

**Summary of views submitted by various organizations/individuals* on the
Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2007
(as of 25 March 2008)**

Part A: Views/Concerns on proposals under the Bill

Organizations/ Individuals	Views/Concerns	Response by the Administration/ Mandatory Provident Fund Schemes Authority (MPFA)
(I) General views on the Bill		
	<ul style="list-style-type: none"> ● The majority of organizations/individuals indicate support for the introduction of the Bill. 	<ul style="list-style-type: none"> ● Noted.
(II) Proposal to impose an obligation on an employer to pay mandatory contributions for the employee in non-enrolment cases (Clause 5)		
	<ul style="list-style-type: none"> ● The majority of organizations/individuals support the proposal in principle. 	<ul style="list-style-type: none"> ● Noted.
LSHK	<ul style="list-style-type: none"> ● Regarding the legal and drafting aspect of the proposal, it expresses concern about whether the proposed amendment to require employers in non-enrolment cases to make mandatory contributions in respect of their employees' past period of service is constitutional and whether it is in line with the general legal principle against the introduction of retrospective legislation. 	<ul style="list-style-type: none"> ● The purpose of the proposed section 7AE is to close the legislative loophole that where an employer fails to enrol his employee to a registered scheme, he is not liable to make Mandatory Provident Fund ("MPF") contribution during the period when the employee is not enrolled, as required by section 7, to a registered scheme. It is an existing obligation for an employer to make MPF contribution for an employee since the commencement of the Mandatory Provident Fund Schemes Ordinance ("MPFSO"), but by virtue of the employer's failure to enrol the employee to a registered scheme in accordance with section 7, the employer has not paid the MPF contributions which he should have paid.

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		<ul style="list-style-type: none"> ● The proposed section 7AE will not create a new obligation or impose a new liability on the employer to pay MPF contributions for non-enrolled employees retrospectively. The amendment will make clear that the employer must do that which he should have done but for his failure to comply with the existing law. In this connection, section 7AE does not contravene the general principle against retrospectivity.
HKBA	<ul style="list-style-type: none"> ● The proposal will reinforce the duties of employers under the existing MPF legislation to enrol their employees into a registered scheme. 	<ul style="list-style-type: none"> ● Noted.
(III) Proposal to confer on the court a discretionary power to compel the employer to rectify the non-enrolment and non-payment situation (Clause 12)		
FHKKLU HKCEA HKCTU HKFTU DP Dr CHAN Tung Ms KO Po-ling	<ul style="list-style-type: none"> ● They support the proposal. 	<ul style="list-style-type: none"> ● Noted.
FHKKLU	<ul style="list-style-type: none"> ● To ensure employers' payment of the outstanding mandatory contributions in accordance with the court's judgment, the Government should consider including in the Bill penalties such as imprisonment, 	<ul style="list-style-type: none"> ● In the case where the court has awarded a judgment for debt but the employer fails to repay the outstanding contributions, the MPFA, as the judgment creditor could enforce the judgment by for instance, applying for writ of

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	<p>suspension of business or recovery of the arrears through winding-up proceedings if the judgment is not complied with. A proper mechanism should be established for recovering outstanding contributions. For example, consideration should also be given to first settling the outstanding contributions from the fine paid by the convicted employers.</p>	<p>fieri facias (so as to enforce the judgment through seizure and sale of property of the judgment debtor to settle the debt), a garnishee order (so as to require a third party to pay direct to the judgment creditor the debt due from the third party to the judgment debtor to satisfy the judgment debt), a charging order (an order placed on a debtor's property for monies owed to a creditor so that when the property is sold the debtor will have to pay that debt off first before any of the proceeds are given to the debtor). The judgment creditor could also initiate contempt proceeding against the debtor and in case where the debtor is shown to have deliberately or wilfully disobeyed the judgment, the court could impose fine and/or custodial sentence on the debtor.</p> <ul style="list-style-type: none"> ● A judgment creditor has no right to apply for suspension of the business of the judgment debtor. A judgment creditor may however apply to the court for winding-up of the judgment debtor under s. 177 of the Companies Ordinance, Cap. 32. ● Apart from civil recovery action, it is proposed under the Bill to empower the court to order an employer to rectify its non-compliance act of non-enrolment and default contributions. We also propose to create an offence against the employers who fail to comply with the court order to increase the deterrent effect against non-compliance. ● We have consulted the Treasury Branch of the Financial Services and the Treasury Bureau on the proposal to settle outstanding contributions from the Government fines and

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		<p>are given to understand that fines imposed by the Magistrates' Courts, the District Court, the High Court and the Court of Final Appeal are “moneys received for the purposes of the Government” and should therefore go to the general revenue by virtue of section 3(1) of the Public Finance Ordinance (Cap. 2). As the Government has no obligation to pay the MPF contributions to the employees on behalf of the defaulting employers under the existing law, the proposal is tantamount to requiring the Government to assume an additional liability and to incur an additional expenditure. The Treasury Branch is not aware of any existing arrangement of using fines to fulfill the financial obligation of the convicted party. Moreover, the proposal constitutes hypothecation of revenue and the Treasury Branch, as a matter of principle, would not support the proposal.</p>
HKCEA	<ul style="list-style-type: none"> ● Employers may inadvertently commit an offence of non-enrolment or non-payment due to operational problems. The Administration/MPFA should, before implementation of the Bill, conduct more publicity on the new provisions to facilitate employers' understanding of their legal responsibility. 	<ul style="list-style-type: none"> ● The MPFA will launch publicity and education programmes to increase the public awareness of legislative changes to be brought about by the enactment of the Bill, complementing the existing programmes. This serves to enable the public to better understand and cope with their legal obligations under the amended MPF legislation.
HKCTU	<ul style="list-style-type: none"> ● To ensure employers' payment of the outstanding contributions so as to better protect the employees' entitlements under the Mandatory Provident Fund (MPF) scheme, consideration should be given to empowering the court to make an order to compel the non-compliant employer to pay the outstanding 	<ul style="list-style-type: none"> ● In the case where the court has awarded a judgment for debt but the employer fails to repay the outstanding contributions, the MPFA, as the judgment creditor could enforce the judgment by for instance, applying for writ of fieri facias (so as to enforce the judgment through seizure and sale of property of the judgment debtor to settle the

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	<p>contributions, failing which the employer would be subject to further penalties such as suspension of business or prosecution for the offence of “contempt of court”.</p>	<p>debt), a garnishee order (so as to require a third party to pay direct to the judgment creditor the debt due from the third party to the judgment debtor to satisfy the judgment debt), a charging order (an order placed on a debtor’s property for monies owed to a creditor so that when the property is sold the debtor will have to pay that debt off first before any of the proceeds are given to the debtor). The judgment creditor could also initiate contempt proceeding against the debtor and in case where the debtor is shown to have deliberately or willfully disobeyed the judgment, the court could impose fine and/or custodial sentence on the debtor.</p> <ul style="list-style-type: none"> ● A judgment creditor has no right to apply for suspension of the business of the judgment debtor. A judgment creditor may however apply to the court for winding-up of the judgment debtor under s. 177 of the Companies Ordinance, Cap. 32. ● Apart from civil recovery action, it is proposed under the Bill to empower the court to order an employer to rectify its non-compliance act of non-enrolment and default contributions. We also propose to create an offence against the employers who fail to comply with the court order to increase the deterrent effect against non-compliance.
DP	<ul style="list-style-type: none"> ● It expresses concern that as the court will possibly exercise the proposed discretionary power to compel an employer to rectify the non-enrolment and non-payment situation only occasionally, the proposal 	<ul style="list-style-type: none"> ● The proposal of empowering the court to order an employer to rectify its non-compliance act of non-enrolment and default contributions provides flexibility and adds to the array of enforcement measures currently adopted by the MPFA. The enforcement

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	<p>may not achieve better protection for employees.</p>	<p>measures adopted by the MPFA include conducting proactive inspection visits to employment premises, investigating into complaints, imposing contribution surcharges on defaulting employers, filing civil claims and pursuing criminal prosecutions.</p> <ul style="list-style-type: none"> ● Apart from the proposal on issuance of court order, the increase in the maximum penalty for non-enrolment and non-payment of contributions is proposed with a view to creating a stronger deterrent effect on unscrupulous employers, sending a clear message that employers must enrol their employees and pay contributions on time. ● The above measures should provide stronger deterrent effect against non-compliant employers. The MPFA will continue to review the MPF legislation and its enforcement strategies to identify room for further improvement to ensure that the interest of schemes members and employees are safeguarded.
<p>Ms KO Po-ling</p>	<ul style="list-style-type: none"> ● Welcomes the proposal to confer on the court a discretionary power to compel an employer to rectify the non-enrolment and non-payment situation as this would better protect the interest of employees. 	<ul style="list-style-type: none"> ● Noted
<p>(IV) Increasing the maximum penalties for MPF-related offences (Clause 3)</p>		
<p>FHKKLU HKCEA HKCTU</p>	<ul style="list-style-type: none"> ● They support the proposal. 	<ul style="list-style-type: none"> ● Noted

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HKFTU HKCIEA DP Dr CHAN Tung Ms KO Po-ling Mr YEUNG Wai-sing		
FHKKLU	<ul style="list-style-type: none"> As the maximum penalty has seldom been imposed on convicted employers for non-payment of MPF contributions and non-enrolment, it suggests that a level of penalty with adequate deterrent effect should be adopted by the court as the minimum sentence. 	<ul style="list-style-type: none"> The increase in the maximum penalty for non-enrolment and non-payment of contributions is proposed with a view to creating a stronger deterrent effect on unscrupulous employers, sending a clear message that employers must enrol their employees and pay contributions on time. While the penalty imposed in individual case is a decision for the court, we believe that the court would take into account the increase in the maximum penalty in sentencing. The Department of Justice (“DoJ”) will submit previous conviction records of repeated defaulters for the court’s consideration in sentencing.
CGCC	<ul style="list-style-type: none"> As the employer is required to contribute an amount equivalent to 5% of the employee's relevant income to the MPF scheme, default MPF contributions only represent a small proportion of the employee's wage. Hence, increasing the maximum penalty of non-payment of mandatory contributions to align with that for wage default is inappropriate. 	<ul style="list-style-type: none"> The increase in the maximum penalty for non-enrolment and non-payment of contributions is proposed with a view to creating a stronger deterrent effect on unscrupulous employers, sending a clear message that employers must enrol their employees and pay contributions on time. The proposed amendment is also based on the consideration that the nature of default in making MPF contributions is akin to the nature of default in wage

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	<ul style="list-style-type: none"> ● Agrees in principle to suitably uplift the penalty for failure of employers to remit the deducted wages as employee mandatory contributions, given the more serious nature of this offence compare with failure of employers to make MPF contributions. It nevertheless considers that the proposed maximum penalty is pitched at an excessive level which is even higher than that for wage defaults. The increase in penalty should be made in a fair and reasonable manner. 	<p>payment.</p> <ul style="list-style-type: none"> ● While MPF default contributions will generally be in a smaller amount than wage defaults, the maximum penalty is only the heaviest penalty that could be imposed by the court. The amount of outstanding contributions would be one of the factors that the court would take into account in determining the appropriate penalty. ● It is proposed in the Bill to increase the maximum penalty for an offence involving an employer who fails to remit the deducted wages as employee mandatory contributions to a fine of \$450,000 and imprisonment for four years. This maximum penalty level is proposed with reference to the similar offences under the Employment Ordinance (“EO”): <ul style="list-style-type: none"> - the maximum fine of \$350,000 and imprisonment for three years for wage defaults under the EO (it is proposed that the penalty for defaulting MPF contributions should be on a par with that for wage defaults); and - illegal deduction from an employee’s wage – a maximum fine of \$100,000 and imprisonment for one year under the EO. <p>The proposed maximum fine of \$450,000 and imprisonment for four years equals to the aggregate of the maximum penalty for the above two similar offences under the EO so as to reflect the more serious nature of the offence and create a stronger deterrent effect on</p>

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	<ul style="list-style-type: none"> ● CGCC also expresses concern whether the increase in maximum level of fine can achieve better protection for employees. 	<p>unscrupulous employers.</p> <ul style="list-style-type: none"> ● The maximum penalty is only the heaviest penalty that could be imposed by the court. The penalty imposed in an individual case is a decision for the court, having regard to the facts and circumstances of the case. ● The proposed amendments will help better protect the interest of employees and scheme members by providing stronger deterrent effect on non-compliant employers whilst not jeopardizing the interest of those employers who duly comply with the enrolment and contribution requirements under the MPF legislation for their employees.
HKCTU	<ul style="list-style-type: none"> ● Referring to companies with "limited liability", HKCTU points out that some unscrupulous employers have managed to evade their responsibility. To increase the deterrent effect, it suggests MPFA should, in its criminal proceedings, hold directors of limited companies personally liable for offences committed by the companies. 	<ul style="list-style-type: none"> ● In non-enrolment and default contribution cases, prosecution action will be taken against the employer company as well as against its directors where there is sufficient evidence, so as to impose on them criminal liability for better deterrent effect. In the year 2006-07, the MPFA applied for 440 summonses in respect of non-enrolment and default contributions. Amongst these summonses, 105 summonses were laid against 15 directors/managers of limited companies in respect of default contributions. A total of 13 directors/managers were convicted for default contributions and each was imposed a fine ranging from \$8 000 to \$37 000.
HKFTU	<ul style="list-style-type: none"> ● Pointing out that there was no precedent case under which an employer convicted of MPF-related offences had been sentenced to imprisonment, it requests 	<ul style="list-style-type: none"> ● The penalty imposed in individual case is a decision for the court, having regard to the facts and circumstances of the case. The DoJ will submit previous conviction

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	<p>MPFA to appeal against lenient sentences imposed on recalcitrant employers so as to strengthen the deterrent effect of the MPF legislation.</p>	<p>records of repeated defaulters for the court's consideration in sentencing.</p> <ul style="list-style-type: none"> ● Whether to appeal to a higher court is an issue that needs to be determined in the light of the facts and circumstances of each case. After an assessment, if the case warrants an appeal to a higher court, the MPFA will discuss with the DoJ. The DoJ may then consider appealing to a higher court for the case where they consider that there are justifiable grounds.
HKCIEA	<ul style="list-style-type: none"> ● Employers who have defaulted MPF contributions for a long period of time, say more than one year, should be required to compensate employees' loss in investment return from the MPF scheme proportional to the length of the default period (e.g. 5% interest rate per annum) in addition to the 5% contribution surcharge. 	<ul style="list-style-type: none"> ● Under the existing MPF legislation, an employer is subject to a contribution surcharge which is 5% of the amount of arrears if it defaults in making MPF contributions for its employee. This 5% contribution surcharge is intended to compensate the employee for loss of investment income due to the default of the employer in making contributions and is credited into the employee's MPF account.
HKSMEA	<ul style="list-style-type: none"> ● Based on the results of a survey on its members, HKSMEA opposes the proposed increase in the maximum penalties for MPF-related offences. The proposed maximum penalties are pitched at excessive levels. Moreover, in taking enforcement actions and prosecutions, MPFA should take into consideration the difficulties of and reasons for the employers' failure to comply with the enrolment and contribution requirements, such as financial difficulties, oversight or refusal on the part of employees to enrol in a scheme and to pay contributions as expatriate 	<ul style="list-style-type: none"> ● The proposed increase of maximum penalty for non-enrolment or non-payment of MPF contributions to a fine of \$350,000 and to imprisonment of 3 years serves to put the penalty on par with that for wage default under the EO as the nature of a default in making MPF contributions is akin to the nature of a default in wage payment. ● The increase in the amount of penalty for non-enrolment and non-payment of contributions is proposed with a view to creating a stronger deterrent effect on unscrupulous

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	<p>employees already have retirement schemes in their home countries.</p>	<p>employers, sending a clear message that the employers must enrol their employees and pay the contributions on time.</p> <ul style="list-style-type: none"> ● It is proposed to increase the maximum penalty for an offence involving an employer who fails to remit the deducted wages as employee mandatory contributions. As proposed, upon conviction, an employer will be liable to a fine of \$450,000 and to imprisonment for four years. This maximum penalty level is proposed with reference to the similar offences under the EO: <ul style="list-style-type: none"> - the maximum fine of \$350,000 and imprisonment for three years for wage defaults under the EO (it is proposed that the penalty for defaulting MPF contributions should be on a par with that for wage defaults); and - illegal deduction from an employee's wages – a maximum fine of \$100,000 and imprisonment for one year under the EO. <p>The proposed maximum fine of \$450,000 and imprisonment for four years equals to the aggregate of the maximum penalty for the above two similar offences under the EO so as to reflect the more serious nature of the offence and create a stronger deterrent effect on unscrupulous employers.</p> <ul style="list-style-type: none"> ● The maximum penalty is only the heaviest penalty that could be imposed by the court. The penalty imposed in

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		<p>individual case is a decision for the court, having regard to the facts and circumstances of the case.</p> <ul style="list-style-type: none"> ● The proposed amendment will help better protect the interest of employees and scheme members by providing stronger deterrent effect on non-compliant employers whilst not jeopardizing the interest of those employers who duly comply with the enrolment and contribution requirements under the MPF legislation for their employees. ● The MPFA will carefully investigate and scrutinize every case in deciding if it is justifiable to take prosecution action against the employer.
DP	<ul style="list-style-type: none"> ● MPFA should step up its enforcement actions in a timely and effective manner, notably monitoring employers' payment of mandatory contributions and collection of evidence against non-compliant employers. ● The proposed increase in maximum penalties may not achieve the intended deterrent effect as the penalties imposed by the court were on the lower end. 	<ul style="list-style-type: none"> ● The MPFA has been determined in its effort to tackle, in particular, those cases where employers have failed to comply with the enrolment and contribution requirements under the MPFSO. Enforcement measures adopted by the MPFA include conducting proactive inspection visits to employment premises, investigating into complaints, imposing contribution surcharges on defaulting employers, filing civil claims and pursuing criminal prosecutions. ● The increase in the penalty for non-enrolment and non-payment of contributions is proposed with a view to creating a stronger deterrent effect on unscrupulous employers, sending a clear message that the employers must enrol their employees and pay the contributions on time. While the penalty imposed in individual case is a decision for the court, we believe that the court would

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		take into account the increase in the maximum penalty in sentencing. The DoJ will submit previous conviction records of repeated defaulters for the court's consideration in sentencing.
Ms KO Po-ling	<ul style="list-style-type: none"> ● She supports the proposed amendment for providing stronger deterrence against breaches involving default mandatory contributions. 	<ul style="list-style-type: none"> ● Noted
Mr YEUNG Wai-sing	<ul style="list-style-type: none"> ● He supports in principle the proposed amendments to strengthen the enforcement of the MPF System. He cautions that the amendments should be drafted in a fair manner so as to provide stronger deterrence against breaches by unscrupulous employers, while at the same time avoid penalizing employers for committing an offence inadvertently. 	<ul style="list-style-type: none"> ● The MPFA will launch publicity and education programmes to increase the public awareness of legislative changes to be brought about by the enactment of the Bill. This serves to enable the public to better understand and cope with their legal obligations under the amended MPF legislation. ● The MPFA will carefully investigate and scrutinize every case in deciding if it is justifiable to take prosecution action against the employer.
(V) Offence for providing false pay-records to employees (Clause 33)		
HKCIEA	<ul style="list-style-type: none"> ● It supports the proposal but suggests that prosecution should not be instituted against employers who have provided inaccurate information in the pay records due to oversight. 	<ul style="list-style-type: none"> ● An employer will be held liable under the new offence provision only if he knows that the information contained in the pay-record is false and misleading in a material respect or if he recklessly provides any information that is false or misleading in a material respect.
HKSMEA	<ul style="list-style-type: none"> ● It has reservation on the proposal as the MPFSO has already provided sanctions on persons for making false or misleading statement in any document given 	<ul style="list-style-type: none"> ● Presently, the only provision that sanctions a person for making a false or misleading statement is section 43E of the MPFSO. Under section 43E, a person commits an

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	to certain prescribed persons.	<p>offence if he makes a false or misleading statement in any document given to <i>the MPFA, a trustee, an auditor of a trustee or an auditor of an MPF scheme</i>. The person, upon conviction under section 43E, is liable to a fine at level 6 (i.e. \$100,000) and to imprisonment for 12 months on the first occasion and to a fine of \$200,000 and to imprisonment for 2 years on each subsequent occasion.</p> <ul style="list-style-type: none"> ● Section 43E of the MPFSO however does not apply to a case where a pay-record containing false or misleading information is given to <i>an employee</i>. It is therefore proposed to create a new provision stipulating that a person commits an offence if he provides information in a pay-record which he knows to be false or misleading in a material respect, or recklessly provides information in a pay-record which is false or misleading in a material respect. The person, upon conviction, would be liable to a fine at level 6 (i.e. \$100,000) and to imprisonment for 12 months on the first occasion and to a fine of \$200,000 and to imprisonment for 2 years on each subsequent occasion.
DP	<ul style="list-style-type: none"> ● It supports the proposal in principle. 	<ul style="list-style-type: none"> ● Noted
Dr CHAN Tung	<ul style="list-style-type: none"> ● He supports the proposal. 	<ul style="list-style-type: none"> ● Noted

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Mr YEUNG Wai-sing	<ul style="list-style-type: none"> ● While some employers may provide false or misleading information in the pay-records, it is possible that false information may have been provided by employees. As employers could not possibly vet the information provided by employees in great detail, prosecution should not be instituted against an employer who could provide reasonable explanation. 	<ul style="list-style-type: none"> ● The MPF legislation requires that the pay-record should contain the following information: <ul style="list-style-type: none"> - the amount of relevant income paid to the employee by the employer - the amount of Mandatory Contributions (“MC”) and Voluntary Contributions (“VC”) (if any) paid by the employer - the amount of MC and VC (if any) deducted from the employee’s income - the date on which the contributions are paid to the trustee ● The information statutorily required in the pay-records should all be known to and verifiable by the employers. This is because it is the employers who are responsible for arranging the payment of relevant income to the employees, making deductions from employees’ relevant income for contributions purpose and remitting employer and employee contributions to the approved trustees of MPF schemes. Normally, the employers do not need to resort to their employees for information to facilitate the preparation of pay-records. ● In any event, an employer will be held liable under the new offence provision only if he knows that the information contained in the pay-record is false and misleading in a material respect or if he recklessly

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		provides any information that is false or misleading in a material respect.
(VI) approval of controllers of approved trustees (Clauses 25 to 32)		
HKCEA	<ul style="list-style-type: none"> ● It considers that the proposed amendment should be able to ensure the quality of MPF trustees. 	<ul style="list-style-type: none"> ● Noted
DP	<ul style="list-style-type: none"> ● It supports the proposal in principle. 	<ul style="list-style-type: none"> ● Noted

Part B: Other views/concerns on the MPF System

Organizations/ Individuals	Views/Concerns	Response by the Administration/MPFA
(I) MPF fees and charges		
HKCEA	<ul style="list-style-type: none"> ● It calls on MPFA to strengthen supervision of the operation of MPF trustees and their fees and charges, including measures to facilitate lowering of fees by MPF trustees and to improve the presentation of the annual benefits statement by including details of the calculation of fees and charges. 	<ul style="list-style-type: none"> ● 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. Other means to drive fees down to as low a level as practicable include promoting competition, educating scheme members and streamlining administration to reduce operating costs. ● The MPFA agrees that the annual benefit statement (“ABS”) is an important disclosure tool. After extensive consultation with relevant stakeholders and the enactment of relevant legislation provisions in January 2008, the Code on Disclosure for MPF Investment Funds (“the Code”) has been revised in February 2008 to improve the content of the ABS. Trustees are required to provide additional items in the ABS, including items such as the total amount of contributions (before and after fees); the total amount of transfers (before and after fees); the total amount of fees deducted on contributions and transfers and the total amount of fees charged on transactions where interests in constituent funds are bought and sold. The new requirement will take effect in relation to annual benefit statements in respect of financial periods ending after 1 September 2009.

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HKSMEA DP	<ul style="list-style-type: none"> ● The management fees of MPF schemes are on the high side. The Administration should tackle this problem expeditiously to protect the accrued benefits of scheme members upon their retirement. 	<ul style="list-style-type: none"> ● 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. ● Following the issue of the Code in 2004, the MPFA has developed 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, was launched in July 2007. The second phase, which shows detailed information about fees and charges for each individual fund, will be launched soon. ● 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. Educating scheme members about the importance of fees and charges in investment decisions is also part of MPFA's ongoing efforts. ● The MPFA has recently developed a proposal to enhance employee's control of MPF investments by allowing transfer of accrued benefits derived from employee contributions once per calendar year. We will consult the LegCo Panel on Financial Affairs on the proposal in April 2008.

Organizations/ Individuals	Views/Concerns	Response by the Administration/MPFA
(II) Enhancing the protection of employees' benefits upon retirement		
HKCTU	<ul style="list-style-type: none"> ● To better protect employees' entitlements under Occupational Retirement Scheme (ORSO Schemes), which are exempted from the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (notably in cases where employees who are unable to fulfill the period of service specified under the terms of the ORS suffer losses of their entitlements under the scheme), it suggests that legislative amendments be made to the effect that the benefits provided to employees under exempted provident fund schemes such as ORS should not compare less favourably than the accrued benefits of an employee under a MPF scheme. 	<ul style="list-style-type: none"> ● The MPF and ORSO interface arrangement was established after extensive consultation with relevant stakeholders. In general, ORSO schemes established before 15 October 1995 meeting the prescribed requirements can apply for MPF exemption so that the employers and members of ORSO schemes will be exempt from MPF requirements. The purpose of the MPF/ORSO interface arrangement is to minimize disruption to the existing ORSO schemes arrangement and provide employees with an option to opt between an MPF scheme and an ORSO scheme based on their individual needs. ● If an employer operates an ORSO scheme with MPF exemption granted, the employer needs to provide its employees with an option to join the ORSO scheme or an MPF scheme. In this regard, the employer must provide to its employees the relevant information prescribed in the legislation relating to the ORSO scheme and the MPF scheme to facilitate them to make an informed decision. The employee should give a written notice to his employer to confirm his election to join the ORSO scheme or the MPF scheme. ● If the employer does not comply with the requirements on providing its employees with an option to choose between an MPF scheme and an ORSO scheme, the employee can complain to the MPFA for follow up. In making an election as to which scheme to join, the

Organizations/ Individuals	Views/Concerns	Response by the Administration/MPFA
		<p>MPFA strongly encourages employees to fully understand the features and characteristics of the ORSO scheme and the MPF scheme and their respective rights under the two schemes should they become its members. In case of doubt, the employees should seek clarification from their employers immediately.</p>
<p>HKCTU HKFTU</p>	<ul style="list-style-type: none"> ● Under the existing legislation, employers who have made severance payment or long service payment to their employees can offset the corresponding amounts from the employees' accrued benefits which are attributable to employers' contributions. HKCTU opines that the increase in the number of offsetting arrangements over the past few years will reduce the accrued benefits of employees upon their retirement. HKFTU suggests that the offsetting arrangements be abolished to achieve better protection for MPF scheme members upon their retirement. 	<ul style="list-style-type: none"> ● Before the MPF System was put into operation, the law already allows 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. ● 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 present. The Administration thus has no plan to review such arrangement.

Organizations/ Individuals	Views/Concerns	Response by the Administration/MPFA
Mr YEUNG Wai-sing	<ul style="list-style-type: none"> The current arrangement under the MPF legislation for an employee to claim his accrued benefits on ground of permanent departure from Hong Kong is subject to abuse by employees who make such claims and subsequently take up jobs in Hong Kong. The Administration should review the above arrangement. 	<ul style="list-style-type: none"> The MPF legislation provides that a scheme member who wishes to be paid accrued benefits on the ground of permanent departure from Hong Kong needs to provide evidence satisfactory to the trustee that he is permitted to reside outside Hong Kong. The claimant needs to complete a claim form for benefit withdrawal purpose to be accompanied by a statutory declaration stating that the claimant departed, or will depart, from Hong Kong permanently on a specified date for submission to the trustee. To avoid the claimants' abuse of the withdrawal system by providing false and misleading information and claiming that they would depart or had departed from Hong Kong, in January 2008, the MPFA amended the relevant Guidelines to require the claimant wishing to withdraw his/her accrued benefits on the ground of permanent departure from Hong Kong to provide detailed information about the departure. The amendment serves to provide a stronger deterrent effect against false claim and enables the MPFA to collect more detailed information to facilitate more effective and efficient investigation into suspected cases. The MPFA conducts surveillance checks on applications for early withdrawal of accrued benefits on the ground of permanent departure and would verify the information provided by applicant. The claim form and the statutory declaration already contain a prominent warning statement clearly stating that it is an offence for a person who makes a false or misleading statement in a

Organizations/ Individuals	Views/Concerns	Response by the Administration/MPFA
		<p>material respect.</p> <ul style="list-style-type: none"> ● If there is sufficient evidence, the MPFA can institute prosecution action in accordance with s.43E of the MPFSO against those claimants who provide false or misleading information in making claim for withdrawal of benefits. Upon conviction under s.43E of the MPFSO, the offender is liable to a fine at \$100,000 and to imprisonment for 12 months on the first occasion and to a fine of \$200,000 and to imprisonment for 2 years on each subsequent occasion. ● The MPFA will continue monitoring the situation closely in order to enhance the investigation efficiency and facilitate better planning of the MPFA's enforcement actions against possible abuse.
(III) Improving the administration of the MPF schemes		
HKFTU	<ul style="list-style-type: none"> ● Employees should be allowed to withdraw benefits attributable to their mandatory contributions as the benefits were by nature employee's assets. Hence, employees should be given greater control over for their MPF contributions and that made by their employers. The Administration should give further consideration to enhance the portability of MPF contributions. 	<ul style="list-style-type: none"> ● The MPFA has submitted to the Government a proposal on allowing the employees to transfer accrued benefits derived from their own contributions to an MPF scheme of their choice. The LegCo Panel on Financial Affairs would be consulted on the proposal in April 2008.

Organizations/ Individuals	Views/Concerns	Response by the Administration/MPFA
HKCIEA	<ul style="list-style-type: none"> ● Given that MPF service providers are only required to issue annual benefits statement to scheme members, members may not be able to detect the problem of default payment in a timely manner and thus will delay the arrears recovery. It suggests that the statement be issued, at shorter intervals of say, quarterly or half-yearly. ● The Administration/ MPFA should conduct more publicity to remind employees to monitor their accounts in the MPF schemes. 	<ul style="list-style-type: none"> ● All the MPF trustees have already set up hotlines or websites to enable scheme members to enquire about details of their MPF accounts. In this regard, the MPFA has jointly set up with trustees a “Central Contribution Hotline” in September 2007 which connects scheme members to the relevant trustee’s enquiry centre or interactive voice response system. Members can then access their MPF account information, including the contribution status, by simply providing basic personal information for verification. ● The MPFA has launched publicity programme to promulgate the obligations of employers such as to provide pay-records to employees and to remind employees to check their pay-records. The MPFA would continue to educate employers and employees and publicize the MPF requirements through various media including newspapers and TV. Employees are encouraged to report default contribution cases to the MPFA promptly in order to protect their own interests. Joint publicity and education programmes are organized with various stakeholders, including labour unions, employer associations and political parties.

Abbreviations for Organizations/Individuals :

CGCC	The Chinese General Chamber of Commerce
DP	Democratic Party
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
HKCTU	Hong Kong Confederation of Trade Unions
HKFTU	Hong Kong Federation of Trade Unions
HKSMEA	Hong Kong Small and Medium Enterprises Association
LSHK	The Law Society of Hong Kong
HKBA	Hong Kong Bar Association
Dr CHAN Tung	Dr CHAN Tung, SBS, JP, Sham Shui Po District Council Chairman
Ms KO Po-ling	Ms KO Po-ling, MH, JP, Yau Tsim Mong District Council member
Mr YEUNG Wai-sing	Mr YEUNG Wai-sing, MH, Eastern District Council member

Note : Other views provided by LSHK's written submission related to the textual content of the provisions of the Bill will be dealt with during the clause-by-clause examination of the Bill