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By Fax : 6 pages

8 June 2002

Ms Connie Fung
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Ms Fung,

Mandatory Provident Fund Schemes (Amendment) Bill 2002

Thank you for your letter of 30 May 2002, on the above subject. Our comments on the matters raised in your letter are set out below.

Clause 5 - proposed section 10A, publication of the results of MPFA's review

We envisage that MPFA would adopt an open and transparent approach in reviewing the minimum and maximum levels of relevant income. The MPF Schemes Advisory Committee (a statutory body with the function of advising the MPFA on its operation of the MPFSO) would be consulted and the findings would be presented to the Legislative Council. Changes to the level of relevant income would take the form of a Bill (or by notice in gazette made by the Chief Executive in Council) and subject to the sanction of the Legislative Council. For the current case for example, MPFA has consulted the MPF Schemes Operation Review Committee, the MPF Schemes Advisory Committee, and announced its proposals. The Legislative Council Financial Affairs Panel was also consulted and a press release was issued in conjunction with the gazettal of the Bill containing the proposed changes to the minimum level of relevant income. We should avoid being too prescriptive and we do not think it is necessary to stipulate the publication arrangement in the law.

Clause 9 - proposed section 34B, consequential amendments in respect of restructuring of registered schemes

We agree that items 10 and 11 of Schedule 6 to the MPFSO should be consequentially amended and a Committee Stage Amendment (CSA) will be prepared.

Clause 11 - proposed section 43B, daily fine

- (a) It is our intention that the daily fine should be imposed after the date of conviction. For the protection of scheme members' interest, it is important for the employer convicted of non-enrolment to rectify the situation as soon as possible. Therefore, a daily fine is introduced to deter the convicted employer from continuing with the offence. Similar provisions can be found in other pieces of legislation, e.g. in section 64(7) of the Personal Data (Privacy) Ordinance (cap. 486), the “daily penalty” is defined in section 2 to mean a penalty for each day on which the offence is continued after conviction therefor.
- (b) We have been advised that the use of the word ‘may’ in proposed section 43B(4) has the same legislative effect as the use of the word ‘shall’ in section 22 of the Drug Dependent Persons Treatment and Rehabilitation Centres (Licensing) Ordinance (Cap. 566). We do not think it is necessary to refer to the phrase ‘whichever is the later’, because the period of 6 months which runs from the discovery by MPFA would naturally expire later than the 6 months period which runs from the date of commission of the offence.

Section 16 of the Schedule to the Bill, transfer of accrued benefits

- (a) We agree that there is a need to introduce a timeframe: the new employer should elect to transfer benefits within the permitted period. A CSA to that effect will be prepared.
- (b) For the English text, it is beyond doubt that the expression “the last-mentioned scheme” is the registered scheme to which the employee's accrued benefits are to be transferred, and no change is needed. For the Chinese text, a CSA will be prepared to better reflect the English text.

Section 20 of the Schedule to the Bill, Investment of Scheme Funds

- (a) Agreed. To ensure consistency, a CSA will be prepared to add the expression “of this Schedule” after “section 6(b)(i), (ii) or (iii)”.
- (b) The decisions of MPFA which may be the subject of an appeal are

set out in Schedule 6 to the MPFSO. Appellable decisions are related to substantive matters affecting the overall administration and operation of a registered scheme. These include registration of MPF schemes, imposing of conditions on applicants for approval as approved trustees, suspension and revocation of registered schemes/approved trustees. Investment related provisions which will not affect the substantive operational of MPF schemes are not appellable. In the context of the proposed sections 2(5) and 11(3B) of Schedule 1 to MPFS (General) Regulation, the Bill already provides a 30 days' advance notice and an opportunity for the approved trustee to make written representation. This arrangement is consistent with the provisions in section 6(2) of the MPFS (General) Regulation which was added via the MPFS (Amendment) Ordinance 2002. The service providers have accepted such an arrangement.

Section 21 of the Schedule to the Bill, contents of custodial agreements

- (a) At present, custodians and their subcustodians are subject to different indemnification requirements under section 5(a) and (b) of Schedule 3 to the MPFS (General) Regulation. We propose to remove such inconsistency by amending section 5(b) of Schedule 3 so that subcustodians would be required to indemnify the scheme for 'direct losses' only.
- (b) We agree that section 5(b) should be amended to refer to “any direct losses” so that it would be consistent with the provision in section 5(a). A CSA will be prepared.

Chinese text

Clauses 4 and 7 – proposed sections 7A(10) and 12A(6B), employers and relevant employees required to contribute

The wording in these clauses follows those adopted in paragraphs (a) and (c) in the definition of “contribution period” in section 7A(10). Furthermore “該等期間” does not mean “each of the periods” in the context of the Chinese text. In the English text, the description of the period immediately follows the words “each period”. In the Chinese text the sequence is reversed. We described the period first and then goes on to say each of that kind of period. So the word “等” here does not mean more than one but refers to the kind of period described in the preceding part. There is no discrepancy in both text. I enclose a copy extract from 《語文大詞典》 with the relevant explanation of the word “等” underlined for your easy reference.

Clause 6 – proposed section 12(2A), contributions to vest in scheme members as accrued benefits

There is no discrepancy in meaning between the English and Chinese text. It is beyond doubt that “如此產生的” in paragraphs (a)(ii), (b)(ii) and (c)(ii) refer to “作存款存放所產生的” in paragraphs (a)(i), (b)(i) and (c)(i).

Clause 10 – proposed section 136, authority to give notice

The wording follows those in the existing provision.

Clause 16 – proposed section 150A, transfer of accrued benefits

A CSA will be prepared to match the Chinese with the English text.

Clause 17 – proposed section 164, claim for payment on ground of total incapacity

A CSA will be prepared to delete the reference to “在該成員失業的情況下 –”。

Clause 26 – proposed section 4

A CSA will be prepared to match the Chinese with the English text.

Please do not hesitate to contact the undersigned for any further enquiries.

Yours sincerely,

(Miss Patricia So)
for Secretary for Financial Services

děi (得)

得 dēi (得) 得: 这个工程~三个月才能完|修这座水坝~多少人力|表示意志上或事实上必须: 咱们绝不能落后, ~把工作赶上去|取得优异成绩, 就~努力学习|花~钱的否定是“无谓”或“不值”, 不说“不得”。表示程度的必然: 钱下大雨了, 要不快走, 就~淋雨。

得 dēi (得) 得: 多亏, 多亏: ~自来博得, 不然又见不着他了。

dēn (抻)

抻(dēn) 抻: 两头同时用力, 或一头用力, 把另一头用力, 把线、绳子; 布匹、衣服等拉一拉, 把线手~。[方言] 抻: 那~住了, 不要放手。

dēng (灯)

灯(dēng) 灯: 照明或装饰用的发光的器具。一灯~|电~|红灯~|煤油~|太阳~。②指能燃烧气体用来照明的东西加热的器具: 酒精~|本生~。③指收音机、电视机的电子管: 灯~收音机。

灯(dēng) 灯: 指民间的莲花灯的工艺。②旧时演戏时用以装饰台柱或道具的灯: 灯~|灯~。

灯(dēng) 灯: 灯心草的茎的中心部分, 白色, 用做灯的灯心。

灯(dēng) 灯: 灯的光度。②指灯台上或灯罩内的照明设备。

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