

**COMMENTS BY THE LAW SOCIETY OF HONG KONG REGARDING
THE MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) (NO. 2) BILL (“the Bill”)**

| Clause in Bill | Relevant Section (of the MPFSO unless otherwise stated) | Comments | Administration / Mandatory Provident Fund Schemes Authority’s Response |
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| 3 | Sections 43B | 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). | <ul style="list-style-type: none"> • The existing section 43B of the Mandatory Provident Fund Schemes Ordinance (“MPFSO”) simply says that “an employer who...fails to comply with a requirement imposed on employers by...section 7A” without specifically mentioning which subsections of section 7A. • We propose to amend the proposed section 43B(1B) in clause 3 of the Bill to cover section 7A(1) and (2) so as to reiterate the section 43B penalty provision in respect of those subsections in section 7A. |
| 4(1) | Section 2 | The references to “(aa)” and “(ab)” should, surely, be references to “(c)” and “(d)”? | <ul style="list-style-type: none"> • The paragraphs are inserted immediately after paragraph (a) for the following reasons - <ul style="list-style-type: none"> (a) the nature of these contributions are similar to that of the contributions described in paragraph (a); and (b) to follow the order of appearance of the contributions in the Ordinance. |
| 5 | Section 7AA | The reference to “a relevant employee of an employer” in section 7AA(1) appears only to relate to a current 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)). | <ul style="list-style-type: none"> • The term “employee” is defined in section 2 of the MPFSO as having the same meaning as in the Employment Ordinance, other than a person excluded by section 4(2) of that Ordinance, and includes an apprentice and a former employee. The term “relevant employee” is defined in section 2 of the MPFSO by reference to “employee”. Hence, a “relevant employee” includes a former employee. As such, it is not necessary to include an express reference to “former relevant |

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| | | | employees". |
| 10 | Section 18(1) | The reference to the failure to pay a mandatory contribution "on or before the day by which it is required to be paid under the Ordinance" is unclear. Section 122 and 133/134 of the General Regulation set out the number of days for payment of contributions (including a "grace" period for employers). Is the "day by which it is required to be paid under the Ordinance" in the prospective new section 18(1) intended to refer to the day in section 122 of the General Regulation or the long-stop date specified in sections 133/134? | <ul style="list-style-type: none"> Sections 133 and 134 of the Mandatory Provident Fund Schemes (General) Regulation ("General Regulation") have been amended by sections 64 and 65 of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2008. Section 133 is repealed and the provisions relating to the settlement period for payment of contributions in section 134 have been removed entirely. As such, "the day by which it is required to be paid under this Ordinance" can only mean the contribution day as defined in section 122 of the General Regulation. |
| 17(6) | Section 78(6)(c) | It should be made clear that the new subsection should be inserted immediately after section 78(6)(c)(ii). | <ul style="list-style-type: none"> The present formula follows the standard formula adopted by the Law Drafting Division of the Department of Justice. As a matter of drafting practice, it is only when a doubt could arise as to the place in the Ordinance where the new section is being added would the exact position be stated in the amending clause. As there is no doubt in this particular case, an express reference to the position is not necessary. |
| 31 | Section 42D | Would it make sense for these to be an exemption in relation to intra-group transfers of shareholding? | <ul style="list-style-type: none"> The rationale for the proposed provision is explained in paragraph 17 of the LegCo Brief (LC Paper FSB CRG4/51C(2007)). We have no intention to create exemption in this regard. |

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| N/A | Section 45(3) of the 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 Hong Kong SFC. This makes no sense and should be rectified at the earliest opportunity. | <ul style="list-style-type: none"> According to Department of Justice, section 45(3), when read together with section 45(1), permits investment management activities to be delegated to an associate approved by the SFC. |