

立法會
Legislative Council

Ref : CB4/BC/1/12

LC Paper No. CB(4)923/12-13
(These minutes have been seen
by the Administration)

Bills Committee on Education (Amendment) Bill 2013

**Minutes of the second meeting
held on Saturday, 18 May 2013, at 9:00 am
in Conference Room 2 of the Legislative Council Complex**

Members present : Hon Cyd HO Sau-lan (Chairman)
Hon Starry LEE Wai-king, JP
Dr Hon Kenneth CHAN Ka-lok
Hon CHAN Yuen-han, SBS, JP
Dr Hon Helena WONG Pik-wan
Hon IP Kin-yuen

Members absent : Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon MA Fung-kwok, SBS, JP

Public Officers attending : Item II

Mr Kevin YEUNG
Under Secretary for Education

Mrs Michelle WONG
Deputy Secretary for Education

Miss Elaine NG
Senior Government Counsel
Department of Justice

Attendance by Invitation : Young DAB

Mr Jonathan TSOI Tung-chau
Member

Hong Kong Professional Teachers' Union

Mr CHEUNG Fu-wing
Executive Committee Member

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (4) 4

Staff in attendance : Miss Carrie WONG
Assistant Legal Adviser 4

Mr KWONG Kam-fai
Senior Council Secretary (4)4

Miss Jennifer LEUNG
Clerical Assistant (4)3

Action

I. Confirmation of minutes

(LC Paper No. CB(4)635/12-13 -- Minutes of meeting on 22 April 2013)

The minutes of the meeting held on 22 April 2013 were confirmed.

II. Meeting with deputations and the Administration

(LC Paper No. CB(3)454/12-13 -- The Bill

File Ref.: L/M(1) to EDB(SA)/F&A/65/24/1(pt.5) -- Legislative Council Brief issued by the Education Bureau

LC Paper No. LS37/12-13 -- Legal Service Division Report

LC Paper No. CB(4)583/12-13(02) -- Marked-up copy of the Education Ordinance prepared by the Legal Service Division

Action

- LC Paper Nos. CB(4)583/12-13(03) and (04) -- Assistant Legal Adviser's letter dated 26 March 2013 to the Administration and the Administration's reply dated 9 April 2013
- LC Paper Nos. CB(4)583/12-13(05) and (06) -- Assistant Legal Adviser's letter dated 9 April 2013 to the Administration and the Administration's reply dated 10 April 2013
- LC Paper No. CB(4)583/12-13(07) -- Paper on Education (Amendment) Bill 2013 prepared by the Legislative Council Secretariat (background brief)
- LC Paper No. CB(4)666/12-13(01) -- Submission from Hong Kong Professional Teachers' Union)

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Meeting with deputations

3. The Bills Committee received views from two deputations attending the meeting.

Clause-by-clause examination of the Bill

4. The Bills Committee proceeded to examine the Bill clause by clause.

Legislative timetable

5. The Chairman concluded that the Bills Committee had completed scrutiny of the Bill. Members agreed that the Bills Committee would report its deliberations to the House Committee on 31 May 2013 so that the Second Reading debate on the Bill could be resumed at the Council meeting of 19 June 2013. They also noted that the deadline for giving notice of amendment(s), if any, to the Bill would be 8 June 2013.

Action

III. Any other business

6. There being no other business, the meeting ended at 10:15 am.

Council Business Division 4
Legislative Council Secretariat
23 July 2013

**Proceedings of the second meeting of the
Bills Committee on Education (Amendment) Bill 2013
on Saturday, 18 May 2013, at 9:00 am
in Conference Room 2 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action required
<i>Agenda Item I – Confirmation of minutes of meeting</i>			
000902 - 000951	Chairman	Minutes of meeting on 22 April 2013 were confirmed.	
<i>Agenda Item II – Meeting with deputations and the Administration</i>			
000952 - 001049	Chairman	Opening remarks	
001050 - 001425	Young DAB	Presentation of views by the deputation – (a) it supported the proposed amendments in the Bill; and (b) the Bill should have been introduced much earlier.	
001426 - 001826	Hong Kong Professional Teachers' Union	Presentation of views by the deputation as detailed in its submission [LC Paper No. CB(4)666/12-13(01)]. Whilst supporting the Bill, the deputation was concerned about the predicament of the bankrupt teacher-contributors of Grant Schools Provident Fund ("GSPF")/Subsidized Schools Provident Fund ("SSPF") whose retirement benefits were vested in the trustee-in-bankruptcy.	
001827 - 002745	Assistant Legal Adviser 4 ("ALA4") Administration Chairman	In response to ALA4's enquiries, the Administration's clarifications on the following (LC Paper No. CB(4)583/12-13(03) to (06)) – (a) the difference in the wordings used in proposed section 85(4) of the Bill (i.e. if a provident fund member is an undischarged bankrupt) and those in section 16(1A) of the Mandatory Provident Fund Schemes Ordinance ("MPFSO") (i.e. if a scheme member is adjudicated bankrupt); and (b) the protection under proposed section 85(4) of the Bill covered benefits "accrued", "accruing" and "to be accrued", whereas that of section 16(1A) of MPFSO only covered "accrued benefits". The Chairman's enquiry on whether the amendments proposed under the Bill would also be applicable to teachers in Direct Subsidy Scheme ("DSS") schools. The Administration's explanation that – (a) many DSS schools were former grant or subsidized schools, the teachers of which were	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>members of GSPF/SSPF; and</p> <p>(b) Relevant provisions in the GSPF Rules provide for the special arrangements for teachers of these DSS schools opting to remain as members of GSPF. For those SSPF contributors, after a maximum period of five years immediately after the subsidized school has become a DSS school, they are to be covered by the mandatory provident fund schemes provided by respective DSS schools.</p>	
002746 - 003737	Miss CHAN Yuen-han Administration Mr IP Kin-yuen Chairman	<p>Miss CHAN Yuen-han's enquiry on the applicability of the proposed amendments to teachers in DSS schools, private schools and international schools.</p> <p>The Administration's response that –</p> <p>(a) DSS schools, private schools and international schools were required by MPFSO to enrol their employees including teachers on MPF schemes or other recognized retirement benefit schemes;</p> <p>(b) if the DSS school was a former grant/subsidized school, the teachers of which had joined GSPF/SSPF, these teachers might opt to remain in GSPF/SSPF or join the MPF scheme arranged by the school concerned; and</p> <p>(c) it was possible that in a DSS school which was formerly a grant/subsidized school, some teachers were members of GSPF/SSPF while others were members of a MPF scheme.</p> <p>In reply to Miss CHAN Yuen-han's enquiry about the retirement benefits of teachers in case a private/international/DSS school became insolvent, the Administration advised that under the MPF system, the assets of the MPF scheme (including contributions from employers and employees and the earnings thereof) were required to be segregated from the assets of the employer-school.</p> <p>Remarks by Mr IP Kin-yuen that the rate of contributions made by schools to GSPF/SSPF were commensurate with the teacher's length of service and were generally higher than the rate of mandatory contributions by employers as required under MPFSO.</p> <p>Remarks by the Chairman and Miss CHAN Yuen-han that the Administration should consider enhancing the provisions of MPFSO with reference to the provisions of GSPF/SSPF.</p>	
003738 - 004811	Dr Kenneth CHAN Ka-lok Administration	Dr Kenneth CHAN's request for information on –	

Time marker	Speaker(s)	Subject(s)	Action required
	Chairman	<p>(a) the number of teachers in grant schools/subsidized schools who had been adjudicated bankrupt since August 2009; and</p> <p>(b) measures, if any, on an administrative or compassionate basis, to assist the bankrupt teachers who could not benefit from the proposed amendments in the Bill.</p> <p>The Administration's response that –</p> <p>(a) three teachers in grant schools/subsidized schools were adjudicated bankrupt in each year from 2009 to 2011, and two such bankruptcy cases in the first five months of 2013;</p> <p>(b) since May 2011 when the relevant amendments to MPFSO came into operation, four GSPF/SSPF members had been adjudicated bankrupt;</p> <p>(c) under the prevailing policy, the legislative amendments would not normally take retrospective effect and the Administration was not in a position to devise special measures with regard to the provident fund benefits of teacher-contributors whose GSPF/SSPF benefits were vested in the trustee-in-bankruptcy; and</p> <p>(d) if the bankrupt teachers encountered any difficulty in their daily living, they could seek appropriate assistance from the Government, similar to other needy members of the public.</p> <p>In reply to the Chairman, the Administration confirmed that since the Court of Appeal judgement in 2009, payments of GSPF/SSPF benefits attributable to post-discharge service would be made to the contributors, and the pre-discharge benefits would be paid to the trustee-in-bankruptcy.</p>	
004812 - 010455	Mr IP Kin-yuen Administration Chairman	<p>Mr IP Kin-yuen's observation that the protection of retirement benefits of GSPF/SSPF members would differ if the adjudication of bankruptcy took place –</p> <p>(a) before the Court of Appeal judgement in 2009;</p> <p>(b) after the Court of Appeal judgement in 2009 and before the proposed amendments came into operation; or</p> <p>(c) after the proposed amendments came into operation.</p> <p>Mr IP's view that –</p> <p>(a) the Bill was belated and the Administration</p>	

Time marker	Speaker(s)	Subject(s)	Action required
		<p>should have taken steps to introduce the amendments earlier; and</p> <p>(b) the Administration should consider providing assistance on compassionate grounds to those GSPF/SSPF members who could not benefit from the proposed amendments.</p> <p>The Administration's response that –</p> <p>(a) under the prevailing policy, the Bill would not have any retrospective effect. If a teacher-contributor was adjudicated bankrupt before the proposed amendments came into operation, the existing provisions in the Education Ordinance and the GSPF/SSPF Rules would continue to apply; and</p> <p>(b) the Administration had closely monitored the development of the court case Re. Ng Shiu Fan and had taken into consideration the possible appeal to the Court of Final Appeal (CFA) and the subsequent impact on the legislative amendments. Having regard to the long lapse of the leave to appeal, the Administration took steps to expedite the legislative exercise by commencing the drafting work after reviewing the GSPF/SSPF Rules notwithstanding the possibility of further appeal.</p> <p>In reply to Mr IP, the Administration advised that for DSS schools which were former grant/subsidized schools, the subsidy provided by the Government to these schools had taken into account the schools' donations to GSPF/SSPF.</p>	
010456 - 010657	Administration Chairman	<p><u>Clause-by-clause examination of the Chinese version of the Bill</u></p> <p><u>Long title</u></p> <p>Part 1: Preliminary</p> <p><u>Clause 1 – Short title</u></p> <p>Members raised no query to the above proposed provisions.</p> <p><u>Clause 2 – Enactments amended</u></p> <p>In response to the Chairman's query, the Administration confirmed that the amendments would come into operation on the date of gazettal of the Bill as enacted.</p>	

Time marker	Speaker(s)	Subject(s)	Action required
010658 - 011044	Administration Chairman	<p>Part 2: Amendment to Education Ordinance (Cap.279)</p> <p><u>Clause 3 – Section 85 amended (rules for provident funds)</u></p> <p>Members raised no query.</p> <p>The Chairman's suggestion that information on the handling of the GSPF/SSPF benefits with reference to various critical dates in relation to the bankruptcy procedures of a bankrupt teacher-contributor and the effective date of the Bill as enacted should be presented to the Bills Committee in the format of diagram/table to facilitate understanding of the different scenarios.</p>	
011045 - 011359	Administration Chairman ALA4	<p>Part 3: Amendments to Subsidiary Legislation</p> <p>Division 1 – Amendment to Grant Schools Provident Fund Rules (Cap.279 sub.leg.C)</p> <p><u>Clause 4 – Rule 14 amended (payments out and pro rata of dividends)</u></p> <p>Division 2 – Amendment to Subsidized Schools Provident Fund Rules (Cap.279 sub.leg.D)</p> <p><u>Clause 5 – Rule 14 amended (payments out and pro rata of dividends)</u></p> <p>Members raised no query on clause 4 to clause 5</p> <p>Completion of clause-by-clause examination of the Bill.</p> <p>ALA4's advice that no discrepancy was detected between the Chinese and English versions of the Bill.</p>	
011400 - 011510	Chairman Clerk	<p>The Bills Committee would report its deliberations to the House Committee on 31 May 2013. The Second Reading debate on the Bill could be resumed at the Council meeting of 19 June 2013. The deadline for giving notice to move amendments, if any, to the Bill was 8 June 2013.</p>	
<i>Agenda Item III – Any other business</i>			
011511 - 011515	Chairman	Closing remarks	