

立法會
Legislative Council

LC Paper No. CB(1)1349/18-19
(These minutes have been seen
by the Administration)

Ref : CB1/BC/10/18

**Bills Committee on Occupational Retirement Schemes
(Amendment) Bill 2019**

**Minutes of first meeting held on
Friday, 17 May 2019, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Christopher CHEUNG Wah-fung, SBS, JP (Chairman)
Hon Kenneth LEUNG (Deputy Chairman)
Hon WONG Ting-kwong, GBS, JP
Hon CHAN Kin-por, GBS, JP
Dr Hon KWOK Ka-ki
Hon CHUNG Kwok-pan
Hon Alvin YEUNG
Hon Jimmy NG Wing-ka, JP
Hon HO Kai-ming
Hon CHAN Chun-ying, JP

Members absent : Hon WU Chi-wai, MH
Hon Tanya CHAN

**Public Officers
attending** : Agenda item II

Financial Services and the Treasury Bureau

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

Ms Joan HUNG
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services)
Mandatory Provident Fund Reform

Mandatory Provident Fund Schemes Authority

Ms Gabriella YEE
Executive Director (Policy)

Ms Maria CHEUNG
Senior Manager (Policy Development)

Department of Justice

Ms Elaine NG
Senior Government Counsel

Ms Carmen CHU
Senior Government Counsel

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance : Mr Mark LAM
Assistant Legal Adviser 7

Ms Anki NG
Council Secretary (1)5

Ms Michelle NIEN
Legislative Assistant (1)5

Action

I. Election of Chairman and Deputy Chairman

Mr WONG Ting-kwong, the member who had the highest precedence in the Council among members of the Bills Committee present at the meeting, presided over the election of Chairman of the Bills Committee. He invited nominations for the chairmanship.

2. Mr Jimmy NG nominated Mr Christopher CHEUNG and the nomination was seconded by Mr CHAN Chun-ying. Mr Christopher CHEUNG accepted the nomination. There being no other nominations, Mr Christopher CHEUNG was declared Chairman of the Bills Committee. Mr CHEUNG then took over the chair.

Election of Deputy Chairman

3. The Chairman invited nominations for the deputy chairmanship. Dr KWOK Ka-ki nominated Mr Kenneth LEUNG and the nomination was seconded by Mr CHUNG Kwok-pan. Mr Kenneth LEUNG accepted the nomination. There being no other nominations, Mr Kenneth LEUNG was declared Deputy Chairman of the Bills Committee.

II. Meeting with the Administration

(LC Paper No. CB(3)521/18-19	— The Bill
File Ref: RTS/2/1C	— Legislative Council Brief issued by the Financial Services and the Treasury Bureau
LC Paper No. LS67/18-19	— Legal Service Division Report
LC Paper No. CB(1)1061/18-19(01)	— Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to members)
LC Paper No. CB(1)1061/18-19(02)	— Paper on Occupational Retirement Schemes (Amendment) Bill 2019 prepared by the Legislative Council Secretariat (background brief))

4. The Bills Committee deliberated (index of proceedings in the **Appendix**).

Invitation of public views

5. Members agreed to invite public views on the Bill from interested parties and members of the public by placing an invitation on the website of the Legislative Council ("LegCo") and issuing invitation letters to the 18 District Councils.

(Post-meeting note: An invitation for public submissions on the Bill was uploaded onto LegCo's website on 17 May 2019. Invitation letters for views on the Bill were also issued to the District Councils and organizations which the Mandatory Provident Fund Schemes Authority had previously consulted during public consultation on the proposed amendments. The written submissions received were circulated to members vide LC Paper Nos. CB(1)1136/18-19 and CB(1)1215/18-19 on 5 June 2019 and 25 June 2019, respectively. The Administration's response to the written submissions was issued vide LC Paper No. CB(1)1299/18-19 on 5 August 2019.)

Legislative timetable

6. The Bills Committee completed the clause-by-clause examination of the Bill. The Administration indicated that it would propose amendments to the Bill which would be circulated to members when ready. The Bills Committee agreed to consider at a later stage whether a further meeting was necessary to study the Bill. The Administration would later advise the proposed date of resumption of the Second Reading debate on the Bill.

(Post-meeting note: The amendments proposed by the Administration were circulated to members vide LC Paper No. CB(1)1204/18-19(01) on 25 June 2019.)

III. Any other business

7. There being no other business, the meeting ended at 12:32 pm.

Council Business Division 1
Legislative Council Secretariat
16 September 2019

Appendix

Proceedings of first meeting of the Bills Committee on Occupational Retirement Schemes (Amendment) Bill 2019 on Friday, 17 May 2019, at 10:45 am in Conference Room 3 of the Legislative Council Complex

Time marker	Speaker	Subject(s)	Action required
Agenda item I – Election of Chairman and Deputy Chairman			
000350 – 000550	Mr WONG Ting-kwong, Mr Jimmy NG Mr CHAN Chun-ying Mr Christopher CHEUNG	Election of Chairman	
000551– 000720	Dr KWOK Ka-ki Mr CHUNG Kwok-pan Mr Kenneth LEUNG	Election of Deputy Chairman	
000721 – 000815	Chairman	Opening remarks	
Agenda item II – Meeting with the Administration			
000816 – 002037	Chairman Administration	Briefing by the Administration on the Occupational Retirement Schemes (Amendment) Bill 2019 ("the Bill") with the aid of PowerPoint presentation materials (LC Paper No. CB(1)1072/18-19(01)).	
002038 – 002533	Chairman Mr Kenneth LEUNG Administration	<p>Noting that as at 30 April 2019, 932 schemes under the Occupational Retirement Schemes Ordinance (Cap. 426) ("ORSO") were without Mandatory Provident Fund ("MPF") exemption (page 5 of LC Paper No. CB(1)1072/18-19(01)), Mr Kenneth LEUNG enquired about –</p> <p>(a) whether employers operating occupational retirement schemes under ORSO ("ORSO schemes") could claim tax deductions for the contributions made for their employees;</p> <p>(b) whether employers who wished to continue operating the ORSO schemes would need to terminate the membership of those scheme members who were not their employees when the proposed amendments came into effect;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) in relation to retention of benefits in the relevant ORSO schemes, whether the employment-based criterion under the proposed amendments would cover ex-employees of relevant ORSO scheme employers and employees who were affected or withdrawn from relevant ORSO schemes due to transfer of businesses or mergers and acquisitions;</p> <p>(d) who could determine the existence or validity of an employment relationship under ORSO; and</p> <p>(e) whether contractors of organizations (such as consultants engaged under consultancy agreements) could participate in relevant ORSO schemes after the proposed amendments came into effect.</p> <p>The Administration and the Mandatory Provident Fund Schemes Authority ("MPFA") advised that –</p> <p>(a) employers operating ORSO schemes could claim tax deductions for the contributions made for their employees up to 15% of the employees' total emoluments;</p> <p>(b) when the proposed amendments came into effect, employers who wished to continue operating the ORSO schemes would need to make alternative arrangements about the membership of scheme members who were not their employees such as arranging for them to participate in other schemes as appropriate. MPFA would follow up those cases with employers;</p> <p>(c) the employment-based criterion under the proposed amendments would cover employees (whether past or present) of the relevant employer of ORSO schemes, and individuals transferred from another ORSO scheme to the scheme upon business transactions in good faith between the relevant employers of the two schemes. Individuals who were once employees of the employers of relevant ORSO schemes would generally be covered under the proposed employment-based criterion; and</p> <p>(d) ORSO had provided for statutory determination of membership of an occupational retirement scheme for persons providing service to proprietors of organizations. The existing section 3(5) of ORSO, and the new section 2B(2) which would replace it, provided that any person providing service on a full-time basis to a business or other organization in</p>	

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		<p>Hong Kong for a period of more than 4 years in such manner and subject to such degree of control that he might reasonably be regarded as an integral part of the organization was to be regarded as employed by the proprietor whether or not there was a contract of employment or service between such persons and the proprietor.</p>	
002534 – 002918	Chairman Mr CHAN Chun-ying Administration	<p>Noting that some employers might terminate the employment relationship shortly after lodging the applications and/or registering the ORSO schemes, Mr CHAN Chun-ying enquired about –</p> <ul style="list-style-type: none"> (a) the estimated number of ORSO schemes cases which did not involve employment relationships and the distribution of such cases in relation to their MPF exemption status as referred to on page 5 of LC Paper No. CB(1)1072/18-19(01); and (b) enforcement actions that the Registrar could take apart from cancelling the registrations and freezing the assets of the registered schemes when ongoing compliance with the proposed employment-based criterion was not satisfied. <p>The Administration advised that –</p> <ul style="list-style-type: none"> (a) the Registrar preliminarily suspected that eight ORSO schemes might have been misused as investment vehicles with open participation. The aggregate number of scheme members amounted to about 550. The number of members in each scheme who did not have actual employment relationships was yet to be determined before full investigation of the relevant cases; and (b) one of the policy intents for the proposed amendments was to enable the Registrar to conduct investigation or inspection in employment establishments or business premises for ascertaining compliance with the statutory requirements under ORSO, including collecting evidence required under the proposed employment-based criterion. When exercising the power of inspection, the Registrar would apply an objective "reasonable man" test based on the actual conditions to determine whether ongoing compliance with the proposed employment-based criterion was satisfied. For schemes in which most members were 	

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		<p>found not to have a genuine employment relationship with the employer, it was likely that their registration would be cancelled. In other cases, the Registrar would consider taking other measures to ensure compliance, such as requesting the scheme to remove the membership of non-compliant members. The Registrar would also consider whether the non-compliance was a genuine mistake or omission when determining the appropriate measure.</p>	
002919 – 003157	Chairman Mr CHAN Kin-por Administration	<p>Noting that MPFA had consulted administrators and relevant industry bodies on the proposed amendments, Mr CHAN Kin-por enquired about –</p> <ul style="list-style-type: none"> (a) the operational difficulties, if any, relating to the proposed amendments as anticipated by the insurance industry and whether such difficulties had been resolved; and (b) whether the relevant stakeholders, including employers, employer associations, insurance and asset management industry, raised any objection to the proposed amendments. <p>The Administration and MPFA advised that –</p> <ul style="list-style-type: none"> (a) the insurance industry and trustee companies raised no major issue on the impact of the proposed amendments on their business operations; (b) employer associations had raised a concern on the arrangements after abolishing the granting of exemption certificates by way of the exemption criterion involving a high proportion of employees who were not permanent Hong Kong residents. Noting that under the proposal, the only ORSO exemption criterion would be for an offshore scheme to be registered or approved by a regulatory authority outside Hong Kong performing functions which were generally analogous to those of the Registrar, employer associations suggested that the Registrar should make public the relevant regulatory authorities satisfying this criterion to facilitate employers' compliance with the ORSO exemption requirements. To this end, MPFA had already posted a list of authorities in a country, territory or place outside Hong Kong for the purpose of section 7(4)(a) of ORSO for public reference on their webpage; and 	

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		(c) the relevant sectors had raised no objection to the proposed amendments.	
003158 – 004032	Chairman Mr Kenneth LEUNG Administration	<p>Mr Kenneth LEUNG enquired about –</p> <p>(a) the required duration of ongoing compliance with the proposed employment-based criterion to enable the employee to remain a member of the relevant ORSO scheme despite cessation of employment;</p> <p>(b) whether the common law test to be applied for determination of employment relationship under the proposed amendment would be the same as that applied under the Employment Ordinance (Cap. 57);</p> <p>(c) the reporting requirements of relevant ORSO schemes employers who were engaged under the Foreign Account Tax Compliance Act of the United States of America ("FATCA") and/or the Organisation for Economic Co-operation and Development's automatic exchange of financial account information ("AEOI") under the proposed amendment;</p> <p>(d) whether the employer associations had expressed views and concerns on the additional administrative measures brought about by the proposed amendment for meeting the relevant reporting requirements; and</p> <p>(e) the number and names of the regulators outside Hong Kong which perform functions generally analogous to the Registrar.</p> <p>The Administration and MPFA advised that –</p> <p>(a) MPFA would consider the actual circumstances case by case to determine whether ongoing compliance with the proposed employment-based criterion was satisfied. The duration of which an employee could remain in the relevant ORSO scheme after cessation of employment would generally be governed by individual scheme rules;</p> <p>(b) the common law test to be applied for determination of employment relationship under the proposed amendment would be the same as that applied under the Employment Ordinance (Cap. 57);</p>	

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		<p>(c) there was no exemption for ORSO schemes employers under FATCA and/or AEOI. The proposed Amendment Bill would not change this position;</p> <p>(d) employers in general did not consider it difficult as they would only be required to make a declaration in addition to the annual statement confirming the membership of the schemes complied with the employment-based criterion. Their major concern was on the availability of the list of regulatory authorities outside Hong Kong performing functions which were generally analogous to those of the Registrar. The list would enable employers to identify whether their overseas schemes might be eligible to be exempted ORSO schemes; and</p> <p>(e) based on past application statistics, the five regions/countries which most of the existing exempted schemes originated from were, namely, the United States of America, the United Kingdom, Canada, Singapore and Taiwan.</p>	
004033 – 004138	Chairman Administration	<p>The Chairman enquired about the impact of the proposed amendments, if any, on overseas enterprises which were considering setting up businesses in Hong Kong and the responses from foreign chambers of commerce in Hong Kong on the proposed amendments.</p> <p>The Administration advised that the major concern raised by chambers of commerce during consultation on the proposed amendments was on the original proposal to abolish the exemption route altogether. The Administration had taken into account their suggestion and revised the legislative proposal to the effect that the exemption criterion for offshore schemes registered or approved by regulatory authorities outside Hong Kong performing functions generally analogous to those of the Registrar would continue to apply after the proposed amendments took effect.</p>	
Clause-by-clause examination of the Occupational Retirement Schemes (Amendment) Bill 2019			
004139 – 004228	Chairman Administration	<p>Part 1 – Preliminary</p> <p><u>Clause 1 – Short title</u></p> <p><u>Clause 2 – Enactments amended</u></p> <p>Members raised no queries.</p>	

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004229 – 004430	Chairman Administration	<p>Part 2 – Amendments to Occupational Retirement Schemes Ordinance (Cap. 426)</p> <p><u>Clause 3 – Section 2 amended (interpretation)</u></p> <p><u>Clause 4 – Sections 2A and 2B added</u></p> <p><i>Section 2A. Meaning of eligible person</i></p> <p>Members raised no queries.</p>	
004431 – 004553	Chairman Assistant legal Adviser 7 ("ALA7") Administration	<p><i>Section 2B. Interpretation of employment</i></p> <p>In response to ALA7's enquiry about whether the 4-year period specified in the proposed section would be a continuous period, the Administration advised in the affirmative.</p>	
004554 – 004632	Chairman Administration	<p><u>Clause 5 – Section 3 amended (restrictions on operation of occupational retirement schemes)</u></p> <p>Members raised no queries.</p>	
004633 – 005014	Chairman Mr Kenneth LEUNG Administration	<p><u>Clause 6 – Section 6A added</u></p> <p><i>Section 6A. Registrar may issue guidelines</i></p> <p>Mr Kenneth LEUNG enquired about whether prior to introducing the proposed section 6A, the Registrar was empowered to issue guidelines as appropriate, and whether the code, standard, specification or provision specified in section 6A(2)(a) as guidelines had the same value as evidence in the relevant proceedings.</p> <p>MPFA advised that the Registrar had issued guidelines to assist employers and/or applicants for the required procedures and/or administrative arrangements under the ORSO scheme. As the guidelines issued in accordance with the proposed section 6A would be admissible in evidence if they were relevant to determining a matter in issue in the proceedings, adding such section would enable the courts to consider the guidelines as evidence in such proceedings. The code, standard, specification or provision specified in section 6A(2)(a) as guidelines were different documents in nature but would have the same value as evidence in the relevant proceedings.</p>	

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005015 – 005300	Chairman Administration	<p><u>Clause 7 – Section 7 amended (exemption)</u></p> <p><u>Clause 8 – Section 8 amended (appeal against the Registrar's decision)</u></p> <p>Members raised no queries.</p>	
005301 – 005504	Chairman Mr Kenneth LEUNG Administration	<p><u>Clause 9 – Section 8A added</u></p> <p><i>Section 8A. Membership requirements for exempted schemes</i></p> <p>Mr Kenneth LEUNG enquired about measures to facilitate the taking of enforcement actions against offshore exempted schemes, which often involved overseas companies. MPFA advised that offshore exempted schemes usually had representative offices and employees in Hong Kong. Relevant investigations and/or enforcement actions could be conducted and/or taken against these representative offices.</p> <p><u>Clause 10 – Section 10 amended (provision of information relating to exempted schemes)</u></p> <p>Members raised no queries.</p>	
005505 – 005650	Chairman ALA7 Administration	<p><u>Clause 11 – Section 11 amended (proposal to withdraw an exemption certificate)</u></p> <p>ALA7 enquired about the factors that the Registrar would take into account when considering what would constitute "public interest" in deciding to withdraw an exemption certificate under the proposed section 11(1)(j).</p> <p>The Administration advised that when considering whether to withdraw an exemption certificate on the ground of "public interest", the Registrar would take into account all relevant factors and circumstances of a case, for example, where some overseas schemes were under wide press coverage for suspected illegal activities or under investigation in overseas countries/regions, the Registrar might withdraw an exemption certificate.</p>	
005651 – 010110	Chairman Administration	<p><u>Clause 12 – Section 12 amended (withdrawal of exemption certificate)</u></p> <p><u>Clause 13 – Section 14 amended (coming into effect of withdrawal)</u></p>	

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		<p><u>Clause 14 – Section 18 amended (registration)</u></p> <p><u>Clause 15 – Section 19 amended (appeal against the Registrar's decision)</u></p> <p><u>Clause 16 – Section 20 amended (registered schemes' trustees, etc., to keep proper accounts and records, etc.)</u></p> <p>Members raised no queries.</p>	
010111 – 010354	Chairman Mr Kenneth LEUNG Administration	<p><u>Clause 17 – Sections 20A and 20B added</u></p> <p><i>Section 20A. Requirements in relation to certain terms</i></p> <p>In response to Mr Kenneth LEUNG's enquiry about whether Schedule 1 was part of ORSO and whether the requirements under the proposed section 20A were previously included in ORSO, the Administration advised in the affirmative. The Administration added that as the requirements in relation to the terms of a registered scheme were considered important, they were transferred from Schedule 1 of ORSO to the proposed section.</p> <p><i>Section 20B. Membership requirements for registered schemes</i></p> <p><u>Clause 18 – Section 21A amended (notice required)</u></p> <p><u>Clause 19 – Section 24 amended (general funding requirements and duties)</u></p> <p>Members raised no queries.</p>	
010355 – 010435	Chairman Mr Kenneth LEUNG Administration	<p><u>Clause 20 – Section 25 amended (trusteeship requirement)</u></p> <p>In response to Mr Kenneth LEUNG's enquiry about whether any requirements in relation to the eligibility of the trustees had been added to the proposed amendments, the Administration advised in the negative.</p>	
010436 – 011000	Chairman Administration	<p><u>Clause 21 – Section 26 amended (contravention of trusteeship requirement)</u></p> <p><u>Clause 22 – Section 30 amended (annual return)</u></p> <p><u>Clause 23 – Section 32 amended (Registrar may require certain reports and certificates)</u></p>	

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		<p><u>Clause 24 – Section 33 amended (information etc. to be given to Registrar)</u></p> <p><u>Clause 25 – Section 33A added</u></p> <p><i>Section 33A. Registrar to be notified of certain events</i></p> <p><u>Clause 26 – Section 36 amended (inquiries)</u></p> <p><u>Clause 27 – Section 42 amended (grounds for cancellation of registration)</u></p> <p><u>Clause 28 – Section 43 amended (proposal to cancel registration)</u></p> <p>Members raised no queries.</p>	
011001 – 011250	Chairman ALA7 Administration	<p><u>Clause 29 – Section 44 amended (court may order freezing of assets)</u></p> <p>ALA7 enquired about whether the issue of the court order for freezing of assets of the employer in parallel with the proposal to cancel the registration of a registered scheme issued by the Registrar under the proposed amendment would deny the relevant employer of the opportunity to be heard by the courts.</p> <p>The Administration and MPFA advised that under the proposed section 44(1A), before making the order for freezing the assets of the relevant employer, the court must satisfy itself, so far as it could reasonably do so, that it was desirable that the order be made and the order would not unfairly prejudice any person.</p>	
011251 – 011600	Chairman Administration	<p><u>Clause 30 – Section 45 amended (cancellation of registration)</u></p> <p><u>Clause 31 – Section 47 amended (coming into effect of cancellation)</u></p> <p><u>Clause 32 – Section 49 amended (appointment of liquidator)</u></p> <p><u>Clause 33 – Section 50 amended (remuneration of liquidator)</u></p> <p><u>Clause 34 – Section 51 amended (powers of liquidator)</u></p>	

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		<p><u>Clause 35 – Section 52 amended (vesting of assets of scheme in liquidator)</u></p> <p><u>Clause 36 – Section 53 amended (effect of winding-up order)</u></p> <p><u>Clause 37 – Section 54 amended (avoidance of preference in certain cases)</u></p> <p><u>Clause 38 – Section 55 amended (saving of bona fide transactions, etc.)</u></p> <p><u>Clause 39 – Section 56 amended (distribution of assets)</u></p> <p><u>Clause 40 – Section 57 amended (the court's power after winding up)</u></p> <p><u>Clause 41 – Section 61 amended (Appeal Board)</u></p> <p><u>Clause 42 – Section 62 amended (constitution and powers of Appeal Board)</u></p> <p>Members raised no queries.</p>	
011601 – 011651	Chairman Administration	<p><u>Clause 43 – Part VIIIA added – Inspection and Investigation</u></p> <p><i>Section 66A. Interpretation</i></p> <p>Members raised no queries.</p>	
011652 – 012305	Chairman Mr Kenneth LEUNG ALA7 Administration	<p><i>Section 66B. General powers of inspection</i></p> <p>Mr Kenneth LEUNG enquired about the rationale for empowering the Registrar to conduct inspection in employment establishments or business premises, whether prior notice for inspection to the relevant premises would be required, the form of notice to be given, whether surprise inspections had been conducted for regulating MPF schemes, and whether similar inspection powers were available to MPFA for regulating MPF schemes.</p> <p>The Administration and MPFA advised that the purpose of the proposed amendments was to enable the Registrar to conduct investigation or inspection in employment establishments or business premises for ascertaining compliance with the statutory requirements under ORSO. Under section 66B(3), in general, reasonable notice would</p>	

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		<p>be given to the occupier of the relevant premises of the intention to enter the premises for conducting inspections. The notice would be in the form of a letter specifying the purpose of the inspection and the documents to be inspected, and issued a few days prior to the inspection. Based on the MPFA's experience with MPF trustees, it did not appear necessary to carry out surprise inspections. Similar inspection powers were available to MPFA for regulating MPF schemes under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO").</p> <p>In relation to the power of entering premises and inspecting materials under the proposed new section by a person in possession of a warrant of authority, ALA7 enquired about the provisions for empowering the Registrar to issue a warrant and specifying the conditions to be satisfied by the Registrar before issuing a warrant.</p> <p>The Administration advised that section 80A to be introduced in the proposed amendment was the empowering section for the Registrar to appoint or authorize a person in writing to perform functions, or specified functions, under or for the purposes of ORSO. The "warrant" described herein was to identify the person so appointed or authorized by the Registrar to carry out inspections on its behalf.</p>	
012306 – 012845	Chairman ALA7 Administration	<p><i>Section 66C. Investigation</i></p> <p><i>Section 66D. Investigation powers</i></p> <p><i>Section 66E. Offences of failing to comply with investigation requirement</i></p> <p><i>Section 66F. Offences of giving false or misleading information</i></p> <p><i>Section 66G. Court's inquiry into failure to comply with investigation requirement</i></p> <p>Members raised no queries.</p> <p><i>Section 66H. Criminal proceedings and applications under sections 66E, 66F and 66G</i></p> <p>ALA7 enquired about the criteria to be considered for either (a) initiating criminal proceedings under sections 66E and 66F against a person for failing to comply with an</p>	

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		<p>investigation requirement without reasonable excuse under section 66D, or (b) making an application to conduct a court's inquiry into such failure under section 66G.</p> <p>The Administration advised that under section 66H, the initiation of criminal proceedings under sections 66E and 66F and the application for conducting a court's inquiry under section 66G were mutually exclusive to avoid duplicity. If an investigator required the production of certain required documents or information, he would consider making an application under section 66G for conducting a court's inquiry as the court might order the person to comply with the requirement within the period specified by the court.</p> <p><i>Section 66I. Use of incriminating evidence in proceedings</i></p> <p>Members raised no queries.</p>	
012846 – 013309	Chairman Mr Kenneth LEUNG Administration	<p><u>Clause 44 – Section 67 amended (special provisions for schemes covering groups of companies)</u></p> <p>Mr Kenneth LEUNG enquired about the rationale for the proposed replacement of the term "reasonable cause" with the term "reasonable excuse" under sections 67(3) to 67(10), whether the term was in line with the use in MPFSO, and whether such amendment was consistent with the general use of the term "reasonable excuse" in other pieces of legislation and had complied with the Administration's internal drafting guidelines. He urged the Administration to ensure consistent use of such term in all legislation.</p> <p>The Administration advised that it would review whether the term "reasonable excuse" was in line with the term used in the context of MPFSO. The Administration considered that the term "reasonable excuse" was more accurate than "reasonable cause" in the context of this section and modern language. It had no intention to conduct a large-scale alignment exercise for replacement of the term "reasonable cause" with "reasonable excuse" in all legislation, but would relay the concerns of Mr LEUNG to the Department of Justice for consideration.</p>	
013310 – 013455	Chairman Mr Kenneth LEUNG Administration	<p><u>Clause 45 – Section 70B added</u></p> <p><i>Section 70B. Transfer of benefits</i></p>	

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		In response to Mr Kenneth LEUNG's enquiry, MPFA advised that the transfer of accrued benefits from an ORSO scheme to an MPF scheme would be in the form of making voluntary contributions only, not a direct transfer of accrued benefits from an ORSO scheme.	
013456 – 013510	Chairman Administration	<u>Clause 46 – Section 75 substituted</u> <i>Section 75. Immunity</i> Members raised no queries.	
013511 – 013637	Chairman ALA7 Administration	<u>Clause 47 – Section 78 amended (disclosure by Registrar)</u> Referring to the proposed section 78(1)(eb)(iii) which provided that the Registrar might disclose information if the disclosure enabled the performance of a function conferred by law, ALA7 enquired about the parties to which the information could be transferred. The Administration advised that section 78(1)(eb) provided for the transfer of information by the Registrar to the enforcement bodies specified therein upon request for the performance of their statutory duties, including the Insurance Authority and the Monetary Authority, etc.	
013638 – 014115	Chairman Administration	<u>Clause 48 – Section 79 amended (offence)</u> <u>Clause 49 – Sections 79A, 79B and 79C added</u> <i>Section 79A. Offences of obstructing performance of functions etc.</i> <i>Section 79B. Prosecution deadline for summary offences</i> <i>Section 79C. Proof of reasonable excuse or lawful authority</i> <u>Clause 50 – Section 80A added</u> <i>Section 80A. Registrar may appoint or authorize persons</i> <u>Clause 51 – Sections 85 and 86 added</u> <i>Section 85. Schemes falling short of membership requirements</i>	

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		<p><i>Section 86. Transitional provisions for Occupational Retirement Schemes (Amendment) Ordinance 2019</i></p> <p>Members raised no queries.</p>	
014116 – 014615	Chairman Mr Kenneth LEUNG Administration	<p><u>Clause 52 – Schedule 1 amended (documents required for registration)</u></p> <p>Mr Kenneth LEUNG enquired about the differences between the contents of the statement to be made by a solicitor and an auditor under the proposed amendments, whether an auditor would be required to confirm the annual return submitted by the employer, and the legal consequences, if any, which might be faced by the above professionals if the information so provided in the statements were later found to be inaccurate.</p> <p>The Administration advised that in general, the solicitor would be required to state, after perusing the provisions of the scheme, that the scheme by its terms limits membership to eligible persons, while the auditor would be required to state, after inspecting the financial transactions of the applicant for registration of the scheme, as at a date within three months before the date of application, whether all members of the scheme were eligible persons in all material respects. The statements were only required to be submitted at the time of the applications, and only the relevant employers would be required to submit annual returns. As the statements required were not statutory declarations, if the information in the statements were later found to be inaccurate and intentionally provided, the Registrar might consider referring the case to the relevant professional bodies for necessary actions.</p>	
014616 – 014652	Chairman Administration	<p>Part 3 – Amendments to Occupational Retirement Schemes (Authentication and Certification of Documents) Rules (Cap. 426 sub. leg. A)</p> <p><u>Clause 53 – Schedule 1 amended (documents to be authenticated)</u></p> <p>Members raised no queries.</p>	
014653 – 015020	Chairman Mr Kenneth LEUNG Administration	<p>Invitation of public views, meeting arrangements and legislative timetable</p>	

Time marker	Speaker	Subject(s)	Action required
Agenda item III - Any other business			
015021 – 015025	Chairman	Concluding remarks	

Council Business Division 1
Legislative Council Secretariat
16 September 2019