

立法會
Legislative Council

LC Paper No. CB(1)108/14-15
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/13

**Bills Committee on Mandatory Provident Fund Schemes
(Amendment) Bill 2014**

**Minutes of second meeting on
Tuesday, 30 September 2014, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon CHAN Kin-por, BBS, JP (Chairman)
Hon WONG Ting-kwong, SBS, JP
Hon LEUNG Kwok-hung
Hon NG Leung-sing, SBS, JP
Hon SIN Chung-kai, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu, JP
- Members absent** : Hon LEE Cheuk-yan
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon WONG Kwok-kin, SBS
Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki
Hon CHUNG Kwok-pan
- Public officers attending** : Mr Eddie CHEUNG
Deputy Secretary for Financial Services and the
Treasury (Financial Services) 2

Miss Susanna LAI
Principal Assistant Secretary for Financial
Services and the Treasury (Financial Services)3

Miss Elaine NG
Senior Government Counsel
Department of Justice

Attendance by invitation : Ms Gabriella YEE
Head (Policy Development and Research)
Mandatory Provident Fund Schemes Authority

Clerk in attendance: Ms Annette LAM
Chief Council Secretary (1)3

Staff in attendance: Miss Evelyn LEE
Assistant Legal Adviser 10

Ms Connie HO
Senior Council Secretary (1)3

Action

I. Meeting with the Administration

(LC Paper No. CB(3)762/13-14 -- The Bill

LC Paper No. CB(1)2021/13-14(01) -- Mark-up copy of the Bill
prepared by the Legal
Service Division (Restricted
to members only)

File Ref: MPF/2/1/38C Pt. 2 -- Legislative Council Brief
issued by the Financial
Services and the Treasury
Bureau

LC Paper No. LS70/13-14 -- Legal Service Division
Report

LC Paper No. CB(1)1835/13-14(01) -- Paper on Mandatory Provident Fund Schemes (Amendment) Bill 2014 prepared by the Legislative Council Secretariat (background brief)

LC Paper No. CB(1)2049/13-14(01) -- Administration's paper on *(tabled at the meeting and subsequently issued via e-mail on 30 September 2014)* Mandatory Provident Fund Schemes (Amendment) Bill 2014 (power-point presentation material))

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

Declaration of interest

2. Mr WONG Ting-kwong declared that he was the Chairman of the Mandatory Provident Fund Schemes Advisory Committee ("MPFSAC"). Mr NG Leung-sing declared that he was a former member of the MPFSAC and the corporation that he worked for had engaged in the provision of Mandatory Provident Fund ("MPF") services. Mr POON Siu-ping declared that he was a member of the Board of the Mandatory Provident Fund Schemes Authority.

Follow-up action required of the Administration

3. The Administration was requested to provide:
- (a) a cost comparison to illustrate the extent to which the proposed measures to simplify administrative processes of MPF, such as the use of electronic means of communications between trustees and scheme members, could help drive down the MPF fees payable by scheme members;
 - (b) an analysis on the benefits, including the impact on fee reduction, brought about by the merging of similar schemes/constituent funds and cancellation of constituent funds with unsatisfactory investment return by trustees; and
 - (c) information on how a scheme member, who had lost consciousness and certified by a registered medical practitioner/Chinese medicine practitioner that his/her remaining

life expectancy was less than 12 months, could effect his/her application for early withdrawal of MPF accrued benefits on the ground of terminal illness.

(Post-meeting note: A letter dated 3 October 2014 from Hon TANG Ka-piu requesting the Administration to provide a response to the concerns raised by him was circulated to members vide CB(1)2058/13-14(01) on 6 October 2014.)

Date of next meeting

4. The Chairman reminded members that the next meeting would be held on Tuesday, 7 October 2014 at 9:00 am to receive views from deputations and meet with the Administration.

II. Any other business

5. There being no other business, the meeting ended at 4:02 pm.

Council Business Division 1
Legislative Council Secretariat
23 October 2014

**Proceedings of the second meeting of
the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2014
on Tuesday, 30 September 2014, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 – 000235	Chairman	Opening remarks	
000236 – 001722	Chairman Administration	Briefing on the key legislative proposals in the Mandatory Provident Fund Schemes (Amendment) Bill 2014 ("the Bill") by the Administration (LC Paper No. CB(1)2049/13-14(01)).	
001723 – 002301	Chairman Mr SIN Chung-kai Administration	<p><u>Mr SIN Chung-kai</u> enquired how the application for withdrawal of Mandatory Provident Fund ("MPF") accrued benefits could be effected in the event that a scheme member had lost consciousness due to critical illnesses, e.g. a sudden onset of stroke.</p> <p>The Administration responded that -</p> <p>(a) the scheme member's family member could apply to the court, which might make orders or give directions on the handling of the scheme member's property and affairs (e.g. lodging an application for early withdrawal of MPF accrued benefits on behalf of the member); and</p> <p>(b) a new section 165A was proposed to be added to the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) to clarify the existing practice that a committee of estate appointed under the Mental Health Ordinance (Cap. 136) could make a claim for early withdrawal of MPF accrued benefits as if it were the scheme member.</p> <p>Mr SIN's concern that the accrued MPF benefits could not be withdrawn in a timely manner to address the pressing financial needs of the member concerned as the relevant legal procedures might take a rather long period of time.</p>	
002302 – 002646	Chairman Mr WONG Ting-kwong Administration	<u>Mr WONG Ting-kwong</u> declared that he was the Chairman of the Mandatory Provident Fund Schemes Advisory Committee ("MPFSAC"). He expressed that members belonging to the	

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		<p>Democratic Alliance for the Betterment and Progress of Hong Kong supported the legislative amendments proposed under the Bill.</p> <p>Mr WONG's views that -</p> <p>(a) since some critical illnesses, such as stroke, might not be incurable, the MPFSAC considered it inappropriate to allow early withdrawal of MPF accrued benefits by scheme members for meeting medical expenses of critical illness as this would reduce the amount of funds available for members' post-retirement life; and</p> <p>(b) to safeguard the assets of scheme members, it was prudent for the court to appoint a committee of estate to handle the assets of a scheme member who had lost the ability to manage his/her own assets due to critical illness.</p> <p>In response to Mr WONG's question about the definition of "small balance account", the Administration advised that MPF accounts with a balance of less than \$5,000 would be regarded as "small balance account".</p>	
002647 – 003410	Chairman Mr TANG Ka-piu Administration	<p><u>Mr TANG Ka-piu</u> enquired about the extent to which the MPF fees could be driven down following the implementation of the measures to relieve the compliance burden of trustees proposed under the Bill.</p> <p>The Administration responded that -</p> <p>(a) a multi-pronged approach, including the implementation of the Employee Choice Arrangement, encouraging mergers of existing schemes/funds and consolidation of personal accounts, and the proposed introduction of a "core fund" with a fee cap as the default fund of each MPF scheme, was adopted with a view to driving down the MPF fees; and</p> <p>(b) it would be difficult to quantify the amount of fee reduction that would be achieved by the relevant measures. However, the Administration would attempt to illustrate the extent to which the proposed measures to</p>	The Administration to take follow-up action as in

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		simplify administrative processes of MPF, such as the use of electronic means of communications between trustees and scheme members, could help drive down the MPF fees payable by scheme members.	paragraph 3(a) of the minutes.
003411 – 003933	Chairman Mr LEUNG Kwok-hung Administration	<u>Mr LEUNG Kwok-hung</u> commented that the returns of MPF investments had been unsatisfactory. He suggested entrusting the Hong Kong Monetary Authority ("HKMA") to act as a public trustee to take up the investment of all MPF funds and that a guaranteed return, broadly comparable to the investment return of the Exchange Fund ("EF"), be provided to scheme members by HKMA.	
003934 – 004340	Chairman Mr POON Siu-ping Administration	<p><u>Mr POON Siu-ping</u> declared that he was a member of the Board of the Mandatory Provident Fund Schemes Authority ("MPFA").</p> <p>In reply to Mr POON, the Administration responded that -</p> <p>(a) the more frequent were the phased withdrawals, the higher the additional administrative cost; and</p> <p>(b) in the rare circumstances as mentioned at the meeting that a member had ceased employment and withdrawn accrued MPF benefits on the ground of terminal illness, but subsequently survived and re-entered the labour market and became a MPF scheme member again, he could still apply for early withdrawal of MPF accrued benefits on the ground of terminal illness if he was so unfortunate to be diagnosed with terminal illness again.</p>	
004341 – 004939	Chairman Mr NG Leung-sing Administration	<p>Declaration of interest by Mr NG Leung-sing.</p> <p><u>Mr NG</u> remarked that the proliferation of funds was inevitable given that it was necessary for trustees to provide scheme members with sufficient choices of funds with different risk exposure to suit members' needs. He advised that the MPFA should assess the suitability of individual constituent fund products introduced by trustees and maintain close communication with</p>	

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		<p>the relevant stakeholders (i.e. scheme members and trustees) to ensure the stable and healthy development of the MPF System.</p> <p>Mr NG's enquiry about -</p> <ul style="list-style-type: none"> (a) the outcome of discussion on the proposal of allowing early withdrawal of MPF accrued benefits for treating chronic illness; and (b) the possibility of allowing early withdrawal of MPF accrued benefits by scheme members along the concept of "reverse mortgage" for treating chronic illness. <p>The Administration responded that -</p> <ul style="list-style-type: none"> (a) unlike the multi-purpose mandatory saving schemes in other jurisdictions, the MPF System was a dedicated scheme designed solely for saving for retirement purpose, and its contribution rate was relatively low at 5% only; (b) allowing early withdrawal for medical treatment should be weighed against the consideration that the scheme member, if not terminally ill, would still require provisions for his retirement ; and (c) allowing early withdrawal to meet medical expenses meant less accrued benefits would remain for the retirement needs of the scheme member concerned in future, which was inconsistent with the policy objective of the MPF System. <p>The Administration said that no proposal for early withdrawal of MPF accrued benefits based on the concept of "reverse mortgage" was received during public consultation.</p>	
004940 – 005153	Chairman Mr SIN Chung-kai Administration	<p><u>Mr SIN Chung-kai</u> reiterated his concern about how a scheme member, who had lost consciousness and certified by a registered medical practitioner/Chinese medicine practitioner that his/her remaining life expectancy was less than 12 months, could effect his/her application for early withdrawal of MPF accrued benefits on the ground of terminal illness. The Administration</p>	<p>The Administration to take follow-up action as in paragraph 3(c) of the minutes.</p>

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		undertook to provide information in this respect.	
005154 – 005704	Chairman Mr TANG Ka-piu Administration	<p>Mr TANG Ka-piu's enquiry on whether the revisions to disclosure arrangements in secrecy provisions of the Mandatory Provident Fund Schemes Ordinance ("MPFSO") and the Occupational Retirement Schemes Ordinance (Cap. 426) ("ORSO") proposed under the Bill would enable the Administration to obtain from trustees information about the MPF accounts under their management that were essential for policy analysis, such as the average annual rate of investment returns of those MPF accounts from which accrued benefits had been withdrawn in the past 10 years which was not currently covered by the information submitted by MPF trustees pursuant to MPFSO.</p> <p>The Administration's reply that the relevant legislative amendments aimed at -</p> <p>(a) updating the secrecy provisions of the MPFSO and ORSO to allow disclosure of scheme members' personal and financial information, subject to specified conditions, by MPF trustees and ORSO administrators to foreign tax authorities for complying with reporting requirements to enhance tax transparency or combat tax evasion so as to fulfill the international obligations of the Hong Kong Special Administrative Region Government; and</p> <p>(b) updating the list of parties and organizations to whom the MPFA and frontline regulators in respect of regulation of MPF intermediaries (i.e. the HKMA, Securities and Futures Commission, and Insurance Authority) might disclose information.</p> <p>The Administration undertook to discuss with Mr TANG Ka-piu in respect of the types of information required for the purpose of policy analysis after the meeting.</p>	The Administration to follow up.
005705 – 005956	Chairman Administration	At the invitation of the Chairman, the Administration made the following remarks in response to Mr LEUNG Kwok-hung's question -	

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		<p>(a) after the deduction of administrative and management fees, the annualized internal rate of return of MPF investments since the commencement of MPF Scheme in 2000 was 4.3% while the average inflation rate during the same period was 1.6%. Based on the above information, the return of MPF investments during the last 13 years was in fact not unsatisfactory; and</p> <p>(b) it was not appropriate to compare the investment portfolio of EF and that of the MPF Scheme in view of their different investment objectives and strategies in asset allocation.</p>	
005957 – 010922	<p>Chairman Mr TANG Ka-piu Administration Assistant Legal Adviser 10 (ALA10)</p>	<p>Noting that the MPFA had adopted the "in scheme members' interests" criterion in approving new constituent funds, <u>Mr TANG Ka-piu</u> enquired about -</p> <p>(a) the MPFA's reasons for rejecting the applications for new constituent funds in the past; and</p> <p>(b) whether the reduction in the number of constituent funds in recent years was due to the tightening of the approval of new constituent funds by MPFA or the business decisions of trustees.</p> <p>The Administration responded that -</p> <p>(a) applications would be regarded as "not in scheme members' interests" if the proposed new constituent fund was (i) not sufficiently diversified (narrow focus on certain markets/industries would entail a high risk level), and (ii) too similar to existing constituent funds in the market (the introduction of the new fund would not increase the choice of scheme members); and</p> <p>(b) the reduction in the number of constituent funds in recent year was partly attributable to the implementation of the short-term fee-reduction measures, such as merging smaller scale or less efficient funds, pursuant to the recommendations of the study on the costs incurred by trustees in performing</p>	

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		<p>different MPF scheme administration functions ("the Cost Study") commissioned by the MPFA in 2012. Some trustees had taken the opportunity to initiate discussion with MPFA to cancel the registration of less efficient constituent funds.</p> <p>At the invitation of the Chairman, ALA10 briefed members on the scope of amendments to the secrecy provisions of MPFSO and ORSO proposed under the Bill.</p>	
010923 – 011603	Chairman Mr SIN Chung-kai Administration	<p><u>Mr SIN Chung-kai</u> sought clarification on the procedures which a person who had withdrawn MPF accrued benefits on the ground of early retirement had to go through should he/she wish to take up employment again.</p> <p>The Administration advised that -</p> <ul style="list-style-type: none"> (a) a person who had made early withdrawal of MPF accrued benefits on the ground of early retirement was not required to report to the MPFA on re-employment; (b) a scheme member was presently required to make a statutory declaration declaring that he/she would permanently cease employment when applying for early withdrawal of MPF accrued benefits on the ground of early retirement; (c) the existing wording of the relevant provisions in the MPFSO might give rise to ambiguity as to whether the early-retired scheme member could take up employment again later due to unforeseeable events or changes in financial conditions. An early-retired declarant might be legally liable for making a false statutory declaration should he/she be re-employed later; and (d) it was therefore proposed to amend the relevant provisions in the MPFSO to clarify the meaning of permanently ceasing employment or self-employment, so that an early-retired scheme member might take up employment again due to unforeseeable events or changes in financial conditions. 	

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011604 – 011755	Chairman Mr POON Siu-ping Administration	In response to Mr POON Siu-ping's enquiry, the Administration advised that the criterion of "in scheme members' interests" had all along been adopted in approving new funds. A circular informing the industry of the relevant requirements based on the operational experience of MPFA had been issued in 2011. The Bill proposed to provide a clear legal basis for the MPFA to refuse applications for introducing new MPF funds if it was not satisfied that the fund was in scheme members' interests. A guideline setting out the detailed requirements in respect of the approval criterion of "in scheme members' interests" for new constituent funds adopted by the MPFA would be issued for the MPF industry's reference in the future.	
011756 – 012111	Chairman Mr NG Leung-sing Administration	<p>Since registered medical practitioners and registered Chinese medicine practitioners would not have liability under the MPFSO if a scheme member certified terminally-ill by them eventually survived longer than expected, <u>Mr NG Leung-sing</u> suggested the Administration to consider putting in place a mechanism to guard against abuse of the issuance of certification for terminal illness, such as making public the names of those medical practitioners who had frequently provided inaccurate assessment on the remaining life expectancy of terminally-ill patients.</p> <p>The Administration responded that -</p> <ul style="list-style-type: none"> (a) a medical practitioner would be held liable for intentionally making a false statement; (b) the proposed definition of "remaining life expectancy" and the 12-month life expectancy yardstick had taken into account the outcome of the public consultation on the proposals and subsequent discussion with medical professional bodies. Reference had also been made to a similar arrangement adopted in the Australian Superannuation System; and (c) the Administration would keep in view the situation upon implementation of the proposal and revise the arrangement if necessary. 	

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012112 – 012700	Chairman Mr TANG Ka-piu Administration	At the request of Mr TANG Ka-piu, the Administration would provide an analysis on the benefits, including the impact on fee reduction, brought about by the merging of similar schemes/constituent funds and cancellation of constituent funds by trustees pursuant to the implementation of the short-term measures to drive down MPF fees based on the recommendations of the Cost Study in 2012.	The Administration to take follow-up action as in paragraph 3(b) of the minutes.
012701 – 013228	Chairman Administration	<p><u>The Chairman</u> relayed the concern of the Hong Kong Federation of Insurers ("HKFI") -</p> <p>(a) the current proposal, which required the trustees to process free of charge a scheme member's request to make withdrawal of no more than 12 times a year with no restrictions on the amount withdrawn, would bring tremendous administrative burden to trustees; and</p> <p>(b) the Administration was requested to consider reducing the number of free withdrawal to 4 times a year or setting a minimum amount for each withdrawal to avoid driving up tremendously the administration cost of trustees.</p> <p>The Administration responded that -</p> <p>(a) the current proposal had balanced the need of providing flexibility for members' withdrawals and minimizing the impact on the administrative cost of the trustees; and</p> <p>(b) the difference between the administrative cost of providing free withdrawal of 12 times a year and that of 4 times a years should not be substantial. Also, the administrative cost should be transaction-based rather than amount-based, i.e., the cost of a transaction should not vary in accordance with the amount withdrawn. Nevertheless, the Administration would further study the issue with the MPF industry should there be further information demonstrating the cost impact of the current proposal.</p> <p>The Chairman's views that -</p>	

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		<p>(a) allowing a scheme member who had made early withdrawal of his/her accrued MPF benefits on the ground of early retirement to take up employment later again might encourage scheme members to make early withdrawal on the same ground in the future; and</p> <p>(b) the Administration should consider introducing measures to guard against the abuse of early withdrawals on the ground of early retirement.</p> <p>The Administration responded that -</p> <p>(a) upon making the relevant amendments to the MPFSO, a scheme member would be required to make a statutory declaration to the effect that he/she had "no intention" of taking up employment again when they applied for early withdrawal of MPF accrued benefits on the ground of early retirement. Making a false statutory declaration might attract criminal liability.</p> <p>In the light of the Chairman's concern, the Administration undertook to consider means to enhance the monitoring of early withdrawal of MPF accrued benefits on the ground of early retirement.</p>	<p>The Administration to follow up.</p>
013229 – 013331	Chairman Administration	Meeting arrangements	