

For discussion on
24 April 2008

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

Administration's Response to the Views of the Bills Committee
at the Meeting on 15 April 2008

Purpose

At the meeting of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2007 (“the Bill”) held on 15 April 2008, the Administration was requested to provide written response to the requests and comments made by Members. This paper sets out the Administration’s response.

The Administration’s response

2. Members are requested to note that at least 11 new measures would be put in place to increase the deterrent effect against non-compliance, strengthen the Mandatory Provident Fund Authority (“MPFA”)’s enforcement actions and facilitate the recovery of outstanding contributions which will better protect employees’ interest. Two of these measures have already been approved under the Mandatory Provident Fund Schemes (Amendment) Ordinance 2008 (“the

Amendment Ordinance”), while another nine measures would be introduced if the Government and MPFA’s proposals in the current legislative exercise are agreed. These measures are:

The Amendment Ordinance

- (i) enhance MPFA’s power to require production of information for enforcement actions;
- (ii) remove the settlement period which will expedite recovery of outstanding contributions;

The current legislative exercise

- (iii) increase the maximum penalty against default contributions from a fine of \$100,000 and imprisonment for 6 months on the first conviction, and a fine of \$200,000 and imprisonment for 12 months on each subsequent conviction; to a fine of \$350,000 and imprisonment for three years;
- (iv) further increase the maximum penalty in case the employer failed to remit the deducted wages as mandatory contributions to a fine of \$450,000 and imprisonment for four years;
- (v) empower the court to issue order to direct employers to rectify non-enrolment and / or non-payment of mandatory contributions and contribution surcharge;
- (vi) make it an offence if the employers failed to comply with the court order, who will be subject to a maximum penalty of a fine of \$350,000 and imprisonment for three years, and a daily fine of \$500 for each day during which the offence is continued;

- (vii) extend the liability of officers and persons concerned in the management of the company under section 44 of the Mandatory Provident Fund Schemes Ordinance (“MPFSO”) to include cases where the company concerned commits the offence under (vi). They will be subject to a maximum penalty of a fine of \$350,000 and imprisonment for three years, and a daily fine of \$500 for each day during which the offence is continued;
- (viii) increase the maximum penalty against non-enrolment from a fine of \$100,000 and imprisonment for 6 months on the first conviction, and a fine of \$200,000 and imprisonment for 12 months on each subsequent conviction; to a fine of \$350,000 and imprisonment for three years;
- (ix) impose liability on employers for payment of contributions in non-enrolment cases, with a maximum penalty of a fine of \$350,000 and imprisonment for three years for non-compliance;
- (x) empower the MPFA to recover past outstanding contributions in non-enrolment cases; and
- (xi) make it an offence if employers provide false pay-records to employees, who will be subject to a maximum penalty of a fine of \$100,000 and imprisonment for one year on the first conviction and to a fine of \$200,000 and imprisonment for two years on each subsequent conviction.

3. As regards the seven proposed improvement measures recently considered by the Labour Advisory Board (“LAB”) to assist employees in enforcing Labour Tribunal awards, Members may wish to

note that similar arrangements in respect of four of these measures are already in place under the MPF regime, and we have proposed vide the current legislative exercise to introduce a measure similar to one of the other proposals. We note that the LAB has not reached agreement on one of the seven proposals. We will liaise with the Labour Department to follow up the remaining proposal. Further details are given in the Annex.

4. To ensure compliance with the MPFSO, the MPFA takes prosecution actions against employers which are in breach of the legislative requirements. Where sufficient evidence is available, criminal actions will also be brought against the directors concerned. On the question of overseas directors and corporate directors, it is noted that the situation in Hong Kong is not dissimilar to the other international finance centres, where it is permissible for corporate directors and individual directors who are not domiciled in the host country to operate in respect of companies registered in the host country. Such directors of companies registered in Hong Kong are subject to the same legal requirements and sanctions as individual directors who are natural persons and residing in Hong Kong. Regarding the issue raised by Members on asset transfer by employers, we are in touch with the Labour and Welfare Bureau on the action that could be taken against such employers.

Further breakdown of MPFA's enforcement statistics

5. According to the MPFA, they do not maintain records of breakdown of the numbers of cases where the arrears have been fully or partially recovered in respect of the default contribution complaint cases. In the relevant period, 13 of 15 prosecution cases have resulted in successful conviction of the directors/managers of the companies concerned.

Financial Services and the Treasury Bureau

April 2008

**The measures recently considered by the Labour Advisory Board
to assist employees in enforcing Labour Tribunal awards**

	The proposed measures	The current position in the MPF regime
(a)	Relaxing/waiving the means test of legal aid for employees seeking to file winding-up/bankruptcy petition against the defaulting employer or granting discretionary power to the Director of Legal Aid to waive the means test for such employees	<ul style="list-style-type: none">• These measures are not relevant to the MPF regime since the Mandatory Provident Fund Schemes Authority (“MPFA”) has already taken on the responsibility to pursue civil claims against defaulting employers on behalf of employees for recovery of outstanding mandatory contributions and contribution surcharges in accordance with section 18 of the MPFSO. Any MPF contributions recovered by the MPFA from the defaulting employers will be paid to the employees' MPF accounts for their benefit. In this connection, all legal costs associated with the recovery of outstanding contributions and enforcement of awards made by the courts are borne by the MPFA.
(b)	Waiving/reducing the execution cost for bailiff service for employees with defaulted Labour Tribunal (“LT”) awards	

	The proposed measures	The current position in the MPF regime
(c)	Imposing punitive surcharge on defaulting employers	<ul style="list-style-type: none"> Under the existing arrangement, the MPFSO imposes a contribution surcharge at 5% of the amount of outstanding mandatory contributions on employers who default in making MPF contributions. Any arrears and contribution surcharges paid to or recovered by the MPFA on behalf of employees would be credited into the employees' MPF accounts.
(d)	Making non-compliance of LT awards a criminal offence	<ul style="list-style-type: none"> We will achieve similar result if our proposals in the current legislative exercise vide paragraph 2(v) & (vi) in this paper are agreed.
(e)	Empowering the LT to make an order requiring the defaulting employer to reveal his financial details	<ul style="list-style-type: none"> The MPFA's power to require production of records by employers has already been enhanced vide the measure referred to the paragraph 2(i) of this paper.

	The proposed measures	The current position in the MPF regime
(f)	Conducting an overall review of enforcement of court judgment in civil cases	<ul style="list-style-type: none"> • We will facilitate the Labour Department's review.
(g)	Extending the coverage of the Protection of Wages on Insolvency Fund to defaulted sums awarded by the LT	<ul style="list-style-type: none"> • We note that the LAB has not reached agreement on this proposal.