

(譯文)

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財經事務局局長

傳真文件

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(經辦人： 財經事務局助理局長(退休計劃
及保險)蘇貝茜女士)

蘇女士：

《2002年強制性公積金計劃(修訂)條例草案》

本人現正審閱上述條例草案，以便向議員提供意見。謹請閣下就以下問題作出澄清：

草案第5條——擬議的第10A條

強制性公積金計劃管理局(“積金局”)完成對最低及最高有關入息水平的檢討後，積金局須否公布有關檢討的結果；若有此規定，積金局應透過何種途徑公布有關結果？當局應否制定關於這方面的條文？

草案第9條——擬議的第34B條

因應有關註冊計劃重組的修訂建議，《強制性公積金計劃條例》(第485章)附表6第10及11項應否作出相應修訂？

草案第11條——擬議的第43B條

- (a) 在擬議第43B(3)條，為何建議就**定罪後**(斜體由本人加上)該罪行持續的每一日另處\$500每日罰款？此條的草擬方式似乎建議每日罰款只可在定罪後持續的罪行作出。這是否反映政府當局的用意？若當局擬讓法庭有權就持續發生的罪行由其被干犯當日至被定罪當日的期間施加罰款，該條文應否修訂為“在該罪行持續的每一日處以\$500每日罰款”。事實上，就持續罪行訂明每日罰款的其他現有條文，均採用這個寫法。
- (b) 在擬議的第43B(4)條中所用的“可”字，似乎建議除該條所提出的時限外，可以有另一個提出檢控的時限。這是否反映政府當局的用意？若

然，其他時限為何？若該條作出修訂，使法律程序須在該罪行干犯後6個月內、或在管理局發現或獲悉該罪行後6個月內(以較後者為準)提出，此條文會否較為清晰？請參閱現有法例的類似條文，例如《藥物倚賴者治療康復中心(發牌)條例》(第566章)第22條。

條例草案附表第16條

- (a) 在《強制性公積金計劃(一般)規例》(第485章，附屬法例) (“《一般規例》”)擬議第150A條中，新僱主應於何時將其選擇以書面通知有關的受託人？當局應否制定關於這方面的條文？
- (b) 擬議第150A(b)條提到“(a)段所述計劃的受託人”。該計劃是否指僱員將會把其在另一個計劃中的累算權益轉移往的計劃？這條文的含義似乎有不清晰之處，特別是在與中文本一併參閱時為然。中文本提及該條第(a)段所述計劃的受託人。然而，第(a)段的中文本載有兩項對“計劃”的提述。請改善條文的草擬方式，令中英文文本均更為清晰及貫徹一致。閣下可考慮使用“承轉受託人”及“轉移受託人”的用語，因為此等用語已在《一般規例》第XII部界定。

條例草案附表第20條

- (a) 在《一般規例》附表1擬議的第2(3)條中，應否在“第6(b)(i)、(ii)或(iii)條”之前加入“本附表”，以區分此附表的條文及《一般規例》的條文？請參閱《一般規例》附表1的第3(2)(b)及6(a)條，該等條文有作出該項區分。
- (b) 根據《一般規例》附表1擬議的第2(5)及(6)條和11(3B)及(3C)條，積金局可對成分基金資金的投資施加條件或修訂該等條件。核准受託人能否對積金局施加或修訂該等條件的決定提出上訴？若可以，請對《強制性公積金計劃條例》(第485章)附表6作出相應修訂。

條例草案附表第21條

- (a) 《一般規例》附表3現有的第5(b)條訂明：保管人協議必須規定保管人須就“任何可歸因於保管人的獲轉授人欺詐地、不誠實地或疏忽地作出或不作出任何作為所致的損失，向計劃作出彌償，彌償的幅度一如假若作出或不作出該等作為的是保管人本身一樣”。以“直接損失”取代“任何損失”的擬議修訂，會產生限制保管人作出彌償範圍的效果。請解釋為何建議作出該項限制。
- (b) 若當局的意圖是使保管人只須就“直接損失”向計劃作出彌償，有關提述應否為“任何直接損失”，從而使擬議第5(b)條的草擬方式與附表3第5(a)條的草擬方式一致。

中文本

本人對條例草案中文本的意見已標明於隨附的頁張，供閣下考慮。

希望閣下可在法案委員會於2002年6月3日舉行會議前以中英文賜覆。

助理法律顧問

(馮秀娟小姐)

連附件

副本致： 律政司司長(經辦人：高級助理法律草擬專員霍思先生及高級政府律師蕭艾芬女士)
法律顧問

2002年5月30日

m3553

“(1A) 每名僱用有關僱員的僱主必須採取所有切實可行的步驟，以確保在特准限期屆滿之後——

- (a) (如該僱主已就有關僱員遵守第(1)款)該僱員在他整個受僱於該僱主的期間持續是註冊計劃的成員；
- (b) (如該僱主沒有就有關僱員遵守第(1)款)該僱員成為註冊計劃的成員，並從此在他整個受僱於該僱主的期間持續是註冊計劃的成員。”。

4. 僱主及有關僱員須向註冊計劃作出供款

第7A條現予修訂——

(a) 廢除第(7)款而代以——

“(7) 如僱員(臨時僱員除外)的工資期——

- (a) 不多於1個月，僱主不得根據第(2)(b)款，就該僱員在任任何於有關時間之後受僱工作的第30日當日或之前開始的工資期所賺取的有關入息作出扣除；
- (b) 多於1個月，僱主不得根據第(2)(b)款，就該僱員在任任何由有關時間至有關時間之後受僱工作的第30日所在的公曆月的最後一日為止的期間所賺取的有關入息作出扣除。”；

(b) 在第(10)款中——

(i) 在“供款期”的定義中，廢除(b)段而代以——

- “(b) (i) 就工資期不多於1個月的有關僱員(臨時僱員除外)而言，如有關僱主就某段期間向或應向該僱員支付有關入息，指每段該等期間，但並不包括任何於有關時間

英文本的提述為“each period”而並非“each of the periods”。此中文本的意思卻表達了“each of the periods”的意思。請令中英文文本一致。

“(1A) Every employer of a relevant employee must take all practicable steps to ensure that, after the expiration of the permitted period—

- (a) if the employer has complied with subsection (1) in respect of the employee, the employee continues to be a member of a registered scheme throughout his employment with that employer;
- (b) if the employer has not complied with subsection (1) in respect of the employee, the employee becomes a member of a registered scheme and thereafter continues to be a member of a registered scheme throughout his employment with that employer.”.

4. Employer and relevant employees required to contribute to registered scheme

Section 7A is amended—

(a) by repealing subsection (7) and substituting—

“(7) An employer must not, in respect of an employee (not being a casual employee) whose wage period—

- (a) is not more than 1 month, make a deduction under subsection (2)(b) in respect of the employee's relevant income earned for any wage period that commences on or before the 30th day of employment after the relevant time;
- (b) is more than 1 month, make a deduction under subsection (2)(b) in respect of the employee's relevant income earned for the period commencing from the relevant time and ending on the last day of the calendar month in which the 30th day of employment after the relevant time falls.”;

(b) in subsection (10)—

(i) in the definition of “contribution period”, by repealing paragraph (b) and substituting—

“(b) in relation to a relevant employee (not being a casual employee) whose wage period—

- (i) is not more than 1 month, means each period for which the employer pays or should pay relevant income to the employee, but does not include any wage period commencing on or

之後受僱工作的第30日當日或之前開始的任何工資期；

請參考

以上第(b)(i)段的

意見

(第248頁)

(ii) 就工資期多於1個月的有關僱員(臨時僱員除外)而言，如有關僱主就某段期間向或應向該僱員支付有關入息，指每段該等期間，但並不包括任何由有關時間至有關時間之後受僱工作的第30日所在的公曆月的最後一日為止的期間；及”；

(iii) 在“relevant time”的定義中，廢除“section 7(3).”而代以“section 7(3).”；

加入——

““工資期”(wage period)就某一僱員及其僱主而言，如該僱員為某一期間而獲該僱主支付或應獲該僱主支付有關入息，則指該期間；”。

5. 加入條文

現加入——

“10A. 管理局每4年對最低及最高有關入息水平進行檢討

(1) 管理局必須在本條生效時起計的每段4年期間內，對最低及最高有關入息水平進行不少於一次檢討，以確定是否有理由修訂附表2或3、或附表2及3。

(2) 在不局限管理局為進行第(1)款所述的檢討而可考慮的因素的前提下，管理局必須考慮——

(a) (就最低有關入息水平而言)在檢討時屬現行、由政府統計處進行的綜合住戶統計調查所得出的每月就業收入中位數的百分之五十之數；及

before the 30th day of employment after the relevant time;

(ii) is more than 1 month, means each period for which the employer pays or should pay relevant income to the employee, but does not include the period commencing from the relevant time and ending on the last day of the calendar month in which the 30th day of employment after the relevant time falls; and”;

(ii) in the definition of “relevant time”, by repealing “section 7(3).” and substituting “section 7(3).”;

(iii) by adding—

““wage period” (工資期), in relation to an employee and his employer, means the period for which the employee is paid, or should be paid, relevant income by the employer.”.

5. Section added

The following is added—

“10A. Authority to conduct review of minimum and maximum levels of relevant income every 4 years

(1) The Authority must, not less than once in every period of 4 years beginning with the commencement of this section, conduct a review of the minimum level of relevant income and the maximum level of relevant income to ascertain whether or not there are grounds to amend Schedule 2 or 3 or Schedules 2 and 3.

(2) Without limiting the factors which the Authority may take into account for the purposes of conducting a review mentioned in subsection (1), the Authority must take into account—

(a) in respect of the minimum level of relevant income, 50 per cent of the monthly median employment earnings prevailing at the time of the review as compiled from the General Household Survey conducted by the Census and Statistics Department; and

- (b) (就最高有關入息水平而言)在檢討時屬現行、由政府統計處進行的綜合住戶統計調查所得出的每月就業收入分佈中第九十分百分值的每月就業收入。”。

6. 供款作為累積權益而歸屬計劃成員

第12條現予修訂——

- (a) 在第(2)款中，在“除第”之後加入“(2A)款及第”；

(b) 加入——

“(2A) 第(2)款中對收入或利潤的提述，不包括——

(a) 符合以下說明的利息——

- (i) 將某項註冊計劃的核准受託人就該計劃的某名成員所收取的供款或權益作存款存放所產生的；及
(ii) 在該等供款或權益有待支付入該成員的帳戶的期間如此產生的；

(b) 符合以下說明的利息——

- (i) 將從某個成分基金轉移的權益作存款存放所產生的；及
(ii) 在該等權益有待轉入另一個成分基金作投資的期間如此產生的；及

(c) 符合以下說明的利息——

- (i) 將從某個成分基金收取的權益作存款存放所產生的；及
(ii) 在該等權益有待——
(A) 從有關註冊計劃提取的期間；或
(B) 轉移至另一註冊計劃的期間，如此產生的。

(2B) 第(2A)款提述的利息須由有關註冊計劃的核准受託人為該計劃的成員的利益而保留——

由於英文本
並沒有
“so derived”
的提述，
為何要在
中文本使
用“如此
產生”？

- (b) in respect of the maximum level of relevant income, monthly employment earnings at 90th percentile of the monthly employment earnings distribution prevailing at the time of the review as compiled from the General Household Survey conducted by the Census and Statistics Department.”.

6. Contributions to vest in scheme members as accrued benefits

Section 12 is amended—

- (a) in subsection (2), by adding “subsection (2A) and” after “Subject to”;

(b) by adding—

“(2A) The reference to income or profits in subsection (2) does not include interest derived from the placing on deposit of—

(a) contributions or benefits—

- (i) received by the approved trustee of a registered scheme in respect of a member of the scheme; and
(ii) during the period that the payment of the contributions or benefits into the member’s account is pending;

(b) benefits—

- (i) moved from a constituent fund; and
(ii) during the period that the investment of the benefits into another constituent fund is pending; and

(c) benefits—

- (i) received from a constituent fund; and
(ii) during the period that—
(A) withdrawal of the benefits from the registered scheme concerned is pending; or
(B) transfer of the benefits to another registered scheme is pending.

(2B) Interest referred to in subsection (2A) must be retained by the approved trustee of the registered scheme concerned—

- (a) 以支付該計劃的任何行政開支；或
(b) 作為該計劃的收入。”。

7. 某些與遣散費或長期服務金有關的款項須從累算權益中支付

第12A條現予修訂，加入——

“(6A) 凡——

- (a) 第(6)(a)或(b)款適用於某人；
(b) 新擁有人或有聯繫公司(視屬何情況而定) (“新僱主”) 承擔之前的擁有人或公司 (“前僱主”) 在該人的遣散費或長期服務金方面的法律責任；
(c) 新僱主同意就該等遣散費或長期服務金承認該人受僱於前僱主的僱用期；及
(d) 並未有在註冊計劃中就該人而持有的累算權益按照本條支付給該人或前僱主，

則新僱主可按照《規例》選擇將該人於該計劃的供款帳戶內持有的累算權益，轉移入新僱主指定的註冊計劃內的帳戶。

(6B) 如新僱主根據第(6A)款作出選擇，則就該選擇而言——

- (a) 第7A(7)條不適用於新僱主；及
(b) 在第7A(10)條中，“供款期”的定義的(b)段須在猶如該段措詞如下的情況下予以解釋——

“(b) 就受僱於某僱主並獲或應獲其就某段期間支付有關關息的有關僱員(臨時僱員除外)而言，指每一段該等期間；及”。

英文本的提述為“each period”
而非“each of the periods”
而中文本的意思卻為“each
of the periods”。請令中英文
文本一致。

8. 追討拖欠的強制性供款

第18(2)條現予修訂，廢除“，但不得超逾年率百分之二十”。

- (a) for the payment of any administrative expenses of the scheme; or
(b) as income of the scheme, for the benefit of scheme members.”.

7. Certain amounts relating to severance payments and long service payments to be paid from accrued benefits

Section 12A is amended by adding—

“(6A) Where—

- (a) subsection (6)(a) or (b) applies to a person; the new owner or associated company, as the case may be, (“new employer”) has assumed the liability of the previous owner or company (“previous employer”) for severance payment or long service payment in respect of the person; (c) the new employer has agreed to recognize the person’s length of employment with the previous employer for the purposes of that severance payment or long service payment; and (d) no accrued benefits held in a registered scheme in respect of the person have been paid in accordance with this section to the person or the previous employer,

then the new employer may elect, in accordance with the regulations, to have the accrued benefits of the person held in a contribution account in that scheme transferred to an account in a registered scheme nominated by the new employer.

(6B) Where a new employer has made an election under subsection (6A), then, for the purposes of that election—

- (a) section 7A(7) shall not apply to the new employer; and (b) paragraph (b) of the definition of “contribution period” in section 7A(10) shall be construed as if it read as follows—
“(b) in relation to a relevant employee (not being a casual employee), means each period for which the employer pays or should pay relevant income to the employee; and”.

8. Recovery of mandatory contributions that are in arrears

Section 18(2) is amended by repealing “, not exceeding 20 per cent per annum”.

7. 參與僱主須向核准受託人提供付款結算書

第123條現予修訂——

(a) 在第(1)款中，在“供款期”之前加入“一段或多於一段”；

(b) 在第(2)款中——

(i) 在(a)段中，廢除“供款期”而代以“一段供款期或多於一段供款期的每一段(視情況所需而定)”；

(ii) 在(b)、(c)、(d)及(e)段中，廢除“供款期”而代以“一段供款期或多於一段供款期的每一段(視屬何情況而定)”。

8. 管理局須向參與僱主發給參與證明書

第124(1)條現予廢除，代以——

“(1) 凡管理局信納——

(a) 某僱主已遵守本條例第7(1)或7(1A)(b)條；或

(b) 已根據本條發給證明書的僱主已更改該證明書上顯示的該僱主的姓名或名稱，

管理局必須透過該僱主所參與的註冊計劃的核准受託人，向該僱主發給證明書(如(b)段適用，則發給新的證明書顯示該僱主的新的姓名或名稱)，證明該僱主是證明書所指明的註冊計劃的參與僱主。”。

9. 因沒有支付供款而須支付供款附加費及作出報告

第134(4)及(5)條現予廢除，代以——

“(4) 供款附加費為相等於欠款款額的百分之五的款額。”。

10. 管理局須給予拖欠供款人通知以及核准受託人須告知管理局不付款一事

第136條現予修訂——

(a) 在第(5)款中，廢除在“如於”之後而在“日”之前的所有字句而代以“付款期內沒有收到欠款的全數及供款附加費，必須藉於該限期終結後10”；

(b) 廢除第(7)款。

11. 核准受託人須查核欠款及供款附加費的計算

第137(2)條現予修訂，廢除在“上在”之後而在“糾正”之前的所有字句而代以“切實可行範圍內盡快”。

12. 參與僱主須將某些資料通知受託人

第143(2)條現予修訂——

7. Participating employer to provide remittance statement to approved trustee

Section 123 is amended—

(a) in subsection (1), by adding “or periods” after “contribution period”;

(b) in subsection (2)—

(i) in paragraph (a), by adding “or each of the contribution periods, as the case requires” after “period”;

(ii) in paragraphs (b), (c), (d) and (e), by adding “or each of those periods, as the case may be” after “that period”.

8. Authority to give participation certificates to participating employers

Section 124(1) is repealed and the following substituted—

“(1) On being satisfied that—

(a) an employer has complied with section 7(1) or 7(1A)(b) of the Ordinance; or

(b) an employer which has been previously issued a certificate under this section has changed its name from that shown in the certificate,

the Authority must give to the employer, through the approved trustee of the registered scheme in which the employer participates, a certificate (or, where paragraph (b) is applicable, a new certificate showing the employer's new name) certifying that the employer is a participating employer in the registered scheme specified in the certificate.”.

9. Contribution surcharge for, and report on, failure to pay contributions

Section 134(4) and (5) is repealed and the following substituted—

“(4) The contribution surcharge is an amount equal to 5 per cent of the amount of the arrears.”.

10. Authority to give notice to defaulter and approved trustee to inform Authority of non-payment

Section 136 is amended—

(a) in subsection (5), by repealing “first payment-period or any subsequent payment-period, must, by written notice given within 7” and substituting “payment period must, by written notice given within 10”;

(b) by repealing subsection (7).

11. Approved trustee to check calculations of arrears and contribution surcharge

Section 137(2) is amended by repealing “before the end of the first payment-period or relevant subsequent payment-period, as the case may be” and substituting “as soon as is practicable”.

12. Participating employer to notify trustee of certain information

Section 143(2) is amended—

這意所指的期間是否指“付款期”？若然，“該限期”是否應改為“該付款期”？

15. 參與權主將僱員的累算權益轉移

第 150(b) 及 (c) 條現予廢除，代以——
“(b) 該首述計劃根據本條例第 34B 條重組；或”。

16. 加入條文

現加入——

“150A. 在本條例第 12A(6A) 及 (6B) 條適用的情況下累算權益的轉移

如本條例第 12A(6A) 及 (6B) 條適用——

- (a) 新僱主只可選擇將僱員在計劃中的累算權益轉移至新僱主屬參與者的註冊計劃；而
(b) 將其選擇以書面通知 (a) 段所述計劃的受託人。”——中文本中所指

17. 基於完全喪失行為能力的理由而提出的付款申索

第 164 條現予修訂，加入——

“(5) 如註冊計劃的計劃成員提出申索，而該成員在緊接完全喪失行為能力之前是失業的，則該計劃的核准受託人可向該成員支付其累算權益，但只有在以下情況下方可支付——

- (a) 該成員能向該受託人提供一份符合管理局所指明或批准的格式並由註冊醫生發出的醫生證明書，證明該成員因該證明書內指明的理由永久不適合執行該證明書內指明種類的工作；及
(b) 該成員令該受託人信納該成員在完全喪失行為能力之前所最後從事的工作，是根據僱傭合約從事該種類的工作；及
(c) 在該成員失業的情況下——
(i) 除第 (ii) 節另有規定外，該成員能向該受託人提供由該成員最後之僱主發出的信件，證明有關該特定種類工作的僱傭合約已予終止；
(ii) 如該成員不能遵守第 (i) 節或失業超過 7 年，該成員能向該受託人提供符合管理局所批准的格式的法定聲明，述明關於該特定種類工作的僱傭合約已予終止。
(6) 如註冊計劃的計劃成員提出申索，而該成員在緊接完全喪失行為能力之前停止作為自僱人士，則該計劃的核准受託人可向該成員支付其累算權益，但只有在以下情況下方可支付——
(a) 該成員能向該受託人提供一份符合管理局所指明或批准的格式並由註冊醫生發出的醫生證明書，證明該成員因該證明書內指明的理由永久不適合執行該證明書內指明種類的工作；及
(b) 該成員令該受託人信納該成員在完全喪失行為能力之前所最後從事的工作，是以自僱人士身分從事該種類的工作。”。

在英文本中
並沒有相應的規定。
請令中英文文本一致。

“(a) 給所定計劃的受託人”
並沒有在英文本出現。
請令中英文文本一致。

15. Transfer by participating employer of employee's accrued benefits

Section 150(b) and (c) is repealed and the following substituted—
“(b) the restructuring of the first-mentioned scheme under section 34B of the Ordinance; or”.

16. Section added

The following is added—

“150A. Transfer of accrued benefits where section 12A(6A) and (6B) of the Ordinance is applicable

Where section 12A(6A) and (6B) of the Ordinance is applicable, the new employer may only elect to have the employee's accrued benefits in the scheme transferred to a registered scheme—

- (a) in which the new employer is a participant; and
(b) by giving written notice of the election to the trustee of the last-mentioned scheme.”.

17. Claim for payment on ground of total incapacity

Section 164 is amended by adding—

“(5) If a claim is made by a scheme member of a registered scheme who was, immediately before becoming totally incapacitated, unemployed, the approved trustee of the scheme may pay the member's accrued benefits to that member, but only if the member—

- (a) can provide the trustee with a medical certificate, in a form specified or approved by the Authority and issued by a registered medical practitioner, certifying that the member is permanently unfit to perform the kind of work specified in the certificate for a reason so specified; and
(b) satisfies the trustee that the member was last engaged in that kind of work under a contract of employment before becoming totally incapacitated; and
(c) can provide the trustee with—
(i) subject to subparagraph (ii), a letter from the member's last employer certifying that that contract of employment for that particular kind of work has been terminated;
(ii) if the member is unable to comply with subparagraph (i) or has been unemployed for more than 7 years, a statutory declaration, in a form approved by the Authority, stating that that contract of employment for that particular kind of work has been terminated.
(6) If a claim is made by a scheme member of a registered scheme who, immediately before becoming totally incapacitated, ceased to be a self-employed person, the approved trustee of the scheme may pay the member's accrued benefits to that member, but only if the member—
(a) can provide the trustee with a medical certificate, in a form specified or approved by the Authority and issued by a registered medical practitioner, certifying that the member is permanently unfit to perform the kind of work specified in the certificate for a reason so specified; and
(b) satisfies the trustee that the member was last engaged in that kind of work as a self-employed person before becoming totally incapacitated.”.

- (f) 一項陳述，說明根據該等計劃的管限規則，參與僱主或計劃成員是否需要(全數或部分)承擔重組的費用；如需要的話，則另須載有一項陳述，指明根據該等規則該費用是如何支付的；及
- (g) 一份符合第(2)款的規定的重組方案。
- (2) 重組方案必須——
- (a) 指明建議的重組生效日期；
- (b) 指明建議給予參與僱主及計劃成員關於重組的通知的日期；
- (c) 包括如何進行重組的詳細計劃；
- (d) 包括顯示有關註冊計劃及其成分基金如何重組的圖表；
- (e) 指明將計劃成員的累算權益轉移至承轉計劃的安排；
- (f) 指明補償計劃成員因重組而在累算權益方面的潛在損失的安排，以及處理計劃成員因重組而產生的不滿的機制(如有的話)；
- (g) 包括重組的費用估算；及
- (h) 指明該費用擬由誰承擔，如擬由參與僱主或計劃成員(全數或部分)承擔的話，則另須指明他們需承擔的款額和如何支付該款額。
- (3) 申請亦必須附有下述文件——
- (a) 完成重組及(如將會成立任何新計劃)成立新計劃和(如任何承轉計劃是一項現有計劃)將現有計劃作出適當修訂所需的所有文件的擬本；
- (b) 給予參與僱主或計劃成員的尋求他們同意重組的通知的擬本(如適用的話)；及
- (c) 告知參與僱主或計劃成員重組一事、他們的權利和需採取的行動和一切相關安排的擬本。”。

“或”是否
需要修
改為“及”，以便中英文文本一致？

摘要說明

本條例草案的主要目的在於修訂《強制性公積金計劃條例》(第485章) (“該條例”)及其附屬法例，以對有關條文作出技術性的修訂，該等修訂是在實施該條例及其附屬法例中的實際經驗所顯示的有需要或屬適合的修訂。

2. 草案第3條修訂第7條，以加入新的第7(1A)條，規定有關僱員的僱主在採取其他步驟之餘，須採取所有切實可行的步驟確保該僱員在成為註冊計劃成員之後，在其整個受僱期間內繼續為註冊計劃的成員。草案第11條對第43B(3)條作出相應修訂，訂定如僱主因沒有遵守有關規定而在被定罪後持續不遵守該規定，可就持續罪行的期間對其施加每日罰款。

- (f) a statement as to whether or not the cost of the restructuring is required to be borne (whether wholly or partly) by the participating employers or scheme members under the governing rules of those schemes and, if so, a statement specifying how that cost is to be paid under those rules; and
- (g) a restructuring proposal that complies with subsection (2).
- (2) The restructuring proposal must—
- (a) specify the proposed effective date of the restructuring;
- (b) specify the proposed date on which notice of the restructuring is to be given to the participating employers and scheme members;
- (c) include a detailed plan on how to carry out the restructuring;
- (d) include a chart showing how the registered schemes concerned and the constituent funds of those schemes are to be restructured;
- (e) specify the arrangement for transferring the accrued benefits of scheme members to the transferee scheme;
- (f) specify the arrangement for compensating scheme members for any potential loss of accrued benefits due to the restructuring, and the mechanism (if any) for handling the grievances of scheme members arising from the restructuring;
- (g) include an estimation of the cost of the restructuring; and
- (h) specify by whom that cost is proposed to be borne and, if borne (whether wholly or partly) by the participating employers or scheme members, the amount they have to bear and how it is to be paid.
- (3) The application must also be accompanied by the following documents—
- (a) the drafts of all documents necessary for effecting the restructuring and, where any new scheme is to be established, for establishing the new scheme, and where any transferee scheme is an existing scheme, for amending the existing scheme as appropriate;
- (b) the draft notice to the participating employers and scheme members seeking their consent to the restructuring, if applicable; and
- (c) the draft notice to the participating employers and scheme members informing them of the restructuring, their rights, the actions that they need to take and all related arrangements.”.

Explanatory Memorandum

The principal object of this Bill is to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“the Ordinance”) and its subsidiary legislation in order to make a number of technical amendments to its provisions which practical experience of the operation of the Ordinance and its subsidiary legislation has revealed are necessary or desirable.

2. Clause 3 amends section 7 to add a new section 7(1A) to require an employer of a relevant employee to, inter alia, take all practicable steps to ensure that, after the employee becomes a member of a registered scheme, the employee continues to be a member of a registered scheme throughout his employment. Clause 11 makes a consequential amendment to section 43B(3) to impose a daily penalty on an employer for a continuing failure to comply with the requirement after conviction for the offence of failing to comply with the requirement.