

立法會
Legislative Council

LC Paper No. CB(1)2536/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/BC/3/08/2

**Bills Committee on
Mandatory Provident Fund Schemes (Amendment) Bill 2009**

**Second meeting on
Thursday, 4 June 2009, at 8:30 am
in Conference Room B of the Legislative Council Building**

- Members present** : Hon CHAN Kam-lam, SBS, JP (Chairman)
Hon LEE Chuek-yan
Hon LI Fung-ying, BBS, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon Starry LEE Wai-king
Hon Tanya CHAN
Hon CHEUNG Kwok-che
Hon IP Wai-ming, MH
- Members absent** : Hon Albert HO Chun-yan
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon CHIM Pui-chung
Hon WONG Sing-chi
Hon WONG Yuk-man
- Public officers attending** : Financial Services and the Treasury Bureau
Mr Patrick HO, JP
Deputy Secretary for Financial Services and the
Treasury (Financial Services) 2

Ms Jenny CHAN
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services) 3

Mr Frederick YU
Assistant Secretary for Financial Services and the
Treasury (Financial Services)

Department of Justice

Mr Allen LAI
Senior Government Counsel

Attendance by invitation : Mandatory Provident Fund Schemes Authority

Mr Darren MCSHANE
Executive Director (Regulation and Policy)

Ms Gabriella YEE
Chief Manager (Policy Development and Research)

Clerk in attendance : Ms Rosalind MA
Chief Council Secretary (1)5

Staff in attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mr Noel SUNG
Senior Council Secretary (1)4

Ms Haley CHEUNG
Legislative Assistant (1)8

I Meeting with the Administration/ Mandatory Provident Fund Schemes Authority

Follow-up to issues raised at the meeting on 19 May 2009

(LC Paper No. CB(1)1785/08-09(01) — List of follow-up actions raising from the first meeting on 19 May 2009 prepared by the Legislative Council Secretariat

- LC Paper No. CB(1)1785/08-09(02) — Administration/ Mandatory Provident Fund Schemes Authority (MPFA)'s response to the issues raised at the first meeting
- LC Paper No. CB(1)1606/08-09(03) — Submission from Law Society of Hong Kong (English version only)
- LC Paper No. CB(1)1785/08-09(03) — Administration/ MPFA's response to the submission from Law Society of Hong Kong

Clause-by-clause examination of the Bill

- LC Paper No. CB(1)1785/08-09(04) — Administration/ MPFA's response to the letter from Assistant Legal Adviser to the Administration dated 13 May 2009
- LC Paper No. CB(1)1606/08-09(02) — Letter from Assistant Legal Adviser to the Administration dated 13 May 2009
- LC Paper No. CB(3)526/08-09 — The Bill
- FSB CRG4/51C(2007) Pt.4 — Legislative Council Brief issued by the Financial Services and the Treasury Bureau
- LC Paper No. CB(1)1606/08-09(01) — Marked-up copy of the Bill prepared by the Legal Service Division)

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

Committee Stage amendments (CSAs) to be proposed by the Administration

2. The Bills Committee noted that the Administration would, having taken into account the comments from members and the Law Society of Hong Kong (the Law Society), propose CSAs to clauses 10, 19, 20 and 22 of the Bill.

(Post-meeting note: The Administration's proposed CSAs were circulated to members for comments vide LC Paper No. CB(1)1888/08-09 on 12 June 2009.)

Legislative timetable

3. The Bills Committee had completed scrutiny of the Bill. Members noted the following legislative timetable:

Date of reporting to House Committee	Deadline for giving notice for resumption of Second Reading debate	Deadline for giving notice of Committee Stage amendments	Date of resumption of Second Reading debate
19 June 2009 (Friday)	22 June 2009 (Monday)	27 June 2009 (Saturday)	8 July 2009 (Wednesday)

II Any other business

4. There being no other business, the meeting ended at 10:05 am.

Council Business Division 1
Legislative Council Secretariat
3 September 2009

**Proceedings of the
Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2009
Second meeting on Thursday, 4 June 2009, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time Marker	Speaker	Subject(s)	Action Required
Follow-up to issues raised at the meeting on 19 May 2009			
000353 – 001411	Chairman Administration Assistant Legal Adviser 4 (ALA4)	Briefing by the Administration on response to the issues raised at the meeting on 19 May 2009 (LC Paper No. CB(1)1785/08-09(02)) and response to the submission from the Law Society (LC Paper No. CB(1)1785/08-09(03)).	
Clause-by-clause examination of the Bill			
001412 – 002236	Chairman Administration	<p>Part 1</p> <p>Preliminary</p> <p><u>Clause 1 – Short title</u></p> <p><u>Clause 2 – Commencement</u></p> <p>Part 2</p> <p>Amendments to Mandatory Provident Fund Schemes Ordinance</p> <p><u>Clause 3 – Interpretation</u></p> <p><u>Clause 4 – Authority may pay special contributions into accounts of scheme members</u></p> <p><u>Clause 5 – Authority may require approved trustees to take actions necessary for paying special contributions</u></p> <p><u>Clause 6 – Approval of trustees</u></p> <p><u>Clause 7 – Revocation of approval of approved trustee</u></p> <p><u>Clause 8 – Application for registration as employer sponsored scheme or master trust scheme</u></p> <p><u>Clause 9 – Applications for registration of schemes as industry schemes</u></p> <p><u>Clause 10 – Regulations</u></p> <p>Members raised no question on clauses 1 to 10.</p>	

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002237 – 002645	Chairman Administration Miss Tanya CHAN ALA4	<p>Part 3</p> <p>Amendments to Mandatory Provident Fund Schemes (General) Regulation</p> <p><u>Clause 11 – Interpretation</u></p> <p>(a) In response to Miss Tanya CHAN's enquiry, ALA4's advice that his question on clause 11(3) related to the breakdown of information on the accrued benefits to be shown in the "personal account".</p> <p>(b) The Administration's advice that under the existing legislation, the trustee had to arrange for a member's preserved account (to be renamed as "personal account" under clause 14 of the Bill) to be divided into two sub-accounts. One sub-account specified certain benefits including those derived from mandatory contributions paid by or in respect of the member that were attributable to the member's former employments or former self-employments, and another sub-account specified other benefits including those derived from voluntary contributions paid by or in respect of the member that were attributable to the member's former employments or former self-employments. A "personal account" could show the balance of each sub-account.</p>	
002646 – 002802	Chairman Administration	<p><u>Clause 12 – Non-refusal of scheme applicants</u></p> <p>Members raised no question on clause 12.</p>	
002803 – 003333	Chairman Administration ALA4 Mr IP Wai-ming	<p><u>Clause 13 – No fees etc. for transfer of accrued benefits other than actual expenses</u></p> <p>(a) ALA4's reference to his questions on the proposed amendments to section 34 of the Mandatory Provident Fund Schemes (General) Regulation (the General Regulation), which sought clarifications on the meaning of "necessary transaction costs that are incurred" and "costs reasonably likely to be incurred", as well as the reason for not limiting the charge to the actual expenses incurred by the trustee.</p> <p>(b) The Administration's explanation that according to the MPFA, transfer requests in</p>	

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		<p>unit trust administration were usually priced before any resultant underlying transactions were undertaken. The proposed drafting to allow a trustee to charge "necessary transaction costs that are.... reasonably likely to be incurred" was to cover such situation. Such costs might include, for example, brokerage commissions, taxes, exchange fees and commission, etc, but would not include the general administrative costs of the trustee.</p> <p>(c) Mr IP Wai-ming's enquiry about the mechanism for enquiries and complaints if a scheme member was dissatisfied with the level of fees charged by a trustee for effecting a transfer.</p> <p>(d) The Administration's advice that scheme members who were dissatisfied with the transfer fees might lodge complaints with the MPFA. The MPFA would promote public understanding that transaction costs incurred by a fund could be recovered by way of transfer fees by trustees, through its publicity programmes.</p>	
003334 – 003514	Chairman Administration	<p><u>Clause 14 – Separate accounts for each scheme member</u></p> <p><u>Clause 15 – Transfer of accrued benefits of member of employer sponsored scheme</u></p> <p><u>Clause 16 – Transfer of accrued benefits of member of master trust scheme or industry scheme (other than a casual employee who is a member of an industry scheme)</u></p> <p>Members raised no question on clauses 14 to 16.</p>	
003515 – 010346	Chairman Administration ALA4 Mr IP Wai-ming Mr CHEUNG Kwok-che Mr WONG Kwok-hing MPFA Mr WONG Ting-kwong	<p><u>Clause 17 – Sections added</u></p> <p><i>148A - Transfer of accrued benefits derived from mandatory contributions in respect of current employment to personal accounts</i></p> <p><i>148B - Transfer of accrued benefits derived from mandatory contributions in respect of former employment or former self-employment to contribution accounts or personal accounts</i></p> <p>(a) In response to ALA4's question on the reason</p>	

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		<p>for not providing for the transfer of accrued benefits derived from voluntary contributions under current employment by an employee to his personal account, the Administration's advice that transfer of accrued benefits derived from any voluntary contributions between MPF accounts was governed by the governing rules of individual MPF schemes rather than by the MPF Schemes Ordinance (Cap.485).</p> <p>(b) Concern shared by Mr IP Wai-ming and Mr CHEUNG Kwok-che about the effect of the governing rules determined by scheme trustees on the transfer of accrued benefits derived from voluntary contributions. Mr CHEUNG's view that employees might not be aware of the restrictions imposed by such governing rules.</p> <p>(c) The Administration's advice that the MPFA might consider means to increase scheme members' awareness of the effect of the governing rules through public education.</p> <p>(d) ALA4's enquiry on the reasons for not giving a statutory right to an employee to transfer the accrued benefits derived from employee mandatory contributions under current employment for more than once in a year. View shared by Mr WONG Kwok-hing and Mr IP Wai-ming that there should not be restrictions on the frequency of transfer. Mr WONG's view that given the volatility of the financial market, restrictions on the frequency of transfer might reduce flexibility of scheme members in making timely transfer of MPF schemes in response to market changes.</p> <p>(e) The Administration's explanation that the purpose of the amendment was to impose a statutory obligation on scheme trustees to effect the election of transfer of accrued benefits derived from employee mandatory contributions by their members at least once per calendar year. The present proposal on the frequency of permissible transfers had already taken into account feedback obtained from previous consultation. More frequent transfers might be made if permitted in the governing rules of the schemes. The MPFA would step up public education on the impact</p>	

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		<p>and choices of the transfers upon implementation of the portability proposal. However, scheme members should take heed of the long-term nature of their MPF investments when making investment decisions, and be careful if they would consider making frequent transfers between schemes in response to market volatilities.</p> <p>(f) Concern shared by Mr WONG Kwok-hing, Mr IP Wai-ming and Mr CHEUNG Kwok-che that high costs incurred for the transfer might discourage employees from electing the transfer.</p> <p>(g) Explanation of the Administration and the MPFA that the existing law had prohibited the charging of fees on any kinds of transfer of accrued benefits by trustees except for recovery of necessary transaction costs. The proposed amendments to section 34 of the General Regulation sought to better reflect this established policy.</p> <p>(h) View shared by the Chairman and Mr WONG Ting-kwong that changes to the current transfer arrangement should be introduced gradually. The current proposal of allowing employees to transfer accrued benefits derived from their mandatory contributions under current employment at least once per calendar year could help enhance market competition and benefit scheme members.</p>	
010347 – 010742	Chairman Administration	<p><u>Clause 18 – Section substituted</u></p> <p><i>149 - Transfer of accrued benefits in personal accounts to contribution accounts or other personal accounts</i></p> <p>Members raised no question on clause 18.</p> <p><u>Clause 19 – Duty of approved trustee on being notified of election</u></p> <p>Members noted that the Administration would propose CSAs to clause 19 to amend section 153 of the General Regulation in response to the view of the Law Society, i.e. to extend the application of section 153 (which obliged the transferor trustee to</p>	

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		transfer accrued benefits to a separate account in the scheme within 30 days upon notification of the election) to the proposed sections 148A(5)(a), 148B(4)(a), 148B(4)(c), 149(2)(a) and 149(2)(c) and the existing section 145(8)(b).	
010743 – 011227	Chairman Administration	<p><u>Clause 20 – Approved trustee to give transfer statement to scheme member</u></p> <p><u>Clause 21 – Accrued benefits not to be transferred if contributions or contribution surcharges outstanding</u></p> <p><u>Clause 22 – Sections added</u></p> <p><i>157A - Transfer of outstanding sums received by transferor trustees</i></p> <p><i>157B - Register of members of registered schemes who have established and maintained personal accounts within master trust schemes or industry schemes</i></p> <p>Members raised no question on clauses 20 to 22.</p>	
011228 – 011652	Chairman Administration ALA4	<p>Part 4</p> <p>Amendment to Mandatory Provident Fund Schemes Rules</p> <p><u>Clause 23 – Application for Authority's consent to restructuring of registered schemes under section 34B of Ordinance</u></p> <p>Members raised no question on clause 23.</p> <p>Part 5</p> <p>Transitional and Savings</p> <p><u>Clause 24 – Transitional and saving</u></p> <p>(a) ALA4's enquiry as to whether it was necessary to make provision for, in the transitional and savings provision, pending litigations in respect of the accrued benefits in a preserved account.</p> <p>(b) The Administration's response that it was not aware of any case of litigation in respect of the accrued benefits in an MPF preserved account. The proposed savings provisions regarding</p>	

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		<p>preserved accounts and personal accounts under clause 24(4) should be sufficient for the purpose of the Bill. Advice of the Department of Justice that the saving provisions served to ensure smooth transition of legal procedures containing reference to preserved accounts, which were initiated before the enactment of the Bill, to the new definition of "personal account" upon the enactment of the Bill.</p>	
<p>011653 – 012148</p>	<p>Mr WONG Ting-kwong Mr IP Wai-ming Mr CHEUNG Kwok-che MPFA</p>	<p>(a) In response to Mr WONG Ting-kwong's enquiry, the Administration's advice that an employee would no longer hold an account in the employer-sponsored scheme upon termination of employment with the employer concerned.</p> <p>(b) Concern shared by Mr IP Wai-ming and Mr CHEUNG Kwok-che about the choice of election for transfer by an employee member of an MPF exempted occupational retirement scheme (ORSO scheme).</p> <p>(c) The MPFA's advice that for employees who joined an ORSO scheme before the implementation of the MPF System on 1 December 2000, they could choose to withdraw all their accrued benefits in the scheme or transfer the accrued benefits to a personal account in an MPF scheme as voluntary contributions on termination of the ORSO employment. For those who joined such scheme after the implementation of the MPF System, they had to transfer the part of the accrued benefits under the ORSO scheme equivalent to the amount of minimum MPF benefits in respect of their former employment to an MPF scheme for preservation whilst withdrawing the remaining accrued benefits upon termination of the ORSO employment.</p>	
<p>012149 – 012649</p>	<p>Chairman Ms LI Fung-ying MPFA</p>	<p>(a) Ms LI Fung-ying's concern about recovery and transfer of accrued benefits derived from the employee's mandatory contributions in the event that the employer had failed to comply with the mandatory requirement to make contributions for the employee and had not made any deduction from the employee's relevant income.</p>	

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		<p>(b) The MPFA's advice that the underlying principle of the MPF System held an employer responsible for making both the employer's and the employee's mandatory contribution to an MPF scheme. In the case of default contributions, the MPFA would recover from the employers concerned both the employer's and employee's mandatory contributions. If there were outstanding default contributions owed to the employee who had elected to transfer the accrued benefits to a personal account, the transferor trustee would keep the default contributions recovered in the existing MPF account until the employee concerned chose to transfer the accrued benefits after that calendar year.</p>	
<p>012650 – 013215</p>	<p>Chairman Ms Starry LEE Administration</p>	<p>(a) Ms Starry LEE's view that consideration should be given to allowing greater flexibility for scheme members to invest their accrued benefits derived from their mandatory contributions, such as investing as fixed deposits in banks rather than making fund-type investments. Ms LEE also stated the request of some employees for relaxing the restriction for withdrawal of accrued benefits at the age of 65.</p> <p>(b) The Chairman's advice that Ms LEE's concerns on issues related to the operation of the MPF System could be pursued at appropriate forum outside the Bills Committee.</p> <p>(c) The Administration's response that each MPF scheme must offer a relatively conservative investment choice of investment fund. According to the General Regulation, such fund could only invest into Hong Kong Dollar assets. As such, Hong Kong Dollar fixed deposits had already been included as one of the investment choices. As the MPF System aimed to assist the working population to make retirement savings, any measures to relax the restrictions on the withdrawal of accrued benefits by scheme members before reaching the age of 65 should be examined carefully, and it was noted that the various sectors in the community had not reached a common view on this subject at this stage.</p>	

Time Marker	Speaker	Subject(s)	Action Required
013216 – 013628	Chairman Administration Clerk	Legislative timetable.	

Council Business Division 1
Legislative Council Secretariat
3 September 2009