

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

**Summary of comments/queries raised by the Legal Service Division
and the Administration's response**

Clause	Proposed section	Issue	LSD's comments/queries	Administration's response
Clauses 2 and 8 and section 8 of the Schedule to the Bill	<p><u>Section 2</u> (definition of "mandatory contribution") and <u>section 11(7)</u> of the Mandatory Provident Fund (MPF) Schemes Ordinance (Cap. 485) and <u>section 78(6), (7) and (8)</u> of the MPF Schemes (General) Regulation (Cap. 485 sub. leg.)</p> <p><i>[Marked-up copy (English version) : p.4, 15, 50, 51, 52 & 53]</i></p>	Reference to "minimum MPF benefits, to which section 5(1)(b) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) applies".	Apart from making reference to section 5(1)(b) of Schedule 2 to the MPF Schemes (Exemption) Regulation, the proposed sections should also refer to section 5(1)(a) of the same Schedule as the latter section also relates to the transfer of minimum MPF benefits.	<ul style="list-style-type: none"> ● Section 5(1) of Schedule 2 to the MPF Schemes (Exemption) Regulation¹ requires the trustee to transfer the minimum MPF benefits as soon as practicable to schemes referred to in section 5(1)(a) and 5(1)(b). As such, the Bill should refer to section 5(1) instead of section 5(1)(b) only. ● A CSA will be proposed to amend "section 5(1)(b)" to read "section 5(1)" in <u>clause 2</u> (definition of "mandatory contribution"); in <u>clause 8</u> (proposed section 11(7)(b)); and in <u>section 8 of the Schedule</u> (where "section 5(1)(b)" appears 10 times).

¹ Section 5(1) of Schedule 2 to the MPF Schemes (Exemption) Regulation provides that where a new member of a relevant scheme is entitled to receive benefits (whether immediately or prospectively) under the scheme, the trustee of the scheme shall transfer, in accordance with the governing rules of the scheme, the minimum MPF benefits of the member as soon as practicable -

- (a) to a registered scheme in which the member's new employer is a participating employer; or
- (b) to a master trust scheme, nominated by the member, that accepts transfers of minimum MPF benefits from other registered schemes.

<p>Clauses 2 and 8 and sections 1 and 8 of the Schedule to the Bill</p>	<p><u>Section 2</u> (definition of "master trust scheme") and <u>section 11(7)</u> of the MPF Schemes Ordinance; <u>section 2</u> (definition of "preserved account") and <u>section 78(6)(d)(ii), (e)(ii) and (f)(ii), (7)(d)(ii) and (8)(b)(ii)</u> of the MPF Schemes (General) Regulation</p> <p><i>[Marked-up copy (English version): p. 4, 15, 51, 52 & 53]</i></p>	<p>Reference to transfer of "benefits in an ORSO exempted scheme or an ORSO registered scheme"</p>	<p>Apart from benefits in an ORSO exempted scheme² or an ORSO registered scheme³, can persons who have benefits in a "relevant ORSO registered scheme"⁴ as defined in the MPF Schemes (Exemption) Regulation opt to have benefits in that scheme transferred to a registered scheme? If so, should this be reflected in the relevant sections proposed in the Bill?</p>	<ul style="list-style-type: none"> ● There are two types of schemes under the Occupational Retirement Schemes Ordinance, namely ORSO exempted schemes and ORSO registered schemes. "Relevant ORSO registered scheme" is an ORSO registered scheme which is eligible to seek exemption from MPF requirements. The definition of the term will not affect its status as an ORSO registered scheme. ● The proposed amendments to the definition of "master trust scheme" are to enable employees having benefits in ORSO exempted schemes and ORSO registered schemes to transfer their benefits to a master trust scheme. Therefore, the two types of ORSO schemes mentioned in clauses 2 and 8 and sections 1 and 8 of the Schedule in effect cover all the schemes governed by the ORSO.
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² Under the MPF Schemes (Exemption) Regulation, "ORSO exempted scheme" means an occupational retirement scheme for which the Registrar of ORSO schemes has issued an exemption certificate under the Occupational Retirement Schemes Ordinance (Cap. 426) or an occupational retirement scheme within the meaning of Cap. 426 where the employer of the scheme is the government of a place outside Hong Kong or an agency or undertaking of or by such a government which is not operated for the purpose of gain.

³ Under the MPF Schemes (Exemption) Regulation, "ORSO registered scheme" means an occupational retirement scheme registered under Cap. 426.

⁴ "relevant ORSO registered scheme" is defined in the MPF Schemes (Exemption) Regulation to mean an ORSO registered scheme-

- (a) which is governed by a trust;
- (b) which provides benefits payable on termination of service, death, disability, retirement or winding up of the scheme;
- (c) established before or on 15 October 1995; and
- (d) in respect of which application for exemption or application for registration under the Occupational Retirement Schemes Ordinance (Cap. 426) was received by the MPF Schemes Authority (being the Registrar of ORSO schemes under Cap. 426) not later than 15 January 1996.

<p>Clause 2</p>	<p><u>Section 2</u> of the MPF Schemes Ordinance</p>	<p>Proposed definition of "company"</p>	<p>What is the rationale for including a corporation in the case of the definition of "oversea company"? It would appear from the definition of "oversea company" and the proposed definition of "corporation" that the two terms are mutually exclusive of each other⁵. <i>[Marked-up copy (English version): p. 2, 5 & 7]</i></p>	<p>In the definition of "company", the two terms "oversea company" and "corporation" are meant to be mutually exclusive of each other. A CSA will be moved to delete the reference to "oversea company" in clause 2(a)(ii)(b)(i) concerning the definition of "company".</p>
<p>Clause 2</p>	<p><u>Section 2</u> of the MPF Schemes Ordinance</p>	<p>Proposed definition of "oversea company" <i>[Marked-up copy (English version): p.5]</i></p>	<ul style="list-style-type: none"> ● Section 332 of the Companies Ordinance (Cap. 32) provides that Part XI of the Companies Ordinance shall apply to all oversea companies which are companies incorporated outside Hong Kong having a place of business in Hong Kong. No reference is made to "body corporate" in that section. ● Accordingly, is it appropriate to define "oversea company" in the MPF Schemes Ordinance to mean "a body corporate" to which Part XI of the Companies Ordinance (Cap. 32) applies" when Part XI of Cap. 32 applies to "companies" instead of "body corporate"? 	<p>The Administration agrees that it is more appropriate to follow the wording in the Companies Ordinance and the proposed amendment to the definition of "oversea company" in clause 2(a)(vii) of the Bill is not necessary. A CSA will be moved accordingly.</p>

⁵ Under the MPF Schemes Ordinance, "oversea company" means a company to which Part XI of the Companies Ordinance (Cap. 32) applies, i.e. a company incorporated outside Hong Kong which establishes or has a place of business in Hong Kong and is registered under Part XI of the Companies Ordinance. Under the Bill, "corporation" means a body corporate which is incorporated in a place outside Hong Kong and is not an oversea company.

<p>Clauses 9, 10 and 11 and section 2 of the Schedule to the Bill</p>	<p><u>Sections 20(12), 21(12) and 21A(12)</u> of the MPF Schemes Ordinance and <u>section 6</u> of the MPF Schemes (General) Regulation</p> <p><i>[Marked-up copy (English version): p. 18, 21, 25 & 43]</i></p>	<p>Power of the MPF Schemes Authority (MPFA) to amend conditions on an approved trustee</p>	<ul style="list-style-type: none"> ● If MPFA has already decided that it is appropriate to amend or impose conditions, there appears little point in giving an approved trustee an opportunity to make representations as to why the conditions should not be amended or imposed. ● Would it be better if "has decided" is amended to "considers"? Likewise, should "notice of its decision" in the proposed sections concerned be replaced by "notice of its intention"? 	<ul style="list-style-type: none"> ● The proposed amendments are to allow the MPFA to change the conditions. But MPFA should also give the affected parties an opportunity to make representations. The wording is consistent with the style presently adopted in the MPF Schemes Ordinance (e.g. Schedule 6) <i>[Marked-up copy (English version): p. 38]</i> ● We regard the wording as appropriate and MPFA would proceed with amending the conditions once it has fulfilled both conditions: has decided that it is appropriate and has given the trustee an opportunity for representation. An appeal mechanism will also be provided as appropriate⁶. However, the conditions would need to be amended/imposed before the outcome of any appeal as in some cases, there may be an urgent need to do so in order to protect scheme members' interests.
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⁶ The Bill proposes that any person aggrieved by a decision of MPFA to amend conditions imposed on an approved trustee may appeal to the Mandatory Provident Fund Schemes Appeal Board constituted under section 35 of the MPF Schemes Ordinance.

<p>Section 17 of the Schedule to the Bill</p>	<p><u>Section 203(1)</u> of the MPF Schemes (General) Regulation</p> <p><i>[Marked-up copy (English version): p. 63]</i></p>	<p>Circumstances in which persons are exempted from operation of the Ordinance</p>	<p>As it is now proposed that a person will be exempt from the Ordinance when the period during which the person is given permission to remain in Hong Kong does not exceed 13 months, should the two references to "12" in section 203(2) be amended to "13" as well?</p>	<p>A CSA will be moved to amend the two references to "12" in section 203(2) of the MPF Schemes (General) Regulation to "13".</p>
<p>Section 8 of the Schedule to the Bill</p>	<p><u>Section 78(6)(a)(iii), (6)(b)(iii), (6)(c)(ii), 78(7)(b)(ii) and 78(8)(a)(ii)</u></p> <p><i>[Blue Bill : p.C752-753, C754-755 and C756-757]</i></p>	<p>Drafting matters - the Chinese and English texts do not match.</p>	<p>The proposed Chinese text for the reference "the member's minimum benefits to which section 5(1)(b) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) applies" is "但只限於《強制性公積金計劃(豁免)規例》(第485章, 附屬法例)附表2第5(1)(b)條適用的最低強制性公積金利益". The English text, as drafted, does not contain the meaning of "但只限於" appeared in the Chinese text.</p>	<p>Although the English version does not contain the literal equivalent of "但只限於", the qualifier "to which section ... applies" following "the member's minimum MPF benefits" has the effect of limiting the scope of the benefits to which the provision apply. To facilitate comprehension of the Chinese version, such qualifier is put at the end of the sentence. Conjunctive words are needed to bring home to the readers in a straightforward manner the connection between the qualifier and the benefits to be qualified. We consider that the words "但只限於" have aptly served this purpose without affecting the intended meaning of the provision.</p>