

**Response to the observations of the Assistant Legal Adviser on the
Mandatory Provident Fund Schemes (Amendment) Bill 2007**

Observations	Administration/MPFA's response
Part 2	
Paragraph 1	<ul style="list-style-type: none"> • Clauses 3 and 8 serve to set out the policy intent more clearly, i.e. apart from an undertaking by deed, an undertaking that is not in the form of a deed but in some other similar form that is acceptable to the Mandatory Provident Fund Schemes Authority ("MPFA") may be given. The existing wording can be taken to mean an undertaking (which may be in the form of a deed or in similar form) that is acceptable to the MPFA may be given. Hence the English text is restructured to put the qualifier in a more appropriate place. The original Chinese text is also rewritten to reflect the policy intent more accurately. • As regards clause 9, for consistency with other provisions which also require the submission of a written undertaking to the MPFA, a new element has been added, i.e., the undertaking may be in a form acceptable to the MPFA.
Paragraph 2	<ul style="list-style-type: none"> • We have proposed to amend section 44(2) of the Mandatory Provident Fund Schemes (General) Regulation ("General Regulation"). Please refer to clause 39(1) of the Bill.
Paragraph 3	<ul style="list-style-type: none"> • Where the entity giving the undertaking is an overseas entity, the MPFA has to consider the form of the undertaking on a case by case basis. It would be difficult to specify / prescribe a form

		in respect of each and every overseas jurisdiction.
Part 7		
Paragraph 4		<ul style="list-style-type: none"> The purpose of the unclaimed benefits register is set out under section 172(12) of the General Regulation but the purpose of the other public registers maintained by the MPFA is not specified. The intention of the additional provisions is to spell out the purposes of these other registers so as to define the scope of the proper use of the information contained in those registers.
Part 9		
Paragraphs 5 and 6	5	<ul style="list-style-type: none"> The proposal of allowing a MPF trustee to accept from an employee a notice of cessation of employment by statutory declaration seeks to facilitate the transfer of accrued benefits by the employee after cessation of employment for cases where the employer concerned cannot be located or refuses to submit the notice of cessation of employment to the trustee. Giving a false or misleading statement to the trustee is a criminal offence under section 43E of the Mandatory Provident Fund Schemes Ordinance. We consider that the nature of an employer's failure to give a notice of cessation of employment to a trustee is somewhat different from that of an employee's providing false information to the trustee. It should be noted that if an employer gives a notice containing a false or misleading statement to a trustee, it is also a criminal offence under section 43E.

Part 11	
Paragraph 7	<ul style="list-style-type: none"> • Since there is only one kind of application mentioned in sections 6 and 36 after the proposed amendments are made to them, there would not be any confusion as to the interpretation of the word "application" in section 6(7) or section 36(6). As such, we do not consider that a cross reference to section 6(5) or section 36(4) is necessary.
Paragraph 8	<ul style="list-style-type: none"> • The circumstances under which the MPFA may cancel the approval of a pooled investment fund / constituent fund will be determined on a case by case basis. For example, where the assets and members of a scheme have all been transferred to another scheme, the MPFA will cancel the registration of the transferor scheme and the approval of the constituent funds and, where applicable, the approval of underlying pooled investment funds.
Part 12	
Paragraph 9	<ul style="list-style-type: none"> • Part 12 seeks to replace the requirement for the trustees to publish newspaper notices by maintenance of a more frequently updated register by the MPFA. The latter is considered to be a more effective mechanism to facilitate the members who have unclaimed benefits in a scheme to claim those benefits. • The current legislation requires a trustee to publish newspaper notices if it is unable to locate the scheme member, and then wait for the member to lodge a claim. We consider that it would be preferable for the trustees to take certain positive steps to attempt to contact the scheme member, and those steps should be specified by the MPFA in guidelines. There are no existing guidelines

	on what steps the trustees should follow in this regard.
Paragraph 10	<ul style="list-style-type: none"> We consider that a period of 6 months for the trustees to locate a member before the accrued benefits of a member is considered as unclaimed benefits is reasonable because giving too short a period for trustees to locate members may create a lot of unclaimed benefits records only to be removed shortly afterwards.
Part 14	
Paragraph 11	<ul style="list-style-type: none"> The intention of the proposed section is to allow information to be disclosed in circumstances where the provider of the information requests or allows it to be disclosed. For example, an employee lodging complaints with the MPFA and the Labour Department may request the MPFA to release his MPF information to the Labour Tribunal.
Other	
Paragraph 12	<ul style="list-style-type: none"> Please refer to the Appendix.

Appendix

List of proposals put forward by the Mandatory Provident Fund Schemes Authority

No.	Proposals	Relevant part of the Bill
1.	Amend sections 20(6)(b), 21(8) and 21A(8) of the Mandatory Provident Fund Schemes Ordinance (“MPFSO”), sections 17(12), 22, 44(2)(a), 46(3)(c), 47(3) and 69(2) of the Mandatory Provident Fund Schemes (General) Regulation (“General Regulation”), and section 7(3)(f) of Schedule 3 to the Mandatory Provident Fund Schemes (Exemption) Regulation (“Exemption Regulation”) for consistency with some existing sections in the MPF legislation, which require undertakings to be given by deed (or like form acceptable to the MPFA).	2 & 4
2.	Amend section 70(4), (5) & (6) of the General Regulation for consistency with section 3 of Schedule 3 to the General Regulation.	3
3.	Amend sections 20(6)(b), 21(8) and 21A(8) of the MPFSO for consistency with section 31 of the General Regulation, the latter of which stipulates that an application for participation made by an employer or an application for maintaining a preserved account made by a person must not be rejected by the trustee if that employer or person provides the information required and agrees to comply with the governing rules of the scheme concerned.	4
4.	Amend the Chinese translation of the term “years of post-MPF service” from “參加強制性公積金計劃後的服務年期” to “強制性公積金實施後的服務年期” to more accurately reflect its meaning.	5
5.	Amend the eligibility condition in section 14 of the	6

No.	Proposals	Relevant part of the Bill
	Exemption Regulation to also allow member and asset transfer to take place as soon as practicable after the new occupational retirement scheme is granted MPF exemption.	
6.	Amend the MPFSO to specify the purpose of the public registers established thereunder, which is to enable the public to ascertain whether the trustees and the schemes have been approved/ registered/ exempted by the MPFA, as well as for them to obtain basic information in connection with the trustees and schemes.	7
7.	Clarify how the enrolment and contribution requirements under the MPF legislation would apply to persons who cease to be exempt from the MPF legislation.	8
8.	Allow an employee to submit a notice of cessation of employment by statutory declaration to the trustee of the MPF scheme when his/ her employer cannot be located or refuses to submit the notice so as to facilitate transfer of accrued benefits.	9
9.	Rationalize the prescribed conditions for allowing a scheme member to withdraw accrued benefits on the ground of small balance.	10
10.	Clarify that the MPFA can cancel the approval of constituent funds or approved pooled investment funds.	11
11.	Treat the accrued benefits as unclaimed benefits if the cheque for payment of such accrued benefits remains unrepresented for a certain period as specified in the guidelines after issuance and the trustee is unable to locate the claimant after a specified period.	12
12.	Streamline the provisions relating to treatment of accrued	12

No.	Proposals	Relevant part of the Bill
	benefits as unclaimed benefits.	
13.	Exempt a trustee from the requirement of appointing an investment manager at the constituent fund level if certain conditions are satisfied.	13
14.	Allow the MPFA to disclose information under certain circumstances.	14
15.	Rationalize the prescribed conditions for allowing a scheme member to withdraw accrued benefits on the ground of permanent departure.	15
16.	Allow membership certificates or participation certificates, if they are to be sent by post, be sent by ordinary post.	16
17.	Clarify that the Official Administrator, if he agrees to administer a deceased's small estate without a grant of representation, is allowed to withdraw the deceased's accrued benefits.	17
18.	Extend the prosecution time bar under several sections in the MPF legislation to the effect that, notwithstanding section 26 of the Magistrates Ordinance, criminal proceedings may be instigated for an offence against any of these sections within 6 months after the offence is discovered by, or comes to the notice of, the MPFA.	18
19.	Clarify the effect of the MPFA's consent given to a scheme restructuring application submitted by the trustee, i.e. that the scheme restructuring upon completion is binding on all parties concerned (including participating employers and members) and effective at law.	19
20.	Improve the effectiveness of service of MPF summonses.	20

No.	Proposals	Relevant part of the Bill
21.	Clarify that a capital preservation fund may also be invested in debt securities with a remaining maturity period of 1 year or less and that satisfy the minimum long term credit rating set by the MPFA.	21
22.	Allow the MPFA to prescribe further content requirements for an annual benefit statement.	22
23.	Allow the subsidiary or sister subsidiary of a qualified institution to act as a subcustodian.	23
24.	Clarify that section 156 of the General Regulation would also apply to cases with contribution surcharges (but not contributions) outstanding as well as cases with both contributions and contribution surcharges outstanding in relation to the scheme member's account.	24
25.	Remove the housing allowance and benefit exclusion from the definition of "relevant income".	25
26.	Confer the MPFA with an explicit power to request employers, self-employed persons and any other persons to produce records to the MPFA to facilitate the MPFA in checking compliance with the MPF legislation.	26
27.	Improve the current arrears recovery mechanism by various measures.	27
28.	Empower the MPFA to take criminal and civil action against an employer in default contribution case where it has not enrolled its employees into a MPF scheme. Empower the Court to order an employer, upon conviction for non-compliance with section 7 or section 7A under section 43B of the MPFSO, to enrol its employees into a MPF scheme or to pay the outstanding contributions and contribution surcharges.	*

No.	Proposals	Relevant part of the Bill
29.	Improve regulation and monitoring of controllers by amending the requirements relating to controllers including requiring any person to be appointed as a controller of a trustee to obtain prior written consent from the MPFA before the appointment.	*

* To be included in another bill to be introduced into LegCo within this legislative session.