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G4/38C(2001) XII

14 January 2002

Clerk to Bills Committee
(Attn.: Miss Polly Yeung)
Legislative Council
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Miss Yeung,

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

At the last meeting on 4 January 2002, members suggested the Administration to review the drafting of clause 4 of the Bill (on MPFA's power to borrow) to the effect that such power would be restricted to obtaining temporary or short term banking facilities to provide for unforeseeable circumstances, and not for long term loans.

After consulting the Mandatory Provident Fund Schemes Authority (MPFA) and taking into account its operational needs, we propose to amend Clause 4 to the effect that MPFA may, with the approval of the Financial Secretary, borrow money temporarily for the purposes of:

- a) the settlement of securities transactions,
- b) acquiring an overdraft banking facility,
- c) dealing with an emergency, or
- d) dealing with other unforeseeable circumstances.

The revised draft CSAs are attached at Annex.

As MPFA's borrowing is subject to the approval of the Financial Secretary, in granting the approval, the Financial Secretary will consider whether the borrowing is appropriate and necessary.

Separately, on the definitions of “company” and “oversea company”, Hon Audrey EU raised at the last meeting that the definitions were too complicated and proposed to incorporate the definition of “oversea company” into the definition of “company”. The Chairman suggested that the Administration should clarify the matter with Ms Eu after the meeting. The Administration explained to Ms Eu that as there were references to “oversea company” in the existing provisions of the Mandatory Provident Fund Schemes Ordinance and the Mandatory Provident Fund Schemes (General) Regulation, any changes to the proposed definitions would necessitate amendments to these provisions in the MPF legislation. No further amendment is proposed.

Yours sincerely,

(Miss Patricia So)
for Secretary for Financial Services

c.c. MPFA (Attn.: Mr Raymond Tam)
DoJ (Attn.: Mr Geoffrey Fox,
Ms Lonnie Ng,
Mrs Rita Wong)

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1st draft: 26.6.2001
2nd draft: 3.12.2001
3rd draft: 5.12.2001
4th draft: 7.12.2001
5th draft: 10.12.2001
6th draft: 11.12.2001
7th draft: 19.12.2001
8th draft: 11.1.2002
9th draft: 14.1.2002

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>

(e) In subparagraph (x) -

(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)”.

4 By deleting the proposed section 6QA and substituting -

"6QA. Authority may borrow money

The Authority may, with the approval of the Financial Secretary, borrow money temporarily, on such security or other conditions as it considers expedient, for the purposes of -

- (a) the settlement of transactions in securities;
- (b) acquiring an overdraft banking facility;
- (c) dealing with an emergency; or
- (d) dealing with any other circumstances which could not have been foreseen."

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