



**Comments of the Law Society on  
Mandatory Provident Fund Scheme (Amendment) (No.2) Bill 2007**

Section in Amendment Ordinance	Provision to be changed	Comment
1. Section 3 (Offences by Employers)	-	It would appear that there is no longer any penalty for failure to comply with section 7A(1). It may be this is covered by the penalty for breach of section 7A(8).
2. Section 4(1)	Section 2(1) MPFSO (definition of "mandatory contribution")	The references to "(aa)" and "(ab)" should, surely, be references to "(c)" and "(d)"?
3. Section 5 (sections added)	Section 7AA MPFSO	The reference to "a relevant employee of an employer" in section 7AA(1) appears only to relate to a <u>current</u> employee. You may wish to change this wording in order to include a former relevant employee (although care would then need to be taken in relation to section 7AA(3)(b)).

Section in Amendment Ordinance	Provision to be changed	Comment
4. Section 5 (sections added)	Section 7AE MPFSO	Is the Legislative Council happy that the introduction of this new debt relating to past breaches by employers is constitutional and complies with the general principles against the introduction of retrospective legislation?
5. Section 10 (Recovery of mandatory contributions that are in arrears)	Section 18(1) MPFSO	<p>The reference to the failure to pay a mandatory contribution "on or before the date by which it is required to be paid under this Ordinance" is unclear. Section 7A(8) specifies the manner in which contributions need to be paid.</p> <p>However, this section refers to the Regulations. Sections 122 and 133/4 of the General Regulation set out the number of days for payment of contributions (including a "grace" period for employers). Is the "date by which it is required to be paid under this Ordinance" in the prospective new section 18(1) intended to refer to the date in section 122 of the General Regulation or the long-stop date specified in sections 133/4?</p> <p>This needs to be clarified.</p>
6. Section 17(6) (Separate accounts for a Scheme Member)	Section 78(6)(c) General Regulation	It should be made clear that the new subsection should be inserted immediately after section 78(6)(c)(ii).

Section in Amendment Ordinance	Provision to be changed	Comment
7. Section 31(Part IVA added)	New section 42D	Would it make sense for these to be an exemption in relation to intra-group transfers of shareholdings?
8. Additional point for consideration	Section 45(3) General Regulation	There is a mistake in the drafting of this section. As currently drafted it prohibits the delegation of investment management activities to an associate which is approved by the Hong Kong SFC. This makes no sense and we would recommend that it should be rectified at the earliest opportunity.

**The Law Society of Hong Kong  
Retirement Schemes Committee**

**14 February 2008**

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