

立法會
Legislative Council

LC Paper No. CB(1)1947/11-12
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by the Administration)

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

**Third meeting on
Tuesday, 6 March 2012, at 9:00 am
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon WONG Ting-kwong, BBS, JP (Chairman)
Hon LEE Cheuk-yan
Hon LI Fung-ying, SBS, JP
Hon KAM Nai-wai, MH
Hon CHAN Kin-por, JP
Hon Alan LEONG Kah-kit, SC

Members absent : Hon LEUNG Yiu-chung
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP

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)

Attendance by invitation : Mandatory Provident Fund Schemes Authority

Mr Darren McSHANE
Executive Director (Regulation and Policy)

Mrs Janet YUEN
Consultant (Policy Projects)

Ms Amelia LEUNG
Senior Manager (Policy Development)

The Life Underwriters Association of Hong Kong

Ms Jeff WONG
Vice President

Democratic Alliance for the Betterment and Progress of
Hong Kong

Mr Frankie YUI
Deputy Spokesperson, Manpower Affairs

The Hong Kong Confederation of Insurance Brokers

Mr Patrick CHAN
Vice Chairman

Asian Consultancy on Tobacco Control

Dr Judith MACKAY
Director

World Lung Foundation

Dr Judith MACKAY
Senior Advisor

The Hong Kong Chinese Importers' and Exporters' Association

Mr Peter CHUNG
Committee Member

The Professional Insurance Brokers Association

Mr Jase YIU
Chief Administrative Executive

The Federation of Hong Kong and Kowloon Labour Unions

Mr KO Chun-kit
Labour Right Committee Officer

The Hong Kong Federation of Trade Unions

Mr LEUNG Kwok-wai
Member of Rights and Benefits Committee

Hong Kong Confederation of Trade Unions

Mr POON Man-hon
Policy Researcher

The Law Society of Hong Kong

Mr David ADAMS
Chairman, Retirement Schemes Committee

Ms Sophia MAN
Member, Retirement Schemes Committee

The Hong Kong Retirement Schemes Association

Mr Jonathan WATKIN
Director - Secretariat

Individual

Mr Raymond HO
Sai Kung District Council member

Hong Kong Trustees' Association Limited

Ms LAU Ka-shi
Chairman

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 Meeting with deputations and the Administration

Meeting with deputations

(LC Paper No. CB(1)1210/11-12(01) — Submission from The Life Underwriters Association of Hong Kong

LC Paper No. CB(1)1229/11-12(01) — Submission from The Hong Kong Confederation of Insurance Brokers

LC Paper No. CB(1)1210/11-12(02) — Submission from Asian Consultancy on Tobacco Control

LC Paper No. CB(1)1210/11-12(03) — Submission from World Lung Foundation

LC Paper No. CB(1)1210/11-12(04) — Submission from The Hong Kong Chinese Importers' & Exporters' Association

LC Paper No. CB(1)1210/11-12(05) — Submission from Professional Insurance Brokers Association

LC Paper No. CB(1)1210/11-12(06) — Submission from The Law Society of Hong Kong

LC Paper No. CB(1)1210/11-12(07) — Submission from The Hong Kong Retirement Schemes Association

Submissions/letters from organizations not attending the meeting

(LC Paper No. CB(1)1210/11-12(08) — Submission from The Hong Kong Investment Funds Association

LC Paper No. CB(1)1210/11-12(09) — Submission from The Hong Kong Federation of Insurers

LC Paper No. CB(1)1210/11-12(10) — Submission from The Chinese Manufacturers' Association of Hong Kong

LC Paper No. CB(1)1210/11-12(11) — Submission from Mr YEUNG Wai-sing, MH, Eastern District Council member

LC Paper No. CB(1)1210/11-12(12) — Submission from Mr LAM, a member of the public

LC Paper No. CB(1)1229/11-12(02) — Submission from General Agents & Managers Association of Hong Kong

LC Paper No. CB(1)1229/11-12(03) — Submission from The Hong Kong Association of Banks

Other relevant papers

(LC Paper No. CB(3)232/11-12 — The Bill

LC Paper No. CB(1)978/11-12(01) — Administration's powerpoint presentation materials for the meeting on 31 January 2012

LC Paper No. CB(1)939/11-12(01) — Marked-up copy of the Bill prepared by the Legal Service Division)

The Chairman welcomed representatives of the Administration, the Mandatory Provident Fund Schemes Authority and deputations to the meeting. He reminded the deputations that their views presented at the meeting would not be covered by the protection and immunity provided under the Legislative Council (Powers and Privileges) Ordinance (Cap. 382).

(Post-meeting Note: The speech of the representative from the Asian Consultancy on Tobacco Control and World Lung Foundation, and the submissions from (a) the Federation of Hong Kong and Kowloon Labour Unions and (b) Hong Kong Confederation of Trade Unions tabled at the meeting were circulated to members via a Lotus-Notes email on 6 March 2012.)

2. The deputations presented their views on the Bill.

Discussion

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

III Any other business

Date of next meeting

4. The Chairman reminded members that the next two meetings would be held on 15 March 2012 at 4:30 pm and 20 March 2012 at 8:30 am.
5. There being no other business, the meeting ended at 10:50 am.

Council Business Division 1
Legislative Council Secretariat
21 May 2012

**Proceedings of the
Bills Committee on Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011
Third meeting on Tuesday, 6 March 2012, at 9:00 am
in Conference Room 1 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000204 – 000631	Chairman	Introductory remarks	
000632 – 001217	The Life Underwriters Association of Hong Kong (LUAHK)	Presentation of views (LC Paper No. CB(1)1210/11-12(01))	
001218 – 001551	Democratic Alliance for the Betterment and Progress of Hong Kong (DAB)	<p>The representative of the Democratic Alliance for the Betterment and Progress of Hong Kong ("DAB") made the following comments:</p> <ul style="list-style-type: none"> (a) DAB welcomed the replacement of the existing administrative regulatory arrangements by a statutory regime; (b) Regulation on the sales and marketing activities of MPF intermediaries should be strengthened; (c) As the proposed regulatory regime involved the Mandatory Provident Fund Authority ("MPFA") and three frontline regulators ("FRs"), consistency in regulation should be maintained; (d) The Administration should step up publicity and public education on the Employee Choice Arrangement ("ECA"); (e) Sufficient time should be allowed for the transitional arrangements to facilitate the smooth implementation of ECA; and (f) Upon the launch of ECA, the Administration should review the feasibility of implementing a full portability arrangement for the MPF System. (強積金全自由行) 	

Time Marker	Speaker	Subject(s)	Action Required
001552 – 002045	The Hong Kong Confederation of Insurance Brokers (HKCIB)	Presentation of views (LC Paper No. CB(1)1229/11-12(01))	
002046 – 002547	Asian Consultancy on Tobacco Control World Lung Foundation	Presentation of views (LC Paper No. CB(1)1210/11-12(03) and LC Paper No. CB(1)1244/11-12(01))	
002548 – 002821	The Hong Kong Chinese Importers' and Exporters' Association	Presentation of views (LC Paper No. CB(1)1210/11-12(04))	
002822 – 003106	The Professional Insurance Brokers Association	Presentation of views (LC Paper No. CB(1)1210/11-12(05))	
003107 – 003540	The Federation of Hong Kong and Kowloon Labour Unions	Presentation of views (LC Paper No. CB(1)1244/11-12(02))	
003541 – 003847	The Hong Kong Federation of Trade Unions (FTU)	<p>The representative of the Hong Kong Federation of Trade Unions made the following comments:</p> <ul style="list-style-type: none"> (a) FTU welcomed the introduction of the Bill and hoped that ECA could be launched quickly; (b) A stringent approach should be adopted for the regulation of MPF intermediaries; (c) Since the proposed regulatory regime involved the approach of "multiple regulatory authorities for one industry", consistency in supervision and enforcement should be maintained; (d) The Administration should review the operation of the new regulatory regime after the two-year transitional period; (e) FTU hoped that the commissions of MPF intermediaries could be disclosed to the public; 	

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		<p>(f) The fines for default contributions should be raised to strengthen the deterrent effect. Imprisonment might also be imposed; and</p> <p>(g) FTU hoped that the Administration would review the feasibility of implementing a full portability arrangement for the MPF System after the launch of ECA. Besides, the Administration should examine the feasibility of implementing a "one single life-time MPF account" arrangement and abolishing the arrangement of offsetting the severance and long service payment with the accrued benefits derived from the employers' contribution to the MPF schemes.</p>	
003848 – 004321	Hong Kong Confederation of Trade Unions	Presentation of views (LC Paper No. CB(1)1244/11-12(03))	
004322 – 004541	The Law Society of Hong Kong (LSHK)	Presentation of views (LC Paper No. CB(1)1210/11-12(06)). LSHK also pointed out that the drafting of the Bill was unusually complex and difficult to understand, and suggested the Administration review the drafting aspects of the Bill to enhance its readability.	
004542 – 004935	The Hong Kong Retirement Schemes Association	Presentation of views (LC Paper No. CB(1)1210/11-12(07))	
004936 – 005332	Mr Raymond HO, Sai Kung District Council member	Mr HO remarked that the Administration should let the public decide how they would prepare for their retirement and should allow MPF scheme members to make use of their MPF accrued benefits for different investment choices..	
005333 – 005614	Hong Kong Trustees' Association Limited	<p>The representative of the Hong Kong Trustees' Association Limited made the following comments:</p> <p>(a) As MPFA and three FRs were involved in the proposed regulatory regime, consistency in regulation should be maintained; and</p> <p>(b) The Administration/MPFA should step up publicity and public education on MPF.</p>	

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005615 – 010815	Ms LI Fung-ying Administration Mandatory Provident Fund Schemes Authority (MPFA)	<p>Referring to the concerns raised by some of the deputations present, Ms LI enquired about:</p> <ul style="list-style-type: none"> (a) how an MPF intermediary could know which FR he was assigned to; (b) what measures would be in place to ensure that the livelihood of the existing MPF intermediaries would not be affected upon implementation of the new regulatory regime; (c) how the MPF intermediaries could know what they could do and could not do in conducting MPF sales activities; and (d) what public education would be conducted for MPF scheme members to prepare them for the implementation of ECA. <p>The Administration replied as follows:</p> <ul style="list-style-type: none"> (a) The existing administrative regulatory arrangements would be replaced by a statutory regime under the Bill and the livelihood of the existing MPF intermediaries had been taken into account in working out the transitional arrangement for them. Under the proposed transitional arrangements, all existing MPF intermediaries with valid registration with MPFA immediately before the commencement of the proposed statutory regime could continue to perform the regulated activities for two years, during which they might apply to MPFA for registration under the statutory regime. They were not required to re-take the qualifying examination. They would be notified of the FRs assigned to them, and the information would also be available in the public register maintained by MPFA; (b) No registration fee or operation cost of the E-platform would be charged by MPFA in the initial stage of the implementation of ECA. The determination of the fee level in future would be subject to the negative vetting procedure of the Legislative Council ("LegCo") when the relevant subsidiary legislation was introduced into LegCo for scrutiny; 	

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		<p>(c) A number of measures would be in place to protect MPF scheme members. For instance, MPF intermediaries would be required to comply with the performance requirements under the Bill and a failure to do so might result in disciplinary sanctions;</p> <p>(d) The Bill provides for conduct requirements to be observed by MPF intermediaries and MPFA would issue guidelines on the relevant details; and</p> <p>(e) MPFA had been providing relevant public education. MPFA would conduct a new round of education and publicity in the summer of 2012 to prepare for the planned implementation of ECA on 1 November 2012.</p> <p>MPFA supplemented as follows:</p> <p>(a) Several levels of education would be involved. Firstly, education would be provided to MPF intermediaries so that they would be well aware of the relevant requirements on them. Besides, the public would be informed of the details of ECA so that they could make informed decisions;</p> <p>(b) MPFA would utilize a number of strategies in the provision of education. For instance, it would organize seminars and disseminate relevant information through its website and publicity materials. MPF intermediaries would also be asked to direct MPF scheme members to refer to materials/information provided by MPFA. In addition, MPFA would ensure that relevant documents such as forms for ECA would contain key information to facilitate members of the public to make informed decisions; and</p> <p>(c) The Prevention of Bribery Ordinance (Cap. 201) ("PBO") stipulated the kind of information an intermediary was required to disclose (e.g. remuneration disclosure). MPFA would set out in its new guidelines for MPF Intermediaries information that an</p>	

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		<p>MPF intermediary would be required to disclose so that scheme members would be able to assess whether there was any conflict of interest in relation to the advice received from an intermediary.</p>	
<p>010816 – 011800</p>	<p>Mr KAM Nai-wai Administration</p>	<p>Mr KAM remarked that the weaknesses of the approach of "two regulatory authorities for one industry" were revealed in the "Lehman Brothers Incident". Mr KAM said that given the approach of "multiple regulatory authorities for one industry" was adopted in the proposed regulatory regime, the Administration should explain what measures were in place to prevent inconsistency in enforcement and information disclosure and the recurrence of incidents similar to the "Lehman Brothers Incident". Mr KAM also pointed out that although MPF schemes were not allowed to invest in high-risk financial products such as structured products under the existing Mandatory Provident Fund Schemes Ordinance (Cap. 485), the Administration should not overlook the possible problems arising in the sales process, particularly problems related to information disclosure, because (a) the returns of different constituent funds in a registered MPF scheme varied greatly; and (b) MPF scheme members relied heavily on the information provided by MPF intermediaries.</p> <p>The Administration replied as follows:</p> <p>(a) The Administration recognized the importance of information disclosure. The Bill provided for requirements on disclosure of information by MPF intermediaries and MPFA would provide the relevant details in the guidelines;</p> <p>(b) The proposed regulatory regime was designed having regard to the fact that MPF schemes were mostly sold by intermediaries in the banking, insurance and securities industries; and</p> <p>(c) A number of measures were in place to ensure consistency in regulation, for instance:</p>	

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		<ul style="list-style-type: none"> (i) FRs would supervise the sales and marketing activities of MPF intermediaries against a single set of conduct requirements as stipulated in the Bill; (ii) MPFA would be the sole authority to issue guidelines and decide disciplinary sanctions against MPF intermediaries; (iii) All appeals by MPF intermediaries against MPFA's disciplinary decisions would be handled by a single appeal channel, i.e. the Mandatory Provident Fund Schemes Appeal Board; and (iv) MPFA would establish a regular liaison mechanism with the three FRs to ensure consistency in supervision and investigation. 	
011801 – 012952	Mr CHAN Kin-por Administration MPFA	<p>Mr CHAN made the following remarks:</p> <ul style="list-style-type: none"> (a) The Administration and MPFA should clarify whether MPF intermediaries were required to hold a Type 4 licence under the Securities and Futures Ordinance (Cap. 571) ("SFO"), because an MPF intermediary might need to offer investment advice in practice. MPFA should discuss the issue with the industry; (b) While Mr CHAN understood that MPFA would neither charge registration fee nor operation cost of the E-platform in the two-year transitional period, he was concerned about the fee arrangements thereafter; (c) The Administration should clarify the issue of remuneration disclosure by MPF intermediaries to their clients. Under PBO, insurance brokers were required to disclose their remuneration and insurance agents who represented their insurance companies, were not required to disclose remuneration to their clients. However, it was unclear whether MPF intermediaries would be required to disclose remuneration 	

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		<p>to MPF scheme members in future when the issue of transparency would be at play. Mr CHAN also suggested that the Administration and MPFA discuss the issue with the industry;</p> <p>(d) Mr CHAN referred to LSHK's remark that the drafting of the Bill was unusually complex and difficult to understand, and enquired how the Administration would address this issue; and</p> <p>(e) The Administration should explain how it could ensure consistency in the supervision and enforcement works of the three FRs.</p> <p>The Administration replied as follows:</p> <p>(a) MPFA could discuss further with the industry to address the latter's concern about the necessity of holding certain licences under SFO;</p> <p>(b) Regarding the issue of remuneration disclosure by MPF intermediaries to their clients, MPFA's main consideration was transparency in relation to the key information to be provided to scheme members to facilitate them to make informed decision. MPFA would issue clear guidelines on the issue; and</p> <p>(c) The Administration would follow up on LSHK's comments as appropriate and would liaise with LSHK if necessary.</p> <p>MPFA supplemented as follows:</p> <p>(a) The present Bill clarified the regulatory requirements. SFO was not directly applicable to MPF schemes because no securities were directly sold to MPF scheme members. If an MPF intermediary offered advice on MPF schemes/constituent funds only, the holding of certain licences under SFO would not be required. MPFA was willing to discuss the issue with the industry if necessary;</p>	

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		<p>(b) MPFA would review the fee arrangements after the transitional period on a cost-recovery basis. The determination of the fee levels in future would be subject to the negative vetting procedure of the LegCo when the relevant subsidiary legislation was introduced into LegCo for scrutiny; and</p> <p>(c) MPFA's main consideration on the issue of remuneration disclosure was that information should be disclosed to the extent that an MPF scheme member could make an informed decision. Requirements for MPF intermediaries in this aspect would be relatively simple because they were not expected to charge MPF scheme members directly. MPFA would set out the detailed requirements in the guidelines.</p> <p>Mr CHAN remarked that there might be grey areas regarding the necessity for MPF intermediaries to hold certain licenses under SFO upon the implementation of ECA. He requested MPFA to discuss the issue with the industry and provide written information to the industry on the relevant principles/rules to be applied.</p>	
012953 – 013948	Mr Alan LEONG LSHK	<p>Mr LEONG asked LSHK whether it considered that the inherent structure of the Bill made the simplification of the Bill difficult, and if so, whether LSHK had any views on how the overall structure of the Bill could be modified to enhance the Bill's comprehensibility. Mr LEONG also enquired whether the Administration would meet with LSHK to discuss the latter's comments.</p> <p>LSHK replied as follows:</p> <p>(a) The Bill was difficult to draft owing to the complexity of the issues involved. It was difficult to simplify the Bill and LSHK thus gave comments on specific clauses instead;</p> <p>(b) The Bill contained lots of cross-references and thus a number of provisions were difficult to comprehend on a standalone basis. The Administration might consider addressing this issue; and</p>	

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		<p>(c) The definitions of some key terms of the Bill, e.g. "material decision" and "conduct requirements", were embodied in various clauses of the Bill. LSHK suggested that the Administration consider defining those terms in the interpretation clauses.</p> <p>In response to Mr LEONG's enquiry, LSHK confirmed that it was willing to meet with the Administration to discuss the Bill.</p> <p>The Chairman remarked that representatives of the Department of Justice ("DoJ") were not present and requested the Administration to relay relevant comments to DoJ.</p>	
013949 – 014609	Mr CHAN Kin-por LUAHK Administration MPFA HKCIB Chairman	<p>Mr CHAN invited deputations present to comment on MPFA's replies regarding the necessity of holding certain licences under SFO.</p> <p>LUAHK remarked that although MPFA advised that the holding of certain licences under SFO was not required for MPF intermediaries engaging in MPF sales and marketing activities only, MPFA should offer clear guidelines on the scope of advice/activities that could and could not be given/conducted by MPF intermediaries to avoid the intermediaries falling into a potential litigation trap.</p> <p>The Administration remarked that MPFA would offer clear guidelines on the issue. MPFA supplemented that it would clarify the issue and reiterated that if an MPF intermediary offered advice on MPF schemes/constituent funds only, the holding of certain licences under SFO would not be required. MPFA would supplement this by providing Frequently Asked Questions ("FAQ") on the issue. MPFA would also be able to assist further if the industry could provide some practical examples to illustrate the issue.</p> <p>HKCIB enquired whether written replies would be provided by the Administration on the issue. The Chairman remarked that MPFA had undertaken to discuss the issue with the industry.</p>	

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014610 – 014747	Chairman	The Chairman remarked that the next two meetings would be held on 15 March 2012 and 20 March 2012 respectively.	

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21 May 2012