

Bills Committee on the Mandatory Provident Fund Schemes (Amendment) Bill 2001

Responses to the issues raised at the meeting on 10 December 2001

Clause in the Bill	Comments/Concern	The Administration's Response
2(ii) – Definition of “companies”	To clarify the proposal on amending the definition of “company”, and whether the term “corporation” is defined in Companies Ordinance.	<p>Under the existing definition, company means a company or an oversea company within the meaning of the Companies Ordinance (i.e. registered under the Ordinance). In practice, some of references to company in the Mandatory Provident Fund Schemes Ordinance (MPFSO) should include foreign corporations incorporated overseas but not registered as oversea company under the Companies Ordinance.</p> <p>We therefore propose to expand the definition of “company” under MPFSO to include a “corporation” in specific provisions to enable such provisions to also apply to all foreign corporations incorporated overseas that are not registered under the Companies Ordinance.</p>

Clause in the Bill	Comments/Concern	The Administration's Response
		<p>Under section 2(3) of the Companies Ordinance, reference to a body corporate or to a corporation shall be construed as not including a corporation sole but as including a company incorporated outside Hong Kong.</p> <p>Although the definition is different, it is not inconsistent. In any case, the proposed definition of "corporation" in MPFSO is restricted to the Ordinance. It is common for a term to have different interpretations in different Ordinances to serve different purposes.</p>
Clauses 5, 7(b) and 19 – "beginning of the date"	To clarify whether adding the "beginning of" to "the date" in the relevant provisions would have implications on the interpretation of "the date" in other financial related ordinances.	We propose to add "the beginning of" before "the date" in sections 7(3)(b)(ii), 7C(2)(b) and item 7(2) of Schedule 1 to clarify the "relevant time" in these provisions.

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		<p>Under those provisions, the “relevant time” for an employee (or a self-employed person) who commences employment (or self-employment) after 1 December 2000 is defined as the date on which the person becomes employed (or self-employed).</p> <p>Under section 7(1) and 7C(2), an employee (or a self-employed person) must become a member of a registered scheme within the permitted period (i.e. 60 days) after the relevant time. Taken together, the permitted period for such persons will begin on the second day of employment (or self-employment). Compared with sections 7(3)(b)(i) and 7C(2)(a), which mention that the relevant time means the time of the commencement of the section, there is a one day time lag.</p> <p>This is not our legislative intent. Therefore, we propose to remove the anomaly by specifying that</p>

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		<p>the relevant time should be the beginning of the date on which the employment (or self-employment) begins. The relevant time will begin on a specific time instead of a day.</p> <p>The above amendments are required in the specific context of the relevant provisions concerning the relevant time and permitted period in MPFSO. They would not affect the general interpretation of “the day” in other Ordinances.</p> <p>Besides, the term “beginning of the day” is commonly used in the existing legislation, e.g. section 20(2)(a) and 28(3)(a) of the Interpretation and General Clauses Ordinance (Cap. 1), section 44A(1) of the Companies Ordinance (Cap. 32) and sections 75A, 121Z3(c) and (e) of the Securities Ordinance (Cap. 333).</p>

Clause in the Bill	Comments/Concern	The Administration's Response
Clause 4 – MPFA's power to borrow	To clarify that the proposed power to borrow refers to temporary borrowing such as overdraft.	After consulting MPFA, we propose to retain the present wording of the proposed provision, as the scope of borrowing should not be restricted to overdraft only. MPFA may also need to engage in other borrowing activities such as securities settlement (in case of unexpected settlement delay), and short term banking facilities for financing general working capital e.g. to provide for unforeseeable circumstances under which there is not enough liquid cash (e.g. for a recovery plan after a fire). In any case, borrowing by MPFA shall be subject to the approval of the Financial Secretary.
Clauses 10(d) and 11(d) – Power to impose/amend conditions on marketing of the schemes	To consider how to limit the power of MPFA to impose/amend conditions on marketing of schemes.	We propose to limit MPFA's power to impose/amend conditions on marketing of the scheme to ambit of the guidelines issued by MPFA. The relevant draft CSAs have been prepared to reflect the above changes.

Clause in the Bill	Comments/Concern	The Administration's Response
N.A.	To provide information on the composition and power of the Mandatory Provident Fund Schemes Appeal Board.	Relevant information provided at Annex.

27 December 2001

The Mandatory Provident Fund Schemes Appeal Board

The Mandatory Provident Fund Schemes Appeal Board (the Appeal Board) was set up in accordance with section 35 of the Mandatory Provident Fund Schemes Ordinance. Any person aggrieved by any decision specified in Schedule 6 of the Ordinance (Appendix A) may appeal to the Appeal Board.

2. The current Chairman, deputy Chairman and panel members of the Appeal Board were appointed by the Financial Secretary in 2001, in exercise of the powers delegated to him by the Chief Executive. The Chairman and deputy Chairman of the Appeal Board must be a solicitor or barrister admitted under the Legal Practitioners Ordinance, and panel members of the Appeal Board must not be public officers. The current membership list is at Appendix B.

SCHEDULE 6 [ss. 35, 36 & 48]

DECISIONS WHICH MAY BE THE SUBJECT OF AN APPEAL

1. A decision of the Authority to reject an application for approval as an approved trustee. (*Added 4 of 1998 s. 2*)
 2. A decision of the Authority imposing conditions on an applicant for approval as an approved trustee. (*Added 4 of 1998 s. 2*)
 3. A decision of the Authority to suspend the approval of an approved trustee. (*Added 4 of 1998 s. 2*)
 4. A decision of the Authority to revoke the approval of an approved trustee. (*Added 4 of 1998 s. 2*)
 5. A decision of the Authority to refuse to register a provident fund scheme as an employer sponsored scheme or a master trust scheme. (*Added 4 of 1998 s. 2*)
 6. A decision of the Authority imposing conditions on an applicant for the registration of a provident fund scheme. (*Added 4 of 1998 s. 2*)
 7. A decision of the Authority to suspend an approved trustee's administration of a registered scheme. (*Added 4 of 1998 s. 2*)
 8. A decision of the Authority to terminate an approved trustee's administration of a registered scheme. (*Added 4 of 1998 s. 2*)
 9. A decision of the Authority to refuse to consent to the voluntary winding up of an employer sponsored scheme. (*Added 4 of 1998 s. 2*)
 10. A decision of the Authority to reject an application to the Authority for its consent to the merger of 2 or more registered schemes. (*Added 4 of 1998 s. 2*)
 11. A decision of the Authority to reject an application to the Authority for its consent to the division of a registered scheme into 2 or more registered schemes. (*Added 4 of 1998 s. 2*)
 12. A decision of the Authority to reject an application for the granting of an exemption under section 5 of the Ordinance. (*Added 4 of 1998 s. 2*)
 13. A decision of the Authority to revoke an exemption granted under section 5 of the Ordinance. (*Added 4 of 1998 s. 2*)
 14. A decision of the Authority-
 - (a) under section 5 of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap 485 sub. leg.) to refuse an application for an exemption certificate;
 - (b) under section 8 of that Regulation to refuse an application to withdraw an exemption certificate;
 - (c) under section 12 of that Regulation to withdraw an exemption certificate;
 - (d) under section 16 of that Regulation to refuse an application for an exemption certificate;
 - (e) under section 19 of that Regulation to refuse an application to withdraw an exemption certificate;
 - (f) under section 23 of that Regulation to withdraw an exemption certificate. (*Added L.N. 205 of 1998*)
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Mandatory Provident Fund Schemes Appeal Board

**Membership List
(as at 20 December 2001)**

Chairman

Mr. Fung Pak-tung, Patrick, SC

Deputy Chairman

Mrs Lee Wong Pui-ling, Angelina, JP

Panel Members

Mr. Cheng Wai-sun, Edward

Prof. Fan Yiu-kwan, JP

Mr. Joseph P. Fok, SC

Mr. Philip Hilliard

Dr Lui Ting-ming, Francis

Mr. So Wai-keung

Mr. Tyen Kan-hee, Anthony

Mr. Woo Bun, Roderick, JP