

立法會
Legislative Council

LC Paper No. CB(1)2403/11-12
(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**

**Seventh meeting on
Monday, 23 April 2012, at 4:30 pm
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 Andrew LEUNG Kwan-yuen, GBS, JP
Hon KAM Nai-wai, MH
Hon Cyd HO Sau-lan
Hon CHAN Kin-por, JP
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Hon Alan LEONG Kah-kit, SC

Members absent : Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon WONG Sing-chi
Hon WONG Kwok-kin, BBS

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

I Confirmation of minutes of meeting

(LC Paper No. CB(1)1536/11-12 — Minutes of meeting on
23 February 2012)

The minutes of the meeting held on 23 February 2012 were confirmed.

II Meeting with the Administration

Follow-up to issues arising from previous meetings

(LC Paper No. CB(1)1643/11-12(01) — List of follow-up actions arising from the discussion at the meeting on 15 March 2012

LC Paper No. CB(1)1643/11-12(02) — Administration's response to issues raised at the meeting on 15 March 2012

LC Paper No. CB(1)1643/11-12(03) — List of follow-up actions arising from the discussion at the meeting on 20 March 2012

LC Paper No. CB(1)1643/11-12(04) — Administration's response to issues raised at the meeting on 20 March 2012

LC Paper No. CB(1)1643/11-12(05) — List of follow-up actions arising from the discussion at the meeting on 26 March 2012

LC Paper No. CB(1)1643/11-12(06) — Administration's response to issues raised at the meeting on 26 March 2012)

Clause-by-clause examination of the Bill (starting with proposed section 34ZX of clause 13)

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

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

LC Paper No. CB(1)1112/11-12(03) — Letter dated 9 February 2012 from Assistant Legal Adviser to the Administration

LC Paper No. CB(1)1331/11-12(01) — Letter dated 22 February 2012 from the Administration in reply to Assistant Legal Adviser's letter

LC Paper No. CB(1)1643/11-12(07) — Letter dated 5 April 2012 from Assistant Legal Adviser to the Administration)

Discussion

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

Admin

Follow-up actions to be taken by the Administration

3. The Administration and the Mandatory Provident Fund Schemes Authority ("MPFA") were requested to:

- (a) in respect of complaints against Mandatory Provident Fund intermediaries, provide information on the target time limit for MPFA to inform the complainant in writing of the outcome of the follow-up actions taken in respect of a complaint at the conclusion of an investigation or, where applicable, any resultant enforcement actions;
- (b) provide information on the legislative provisions in the United Kingdom that empower the Financial Services Authority ("FSA") to order a person subject to its regulation to award compensation to an aggrieved party;
- (c) further to paragraph 4 of the Administration's response in LC Paper No. CB(1)1643/11-12(02), provide more information about the case in which FSA imposed financial penalty on a financial institution in December 2011 for mis-selling products to elderly customers, including the legislative provisions based on which the penalty was imposed; and
- (d) review the drafting of the Chinese version of proposed section 34ZZF(1)(b).

III Any other business

Date of next meeting

4. The Chairman reminded members that the next two meetings would be held on 27 April 2012 at 8:30 am and 3 May 2012 at 8:30 am.
5. There being no other business, the meeting ended at 6:28 pm.

Council Business Division 1
Legislative Council Secretariat
24 July 2012

**Proceedings of the
Bills Committee on Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011
Seventh meeting on Monday, 23 April 2012, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
000319 – 000539	Chairman	Confirmation of minutes of the meeting on 23 February 2012 (LC Paper No. CB(1)1536/11-12). Opening remarks	
000540 – 000837	Administration	Briefing by the Administration on LC Paper No. CB(1)1671/11-12(01), which was tabled at the meeting.	
000838 – 000930	Chairman Administration	In respect of complaints against Mandatory Provident Fund ("MPF") intermediaries, the Chairman requested the Administration to provide information on the target time limit for the Mandatory Provident Fund Schemes Authority ("MPFA") to inform the complainant in writing of the outcome of the follow-up actions taken in respect of a complaint at the conclusion of an investigation or, where applicable, any resultant enforcement actions.	The Administration to take action as per paragraph 3 of the minutes.
000931 – 001533	Administration	Briefing by the Administration on LC Paper No. CB(1)1643/11-12(02) (the 2 nd paper). The Administration added that in the United Kingdom ("UK"), the Financial Services Authority ("FSA") had the statutory power to require a person subject to its regulation to make restitution to a party who claimed to have suffered loss due to the action of the former. However, as far as the Administration and MPFA understood, FSA had never invoked such power.	
001534 – 002405	Mr KAM Nai-wai Chairman Administration	Mr KAM requested and the Administration agreed to: (a) provide information on the legislative provisions in the UK that empowered FSA to order a person subject to its regulation to make compensation to an aggrieved party; and (b) provide more information about the case in which FSA imposed financial penalty on a financial institution in December 2011 for	The Administration to take action as per paragraph 3 of the minutes.

Time Marker	Speaker	Subject(s)	Action Required
		<p>mis-selling products to elderly customers, including the legislative provisions based on which the penalty was imposed.</p> <p>Mr KAM remarked that he might move Committee Stage amendments (CSAs) to empower MPFA to order an MPF intermediary to make compensation to an aggrieved party.</p>	
002406 – 002558	Administration	Briefing by the Administration on LC Paper No. CB(1)1643/11-12(04) (the 3 rd paper)	
002559 – 002903	Administration	Briefing by the Administration on LC Paper No. CB(1)1648/11-12(06) (the 4 th paper)	
002904 – 003305	Mr CHAN Kin-por Chairman Administration	<p>Mr CHAN remarked that the Life Underwriters Association of Hong Kong Limited (LUAHK) had recently sent a submission to MPFA regarding certain penalty provisions in the Bill, and asked whether the Administration would consider the two issues set out in LUAHK's submission.</p> <p>The Administration responded that it had addressed the issues raised in LUAHK's submission at paragraph 6 of the 2nd paper and paragraph 8 of the 3rd paper. The Administration would request MPFA to send a written reply to LUAHK.</p>	
003306 – 003452	Mr KAM Nai-wai Chairman Administration	<p>The Chairman requested the Administration to provide the Bills Committee with a copy of MPFA's written reply to LUAHK's submission.</p> <p><i>(Post-meeting note: A copy each of LUAHK's submission and MPFA's written reply were issued to members vide LC Paper No. CB(1)1697/11-12 on 26 April 2012.)</i></p>	
003453 – 003832	Administration	<p><u>Clauses-by-clause examination of the Bill</u></p> <p><u>Clause 13 – Part IVA added</u></p> <p>Division 8—Disciplinary Order for Failure to Comply with Performance Requirements</p> <p><i>34ZX. When disciplinary order takes effect</i></p> <p><i>34ZY. Further action by Authority</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
003833 – 005327	Mr KAM Nai-wai Administration Chairman	<p>Mr KAM said that he understood from the discussion at a previous meeting that under proposed section 34ZY, MPFA would, prior to making a disciplinary order against an MPF intermediary, provide an opportunity for the MPF intermediary to negotiate a settlement with the complainant concerned. Mr KAM asked whether under the Bill, MPFA could inform the complainant of the details of the investigation in respect of the MPF intermediary before the settlement negotiation between the complainant and the MPF intermediary.</p> <p>The Administration clarified that the Bill did not require MPFA to provide an opportunity for an MPF intermediary to negotiate with the complainant concerned before MPFA made a disciplinary order. Proposed section 34ZY(1) empowered MPFA to take any further action in place of or in addition to any disciplinary order in respect of a regulated person found guilty of non-compliance with a performance requirement, subject to prior agreement with the regulated person and the conditions set out in proposed section 34ZY(2).</p> <p>Mr KAM enquired when the settlement negotiation between the complainant and the MPF intermediary concerned would usually take place. The Administration advised that such negotiation, if any, was a matter between the complainant and the MPF intermediary concerned, and the Bill did not have any provision on the issue.</p> <p>Mr KAM opined that since MPFA would take into account any agreement made between the complainant and the MPF intermediary concerned in making a disciplinary decision, MPFA should be empowered to inform the complainant of the details of the investigation, prior to making a disciplinary decision in respect of the MPF intermediary. If the complainant was not informed of the details of the investigation before MPFA made a disciplinary decision, the MPF intermediary might take advantage of the complainant's lack of information to reach an agreement in his favour.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p>The Administration clarified that MPFA would take into account all relevant factors before deciding a disciplinary sanction (if any) and hence the fact that an MPF intermediary might take advantage in a situation mentioned by Mr KAM would not help the intermediary to secure a lighter disciplinary sanction (if applicable).</p> <p>Mr KAM remarked that he might move a CSA empowering MPFA to inform a complainant about the details of the investigation on the MPF intermediary concerned prior to the making of a disciplinary decision.</p>	
005328 – 005853	Administration	<p><i>34ZZ. Procedural requirement for Authority before making disciplinary order or taking further action</i></p> <p><i>34ZZA. Application of disciplinary powers in relation to former regulated person</i></p> <p>Division 9—Miscellaneous</p> <p>Subdivision 1—Provisions Supplementary to Divisions 3 and 7</p> <p><i>34ZZB. Inspection and investigation powers in relation to certain entity</i></p> <p><i>34ZZC. Offences relating to sections 34P, 34ZR and 34ZU</i></p>	
005854 – 010440	Ms LI Fung-ying Administration Department of Justice (DoJ)	<p>Ms LI referred to the expression "in a material respect" (在要項上) which appeared in proposed section 34ZZC(3) and (4), and expressed concern that the meaning of the expression was vague. The Chairman asked whether the expression was defined in the Bill or in existing laws. Ms LI also enquired whether similar drafting was present in other legislation.</p> <p>DoJ advised that reference had been made to the Securities and Futures Ordinance (Cap. 571) ("SFO") in drafting proposed section 34ZZC. Pointing out that the expression was used in those phrases "the record, explanation or particulars etc. that are false or misleading in a material respect" in proposed section 34ZZC(3) and (4), the Administration remarked that it was not</p>	

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		<p>suitable to define the expression "in a material respect" for the purpose of the provision, because whether a record/explanation or particulars etc. were false or misleading in a material respect had to be determined having regard to the relevant circumstances of each incident.</p>	
<p>010441 – 010636</p>	<p>Mr CHAN Kin-por Administration Ms LI Fung-ying</p>	<p>Mr CHAN expressed concern that proposed section 34ZZC(3) and (4) might give rise to grey areas. Noting from the Administration that similar offence provisions were present in SFO, Mr CHAN considered that sufficient education and publicity should be provided so that the public would not contravene the law inadvertently. In this connection, he suggested that the Administration should provide a list of the offences and the respective sanctions in the Bill in its publicity materials.</p> <p>Ms LI remarked that the industry should be well informed of the relevant requirements.</p> <p>The Administration advised that it would remind MPFA to step up its publicity and education for the industry on the requirements and sanctions in the Bill before the launch of the Employee Choice Arrangement ("ECA").</p>	
<p>010637 – 010952</p>	<p>Administration</p>	<p><i>34ZZD. Court to inquire into failure to comply with inspection or investigation requirement</i></p> <p>The Administration remarked that it would move a CSA to the proposed section 34ZZD(5).</p> <p><i>34ZZE. Use of incriminating evidence in proceedings</i></p>	
<p>010953 – 011348</p>	<p>Mr CHAN Kin-por Administration</p>	<p>Mr CHAN enquired whether the Administration would make amendments to maximum penalty levels under proposed section 34ZZC, in a manner similar to the proposed amendments set out in paragraph 6 of the 2nd paper (regarding the maximum penalty level for non-compliance with proposed section 34N(1)(a)). The Administration replied in the negative.</p> <p>Mr CHAN expressed concern that there might be grey areas in the offences specified in proposed section 34ZZC, and requested the Administration to provide an example that would warrant</p>	

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		<p>imprisonment for seven years as provided under proposed section 34ZZC(10)(a).</p> <p>The Administration replied as follows:</p> <p>(a) an offence referred to in proposed section 34ZZC(10)(a) involved an intent to defraud, which was a serious crime;</p> <p>(b) the imprisonment term of seven years provided under proposed section 34ZZC(10)(a) was only the maximum penalty that could be imposed whilst the actual imprisonment term would be determined by the Court having considered the relevant facts and evidence in respect of each case;</p> <p>(c) similar sanctions were provided in SFO and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615); and</p> <p>(d) a scenario that might be considered as involving a serious crime leading to imprisonment was as follows: a frontline regulator ("FR") exercised its investigation power by requiring an MPF intermediary to provide certain documents but the MPF intermediary concerned prepared forged documents to mislead the FR with intend to defraud.</p>	
011349 – 011648	Administration	<i>34ZZF. Magistrate's warrant</i>	
011649 – 012346	Ms LI Fung-ying Administration Chairman DoJ	Ms LI requested the Administration to review the drafting of the Chinese version of proposed section 34ZZF(1)(b).	The Administration to take action as per paragraph 3 of the minutes.
012347 – 012608	Administration	<p>Subdivision 2—Other Miscellaneous Provisions</p> <p><i>34ZZG. Registration or approval revocable on request</i></p> <p><i>34ZZH. Notice of revocation, suspension, etc.</i></p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><i>34ZZI. Effect of revocation and suspension</i></p> <p><i>34ZZJ. Fees sharing</i></p>	
012609 – 013102	Chairman Administration Mandatory Provident Fund Schemes Authority (MPFA)	<p>The Chairman pointed out that while MPFA would not collect any registration fee and annual fee from MPF intermediaries in the early stage of the implementation of the new regime, MPFA had to bear the costs incurred in the implementation of the new regime. He asked whether MPFA agreed with the arrangement.</p> <p>MPFA responded that on the basis of its decision not to charge any registration fee nor annual fee during the initial period, it had extensive discussions on this issue with both the Administration and the FRs. It was still in discussion with the FRs on the extent to which the FRs would require a payment for the expenditure or cost incurred by the FRs in providing the services and performing the functions under the Bill, particularly during the initial period where MPFA had expressly indicated that it would not charge registration fees.</p>	
013103 – 013522	Administration	<p><i>34ZZK. Transitional and saving provisions</i></p> <p><u>Clause 14 – Section 35 amended (Appeal Board)</u></p> <p><u>Clause 15 – Sections 42AA and 42AB added</u></p> <p><i>42AA. Authority or specified entity may disclose information obtained under Part IVA despite section 41</i></p>	
013523 – 013748	Ms LI Fung-ying Administration Chairman	<p>In response to Ms LI's enquiry, the Administration advised that the term "entity specified" (指明實體) in proposed section 42AA was defined in proposed section 42AA(4).</p> <p>Ms LI enquired whether the definition of the term "entity specified" could be amended through gazettal. The Administration replied in the negative and advised that the term's definition had to be amended through amendment of the principal legislation.</p>	

Time Marker	Speaker	Subject(s)	Action Required
013749 – 014305	Administration	<p><i>42AB. Person not to disclose information obtained in the course of inspection or investigation</i></p> <p>The Administration remarked that it would move a CSA to proposed section 42AB.</p> <p><u>Clause 16 – Section 42B amended (immunity)</u></p> <p><u>Clause 17 – Section 43B amended (offences by employers)</u> Sub-section (1A) – (1E)</p>	
014306 – 014517	Chairman Administration	<p>In response to the Chairman's enquiry, the Administration advised that section 7AA(7) of the Mandatory Provident Schemes Ordinance (Cap. 485) would apply in a scenario where an employee was not a member of any registered MPF scheme and the employer had to pay the MPF contributions to MPFA directly.</p>	
014518 – 015633	Administration	<p><u>Clause 17 – Section 43B amended (offences by employers)</u> (con't)</p> <p><u>Clause 18 – Section 44 amended (liability of officers, managers and partners)</u></p> <p><u>Clause 19 – Section 44A added</u></p> <p><i>44A. Proof of certain matters in proceedings for offence under section 43B(3A)</i></p> <p>In reply to the Chairman's enquiry, the Administration confirmed that reference had been made to the Employment Ordinance (Cap. 57) in drafting clauses 17 to 19.</p> <p><u>Clause 20 – Section 45G amended (right to bring civil proceedings to recover financial loss)</u></p> <p>The Administration explained that Part IVA of the Bills on "Sales and Marketing Activities, and Giving of Advice, in relation to Registered Schemes" is excluded from the application of the existing section 45G, and section 108 of SFO on "Civil liability for inducing others to invest money in certain cases" applies to Part IVA of the Bill.</p>	

Time Marker	Speaker	Subject(s)	Action Required
		<p><u>Clause 21 – Schedule 5B added</u></p> <p><i>Schedule 5B Transitional and Saving Provisions for Part IVA</i></p>	
015634 – 015811	Ms LI Fung-ying Administration DoJ	<p>In reply to Ms LI's enquiry, the Administration confirmed that the same transitional period, i.e. two years, applied to all the transitional arrangements specified in proposed Schedule 5B.</p> <p>Ms LI pointed out that the contents of several clauses in proposed Schedule 5B were similar, and enquired whether they could be consolidated into one clause. DoJ explained that the clauses would be clearer and more readable if a specific type of persons were dealt with under a separate clause. It was also relevant that the transitional arrangements for different type of persons were quite different in some cases.</p>	
015812 – 015851	Chairman	Date of next meeting	