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Secretary for Financial Services
(Attention: Miss Patricia So, AS(RSI))
Financial Services Bureau
18/F Tower I Admiralty Centre
18 Harcourt Road
Hong Kong

30 May 2002

BY FAX

Fax No. : 2294 0460
Total no. of pages : (10)

Dear Miss So,

Mandatory Provident Fund Schemes (Amendment) Bill 2002

I am scrutinizing the above Bill with a view to advising Members and should be grateful if you would clarify the following matters:

Clause 5 - proposed section 10A

After the Mandatory Provident Fund Schemes Authority (MPFA) has completed a review of the minimum and maximum levels of relevant income, is MPFA required to publish the results of the review and, if so, by what means? Should provisions be made to cover this?

Clause 9 - proposed section 34B

In the light of the amendments proposed for restructuring of registered schemes, should consequential amendments be made to items 10 and 11 of Schedule 6 to the Mandatory Provident Fund Schemes Ordinance (Cap. 485)?

Clause 11 - proposed section 43B

- (a) In proposed section 43B(3), what is the reason for proposing a daily fine of \$500 for each day on which the offence is continued ***after conviction therefor*** (my emphasis)? The way it is drafted appears to suggest that a daily fine can only be imposed for an offence which continues after the date of conviction. Does this reflect the Administration's intention? If it is intended that the court should have the power to impose a fine if the offence continues from the date of the offence to the date of conviction, should the provision be amended to read "a daily fine of \$500 for each day on which the offence continues". In

fact, this is the version adopted in other existing legislation where a daily fine is provided for continuing offences.

- (b) The use of "may" in proposed section 43B(4) appears to suggest that there may be another time limit for prosecution apart from the one proposed in the section. Does this reflect the Administration's intention? If so, what is the other time limit(s)? Would it be clearer if the provision is amended to the effect that proceedings shall be instigated within 6 months of the commission of the offence, or within 6 months after the offence is discovered by, or comes to the notice of, the Authority, whichever is the later? Please see a similar provision in existing legislation, for example, section 22 of the Drug Dependancy Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566).

Section 16 of the Schedule to the Bill

- (a) In proposed section 150A of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.) ("the General Regulation"), when should the new employer give written notice of the election to the trustee concerned? Should provisions be made to cover this?
- (b) Proposed section 150A(b) refers to "the trustee of the last-mentioned scheme". Does this mean the scheme to which the employee's accrued benefits in a scheme are to be transferred? The meaning of this provision appears to be ambiguous especially when it is read together with the Chinese text. The Chinese text refers to the trustee of the scheme mentioned in paragraph (a) of the section. However, the Chinese text of paragraph (a) contains two references to "scheme". Please improve the drafting of the provision to achieve clarity and consistency in both the English and Chinese texts. You may consider using the terms "transferee trustee" and "transferor trustee" as these are defined terms in Part XII of the General Regulation.

Section 20 of the Schedule to the Bill

- (a) In proposed section 2(3) of Schedule 1 to the General Regulation, should "of this Schedule" be added after "section 6(b)(i), (ii) or (iii)" to make a distinction between sections in the Schedule to, and sections in, the General Regulation. Please refer to sections 3(2)(b) and 6(a) of Schedule 1 to the General Regulation where such distinction is made.
- (b) Under proposed section 2(5) and (6) and section 11(3B) and (3C) of Schedule 1 to the General Regulation, MPFA may impose or amend conditions on the investment of the funds of a constituent fund. Can an approved trustee lodge an appeal against the decision of MPFA to impose or amend such conditions? If so, please make consequential amendments to Schedule 6 to the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

Section 21 of the Schedule to the Bill

- (a) The existing section 5(b) of Schedule 3 to the General Regulation provides that the custodian agreement must require the scheme to be indemnified by the custodian for "any losses attributable to fraudulent, dishonest or negligent acts or omissions committed by delegates of the custodian to the same extent as if the custodian had committed those acts or omissions itself". The proposed amendment to replace "any losses" by "direct losses" would have the effect of limiting the scope of the indemnity provided by the custodian. Please explain why such limitation is proposed.
- (b) If it is intended that the custodian should indemnify the scheme for "direct losses" only, should the reference be "any direct losses" to make the drafting of proposed section 5(b) consistent with that of section 5(a) of Schedule 3?

Chinese text

My comments on the Chinese text of the Bill are marked up on the attached pages for your consideration.

I would appreciate it if you would let me have your reply in both languages preferably on or before the Bills Committee meeting on 3 June 2002.

Yours sincerely,

(Connie Fung)
Assistant Legal Adviser

Encl.

c.c. DoJ (Attn: Mr Geoffrey FOX, SALD and Ms Marie SIU, SGC)
LA

“(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

The English text refers to "each period", not "each of the periods" which is the meaning reflected in the Chinese text. Please make both texts match.

“(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；

(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”；

*Please refer to
comments on
paragraph (b)(i)
above
(p. C548)*

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

(iii) 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) 管理局必須在自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位值的每月就業收入。”。

6. 供款作為累算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——

Why is "divert"
used here
when the
English text
does not
contain a
reference to
"so derived"?

- (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入息的有關僱員(臨時僱員除外)而言，指每一段該等期間；及”。

The English text does
not refer to "each of
the periods". Please
make both the English
and the Chinese texts
match.

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;
(b) 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. 參與權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. 管理局須向參與權主發給參與證明書

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) 已根據本條獲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權主。”。

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. 核准受託人須審核欠款及
供款附加費的計算

第 137(2) 條現予修訂，廢除在“上”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. 參與權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—

Should the period here refer to the "payment period"? If so, should this read "後付款期"?

15. 參與僱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。”

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。”

There is no equivalence of the reference in the English text. Please make the English & Chinese texts match.

Please make the English and Chinese texts match. There is no reference in the English text to the trustee mentioned in paragraph (a).

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通知的擬本。”。

As the English text refers

to "and", should "&" be used here? Please make the two texts match by changing either the English or the Chinese texts.

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.