

立法會
Legislative Council

LC Paper No. CB(1)674/01-02
(These minutes have been
seen by the Administration)

Ref: CB1/BC/10/00/2

**Bills Committee on
Mandatory Provident Fund Schemes (Amendment) Bill 2001**

**Meeting on
Monday, 10 December 2001, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members present : Hon Ambrose LAU Hon-chuen, GBS, JP (Chairman)
Hon James TIEN Pei-chun, GBS, JP
Hon NG Leung-sing, JP
Dr Hon David CHU Yu-lin, JP
Hon LEE Cheuk-yan
Hon Margaret NG
Hon CHAN Yuen-han, JP
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon SIN Chung-kai
Hon Andrew CHENG Kar-foo
Hon TAM Yiu-chung, GBS, JP
Hon Tommy CHEUNG Yu-yan, JP
Hon LEUNG Fu-wah, MH, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon Eric LI Ka-cheung, JP
Hon Abraham SHEK Lai-him, JP

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

Mr Raymond TAM
Executive Director (Policy and Development
Division), Mandatory Provident Fund Schemes
Authority

Mr Geoffrey FOX
Senior Assistant Law Draftsman

Ms Lonnie NG
Senior Government Counsel

Clerk in attendance : Miss Polly YEUNG
Chief Assistant Secretary (1)3

Staff in attendance : Miss Connie FUNG
Assistant Legal Adviser 3

Miss Yvonne YU
Senior Assistant Secretary (2)7

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)399/01-02 - Minutes of meeting held on 13 November 2001)

The minutes of meeting held on 13 November 2001 was confirmed.

II. Meeting with the Administration

- (LC Paper No. CB(1)514/01-02(01) - The Administration's response to issues arising from the Bills Committee meeting on 13.11.2001
- LC Paper No. CB(1)533/01-02(01) - MPFA's power to impose additional conditions / amend existing ones upon approved trustees and MPF schemes, and impose new conditions on approved pooled investment funds
- LC Paper No. CB(1)541/01-02(01) - Draft Committee Stage Amendments to the Mandatory Provident Fund Schemes (Amendment) Bill 2001 (Revised)
- LC Paper No. CB(1)683/00-01 - The Bill
- LC Paper No. CB(1)1739/00-01(02) - Marked-up copy of the Bill prepared by the Legal Services Division

2. The Committee deliberated (Index of proceedings attached at **Annex A**).

3. The Administration undertook to take the following actions to facilitate the work of the Committee:

Clause 2

- (a) The Administration would further explain the definition of "corporation" under clause 2 of the Bill and for the sake of consistency, to clarify whether a definition of "corporation" was also stipulated under the Companies Ordinance (Cap. 32).

Clause 4

- (b) Having regard to the concerns raised by members that the Mandatory Provident Fund Schemes Authority (MPFA)'s power to "borrow money" under proposed section 6QA might be too broad, the Administration would review the drafting of this provision so that such power would be exercised to facilitate MPFA in obtaining temporary borrowing such as overdraft facilities.

Clauses 7 and 19

- (c) Members were concerned about the implications on the operation of the financial sectors if the proposed definition of "relevant time" under proposed section 7C(2)(b) and Schedule 1 was inconsistent with the existing definition of "relevant time" under other finance-related legislation. The Administration would provide further explanation for adding "the beginning of" before "the date" in these two clauses and in other clauses where such expression appeared. ALA3 was also requested to examine the proposed amendment in conjunction with the Administration's legal adviser.

Clause 20

- (d) Schedule 6 set out the decisions of the MPFA which might be the subject of an appeal. The Administration would provide information on the Appeal Board including its membership.

Clauses 10 and 11

- (e) Some members queried the justification for empowering MPFA to amend any conditions or impose conditions with respect to the "marketing" of the scheme under proposed sections 21 and 21A. They were concerned about the arbitrary nature of the conditions and that they might be imposed for political reasons. Members suggested that the Administration should study how to limit MPFA's power in this regard, such as by limiting the imposition of such conditions to provisions in "codes of practice" or "guidelines" which normally had

gone through a consultation process and was accepted by the industry. The Administration agreed to consider members' suggestion or other means to limit MPFA's power in this regard.

4. The Committee agreed to hold another meeting to continue discussion with the Administration.

(Post meeting note: With the concurrence of the Chairman, the next meeting will be held on Monday, 4 January 2002 at 10:45 am in Conference Room A of the Legislative Council Building.)

III. Any other business

5. There being no other business, the meeting ended at 6:35 pm.

Legislative Council Secretariat
28 December 2001

**Proceedings of the meeting of the Bills Committee on
Mandatory Provident Fund Schemes (Amendment) Bill 2001**

**on Monday, 10 December 2001, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
<i>Agenda Item I - Confirmation of minutes of meeting</i>			
000000-000215	Chairman	Confirmation of minutes of meeting held on 13 November 2001; Opening remarks	
<i>Agenda Item II - Meeting with the Administration</i>			
000216-000443	Admin	Briefing by the Administration on its response to issues arising from the last meeting on 13.11.2001 (LC Paper No. CB(1)514/01-02(01))	
000444-000527	Chairman	Inviting questions from members	
000528-000812	Miss Margaret NG	Need for the Mandatory Provident Fund Schemes Authority (MPFA) to exercise its power in a reasonable manner	
000813-000927	Admin	- ditto -	
000928-000935	Miss Margaret NG	- ditto -	
000936-001014	Admin	- ditto -	
001015-001226	Chairman	Members noted the Administration's response to other issues raised	
001227-001301	Chairman	MPFA's power to impose additional conditions/amend existing ones upon approved trustees and MPF schemes, and impose new conditions on approved pooled investment funds (LC Paper No. CB(1)533/01-02(01))	
001302-001414	Admin	- ditto -	
001415-001856	MPFA	- ditto -	
001857-002043	Mr James TIEN	He disagreed with the need to provide MPFA with new statutory powers at this stage as the MPF system had only come into operation for about a year	
002044-002119	MPFA	- ditto -	
002120-002146	Mr James TIEN	- ditto -	
002147-002334	Admin	- ditto -	
002335-002349	Mr James TIEN	- ditto -	

Time	Speaker	Subject(s)	Action required
002350-002352	Admin	- ditto -	
002353-002634	Miss Margaret NG	- ditto -	
002635-002659	Admin	- ditto -	
002700-002822	MPFA	- ditto -	
002823-002933	Mr Bernard CHAN	Details of the independent Appeal Board which heard appeals against the MPFA's decisions from service providers	
002934-003033	MPFA	- ditto -	
003034-003119	Chairman	- ditto -	
003120-003205	Chairman	Opening remarks for clause by clause examination	
003206-003210	Chairman	Clause 1 -short title	
003211-003256	Chairman	Clause 2 -interpretation	
003257-003318	Chairman	Clause 3 -functions of MPFA	
003319-003452	Admin / Chairman	Clause 2 - definition of "company"	
003453-003646	Chairman /Admin / Mr SIN Chung-kai	English version of the marked copy of the Bill (LC Paper No. CB(1)1739/00-01(02)) and the draft Committee Stage Amendments (CSA) (English version) tabled at the meeting (CB(1)541/01-02(01) (revised))	
003647-003955	Chairman /Admin	Clause 2 - definitions of "accrued benefits", "company", "governing rules", "mandatory contributions"	
003956-004000	Mr SIN Chung-kai	Clause 2 - definition of "mandatory contribution"	
004001-004132	Admin	- ditto -	
004133-004148	Mr SIN Chung-kai / Admin	- ditto -	
004149-004234	MPFA / Mr SIN Chung-kai	- ditto -	
004235-004259	Chairman /Admin	- ditto -	
004300-004326	Mr SIN Chung-kai	Clause 2 - employees eligible under the definition of "master trust scheme"	
004327-004417	MPFA	- ditto -	
004418-004518	Mr SIN Chung-kai / MPFA	- ditto -	
004519-004528	Chairman / Admin	- ditto -	
004529-004636	Admin / Chairman	Clause 2 - definition of "oversea company"	
004637-004646	Mr SIN Chung-kai	Clause 2 - definition of "corporation"	

Time	Speaker	Subject(s)	Action required
004647-004653	Chairman	- ditto -	
004654-004752	MPFA	- ditto -	
004753-004757	Mr SIN Chung-kai	- ditto -	
004758-004808	MPFA	- ditto -	
004809-004816	Chairman	- ditto -	
004817-004833	Admin	To further explain the definition of "corporation" under clause 2, and to clarify whether a definition of "corporation" was also stipulated under the Companies Ordinance (Cap. 32)	Admin
004834-004836	Chairman	- ditto -	
004837-004845	Mr SIN Chung-kai	- ditto -	
004846-004853	Chairman	Clause 2 - definition of "minimum MPF benefits"	
004854-004917	Admin	Clause 2 - CSA to add a definition of "conditions" to mean reasonable conditions	
004918-004928	Chairman	- ditto -	
004929-004953	Admin	- ditto -	
004954-005008	Chairman	- ditto -	
005009-005012	Admin	- ditto -	
005013-005032	Chairman	- ditto -	
005033-005116	Admin	- ditto -	
005117-005124	Chairman	Clause 2 - definition of "governing rules"	
005125-005141	Admin	Clause 2 - CSA to remove the proposed definitions of "offering document" and "participation agreement" (to be included in the Schedule to the Bill) and thereby reinstating the existing definition of "governing rules"	
005142-005156	Chairman	- ditto -	
005157-005233	Chairman	Clause 2 -definition of "preserved account"	
005234-005239	Chairman / Admin	Clause 2 - definition of "working day"	
005240-005328	Chairman /Admin	Clause 2 - CSA to delete proposed section 2(3) and (4) and substitute a new proposed subsection (3) concerning mandatory contribution	
005329-005352	Admin	- ditto -	
005353-005501	Chairman	- ditto -	

Time	Speaker	Subject(s)	Action required
005502-005655	Admin / Chairman	Clause 8 - a consequential amendment to allow those exempted persons to join and pay voluntary contributions to a registered scheme	
005656-005745	MPFA	- ditto -	
005746-005800	Admin	- ditto -	
005801-005819	Chairman	- ditto -	
005820-005844	Chairman	Clause 3 - functions of MPFA	
005845-005911	Mr James TIEN	- ditto -	
005912-010050	Admin	Clause 3 - justification for addition of proposed section 6E(1) (ea) and (eb) to the functions of MPFA	
010051-010119	Mr James TIEN/ Chairman	- ditto -	
010120-010212	Admin	- ditto -	
010213-010227	Mr James TIEN	- ditto -	
010228-010323	Admin	- ditto -	
010324-010330	Chairman / Admin	Clause 4 - power for MPFA to borrow money	
010331-010359	Mr James TIEN	- ditto -	
010400-010443	MPFA	- ditto -	
010444-010512	Mr James TIEN	- ditto -	
010513-010624	Mr SIN Chung-kai	- ditto -	
010625-010640	Admin	To review the drafting of this provision so that such power would be exercised to facilitate MPFA in obtaining temporary borrowing such as overdraft facilities	Admin
010641-010645	Chairman	Clause 7 - definition of "the relevant time"	
010646-010651	Admin	- ditto -	
010652-010707	Chairman /Admin	Clause 6 – duty of self-employed persons to become scheme member	
010708-010753	Chairman /Admin	Clause 7 – duty of self-employed person to become members	
010754-010812	Mr SIN Chung-kai	Clause 7 – proposed definition of “the relevant time” and the implications, if any, on other financial sectors	
010813-010915	MPFA / Mr SIN Chung-kai	- ditto -	
010916-010921	Chairman	- ditto -	
010922-010915	MPFA	- ditto -	

Time	Speaker	Subject(s)	Action required
010916-010929	Chairman	- ditto -	
010930-010949	Mr James TIEN	- ditto -	
010950-011025	Admin	- ditto -	
011026-011100	Mr SIN Chung-kai	- ditto -	
011101-011130	Admin	- ditto -	
011131-011144	Mr SIN Chung-kai	- ditto -	
011145-011217	Chairman	The Administration to provide further explanation for adding “the beginning of ” before “the date”; ALA3 to examine the proposed amendment with the Administration’s legal adviser	Admin ALA3
011218-011228	Chairman	Clause 8 – exempted persons eligible to pay voluntary contributions	
011229-011403	MPFA	- ditto -	
011404-011502	Chairman	- ditto -	
011503-011531	Admin /Chairman	- ditto -	
011532-011543	Chairman	Clause 9 – approval of trustees	
011544-011609	Admin	Clause 9 – CSA to substitute “7 working days’ advance notice” with “30 working days’ advance notice”	
011610-011615	Chairman	- ditto -	
011616-011715	Admin / Chairman	Clause 9 – CSA to proposed section 20(12) to remove the requirement for an approved trustee to surrender the last certificate of approval within a specified period of time	
011716-011810	MPFA / Chairman	- ditto -	
011811-011835	Mr Bernard CHAN / MPFA	Clause 20 – decisions which might be the subject of an appeal	
011836-011905	Admin /MPFA	- ditto -	
011906-011919	Chairman	- ditto -	
011920-011933	Mr SIN Chung-kai	- ditto -	
011934-011943	Mr Bernard CHAN	The Administration to provide information on the Appeal Board including its membership	Admin
011944-012040	Chairman / Admin	Clause 10	

Time	Speaker	Subject(s)	Action required
012041-012115	Mr SIN Chung-kai	Clause 10 – he queried the justification for empowering MPFA to amend/ impose conditions with respect to the “marketing” of the scheme and arbitrariness of such conditions	
012116-012211	MPFA	- ditto -	
012212-012219	Mr Bernard CHAN	- ditto -	
012220-012228	MPFA	- ditto -	
012229-012235	Mr Sin Chung-kai	- ditto -	
012236-012250	Chairman	- ditto -	
012251-012609	Mr Sin Chung-kai / MPFA	- ditto -	
012610-012612	Chairman	- ditto -	
012613-012636	Admin	- ditto -	
012637-012656	Mr Bernard CHAN	- ditto -	
012657-012731	Mr SIN Chung-kai	- ditto -	
012732-012736	MPFA	- ditto -	
012737-012832	Mr SIN Chung-kai	- ditto -	
012833-012842	Chairman	- ditto -	
012843-012917	MPFA	- ditto -	
012918-013111	Mr SIN Chung-kai / MPFA	- ditto -	
013112-013202	Admin	- ditto -	
013203-013256	Chairman	- ditto -	
013257-013344	Mr SIN Chung-kai	- ditto -	
013345-013355	Chairman	The Administration to consider how to limit MPFA's power, such as by limiting the imposition of conditions to provisions in “codes of practice” or “guidelines” or by other means	Admin
013356-013519	Mr Bernard CHAN	Clause 10 – he conveyed the industry's concern that conditions might be imposed for political reasons	
013520-013524	Chairman	The Administration to consider how to limit MPFA's power in this regard	Admin
013525-013730	Mr SIN Chung-kai	Clause 10 – he raised concern for empowering MPFA to amend/impose conditions with respect to the “marketing” of the scheme	
013731-013804	Admin	- ditto -	
013805-013818	Chairman	- ditto -	

Time	Speaker	Subject(s)	Action required
013819-013910	Admin /Chairman	Clause 10 – CSA to substitute “7 working days’ advance notice” with “30 working days’ advance notice”	
013911-014003	Chairman /Admin	- ditto -	
014004-014013	Chairman	Clause 11	
014014-014027	Mr SIN Chung-kai	Clause 11 – he raised concern for empowering MPFA to amend/impose conditions with respect to the “marketing” of the scheme	
014028-014034	Chairman	- ditto -	
014035-014114	Admin	Clause 11 – CSA to substitute “7 working days’ advance notice” to “30 working days’ advance notice”	
014115-014125	Chairman	Clause 11	
014126-014145	Chairman / Admin	Clause 12	
014146-014209	Chairman / Admin	Clause 13	
014210-014225	Chairman / Admin	Clause 14	
014226-014241	Chairman / Admin	Clause 15	
014242-014301	Chairman / Admin	Clause 16	
014302-014310	Chairman / Admin	Clause 17	
014311-014337	Chairman / Admin	Clause 18	
014338-014347	Chairman / Mr SIN Chung-kai	Clause 19 - The Administration to provide further explanation for adding “the beginning of ” before “the date” and ALA3 to examine the issue with the Administration’s legal adviser	Admin ALA3
014348-014422	MPFA	- ditto -	
014423-014428	Chairman	- ditto -	
014429-015756	Chairman / Admin / MPFA	Clause 21 and the Schedule - consequential and other technical amendments to MPF Schemes (General) Regulation as specified in the Schedule	
015757-015816	Chairman	Concluding remarks	

Note: The audio records of the above proceedings are kept at the LegCo Library

Legislative Council Secretariat

28 December 2001