

立法會
Legislative Council

LC Paper No. CB(1)2244/07-08
(These minutes have been seen
by the Administration)

Ref : CB1/BC/9/07/2

**Bills Committee on Mandatory Provident Fund Schemes
(Amendment) Bill 2008**

**Minutes of the second meeting
held on Monday, 30 June 2008, at 4:30 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 SIN Chung-kai, SBS, JP
Hon LI Fung-ying, BBS, JP
Hon Albert CHAN Wai-yip
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon LEUNG Kwok-hung
Hon WONG Ting-kwong, BBS
Hon Ronny TONG Ka-wah, SC
Hon TAM Heung-man
- Member absent** : Hon Albert HO Chun-yan
- Public officers attending** : Mr Patrick HO Chung-kei, JP
Deputy Secretary for Financial Services and the
Treasury (Financial Services)
- Ms Jenny CHAN Wai-man
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)
- Mr Ryan CHIU Pit-ming
Assistant Secretary for Financial Services and the
Treasury (Financial Services)

Mr Michael LAM Siu-chung
Senior Assistant Law Draftsman
Department of Justice

Miss Amy CHAN Wing-yan
Senior Government Counsel
Department of Justice

- Attendance by invitation** : Mandatory Provident Fund Schemes Authority
- Ms Hendena YU
Chief Operating Officer (Enforcement)
- Ms Gabriella YEE
Chief Manager (Policy Development & Research)
- Clerk in attendance** : Miss Polly YEUNG
Chief Council Secretary (1)5
- Staff in attendance** : Mr KAU Kin-wah
Assistant Legal Adviser 6
- Ms Guy YIP
Senior Council Secretary (1)5
-

I Meeting with the Administration/Mandatory Provident Fund Schemes Authority

Follow-up to issues raised at the meeting on 27 June 2008

(LC Paper No. CB(1)2077/07-08(01) — List of follow-up actions arising from the meeting held on 27 June 2008 prepared by the Legislative Council Secretariat

LC Paper No. CB(1)2066/07-08(01) — Administration/MPFA's response to members' views and concerns raised at the meeting held on 27 June 2008)

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

2. In relation to the concerns raised by members of the Bills Committee about the proposed one-off injection of \$6,000 (hereinafter referred to as the special contribution) into the Mandatory Provident Fund (MPF) accounts of employees and

self-employed persons earning not more than \$10,000 a month, the Administration/the Mandatory Provident Fund Schemes Authority (MPFA) were requested to provide a paper consolidating details of the mechanism and criteria to be used for assessing a person's eligibility for the special contribution, including illustrative examples. The information would be included in the report of the Bills Committee as an appendix for Members' reference.

(Post-meeting note: The Administration/MPFA's response was issued to members vide Appendix III to LC Paper No. CB(1)2091/07-08 on 3 July 2008.)

Clause-by-clause examination of the Bill

- (LC Paper No. CB(3)743/07-08 — The Bill
- LC Paper No. CB(1)2008/07-08(01) — Marked-up copy of the Bill prepared by the Legal Service Division
- LC Paper No. CB(1)2077/07-08(02) — Committee Stage amendment proposed by Hon CHAN Yuen-han)

3. In relation to the queries raised by the legal adviser on the drafting and legal aspects of the following provisions of the Bill, the Administration/MPFA were requested to clarify/consider amending the relevant provisions accordingly:

- (a) according to the current drafting, the proposed section 19D(3) (an MPF account would be opened by an approved trustee for persons who did not have a registered MPF account, i.e. the ORSO scheme members) would be invoked when the proposed section 19B(1) was not satisfied. However, section 19D(3) would only be applicable for the purpose of the proposed section 19B(1). Since person who did not have an MPF account would not be within the visage of the proposed section 19B(1), it followed that there appeared to be no legal basis for the MPFA to require action to be taken by an approved trustee under the proposed section 19D; and
- (b) under the proposed section 19F, the special contribution paid to an eligible person would vest in that person as accrued benefits; the proposed section 19H specified that the provisions of the new Part IIIA of the Bill would prevail over any conflicting instruments. Since trust deeds and related instruments did not contemplate that any special contribution would be made, it was unclear whether the trustees would be authorized under the trust deeds and related instruments to deal with the special contribution in the same way as the employers' and employees' contributions. The Administration/MPFA had been requested to seek the confirmation of trustees that the proposal would

not give rise to operational difficulties.

(Post-meeting note: The Administration/MPFA's response was issued to members vide LC Paper No. CB(1)2108/07-08(01) on 3 July 2008.)

4. The Administration/ MPFA undertook to work out, after enactment of the Bill, the detailed arrangements of a complaint-handling or review mechanism, including the timeframe for actions and the recovery of special contribution that had been wrongly paid. The Administration was also asked to consider whether a separate mechanism should be set up outside the MPFA for making final decisions on disputed cases. The MPFA would provide the requested information to the Panel on Financial Affairs prior to submission of the funding proposal to the Finance Committee. Where necessary, the Panel could raise questions or give views on the arrangements.

The way forward

5. The Chairman concluded that the Bills Committee had completed scrutiny of the Bill. The Administration proposed to resume the Second Reading debate on the Bill on 9 July 2008. Members did not raise any objection.

6. The Bills Committee noted the CSA proposed to Part IIIA of the Bill to be moved by Miss CHAN Yuen-han in her personal capacity (LC Paper No. CB(1)2077/07-08(02)). According to Miss CHAN, the CSA sought to require the Government to make an injection of funds into MPF accounts upon achieving a consolidated surplus exceeding \$50 billion dollars. Members nevertheless noted that the proposed CSA, as currently worded, merely provided a definition on "special contribution" and might not have the effect of imposing an obligation on the Government to make the special contribution under the specified circumstances. Mr LEE Cheuk-yan also indicated his intention to move a CSA to the effect that the special contribution would not be subject to the preservation rule and might therefore be withdrawn prior to the age of 65.

(Post-meeting note: The CSA proposed by Mr LEE Cheuk-yan was issued to members vide LC Paper No. CB(1)2113/07-08(01) on 4 July 2008.)

7. In view that the deadlines for giving notices for resumption of Second Reading debate and the moving of CSAs to the Bill had lapsed before completion of scrutiny, members agreed that the Bills Committee would make a recommendation to the House Committee to seek the President's permission to dispense with the relevant notices. Subject to the President's permission to dispense with the aforesaid notices, the Bills Committee would also recommend that the deadline for giving the aforesaid notices be waived till noon on 5 July 2008.

- Clerk 8. Miss CHAN Yuen-han criticized the Administration for introducing the Bill into the Legislative Council when it was approaching the end of its term, and expressed dissatisfaction that scrutiny of the Bill had been subject to a highly compressed timeframe. The Chairman advised that Miss CHAN's view would be reflected in the report of the Bills Committee.

II Any other business

9. There being no other business, the meeting ended at 6:15 pm.

Council Business Division 1
Legislative Council Secretariat
11 August 2008

**Proceedings of the
Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2008
Second meeting on Monday, 30 June 2008, at 4:30 pm
in Conference Room A of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
000328 – 000517	Chairman Administration	Opening remarks Follow-up to issues raised at the meeting on 27 June 2008 Briefing by the Administration (LC Paper No. CB(1)2066/07-08(01))	
000518 – 000751	Chairman Ms LI Fung-ying Administration	In response to Ms LI Fung-ying's enquiry, the Administration advised that the income of a person's last three months of employment or self-employment during the period from 1 March 2007 to 29 February 2008 would be taken into account in assessing his/her income eligibility.	
000752 – 001007	Chairman Ms LI Fung-ying MPFA Administration	(a) Discussion on the need to devise a complaint-handling or review mechanism. (b) The MPFA advised that after enactment of the Bill, it would require trustees and ORSO employers to submit account information required for implementing the one-off injection exercise. The MPFA was upgrading its computer system for storing, consolidating and processing the large amount of account information expected to be received in around November 2008.	The Administration / MPFA to take action as required in paragraph 4 of the minutes.
001008 – 002300	Chairman Mr LEE Cheuk-yan Administration MPFA ALA6 Miss TAM Heung-man	(a) Discussion on the need or otherwise for flexibility in applying the eligibility criteria and in effecting the one-off payment. (b) The Administration stressed that there was already flexibility in applying the eligibility criteria, as set out in LC Paper No. CB(1)1379/07-08(06). A person's eligibility would not be affected even if he had surpassed the retirement age of 65 or ceased to be	

Time Marker	Speaker	Subject(s)	Action Required
		<p>employed after 29 February 2008. The MPFA supplemented that for those who were eligible but whose accounts had been closed before the one-off injection was made, the special contribution might be paid by way of sending a cheque to them by post.</p> <p>(c) The MPFA advised that publicity efforts would be stepped up to promote employers' and employees' awareness of the injection exercise and to alert them to take the necessary actions.</p>	
002301 – 003442	Chairman Mr Albert CHAN Administration MPFA ALA6	<p>(a) In response to Mr Albert CHAN's enquiry, the Administration advised that the MPFA would implement the one-off injection exercise according to the eligibility criteria specified by the Administration and as agreed by Members when approving the funding proposal by the Finance Committee. The MPFA would seek clarification from the Administration on doubtful cases. The MPFA advised that a person who provided false information committed a criminal offence under section 43B of the MPF Schemes Ordinance (Cap. 485).</p> <p>(b) The Administration advised that the MPFA would set up an administrative mechanism to handle appeal cases.</p> <p>(c) ALA6 remarked that under the proposed arrangement, the MPFA would be authorized to effect the payment of the special contribution in accordance with the criteria specified by the Government. A person aggrieved by the MPFA's decision might not have a cause of action against the MPFA.</p>	
003443 – 004931	Chairman Mr SIN Chung-kai Administration Mr Ronny TONG Mr LEE Cheuk-yan	<p>(a) Discussion on the complaint-handling or review mechanism. Mr SIN Chung-kai suggested that a mechanism independent of the MPFA should be set up to handle complaints</p>	

Time Marker	Speaker	Subject(s)	Action Required
	MPFA ALA6 Mr WONG Ting-kwong	<p>relating to the special contribution. Mr Ronny TONG echoed and suggested that consideration might be given to setting up a committee under the Office of the Financial Secretary for this purpose.</p> <p>(b) The Administration re-iterated that the MPFA would be empowered to effect payment of the special contribution in accordance with the eligibility criteria specified by the Government. The MPFA would not have discretion to deviate from the pre-determined criteria. As such, there was no need to set up a separate complaint/appeal handling mechanism within the Administration. The MPFA advised that it might take about a year to complete the injection exercise including the necessary follow-up actions, such as the handling of complaint cases.</p> <p>(c) Discussion on the criteria to be used for assessing a person's eligibility for the special contribution and the operational arrangements to effect payment. For eligible persons who no longer held an MPF/ORSO account, ALA6 questioned whether the MPFA had the necessary statutory power to effect payment of the special contribution to the persons concerned by issuing a cheque. The MPFA advised that the cheques would be issued by the trustees according to the information provided by the MPFA.</p>	<p>The Administration / MPFA to take action as required in paragraph 2 of the minutes.</p>
004932 – 005036	Chairman Mr LEE Cheuk-yan	<p>Clause-by-clause examination of the Bill</p> <p><i>Mandatory Provident Fund Schemes Ordinance</i></p> <p>Mr LEE Cheuk-yan indicated his intention to move CSAs in respect of the vesting of the special contribution.</p>	

Time Marker	Speaker	Subject(s)	Action Required
005037 – 005130	Chairman Administration	<p><u>Clause 1 - Short title</u></p> <p><u>Clause 2 - MPFA Administration Account</u></p> <p>Members raised no query on clauses 1 and 2.</p>	
005131 – 005309	Chairman Administration ALA6	<p><u>Clause 3 - Part heading amended</u></p> <p>Members noted the CSA proposed by Miss CHAN Yuen-han (LC Paper No. CB(1)2077/07-08(02)) and ALA6's advice that the CSA, as currently drafted, had the effect of providing a definition of "special contribution" only.</p>	
005310 – 010103	Chairman Administration MPFA ALA6	<p><u>Clause 4 - Part IIIA added</u></p> <p><i>Section 19B - Authority may pay special contributions into accounts of scheme members</i></p> <p>Members noted ALA6's query that as the proposed section 19B stated that the special contribution was to be paid into an account of a member of a registered scheme, it appeared to be contradictory when the proposed section 19D(3) stated that an approved trustee might be required to register a person as a member of the scheme.</p>	The Administration / MPFA to take action as required in paragraph 3(a) of the minutes.
010104 – 010236	Chairman Administration ALA6	<p><i>19C - Authority may require information or documents necessary for paying special contributions</i></p> <p>Members noted that an ORSO scheme was regarded as "relevant scheme" under this section.</p>	
010237 – 010608	Chairman Administration ALA6 MPFA	<p><i>19D - Authority may require approved trustees to take actions necessary for paying special contributions</i></p> <p>In response to ALA6's enquiry, the MPFA advised that for an eligible ORSO scheme member without any MPF account, an MPF preserved account would be opened for that person such that the special contribution could be paid into that account. Trustees and ORSO employers</p>	

Time Marker	Speaker	Subject(s)	Action Required
		had been duly consulted on the proposed arrangement.	
010609 – 011415	Chairman Administration Miss CHAN Yuen-han MPFA	<p><i>19E - Authority may recover special contributions that should not have been paid</i></p> <p>Miss CHAN Yuen-han's opinion that a mechanism should be devised for handling the recovery of special contributions that had been wrongly paid. In her view, the recovery should only be made by the MPF after thorough consideration of the circumstances giving rise to the wrong payment.</p>	The Administration / MPFA to take action as required in paragraph 4 of the minutes.
011416 – 011537	Chairman Administration ALA6	<p><i>19F - Vesting of special contributions</i></p> <p>ALA6's suggestion for Mr LEE Cheuk-yan to consider introducing his intended CSA to this clause.</p>	
011538 – 011617	Chairman Administration	<p><i>19G - Liability to pay other contributions</i></p> <p>Members raised no query on this clause.</p>	
011618 – 012619	Chairman Administration ALA6 Miss CHAN Yuen-han MPFA	<p><i>19H - Part IIIA prevails over any instruments applicable to registered schemes</i></p> <p>Discussion on ALA6's query as to the purported effect of the proposed sections 19F and 19H to prevail over the relevant trust deed and specified instrument in relation to the approved trustees' power to deal with the special contribution.</p>	The Administration / MPFA to take action as required in paragraph 3(b) of the minutes.
012620 – 013203	Chairman Administration	<p><u>Clause 5 - Regulations with respect to registered schemes</u></p> <p><u>Clause 6 - Application and interpretation of sections 45B and 45C</u></p> <p><i>Mandatory Provident Fund Schemes (General) Regulation</i></p> <p><u>Clause 7 - Interpretation</u></p> <p><u>Clause 8 - Separate accounts for each scheme members</u></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 9 - Financial penalties</u></p> <p>Members raised no query on clauses 5 to 9.</p>	
013204 – 013648	Chairman Miss CHAN Yuen-han Administration ALA6	<p>(a) Discussion on the complaint-handling or review mechanism. The Administration advised that the details about the appeal mechanism would be provided to the Panel on Financial Affairs. The Administration was requested to consider whether a separate mechanism should be set up outside the MPFA for making final decisions on disputed cases.</p> <p>(b) The Administration advised that since the MPFA would implement the injection exercise on the basis of objective and transparent eligibility criteria, it would be appropriate for the MPFA to handle the complaints/appeals direct. The MPFA would consult and seek clarification from the Administration in doubtful cases.</p> <p>(c) The Chairman's remark that the details of the eligibility criteria to be adopted for the purpose of the special contribution would be included in the report of the Bills Committee as an appendix for Members' reference.</p>	<p>The Administration / MPFA to take action as required in paragraph 4 of the minutes.</p> <p>The Administration / MPFA to take action as required in paragraph 2 of the minutes.</p>
013649 – 014455	Chairman Miss CHAN Yuen-han Administration Mr LEE Cheuk-yan ALA6	The way forward, legislative timetable and CSAs to be moved by Miss CHAN Yuen-han and Mr LEE Cheuk-yan	