

LETTERHEAD OF THE HONG KONG ASSOCIATION OF BANKS

28 September, 2001

The Hon Ambrose Lau Hon-Chuen, GBS, JP
Chairman
Bills Committee on Mandatory Provident Fund
Schemes (Amendment) Bill 2001
Legislative Council
Jackson Road
Central
Hong Kong
By fax: 2121 0420

Dear Mr Lau

Mandatory Provident Fund Schemes (Amendment) Bill 2001 ("Bill")

We write to give the Association's comments on the above Bill for consideration by the Bills Committee.

1. General

Whilst we welcome the initiatives of the Government in reviewing the MPF legislation, now may not be the appropriate time to do so. As the Scheme has been operating for less than a year, the parties concerned are still adapting to the legislative requirements while rules and regulations governing the Scheme are introduced from time to time. It would be more beneficial to all parties to review and streamline the operation and administration of the Scheme to make it less onerous.

2. Clause 2 - definition of "governing rules"

The current definition of "governing rules" will be broadened extensively (a) to include those rules and provisions contained in any *offering document* or *participation agreement* and those governing the *administration* of the scheme and (b) to provide a means to the MPFA to exclude certain rules and

provisions from the definition by notice in the gazette. This gives rise to a number of serious concerns:

- Under Section 63 of the Mandatory Provident Fund Schemes (General) Regulation ("Regulation"), amendments to the governing rules will need the prior approval of the MPFA. The proposed amendments would in effect empower the MPFA to approve business arrangements such as those covering ancillary client services which should be a matter of bilateral agreement between the service providers and their customers.
- "Participation agreement", which would form part of the governing rules under the Bill, is widely defined to include an agreement between a participating employer and the approved trustee of the scheme. Given the large volume involved, it would be administratively burdensome to require the MPFA's approval to such documents and subsequent changes thereto.
- The definition of "offering document", which would form part of the governing rules under the Bill, seems to cover marketing materials of a registered scheme. Given that the SFC is responsible for vetting marketing materials in accordance with the SFC Code on MPF Products and relevant Ordinances, it would neither be necessary nor desirable to have more than one approving authority for the same set of documents.
- Approved trustees are already required to comply with the provisions of the MPFS Ordinance and Regulations governing the administration and operation of MPF Schemes. It would be sufficient for the MPFA to monitor the performance of the trustees in order to protect the interest of MPF scheme members. It would lead to ambiguity and confusion if the definition of governing rules is expanded to cover these purely administrative agreements.
- It is undesirable for the MPFA to be given the power to gazette to exclude certain rules or provisions from the definition of "governing rules". Any changes to the definition of governing rules should follow the normal legislative process to ensure sufficient consultation.

2. Clause 15 - offences by approved trustees

The MPFA already has the authority to suspend its approval of an approved trustee if it reasonably suspects that the trustee fails to comply with the imposed conditions with respect to the conduct of an approved trustee's business. The suspension of approval is a very severe punishment for a trustee. We do not see a need to impose any additional penalty.

3. Clause 8 - voluntary contributions

(a) Section 11(1) is amended to provide that "the employer of a person may arrange for the person to join and pay contributions to a registered scheme notwithstanding that the person is less than 18 years of age or is of or more than retirement age". Presumably, the provision only applies where the employee agrees to be so enrolled. If this is the case, the relevant provision should be made clearer.

(b) Section 11, as currently drafted, does not seem to apply to "exempt persons". Perhaps the MPFA could clarify the reasons for not including such persons.

4. Consequential amendments to MPFS (General) Regulation - Clauses 6 and 7

The proposed introduction of penalties on trustees are rather draconian given that a trustee would in any event be responsible for the acts and omissions of its custodians and sub-custodians.

Yours sincerely

David Wan
Secretary

c.c. Deacons (Mr. J W C Richardson)