

**立法會**  
**Legislative Council**

LC Paper No. CB(1)1166/15-16  
(These minutes have been seen  
by the Administration)

Ref : CB1/BC/3/15

**Bills Committee on  
Mandatory Provident Fund Schemes (Amendment) Bill 2015**

**Minutes of the fourth meeting  
on Monday, 15 February 2016, at 9:30 am  
in Conference Room 2B of the Legislative Council Complex**

- Members present** :
- Hon TAM Yiu-chung, GBS, JP (Chairman)
  - Hon Abraham SHEK Lai-him, GBS, JP
  - Hon Andrew LEUNG Kwan-yuen, GBS, JP
  - Hon Cyd HO Sau-lan, JP
  - Hon CHAN Kin-por, BBS, JP
  - Hon IP Kwok-him, GBS, JP
  - Hon Alan LEONG Kah-kit, SC
  - Hon LEUNG Kwok-hung
  - Hon Albert CHAN Wai-yip
  - Hon WONG Yuk-man
  - Hon NG Leung-sing, SBS, JP
  - Hon KWOK Wai-keung
  - Hon Christopher CHEUNG Wah-fung, SBS, JP
  - Hon SIN Chung-kai, SBS, JP
  - Hon POON Siu-ping, BBS, MH
  - Hon TANG Ka-piu, JP
  - Hon CHUNG Kwok-pan
- Member attending** : Dr Hon CHIANG Lai-wan, JP
- Members absent** :
- Hon LEE Cheuk-yan
  - Hon WONG Ting-kwong, SBS, JP
  - Hon CHAN Han-pan, JP
  - Hon Kenneth LEUNG

**Public officers attending** : Agenda Item II

Mr Eddie CHEUNG  
Deputy Secretary for Financial Services and the  
Treasury (Financial Services) 2

Miss Wendy CHUNG  
Principal Assistant Secretary for Financial Services  
and the Treasury (Financial Services) 3

Mr Allen LAI  
Senior Government Counsel  
Department of Justice

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

Ms Stella YIU  
Head (Investment Regulation)  
Mandatory Provident Fund Schemes Authority

**Clerk in attendance** : Mr Desmond LAM  
Chief Council Secretary (1)3

**Staff in attendance** : Miss Joyce CHAN  
Assistant Legal Adviser 1

Miss Rita YUNG  
Senior Council Secretary (1)8

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Action

**I. Meeting with the Administration**

Matters arising from previous meeting

(LC Paper No. CB(1)553/15-16(01) -- List of follow-up actions arising from the discussion at the meeting on 26 January 2016

LC Paper No. CB(1)483/15-16(01) -- Hon SIN Chung-kai's letter dated 25 January 2016

LC Paper No. CB(1)553/15-16(02) -- Administration's responses to issues raised at the meeting on 26 January 2016 and in the letter from Hon SIN Chung-kai dated 25 January 2016

LC Paper No. CB(1)543/15-16(01) -- Hon NG Leung-sing's letter dated 3 February 2016 enclosing a submission from one of the member banks of The Hong Kong Association of Banks

LC Paper No. CB(1)553/15-16(03) -- Administration's responses to a submission from a member bank of The Hong Kong Association of Banks attached in Hon NG Leung-sing's letter dated 3 February 2016)

Draft Committee stage amendments

(LC Paper No. CB(1)553/15-16(04) -- Mark-up version of the draft Committee stage amendments proposed by the Administration

LC Paper No. CB(1)553/15-16(05) -- Draft Committee stage amendments proposed by Hon CHUNG Kwok-pan

LC Paper No. CB(1)553/15-16(06) -- Draft Committee stage amendments proposed by Hon TANG Ka-piu)

Relevant papers issued previously

(LC Paper No. CB(3)135/15-16 -- The Bill

LC Paper No. CB(1)287/15-16(01) -- Mark-up copy of the Bill prepared by the Legal Service Division (Restricted to members only)

File Ref : MPF/2/1/39C(2015) Pt.2 -- Legislative Council Brief issued by the Financial Services and the Treasury Bureau

LC Paper No. LS12/15-16 -- Legal Service Division Report

LC Paper No. CB(1)396/15-16(03) -- Assistant Legal Adviser's letter dated 23 December 2015 to the Administration

LC Paper No. CB(1)396/15-16(04) -- Administration's responses to enquiries raised by the Assistant Legal Adviser in the letter dated 23 December 2015)

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

Disclosure

2. Mr IP Kwok-him declared that he was a non-executive director of the Mandatory Provident Fund Schemes Authority.

Bills Committee's decision

3. The Bills Committee noted the draft Committee stage amendments ("CSAs") to the Bill proposed by Mr CHUNG Kwok-pan and

Mr TANG Ka-piu respectively. Mr CHUNG Kwok-pan invited the Bills Committee to consider whether the Chairman would move his three alternative sets of CSAs on behalf of the Bills Committee (details of the CSAs were set out in Annex (time marker 003053 – 005048)). The Chairman put the question to vote. As requested by members, the Chairman ordered a division. The Chairman said that four members voted in favour of, and three members voted against the proposal. The votes of individual members were as follows –

*In favour of*

Mr LEUNG Kwok-hung  
Mr TANG Ka-piu  
(4 members)

Mr SIN Chung-kai  
Mr CHUNG Kwok-pan

*Against*

Mr IP Kwok-him  
Mr Christopher CHEUNG  
(3 members)

Mr CHAN Kin-por

4. The Chairman declared that the Bills Committee agreed that subject to the approval of the President on the CSAs, he would, on behalf of the Bills Committee, move the three alternative sets of CSAs in accordance with the order of priority suggested by Mr CHUNG Kwok-pan.

*(Post-meeting note: The written response to the draft CSAs proposed by Mr CHUNG Kwok-pan and Mr TANG Ka-piu provided by the Administration was issued to members vide LC Paper No. CB(1)594/15-16(01) on 24 February 2016.)*

Legislative timetable

5. The Bills Committee completed scrutiny of the Bill. The Bills Committee raised no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 16 March 2016. The Chairman informed members that the Bills Committee would submit a written report to the House Committee at its meeting on 26 February 2016. He also reminded members that the deadline for giving notice to move CSAs to the Bill was 7 March 2016.

**II. Any other business**

6. There being no other business, the meeting ended at 11:33 am.

Council Business Division 1  
Legislative Council Secretariat  
17 August 2016

**Proceedings of the fourth meeting of  
the Bills Committee on  
Mandatory Provident Fund Schemes (Amendment) Bill 2015  
on Monday, 15 February 2016, at 9:30 am  
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<b>Agenda Item I – Meeting with the Administration</b>			
000334 – 000423	Chairman	Introductory remarks.	
<b><i>Matters arising from previous meeting</i></b>			
000424 – 001318	Chairman Administration	Briefing on the Administration's responses to matters raised at the meeting on 26 January 2016 and in the letter from Mr SIN Chung-kai dated 25 January 2016 (LC Paper No. CB(1)553/15-16(02)).	
001319 – 002009	Chairman Mr CHAN Kin-por Mr NG Leung-sing Administration	<p>Mr CHAN Kin-por's views that –</p> <p>(a) the proposed 42-day reply period for existing default scheme members to opt out from the Default Investment Strategy ("DIS") was appropriate;</p> <p>(b) the industry had strongly suggested that the opt-in approach in respect of the DIS should be adopted for existing default scheme members, so as to avoid possible disputes arising from the automatic transfer of accrued benefits to the DIS without express investment instructions from scheme members; and</p> <p>(c) the Administration should continue to engage the industry relating to the technical issues of the transitional arrangements of the DIS.</p> <p>Referring to the submission from one of the member banks of The Hong Kong Association of Banks (LC Paper No. CB(1)543/15-16(01)), Mr NG Leung-sing's view that one of the member banks had also expressed reservation about the opt-out approach.</p> <p>The Administration's response that –</p> <p>(a) the policy intent behind the proposed DIS was to protect the interests of disengaged scheme members who had not made their own investment decisions. Adopting the opt-in approach would defeat the objective of protecting the interests of disengaged scheme</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>members because they were unlikely to make conscious investment decisions when they were informed of the availability of the DIS. The Administration would insist on the opt-out approach; and</p> <p>(b) Mandatory Provident Fund Schemes Authority ("MPFA") would mount large-scale publicity campaigns after the enactment of the Bill to enhance public understanding of the DIS including the impact of the transitional arrangements.</p>	
002010 – 002601	Chairman Mr LEUNG Kwok-hung Administration	<p>Mr LEUNG Kwok-hung's reiteration that –</p> <p>(a) he was opposed to the privately-managed Mandatory Provident Fund ("MPF") System; and</p> <p>(b) the Administration had the responsibility to provide retirement protection to Hong Kong people. It should introduce a single DIS, take up the role of a public trustee to operate the DIS, and provide guaranteed returns to scheme members.</p> <p>Mr LEUNG Kwok-hung's enquiry on the policy objective of the introduction of the DIS.</p> <p>The Administration's response that –</p> <p>(a) the policy intent behind the proposed DIS was to protect the interests of disengaged scheme members who had not made their own investment decisions in relation to their accrued benefits;</p> <p>(b) the primary objective of the proposed DIS was to address the problems of high fees and difficulty in making investment choices in the MPF System by regulating the default investment arrangements. The highly standardized and fee-controlled DIS was considered to be effective in protecting the interests of the disengaged scheme members by providing them with an investment solution that was consistent with the objective of long-term retirement savings; and</p> <p>(c) the proposed market-based mode by requiring trustees to provide a DIS in each scheme enabled</p>	



Time marker	Speaker	Subject(s)	Action required
		the launch of DIS expeditiously.	
002602 – 002626	Chairman Mr Albert CHAN Administration	In response to Mr Albert CHAN's enquiry, the Administration's reiteration that the opt-out approach was considered appropriate from the perspective of protecting the interests of disengaged members.	
002627 – 002647	Chairman Legal Adviser to the Bills Committee ("ALA1")	<p>The Chairman said that the Bills Committee had completed clause-by-clause examination of the Bill at the last meeting on 26 January 2016.</p> <p>ALA1's observation that no difficulties had been identified relating to the legal and drafting aspects of the English text of the Bill.</p>	
002648 – 003015	Chairman Mr CHAN Kin-por	<p>Mr CHAN Kin-por's reiteration of his views that –</p> <ul style="list-style-type: none"> <li>(a) he supported in principle the introduction of the DIS to protect the interests of disengaged scheme members;</li> <li>(b) the industry had strongly suggested that the opt-in approach in respect of the DIS should be adopted for existing default scheme members, so as to avoid possible disputes arising from the automatic transfer of accrued benefits to the DIS without express investment instructions from scheme members;</li> <li>(c) the Administration should continue to engage the industry relating to the technical issues of the implementation of the DIS; and</li> <li>(d) if the opt-out approach was adopted, the Administration should conduct adequate publicity activities to enhance public understanding of the DIS including the impact of the transitional arrangements.</li> </ul>	
<b><i>Draft Committee stage amendments to the Bill</i></b>			
003016 – 003052	Chairman	The Chairman said that Mr CHUNG Kwok-pan and Mr TANG Ka-piu intended to propose Committee stage amendments ("CSAs") to the Bill and had forwarded their draft CSAs to the Bills Committee for consideration respectively.	
003053 – 005048	Chairman Mr CHUNG Kwok-pan Administration	Mr CHUNG Kwok-pan's explanation of his proposed CSAs (LC Paper No. CB(1)553/15-16(05)) to the effect that –	

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	Chief Regulation & Policy Officer and Executive Director, MPFA	<p>(a) all out-of-pocket expenses should also be included in calculating the management fee which was subject to the proposed fee cap of 0.75%;</p> <p>(b) a cap of 0.20% be imposed on out-of-pocket expenses; or</p> <p>(c) a sunset clause be added such that the section 34DC (i.e. fee control mechanism) would cease operation on 31 December 2021, and at appropriate time before it expired, to conduct a review and public consultation on the implementation of the DIS, in particular its effect on the payment for services charged to the DIS constituent funds ("CFs"). MPFA must prepare a report on the outcome of the review and public consultation and the report must be laid on the table of the Legislative Council before a specified date.</p> <p>Mr CHUNG Kwok-pan's proposal that if all three sets of CSAs were ruled admissible by the President, the first set of CSAs in (a) above should be moved and voted on first; if they were negatived, the second set of CSAs in (b) above should then be moved and voted on; and if the first and second sets of CSAs were both negatived, the third set of CSAs in (c) above should then be moved and voted on.</p> <p>The Administration's and MPFA's responses that –</p> <p>(a) there were operational and enforcement difficulties in including the out-of-pocket expenses in the proposed 0.75% statutory cap for payment of services charged to the two DIS CFs, or introducing a separate 0.20% statutory cap on out-of-pocket expenses by modeling on the proposed daily fee cap in the proposed section 34DC. These difficulties included –</p> <p>(i) unavailability of expenses information of underlying funds to approved trustees;</p> <p>(ii) infeasibility of applying the net asset value ("NAV")- and daily-based calculation methodology to the proposed expense cap; and</p> <p>(iii) possible conflict of duties and obligations</p>	

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		<p>imposed on the approved trustees.</p> <p>(b) that said, out-of-pocket expenses would be included in the Fund Expense Ratio ("FER") levels of CFs and approved trustees would be required to disclose FER levels as required in the MPFA's Code on Disclosure for MPF Investment Funds. MPFA would also publish the FER levels of all CFs on its website for comparison by scheme members;</p> <p>(c) the current drafting of the proposed CSA (especially the new section 34DCA(1)) would, in effect, stop the operation of the statutory fee cap of 0.75% from 31 December 2021. Under such circumstances, there would no longer be any statutory cap on management fees for DIS CFs and the industry could charge fees at a level that was higher than 0.75%, which would not be in scheme members' interests; and</p> <p>(d) at present, without knowing the eventual participation rate of the DIS and in the absence of any experience on its actual operation, it would be too early to determine the appropriate timing and frequency of the review of the DIS fee cap, not to mention scheduling the review in the law. The Administration would evaluate the operation of the proposed fee cap after the full implementation of the DIS.</p> <p>Mr CHUNG Kwok-pan's reiteration that it was necessary to have a cap on the out-of-pocket expenses.</p>	
005049 – 011040	Chairman Mr LEUNG Kwok-hung Mr Alan LEONG Administration MPFA	<p>Mr LEUNG Kwok-hung's view that there should be a cap on the out-of-pocket expenses.</p> <p>Mr LEUNG Kwok-hung's and Mr Alan LEONG's query on the effectiveness of MPFA's monitoring and control of the out-of-pocket expenses level of DIS CFs through disclosure of FER levels by the approved trustees only.</p> <p>The Administration's and MPFA's responses that –</p> <p>(a) MPFA would continue to press upon the industry to take measures to reduce the total expense impact, noting that the FER of DIS CFs of most schemes should gradually decline to 1% or</p>	

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		<p>below in the medium to long term (i.e. around three to five years);</p> <p>(b) MPFA reiterated that approved trustees had a duty to act in the interest of scheme members; and</p> <p>(c) that said, if necessary, MPFA would conduct investigation to see if approved trustees had incurred unreasonably large amount of expenses.</p>	
011041 – 012548	Chairman Mr TANG Ka-piu Mr SIN Chung-kai Administration	<p>Mr TANG Ka-piu's explanation of his proposed CSAs (LC Paper No. CB(1)553/15-16(06)) to the effect that –</p> <p>(a) a performance-based penalty be introduced for the DIS, whereby the annualized investment return rate of the Core Accumulation Fund under the DIS for the past three and five years must not be lower than the annualized Consumer Price Index of the same respective period, failing which the approved trustee concerned would face financial penalties or revocation of the approval of the relevant Core Accumulation Fund;</p> <p>(b) all custodian fees be subject to the statutory management fee cap of 0.75%;</p> <p>(c) the percentage of the statutory management fee cap specified in the proposed Schedule 11 was to be reviewed after the end of each financial year, and if downward adjustment of the percentage was warranted after review, the Administration must act correspondingly to make relevant adjustment; and</p> <p>(d) MPFA be requested to prepare a report including the ranking of investment return rate of Core Accumulation Funds after the end of each financial year and deliver the report to the Legislative Council and scheme members for reference.</p> <p>The Administration's response that –</p> <p>(a) investment outcomes might be driven by investment market situation to a large extent, rather than the efforts of individual investment managers or the approved trustees. The</p>	

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		<p>volatility and fluctuation of the investment markets were beyond the control of approved trustees. In addition, the objective of the MPF System was to provide scheme members with an investment solution for long-term retirement savings. It would appear quite arbitrary to set any investment return targets of the DIS CFs over a short period of time, or impose any penalties on the trustees if they failed to achieve the target returns;</p> <p>(b) some custodian fees were not calculated based on the NAV of a CF, but were based on the volume or frequency of transactions done. They were treated as expenses which were not necessarily predictable or avoidable as they were driven by the volume and frequency of those activities. Transaction-based custodian fees were only known after those activities had taken place and charged after those transactions had been completed. They could not and would not be charged based on the NAV of the fund. This approach was different from those fees that were charged on a NAV basis, which were both controllable and predictable in that they were known at the start of the calculation period and therefore could be reasonably controlled under the 0.75% proposed fee cap; and</p> <p>(c) at present, without knowing the eventual participation rate of the DIS and in the absence of any experience on its actual operation, it would be too early to determine the appropriate timing and frequency of the review of the DIS fee cap, not to mention scheduling the review in the law. The Administration would evaluate the operation of the proposed fee cap after the full implementation of the DIS.</p> <p>In response to Mr SIN Chung-kai's concern about the effectiveness of the proposed performance-based penalty, Mr TANG Ka-piu's explanation that his proposal aimed to encourage the approved trustees to act in the best interests of scheme members, in particular to improve the investment returns of the MPF schemes.</p>	
012549 – 013052	Chairman Mr WONG Yuk-man	Mr WONG Yuk-man's views that –  (a) the level of management fee cap of 0.75% for	

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		<p>the DIS CFs was unacceptable;</p> <p>(b) the two DIS CFs targeted to invest a considerable percentage (about 40% to 80%) of the NAV of the CFs in lower risk investments. Such investments rarely required active management by the investment managers and that minimal marketing charges would be required for the DIS;</p> <p>(c) according to the Cost Study commissioned by MPFA in 2012, data collected from approved trustees and administrators indicated that the weighted average investment management fee was 0.59% of the assets under management; and</p> <p>(d) the proposed de-risking mechanism was not effective enough to help scheme members achieve greater risk diversification in their MPF investments.</p> <p>Mr WONG Yuk-man's indication that he intended to propose CSAs to the effect that –</p> <p>(a) the proposed management fee cap be amended as 0.59% for the DIS CFs; and</p> <p>(b) the de-risking be commenced when the DIS member reached the age of 42, which was about the mid-point between 18 and 65 so as to better diversify investment risks.</p>	
013053 – 013144	Chairman Mr CHUNG Kwok-pan	Mr CHUNG Kwok-pan's request for the Administration to consider carefully his proposed CSAs to cap the out-of-pocket expenses permitted to be charged to the DIS CFs, so as to better protect the interests of scheme members.	
<b><i>Matters arising from previous meeting</i></b>			
013145 – 014012	Chairman Mr SIN Chung-kai Administration MPFA	<p>Mr SIN Chung-kai's views that the accrued benefits of default scheme members who could not be located should not be transferred to the DIS, so as to avoid possible disputes arising from the automatic transfer of accrued benefits to the DIS without express investment instructions from these scheme members. His enquiries on –</p> <p>(a) the details of the MPFA guidelines on locating scheme members; and</p>	

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		<p>(b) the handling of unclaimed accrued benefits.</p> <p>MPFA's response that –</p> <p>(a) the uncontactable default scheme members were those who needed most protection. MPFA would launch publicity campaigns including conveying a key message that scheme members should ensure they had an updated and valid address with their trustees for communication;</p> <p>(b) MPFA was finalizing the guidelines which set out the detailed procedures that were to be carried out by approved trustees to locate default scheme members whose contact details (e.g. addresses or telephone numbers) were unknown to the approved trustees;</p> <p>(c) there were statutory requirements for the approved trustees to take specified steps under different circumstances where scheme members were entitled to be paid their accrued benefits but could not be located. The approved trustees were also required to report any newly identified unclaimed benefits and those unclaimed benefits that had been claimed by members to MPFA on a quarterly basis for MPFA to maintain a register of unclaimed benefits;</p> <p>(d) the proposed section 34DI of the Bill required trustees to go through specified steps and manner to locate the members who could not be contacted or had no or no valid contact address with the trustees before transfer of all their accrued benefits to the DIS; and</p> <p>(e) in this connection, MPFA had issued guidelines to prescribe the steps to be taken by approved trustees before the benefits were classified as unclaimed benefits, the information relating to unclaimed benefits to be submitted quarterly to MPFA, the format of submission, etc.</p>	
<b><i>Draft Committee stage amendments to the Bill</i></b>			
014013 – 015251	Chairman Mr TANG Ka-piu Mr CHUNG Kwok-pan Mr IP Kwok-him Mr CHAN Kin-por	Discussion on Mr CHUNG Kwok-pan's request for the Bills Committee to consider whether the Chairman would move his proposed CSAs on behalf of the Bills Committee.  The Administration's reiteration that there were	

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	Ms Cyd HO ALA1 Administration	operational and enforcement difficulties relating to Mr CHUNG Kwok-pan's proposed CSAs.  ALA1's initial observation that the draft CSAs proposed by Mr CHUNG Kwok-pan were admissible under Rules 57(4) and (6) of the Rules of Procedure, and that ultimately whether the proposed CSAs were allowed to be moved would be subject to the decision of the President.	
015252 – 015923	Chairman Mr CHUNG Kwok-pan	The Chairman put the question on Mr CHUNG Kwok-pan's proposal to vote. At the request of members, the Chairman ordered a division. The division bell had been rung for five minutes.  Members present and voted agreed that if the CSAs were ruled admissible by the President, the Chairman would, on behalf of the Bills Committee, move the CSAs proposed by Mr CHUNG Kwok-pan in accordance with his suggested order of priority.	
015924 – 020236	Chairman Administration	Briefing on the Administration's draft CSAs to the Bill (LC Paper No. CB(1)553/15-16(04)).  Members raised no objection to the CSAs proposed by the Administration.	
020237 – 020424	Chairman Administration	The Bills Committee completed the scrutiny of the Bill.  Legislative timetable.	