

立法會
Legislative Council

LC Paper No. CB(1)2072/01-02
(These minutes have been
seen by the Administration)

Ref: CB1/BC/9/01

**Bills Committee on
Mandatory Provident Fund Schemes (Amendment) Bill 2002**

**Meeting on
Monday, 3 June 2002, 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 LEE Cheuk-yan
Hon NG Leung-sing, JP
Hon Bernard CHAN
Hon CHAN Kam-lam
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Dr Hon YEUNG Sum
Hon YEUNG Yiu-chung, BBS
Hon Andrew CHENG Kar-foo
Hon LI Fung-ying, JP
Hon Henry WU King-cheong, BBS
Hon Michael MAK Kwok-fung
Hon LEUNG Fu-wah, MH, JP
Hon Audrey EU Yuet-mee, SC, JP
- Member absent** : Hon CHAN Yuen-han, JP
- Public officers attending** : Miss Susie HO
Deputy Secretary for Financial Services
- Mr Raymond TAM
Executive Director (Policy and Development)
Mandatory Provident Fund Schemes Authority

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 (1)4

I. Confirmation of minutes of meeting

(LC Paper No. CB(1)1889/01-02 - Minutes of meeting held on 28 May 2002)

The minutes of meeting held on 28 May 2002 were confirmed.

II. Meeting with the Administration

The Bill and related papers previously issued

LC Paper No. CB(3)560/01-02 - The Bill

LC Paper No. CB(1)1833/01-02(02) - Marked-up copy of the Bill prepared by the Legal Service Division

File Ref: G4/49C(2002)V - The Legislative Council Brief on the Bill issued by the Financial Services Bureau on 17 April 2002

LC Paper No. LS83/01-02 - The Legal Service Division Report on the Bill

LC Paper No. CB(1)1792/01-02(01) - Extract of the minutes of the meeting of the Financial Affairs Panel on 7 January 2002 re-circulated

LC Paper No. CB(1)716/01-02(04) - Discussion paper provided by the Administration for the meeting of the Financial Affairs Panel on 7 January 2002

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

3. The Administration undertook to provide the following information/response as appropriate:

Minimum and maximum levels of relevant income for Mandatory Provident Fund (MPF) contributions

- (a) In view of the economic downturn and fall in income of many employees and self-employed persons (SEPs) in recent years, a member queried the Administration's findings that the monthly median income still stood at \$10,000, and that the monthly employment earnings at 90th percentile of the monthly employment earnings distribution had been increased from \$20,000 to \$30,000. The Administration undertook to provide more detailed explanation on the aforesaid findings.
- (b) On the maximum level of relevant income for MPF contributions, the Administration advised that some employees earning over \$20,000 were covered by more generous retirement plans. Moreover, some of the employers had made additional voluntary contributions on top of the MPF mandatory contributions for their higher income employees. As such, keeping the maximum level of relevant income at \$20,000 would unlikely affect the retirement protection for these employees. At the request of a member, the Administration undertook to provide further information on such voluntary contributions arrangements.
- (c) On the minimum level of relevant income for MPF contributions, the Administration advised that at present, about 57 000 relevant employees and SEPs were estimated to be excluded from the contribution net as their relevant income was below the \$4,000 level, and another 56 800 relevant employees and SEPs would be carved out if the minimum level was raised from \$4,000 to \$5,000 per month. In response to a member's query about the accuracy of the aforesaid numbers, the Administration would provide further analysis for members' reference.
- (d) A member pointed out that many MPF scheme members had sustained investment losses due to unfavourable market conditions in the last year or so. This would adversely affect the accrued benefits of those employees who were about to retire. At his request, the Administration would work with the Mandatory Provident Fund Schemes Authority (MPFA) to see whether information could be provided on the age profiles of employees covered by MPF schemes and the estimated level of accrued benefits available to them upon retirement.
- (e) Some members considered that the minimum level of relevant income for MPF contributions should be further raised to \$6,000 to lessen the

financial burden of MPF contributions on lower income employees and SEPs. If the minimum level of relevant income for MPF contributions was set at \$5,000, the monthly take home pay of an employee with income of \$5,000 per month would be reduced by \$250 while that of an employee with income of \$6,000 per month would be reduced by \$300 to provide for the MPF contributions. At the request of a member to gauge the impact of the above reductions in take home pay on the standard of living of the lower income employees, the Administration said that the Government Economist would be consulted on whether certain projections in this respect could be provided.

Enhanced protection for scheme members

- (f) Members noted that in order to step up enforcement action, the Administration proposed to change the prosecution time-bar for non-enrolment in MPF schemes and non-payment of MPF contributions by the employer from six months after the occurrence of the offence to six months after the discovery of the offence by, or coming to the notice of, MPFA. At members' request, the Administration would provide the number of cases for which prosecution could not be taken out because of the expiry of the existing six-month time-bar.
- (g) At a member's request, the Administration would provide the number of cases in which the employer had failed to enrol his employees in MPF schemes and the number of cases where the employer still failed to take remedial action after conviction.
- (h) On the time-bar for prosecution of offences, the Administration would advise whether there were provisions in other ordinances similar to proposed section 43B(4) of the Bill in which the six-month period started to count from the discovery of the offences by the enforcement authority, not from the occurrence of the offence.
- (i) The Administration would seek legal advice on the appropriateness or otherwise of imposing a fixed penalty on the offence of non-enrolment in MPF schemes.
- (j) Referring to the offence provision in proposed section 43B(3), some members sought confirmation on whether the fine/penalty stipulated therein was the maximum fine/penalty and it would be up to the court to award the actual level of penalty. The Administration undertook to confirm this point.

Consultation

- (k) Having regard to a member's concern about the representativeness of the committees and employer organizations which had been consulted

on the Bill, the Administration would provide the membership lists of the relevant committees including the MPF Schemes Advisory Committee and the MPF Industry Schemes Committee, as well as the employer organizations which had been consulted.

- (1) In response to a member's enquiry on whether the Labour Advisory Board (LAB) had been consulted/notified of the proposed arrangements contained in the Bill, the Deputy Secretary for Financial Services would confirm whether the Administration's paper for the meeting of the Financial Affairs Panel to discuss the subject had also been issued to the LAB.

4. On the Administration's intention to pass the Bill within the current legislative session, members said that whilst they would try their best to study the Bill expeditiously, they also stressed the need for detailed and careful scrutiny of the proposed provisions and cautioned against any hasty approach.

III. Any other business

5. Members agreed that for the time being, the Bills Committee would not invite deputations to attend meetings to give views as various stakeholders had been consulted on the Bill at different forums.

6. The Chairman consulted members on the dates of future meetings. The Committee agreed to hold the next five meetings as follows:

<u>Date</u>	<u>Time</u>
11 June 2002 (Tuesday)	8:30am
12 June 2002 (Wednesday)	8:30 am
19 June 2002 (Wednesday)	8:30 am
21 June 2002 (Friday)	10:45 am
24 June 2002 (Monday)	4:30 pm

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

Legislative Council Secretariat
20 June 2002

**Proceedings of the meeting of the Bills Committee on
Mandatory Provident Fund Schemes (Amendment) Bill 2002**

**on Monday, 3 June 2002 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
000001 - 000033	Chairman	- Confirmation of minutes of meeting held on 28 May 2002	
000033 - 000519	Chairman Administration Members	- The Administration's intention to pass the Bill within the current legislative session - Dates of future meetings	
000519 - 000944	Mr James TIEN Chairman Administration	- Mr TIEN was concerned that the Bills Committee might not have enough time to complete the scrutiny of the Bill within the current legislative session	
000944 - 001047	Mr SIN Chung-kai	- Cautioned against a hasty approach in examining the Bill	
001047 - 001129	Chairman	- Concluded that whilst members would try their best to study the Bill expeditiously, it was also necessary to study the Bill in detail and carefully. He also cautioned against any hasty approach	
001129 - 001144	Ms LI Fung-ying	- Agreed with the Chairman's view	
001144 - 001733	Chairman Members	- Dates of next five meetings fixed	
001733 - 002403	Chairman	- Discussion to follow the topics in the LegCo Brief (File Ref: G4/49C(2002)V) issued by the Administration	
002403 - 002800	Mr James TIEN Administration	<u>Mechanism to adjust the minimum and maximum levels of relevant income for Mandatory Provident Fund (MPF) contributions</u> - The Administration would provide detailed explanation on its findings that the median income still stood at \$10,000 per month despite the general decline in wages since 1997; and that the	Admin

		monthly employment earnings at 90th percentile of the monthly employment earnings distribution had increased from \$20,000 to \$30,000	
002800 - 003750	Mr Andrew CHENG Administration	<ul style="list-style-type: none"> - Members of the Democratic Party considered that 60%, instead of 50% of the monthly median income should be adopted as the basis to adjust the minimum level of relevant income for MPF contributions - Rationale of adopting the monthly employment earnings at 90th percentile of the monthly employment earnings distribution as the basis to adjust the maximum level of relevant income for MPF contributions - Future adjustment of the minimum and maximum levels of relevant income would require approval of the LegCo 	
003750 - 004223	Mr CHAN Kam-lam Administration	<ul style="list-style-type: none"> - Feasibility of adopting the average income level over the four years before each review as the adjustment basis to minimize substantial fluctuations caused by volatile economic conditions 	
004223 - 004553	Mr LEE Cheuk-yan Administration	<ul style="list-style-type: none"> - Feasibility of further raising the minimum level of relevant income to \$6,000 to lessen the financial burden of MPF contributions on lower income employees and self employed persons (SEPs) 	
004553 - 005217	Mr LEUNG Yiu-chung Administration	<ul style="list-style-type: none"> - Feasibility of adopting 60% of the monthly median income as the basis to adjust the minimum level of relevant income - Double standard adopted in determining the maximum and minimum levels of relevant income - The Administration advised that some employees earning more than \$20,000 per month were covered by more generous 	

		<p>retirement plans and some of the employers had made additional voluntary contributions on top of the MPF mandatory contributions for these employees</p> <ul style="list-style-type: none"> - The Administration would provide further information on such voluntary contributions arrangements 	Admin
005217 - 005439	Mr LEUNG Fu-wah Mandatory Provident Fund Schemes Authority (MPFA) Administration	<ul style="list-style-type: none"> - Mr LEUNG advised that he did not have strong views on adopting 50% or 60% of the median income as the basis for adjustment 	
005439 - 010024	Mr James TIEN Administration	<ul style="list-style-type: none"> - The Administration would provide further analysis on the number of employed persons affected if the minimum level of relevant income was \$4,000, \$5,000, \$6,000 and \$7,000 - The Administration explained that while the Labour Advisory Board (LAB) had not been consulted, the MPF Schemes Operation Review Committee (Review Committee), the MPF Schemes Advisory Committee and the MPF Industry Schemes Committee agreed to the proposed amendments 	Admin
010024 - 010535	Mr LEUNG Yiu-chung Administration	<ul style="list-style-type: none"> - On concerns that investment losses due to unfavourable market conditions would affect the accrued benefits of those employees about to retire, the Administration would work with MPFA to see whether information could be provided on the age profiles of employees covered by MPF schemes and the estimated level of accrued benefits available to them upon retirement - The Administration advised that from 1983-2001, the average investment return of retirement funds was about 11.6% 	Admin
010535 -	Mr Bernard CHAN	<ul style="list-style-type: none"> - The choice of investment 	

010726		portfolios by individual MPF scheme members might affect the level of investment returns	
010726 - 010848	Mr LEUNG Fu-wah Administration	- In order to gauge the impact of the reduction in take home pay arising from \$5,000 versus \$6,000 as the minimum level of relevant income, the Government Economist would be consulted on whether certain projections could be provided	Admin
010848 - 010951	Chairman Mr James TIEN Administration	- On Mr TIEN's query about the accuracy of the numbers of employees and SEPs earning below the \$4,000 level and the \$5,000 level, the Administration advised that the number did not include domestic helpers	
010951 - 012755	Chairman MPFA Mr James TIEN	<u>Enhanced protection for MPF scheme members</u> - Proposed use of the interest derived from monies-in-transit	
012755 - 013015	Chairman Administration Mr James TIEN	- In response to Mr TIEN's query about the lack of consultation with LAB, the Deputy Secretary for Financial Services would confirm whether the Administration's paper for the Financial Affairs Panel to discuss the subject had also been issued to the LAB	Admin
013015 - 013245	Mr LEE Cheuk-yan Administration Chairman	- Mr LEE supported the proposed amendment to the prosecution time-bar for non-enrolment in MPF schemes and non-payment of MPF contributions by the employer - The Administration would provide the number of cases for which the prosecution could not be taken out because of the expiry of the existing six-month time-bar	Admin
013245 - 013443	Ms LI Fung-ying Administration Chairman	- The Administration was requested to provide the number of cases in which the employer had failed to enrol his employees in MPF	Admin

		<p>schemes and the number of cases where the employer still failed to take remedial action after conviction</p> <ul style="list-style-type: none"> - Ms LI raised concern about the deterrent effect of the proposed daily penalty of \$500 	
013443 - 013940	Mr LEUNG Fu-wah Administration MPFA	<ul style="list-style-type: none"> - Enquired about the existing mechanism for ensuring that employers make MPF contributions, and was particularly concerned about the situation where the employees' MPF contributions were deducted from their wages but not remitted to the trustee. The situation would worsen if the company was subsequently wound up - The Administration advised that the employees' MPF contributions deducted from their wages but not remitted to the trustee would be treated as wages owed to the employees and they might apply for assistance from the Protection of Wages on Insolvency Fund upon winding up of the company - MPFA advised that in case of doubt, employees should report to MPFA and it would carry out investigation and where necessary, take out prosecution 	
013940 - 014501	Mr Andrew CHENG MPFA Administration Chairman	<ul style="list-style-type: none"> - In view of Mr CHENG's proposal, the Administration would seek legal advice on the appropriateness or otherwise of imposing a fixed penalty on the offences of non-enrolment in MPF schemes - The Administration would advise whether there were provisions in other ordinances similar to proposed section 43B(4) of the Bill in which the six-month time-bar started to count from the discovery of the offences by the enforcement authority, not from 	Admin Admin

		the occurrence of the offence	
014501 - 014849	Mr LEE Cheuk-yan Administration Chairman	- On the offence provision in proposed section 43B(3), the Administration would confirm whether the fine/penalty stipulated therein was the maximum fine/penalty and would be up to the court to award the actual level of penalty	Admin
014849 - 014853	Mr Andrew CHENG Administration Chairman Mr James TIEN	- Mr CHENG and Mr TIEN considered that as drafted, the fine/penalty stipulated in proposed section 43B(3) was the maximum fine/penalty that could be imposed by the court	
014853 - 014917	Chairman	- Requested the Administration to provide information/response as appropriate - Sought members' views on whether deputations should be invited to attend meetings to give views on the Bill	Admin
014917 - 014955	Ms LI Fung-ying	- For the time being, it might not be necessary to invite deputations to attend meetings to give views as various stakeholders had been consulted at different forums	
014955 - 015036	Mr James TIEN Chairman	Membership list of the Review Committee provided in the LegCo Brief	
015036 - 015114	Mr LEUNG Fu-wah	- Agreed with Ms LI Fung-ying's view	
015114 - 015423	Mr James TIEN Administration MPFA Chairman	- Having regard to Mr TIEN's concern about the representativeness of the committees and employers organizations, the Administration would provide the membership lists of the relevant committees including the MPF Schemes Advisory Committee and the MPF Industry Schemes Committee, as well as employer organizations which had been consulted	Admin
015423 - 015451	Mr LEE Cheuk-yan	- Agreed that the Bills Committee would not seek to invite	

		deputations to attend meetings, but would welcome views and would be prepared to consider holding such meetings upon request	
015451 - 015654	Chairman Mr James TIEN Administration	- Closing remarks	

Legislative Council Secretariat

21 June 2002