

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2001

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Financial Services

<u>Clause</u>	<u>Amendment Proposed</u>
2(a)	<p>(a) In subparagraph (ii), in the proposed definition of "company", in paragraph (b)(i), by deleting "oversea company", "</p> <p>(b) By deleting subparagraph (iv).</p> <p>(c) In subparagraph (v), in the proposed definition of "mandatory contribution" -</p> <p style="padding-left: 40px;">(i) in paragraph (a), by deleting "paid or payable" and substituting "required to be paid";</p> <p style="padding-left: 40px;">(ii) in paragraph (b), by deleting "section 5(1)(b)" and substituting "section 5(1)".</p> <p>(d) By deleting subparagraph (vii).</p> <p>(e) In subparagraph (x) -</p>

(i) by adding -

““conditions” () means
reasonable conditions;”;

(ii) by deleting the definitions of “offering
document” and “participation agreement”.

2(b) By deleting the proposed section 2(3) and (4) and
substituting -

“(3) For the avoidance of doubt, it is hereby
declared that an amount that is paid as a
contribution to a registered scheme contingently
on the basis that the amount will later constitute
a mandatory contribution to the scheme shall for
all purposes be treated as a mandatory
contribution to the scheme (and the provisions of
this Ordinance shall apply accordingly) unless and
until it is certain that the amount will not
constitute a mandatory contribution to the
scheme.”.

New By adding -

“2A. Exemptions

Section 4(3) is amended by adding “and
section 11(1) and (2)” after “subsections (4) and
(5)”.

7(a) By deleting “subject to” and substituting “in

accordance with"

- 8
- (a) In paragraph (a) -
 - (i) in the proposed section 11(1), by adding "or is exempted under section 4(3)" after -
 - (A) "retirement age"; and
 - (B) "that age";
 - (ii) in the proposed section 11(2), by adding "or is exempted under section 4(3)" after "retirement age".
 - (b) In paragraph (b), in the proposed section 11(7)(b), by deleting "section 5(1)(b)" and substituting "section 5(1)".

- 9
- In the proposed section 20(12) -
- (a) in paragraph (b)(i), by deleting "7 working" and substituting "30";
 - (b) by deleting everything after "then the" and substituting -
 - "Authority may by written notice served on the approved trustee -
 - (c) amend any conditions imposed under subsection (8) or this subsection with respect to the conduct of the approved

trustee's business; or

- (d) impose conditions with respect to the conduct of the approved trustee's business."

10(d)

(a) In the proposed section 21(12) -

- (i) in paragraph (b)(i), by deleting "7 working" and substituting "30";
- (ii) by deleting everything after "then the" and substituting -

"Authority may by written notice served on the approved trustee -

- (c) amend any conditions imposed under subsection (8A) or this subsection with respect to the administration or marketing of the scheme; or
- (d) impose conditions with respect to the administration or marketing of the scheme."

(b) By adding after the proposed section 21(13) -

"(14) The Authority shall not impose under this section any conditions with respect to the marketing of a registered scheme, or amend any conditions imposed under this section with respect to the marketing of the scheme, unless the imposition or amendment, as the case may be, falls within the ambit of the guidelines."

- 11(d) (a) In the proposed section 21A(12) -
- (i) in paragraph (b)(i), by deleting "7 working" and substituting "30";
 - (ii) by deleting everything after "then the" and substituting -
 - "Authority may by written notice served on the approved trustee -
 - (c) amend any conditions imposed under subsection (8A) or this subsection with respect to the administration or marketing of the scheme; or
 - (d) impose conditions with respect to the administration or

marketing of the
scheme.".

(b) By adding after the proposed section 21A(13) -

"(14) The Authority shall not impose under this section any conditions with respect to the marketing of a registered scheme, or amend any conditions imposed under this section with respect to the marketing of the scheme, unless the imposition or amendment, as the case may be, falls within the ambit of the guidelines.".

15 By deleting the clause.

Schedule (a) In section 1(d), by adding -

"offering document" (), in relation to a registered scheme, means a document -

- (a) inviting participation in the scheme by prospective participating employers or prospective members of the scheme; and
- (b) containing information relating to the establishment or administration of the scheme;" ;

"participation agreement" (), in relation to a registered scheme, means an agreement -

- (a) between a participating employer and the approved trustee of the scheme for the employer and his employees to participate in the scheme;
- (b) between a self-employed person and the approved trustee of the scheme for the self-employed person to participate in the scheme;
- (c) between a person intending to maintain a preserved account in the scheme and the approved trustee of the scheme;".

(b) In section 2(b), in the proposed section 6(3)(b)(i), by deleting "7 working" and substituting "30".

(c) In section 5(b), by deleting the proposed section 63(2A) and substituting -

"(2A) In respect of an amendment proposed to be made or made to the governing rules in respect of or by a participation agreement of a registered scheme -

- (a) subject to paragraph (b),

subsections (1) and (2) shall not apply unless the amendment relates to mandatory contributions or voluntary contribution;

(b) subsections (1) and (2) shall not apply if the amendment is in a form approved by the Authority for the purposes of this section."

(d) By adding -

"5A. Section added

The following is added -

"63A. Amendments to offering documents require Authority's approval

(1) An approved trustee of a registered scheme must notify the Authority in writing of any amendment proposed to be made to the offering document of the scheme and lodge with the Authority a copy of the proposed amendment.

(2) Any amendment to the offering document of the scheme should not be made available to scheme members, prospective scheme members, participating employers or prospective

participating employers until the Authority has given written notice to the trustee that the Authority has approved it.

(3) In this section, a reference to an amendment to the offering document of a registered scheme includes a reference to addition of new provisions, or substitution or omission of existing provisions, of the document."."

(e) In section 8 -

- (i) in paragraph (a), in the proposed section 78(6)(a)(iii), (b)(iii), (c)(ii), (d)(ii), (e)(ii) and (f)(ii), by deleting "section 5(1)(b)" and substituting "section 5(1)";
- (ii) in paragraph (b), in the proposed section 78(7)(b)(ii) and (d)(ii), by deleting "section 5(1)(b)" and substituting "section 5(1)";
- (iii) in paragraph (c) -
 - (A) in the proposed section 78(8)(a)(ii) and (b)(ii), by deleting "section 5(1)(b)" and substituting "section 5(1)";
 - (B) by deleting the full stop and substituting a semicolon;

(iv) by adding -

"(d) by adding -

"(10) For the avoidance of doubt, it is hereby declared that this section does not operate to require the trustee to divide a member's sub-account into any further sub-accounts."

(f) By deleting section 17 and substituting -

"17. Circumstances in which persons are exempted from operation of the Ordinance

Section 203(1)(b) and (2) are amended by repealing "12" wherever it appears and substituting "13"."

(g) In section 18, by adding before paragraph (a) -

"(aa) by adding after item 23 -

"23A. 63A Amendments 10,000 20,000 50,000"."

to offering

documents

require

Authority's

approval