

立法會
Legislative Council

LC Paper No. CB(1)2399/06-07
(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/06/1

**Bills Committee on Mandatory Provident Fund Schemes
(Amendment) Bill 2007**

**Minutes of the second meeting
held on Thursday, 6 September 2007, at 9:00 am
in Conference Room A of the Legislative Council Building**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon CHAN Yuen-han, SBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon WONG Kwok-hing, MH
Hon Alan LEONG Kah-kit, SC
Dr Hon Fernando CHEUNG Chiu-hung
Hon WONG Ting-kwong, BBS
Hon TAM Heung-man
- Members absent** : Hon LEE Cheuk-yan
Dr Hon LUI Ming-wah, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon LI Kwok-ying, MH, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
- Public officers attending** : Ms Jenny CHAN
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)
- Mr Ryan CHIU
Assistant Secretary for Financial Services and the
Treasury (Financial Services)

Miss Monica LAW
Senior Assistant Law Draftsman
Department of Justice

Miss Selina LAU
Senior Government Counsel
Department of Justice

**Attendance by
invitation**

: Mandatory Provident Fund Schemes Authority

Mr Darren MCSHANE
Executive Director (Regulation & Policy)

Ms Gabriella YEE
Senior Manager (Policy & Development)

Hong Kong Small and Medium Enterprises Association

Mr Danny LAU
Chairman

The Hong Kong Chinese Importers' & Exporters'
Association

Mr CHENG Kai-ming
Vice President

Mr CHAN Fung-ping
Vice President

The Hong Kong Retirement Schemes Association

Ms Vivien PUN
General Manager

The Hong Kong Chamber of Small and Medium
Business Limited

Mr Benny POON
Honorary Treasurer

The Hong Kong Chinese Enterprises Association

Ms Cathy NG
Manager of Personnel Department

Employers' Federation of Hong Kong

Ms Jodi KOON
Senior Director-Operation

The Federation of Hong Kong and Kowloon Labour Unions

Mr LEE Keung-tsang
Labour Rights Committee Member

The Hong Kong Federation of Trade Unions (Rights and Benefits Committee)

Mr IP Wai-ming
Director

Hong Kong Bar Association

Mr Paul CAROLAN
Member

Individuals

Mr LAI Chi-lap
Yau Tsim Mong District Council member

Mr MAK Ip-sing
Yuen Long District Council member

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (1)5

Staff in attendance : Mr Kelvin LEE
Assistant Legal Adviser 1

Ms Rosalind MA
Senior Council Secretary (1)8

Ms Sharon CHAN
Legislative Assistant (1)8

I Confirmation of minutes and matters arising

(LC Paper No. CB(1)2276/06-07 —Minutes of meeting on 17 July 2007

LC Paper No. LS71/06-07 —Paper on "Application of Rule 57(4)(a) of the Rules of Procedure and matters relating to the long title of the Rail Merger Bill" prepared by the Legal Service Division)

The minutes of the meeting held on 17 July 2007 were confirmed.

2. Members agreed that LC Paper No. LS71/06-07 would be dealt with in future meetings.

II Meeting with deputations and the Administration/Mandatory Provident Fund Schemes Authority (MPFA)

Paper provided by MPFA

(LC Paper No. CB(1)2307/06-07(01) — "Information on the MPF prosecution cases related to housing allowance" provided by MPFA in response to members' request at the meeting on 17 July 2007)

Submissions from deputations attend the meeting

(LC Paper No. CB(1)2324/06-07(01) — Hong Kong Small and Medium Enterprises Association

LC Paper No. CB(1)2320/06-07(01) — The Hong Kong Chinese Importers' & Exporters' Association

LC Paper No. CB(1)2320/06-07(02) — The Hong Kong Retirement Schemes Association

LC Paper No. CB(1)2307/06-07(02) — The Hong Kong Chamber of Small and Medium Business Limited

- LC Paper No. CB(1)2320/06-07(03) — The Hong Kong Chinese Enterprises Association
- LC Paper No. CB(1)2320/06-07(04) — Employers' Federation of Hong Kong
- LC Paper No. CB(1)2320/06-07(05) — The Federation of Hong Kong and Kowloon Labour Unions
- LC Paper No. CB(1)2324/06-07(02) — The Hong Kong Federation of Trade Unions (Rights and Benefits Committee)
- LC Paper No. CB(1)2320/06-07(06) — Mr LAI Chi-lap, Yau Tsim Mong District Council member
- LC Paper No. CB(1)2327/06-07(01) — Mr MAK Ip-sing, Yuen Long District Council member)

Submissions from organizations not attending the meeting

- (LC Paper No. CB(1)2320/06-07(07) — The Chinese General Chamber of Commerce
- LC Paper No. CB(1)2320/06-07(08) — The Chinese Manufacturers' Association of Hong Kong
- LC Paper No. CB(1)2307/06-07(03) — Hong Kong Investment Funds Association
- LC Paper No. CB(1)2307/06-07(04) — Hong Kong Trustees' Association Ltd
- LC Paper No. CB(1)2320/06-07(09) — Law Society of Hong Kong
- LC Paper No. CB(1)2327/06-07(02) — Hong Kong Confederation of Trade Unions)

3. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions to be taken by the Administration/MPFA

4. To address the concern of the high management fees charged by MPF service providers, the Administration/MPFA agreed to provide an information paper setting out details on the following:

- (a) Ongoing and planned measures which aimed at effectively lowering the fees and charges, including but not limited to measures to increase market competition and the transparency of MPF schemes by requiring MPF service providers to further disclose details of fees and charges, as well as the feasibility of introducing the employee-based portable MPF account; and
- (b) the timeframe for implementation of improvement measures.

5. To facilitate members' assessment of the effectiveness of enforcement actions against and the penalty imposed on non-compliant employers who tried to evade their responsibility for making MPF contributions through intentionally designating a portion of their employees' income as housing allowance or housing benefit, the Administration/MPFA agreed to provide the following information:

- (a) Number of complaint cases received by MPFA relating to employers' abuse of the exclusion of housing allowance and other housing benefit from the existing definition of "relevant income" for MPF contribution; and
- (b) the amount of MPF contribution involved, the follow-up actions taken and/or the penalty imposed in respect of the cases in (a) above.

6. To address the comment of the Hong Kong Bar Association (HKBA) that the proposed extension of the prosecution time bar under sections 43C and 43E of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) would subject the employers to criminal liability without a time limit, which was considered inconsistent with the common law's approach in dealing with summary offences, the Administration/MPFA undertook to look into the issue with the Department of Justice and provide a written response.

(Post-meeting note: The written responses of the Administration/MPFA to the requests in paragraph 4 to 5 above were issued to members vide LC Paper No. CB(1)2403/06-07 on 27 September 2007. As regards the comment of HKBA in paragraph 6 above, the Administration advised that it agreed to the views of HKBA and proposed to impose a limit of three years on the prosecution time bar for the offences. The Administration would prepare Committee Stage Amendments to revise the relevant provisions in the Bill.)

III Any other business

Arrangements for the next meeting

7. Members agreed to hold the next meeting of the Bills Committee on Thursday, 4 October 2007 at 2:30 pm. The Chairman advised that the Secretariat

would prepare a summary of deputations' views for the Administration's written response and this would be made available for members' consideration before the next meeting to be held on 4 October 2007.

(Post-meeting note: The summary of deputations' views and the Administration's/MPFA's response to the views was issued to members vide LC Paper No. CB(1)2403/06-07 on 27 September 2007. On the basis of members' returns to the proposed schedule of meetings issued vide LC Paper No. CB(1)2336/06-07, the Chairman has decided the schedule of meetings in November 2007 to December 2007. The schedule was issued to members vide LC Paper No. CB(1)2374/06-07 on 19 September 2007.)

8. There being no other business, the meeting ended at 10:37 am.

Council Business Division 1
Legislative Council Secretariat
27 September 2007

**Proceedings of the
Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2007
Second meeting on Thursday, 6 September 2007, at 9:00 am
in Conference Room A of the Legislative Council Building**

| Time Marker | Speaker | Subject(s) | Action Required |
|--------------------|---|---|------------------------|
| 000000 – 000800 | Chairman | (a) Confirmation of the minutes of the first meeting on 17 July 2007 (LC Paper No. CB(1)2276/06-07) (b) Welcoming and introductory remarks | |
| 000801 – 001148 | 1. The Hong Kong Chinese Importers' & Exporters' Association | Presentation of views | |
| 001149 – 001316 | 2. The Hong Kong Retirement Schemes Association | Presentation of views | |
| 001317 – 001625 | 3. The Hong Kong Chamber of Small and Medium Business Limited | Presentation of views | |
| 001626 – 001909 | 4. Employers' Federation of Hong Kong | Presentation of views | |
| 001910 – 002143 | 5. The Federation of Hong Kong and Kowloon Labour Unions | Presentation of views | |
| 002144 – 002438 | 6. The Hong Kong Federation of Trade Unions (Rights and Benefits Committee) | Presentation of views | |
| 002439 – 002749 | 7. Hong Kong Bar Association (HKBA) | Presentation of views | |

| Time Marker | Speaker | Subject(s) | Action Required |
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| 002750 – 003056 | 8. Mr LAI Chi-lap, Yau Tsim Mong District Council member | Presentation of views | |
| 003057 – 003355 | 9. Mr MAK Ip-sing, Yuen Long District Council member | Presentation of views | |
| 003356 – 003626 | 10. Hong Kong Small and Medium Enterprises Association | Presentation of views | |
| 003627 - 003819 | 11. The Hong Kong Chinese Enterprises Association | Presentation of views | |
| 003820 - 004102 | Mandatory Provident Fund Schemes Authority (MPFA) | Briefing by MPFA on the information provided in its response to members' request at the meeting on 17 July 2007 (LC Paper No. CB(1)2307/06-07(01)) | |
| 004103 – 004853 | Mr WONG Kwok-hing Administration MPFA Chairman | (a) Mr WONG Kwok-hing sought the Administration's response on the following issues raised by some deputations: (i) High management fees charged by MPF service providers and the need to safeguard the interest of employees through increasing transparency of the MPF funds and/or MPFA's regulation of the level of fees and charges; and (ii) In light of the small number of prosecution cases against non-complaint employers who had abused the exclusion of | |

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| | | <p>housing allowance and benefits from the current definition of "relevant income", whether effective enforcement actions had been taken.</p> <p>(b) The Administration's response that MPF System mainly relied on market forces to set the type and level of fees and that the MPFA and the Administration aimed at promoting market competition so as to help bring market forces into full play. The Code on Disclosure for MPF Investment Funds (the Code) and Phase I of the Fee Comparative Platform (FCP) introduced by MPFA in 2004 and 2007 respectively were the main initiatives. Phase I of FCP provided information about the highest/ average/ lowest expenses by fund types. Phase II of FCP providing more detailed information would be launched after passage of the Bill with amendments to provisions on disclosure by MPFA.</p> <p>(c) MPFA's supplementary response that the transparency of fees and charges had been improved in the past few years. The Code already required standardized disclosure of all fees and charges and introduced the use of a variety of tools such as on-going cost illustrations and fund expense ratios to help scheme members in understanding the MPF information. Phase II of</p> | |

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| | | <p>FCP would aim at, amongst other things, providing a comparison of fees and charges such as bid and offer spread, trustee fees and investment manager fees. Adequate information was available and MPFA would like to get scheme members interested in using it. On prosecution, MPFA's advice that with the application for leave to appeal lodged by a convicted employer rejected by the Court of Final Appeal on 30 July 2007, MPFA was currently following up the other cases of non-compliance related to housing allowance issues.</p> | |
| 004854 – 005207 | <p>Mr WONG Ting-kwong Administration Chairman</p> | <p>(a) Mr WONG Ting-kwong declared that he was a Non-Executive Director of MPFA. His concern that the penalty imposed on non-compliant employers was too lenient.</p> <p>(b) The Administration's response that the Court, in passing sentence, would take into consideration the information submitted by MPFA on the circumstances of individual cases. The Administration was examining MPFA's proposal to increase the maximum penalty for non-enrolment and default MPF contribution to bring it on par with the maximum penalty for wage defaults under the Employment Ordinance (EO) (Cap. 57), i.e. three years imprisonment and a maximum fine of \$350,000.</p> <p>(c) The Administration's confirmation that "relevant</p> | |

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| | | <p>income", as defined in MPFSO, only covered remuneration and benefits provided by the employer in monetary terms. As such, the value of housing benefits provided in kind such as quarters would not be counted towards "relevant income".</p> | |
| 005208 – 010840 | <p>Miss CHAN Yuen-han Administration Chairman Ms Audrey EU MPFA</p> | <p>(a) Miss CHAN Yuen-han welcomed the proposed amendment to the definition of "relevant income". Ms Audrey EU also remarked that Members of the Civic Party supported the proposed amendment. Ms EU's enquiry about the work of MPFA to lower the management fees of MPF funds and the legislative timetable for the relevant legislative proposals, if any, for implementing the new measures.</p> <p>(b) MPFA's advice that various initiatives were in progress to address the concern about high management fees. These included enhancing the transparency of the funds, reducing the management costs by introducing more passive products and a portability proposal for MPF accounts. In this connection, MPFA issued the consultation conclusions on the proposals to improve the content of annual benefit statements in August 2007. Moreover, MPFA would undertake consultation on the portability proposal in September 2007. MPFA aimed to forward its recommendations to the Administration for consideration within 2007.</p> | <p>The Administration/MPFA to provide information as requested in paragraph 4 of the minutes</p> |

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| | | <p>(c) Miss CHAN Yuen-han's view that the Administration/MPFA were over-reliant on market forces in bringing down the fee levels. Miss CHAN's view that the problem could be better tackled by allowing employees to choose their own MPF service providers.</p> <p>(d) The Administration's advice that MPFA had commenced discussion with the MPF stakeholders, including the industry, on the feasibility of allowing employees to choose their own MPF service providers for their mandatory contributions. MPFA aimed to put forward recommendations to the Government by end 2007.</p> <p>(e) Regarding Ms Audrey EU's enquiry about the number of scheme members making transfer of funds when they changed jobs, MPFA's advice that reference might be made to information on the number of preserved accounts which were accounts holding the accrued benefits derived from scheme members' former employment.</p> <p>(f) On Ms Audrey EU's enquiry about greater flexibility to allow scheme members to withdraw MPF benefits before the age of 65, the Administration's advice that there were provisions under the existing Mandatory Provident Fund Schemes Ordinance (MPFSO) (Cap. 485) specifying the circumstances for early withdrawal of accrued</p> | |

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| | | <p>benefits. Nevertheless, having regard to the purpose of the MPF System to provide for retirement protection for the workforce, the Administration had no plan to provide further flexibility for scheme members to claim their accrued benefits before the age of 65.</p> | |
| 010841 – 011722 | <p>Miss TAM Heung-man Chairman Administration MPFA</p> | <p>(a) Miss TAM Heung-man's request for information on cases of non-compliant employers who tried to evade their responsibility for making MPF contributions through intentionally designating a portion of their employees' income as housing allowance or housing benefit.</p> <p>(b) MPFA's response that it had been handling complaint cases involving about 55 enterprises of varying sizes, employing a roughly estimated total of 20 000 to 30 000 employees, though not every employee might be affected by the housing issues. The percentage of housing component in the "relevant income" of some of the affected employees could range from 10% to 65% of their monthly income.</p> <p>(c) Miss TAM Heung-man's view that employees should be given the right to choose their MPF service providers and her enquiry about the timeframe for introducing the legislative amendments.</p> <p>(d) The Chairman's remark that members' concern about other issues relating to the MPF System might be followed up</p> | <p>The Administration/MPFA to provide information as requested in paragraph 5 of the minutes.</p> |

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| | | <p>at other forums and the discussion of the Bills Committee should focus on issues within the scope of the Bill as far as practicable.</p> <p>(e) The Administration's reiteration that MPFA was undertaking discussion with the MPF stakeholders including the industry on the feasibility of allowing employees to choose MPF service providers for their own contributions with a view to putting forward its recommendations to the Government by end 2007. The Administration would examine the recommendations and consult Members of the Legislative Council where appropriate. Pending the outcome of consultation and MPFA's recommendations, the Administration was not yet in a position to specify any proposed legislative timetable.</p> <p>(f) On Miss TAM Heung-man's enquiry about the plan and timetable for the Administration to adjust upwards the maximum level of "relevant income" to \$30,000, the Administration's response that after consulting the Panel on Financial Affairs (FA Panel) in January and February 2007 on the recommendations of MPFA's review of the levels of "relevant income", it was still examining the issue in the light of the views received.</p> | |
| 011723 – 012310 | Mr WONG Kwok-hing | (a) Mr WONG Kwok-hing's concern about measures to | |

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| | Administration MPFA Chairman | <p>facilitate scheme members' monitoring of their MPF fund accounts and checking of their account balance, such as the introduction of the personal portable account and account passbook. His enquiry on the timing for implementation of the relevant proposals.</p> <p>(b) MPFA's response that the proposal of personal portable account involved complicated issues and considerable legislative amendments, such as the procedures and timeframe for making transfer and the restrictions on the frequency and amount of transfer. The procedural flow for service providers to observe in administering these portable accounts had to be worked out first. The means of communication (e.g. whether by using an account passbook) would be a subsidiary issue. MPFA was still discussing the details with MPF stakeholders including the industry and aimed to put forward its recommendations to the Administration as soon as possible. It would seek the FA Panel's views in due course.</p> <p>(c) In response to Mr WONG Kwok-hing's concern about the legislative timetable for increasing the maximum penalty for non-enrolment and default contribution in line with that under EO, the Administration's advice that it would endeavour to submit the proposal in the 2007-08 legislative session.</p> | |

| Time Marker | Speaker | Subject(s) | Action Required |
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| 012311 – 012648 | Mr WONG Ting-kwong MPFA | <p>(a) Mr WONG Ting-kwong's view that both employers and employees shared the concern about choosing the suitable MPF service providers who charged reasonable fees and achieved good investment returns. Hence, the crucial issue for enhancing the regulation of the MPF System was to educate the public on making the right choice of MPF service provider and investment portfolio.</p> <p>(b) MPFA's response that FCP was only one tool to provide information on fees and charges of MPF funds. MPFA, in conjunction with other stakeholders would continue educational efforts to make the public aware of the relevant factors in making decisions about their MPF investments.</p> | |
| 012649 – 013629 | Mr WONG Kwok-hing Administration MPFA Chairman HKBA Ms Audrey EU | <p>(a) Mr WONG Kwok-hing's view that employees might be hesitant about lodging complaints against their non-compliant employers while they were still in employment. His view that extension of the prosecution time bar would facilitate enforcement actions by MPFA as criminal proceedings could still be instituted even if an offence was discovered by, or came to the notice of MPFA more than six months after its occurrence.</p> <p>(b) The Administration's remark that the proposed extension of the prosecution time bar sought to facilitate the institution of criminal</p> | |

| Time Marker | Speaker | Subject(s) | Action Required |
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| | | <p>proceedings within six months after the offence was discovered by the MPFA. On employees' concern about lodging complaints against their employers, MPFA's response that it would conduct consultation on whether employment protection to employees similar to that provided under EO should also be provided in MPFSO.</p> <p>(c) HKBA's clarification of its concern that the proposed amendments to sections 43C and 43E of MPFSO would subject the employers to criminal liability without a time limit, which was inconsistent with the common law's approach in dealing with summary offences.</p> <p>(d) Mr WONG Kwok-hing's concern about the servicing of summonses, given that some unscrupulous employers would try to avoid the summons being served on them by changing their registered address or refusing to acknowledge the receipt of summonses. Ms Audrey EU's enquiry of whether the proposed amendments to MPFSO by adding a section 47C would plug this loophole.</p> <p>(e) MPFA's explanation that the proposed amendments to MPFSO aimed to provide an alternative mechanism for the service of summons on the employer's business address. MPFA and the Administration's confirmation that under the new section 47C, MPF summonses could</p> | <p>The Administration/MPFA to take follow-up action as required in paragraph 6 of the minutes</p> |

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| | | be served by leaving it at, or sending it by post to, any place at which the employer carried on business. | |
| 013630 – 013859 | Chairman WONG Kwok-hing | Arrangements for the next meeting | |

Council Business Division 1
Legislative Council Secretariat
27 September 2007