

**Bills Committee on Mandatory Provident Fund Schemes
(Amendment) (No.2) Bill 2007**

6th meeting on 15 April 2008

List of follow-up actions

In relation to members' concerns about the deterrent effect of the proposed amendments and the effectiveness of actions/measures for the recovery of outstanding mandatory contributions from non-compliant employers, the Administration/the Mandatory Provident Fund Schemes Authority were requested to:

- (a) make reference to the Labour Department's recent recommendations to the Labour Advisory Board on measures to facilitate the enforcement of Labour Tribunal awards in respect of employers' default payment of wages; and examine whether any of these measures could apply in the recovery of mandatory contributions in arrears from employers;
- (b) examine measures to plug the loophole where an unscrupulous employer could transfer assets from his company to other companies, thus depriving the company of assets out of which the outstanding mandatory contributions could be settled;
- (c) provide information on the tools available in taking enforcement actions against directors of employer companies where these directors are not ordinarily resident in Hong Kong or where they are legal entities and not natural persons;
- (d) provide further information on the outcome of the enforcement actions taken in respect of the 5 102 default contribution complaint cases received in 2006-2007, with a breakdown on the number of cases in which all or part of the outstanding contributions had been successfully recovered and the number of cases in which the directors of the employer companies had been convicted of Mandatory Provident Fund (MPF)-related offences; and
- (e) note (i) a suggestion to reverse the onus of proof or impose an evidential burden in criminal prosecution against the director as to his not having knowledge of or consented to the MPF-related offences and (ii) the approach outlined in paragraph 13 of LC Paper No. LS67/07-08 proposing to impose a personal liability on directors for the unpaid mandatory contribution; and to re-consider whether the Administration will take on board (i) and (ii).