

立法會
Legislative Council

LC Paper No. CB(1)1485/20-21
(These minutes have been seen
by the Administration)

Ref : CB1/BC/11/20

**Bills Committee on
Mandatory Provident Fund Schemes (Amendment) Bill 2021**

**Minutes of the third meeting
on Friday, 3 September 2021, at 11:00 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon WONG Ting-kwong, GBS, JP (Chairman)
Hon Abraham SHEK Lai-him, GBS, JP
Hon CHAN Kin-por, GBS, JP
Hon YIU Si-wing, SBS
Hon LEUNG Che-cheung, SBS, MH, JP
Hon CHUNG Kwok-pan
Hon Jimmy NG Wing-ka, BBS, JP
Hon CHAN Chun-ying, JP
Hon LUK Chung-hung, JP

Members absent : Hon Starry LEE Wai-king, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Christopher CHEUNG Wah-fung, SBS, JP
Dr Hon CHIANG Lai-wan, SBS, JP

Public officers attending : Agenda item I
Mr Aaron LIU, JP
Deputy Secretary for Financial Services and the
Treasury (Financial Services)2

Miss Cheryl CHOW
Principal Assistant Secretary for Financial
Services and the Treasury (Financial Services)
Mandatory Provident Fund Reform

Ms Frances HUI
Senior Assistant Law Draftsman
Department of Justice

Mr Michael CHOI
Senior Government Counsel (Acting)
Department of Justice

**Attendance by
invitation** : Agenda item I

Ms Gabriella YEE
Executive Director (Policy)
Mandatory Provident Fund Schemes Authority

Mr Eric CHENG
Director (Policy Development & Research)
Mandatory Provident Fund Schemes Authority

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

Staff in attendance : Mr Alvin CHUI
Assistant Legal Adviser 3

Mr Joey LO
Senior Council Secretary (1)8

Miss Gloria WONG
Council Secretary (1)3

Ms May LEUNG
Legislative Assistant (1)3

I. Meeting with the Administration

Clause-by-clause examination of the Bill

- (LC Paper No. CB(3)773/20-21 -- The Bill
- File Ref: MPF/2/1/43C -- Legislative Council Brief issued by the Financial Services and the Treasury Bureau
- LC Paper No. LS96/20-21 -- Legal Service Division Report on the Bill
- LC Paper No. CB(1)1158/20-21(01) -- Marked-up copy of the relevant provisions of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) to be amended by the Bill prepared by the Legal Service Division
(Restricted to members only)
- LC Paper No. CB(1)1158/20-21(03) -- Assistant Legal Adviser's letter dated 21 July 2021 to the Administration
- LC Paper No. CB(1)1158/20-21(04) -- Administration's reply to Assistant Legal Adviser's letter dated 21 July 2021)

Draft amendments to the Bill

- (LC Paper No. CB(1)1283/20-21(01) -- Draft amendment proposed by Hon LUK Chung-hung
- LC Paper No. CB(1)1285/20-21(01) -- Draft amendments proposed by the Administration, together with its response to the draft amendment proposed by Hon LUK Chung-hung
(tabled at the meeting and subsequently issued on 3 September 2021)
- LC Paper No. CB(1)1240/20-21(02) -- Summary table showing amendments to be proposed by the Administration to the Bill)

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

Disclosure of pecuniary interest

2. The Chairman drew members' attention to Rule 83A of the Rules of Procedure of the Legislative Council which provided that members should not speak on a matter in which they had a direct or indirect pecuniary interest, except where they disclosed the nature of that interest.

3. Mr CHAN Chun-ying declared that BOCI-Prudential Trustee Limited under the group of companies he was working for was a Mandatory Provident Fund Trustee.

II. Any other business

Legislative timetable

3. The Chairman said that the Bills Committee had completed the scrutiny of the Bill and raised no objection to the draft amendments to the Bill proposed by the Administration and Hon LUK Chung-hung respectively. The Bills Committee noted that the Administration would take on board Hon LUK Chung-hung's proposed amendment.

(Post-meeting note: The Administration informed the Secretariat that it intended to resume the Second Reading debate on the Bill at the Council meeting of 20 October 2021. Members were informed of the legislative timetable vide LC Paper No. CB(1)1300/20-21 on 7 September 2021 and noted that –

- the Chairman would report the deliberations of the Bills Committee at the House Committee meeting on 24 September 2021; and
- the deadline for giving notice to move amendments to the Bill, if any, was 9 October 2021.)

4. There being no other business, the meeting ended at 11:42 am.

**Proceedings of the third meeting of
the Bills Committee on
Mandatory Provident Fund Schemes (Amendment) Bill 2021
on Friday, 3 September 2021, at 11:00 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000155 – 000315	Chairman	Opening remarks and reminder on disclosure of pecuniary interest in accordance with Rule 83A of the Rules of Procedure of the Legislative Council ("LegCo").	
<p><i>Clause-by-clause examination of the Bill</i> [The Bill (LC Paper No. CB(3)773/20-21)] [Marked-up copy of the Bill prepared by the Legal Service Division (LC Paper No. CB(1)1158/20-21(01))] [Summary table showing the amendments to be proposed by the Administration to the Bill (LC Paper No. CB(1)1240/20-21(02))]</p>			
000316 – 000820	Chairman Administration	<p><u>Clause 19 – Part 3B added</u></p> <p><i>Subdivision 4 — Approved Trustee's Duties in relation to FER for Relevant Corresponding Period of Constituent Fund</i></p> <p><u>Section 19Z – Approved trustee's duty to determine permitted percentage for constituent fund other than capital preservation fund</u></p> <p><u>Section 19ZA – Approved trustee's duty to pay excess into relevant constituent fund</u></p> <p><i>Subdivision 5 — Powers of Authority to Determine Relevant Rate of Administration Fee and Require Approved Trustee to Determine FER for Specified Period of Constituent Fund</i></p> <p><u>Section 19ZB – Power of Authority to determine relevant rate of administration fee for constituent fund</u></p> <p><u>Section 19ZC – Power of Authority to require approved trustee to determine FER for specified period of constituent fund</u></p> <p><i>Subdivision 6 — Authority's Duties to Publish Specified Information and Fee Level Charged by System Operator of Electronic MPF System</i></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>Section 19ZD – Authority's duties to publish specified information and general fee level charged by system operator</u></p> <p><i>Subdivision 7 – Powers of Secretary</i></p> <p><u>Section 19ZE – Power of Secretary to appoint days for purposes of section 19U, 19Y and 19Z</u></p> <p><u>Section 19ZF – Power of Secretary to amend Schedules</u></p> <p><i>Division 8 – Miscellaneous Provisions</i></p> <p><u>Section 19ZG – System operator to provide administrative support to Authority</u></p> <p><u>Section 19ZH – Mandatory use of electronic MPF system etc. does not prevent approved trustees from seeking remedies from system operator</u></p> <p>Members raised no query.</p>	
000821 – 000840	Chairman Administration	The Administration briefed the Bills Committee that clauses 20 to 32 had been presented and examined at the second meeting when the proposed technical and consequential amendments to the Bill relating mainly to the streamlined work flow following the implementation of the eMPF Platform were introduced by the Administration.	
000841 – 001130	Chairman Mr CHUNG Kwok- pan Administration	<p><u>Clause 33 – Section 41 amended (persons not to disclose certain information)</u></p> <p><u>Clause 34 – Sections 41A and 41B added</u> <i>41A – Supplementary provisions to section 41— disclosure by system operator to approved trustees</i> <i>41B – Supplementary provisions to section 41— disclosure by persons other than Authority</i></p> <p><u>Clause 35 – Section 42 amended (Authority may disclose certain information despite section 41)</u></p> <p><u>Clause 36 – Section 42AA amended (specified entity may disclose information obtained under Part 4A despite section 41)</u></p>	

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		<p><u>Clause 37 – Section 42AAB amended (administrator under Occupational Retirement Schemes Ordinance or approved trustee may disclose certain information despite section 41)</u></p> <p><u>Clause 38 – Section 42B amended (immunity)</u></p> <p><u>Clause 39 – Section 43 amended (offence for unapproved person to carry on business as approved trustee, etc.)</u></p> <p><u>Clause 40 – Section 43BA amended (court may make certain orders in proceedings for offences under section 43B)</u></p> <p><u>Clause 41 – Section 43E amended (offence to make false or misleading statement)</u></p> <p><u>Clause 42 – Section 44B added</u></p> <p>44B – Defence for offence under section 43A(1) or (3)</p> <p><u>Clause 43 – Section 45B amended (Authority may serve notice requiring payment of financial penalty in certain cases)</u></p> <p><u>Clause 44 – Section 48 amended (amendment of Schedules)</u></p> <p><u>Clause 45 – Section 50 added</u> 50 – Transitional provisions for 2021 Amendment Ordinance</p> <p><u>Clause 46 – Schedule 1A amended (provisions relating to Authority)</u></p> <p>Members raised no query.</p>	
001131 – 001215	Chairman Mr CHUNG Kwok-pan Administration	<p><u>Clause 47 – Schedule 11 amended (percentage specified for purposes of section 34DD(4))</u></p> <p>In response to Mr CHUNG Kwok-pan's enquiry, the Administration advised that the statutory cap on out-of-pocket expenses in relation to the Default Investment Strategy ("DIS") constituent funds would be lowered from the existing 0.2% to 0.1% per annum of the net asset value ("NAV"). Coupled with the statutory management fee cap of</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>0.75% per annum of NAV of the DIS constituent funds, the aggregate ceiling of the total fees payable under the DIS constituent funds would be 0.85% per annum of NAV upon onboarding of the relevant schemes of the DIS constituent funds to the electronic Mandatory Provident Fund ("MPF") System.</p>	
<p>001216 – 001315</p>	<p>Chairman Administration</p>	<p>The Administration briefed the Bills Committee that clause 48 had been presented and examined at the second meeting when the proposed technical and consequential amendments to the Bill relating mainly to the streamlined workflow following the implementation of the eMPF Platform were introduced by the Administration.</p> <p><i>Schedule 17 - Transitional Provisions for 2021 Amendment Ordinance</i></p> <p>Members raised no query.</p>	
<p>001316 – 001725</p>	<p>Chairman Administration</p>	<p>Part 3 - Amendments to Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A)</p> <p><u>Clause 49 – Section 2 amended (interpretation)</u></p> <p><u>Clause 50 – Section 31 amended (non-refusal of scheme applicants and notice of participation)</u></p> <p><u>Clause 51 – Section 34 amended (no fees etc. for transfer of accrued benefits other than necessary transaction costs)</u></p> <p><u>Clause 52 – Section 39 amended (control objectives and internal control procedures to be maintained for each registered scheme)</u></p> <p><u>Clause 53 – Section 54 amended (approved trustee to provide information to scheme members)</u></p> <p><u>Clause 54 – Section 56 amended (approved trustee to provide scheme members with annual benefit statements)</u></p> <p><u>Clause 55 – Section 56A repealed (approved trustee to provide scheme members with tax deductible voluntary contributions summaries with respect to TVC accounts)</u></p>	

Time marker	Speaker	Subject(s)	Action required
		<p><u>Clause 56 – Section 58 amended (approved trustee to inform scheme members etc. of changes of business particulars)</u></p> <p><u>Clause 57 – Section 59 amended (approved trustee to inform scheme members etc. of requirements relating to voluntary contributions)</u></p> <p><u>Clause 58 – Section 66 amended (approved trustee permitted to deduct from scheme members' accounts amount in respect of administrative expenses)</u></p> <p><u>Clause 59 – Section 75 amended (service providers to report certain matters to Authority)</u></p> <p><u>Clause 60 – Section 102 amended (auditor to report on financial statements etc.)</u></p> <p><u>Clause 61 – Section 103 amended (auditor to report certain matters to Authority)</u></p> <p><u>Clause 62 – Section 105 amended (access of auditor to scheme records)</u></p> <p><u>Clause 63 – Section 110 amended (requirements in section 22A of the Ordinance)</u></p> <p><u>Clause 64 – Section 117 amended (approved trustee to lodge monthly return with Authority)</u></p> <p><u>Clause 65 – Section 122 amended (participating employer to calculate relevant income and pay mandatory contributions)</u></p> <p><u>Clause 66 – Section 125 amended (ascertaining and reporting of relevant income and basis of contribution of self-employed person)</u></p> <p><u>Clause 67 – Section 128 amended (relevant income of self-employed person who does not produce evidence of that income)</u></p> <p><u>Clause 68 – Section 130 amended (net loss sustained in respect of self-employed person's business)</u></p> <p><u>Clause 69 – Section 131 amended (contribution period and contribution day in respect of self-employed person)</u></p>	

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		<p><u>Clause 70 – Section 132 repealed (approved trustee to check calculations of mandatory contributions)</u></p> <p><u>Clause 71 – Section 135 repealed (approved trustee to inform Authority of failure to pay mandatory contribution)</u></p> <p><u>Clause 72 – Section 136 amended (Authority to give notice to defaulter and approved trustee to inform Authority of non-payment)</u></p> <p><u>Clause 73 – Sections 137 and 138 repealed</u></p> <p><u>Clause 74 – Section 142 amended (self-employed person to notify trustee of change of particulars)</u></p> <p><u>Clause 75 – Section 143 amended (participating employer to notify trustee of certain information)</u></p> <p><u>Clause 76 – Section 143A added</u></p> <p><i>143A – Participating employer to give certain document or information to employee</i></p> <p><u>Clause 77 – Section 145A added</u></p> <p><i>145A – Disposal of unclaimed benefits in employer sponsored scheme</i></p> <p><u>Clause 78 – Section 152 repealed (approved trustee to notify scheme member of member's options of transfer)</u></p> <p><u>Clause 79 – Section 153 amended (duty of approved trustee on being notified of election)</u></p> <p><u>Clause 80 – Sections 154 and 155 repealed</u></p> <p><u>Clause 81 – Section 156 repealed (accrued benefits not to be transferred if contributions or contribution surcharges outstanding)</u></p> <p><u>Clause 82 – Section 157 amended (accrued benefits, etc. not to be transferred if scheme accounts are being audited or if scheme is being investigated)</u></p> <p><u>Clause 83 – Section 157A repealed (transfer of outstanding sums received by transferor trustees)</u></p>	

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		<p><u>Clause 84 – Section 157B repealed (register of members of registered schemes who have established and maintained personal accounts within master trust schemes or industry schemes)</u></p> <p><u>Clause 85 – Section 159 amended (claim for payment on attaining retirement age)</u></p> <p><u>Clause 86 – Section 160 amended (claim for payment on attaining early retirement age)</u></p> <p><u>Clause 87 – Section 161 amended (claim for payment on death)</u></p> <p><u>Clause 88 – Section 163 amended (claim for payment on ground of permanent departure from Hong Kong)</u></p> <p><u>Clause 89 – Section 167 amended (accrued benefits, etc. not to be paid if scheme accounts are being audited or if scheme is being investigated)</u></p> <p><u>Clause 90 – Section 169A added</u> <i>169A – Treatment of accrued benefits that are unclaimed or that have not been paid</i></p> <p><u>Clause 91 – Part 13, Division 2 heading repealed (unclaimed benefits)</u></p> <p><u>Clause 92 – Sections repealed</u></p> <p><u>Clause 93 – Section 172C repealed (register of scheme members who have unclaimed benefits to be kept)</u></p> <p><u>Clause 94 – Section 173 repealed (disposal of unclaimed benefits in employer sponsored scheme)</u></p> <p><u>Clause 95 – Section 174 repealed (treatment of unclaimed benefits in master trust scheme or industry scheme)</u></p> <p><u>Clause 96 – Section 175 amended (offences)</u></p> <p><u>Clause 97 – Section 203A added</u> <i>203A – Defence for offence relating to section 78, 164(2) or (4), 164A(3), 165(3), 167 or 169</i></p>	

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		<p><u>Clause 98 – Section 206 amended (how notices etc. are to be given for purposes of the Ordinance)</u></p> <p><u>Clause 99 – Section 206A repealed (how documents are to be served for purposes of section 153(1) or 154(2A)(b))</u></p> <p><u>Clause 100 – Section 208 added</u> <i>208 – Transitional provisions for 2021 Amendment Ordinance</i></p> <p><u>Clause 101 – Schedule 4 amended (financial penalties)</u></p> <p><u>Clause 102 – Schedule 5 added</u></p> <p><i>Schedule 5 – Transitional Provisions for 2021 Amendment Ordinance</i></p> <p>Members raised no query</p>	
001726 – 002015	Chairman Administration	<p>Part 4 - Related Amendments to Occupational Retirement Schemes Ordinance and other Subsidiary Legislation of Mandatory Provident Fund Schemes Ordinance</p> <p><i>Division 1 – Occupational Retirement Schemes Ordinance (Cap. 426)</i></p> <p><u>Clause 103 – Section 77 amended (preservation of secrecy)</u></p> <p><u>Clause 104 – Section 78B added</u> <i>78B – Disclosure for purposes of section 50B or 50C of Inland Revenue Ordinance</i></p> <p><i>Division 2 – Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485 sub. leg. C)</i></p> <p><u>Clause 105 – Schedule 2 amended (fees prescribed for the purposes of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A))</u></p> <p><i>Division 3 – Mandatory Provident Fund Schemes (Specification of Permitted Periods) Notice (Cap. 485 sub. leg. F)</i></p> <p><u>Clause 106 – Section 1 amended (permitted period</u></p>	

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		<p><u>specified for purposes of section 7 of Ordinance)</u></p> <p><u>Clause 107 – Section 2 amended (permitted period specified for purposes of section 7C of Ordinance)</u></p> <p><i>Division 4 – Mandatory Provident Fund Schemes (Compensation Claims) Rules (Cap. 485 sub. leg. H)</i></p> <p><u>Clause 108 – Rule 4 amended (requirements as to making of section 17B applications)</u></p> <p><i>Division 5 – Mandatory Provident Fund Schemes (Winding Up) Rules (Cap. 485 sub. leg. I)</i></p> <p><u>Clause 109 – Rule 4 amended (requirements as to making of winding up applications)</u></p> <p>Members raised no query.</p>	
002016 – 002102	Chairman Mr CHAN Kin-por Mr CHAN Chun-ying	Disclosure of pecuniary interest	
002103 – 002140	Chairman Assistant Legal Adviser 3 ("ALA3")	ALA3 said that there was no discrepancy between the Chinese and English versions of the Bill which were in order from the drafting point of view.	
002141 – 002900	Chairman Administration	<p>Briefing by the Administration on its proposed amendments to the Bill (Annex to LC Paper No. CB(1)1285/20-21(01))</p> <p>The Bills Committee raised no objection to the proposed amendments which were mainly technical and consequential in nature and sought to clarify the policy intent of certain provisions.</p>	
002901 – 003737	Chairman Mr LUK Chung-hung Administration	<p>Briefing by Mr LUK Chung-hung on his proposed amendment to the Bill (LC Paper No. CB(1)1283/20-21(01))</p> <p>Mr LUK said that his proposed amendment aimed to encourage competition in the MPF market and lower fees by enhancing the transparency of the MPF System, particularly through the provision of more information on fees and return on investment, etc., by trustees to scheme members.</p>	

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		<p>The Administration said that the Mandatory Provident Fund Schemes Authority ("MPFA") was empowered under section 56(3)(fa) of the Mandatory Provident Fund Schemes (General) Regulation ("the Regulation") to specify information to be included in the annual benefit statements, which would be issued to scheme members by trustees at the end of each financial year. The annual benefit statements would include information such as accrued benefits and return on investment during the year. As Mr LUK's proposed amendment was in line with the policy intent of the Bill to facilitate access to account information by scheme members, and the Administration would take on board Mr LUK's proposal and prepare a draft of its amendments as soon as possible for circulation to the Bills Committee.</p> <p>In response to the Chairman's enquiry on the provisions to be amended, the Administration advised that while the proposed new section 19S (central register) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) would be relevant, scheme members would need to apply to the system operator for access to information in the central register under section 19S. To further facilitate members' access to their account information, the Administration was also considering amendments to relevant requirements of the annual benefit statements under section 56(3) of the Regulation, so that annual benefit statements to be prepared by trustees in due course would include the additional information on fees and cumulative returns on investment, etc., and would be distributed to scheme members via the eMPF Platform and shown on the front-end portal of the eMPF Platform for scheme members' easy access at any time.</p> <p>At Mr LUK's request, the Administration would discuss with him on the drafting of the amendment after the meeting.</p> <p>The Chairman suggested that no further meeting would need to be held for discussing the remaining proposed amendment by the Administration, and the Secretary for Financial Services and the Treasury could explain the Administration's amendments upon taking on board Mr LUK's comment when the Second Reading debate on the Bill was resumed in</p>	

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		LegCo.	
003738 – 004000	Chairman Mr CHAN Kin-por Administration	Mr CHAN Kin-por said that he supported the aim of Mr LUK Chung-hung's proposed amendment to the Bill to enhance the transparency of the MPF System. He suggested that the Administration engage the MPF trustees as appropriate on the requirement of additional information to be provided by the trustees to scheme members. The Administration said it would follow up the matter with MPFA in due course.	
004001 – 004035	Chairman Administration	The Chairman concluded that the Bills Committee had completed the scrutiny of the Bill and no further meeting of the Bills Committee would be held. Legislative timetable	
Agenda item II – Any other business			
004036 – 004125	Chairman	Closing remarks	