

立法會
Legislative Council

LC Paper No. CB(1)136/07-08
(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 third meeting
held on Thursday, 4 October 2007, at 2:30 pm
in Conference Room A of the Legislative Council Building**

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

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

I Confirmation of minutes and matters arising

(LC Paper No. CB(1)2399/06-07 — Minutes of meeting on 6 September 2007)

The minutes of the meeting held on 6 September 2007 were confirmed.

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

(LC Paper No. CB(1)2403/06-07(01) — Administration/MPFA's response to views submitted by various organizations/individuals on the Mandatory Provident Fund Schemes

(Amendment) Bill 2007 (as of 27 September 2007)

LC Paper No. CB(1)2403/06-07(02) — Paper on "Measures to lower the fees and charges of MPF funds" provided by MPFA in response to members' request at the meeting on 6 September 2007

LC Paper No. CB(1)2403/06-07(03) — Paper on "Complaint cases related to housing allowance issues" provided by MPFA in response to members' request at the meeting on 6 September 2007

LC Paper No. CB(1)2403/06-07(04) — Paper on "Improvement of arrears recovery mechanism" provided by MPFA

LC Paper No. CB(3)710/06-07 — The Bill

LC Paper No. CB(1)2107/06-07(01) — Marked-up copy of the Bill prepared by the Legal Service Division

FSB CRG4/51C(2007) Pt.17 — The Legislative Council Brief issued by the Financial Services and the Treasury Bureau)

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

III Any other business

Arrangements for the next meeting

3. Members noted that the next meeting of the Bills Committee would be held on Thursday, 1 November 2007 at 2:30 pm. They also agreed that the Bills Committee would commence clause-by-clause examination of the Bill at the next meeting scheduled for 1 November 2007.
4. There being no other business, the meeting ended at 3:55 pm.

**Proceedings of the
Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2007
Third meeting on Thursday, 4 October 2007, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000415	Chairman	(a) Confirmation of minutes of the second meeting held on 6 September 2007 (LC Paper No. CB(1) 2399/06-07) (b) Welcoming and introductory remarks	
000416 – 000759	Chairman Administration	It was agreed that if necessary, issues related to the Bill raised by deputations (LC Paper No. CB(1) 2403/06-07(01)) could be re-visited during the clause-by-clause examination of the Bill.	
000800 – 001412	Chairman Mandatory Provident Fund Schemes Authority (MPFA)	Briefing by MPFA on LC Paper No. CB(1) 2403/06-07(02)	
001413 – 002754	Mr TAM Yiu-chung Chairman Mr WONG Kwok-hing MPFA Ms LI Fung-ying	(a) Mr TAM Yiu-chung and Mr WONG Kwok-hing welcomed the recent lowering of fees by some MPF trustees. Mr TAM's view that MPFA should keep up its efforts to achieve further reductions in fees by MPF trustees. Mr WONG was concerned about MPFA's liaison with trustees to bring about further reduction in fees and charges. (b) MPFA's response that it had, in recent months, held meetings with all approved MPF trustees to better understand their approach in setting the levels of fees and charges and their future plans. MPFA expected that	

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		<p>more trustees would make announcements on lowering of fees in the near future.</p> <p>(c) In response to the concern shared by Mr WONG Kwok-hing and Ms LI Fung-ying about measures to effectively drive down the fees and charges of MPF funds, MPFA's reiteration of its commitment to improving the transparency of fees and promoting competition so as to help bring market forces into full play. MPFA was also examining measures including enhancing disclosure of fees and charges by trustees, the proposal to increase employees' control over their MPF investments, and the provision of lower cost investment products by trustees.</p> <p>(d) Ms LI Fung-ying's enquiry about the target/reasonable level of fees and charges for MPF schemes.</p> <p>(e) MPFA's explanation that:</p> <p>(i) it was difficult to specify a quantifiable figure.</p> <p>(ii) MPFA as the regulator was committed to taking measure to drive fees and charges down to the lowest reasonable level.</p> <p>(iii) whilst no strict comparison could be made with overseas systems given the differences in their</p>	

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		<p>design and scale, the fund expense ratio for the Australian system in the range of 1.5% to 1.7% might be a reference threshold for the level of fees and charges for a large and mature system.</p>	
002755 –005146	<p>Mr LEE Cheuk-yan Chairman MPFA Miss CHAN Yuen-han Administration Mr Andrew LEUNG Mr Tommy CHEUNG</p>	<p>(a) Mr LEE Cheuk-yan's view that the recent reduction in fees and charges by MPF trustees had been made under strong public pressure rather than driven by market forces. Mr LEE's view that the portability proposal currently under consultation was inadequate as employees would only be allowed to transfer accrued benefits derived from their own mandatory contributions but not those from the employers.</p> <p>(b) MPFA's advice that Members' views would be sought on the portability proposal in due course. Whilst there was support in principle for increasing employees' control over their MPF investments, practical issues such as the administrative work on the part of the employers and the impact on the offsetting arrangements for Long Service Payment (LSP) and Severance Payment (SP) would have to be taken into account.</p> <p>(c) Mr LEE Cheuk-yan's objection to the existing offsetting arrangements and his view that allowing employees to transfer all their accrued benefits (i.e.</p>	

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		<p>including those derived from their employers' contributions) to an MPF scheme of their own choice would not have any adverse impact on the offsetting arrangements.</p> <p>(d) Miss CHAN Yuen-han's concern about the impact of the offsetting arrangements for LSP and SP on the accrued benefits of employees in the long run. Miss CHAN's concern about the progress of the portability proposal and her view that the relevant bill should be introduced early in order that scrutiny could be completed within the 2007-2008 session.</p> <p>(e) The Administration's response that the portability proposal and the offsetting arrangements were issues outside the scope of the Bill.</p> <p>(f) The Administration's advice that pending the outcome of consultation on the proposal and MPFA's recommendations, it was not in a position to specify any proposed legislative timetable.</p> <p>(g) MPFA's reiteration that it would endeavour to submit its proposal to the Administration as soon as practicable and before the end of 2007.</p> <p>(h) The Chairman's advice that members' concern about other issues relating to the MPF System might be pursued at other forums.</p>	

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		<p>(i) Views expressed by Mr Andrew LEUNG and Mr Tommy CHEUNG as follows:</p> <p>(i) fees and charges of MPF funds should be lowered and on par with global standards.</p> <p>(ii) Mr CHEUNG's suggestion that if necessary, fees and charges of MPF schemes should be regulated or capped by legislation.</p> <p>(iii) the existing offsetting arrangements for LSP and SP were the outcome of lengthy negotiation prior to the implementation of the MPF System, and had served to address the concerns of employers of small and medium enterprises about the additional financial burden.</p> <p>(iv) the proposal to allow employees the choice of their MPF schemes might increase administration costs for employers and would require careful discussion by stakeholders.</p>	
005147 - 005429	Mr WONG Ting-kwong Chairman	Mr WONG Ting-kwong declared that he was a Non-Executive Director of MPFA. His view that the Bills Committee should focus discussion on issues within the scope of the Bill.	
005430 – 005717	Chairman MPFA	Briefing by MPFA on LC Paper No. CB(1)2403/06-07(03)	

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005718 – 010342	Mr WONG Kwok-hing MPFA Chairman	<p>(a) Mr WONG Kwok-hing's concern about the small number of cases where prosecution had been taken against employers for evading their responsibility to make MPF contributions by designating a part of their employees' salaries as housing allowances (six cases as at 20 September 2007).</p> <p>(b) MPFA's response that before instituting prosecution, civil remedies would first be sought by way of recovering the default contributions from the employers. In processing of housing allowance complaint cases, it had been necessary for MPFA to put on hold cases pending the outcome of a convicted employer's application for leave to appeal. Processing of these outstanding cases had resumed after the aforesaid application had been rejected by the Court of Final Appeal in July 2007.</p> <p>(c) As to Mr WONG Kwok-hing's concern about the deterrent effect of the existing arrangements, MPFA's advice that the process for recovery of arrears of MPF contributions under which a surcharge would be imposed had a deterrent effect on defaulting employers. Moreover, MPFA had submitted a proposal to the Administration for increasing the maximum penalty for non-enrolment and default payment of MPF contribution to bring it on</p>	

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		<p>par with the maximum penalty for defaulting wage payment under the Employment Ordinance (EO) (Cap. 57).</p> <p>(d) Responding to Mr WONG Kwok-hing's concern about employees' jobs being jeopardized after lodging complaints against their employers, MPFA's advice that it was undertaking consultation on whether employment protection similar to that available under EO should also be provided under the Mandatory Provident Fund Schemes Ordinance (MPFSO) (Cap. 485).</p>	
010343 – 010731	Chairman MPFA	MPFA's briefing on LC Paper No. CB(1)2403/06-07(04)	
010732 – 011325	Mr WONG Kwok-hing MPFA Administration	<p>(a) Mr WONG Kwok-hing's view that the proposed removal of the 30-day settlement period could not adequately safeguard employees' interests. Mr WONG's view that timely legal action should be taken against employers defaulting MPF contributions.</p> <p>(b) MPFA's response that under the current arrears recovery mechanism, the employer's liability would arise when he failed to settle the MPF contributions by the contribution day (i.e. the 10th day after the last day of the relevant calendar month for a relevant employee).</p> <p>(c) As to Mr WONG Kwok-hing's concern about employees' job security after lodging complaints and</p>	

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		<p>giving evidence against their employers, MPFA's advice that in cases where there was sufficient documentary evidence on the employment relationship and the amount of default contribution, the employee might not be required to testify in person. MPFA's reiteration that it was conducting consultation on providing protection to employees under MPFSO similar to that under EO.</p> <p>(d) The Administration's advice that it 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 defaulting wage payment under EO. The Administration would endeavour to introduce the relevant bill into the LegCo as soon as possible to facilitate early scrutiny by Members.</p>	
011326- 011746	Ms LI Fung-ying MPFA	<p>(a) Ms LI Fung-ying's concern about compliance of approved trustees with the notification requirements under the current arrears recovery mechanism. MPFA's advice that the notification system had been working effectively in general.</p> <p>(b) Responding to Ms LI Fung-ying's further enquiry on empowering MPFA to take legal actions expeditiously to ensure early arrears recovery, MPFA's explanation that the proposed amendment under the Bill would speed up the</p>	

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		recovery process and allow MPFA to recover default contributions immediately at the end of the settlement period.	
011747 – 012223	Mr WONG Kwok-hing Chairman MPFA	<p>(a) Responding to Mr WONG Kwok-hing's concern about the period allowed for defaulting employers to rectify the situation before MPFA took legal action for arrears recovery, MPFA's explanation on the proposed recovery mechanism and that investigation normally commenced shortly if not immediately at the end of the payment period and upon receipt of the second unrectified report from the trustee.</p> <p>(b) Mr WONG Kwok-hing's reiteration of the need to expedite the enforcement process and where necessary, to seek approval from LegCo for additional resources.</p>	
012224 – 012826	Mr WONG Ting-kwong MPFA Mr WONG Kwok-hing	<p>(a) Mr WONG Ting-kwong's view that wider use of electronic communication between MPFA and trustees might speed up the arrears recovery process. MPFA's response that attempts had been made to facilitate transfer of information at different levels, such as improving scheme members' access to MPF fund information through the Fee Comparative Platform (FCP).</p> <p>(b) Responding to Mr WONG Kwok-hing's concern about the timeframe for implementation of FCP,</p>	

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		<p>MPFA's advice that Phase I of FCP was launched in July 2007 providing information about the highest/average/lowest expenses by fund types. Preparation was underway for Phase II of FCP providing more detailed information on the fees and charges of each constituent fund. Phase II would be launched at an early date after passage of the Bill.</p> <p>(c) As to Mr WONG Kwok-hing's concern about scheme members' checking of their MPF accounts balance, MPFA's advice that proposed improvements to the annual benefits statement, which were currently under consultation, would facilitate such checking</p>	
012827 – 012920	Chairman WONG Kwok-hing	Arrangements for the next meeting	