

立法會
Legislative Council

LC Paper No. CB(1)1279/11-12
(These minutes have been seen
by the Administration)

Ref : CB1/BC/1/11/2

**Bills Committee on Mandatory Provident Fund Schemes
(Amendment) (No. 2) Bill 2011**

**First meeting on
Tuesday, 31 January 2012, at 8:45 am
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon WONG Ting-kwong, BBS, JP (Chairman)
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon LI Fung-ying, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan
Hon CHAN Kin-por, JP
Hon WONG Sing-chi
Hon IP Kwok-him, GBS, JP
Hon Alan LEONG Kah-kit, SC

Members absent : Hon KAM Nai-wai, MH
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH

Public officers attending : Mr Patrick HO, JP
Deputy Secretary for Financial Services and the
Treasury (Financial Services)

Miss Emmy WONG
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)

Mr Lawrence PENG
Senior Assistant Law Draftsman
Department of Justice

Miss Selina LAU
Senior Government Counsel
Department of Justice

Attendance by invitation : Mr Darren McSHANE
Executive Director (Regulation and Policy)
Mandatory Provident Fund Schemes Authority

Mrs Janet YUEN
Consultant (Policy Projects)
Mandatory Provident Fund Schemes Authority

Ms Amelia LEUNG
Senior Manager (Policy Development)
Mandatory Provident Fund Schemes Authority

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (1)5

Staff in attendance : Miss Carrie WONG
Assistant Legal Adviser 4

Mr Hugo CHIU
Council Secretary (1)5

Ms Haley CHEUNG
Legislative Assistant (1)5

I Election of Chairman

Mr Tommy CHEUNG, the member with the highest precedence among those present at the meeting, presided over the election of the Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee.

2. Mr WONG Ting-kwong was nominated by Mr IP Kwok-him and the nomination was seconded by Mr Andrew LEUNG. Mr WONG Ting-kwong accepted the nomination. There being no other nomination, Mr Tommy CHEUNG declared that Mr WONG Ting-kwong was elected Chairman of the Bills Committee.

3. Members agreed that there was no need to elect a Deputy Chairman.

II Meeting with the Administration

(LC Paper No. CB(3)232/11-12	— The Bill
File Ref: G6/9/22(2001) Pt.20	— Legislative Council Brief issued by the Financial Services and the Treasury Bureau
LC Paper No. LS16/11-12	— Legal Service Division Report on Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011
LC Paper No. CB(1)938/11-12	— Background brief on Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011 prepared by the Legislative Council Secretariat
LC Paper No. CB(1)939/11-12(01)	— Marked-up copy of the Bill prepared by the Legal Service Division)

Declaration of Interests

4. Mr Andrew LEUNG Kwan-yuen, Ms LI Fung-ying and Mr IP Kwok-him declared that they were non-executive directors of the Mandatory Provident Fund Schemes Authority (MPFA). Mr WONG Ting-kwong declared that he was a former non-executive director of the MPFA and the Chairman of the Mandatory Provident Fund Schemes Industry Schemes Committee.

Discussion

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

(Post-meeting note: The powerpoint presentation notes tabled at the meeting were issued to members vide LC Paper No. CB(1)978/11-12 on 1 February 2012.)

Admin Follow-up actions to be taken by the Administration

6. The Administration was requested to provide, in respect of Mandatory Provident Fund (MPF) intermediaries, information on:

- (a) the qualifying examination and the continuing training requirement under the existing and the proposed new regimes, and the transitional arrangements in regard to the qualifying examination and the continuing training requirement for existing MPF intermediaries; and
- (b) the support measures (such as provision of sufficient training courses) to facilitate the smooth transition of existing MPF intermediaries to the new regime and the registration of new MPF intermediaries.

III Any other business

Invitation for views

7. Members agreed (a) to send invitation letters to the relevant organizations and the District Councils, and to post an invitation notice on the Legislative Council website to invite the public to give views on the Bill; and (b) to hold a meeting to receive public views on the Bill.

Date of next meeting

8. The Chairman requested the Clerk to arrange the schedule of future meetings.

9. There being no other business, the meeting ended at 10:28 am.

**Proceedings of the
Bills Committee on Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011
First meeting on Tuesday, 31 January 2012, at 8:45 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000317 – 000617	Mr Tommy CHEUNG Mr IP Kwok-him Mr Andrew LEUNG Mr WONG Ting-kwong	Election of Chairman	
000618 – 000717	Chairman	Opening remarks	
000718 – 002126	Administration	Briefing by the Administration on the proposals in the Bill.	
002127 – 002233	Chairman Mr Andrew LEUNG Mr IP Kwok-him Ms LI Fung-ying	Declaration of interests	
002234 – 002524	Chairman Administration	<p>The Chairman remarked that the approach of 'two regulators for one industry' (一業兩管) was adopted under the Bill, i.e. a Mandatory Provident Fund ("MPF") intermediary would be subject to the supervision of two authorities, namely, the Mandatory Provident Fund Schemes Authority ("MPFA") and a relevant frontline regulator ("FR"). Given the weaknesses of the approach as witnessed in the Lehman Brothers Minibonds Incident, he enquired how such weaknesses could be avoided in the implementation of the Employee Choice Arrangement ("ECA").</p> <p>The Administration clarified that under the Bill, MPFA would be the sole authority to issue the Code of Conduct (CoC) for MPF intermediaries, and FRs would be given the same regulatory powers under the Bill and would conduct their supervision in accordance with the same set of requirements for MPF intermediaries. This regulatory approach would ensure consistency and efficient use of regulatory resources as MPF intermediary activities were incidental to the</p>	

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		<p>main lines of business of most MPF intermediaries, who were subject to the supervision of the respective FRs for their main lines of business.</p>	
<p>002525 – 003452</p>	<p>Ms LI Fung-ying Administration Chairman Mandatory Provident Fund Schemes Authority (MPFA)</p>	<p>Ms LI enquired about:</p> <ul style="list-style-type: none"> (a) the fee and validity period of the registration of MPF intermediaries; (b) whether MPFA could, having regard to investigation findings of FRs, conduct further investigation on its own if it considered necessary; (c) whether an FR could make a suggestion on the disciplinary sanction; (d) how the disciplinary sanction would be determined if there was disagreement between MPFA and the FR concerned; and (e) the appeal mechanism for MPF intermediaries. <p>The Administration replied as follows:</p> <ul style="list-style-type: none"> (a) While MPFA was empowered under the Bill to charge a registration fee on MPF intermediaries, MPFA has indicated its plan not to charge any registration fee in the early stage of the implementation of the ECA so as to facilitate smooth transition. In future, the fee level would be subject to the approval of the relevant subsidiary legislation by the Legislative Council (LegCo). (b) MPFA would determine whether and what disciplinary sanction should be imposed based on the investigation findings provided by FRs and the representation of the intermediary concerned. MPFA could request FRs to gather further information if necessary; (c) the Bill specified that MPFA would be the sole authority to impose disciplinary sanctions and it did not require the FRs to make a relevant suggestion to MPFA in the process; 	

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		<p>(d) the MPF intermediary concerned could lodge an appeal to the Mandatory Provident Fund Schemes Appeal Board ("MPFS Appeal Board") if he disagreed with MPFA's disciplinary decision; and</p> <p>(e) the Bill proposed to expand the purview of the existing MPFS Appeal Board to cover appeals against MPFA's disciplinary decisions on MPF intermediaries and to introduce suitable modifications to its compositions.</p> <p>In reply to the Chairman, the Administration and MPFA advised that the determination of the MPFS Appeal Board on the merits of a decision was final. Generally speaking, an administrative decision could however be subject to judicial review on grounds such as improper exercise of authority during the decision making process.</p>	
003453 – 004309	Mr WONG Sing-chi MPFA Chairman Administration	<p>Mr WONG enquired:</p> <p>(a) whether the existing MPF intermediaries would be required to take any examination for registration under the Bill, and if not, what measures the Administration would take to ensure that they were equipped with the latest knowledge of the MPF system;</p> <p>(b) how the existing registration regime for MPF intermediaries could ensure that MPF intermediaries were equipped with the latest knowledge of the MPF system; and</p> <p>(c) whether the renewal of registration would be required.</p> <p>The Administration responded that under the transitional arrangements provided in the Bill, existing MPF intermediaries would be subject to the on-going requirement of continuing training but not the entrance examination for registration. Under the proposed statutory regime, registered MPF intermediaries would not be required to seek renewal of their registration, but MPFA could revoke an MPF intermediary's registration if he could not fulfill the continuing training requirement. MPFA would review and update the contents of the examination for the</p>	

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		<p>registration of MPF intermediaries regularly to reflect the developments in the MPF system.</p> <p>Mr WONG requested the Administration to provide, in respect of MPF intermediaries, information on:</p> <p>(a) the qualifying examination and the continuing training requirement under the existing and the proposed new regimes, and the transitional arrangements in regard to the qualifying examination and the continuing training requirement for existing MPF intermediaries; and</p> <p>(b) the support measures (such as provision of sufficient training courses) to facilitate the smooth transition of existing MPF intermediaries to the new regime and the registration of new MPF intermediaries.</p>	<p>The Administration to take action as per paragraph 6 of the minutes.</p>
<p>004310 – 004835</p>	<p>Mr CHAN Kin-por MPFA Administration</p>	<p>Mr CHAN enquired about:</p> <p>(a) the development cost of the electronic transfer system ("E-platform"), whether the cost would be transferred to MPF trustees and, if so, how the cost would be collected; and</p> <p>(b) whether clear guidelines would be provided to practitioners of the insurance industry engaged in the selling of MPF products regarding the kind of information and advice they could provide/offer in the sales process.</p> <p>The Administration and MPFA replied as follows:</p> <p>(a) The development cost of the E-platform would be borne by MPFA. MPF trustees currently conducted the transfer of benefits among MPF schemes through written documents. According to MPFA's initial assessment, the fee payable by MPF trustees in future to fund the operation of the E-platform would not be higher than the existing cost incurred for benefit transfers through written documents. Thus the fee for the E-platform would not result in an increase in the administration fee chargeable by MPF trustees on MPF scheme members;</p>	

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		<p>(b) The CoC to be issued by MPFA would specify the types of information that should be provided by MPF intermediaries in the sales and marketing process; and</p> <p>(c) The kind of advice MPF intermediaries could offer on MPF products was specified in the Bill. The CoC would set out expectations concerning the giving of advice by MPF intermediaries.</p>	
004836 – 010236	Mr LEE Cheuk-yan Administration MPFA Chairman	<p>Mr LEE enquired:</p> <p>(a) whether MPF intermediaries might utilize certain means like offering gifts to lure MPF scheme members;</p> <p>(b) what measures the Administration would take to ensure that the administration fee of MPF trustees would not be increased after the implementation of the ECA and the E-platform; and</p> <p>(c) whether an ordinary member of the public, not being an MPF intermediary, offering advice on MPF schemes/products would bear any legal liability.</p> <p>The Administration and MPFA replied as follows:</p> <p>(a) after the passage of the Mandatory Provident Fund Schemes (Amendment) Bill 2009 which was the enabling legislation for implementation of the ECA, there had already been a trend of downward adjustment in the fees charged by MPF trustees. It was anticipated that the increased competition among MPF trustees after the implementation of the ECA would induce them to further lower their fees;</p> <p>(b) the enabling legislation for ECA had already specified that MPF trustees must not charge any fee for handling transfers for MPF scheme members under the ECA;</p> <p>(c) MPFA would provide education to members of the public on ECA;</p>	

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		<p>(d) the Bill targeted at advice offered by MPF intermediaries in the course of their business, employment or for reward. It did not cover cases whereby a person offered relevant advice to his friends outside the above-mentioned context; and</p> <p>(e) the practice of using gifts to lure MPF scheme members had already been prohibited by MPFA and this would be included under the CoC.</p>	
010237 – 011710	Mr Alan LEONG Administration MPFA	<p>Mr LEONG asked if an MPF intermediary considered that MPFA had put him under the supervision of an incorrect FR, how such a scenario would be dealt with. Mr LEONG remarked that the main lines of business for some MPF intermediaries might not be straightforward and there might be mismatches between the FRs and MPF intermediaries. He also enquired about the work on the amendments to the respective CoCs administered by the FRs.</p> <p>The Administration replied as follows:</p> <p>(a) MPFA would not assign an MPF intermediary to a FR arbitrarily. It would consider relevant factors like the main lines of business of the MPF intermediary concerned.</p> <p>(b) Proposed section 34Z set out the criteria and procedures for assignment of FRs. To allow for flexibility to handle special cases, the provisions proposed a residual power for MPFA to assign a FR to replace the one assigned according to the said criteria to ensure that the intermediary concerned would be subject to the supervision of the regulator of its main line of business. MPFA would exercise the discretion taking into account the information provided by the MPF intermediaries concerned.</p> <p>(c) The Bill specified that MPFA was the sole authority to issue the CoC for MPF intermediaries and FRs would conduct their supervision to ensure compliance with the same set of requirements. MPFA would maintain close liaison with the FRs in formulating the CoC.</p>	

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011711 – 012959	Ms Cyd HO Administration Chairman MPFA	<p>Ms HO remarked that the negligence of any of the three FRs might lead to financial losses of some MPF scheme members and enquired:</p> <ul style="list-style-type: none"> (a) whether the FR concerned would bear any legal liability; (b) which person or organization had the capacity to bring legal proceedings for negligence; and (c) whether the responsibilities of the FR concerned was covered by the Memorandum of Understanding (MOU) signed between the FRs and MPFA. <p>The Administration replied as follows:</p> <ul style="list-style-type: none"> (a) the three FRs must exercise their powers within the constraints stipulated in the relevant legislation; (b) if the misconduct of an MPF intermediary led to financial losses of some MPF scheme members, MPFA was empowered under the Bill to take disciplinary actions against the MPF intermediary and MPFA may, by agreement with the regulated person, take any further actions in place of or in addition to any disciplinary order. and (c) the investment regulation of MPF funds was subject to stringent restrictions under the existing legislation, e.g. MPF funds were not allowed to invest in high-risk financial products such as structured products whilst FRs' regulatory role is limited to the MPF sales and marketing activities. <p>MPFA added that the Bill had set out clearly the powers and responsibilities of the FRs in the new regulatory regime.</p>	
013000 – 014249	Mr LEE Cheuk-yan Administration Chairman MPFA	<p>Mr LEE made the following remarks:</p> <ul style="list-style-type: none"> (a) The Administration should provide concrete information on what constituted "breaches by MPF intermediaries" under the Bill, such as setting out examples of prohibited acts and details of relevant guidelines; 	

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		<p>(b) The Administration should update the Bills Committee on the possible impact of the E-platform on the fees charged by MPF trustees in due course; and</p> <p>(c) The Administration should elaborate on the Bill's enhanced measures to guard against default contributions, such as the sanctions against and the amount of daily penalty for an employer failing to make MPF mandatory contributions for an employee continuously.</p> <p>The Administration replied as follows:</p> <p>(a) It would be more appropriate to discuss items (a) and (c) during the clause-by-clause examination of the Bill.</p> <p>(b) Since MPFA would not charge MPF trustees fees for the operation of the E-platform in the early stage of the implementation of the ECA, the Administration could not forecast the E-platform's impact on the fees of MPF trustees for the time being.</p> <p>Mr LEE enquired about the responsibilities of Directors of a company under the Bill. The Administration responded that clause 18 of the Bill set out the liabilities of officers, managers and partners of a company. The Administration would explain further during the clause-by-clause examination of the Bill.</p> <p>Mr LEE reiterated his enquiry on the possible impact of the E-platform on the fees charged by MPF trustees, and asked whether the Administration had discussed the issue with the industry.</p> <p>The Administration and MPFA replied as follows:</p> <p>(a) MPFA would bear the development cost of the E-platform and would not charge MPF trustees the E-platform's operation cost in the early stage of implementation of the ECA. The determination of the fee level in future would be subject to approval of the relevant subsidiary legislation by LegCo.</p>	

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		(b) The fee of the E-platform constituted a tiny component of the total administration cost of MPF trustees only and would have little impact on the reduction in their administration fees. With the increasing competition expected and with reference to the recent fee reductions by trustees, the ECA should have the effect of adding pressure on the trustees to further reduce the fees of MPF schemes.	
014250 – 014437	Chairman Ms LI Fung-ying	<p>The Bills Committee agreed to invite the public, including relevant professional organizations, to give views on the Bill.</p> <p>The Chairman requested the Legislative Council Secretariat to arrange the schedule of future meetings.</p>	

Council Business Division 1
Legislative Council Secretariat
12 March 2012