

Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2007

COMMITTEE STAGE

Amendments to be moved by _____

Clause

Amendments proposed

New clauses

By adding—

“12A. Liability of officers, managers and partners

Section 44(1) is repealed and the following substituted—

“(1) Where an offence under this Ordinance is committed by a company and—

- (a) unless there is evidence showing that the following person has not consented to or connived in the offence,
 - (i) any officer of the company; or
 - (ii) any other person concerned in the management of the company, or any person who was purporting to act in that capacityis presumed to have consented to or connived in the offence; or

- (b) the offence is proved to be attributable to the negligence on the part of any officer or other person described above,

the officer or person as well as the company commits the offence and is liable to be proceeded against and punished accordingly.” .

12B. Civil liabilities of company directors and shareholders

The following is added—

“44A. Civil liabilities of company directors and shareholders

- (1) Where—
 - (a) any employer, which is a company, has been convicted more than once under section 43B;
 - (b) recovery of mandatory contribution that is in arrears by the Authority against the employer is unsuccessful because it has insufficient assets; and
 - (c) the employer continues to carry on business and persists in failing to pay any contribution due,

a court of competent jurisdiction may, upon an application by the Authority and being satisfied that it is just and equitable to do so, make an order that the directors (including a shadow director) or shareholders of the employer or any one or more of them shall personally pay to the Authority within the time specified in such order the mandatory contribution that is in arrears together with any contribution surcharge payable under section 18(2) in respect of those arrears.

(2) For the purpose of this section, “shadow director” has the meaning assigned to the expression in section 2(1) of the Companies Ordinance (Cap.32).”.”.