

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

7th meeting on 24 April 2008

List of follow-up actions

1. In relation to the concerns raised by the legal adviser and members of the Bills Committee about the provisions relating to controllers of approved trustees under the proposed sections 42A to 42F of the Mandatory Provident Fund Schemes (General) Regulation (Clause 31 of the Bill), the Administration/the Mandatory Provident Fund Schemes Authority (MPFA) were requested to:
 - (a) examine further the meaning of "substantial shareholder" under the proposed section 42A(2), having regard to whether it was necessary to include under the definition an associate of the substantial shareholder who was a person acting in concert with the substantial shareholder (i.e. making reference to Schedule 8 of the Mandatory Provident Fund Schemes Ordinance (MPFSO) (Cap. 485));
 - (b) consider whether to amend the proposed sections 42B(3), 42C(3), 42D(5) and 42E(1) pertaining to the requirements on officers, indirect controllers, substantial shareholders and controllers of a trustee, to align with the criteria for determination of a "fit and proper person" under section 129 of the Securities and Futures Ordinance (Cap. 571);
 - (c) consider whether it was an appropriate arrangement to require a trustee to apply to the MPFA for consent to persons proposing to become indirect controllers, having regard to the fact that indirect controllers normally acted behind the scene and the above arrangement might appear to encourage behind the scene activities and might not be conducive to effective regulation over the MPF trustees; and
 - (d) explain the material difference, if any, between the meaning of "indirect controller" of a trustee under MPFSO and that of "shadow director" of a company under the Companies Ordinance (CO)(Cap. 32). If there was no material difference, consider whether the term "shadow director" should be adopted in the MPFSO so that the procedures and sanctions in relation to "shadow director" under CO could be readily applicable to MPF scheme trustees.

2. To address members' concern about the protection of employees' accrued benefits under the MPF System, the Administration/the MPFA were requested to:
 - (a) provide a paper setting out the procedures and timeframe under which the MPFA would take actions to apply for liquidation of the employer company which had persistently failed to settle the outstanding mandatory contributions; and
 - (b) note a member's suggestion to extend the scope of the Mandatory Provident Fund Schemes Compensation Fund to cover default MPF contributions owed by insolvent employer companies, and consider whether the suggestion can be taken on board.

Council Business Division 1
Legislative Council Secretariat
6 May 2008