

**Response to views submitted by various organizations/individuals\* on the Mandatory Provident Fund Schemes (Amendment) Bill 2007**

**Part A: Views/Concerns on proposals under the Bill**

Organizations/ Individuals*	Views/Concerns	Response by the Administration/ Mandatory Provident Fund Schemes Authority (MPFA)
<b>(I) General views on the Bill</b>		
	<ul style="list-style-type: none"> <li>The majority of organizations indicate support for the introduction of the Bill.</li> </ul>	<ul style="list-style-type: none"> <li>Noted</li> </ul>
<b>(II) Proposed inclusion of housing allowance and other housing benefit in the definition of "relevant income"</b>		
HKRSA HKCIEA HKCTU HKFTU	<ul style="list-style-type: none"> <li>They support the proposal.</li> </ul>	<ul style="list-style-type: none"> <li>Noted</li> </ul>
HKCSMB	<ul style="list-style-type: none"> <li>It expresses disagreement and is concerned that the proposal will increase the burden on employees to make MPF contribution and to pay a higher amount of salaries tax which is based on the employee's earnings.</li> </ul>	<ul style="list-style-type: none"> <li>The complaints received by the MPFA indicate that some employers have abused the existing arrangement for the housing allowance to evade their responsibility for making MPF contributions. We consider that it is important to proactively consider how that can be addressed to prevent unscrupulous employers from moving what would otherwise be relevant income to something that can be considered to be a housing allowance or benefit so as to reduce the amount of mandatory contributions payable. Hence, we put forward this proposed legislative amendment.</li> </ul>

Organizations/ Individuals*	Views/Concerns	Response by the Administration/ Mandatory Provident Fund Schemes Authority (MPFA)
		<ul style="list-style-type: none"> <li>The proposed amendment to remove the housing allowance/benefit exclusion from the definition of “relevant income” will only affect the determination of “relevant income” for MPF purpose. The amendment will not have implications on the existing arrangement for salaries tax. In particular, the amendment will not affect the salaries tax liability of an employee who is or will be enjoying housing allowance/ benefit provided or to be provided by his employer.</li> </ul>
EFHK	<ul style="list-style-type: none"> <li>It urges the Administration to consider including housing allowance payable in cash terms only in the definition of "relevant income".</li> </ul>	<ul style="list-style-type: none"> <li>Presently, an employer is required to decide whether each and every remuneration item of the employee falls under the definition of “relevant income” in accordance with the “statutory criteria” stipulated under the Mandatory Provident Fund Schemes Ordinance. The term “relevant income” is defined to mean, in respect of a relevant employee, any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite or allowance (other than a housing allowance or other housing benefit), expressed in monetary terms, paid or payable by an employer (directly or indirectly) to that relevant employee in consideration of his employment under that contract, but does not include severance payments or long service payments under the Employment Ordinance.</li> <li>The proposal aims at removing the current housing allowance/benefit exclusion to the effect that housing allowance/benefit will be treated no differently from other types of allowances/benefits. After the amendment, an item of housing allowance/benefit, like any other remuneration item, will need to be assessed with reference</li> </ul>

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	<ul style="list-style-type: none"> <li>It considers that the Administration should set a reasonable timeframe for implementing the new definition so that employers can have sufficient time to adjust their payroll systems and the design of their employees' benefits packages which use the amount of relevant income as the basis for computing other benefits such as voluntary contributions.</li> </ul>	<p>to the "statutory criteria" to determine if it falls within the definition of "relevant income", i.e. only the housing allowance/benefits payable in cash terms would be included as "relevant income".</p> <ul style="list-style-type: none"> <li>If necessary, a transitional period will be provided to allow parties concerned to make necessary changes to systems and procedures. The MPFA will launch publicity and education programmes to increase awareness of the legislative amendments and will encourage trustees to communicate with their clients to facilitate the transition.</li> </ul>
HKCEA	<ul style="list-style-type: none"> <li>It supports the proposal and considers that it will unlikely have a significant impact on the employment market and the economy.</li> </ul>	<ul style="list-style-type: none"> <li>Noted</li> </ul>
CGCC	<ul style="list-style-type: none"> <li>While agreeing with the need to safeguard against abuse, it queries that MPFA has not provided full information in support of its statement that the proposed amendment is made "in the light of abuses that have developed in recent years".</li> <li>The proposed amendment may increase the contribution burden on employees and employers, in particular those</li> </ul>	<ul style="list-style-type: none"> <li>Since the implementation of the MPF System in December 2000, the MPFA has received complaints relating to housing allowance and benefit from about 400 employees working for about 50 employers in different industries. These employees alleged that their employers had adopted an artificial salary arrangement by labeling part of their salaries as housing allowance and benefit, and paid MPF contributions only on the remaining portion of salaries, thereby reducing the amount of MPF contributions payable.</li> <li>We believe that most of the employees who receive housing allowance/benefits belong to the higher income</li> </ul>

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	<p>in small and medium enterprises. In the longer-term, the increase in the maximum level of relevant income for MPF purposes will also increase the contribution burden on employers and employees.</p>	<p>group. It is likely that their relevant income at present already exceeds the maximum level of relevant income for MPF contributions. The proposed amendment has limited impact on the employers and employees.</p> <ul style="list-style-type: none"> <li>The review of the minimum and maximum level of relevant income and the definition of “relevant income” are two separate issues. Before any change is introduced to the minimum and maximum level of relevant income, we will thoroughly consult the stakeholders.</li> </ul>
CMAHK	<ul style="list-style-type: none"> <li>While raising no objection to the proposal, there is concern about the resultant increase in compliance cost for employees and employers to understand and adapt to the new calculation of MPF contributions. The financial burden on employers who are making voluntary contributions will also be increased.</li> </ul>	<ul style="list-style-type: none"> <li>Under the present arrangement, the employers are required to decide whether each and every remuneration item of the employees falls under the definition of “relevant income” in accordance with the “statutory criteria”. The MPFA has also issued guidelines to provide guidance to relevant parties about how to define the relevant income of the relevant employees.</li> <li>The proposal aims at removing the current housing allowance/benefit exclusion and would not amend the “statutory criteria” mentioned above. After the amendment, an employer will be assessing an item of housing allowance/benefit with reference to the same familiar set of “statutory criteria” to determine if it falls within the definition of “relevant income”.</li> <li>The proposed amendment will only affect those employers who provide housing benefits to their employees. If the employer is only providing housing benefits of the same kind and nature to its employee (e.g. only provide housing</li> </ul>

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	<ul style="list-style-type: none"> <li>It suggests that MPFA should assess and quantify the financial implications of the proposed amendment, in particular the impact on the contribution burden of employers and employees.</li> </ul>	<p>allowance in cash term), it would only need to assess that benefits once so as to determine if the item of housing benefits falls under the definition of “relevant income”. Thereafter, the employer would not need to conduct assessment on the same benefits. In the course of conducting the assessment, the employer could make reference to the guidelines issued by the MPFA, and it could also seek assistance from the MPFA or the trustee of its schemes if necessary.</p> <ul style="list-style-type: none"> <li>If necessary, a transitional period will be provided to allow parties concerned to make necessary changes to systems and procedures. The MPFA will launch publicity and education programmes to increase awareness of upcoming changes and will encourage trustees to communicate with their clients to facilitate the transition.</li> <li>We encourage employers to make voluntary contribution for the employees to enhance their retirement protection. This would also help employers to retain talents. Employers could decide whether to make voluntary contribution having regard to their own circumstances.</li> <li>The proposal would not affect those employees earning more than \$20,000 a month (excluding housing allowances and benefits). In other words, the mandatory contributions to be made by the relevant employers and employees would remain unchanged. These cases are expected to cover a substantial portion of the genuine housing allowance cases.</li> </ul>

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	<ul style="list-style-type: none"> <li>• The new definition of "relevant income" should not be adopted in the calculation of other employment benefits (e.g. traveling allowance) based on the employee's income.</li> <li>• The Bill should provide clearly whether the calculation of housing allowance is based on the actual monetary amount payable by the employer or the notional "rental value" of accommodation provided by the employer (e.g. by using a certain percentage of the employee's total net income for determining the "rental value", as in the case of computing salaries tax).</li> </ul>	<ul style="list-style-type: none"> <li>• The proposal aims at removing the current housing allowance and benefit exclusion to the effect that housing allowance/ benefit will be treated no differently from other types of allowances/benefits. The proposed amendment would not affect the calculation of other remuneration items. For example, if an employer provides medical insurance benefits in non-monetary form to its employee, the benefit will not be included as "relevant income".</li> <li>• In determining the amount of relevant income arising from a particular housing arrangement in the MPF context, the tax rules on rental value of a place of residence provided by employers do not apply, and it should be based on the actual monetary amount.</li> </ul>
HKCIEA HKCTU	<ul style="list-style-type: none"> <li>• The proposed amendment would prevent abuse by employers seeking to reduce their MPF contribution by designating a portion of the employees' income as housing allowance.</li> <li>• The financial impact of the revised definition of "relevant income" should not be significant, as the majority of employees receiving housing allowance are higher income earners with monthly income above the current maximum level of \$20,000.</li> </ul>	<ul style="list-style-type: none"> <li>• Noted</li> </ul>

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<b>(III) Improvement of the arrears recovery mechanism</b>		
EFHK	<ul style="list-style-type: none"> <li>It supports the streamlining of the arrears recovery process, but considers that employers should be allowed sufficient time to adapt to the change, which will no longer provide a buffer (e.g. a 30-day settlement period) for employers to remit contribution data and payment by the end of the contribution day.</li> </ul>	<ul style="list-style-type: none"> <li>If necessary, a transitional period will be provided to allow parties concerned to get accustomed to the new arrangement. The MPFA will launch publicity and education programmes to increase public awareness of the legislative amendments and will encourage trustees to communicate with their clients to facilitate the transition.</li> </ul>
HKCEA	<ul style="list-style-type: none"> <li>It supports the proposed amendments to safeguard against default MPF contributions by employers and to protect the retirement benefits of employees.</li> </ul>	<ul style="list-style-type: none"> <li>Noted</li> </ul>
HKCIEA	<ul style="list-style-type: none"> <li>It agrees that the arrears recovery procedure should be streamlined. Instead of removing the 30-day settlement period altogether, HKCIEA suggests to reduce it to 10 days to allow employers a buffer period for settling the default contributions with the trustees.</li> </ul>	<ul style="list-style-type: none"> <li>The proposal does not affect the current contribution requirement under which an employer is required to remit mandatory contributions to the trustee by the contribution day (i.e. the 10<sup>th</sup> day after the end of the contribution period). If the employer fails to do so, the trustee will need to make a report to the MPFA within the 10 days immediately following the contribution day informing the MPFA of the fact. The MPFA can then follow up with the defaulting employer.</li> <li>The MPFA would encourage the trustees to first follow up with these employers within the 10 days immediately following the contribution day before reporting these cases to the MPFA as default cases. This serves to avoid wastage of resources of all parties concerned.</li> </ul>

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HKFTU	<ul style="list-style-type: none"> <li>It suggests that Section 133 of Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) should be amended to the effect that if the employer has failed to pay its MPF contributions by the contribution day, the MPF service provider must notify the employee concerned in writing of the default payment immediately.</li> </ul>	<ul style="list-style-type: none"> <li>The MPFA has worked with MPF trustees to install a central enquiry hotline to facilitate employees' checking of their MPF accounts balance and early detection of default contributions so that they can report the suspected offences to the MPFA as soon as possible. A pilot central enquiry line has been launched in August 2007.</li> <li>Apart from the enquiry line, the scheme members could also enquire the contribution status of their MPF accounts through the Internet or other channels as provided by different trustees. The MPFA will continue to explore other possible ways to facilitate the employees' checking of the contribution status of their MPF accounts.</li> </ul>
<b>(IV) Enhancing the enforcement of the MPF System</b>		
HKCIEA	<ul style="list-style-type: none"> <li>It supports the proposed amendments to enhance the enforcement of the MPF System, such as those relating to the service of summons on the employer's business address, expansion of MPFA's power to require production of records from employers and self-employed persons and the extension of the prosecution time bar to 6 months after the offence is discovered by or comes to the notice of MPFA.</li> </ul>	<ul style="list-style-type: none"> <li>Noted</li> </ul>
EFHK	<ul style="list-style-type: none"> <li>Given the current high compliance rate of about 90% under the MPF System, the Administration should adopt an educational approach and provide tax incentives similar to those provided in the United States 401(k) system to achieve full compliance.</li> </ul>	<ul style="list-style-type: none"> <li>The 401(k) system in the United States is a voluntary retirement contribution scheme which is different from the MPF System.</li> <li>The MPFA has been conducting public education programme to enhance the public understanding of the</li> </ul>

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		operation of the MPF System and increase their awareness to comply with the relevant requirements.
HKCEA	<ul style="list-style-type: none"> <li>It supports the strengthening of enforcement actions against non-compliance as it is an important measure to ensure the smooth operation of the MPF System.</li> </ul>	<ul style="list-style-type: none"> <li>Noted</li> </ul>
FHKKLU	<ul style="list-style-type: none"> <li>It suggests expanding the power of MPFA to inspect the contracts and examine the working relationship between employers and self-employed persons for the purpose of ensuring compliance with the provisions of the MPF legislation. Prosecution should be instituted against the employers who have attempted to evade MPF contributions by requiring their employees to become self-employed persons.</li> </ul>	<ul style="list-style-type: none"> <li>Whether an individual is working as an employee or a self-employed person (“SEP”) depends on many factors such as the working arrangements between the parties and the degree of supervisory control, etc. Each case must be examined on its own merits. An employer cannot evade its MPF responsibilities simply because a contract is signed with its employee claiming that the latter is working as a SEP. The MPFA will conduct investigation and take appropriate action with regard to the relevant cases</li> <li>The proposed section 19A empowers the MPFA to require employers, SEPs or any other persons to produce records for inspection, irrespective of whether during on-site inspections or not, for the purpose of ensuring compliance with the provisions of the MPF legislation. An employer, a SEP or any other person who, without reasonable excuse, fails to comply with the request commits an offence and is liable on summary conviction to a fine.</li> <li>After section 19A comes into operation, the MPFA can carry out inspection and investigation against the non-compliant employers more efficiently and effectively.</li> </ul>

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<b>(V) Improvement of the administration and regulation of MPF schemes</b>		
EFHK	<p><u>Transfer of accrued benefits on cessation of employment</u></p> <ul style="list-style-type: none"> <li>As the proposed amendment allows a trustee to accept from an employee a notice of cessation of employment by statutory declaration to effect the transfer of accrued benefits, EFHK is concerned that such an arrangement may deprive the employer of some of his rights such as using the employer's mandatory contribution for offsetting long service payment or severance payment.</li> </ul>	<ul style="list-style-type: none"> <li>The proposal is intended to primarily cater for cases where the trustee can no longer reach the employer or the employer has refused to provide notice on the termination of employment. As the trustees would contact the employer concerned before accepting the statutory declaration from the employee, the proposal should not affect the arrangement for using the accrued benefits arising from employers' contribution to offset long service payment or severance payment.</li> </ul>
HKIFA HKTA  HKIFA	<p><u>Disclosure of information</u></p> <ul style="list-style-type: none"> <li>The "Fee Comparative Platform" (FCP) introduced by MPFA should include the information currently provided in the fund fact sheet (e.g. fund size, investment objectives, fund performance, etc).</li> <li>If the FCP has capacity constraint, it should at least carry the performance data (such as three to five years' data) together with the risk level/risk indicator of each fund, and the services offered by each provider. Such information will enable employers and employees to be in a better position to make informed investment decisions.</li> </ul>	<ul style="list-style-type: none"> <li>The MPFA would consider the suggestion of including the information in the fund fact sheets in the FCP.</li> <li>Ditto</li> </ul>

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HKSMEA	<ul style="list-style-type: none"> <li>• With the increasing use of the Internet, MPFA should allow the fund industry to have more extensive use of electronic means to disseminate MPF-related information.</li>   <li>• Transparency of the MPF schemes should be improved by providing information on the breakdown of the fees and charges to scheme members.</li> </ul>	<ul style="list-style-type: none"> <li>• We support and encourage the wider use of electronic distribution of documents by trustees and investment managers provided it is an effective way of disseminating information to members. We note that the existing legislation generally presents no barrier to the use of electronic means in distributing MPF information or documents.</li>   <li>• MPF trustees would need to consider the needs of different stakeholders with different level of access to electronic means, and the nature of the documents in question in assessing whether it is appropriate to adopt electronic transmission. But we see no harm for trustees to offer electronic transmission as an option for selection by individual scheme member.</li>   <li>• The MPFA is committed to improving the transparency of fees so as to help bring market forces into full play.</li>   <li>• Following the issue of the “Code on Disclosure for MPF Investment Funds” in 2004, the MPFA is developing a web-based comparative platform to help scheme members compare fees and charges across funds and schemes.</li>   <li>• The first phase of this platform, which provides scheme members with information about the highest/average/lowest expenses by fund types, has been launched in July 2007.</li> </ul>

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<p>FHKKLU</p> <p>HKFTU</p>	<ul style="list-style-type: none"> <li>• Given that MPF service providers only issue the Annual Benefit Statement once a year, MPF scheme members may not be able to detect the problem of default payment in a timely manner and thus will delay the arrears recovery. Further improvements should be made to facilitate employees to access the information of their MPF accounts (e.g. by telephone enquiry and other possible measures)</li> <li>• MPF service providers should be required to issue an electronic service card for scheme members to check their MPF accounts through automatic teller machines.</li> <li>• The transparency of MPF schemes and their investment performance should be enhanced.</li> </ul>	<ul style="list-style-type: none"> <li>• The second phase is designed to show detailed information about fees and charges for each individual fund. The launching time of the second phase will depend on the legislative timetable of the current Bill.</li> <li>• Please refer to the response to the views of the FTU on the improvement of the arrears recovery mechanism.</li> <li>• While some banks act as intermediaries to promote certain MPF schemes, the actual operators of MPF schemes are the trustees which do not have extensive branch networks and the administration systems to readily provide automatic teller machines (ATM) service. Even for those trustees with banking business within its financial group, there will be substantial development work required to adapt the banking passbook system to the MPF system due to the more complex nature of MPF accounts.</li> <li>• Following the issue of the “Code on Disclosure for MPF Investment Funds” in 2004, the MPFA is developing a web-based comparative platform to help scheme members compare fees and charges across funds and schemes. The first phase of this platform, which provides scheme members with information about the</li> </ul>

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		<p>highest/average/lowest expenses by fund types, has been launched in July 2007. The second phase is designed to show detailed information about fees and charges for each individual fund. The launching time of the second phase will depend on the legislative timetable of the current Bill. The MPFA would also consider the suggestion of including the information in the fund fact sheets in the FCP.</p>
HKCIEA	<p><u>Consent to restructuring of MPF schemes</u></p> <ul style="list-style-type: none"> <li>• HKCIEA agrees with most of the proposals to enhance the administration and regulation of MPF schemes. Nevertheless, it has reservation on the proposal that the consent given by MPFA to trustees for restructuring of MPF schemes may override the requirement to obtain scheme members' consent. In order to safeguard the interest of scheme members, the consent for scheme restructuring should be entrusted to high-level government officials, and not solely to MPFA.</li> </ul>	<ul style="list-style-type: none"> <li>• Under the existing MPF legislation, the MPFA may consent to the scheme restructuring application only if satisfied, amongst other things, that the interests of the members of the scheme or those schemes will be adequately protected. The MPFA always encourages trustees/ employers to communicate well with scheme members regarding matters of the scheme that may have an impact on scheme members. This remains the case after the amendment. The proposed legislative amendment only seeks to clarify the effect of the consent given by MPFA on the scheme restructuring.</li> </ul>
HKCEA	<p><u>Withdrawal of accrued benefits</u></p> <p>HKCEA reflects the view of some employees of its member companies that greater flexibility should be provided for scheme members to withdraw their accrued benefits under special circumstances, e.g. sickness or other special grounds.</p>	<ul style="list-style-type: none"> <li>• Presently, under the MPF legislation, subject to exceptions, benefits attributable to employer and employee mandatory contributions accrued under the MPF scheme can only be withdrawn upon the employee attaining the retirement age of 65. These exceptional circumstances are:</li> </ul>

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Mr MAK Ip-sing	<ul style="list-style-type: none"> <li>• He suggests allowing employees to withdraw a certain amount of accrued benefits for urgent need after they have made MPF contributions for 10 years.</li> </ul>	<ul style="list-style-type: none"> <li>(a) early retirement at age 60;</li> <li>(b) permanent departure from Hong Kong;</li> <li>(c) total incapacity;</li> <li>(d) no contributions were paid in the past 12 months, the account balance does not exceed \$5,000; and will not work in the future; or</li> <li>(e) death.</li> <li>• The circumstances allowing for withdrawal of accrued benefits as presently stipulated in the MPF legislation were extensively deliberated by the Legislative Council. When determining what circumstances in which early withdrawal of accrued benefits might be permitted, the underlying principle is to balance the need for early withdrawal of benefits and the requirement to protect and preserve accrued benefits for the purpose of retirement protection. Allowing additional circumstances for early withdrawal of benefits may adversely affect the purpose of the MPF System.</li> <li>• Ditto</li> </ul>

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Mr LAI Chi-lap HKCEA	<p><u>Level of fees and charges for MPF schemes</u></p> <ul style="list-style-type: none"> <li>The management fees of MPF schemes are overcharged.</li> </ul>	<ul style="list-style-type: none"> <li>The MPF System mainly relies on market forces to set the type and level of fees. The MPFA is committed to improving the transparency of fees so as to help bring market forces into full play.</li> <li>The MPFA is currently consulting the relevant stakeholders (including the industry, employers and employees organizations) on the development of a practicable proposal to allow the employees to transfer accrued benefits derived from their own contributions to an MPF scheme of their choice. The proposal, if successfully implemented, would result in around 60% of MPF benefits being portable between trustees and would encourage employees to take a more active interest in their MPF investments, thereby helping to promote competition in the MPF market.</li> <li>Following the issue of the “Code on Disclosure for MPF Investment Funds” in 2004, the MPFA is developing a web-based comparative platform to help scheme members compare fees and charges across funds and schemes. The first phase of this platform, which provides scheme members with information about the highest/average/lowest expenses by fund types, has been launched in July 2007. The second phase is designed to show detailed information about fees and charges for each individual fund. The launching time of the second phase will depend on the legislative timetable of the current Bill.</li> </ul>

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	<ul style="list-style-type: none"> <li>• HKCEA considers it necessary to improve the administration of MPF schemes.</li> </ul>	<ul style="list-style-type: none"> <li>• Moreover, the MPFA from time to time reviews the operational arrangements of the existing System in consultation with the industry, and proposes legislative amendments to streamline the procedures and reduce the operating costs of MPF schemes.</li> <li>• Educating scheme members about the importance of fees and charges in investment decisions is also part of MPFA's ongoing efforts.</li> <li>• At present, the approved trustees provide offering documents (or known as principal brochures, prospectuses, etc.) for the MPF schemes they operate which provide information to related parties such as employers and scheme members about the MPF schemes and their underlying constituent funds (e.g. the dealing of the constituent funds, valuation and pricing of the funds, investment risk of the funds, etc.).</li> <li>• Additionally, the employers and employees could normally make a request to the approved trustees for inspection of the trust deed of the MPF schemes, so as to understand better about the operation and other aspects of the establishment and operation of the schemes and their constituent funds.</li> </ul>

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HKFTU	<ul style="list-style-type: none"> <li>To address the concern about high management fees and charges imposed by MPF service providers, the Government should consider establishing a central system for collecting MPF contributions from employers and employees for onward transfer to the relevant MPF service providers. The Government should regulate the fees and charges by way of legislation if the situation has not improved.</li> </ul>	<ul style="list-style-type: none"> <li>Under the existing MPF legislation, the approved trustee is required to assist the participating employers and scheme members as far as possible to participate in the scheme operation effectively, such as answering their enquiries about the schemes, including enquiries related to any information contained in the documents that have been provided to the scheme members or participating employers.</li> <li>The establishment of a central employee service management system would bring about substantial changes to the operation of the existing MPF System and there is yet to be any evidence to indicate that the system could reduce administration cost. The MPFA would continue to explore with the trustees possible ways to reduce administration cost.</li> <li>The MPFA is exploring different ways to drive down the management fees of the MPF funds. There is no plan to regulate the level of fees through legislation.</li> </ul>
Mr MAK Ip-sing	<ul style="list-style-type: none"> <li>He considers that the management fees of MPF schemes should be reduced by 50%.</li> </ul>	<ul style="list-style-type: none"> <li>The MPFA is exploring different ways to drive down the management fees of the MPF funds. There is no plan to regulate the level of fees through legislation.</li> </ul>
HKSMEA	<ul style="list-style-type: none"> <li>The Government should regulate the fees and charges of MPF service providers by way of legislation, by requiring them to charge standard management fees or to charge at a fixed percentage of the investment return.</li> </ul>	<ul style="list-style-type: none"> <li>Ditto</li> </ul>

**Part B: Other views/concerns on the MPF System**

Organizations/ Individuals*	Views/Concerns	Response by the Administration/MPFA
<b>(I) Employees' choice of MPF service providers</b>		
HKFTU FHKKLU	<ul style="list-style-type: none"> <li>Employees should be given the right to choose their MPF service providers.</li> </ul>	<ul style="list-style-type: none"> <li>The MPFA is currently consulting the relevant stakeholders (including the industry, employers and employees organizations) on the development of a practicable proposal to allow the employees to transfer accrued benefits derived from their own contributions to an MPF scheme of their choice. The proposal, if successfully implemented, would result in around 60% of MPF benefits being portable between trustees. The MPFA would consider the views of the stakeholders and plans to submit its proposal to the Administration by end of this year.</li> </ul>
HKSMEA	<ul style="list-style-type: none"> <li>In accordance with the results of a survey on its members, HKSMEA opposes to allowing employees to choose their own MPF service provider.</li> </ul>	<ul style="list-style-type: none"> <li>Ditto</li> <li>Under the proposal, the new contributions to be made by employers and employees would still be paid to the schemes participated by the employers, so as to minimise the administrative work of the employers and trustees. The employers would not be required to handle any documents or procedures for the transfer of accrued benefits arising from employees' contributions, and therefore the proposal should not have significant impact on the employers.</li> </ul>

Organizations/ Individuals*	Views/Concerns	Response by the Administration/MPFA
<b>(II) Adjusting the maximum level of relevant income and tax relief limit for MPF contributions</b>		
HKRSA	<ul style="list-style-type: none"> <li>The maximum level of relevant income for MPF contributions should only be raised in a gradual manner. For the time being, HKRSA suggests that it would only be appropriate to raise the level to \$25,000 per month.</li> </ul>	<ul style="list-style-type: none"> <li>The current maximum and minimum levels of relevant income for MPF contributions are \$20,000 and \$5,000 respectively.</li> <li>Section 10A of the MPFSO requires the MPFA to review the minimum and maximum relevant income levels at least once every 4 years from the commencement of section 10A of the MPFSO.</li> <li>Section 10A came into operation on 19 July 2002. The MPFA has earlier proposed to increase the maximum level of relevant income to \$30,000 per month and retain the minimum level of relevant income at \$5,000 per month.</li> <li>The MPFA has consulted the LegCo Panel on Financial Affairs earlier this year on its review findings and recommendations. The Administration is now considering the views of different parties.</li> </ul>
HKTA	<ul style="list-style-type: none"> <li>It considers that the proposed increase of the maximum level of relevant income from \$20,000 to \$30,000 would promote better retirement planning for the working population and enhance the retirement protection of scheme members.</li> </ul>	<ul style="list-style-type: none"> <li>Ditto</li> </ul>
HKRSA HKTA	<ul style="list-style-type: none"> <li>The tax relief limit should be raised in accordance with any increase in the maximum level of relevant income.</li> <li>The Government should also provide tax relief to</li> </ul>	<ul style="list-style-type: none"> <li>In considering the adjustment to the maximum level of relevant income, the Government would also consider the tax relief arrangement for MPF contributions.</li> </ul>

Organizations/ Individuals*	Views/Concerns	Response by the Administration/MPFA
	<p>encourage additional voluntary contributions from scheme members.</p>	<ul style="list-style-type: none"> <li>• We encourage employees to make voluntary contributions if circumstances permit with a view to accruing more benefits for retirement to suit individual needs. We are looking into the proposal to provide tax deduction for voluntary contributions.</li> <li>• The granting of tax deductions for voluntary contributions made to MPF schemes raises a number of issues such as the scope and parameters of the arrangement, equity concern of those who cannot benefit from the tax deduction and implications on the administration of the MPF System.</li> </ul>
<b>(III) Offsetting arrangements for Severance Payment and Long Service Payment</b>		
HKFTU	<ul style="list-style-type: none"> <li>• Severance payment and long service payment are statutory labour benefits which are different in nature from MPF benefits. The existing arrangement of offsetting the amount of such payments from the employees' accrued benefits should be abolished to achieve better protection for scheme members upon their retirement.</li> </ul>	<ul style="list-style-type: none"> <li>• Before the MPF System was put into operation, the law already allowed employers to offset the accrued benefits derived from their contributions made to registered retirement schemes against severance payment or long service payment. It was decided only after extensive consultations and with the concerted efforts of all parties concerned that this long-established offsetting arrangement should continue for the MPF schemes. Removal of the offsetting arrangement would have far-reaching implications on employers (in particular those small and medium sized enterprises) in view of the significant cost impact on them.</li> <li>• The review of the offsetting arrangement under the MPF System is a complex issue requiring the support of both employers and employees, which is however not evident at</li> </ul>

Organizations/ Individuals*	Views/Concerns	Response by the Administration/MPFA
		present. The Administration thus has no plan to review such arrangement.
<b>(IV) Sanction for non-enrolment and/or non-payment of MPF contributions</b>		
FHKKLU HKFTU	<ul style="list-style-type: none"> <li>They urge that a higher penalty should be introduced in law for non-enrolment or non-payment of MPF contributions to achieve a deterrent effect. HKFTU also suggests that the penalty for default payment of MPF contributions should be brought in line with that for defaulting payment of wages under the Employment Ordinance (Cap. 57), i.e. a maximum fine of \$350,000 and imprisonment of three year upon conviction.</li> </ul>	<ul style="list-style-type: none"> <li>The MPFA has submitted to the Government its proposal to increase the penalty for defaulting contribution and failure to enrol the employees in MPF schemes so as to put it on a par with the penalty for wage default under the Employment Ordinance. We are actively considering the proposal.</li> </ul>
<b>(V) The operation of the MPF System</b>		
Mr LAI Chi-lap	<ul style="list-style-type: none"> <li>He suggests that the Government should establish a publicly-managed fund similar to the Tracker Fund of Hong Kong to provide an alternative to employees.</li> </ul>	<ul style="list-style-type: none"> <li>The MPFA would consider whether product costs can be reduced, for example, by making greater use of simplified and lower cost investment products.</li> </ul>
Mr MAK Ip-sing	<ul style="list-style-type: none"> <li>He considers that the Government should require MPF service providers to invest at least 30% of their MPF funds in Hong Kong to prevent massive capital outflows.</li> </ul>	<ul style="list-style-type: none"> <li>Under the existing law, at least 30% of the MPF funds must be held in Hong Kong dollar currency investments. This is intended to reduce the risk arising from currency exchange.</li> </ul>

Organizations/ Individuals*	Views/Concerns	Response by the Administration/MPFA
<b>(VI) Protection of employees' entitlements under the MPF scheme</b>		
FHKKLU	<ul style="list-style-type: none"> <li>At present, employees cannot apply for payment of the arrears MPF contribution from the Protection of Wages on Insolvency Fund when their employers went into bankruptcy or liquidation. MPFA should ensure compliance by employers with the MPF legislation and examine measures to enable employees to safeguard their entitlements under the MPF scheme or be compensated in case of default payment by employers.</li> </ul>	<ul style="list-style-type: none"> <li>Where the insolvent employers deduct employees' wages for making employees' MPF contributions and default on these sums, such arrears of wages are already covered by the Protection of Wages on Insolvency Fund.</li> <li>Upon notification of default contribution cases (whether through employees lodging complaints or trustees submitting reports), the MPFA will carry out inspection and investigation as soon as possible in order that prompt enforcement action can be initiated against the employers concerned to recover the default contributions.</li> </ul>
<b>(VII) Anti employee discrimination</b>		
HKBA	<ul style="list-style-type: none"> <li>HKBA suggests that protection similar to that under the Employment Ordinance (Cap. 57) Sections 63A(5) and 72B be provided to 'whistle blowing' employees in order to encourage their reporting of offences by employers so that open ended extension of prosecution time limit may not be necessary.</li> </ul>	<ul style="list-style-type: none"> <li>The MPFA has submitted to the Administration a proposal to better protect the interests of an employee who makes a non-compliance report to the MPFA. The Administration is considering the proposal in consultation with the Department of Justice and the MPFA.</li> </ul>

**(\*) Organizations/Individuals :**

CGCC	The Chinese General Chamber of Commerce
CMAHK	The Chinese Manufacturers' Association of Hong Kong
EFHK	Employers' Federation of Hong Kong

FHKKLU	The Federation of Hong Kong and Kowloon Labour Unions
HKCEA	The Hong Kong Chinese Enterprises Association
HKCIEA	The Hong Kong Chinese Importers' & Exporters' Association
HKCSMB	The Hong Kong Chamber of Small and Medium Business Ltd.
HKCTU	Hong Kong Confederation of Trade Unions
HKFTU	Hong Kong Federation of Trade Unions
HKIFA	Hong Kong Investment Funds Association
HKRSA	The Hong Kong Retirement Schemes Association
HKSMEA	Hong Kong Small and Medium Enterprises Association
HKTA	Hong Kong Trustees' Association Ltd
Mr LAI Chi-lap	Mr LAI Chi-lap, Yau Tsim Mong District Council member
Mr MAK Ip-sing	Mr MAK Ip-sing, Yuen Long District Council member

**Note :** A summary of the views expressed by the Law Society of Hong Kong and the Hong Kong Bar Association (HKBA) in relation to the textual content of the provisions of the Bill have been prepared to facilitate consideration by the Bills Committee during the clause-by-clause examination of the Bill.