

For discussion

**Bills Committee on
Mandatory Provident Fund Schemes (Amendment) Bill 2007**

Proposed Committee Stage Amendments

This paper sets out the Committee Stage Amendments (“CSAs”) intended to be moved by the Administration with regard to the Mandatory Provident Fund Schemes (Amendment) Bill 2007 (“the Bill”).

The proposed Committee Stage Amendments

2. The rationale for moving the CSAs (at Annex) is explained in the ensuing paragraphs.

Clause 2

3. We intend to move a CSA to amend clause 2 of the Bill to specify that except for sections 35 – 38 (Part 12), section 60 (Part 25) and sections 62 – 72 (Part 27) which shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in gazette, all sections shall commence operation on the date of gazettal.

4. The rationale for deferring the commencement of the above sections is that sufficient lead time would need to be allowed for the relevant parties, including the employers and approved trustees, to make the necessary preparation before the provisions could come into operation. Those proposals are related to:

- (a) treatment of unclaimed benefits (Part 12) where trustees would need to amend their scheme administration procedures and systems; and trustees and the Mandatory Provident Fund Schemes Authority (“MPFA”) would need to align their databases on members with unclaimed benefits;

- (b) the removal of the exclusion of housing allowance and other housing benefit from the definition of “relevant income” (Part 25) where some employers’ organisations have requested that a transitional period be provided for employers 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; and
- (c) the improvement of the arrears recovery mechanism (Part 27), including the removal of the 30-day settlement period where some employers’ organisations have requested that a transitional period be provided for employers to adapt to the change, as there will no longer be any buffer for employers to remit contribution data and payment by the end of the contribution day.

Clauses 23 and 24

5. We intend to move a CSA to amend clause 23 to create a new section 7D to specify that where an employer enters into an employment contract with an employee who is less than 18 years of age, and the employer continues to employ the employee after the employee reaches the age of 18, the Mandatory Provident Fund Schemes Ordinance (“MPFSO”) applies to the employer and the employee as if the employment contract had been entered into on the day the employee reached 18 years of age and the employment had begun on that day. Similar provision to cater for the situation of a self-employed person is also added under the new section 7D, so clause 24 is proposed to be deleted.

6. This CSA seeks to better clarify the application of the MPFSO to the employer and the employee. With the proposed amendment, an employer would be required to arrange an employee who reached the age of 18 whilst under that employment to become a member of an MPF scheme and make MPF contributions in accordance with sections 7 and 7A of the MPFSO as if the employment had begun on the day the employee reached the age of 18. The CSA similarly clarifies the

application of the MPFSO to a self-employed person who reached the age of 18 whilst being self-employed. That is, a self-employed person would need to become a member of an MPF scheme and make MPF contributions in accordance with section 7C of the MPFSO as if the self-employment had begun on the day he reached the age of 18.

Clause 37

7. We intend to move a CSA to clause 37 to add a subsection under the proposed section 172C to highlight the purpose of the unclaimed benefits register. Presently, the purpose of the unclaimed benefits register is buried in the proposed section 172C(4) which provides that a member of the public may inspect the register “to ascertain whether he has any unclaimed benefits in the MPF scheme”.

Clauses 47 to 49

8. We intend to move a CSA to amend clauses 47, 48 and 49 to impose a prosecution time bar on the offences against sections 43C and 43E of the MPFSO and certain offences under section 26 of the Mandatory Provident Fund Schemes (Exemption) Regulation respectively, which is within 6 months after the offence is discovered or comes to the notice of the MPFA, or 3 years from the commission of such offence, whichever is the earlier. This is in response to the comments of the Hong Kong Bar Association that the extension of the prosecution time bar as proposed in the Bill would provide for potentially open ended periods in cases where offences remain undiscovered for a long time.

Clause 54

9. We intend to move a CSA to clause 54 of the Bill to replace “paragraphs (b) to (f)” in section 56(5) of the Mandatory Provident Fund Schemes (General) Regulation with “paragraphs (b) to (fa)”. This is a consequential amendment.

Clause 60A

10. We intend to move a CSA to add a new clause 60A to the

Bill to specify that the MPFSO as amended by section 60 of the Bill applies in relation to a contribution period that begins on or after the date of commencement of that section. This serves to clarify how the revised definition of “relevant income” would apply in relation to a contribution period.

Clause 63

11. We intend to move a CSA to amend clause 63 by refining section 18(5) of the MPFSO to clearly specify and delineate, in the respective cases of an employee and a self-employed person, the arrangement on the payment of the arrears or contribution surcharges by the MPFA to a MPF scheme. These arrears or contributions were, in the first place, paid to or recovered by the MPFA in respect of the employee or the self-employed person. The CSA serves to set out how the MPFA would handle the arrears or contribution surcharges recovered by or paid to it.

Financial Services and the Treasury Bureau
October 2007

MANDATORY PROVIDENT FUND SCHEMES
(AMENDMENT) BILL 2007

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
2	<p>By deleting the clause and substituting –</p> <p>“2. Commencement</p> <p>(1) Subject to subsection (2), this Ordinance shall come into operation on the day on which it is published in the Gazette.</p> <p>(2) Sections 35, 36, 37, 38, 60, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71 and 72 shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.”.</p>
23	<p>By deleting the clause and substituting –</p> <p>“23. Section added</p> <p>The Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended by adding –</p> <p>“7D. Application of Ordinance to certain employees and self-employed persons</p> <p>(1) If –</p> <p>(a) an employer enters into a</p>

contract of employment with an employee who is less than 18 years of age; and

- (b) the employee reaches 18 years of age on or after the date of commencement of this section; and
- (c) the employer continues to employ the employee after he reaches 18 years of age,

then this Ordinance applies to the employer and the employee as if they had entered into the contract of employment on the day on which the employee reaches 18 years of age and the employment had begun or commenced on that day.

(2) If –

- (a) a person is self-employed before he is 18 years of age; and
- (b) he reaches 18 years of age on or after the date of commencement of this section; and
- (c) he continues to be self-employed after reaching 18 years of age,

then this Ordinance applies to him as if he had become a self-employed person on the day on which he reaches 18 years of age.”.”.

- 24 By deleting the clause.
- 37 (a) In the proposed section 172C, by adding –
 “(3A) The register is to be made available for inspection to enable a person who may be entitled to benefits in a registered scheme to ascertain whether he has any unclaimed benefits in the scheme.”.
- (b) In the proposed section 172C(4), by deleting “to ascertain whether he has any unclaimed benefits in the scheme”.
- 47 By deleting the proposed section 43C(3) and substituting –
 “(3) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), proceedings may be instituted for an offence against this section –
 (a) within 6 months after the offence is discovered by, or comes to the notice of, the Authority; or
 (b) within 3 years of the commission of the offence,
 whichever period expires first.”.
- 48(2) By deleting the proposed section 43E(2) and substituting –
 “(2) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), proceedings may be instituted for an offence against this section –
 (a) within 6 months after the offence is discovered by, or comes to the notice of, the Authority; or
 (b) within 3 years of the commission of the offence,

whichever period expires first.”.

- 49(2) By deleting the proposed section 26(2) and substituting –
- “(2) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), proceedings may be instituted for an offence against subsection (1)(a) consisting of a failure to comply with section 4(1) or 15(1) –
- (a) within 6 months after the offence is discovered by, or comes to the notice of, the Authority; or
- (b) within 3 years of the commission of the offence,
- whichever period expires first.”.

- 54 (a) By renumbering the clause as clause 54(1).
- (b) By adding –
- “(2) Section 56(5) is amended by repealing “(f)” and substituting “(fa)”.”.

- New By adding immediately after clause 60 –
- “60A. Application of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2007**
- The Mandatory Provident Fund Schemes Ordinance (Cap. 485) as amended by section 60 of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2007 (of 2007) applies in relation to a contribution period that begins on or after the date of commencement of that section.”.

63(6)

By deleting the proposed section 18(5) and substituting –

“(5) The Authority must pay any arrears or contribution surcharge paid to or recovered by the Authority –

- (a) in the case of an employee who is still employed by the employer concerned at the time the Authority makes payment –
 - (i) to the approved trustee of the registered scheme nominated by the employer for this purpose; or
 - (ii) if the employer has not nominated a registered scheme, to the approved trustee of the registered scheme nominated by the employee for this purpose; or
 - (iii) if both the employer and the employee have not nominated a registered scheme, to the approved trustee of a registered scheme that the Authority considers appropriate; or
- (b) in the case of an employee who has ceased to be employed by the employer concerned at the time the Authority makes payment –
 - (i) to the approved trustee of the registered scheme nominated

- by the employee for this purpose; or
- (ii) if the employee has not nominated a registered scheme, to the approved trustee of a registered scheme that the Authority considers appropriate; or
- (c) in the case of a self-employed person –
 - (i) to the approved trustee of the registered scheme nominated by the self-employed person for this purpose; or
 - (ii) if the self-employed person has not nominated a registered scheme, to the approved trustee of a registered scheme that the Authority considers appropriate.”.