business Manager

Mr Marga WOLFGRAM
Head of Business Management and Production

HSBC International Trustee Limited

Mr Jonathan E HUBBARD
Managing Director

State Street Bank and Trust Company

Mr Michael MCCARTHY
Vice President

Ms Sophia YUEN
Assistant Vice President

Standard Chartered Bank

Ms Linda CHOI
Senior Vice-President

Ms Katie YIP
Legal Adviser, Legal & Compliance Department

The Bank of New York

Ms Christina Y Y LAM
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

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I. 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)1640/99-00(01) — Administration's response to members' points of concern raised at the third meeting on 16 May 2000
- LC Paper No. CB(1)1640/99-00(02) — Fourth submission dated 18 May 2000 from Clifford Chance
- LC Paper Nos. CB(1)1640/99-00(03)(a) and CB(1)1640/99-00(03)(b) — Administration's proposed amendments
- LC Paper No. CB(1)1640/99-00(04) — Summary of proposed amendments prepared by the Legislative Council Secretariat
- 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)

Follow-up to the discussion at the third meeting

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

2. 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 third meeting on 16 May 2000.

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

3. DSFS advised that having regard to the views of members and the Group, the

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Administration proposed to amend section 65(2)(a)(iii) and 65(2)(b)(iii) to clarify that encumbrance of scheme assets was only permitted in situations where at the time the encumbrance was created, it was unlikely that the period of the borrowing would exceed 90 days or 7 working days (as the case may be). The same amendments would also be made to section 3 of Schedule 3. Members and the Group accepted the proposed amendments.

*Indemnity for indirect losses
(Section 5 of Schedule 3 of the General Regulation)*

4. Members and the Group welcomed the Administration's proposed amendment to remove 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)*

5. 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. As regards sections 6 and 7 of Schedule 3, DSFS pointed out that there were good reasons for requiring subcustodians to report to their custodians any material changes affecting their eligibility to be subcustodians. In the light of the Group's concern that subcustodians might have difficulties in complying with the requirements, the Administration proposed to give the Mandatory Provident Fund Schemes Authority (MPFA) the discretion to waive the requirements in respect of subcustodial agreements if they caused undue hardship. Members and the Group accepted this arrangement.

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

6. DSFS advised that the Administration agreed to amend section 1(b) of Schedule 3 to reflect the policy intent that scheme assets were to be entrusted to custodians (or subcustodians) for safe keeping, and that they should be properly held, registered and segregated from the assets of custodians and its subcustodians. Members and the Group accepted the proposed amendment.

Administration's proposed amendments

7. DSFS briefed members on the Administration's proposed amendments to 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). Members had no comments on the proposed amendments.

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Submissions from Clifford Chance and Baker & McKenzie

8. DSFS advised that the points raised in the Clifford Chance's fourth submission dated 18 May 2000 and Baker & McKenzie's submission dated 21 April 2000 had been addressed by the Administration's proposed amendments to the Amendment Regulation.

Clause-by-clause examination of the Amendment Regulation

9. Members noted the Administration's proposed amendments to sections 71, 118, 122, 150, 157 and 167, and Schedules 1 and 3 of the General Regulation.

Way forward

10. The Subcommittee supported the Administration's proposal to move two motions for the passage of the Amendment of Schedule 1 Notice with amendments and the Amendment Regulation with amendments at the Council meeting on 21 June 2000. The Chairman would report the Subcommittee's deliberations to the House Committee on 2 June 2000.

II. Meeting with the Administration on the Mandatory Provident Fund Schemes Rules

- (— Legislative Council Brief issued by the Financial Services Bureau (Ref: FSB CR G6/9/32C(2000) on 9 May 2000
- Legal Service Division Report (LC Paper No. LS 137/99-00) issued vide LC Paper No. CB(2)1945/99-00 on 10 May 2000
- Relevant legislative provisions issued vide LC Paper No. CB(1)1640/99-00(05))

Briefing by the Administration

11. At the Chairman's invitation, DSFS briefed members on the Mandatory Provident Fund Schemes Rules (the Rules). She advised that the Rules were made by MPFA to provide for the calculation of the total amount of accrued benefits vested in a scheme member from time to time and to prescribe the information and documents that should be contained in or accompanied with applications to MPFA for merger or division of registered schemes.

Way forward

12. The Subcommittee supported the Administration's proposal to move a motion for the passage of the Rules at the Council meeting on 21 June 2000. The Chairman would report the Subcommittee's deliberations to the House Committee on 2 June 2000.

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III. Any other business

Date of the fifth meeting

13. The Chairman reminded members that the fifth meeting of the Subcommittee would be held on Monday, 29 May 2000 at 8:30 am.

14. There being no other business, the meeting ended at 3:25 pm.

Legislative Council Secretariat

27 September 2000