

立法會
Legislative Council

LC Paper No. CB(1)482/07-08
(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 fifth meeting
held on Thursday, 22 November 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 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 Alan LEONG Kah-kit, SC
Hon WONG Ting-kwong, BBS
- Members absent** : Dr Hon LUI Ming-wah, SBS, JP
Hon LEUNG Yiu-chung
Hon SIN Chung-kai, SBS, JP
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Dr Hon Fernando CHEUNG Chiu-hung
Hon TAM Heung-man
- 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)271/07-08 — Minutes of meeting on 1
November 2007)

The minutes of the meeting held on 1 November 2007 were confirmed.

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

Clause-by-clause examination of the Bill

- (LC Paper No. CB(1)272/07-08(01) — Administration's response to members' views expressed at the meeting on 1 November 2007
- LC Paper No. CB(1)166/07-08(01) — Marked-up copy of the Administration's proposed Committee Stage amendments to the Bill prepared by the Legal Service Division
- 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
- LC Paper No. CB(1)135/07-08(01) — Letter dated 19 September 2007 from Assistant Legal Adviser (ALA) to the Financial Services and the Treasury Bureau
- LC Paper No. CB(1)135/07-08(02) — Administration's response to the observations of the ALA on the Bill
- LC Paper No. CB(1)135/07-08(03) — Proposed Committee Stage amendments provided by the Administration
- LC Paper No. CB(1)135/07-08(04) — Administration's response to views expressed by the Hong Kong Bar Association and the Law Society of Hong Kong on the Bill (English version only)
- LC Paper No. CB(1)2403/06-07(01) (Revised) — Administration/MPFA's response to views submitted by various organizations/individuals on the Mandatory Provident Fund Schemes (Amendment) Bill 2007

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**).

Legislative timetable

3. The Chairman concluded that the Bills Committee had completed scrutiny of the Bill. Members supported the resumption of Second Reading debate on the Bill. The Chairman directed the Clerk to liaise with the Administration and inform members of the legislative timetable for the resumption in due course.

(Post-meeting note: The Administration had advised that it would resume Second Reading debate on the Bill at the Council meeting on 9 January 2008. Members were informed of the legislative timetable vide LC Paper No. CB(1)339/07-08 on 27 November 2007.)

4. Members agreed that the Bills Committee would not move any Committee Stage Amendments (CSAs) to the Bill in its name and none of the members present had indicated that they intended to propose any CSAs to the Bill.

(Post-meeting note: As the Bills Committee had completed scrutiny of the Bill, the ensuing meetings which had been notified vide LC Paper No. CB(1)2336/06-07 dated 10 September 2007 would not be held. Members were informed of the cancellation of the meetings vide LC Paper No CB(1)323/07-08 on 23 November 2007).

III Any other business

5. There being no other business, the meeting ended at 3:45 pm.

**Proceedings of the
Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2007
Fifth meeting on Thursday, 22 November 2007, at 2:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000000 – 000357	Chairman	Confirmation of minutes of the 4th meeting held on 1 November 2007 (LC Paper No. CB(1) 271/07-08)	
000358 – 000801	Chairman Administration	<p>(a) Briefing by the Administration on its response to members' views expressed at the meeting on 1 November 2007 (LC Paper No. CB(1) 272/07-08(01)).</p> <p>(b) Members noted the proposed Committee Stage Amendments (CSAs) to clauses 3 to 10, clauses 15 to 17, clauses 20 to 22, clause 37 and clause 41 of the Bill as set out in the Administration's paper (LC Paper No. CB(1)272/07-08(01)).</p>	
000802 – 001316	Chairman Administration	<p>Clause-by-clause examination</p> <p><u>Clause 43 – How notices etc. are to be served, etc. for purposes of the Ordinance</u></p> <p><u>Clause 44 – Interpretation</u></p> <p><u>Clause 45 – Withdrawal of accrued benefits</u></p> <p><u>Clause 46 – Offences by employers</u></p> <p>Members raised no query on clauses 43 to 46</p>	
001317 – 002814	Administration Mr WONG Kwok-hing Chairman ALA1 Ms LI Fung-ying	<p><u>Clause 47 – Offences by self-employed persons</u></p> <p><u>Clause 48 – Offence to make false or misleading statement</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p data-bbox="711 230 991 264"><u>Clause 49 – Offences</u></p> <p data-bbox="711 304 1174 882">(a) The Administration's advice that it intended to move a CSA to amend clauses 47, 48 and 49 to impose a prosecution time bar (i.e. six months after the offence was discovered or came to the notice of the Mandatory Provident Fund Schemes Authority (MPFA), or three years from the commission of such offence, whichever was the earlier). The CSA was proposed in response to the comments of the Hong Kong Bar Association.</p> <p data-bbox="711 927 1174 1435">(b) Mr WONG Kwok-hing's concern about employers' default or non-payment of MPF contributions and his view that the prosecution time bar should be extended to six years from the commission of such offence, as employees might not be able to lodge complaints against their employers shortly after commission of the offence due to fear of losing their job.</p> <p data-bbox="711 1480 1174 1944">(c) The Administration's clarification that the prosecution time bar proposed under the CSA would not affect enforcement actions against employers who had committed an offence of non-enrolment or default contribution under existing section 43B of the Mandatory Provident Fund Schemes Ordinance (MPFSO) (Cap. 485).</p> <p data-bbox="711 1989 1174 2092">(d) ALA1's advice that clauses 47 and 48 related to offences committed by self-employed</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>persons and the offence of making false or misleading statement; and not offences of employers' failure to enrol or make contributions to MPF schemes. Hence, the proposed CSA would not affect the existing arrangements for prosecuting breaches of section 43B of the MPFSO.</p> <p>(e) Responding to Ms LI Fung-ying's query on whether the need to specify a prosecution time bar might have been overlooked in the drafting of the Bill, the Administration's explanation that any shortcomings of the draft legislation would be identified and improved having regard to views received in the course of scrutiny.</p>	
002815 – 002934	Administration	<p><u>Clause 50 – Power to restructure registered schemes</u></p> <p>Members raised no query</p>	
002935 – 003829	Administration Mr WONG Kwok-hing Chairman	<p><u>Clause 51 – Section added</u></p> <p><u>Clause 52 – How notices etc. are to be served, etc. for purposes of the Ordinance</u></p> <p>(a) Mr WONG Kwok-hing's concern about the effectiveness of the proposed amendments to the service of summons in plugging the existing loophole whereby unscrupulous employers could deny receipt of summons by various means, such as changing the name of the company.</p> <p>(b) The Administration's response that the proposed</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>amendment to provide for the service of summons by leaving it at, or sending it by post to, any place at which the employer carried on business, sought to increase the chance of successful service of summons and prevent abuse by unscrupulous employers.</p>	
003830 – 004000	MPFA	<p><u>Clause 53 – Provisions relating to capital preservation fund</u></p> <p>Members raised no query</p>	
004001 – 004242	MPFA	<p><u>Clause 54 – Approved trustee to provide scheme members with annual benefit statements</u></p> <p>(a) MPFA's advice that the Administration intended to move a CSA to clause 54 to replace "paragraphs (b) to (f)" in section 56(5) of the Mandatory Provident Fund Schemes (General) Regulation with paragraphs (b) to (fa), which was a consequential amendment.</p> <p>(b) Members raised no query</p>	
004243 – 005052	MPFA	<p><u>Clause 55 – Interpretation</u></p> <p><u>Clause 56 – Associates and related companies</u></p> <p><u>Clause 57 – Eligibility of delegate of custodian</u></p> <p><u>Clause 58 – Qualifications for auditor</u></p> <p><u>Clause 59 – Accrued benefits not to be transferred if contributions outstanding</u></p> <p>Members raised no query on clauses 55 to 59</p>	

Time Marker	Speaker	Subject(s)	Action Required
005053 – 005228	MPFA	<p><u>Clause 60 – Interpretation</u></p> <p>(a) MPFA's advice that the Administration intended to move a CSA to add a new clause 60A to specify that MPFSO as amended by section 60 applied in relation to a contribution period that began on or after the date of commencement of that section. This served to clarify how the revised definition of "relevant income" would apply in relation to a contribution period.</p> <p>(b) Members raised no query</p>	
005229 – 005611	MPFA	<p><u>Clause 61 – Section added</u></p> <p><u>Clause 62 – Interpretation</u></p> <p>Members raised no query on clauses 61 and 62</p>	
005612 – 010147	MPFA Mr TAM Yiu-chung Chairman	<p><u>Clause 63 – Recovery of mandatory contributions that are in arrears</u></p> <p>(a) MPFA's advice that the Administration intended to amend clause 63 by refining section 18(5) of MPFSO to specify and delineate, in the respective cases of an employee and a self-employed person, the arrangement on the payment of the arrears or contribution surcharge by MPFA to an MPF scheme. The proposed CSA served to set out how MPFA would handle the arrears or contribution surcharges recovered by or paid to it.</p> <p>(b) Responding to the Chairman, MPFA's advice that the</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>contribution surcharges recovered would be credited into the MPF account of the scheme member concerned.</p> <p>(c) Mr TAM Yiu-chung's concern about the offsetting arrangement, if any, that was applicable to such credited surcharges against the employer's liability for severance payment or long service payment.</p>	
010148 – 011138	MPFA	<p><u>Clause 64 – Interpretation</u></p> <p><u>Clause 65 – Definitions</u></p> <p><u>Clause 66 – Approved trustee to check calculations of mandatory contributions</u></p> <p><u>Clause 67 – Approved trustee to notify defaulters of failure to pay contributions</u></p> <p><u>Clause 68 – Contribution surcharge for, and report on, failure to pay contributions</u></p> <p><u>Clause 69 – Approved trustee to inform Authority of non-payment or discrepancy of mandatory contribution</u></p> <p><u>Clause 70 – Section added</u></p> <p><u>Clause 71 – Authority to give notice to defaulter and approved trustee to inform Authority of non-payment</u></p> <p><u>Clause 72 – Financial Penalties</u></p> <p>Members raised no query on clauses 64 to 72</p>	
011139 – 011259	Chairman ALA1 Administration	In response to the Chairman, ALA1's advice that he had no further comments on the CSAs proposed by the Administration.	

Time Marker	Speaker	Subject(s)	Action Required
011300 – 011602	Mr WONG Ting-kwong Administration Chairman	<p>(a) Mr WONG Ting-kwong's concern about the progress of other legislative proposals to improve the MPF System, in particular the portability proposal to allow employees to transfer all or part of their accrued benefits to an MPF scheme of their own choice.</p> <p>(b) The Administration's advice that it had consulted the Panel on Financial Affairs in November 2007 on the proposal to improve the operation, in particular the enforcement of the MPF System. The Administration planned to finalize the Bill for introduction as soon as possible within the current legislative session. As to the portability proposal, the Administration was examining MPFA's proposal in consultation with the Department of Justice and had requested MPFA to provide further information. The LegCo would be consulted on the proposal later.</p>	
011603 – 011700	Chairman	Concluding remarks and legislative timetable	