

立法會
Legislative Council

LC Paper No. CB(1)2158/01-02

(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
Wednesday, 12 June 2002, at 8:30 am
in the Chamber of the Legislative Council Building**

Members present : Hon Ambrose LAU Hon-chuen, GBS, JP (Chairman)
Hon NG Leung-sing, JP
Hon CHAN Yuen-han, JP
Hon Bernard CHAN
Hon CHAN Kam-lam
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 LEUNG Fu-wah, MH, JP
Hon Audrey EU Yuet-mee, SC, JP

Members absent : Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Hon Michael MAK Kwok-fung

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

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

Mr Geoffrey FOX
Senior Assistant Law Draftsman

Ms Marie SIU
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 (1)4

I. Meeting with the Administration

- 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
- LC Paper No. CB(1)1986/01-02(01) - Letter dated 30 May 2002 from Assistant Legal Adviser 3 on the Bill to the Administration
- LC Paper No. CB(1) 1986/01-02(02) - The Administration's response dated 8 June 2002 to LC Paper No. CB(1)1986/01-02(01)
- 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 (issued)

LC Paper No. CB(1)1985/01-02 - The Administration's response to the issues arising from the meeting held on 3 June 2002

LC Paper No. CB(1) 1992/01-02(01) - Illustrative examples on the current and proposed arrangement for employees' contribution holidays, and on the generic minimum and maximum relevant income level, as requested by members at the meeting on 11 June 2002

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

2. The Administration/Secretariat undertook to take the following actions and provide information as appropriate:

Discussion on policy issues

Review of minimum and maximum levels of relevant income not less than once in every four years (Clause 5 - proposed section 10A)

- (a) While the Administration advised that the Mandatory Provident Fund Schemes Authority (MPFA) would adopt an open and transparent approach in reviewing the minimum and maximum levels of relevant income not less than once in every 4 years, and that changes to the level of relevant income would require legislative amendments subject to the approval of the Legislative Council (LegCo), a member was concerned about the arrangements to consult/inform LegCo about the results of MPFA's review, particularly if no adjustment to the minimum and maximum levels of relevant income was recommended. In response, the Administration undertook to report to the LegCo Panel on Financial Affairs the outcome of each review carried out by MPFA under proposed section 10A. The Administration would also give an undertaking to this effect at the Second Reading debate on the Bill.

Admin

Consultation with the Labour Advisory Board (LAB)

- (b) A member reiterated the widespread concerns of both employees and employers about the MPF System and requested that the LAB should be consulted on future changes to the MPF System. The Administration noted her request for consideration.

Admin

Clause by clause examination of the Bill

Definition of “total incapacity” under Clause 2 - proposed section 2(1)

- Admin
- (c) Members noted that the definition of ‘total incapacity’ in relation to a scheme member would be amended to mean permanent unfitness to perform the kind of work that the member was "last performing" (substituting "performing immediately") before becoming incapacitated. As the expression “total incapacity” also appeared in other ordinances such as the Employees' Compensation Ordinance (Cap. 282) and the Employment Ordinance (Cap. 57), a member asked whether the proposed definition under the Bill would result in any discrepancy in the use of the same expression in other ordinances. In response, the Administration would check references to "total incapacity" in other ordinances and consider whether it was necessary to introduce a consequential amendment to the definition of "total incapacity" in other ordinances as well.

Drafting of Clause 4 - proposed section 7A(7)

- Admin
- (d) Having regard to a member's concern about the readability of the Chinese text of proposed section 7A(7), the Administration would consider whether the Chinese text of this proposed section could be improved and whether certain adjustment would need to be made to the English text as a result.

Drafting of Clause 6 - proposed section 12(2A)

- Admin
- (e) At the request of a member, the Administration would provide the previous drafts of the Chinese text of this proposed section for members' reference and would consider whether the Chinese drafting could be improved.

Clarification on Clause 6 - proposed section 12(2B)(a)

- ALA3
- (f) The Assistant Legal Adviser 3 (ALA3) would provide to members her written request for clarification on the proposed use of the interest derived from monies-in-transit and the Administration's reply thereto which was received very shortly before the meeting.
(*Post-meeting note:* ALA3's written request dated 5 June 2002 and the Administration's reply dated 11 June 2002 had been issued to members vide LC Paper No. CB(1)2027/01-02 on 17 June 2002.)

Clarification on Clause 11 - proposed section 43B(3) and 43B(4)

ALA3

(g) (*Post-meeting note*: ALA3 wrote to the Administration on 13 June 2002 to seek further clarification on proposed section 43B(3) relating to offences by employers who failed to enrol relevant employees into MPF schemes and on the drafting of proposed section 43B(4) which dealt with the six-month time-bar for prosecution of offences.

3. Mr Andrew CHENG indicated that he might propose to move a Committee Stage Amendment to proposed Schedule 2 under Clause 12 to further raise the minimum level of relevant income for MPF contributions from \$5,000 to \$6,000 to lessen the financial burden of MPF contributions on lower income employees and self-employed persons. He would provide the proposed CSA for members' reference as soon as it is ready.

II Any other business

4. The Chairman reminded members that the next meeting would be held on Wednesday, 19 June 2002 at 8:30 am to continue discussion with the Administration.

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

Legislative Council Secretariat
25 July 2002

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

**on Wednesday, 12 June 2002 at 8:30 am
in the Chamber of the Legislative Council Building**

Time	Speaker	Subject(s)	Action required
000000 - 000923	Chairman Administration Ms Audrey EU Mandatory Provident Fund Schemes Authority (MPFA)	<u>Discussion on policy issues</u> - Illustrative examples on the current and proposed arrangement for employees' contribution holidays, and on the generic minimum and maximum relevant income levels for Mandatory Provident Fund (MPF) contributions as requested by members at the meeting on 11 June 2002 (LC Paper No. CB(1)1992/01-02(01))	
000923 - 001643	Chairman Ms Audrey EU Administration	- On the review of the minimum and maximum levels of relevant income conducted by MPFA, Ms EU was concerned whether an interval of 4 years was an appropriate timeframe - The Administration considered the proposed arrangements reasonable as it would not be desirable to require service providers to adjust their computer systems at too frequent intervals - In response to Ms EU's concern, the Administration confirmed that MPFA must conduct the review of minimum and maximum levels of relevant income not less than once in every period of 4 years	
001643 - 002252	Mr Andrew CHENG Administration Assistant Legal Adviser 3	- While the Administration advised that the MPFA would adopt an open and transparent	

Time	Speaker	Subject(s)	Action required
	(ALA3) Chairman	<p>approach in reviewing the minimum and maximum levels of relevant income not less than once in every 4 years, and that changes to the level of relevant income would require legislative amendments subject to the approval of the LegCo, Mr CHENG was concerned about the arrangements to consult/inform LegCo about the results of the MPFA's review, particularly if no adjustment to the minimum and maximum levels of relevant income was recommended</p> <ul style="list-style-type: none"> - The Administration undertook to report to the LegCo Panel on Financial Affairs the outcome of each review carried out by MPFA, and would also give an undertaking to this effect at the Second Reading debate on the Bill 	Admin
002252 - 002338	Miss CHAN Yuen-han Administration Chairman	<ul style="list-style-type: none"> - Miss CHAN reiterated the widespread concerns of both employees and employers about the MPF System and requested that the Labour Advisory Board should be consulted on future changes to the MPF System - The Administration noted her request for consideration 	Admin
002338 - 002440	Chairman	<p><u>Clause by clause examination of the Bill</u> Clause 1</p>	
002440 - 002751	Ms Audrey EU Administration ALA3 Chairman	<p>Clause 2</p> <ul style="list-style-type: none"> - Definition of "contribution account", which had the same meaning as in section 2 of the Mandatory Provident Fund Schemes (General) Regulation 	

Time	Speaker	Subject(s)	Action required
		(Cap. 485 sub. leg.)	
002751 - 003200	Mr Andrew CHENG Administration	Clause 2 - Mr CHENG pointed out that under the Bill, the definition of "total incapacity" would be amended and asked whether the proposed definition under the Bill would result in any discrepancy in the use of the same expression in other ordinances - The Administration would check references to "total incapacity" in other ordinances and consider whether it was necessary to introduce a consequential amendment to the definition of "total incapacity" in other ordinances as well	Admin
003200 - 003446	Mr LEUNG Fu-wah ALA3	Clause 2 - Definition of "total incapacity"	
003446 - 003901	Mr CHAN Kam-lam Administration Chairman	Ditto	
003901 - 004128	Chairman Mr Andrew CHENG MPFA	Clause 3	
004128 - 004809	Chairman MPFA Mr Andrew CHENG Administration	Clause 4 - Having regard to Mr CHENG's concern about the readability of the Chinese text of proposed section 7A(7), the Administration would consider whether the Chinese text of this proposed section could be improved and whether certain adjustment would need to be made to the English text as a result	Admin
004809 - 004921	Chairman Administration	Clause 5	
004921 - 005542	Chairman Administration Mr Andrew CHENG	Clause 6 - At the request of Mr CHENG, the Administration would	Admin

Time	Speaker	Subject(s)	Action required
		provide the previous drafts of the Chinese text of proposed section 12(2A) for members' reference and would consider whether the Chinese drafting could be improved	
005542 - 005657	ALA3	Clause 6 - ALA3 would provide to members her written request for clarification on the proposed use of the interest derived from monies-in-transit and the Administration's reply thereto which was received very shortly before the meeting	ALA3
005657 - 005914	Chairman MPFA	Clause 7	
005914 - 010025	Chairman MPFA Mr Andrew CHENG	Clause 8	
010025 - 010116	Chairman MPFA	Clause 9	
010116- 010141	Chairman MPFA	Clause 10	
010141 - 010247	Chairman Administration	Clause 11	
010247 - 012907	ALA3 Chairman Administration Mr Andrew CHENG Mr YEUNG Yiu-chung	Clause 11 - Policy intent of providing for a continuing offence under Clause 11 - To strengthen deterrence against failure of an employer to enrol his employees in MPF schemes, the penalty provision under Clause 11 conferred on the court the power to impose a daily fine of \$500 upon the second or subsequent conviction of the employer for each day the offence was continued (LC Paper No. CB(1)1986/01-02(01) and (02)) - Mr YEUNG questioned	

Time	Speaker	Subject(s)	Action required
		whether it was the Administration's intention that it was only when an employer was convicted of the same offence in respect of the same employee on a subsequent occasion that the employer was liable to a daily penalty under proposed section 43B(3)	
012907 - 012945	Chairman Administration	Clause 12	
012945 - 013755	Chairman Administration MPFA Mr Henry WU Mr YEUNG Yiu-chung	Clause 13 - Section 1 of Schedule to the Bill - Legal status of "guidelines" - Definition of "an event of significant nature"	
013755 - 014133	Chairman MPFA	- Section 2 of Schedule to the Bill - Section 3 of Schedule to the Bill - Section 4 of Schedule to the Bill	
014133 - 014418	Mr Henry WU MPFA Chairman	- Section 3 of Schedule to the Bill - Transfer of scheme members and benefits	
014418 - 014755	Mr Andrew CHENG MPFA Chairman	- Section 4 of Schedule to the Bill	
014755 - 015019	Chairman MPFA	- Section 5 of Schedule to the Bill - Section 6 of Schedule to the Bill	
015019 - 015036	Chairman	- Section 7 of Schedule to the Bill	
015036 - 015253	Ms LI Fung-ying MPFA	- Section 6 of Schedule to the Bill	
015253 - 015448	Chairman MPFA	- Section 7 of Schedule to the Bill - Section 8 of Schedule to the Bill	
015448 - 015517	Chairman	- Date of the next meeting	

Time	Speaker	Subject(s)	Action required
015517 - 015538	Mr Andrew CHENG	<ul style="list-style-type: none"> - Mr CHENG indicated that he might propose to move a Committee Stage Amendment (CSA) to proposed Schedule 2 under Clause 12 to further raise the minimum level of relevant income for MPF contributions from \$5,000 to \$6,000 to lessen the financial burden of MPF contributions on lower income employees and self-employed persons. - He would provide the proposed CSA for members' reference as soon as it was ready 	
015538 - 015654	Chairman	<ul style="list-style-type: none"> - The Administration intended to resume the Second Reading debate on 10 July 2002 - The deadline for giving notice of resumption of Second Reading debate was 24 June 2002 - The deadline for giving notice to move CSAs was 29 June 2002 - Reminded the Administration to provide timely response to the issues arising from previous meetings - Closing remarks 	

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

Legislative Council Secretariat

25 July 2002