



**Legislative Council Bills Committee**  
**立法會法案委員會**

**Mandatory Provident Fund Schemes**  
**(Amendment) (No.2) Bill**  
**《2007年強制性公積金計劃(修訂)(第2號)**  
**條例草案》**

**31 January 2008**  
**2008年1月31日**

**INTRODUCTION**

**引言**

**Proposed amendments**

- Cover different aspects of the operation, in particular the enforcement, of the MPF System
- Better protect the interests of employees and scheme members

**擬議修訂**

- 涵蓋強積金制度運作不同事宜，尤其是執法工作
- 為僱員和計劃成員的利益提供更佳保障



## ISSUES

1. Non-payment of mandatory contributions in non-enrolment cases
2. Increasing the maximum penalty for non-payment of contributions and non-enrolment
3. Increasing the maximum penalty for failure of employers to remit the deducted wages as employee mandatory contributions
4. Offence for providing false pay-records to employees
5. Approval of controllers of approved trustees

## 議題

1. 在沒有登記參加強積金計劃的情況下沒有支付強制性供款
2. 提高沒有為僱員登記參加強積金計劃及沒有支付供款的最高刑罰
3. 提高僱主沒有把扣除的工資支付作為僱員強制性供款的最高刑罰
4. 向僱員提供虛假供款紀錄的罪行
5. 對核准受託人的控權人施加核准

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## 1. Non-payment of mandatory contributions in non-enrolment cases

在沒有登記參加強積金計劃的情況下沒有支付強制性供款

### Issue

- s.7(1) of MPFSO: every employer (“ER”) to ensure its relevant employee (“EE”) becomes MPF scheme member within prescribed period
- s.7(1A) of MPFSO: ER to ensure EE enrolment throughout employment

### 議題

- 《強積金條例》第7(1)條：每名僱主須確保其有關僱員在訂明期間內成為強積金計劃成員
- 《強積金條例》第7(1A)條：僱主須確保僱員在整個受僱期間都參加強積金計劃

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## 1. Non-payment of mandatory contributions in non-enrolment cases (cont'd)



在沒有登記參加強積金計劃的情況下沒有支付強制性供款 (續)

### Issue

- ss.7A(1) & (2) of MPFSO: ER to make mandatory contributions (“MC”) to MPF scheme for EE
- ER enrolled EE into MPF scheme but **not** pay MC, MPFA can:
  - ⇒ take criminal action against ER for non-payment of MC; and
  - ⇒ take civil action to recover MC for EE

### 議題

- 《強積金條例》第7A(1)及(2)條：僱主須為僱員向強積金計劃作出強制性供款
- 僱主已安排僱員加入強積金計劃但**沒有**供款，積金局可：
  - ⇒ 就僱主沒有作出供款向其提出刑事檢控；及
  - ⇒ 向僱主提出民事訴訟，為僱員追討供款

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## 1. Non-payment of mandatory contributions in non-enrolment cases (cont'd)



在沒有登記參加強積金計劃的情況下沒有支付強制性供款 (續)

### Issue

- ER **not** enrol EE into MPF scheme and **not** pay MC, MPFA:
  - ⇒ can take criminal action against ER for non-enrolment; but
  - ⇒ **cannot** take criminal or civil action for non-payment of MC

### 議題

- 僱主**沒有**安排僱員加入強積金計劃及**沒有**供款，積金局：
  - ⇒ 可就僱主沒有為僱員加入強積金計劃提出刑事檢控；但
  - ⇒ **不能**就僱主沒有作出供款而採取刑事或民事法律行動

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## 1. Non-payment of mandatory contributions in non-enrolment cases (cont'd)

在沒有登記參加強積金計劃的情況下沒有支付強制性供款 (續)

### Proposals

- ⇒ Make clear that ER who does not enrol EE into MPF scheme is still liable to pay MC for EE
- ⇒ MPFA can take both criminal and civil action against ER for failure to make MC in respect of non-enrolled EE

### 建議

- ⇒ 訂明僱主如沒有為僱員登記參加強積金計劃，僱主仍有法律責任支付僱員的強制性供款
- ⇒ 積金局可就僱主沒有為沒參加強積金計劃的僱員作出強制性供款採取刑事及民事法律行動

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## 1. Non-payment of mandatory contributions in non-enrolment cases (cont'd)

在沒有登記參加強積金計劃的情況下沒有支付強制性供款 (續)

### Proposals

- ⇒ Period of recovery: MC payable from 1 December 2000 or the date of employment of EE (whichever is the later)
  - ⇒ MC will become due to MPFA by a prescribed date
  - ⇒ MPFA will deposit MC received into MPF scheme for EE
  - ⇒ apply to EE even if employment had ceased on commencement of the amendment

### 建議

- ⇒ 追討欠款期：由2000年12月1日或僱員受僱日起（以較遲者為準）計須作出的強制性供款
  - ⇒ 強制性供款將於訂明日期到期支付予積金局
  - ⇒ 積金局會將收訖的強制性供款為僱員存入強積金計劃
  - ⇒ 亦適用於在修訂生效日已終止受僱的僱員

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## 1. Non-payment of mandatory contributions in non-enrolment cases (cont'd)

在沒有登記參加強積金計劃的情況下沒有支付強制性供款 (續)

### Proposals

- ⇒ Court has discretionary power to compel ER to:
  - ⇒ enrol EE into MPF scheme; and
  - ⇒ pay outstanding MC and surcharge

### 建議

- ⇒ 法庭擁有酌情權強制要求僱主：
  - ⇒ 為僱員登記參加強積金計劃；及
  - ⇒ 支付拖欠的供款和供款附加費

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## 2. Increasing the maximum penalty for non-payment of contributions and non-enrolment

提高沒有支付供款及沒有為僱員登記參加強積金計劃的最高刑罰

### Issue

- s.43B of MPFSO: Failure to comply with s.7 (non-enrolment) or s.7A (non-payment of MC)
  - ⇒ 1st occasion: fine at \$100,000 & imprisonment for 6 months
  - ⇒ Subsequent occasion: fine at \$200,000 & imprisonment for 12 months
- s.63C of EO: Failure to pay wages
  - ⇒ Fine at \$350,000 & imprisonment for 3 years

### 議題

- 《強積金條例》第43B條：沒有遵守第7條（沒有為僱員登記參加強積金計劃）或第7A條（沒有支付強制性供款）
  - ⇒ 首次定罪：罰款\$100,000及監禁6個月
  - ⇒ 其後定罪：罰款\$200,000及監禁12個月
- 《僱傭條例》第63C條：欠薪
  - ⇒ 罰款\$350,000及監禁3年

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## 2. Increasing the maximum penalty for non-payment of contributions and non-enrolment (cont'd)



提高沒有支付供款及沒有為僱員登記參加強積金計劃的最高刑罰 (續)

### Issue

- Some MPF stakeholders consider:
  - ⇒ existing MPF legislation not provide effective deterrence against non-compliant ER
  - ⇒ low level of fine imposed by courts in prosecution cases
  - ⇒ default in making MC is akin to default in wage payment
  - ⇒ should align the penalty for default in making MC with that for default in wage payment

### 議題

- 若干強積金相關界別認為：
  - ⇒ 現行的強積金法例不能對違法的僱主產生有效阻嚇作用
  - ⇒ 法庭在檢控個案中所判處的罰款額偏低
  - ⇒ 拖欠強積金供款等同拖欠工資
  - ⇒ 拖欠供款的最高刑罰應調高，與有關拖欠工資的最高刑罰看齊

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## 2. Increasing the maximum penalty for non-payment of contributions and non-enrolment (cont'd)



提高沒有支付供款及沒有為僱員登記參加強積金計劃的最高刑罰 (續)

### Issue

- Failure to arrange enrolment is as serious as contribution defaults

### 議題

- 沒有安排僱員參加強積金計劃，罪行與拖欠強積金供款同樣嚴重

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## 2. Increasing the maximum penalty for non-payment of contributions and non-enrolment (cont'd)



提高沒有支付供款及沒有為僱員登記參加強積金計劃的最高刑罰 (續)

### Proposals

- ⇒ Increase the maximum penalty under s.43B of MPFSO to a fine of \$350,000 and imprisonment for 3 years for employer's failure to enrol EE or make contribution (on par with wage defaults under EO)

### 建議

- ⇒ 就僱主沒有安排僱員參加強積金計劃或欠供強積金的罪行，把《強積金條例》第43B條最高刑罰提高至罰款\$350,000及監禁3年 (等同《僱傭條例》有關拖欠工資的罰則)

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## 3. Increasing the maximum penalty for failure of employers to remit the deducted wages as employee mandatory contributions



提高僱主沒有把扣除的工資支付作為僱員強制性供款的最高刑罰

### Issue

- s.7A of MPFSO
  - ⇒ ER is required to deduct MPF contribution from EE's relevant income
  - ⇒ ER is required to pay EE MC and ER MC to relevant MPF scheme before the contribution due date

### 議題

- 《強積金條例》第7A條
  - ⇒ 僱主須從僱員的有關入息中扣除強積金供款
  - ⇒ 僱主須在供款到期繳交之前，把僱員和僱主的強制性供款一併支付予相關的強積金計劃

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### 3. Increasing the maximum penalty for failure of employers to remit the deducted wages as employee mandatory contributions (cont'd)



提高僱主沒有把扣除的工資支付作為僱員強制性供款的最高刑罰 (續)

#### Issue

- Not uncommon for ER to deduct MC from the EE's relevant income without remitting the deducted sum to MPF scheme  
⇒ EE not only lose the ER contribution, but also the EE MC deducted

#### 議題

- 僱主從僱員的有關入息中扣除強制性供款但沒有把該筆扣除款項支付予強積金計劃的情況 並不罕見  
⇒ 僱員不但得不到僱主供款，亦失去了從其薪金中扣除的僱員強制性供款

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### 3. Increasing the maximum penalty for failure of employers to remit the deducted wages as employee mandatory contributions (cont'd)



提高僱主沒有把扣除的工資支付作為僱員強制性供款的最高刑罰 (續)

#### Issue

- Current sanctions under MPF legislation do not distinguish between cases where ER has deducted MPF contributions from EE's relevant income for its own use and cases where no such deduction has been made
- Concerns have therefore been expressed that, in non-payment of mandatory contribution cases, ER who has deducted EE mandatory contributions should be subject to a heavier punishment than ER who has not

#### 議題

- 現行強積金法例施加的刑罰，沒有對僱主有否從僱員有關入息中扣除強積金供款留作己用作出區分
- 有意見表示，在處理拖欠供款時，有從僱員的工資中扣除僱員的強制性供款的僱主應受到更重懲罰

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### 3. Increasing the maximum penalty for failure of employers to remit the deducted wages as employee mandatory contributions (cont'd)



提高僱主沒有把扣除的工資支付作為僱員強制性供款的最高刑罰 (續)

#### Proposals

- ⇒ Impose a higher penalty on ER who does not remit deducted EE MC to relevant MPF scheme
- ⇒ Upon conviction, ER will be liable to a fine of \$450,000 and to imprisonment for 4 years

#### 建議

- ⇒ 建議對沒有把扣除僱員的強制性供款支付予有關強積金計劃的僱主施加較高的刑罰
- ⇒ 僱主一經定罪，可處以\$450,000罰款及監禁4年

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### 4. Offence for providing false pay-records to employees



向僱員提供虛假供款紀錄的罪行

#### Issue

- s.139 of General Regulation:
  - ⇒ ER to give monthly pay-record containing MPF contribution details to EE not later than 7 working days after payment of MC during the month concerned

#### 議題

- 《一般規例》第139條：
  - ⇒ 僱主須在支付有關月份的強制性供款後的7個工作日內給予僱員每月供款紀錄列明強積金供款詳情

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#### 4. Offence for providing false pay-records to employees (cont'd)



##### 向僱員提供虛假供款紀錄的罪行 (續)

###### Issue

- Information contained in pay-record:
  - ⇒ amount of relevant income
  - ⇒ amount of ER MC / VC paid by ER
  - ⇒ amount of EE MC / VC deducted from EE's income
  - ⇒ date on which MC / VC paid to TR

###### 議題

- 供款紀錄載有以下資料：
  - ⇒ 有關入息的款額
  - ⇒ 僱主支付的僱主強制性／自願性供款的款額
  - ⇒ 從僱員入息中扣除的僱員強制性／自願性供款的款額
  - ⇒ 向受託人支付強制性／自願性供款的日期

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#### 4. Offence for providing false pay-records to employees (cont'd)



##### 向僱員提供虛假供款紀錄的罪行 (續)

###### Issue

- Importance of pay-record:
  - ⇒ EE can verify ER's calculation of amount of ER / EE MC and VC
  - ⇒ Evidence of payment of ER / EE MC and VC

###### 議題

- 供款紀錄的重要性：
  - ⇒ 僱員可核實僱主計算的僱主／僱員強制性及自願性供款款額是否正確
  - ⇒ 作為支付僱主／僱員強制性及自願性供款的證據

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#### 4. Offence for providing false pay-records to employees (cont'd)



##### 向僱員提供虛假供款紀錄的罪行 (續)

###### Issue

- ER, though giving pay-record, could deliberately provide false or misleading contribution details to deceive EE

###### 議題

- 僱主雖然給予僱員每月供款紀錄，但卻可蓄意提供虛假或具誤導性的供款詳情以欺騙僱員

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#### 4. Offence for providing false pay-records to employees (cont'd)



##### 向僱員提供虛假供款紀錄的罪行 (續)

###### Issue

- S.43E of MPFSO: a person commits an offence if he makes a false or misleading statement in any document given to MPFA, TR, auditor of TR, auditor of MPF scheme
- s.43E however not applicable to ERs deliberately providing false pay-records to EEs

###### 議題

- 《強積金條例》第43E條: 任何人在給予積金局、受託人、受託人的核數師或強積金計劃的核數師的任何文件中，作出虛假或具誤導性陳述，即屬違法
- 但第43E條並不適用於僱主蓄意向僱員提供虛假或具誤導性的供款紀錄

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#### 4. Offence for providing false pay-records to employees (cont'd)



##### 向僱員提供虛假供款紀錄的罪行 (續)

#### Proposals

- ⇒ ER commits an offence if he provides information in a pay-record that it knows to be false/ misleading in a material respect, or recklessly provides information in a pay-record that is false/ misleading in a material respect

#### 建議

- ⇒ 若僱主在供款紀錄中，提供明知在要項上屬虛假／具誤導性資料，或罔顧後果地提供在要項上屬虛假／具誤導性資料，即屬違法

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#### 4. Offence for providing false pay-records to employees (cont'd)



##### 向僱員提供虛假供款紀錄的罪行 (續)

#### Proposals

- ⇒ Proposed fine (same as that under s.43E of MPFSO)
  - 1<sup>st</sup> occasion: \$100,000 and imprisonment for 12 months
  - subsequent occasion: \$200,000 and imprisonment for 2 years

#### 建議

- ⇒ 建議罰則（與《強積金條例》第43E條的罰則相同）
  - 首次定罪：\$100,000及監禁12個月
  - 其後定罪：\$200,000及監禁2年

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## 5. Approval of controllers of approved trustees 對核准受託人的控權人施加核准



### Issue 議題

- When a trustee company first applies to carry on MPF business:  
受託人公司首次申請經營強積金業務時：

Chief Executive  
Officer & Directors  
行政總裁及董事

Indirect controllers  
and substantial  
shareholders  
間接控權人及  
大股東

Need MPFA's consent

需獲積金局同意

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## 5. Approval of controllers of approved trustees (cont'd) 對核准受託人的控權人施加核准 (續)



### Issue 議題

- Subsequent to the approval of the trustee:  
在受託人獲得核准資格後：

New Chief Executive  
Officer & Directors  
新行政總裁及董事

New indirect controllers  
and substantial  
shareholders  
新間接控權人及  
大股東

Need MPFA's consent

需獲積金局同意

No need for MPFA's consent

不需獲積金局同意

⇒ inconsistent and unreasonable

⇒ 既不一致也不合理

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## 5. Approval of controllers of approved trustees (cont'd) 對核准受託人的控權人施加核准 (續)



### Issue

- Once the MPFA has given consent to the appointment of a chief executive officer or director of a trustee company
  - ⇒ MPFA not empowered to withdraw the consent even if the person is no longer suitable to be a controller

### 議題

- 積金局一旦就受託人公司行政總裁或董事的委任給予同意
  - ⇒ 即使該行政總裁或董事不再是控權人的適當人選，積金局也無權撤回同意

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## 5. Approval of controllers of approved trustees (cont'd) 對核准受託人的控權人施加核准 (續)



### Proposals 建議

- Subsequent to the approval of the trustee:  
在受託人獲得核准資格後：

New Chief Executive  
Officer & Directors

新行政總裁及董事

Need MPFA's consent  
需獲積金局同意

New indirect  
controllers and  
substantial shareholders

新間接控權人及  
大股東

Also need MPFA's  
consent  
亦需獲積金局同意

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## 5. Approval of controllers of approved trustees (cont'd) 對核准受託人的控權人施加核准 (續)



### Proposals

- Empower the MPFA to withdraw the consent previously given to any chief executive officers or directors as well as other types of controllers from continuing holding such positions if such persons are no longer suitable

### 建議

- 賦予積金局在任何行政總裁或董事或其他類別控權人不再為適當人選的情況下撤回先前給予的同意，使他們不能繼續擔任有關職位

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**END**  
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