

立法會
Legislative Council

LC Paper No. CB(1)218/14-15
(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 fourth meeting on
Monday, 27 October 2014, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Hon CHAN Kin-por, BBS, JP (Chairman)
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan, JP
Hon WONG Kwok-kin, SBS
Hon LEUNG Kwok-hung
Hon NG Leung-sing, SBS, JP
Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki
Hon SIN Chung-kai, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu, JP
Hon CHUNG Kwok-pan
- Members absent** : Hon LEE Cheuk-yan
Hon Starry LEE Wai-king, JP
- 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

Mr Alex LAI
Government Counsel
Department of Justice

Attendance by Invitation : Mr Darren McSHANE
Chief Regulation & Policy Officer and
Executive Director
Mandatory Provident Fund Schemes Authority

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. Confirmation of minutes of meeting**
(LC Paper No. CB(1)108/14-15 -- Minutes of meeting held on
30 September 2014)

The minutes of the meeting held on 30 September 2014 were confirmed.

II. Meeting with the Administration

LC Paper No. CB(1)88/14-15(01) -- List of follow-up actions arising from the discussion at the meeting on 30 September 2014

LC Paper No. CB(1)2058/13-14(01) -- Hon TANG Ka-piu's letter dated 3 October 2014
(*Chinese version only*)

LC Paper No. CB(1)88/14-15(02) -- List of follow-up actions arising from the discussion at the meeting on 7 October 2014

LC Paper No. CB(1)88/14-15(03) -- The Administration's responses to the follow-up actions arising from the discussion at the meetings on 30 September and 7 October 2014

Clause-by-clause examination of the Bill

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))

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

Follow-up action required of the Administration

3. The Administration was requested to:

(a) advise the number of trustees of Mandatory Provident Fund ("MPF") schemes which did not charge scheme members any fees for the use of paper correspondence and the proportion of these MPF trustees;

(b) provide a copy each of the current and proposed revised "Statutory Declaration for Claims for Payment of Accrued

Benefits on Grounds of Early Retirement" to illustrate the implementation of section 15(7) that was proposed to be added to the Mandatory Provident Fund Schemes Ordinance (Cap. 485) which sought to clarify the meaning of permanently ceasing employment or self-employment;

- (c) advise, in the light of the Chinese rendition ("包括一項陳述") of the English text "include in the notice a statement setting out" in the respective sections 20(11), 20A(3), 20B(3), 21(10), 34(7) and 34B(7) of Cap.485, whether the Chinese rendition ("加入一項陳述") of the English text "include in the notice of a statement ..." in the proposed section 21BB(8)(b) should be rendered consistent with the Chinese renditions of the aforesaid sections in Cap. 485 or vice versa and provide the relevant considerations;
- (d) advise whether the Commissioner for Labour had made any requests for information disclosure to the Mandatory Provident Fund Schemes Authority ("MPFA") under section 42 of Cap.485 and whether MPFA had made the relevant disclosure; and
- (e) in respect of the proposed section 42AAB(1)(a), clarified the factors which MPFA would take into account in deciding whether to give the written consent.

(Post-meeting note: The information provided by the Administration was issued to members vide LC Paper No. CB(1)217/14-15(02) on 13 November 2014.)

Date of next meeting

4. The Chairman reminded members that the next meeting would be held on 17 November 2014 at 10:45 am to meet with the Administration.

III. Any other business

5. There being no other business, the meeting ended at 5:42 pm.

**Proceedings of the fourth meeting of
the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2014
on Monday, 27 October 2014, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000000 – 000230	Chairman	Opening remarks Confirmation of minutes of meeting	
000231 – 000547	Chairman Administration	<p>Briefing by the Administration on its response to the lists of follow-up actions arising from the discussion at the meetings on 30 September and 7 October 2014 (LC Paper No. CB(1)88/14-15(03)).</p> <p>In relation to the time required for the appointment of a committee of estate by the Court under the Mental Health Ordinance (Cap.136) to administer the assets and affairs of an unconscious scheme member who was certified by a registered medical practitioner/Chinese medicine practitioner that his/her remaining life expectancy was less than 12 months, including making an application for early withdrawal of Mandatory Provident Fund ("MPF") accrued benefits on the member's behalf, the Administration advised that:</p> <p>(a) according to the Judiciary, the time required for completing the relevant appointment would vary, depending on the complexity and circumstances of individual cases; and</p> <p>(b) under normal circumstances, the approved trustees would pay the benefits to the claimants as soon as practicable if they were satisfied with the relevant applications. There should not be any undue delay on the trustee's side.</p>	
000548 – 001110	Chairman Mr TANG Ka-piu Administration	<p>Mr TANG Ka-piu's view and enquiry -</p> <p>(a) Members of the Legislative Council ("LegCo") were sometimes unable to obtain specific data and statistical information about the MPF System from the Administration in the past. The Administration should enhance the public's right to know by providing LegCo Members with the requested information; and</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(b) whether the Mandatory Provident Fund Schemes Authority ("MPFA") had already been entrusted with the necessary power under the secrecy provisions in the existing Mandatory Provident Fund Schemes Ordinance (Cap. 485) or the Bill to request MPF trustees to provide specific statistical information or data in relation to MPF schemes under their management.</p> <p>The Administration responded that -</p> <p>(a) Cap. 485 stipulated that MPFA might require an approved trustee to give to MPFA any specified information relating to a MPF scheme that was in the possession of the approved trustee;</p> <p>(b) while the approved trustees were obliged to provide the data or information requested by MPFA in relation to a MPF scheme under their management, both MPFA and trustees had to comply with the requirements stipulated in the Personal Data (Privacy) Ordinance (Cap.486) (including the requirement that the data to be collected had to be adequate but not excessive);</p> <p>(c) considering that irregular collection schedule and collection of specific data or information from approved trustees could be time and resource consuming to trustees, and thus had possible cost implications, MPFA generally made use of summary data obtained through regular data collection for analysis purposes. The Administration had to balance the costs and benefits in considering whether to collect specific data and information from trustees; and</p> <p>(d) the Administration stood ready to discuss with Mr TANG Ka-piu in respect of the types of information which might be collected from trustees to enhance the transparency of the MPF System.</p>	<p>The Administration to follow up.</p>
001111 – 001958	Chairman Mr KWOK Ka-ki Administration	Mr KWOK Ka-ki's concerns and enquiries - (a) on the use of electronic means of	

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		<p>communication primarily between trustees and scheme members, whether scheme members would be given a choice to continue to receive paper correspondence from trustees. Given that some grassroots employees might not have access to internet, full implementation of electronic communication would prejudice their right to information;</p> <p>(b) whether the Administration would put in place measures to prevent approved trustees under Cap. 485 from overcharging administration cost on scheme members who opted for using paper correspondence;</p> <p>(c) the Administration should look into the issues involved for cases where the time required for the appointment of a committee of estate by the Court was unreasonably long. If necessary, guidelines should be issued to help ensure a reasonable processing time; and</p> <p>(d) how the cancellation of 16 schemes and 104 constituent funds ("CF") had contributed to the drop of the Fund Expense Ratio ("FER") from 2.1% to 1.68% during the period from July 2007 to September 2014 (paragraph 1(b) in the Administration's response (LC Paper No. CB(1)88/14-15(03)).</p> <p>The Administration responded that -</p> <p>(a) scheme members could opt between using paper correspondence or electronic communication;</p> <p>(b) while there were no provisions in Cap. 485 prohibiting trustees from charging members administrative fee for the use of paper correspondence, some trustees did not charge scheme members any fees for such service. At Mr KWOK Ka-ki's request, the Administration undertook to provide information on the number of trustees which did not charge scheme members any fees for the use of paper correspondence and the proportion of these trustees;</p>	<p>The Administration to take follow-up action as in paragraph 3(a) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		<p>(c) according to the Judiciary, the time required for the appointment of a committee of estate by the Court would depend on the complexity and circumstances of individual cases, e.g., whether the case would involve a variety of assets or whether there were disputes among parties who claimed to have interests in the assets; and</p> <p>(d) in addition to encouraging the industry to consolidate MPF schemes or funds that were smaller in scale or less efficient to achieve greater synergy and cost reduction, MPFA had implemented a host of measures to further drive down MPF fees through enhancing system transparency, promoting competition and simplifying processes. These measures included introducing the FER and the Low Fee Fund List, implementing the Employee Choice Arrangement and encouraging personal account consolidation. The aggregate impact of these measures was reflected in the drop of the FER from 2.1% to 1.69% in the period from July 2007 to September 2014. It was however impossible to break down the contribution of each of these measures to the drop of the FER.</p>	
<i>Clause-by-clause examination of the Bill</i>			
001959 – 002518	Chairman Administration	<p><u>Clause 1 & Clause 2</u></p> <p>Members raised no questions.</p> <p>(With members' concurrence, Mr WONG Ting-kwong took the chair during the temporary absence of the Chairman at this juncture.)</p>	
002519 – 003105	Chairman (Mr WONG Ting-kwong) Mr SIN Chung-kai Administration	<p><u>Clause 3 - to amend section 2 (interpretation)</u></p> <p>Members raised no questions.</p> <p><u>Clause 4 – to amend section 7AA (employer required to pay contributions to Authority where relevant employee not member of registered scheme)</u></p> <p>The Administration's response to Mr SIN Chung-kai's question regarding the computation</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>of the period of time for the definition of "permitted period".</p> <p><u>Clause 5 - to amend section 10 (maximum level of income for contribution purposes)</u></p> <p>Members raised no questions.</p> <p><u>Clause 6 - to amend section 15 (withdrawal of accrued benefits)</u></p> <p>In response to Mr SIN Chung-kai's question on how a scheme member, who had lost consciousness and been certified by a registered medical practitioner/Chinese medicine practitioner that his/her remaining life expectancy was less than 12 months, could apply for early withdrawal of MPF accrued benefits on the ground of terminal illness, the Administration replied that the scheme member's relative or guardian might first make application for appointment as the committee of the estate in accordance with the Mental Health Ordinance. Then, the appointed committee of estate might make claims by completing a form and providing a medical certificate issued by either a medical practitioner or registered Chinese medicine practitioner to the approved trustee concerned. (paragraph 2 in LC Paper No. CB(1)88/14-15(03)).</p>	
003106 – 003748	Chairman (Mr WONG Ting-kwong) Ms Cyd HO Administration	<p><u>Clause 6(8) – to add a new section 15(7) (to clarify the meaning of permanently ceasing employment or self-employment)</u></p> <p>Ms Cyd HO doubted how the proposed section 15(7) could be implemented given the difficulty in verifying whether a scheme member genuinely had no intention of becoming employed or self-employed again when he/she applied for early withdrawal of MPF accrued benefits on the ground of early retirement.</p> <p>The Administration responded that the proposed section 15(7) sought 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 events or subsequent changes in financial conditions which were unforeseeable at the time</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>of applying for early withdrawal of MPF accrued benefits.</p> <p>In the light of Ms Cyd HO's concern, the Administration would provide a copy each of the current and the proposed revised "Statutory Declaration for Claims for Payment of Accrued Benefits on Grounds of Early Retirement" to illustrate the implementation of the proposed section 15(7).</p>	<p>The Administration to take follow-up action as in paragraph 3(b) of the minutes</p>
<p>003749 – 004345</p>	<p>Chairman Mr WONG Ting-kwong Administration Assistant Legal Advisor 10 ("ALA 10")</p>	<p>(The Chairman took the chair again at this juncture.)</p> <p><u>Clause 7 – to add new sections 21BA (Constituent funds of registered schemes to be approved) and 21BB (Application for approval and cancellation of approval of constituent funds of registered schemes)</u></p> <p>The Administration advised that the criterion of "in scheme members' interests" had all along been adopted in approving new funds. The Bill proposed to provide a clearer legal basis for the MPFA to refuse applications for introducing new MPF funds if it was not satisfied that the new fund was in scheme members' interests. The MPFA would issue a guideline setting out the detailed requirements in respect of the approval criterion of "in scheme members' interests" for new CFs for the MPF industry's reference in the future.</p> <p>Members raised no questions.</p> <p>Addressing the concern of ALA 10, the Administration was requested to advise, in the light of the Chinese rendition ("包括一項陳述") of the English text "include in the notice a statement setting out" in the respective sections 20(11), 20A(3), 20B(3), 21(10), 34(7) and 34B(7) of Cap.485, whether the Chinese rendition ("加入一項陳述") of the English text "include in the notice of a statement ..." in the proposed section 21BB(8)(b) should be rendered consistent with the Chinese renditions of the aforesaid sections in Cap. 485 or vice versa and provide the relevant considerations.</p>	<p>The Administration to take follow-up action as in paragraph 3(c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
004346 – 004433	Chairman Administration	<p><u>Clause 8 – to amend section 23 (Residual Provident Fund Scheme)</u></p> <p>Members raised no questions.</p>	
004434 – 005219	Chairman Ms Cyd HO Administration ALA10	<p><u>Clause 9 - to amend section 42 (Authority may disclose certain information despite section 41)</u></p> <p>Ms Cyd HO asked if some Government departments not on the list of parties and organizations provided under the proposed section 42(1)(d), such as the Labour Department, would be able to obtain information from MPFA to execute their functions/duties.</p> <p>The Administration advised that pursuant to the proposed section 42(1)(d)(xv), MPFA could disclose information to a person authorized by a person or body specified in subparagraphs (i), (ii), (iii), (iv), (v), (vi) or (vii) of the proposed section 42(1)(d). MPFA might only disclose information if certain conditions specified under section 42(1A) were fulfilled.</p> <p>As requested by Ms Cyd HO, the Administration would advise whether the Commissioner for Labour had ever made any requests for information disclosure to MPFA under section 42 and whether MPFA had made the relevant disclosure.</p>	The Administration to take follow-up action as in paragraph 3(d) of the minutes
005220 – 005713	Chairman (Mr WONG Ting-kwong) Mr SIN Chung-kai Administration	<p><u>Proposed sections 42(1)(d) and 42(1)(1A)</u></p> <p>(Mr WONG Ting-kwong took the chair during the temporary absence of the Chairman at this juncture.)</p> <p>In response to Mr SIN Chung-kai's enquiry, the Administration advised that -</p> <p>(a) the addition of the Privacy Commissioner for Personal Data and the Registrar of Companies to the proposed section 42(1)(d) was to facilitate the relevant authorities in exercising their statutory functions. The proposed addition was in line with other legislation such as the Securities and Futures Ordinance (Cap. 571); and</p>	

Time marker	Speaker	Subject(s)	Action required
		(b) the conditions for the MPFA to disclose information under the proposed section 42(1)(1A)(a), (b) and (c) remained the same as provided under the existing section 42(1)(d) (i), (ii) and (iii) of Cap. 485.	
005714 – 005958	Chairman (Mr WONG Ting-kwong) Administration	<p><u>Proposed section 42(8)-(11)</u></p> <p>Members raised no questions.</p> <p><u>Proposed section 42(12)</u></p> <p>In response to Mr WONG Ting-kwong's query, the Administration advised that a fine at level 4 amounted to \$25,000.</p>	
005959 – 010347	Chairman (Mr WONG Ting-kwong) Mr POON Siu-ping Administration	<p><u>Clause 10 - to amend section 42AA (Authority or specified entity may disclose information obtained under Part 4A despite section 41)</u></p> <p>In response to Mr POON Siu-ping's query on the difference between the list of parties and organizations provided under proposed sections 42(1)(d) and 42AA(3)(e), the Administration explained that section 42AA governed the disclosure by MPFA and specified entities, namely the Insurance Authority, the Monetary Authority and the Securities and Futures Commission. As the three specified entities had already been set out in section 42AA(5), they were thus not included in the list in section 42AA(3)(e).</p>	
010348 – 010814	Chairman (Mr WONG Ting-kwong) Administration ALA10	<p><u>The proposed section 42AAB</u></p> <p>In respect of the proposed section 42AAB(1)(a), the Administration was requested to clarify the factors which MPFA would take into account in deciding whether to give the written consent.</p> <p>The Administration indicated that it was considering introducing Committee Stage Amendment to the Bill to set out the factors.</p>	The Administration to take follow-up action as in paragraph 3(e) of the minutes
010815 – 011108	Chairman Administration	<p>(The Chairman took over the chair at this juncture)</p> <p><u>Clause 12 - to amend section 43 (offence for unapproved person to carry on business as</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>approved trustee, etc.)</u></p> <p><u>Clause 13 – to amend section 43C (offences by self-employed persons)</u></p> <p><u>Clause 14 – to amend section 43E (offence to make false or misleading statement)</u></p> <p><u>Clause 15 - to amend section 43F (offence relating to pay-record)</u></p> <p><u>Clause 16 – to amend section 46 (regulations)</u></p> <p>Members raised no questions.</p>	
011109 – 011140	Chairman Administration	<p><u>Clause 17 – to add proposed section 47D (Time limit for prosecution)</u></p> <p>Members noted the proposed extension of the time limit for instituting proceedings in respect of certain offences under MPF legislation to within three years after the commission of the offence.</p> <p>Members raised no questions.</p>	
011141 – 011238	Chairman Administration	<p><u>Clause 19 – to amend Schedule 6 (decisions which may be the subject of an appeal)</u></p> <p>Members raised no questions.</p>	
011239 – 011247	Chairman Administration	<p><u>Clause 20 - to amend Schedule 7 (age specified for the purposes of section 15(2))</u></p> <p>Members raised no questions.</p>	
011248 – 011330	Chairman Administration	<p><u>The Chairman</u> requested the Administration to provide the Bills Committee with written response to the submissions received and deputations' views expressed at the meeting on 7 October 2014, as well as its response to the issues raised at this meeting prior to the next meeting.</p> <p>Meeting arrangements.</p>	The Administration to follow up