

BRIEF FOR LEGISLATIVE COUNCIL

Mandatory Provident Fund Schemes Ordinance (Chapter 485)

**MANDATORY PROVIDENT FUND
SCHEMES (AMENDMENT) (NO.2) BILL 2007**

INTRODUCTION

At the meeting of the Executive Council on 18 December 2007, the Council ADVISED and the Chief Executive ORDERED that the Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2007 (“the Bill”), at Annex, should be introduced into the Legislative Council.

Annex

JUSTIFICATIONS

2. The Mandatory Provident Fund (“MPF”) System, designed to be a mandatory, privately managed, fully-funded scheme, was launched in December 2000 for retirement protection for Hong Kong’s working population. As at end September 2007, over 2.3 million employees and self-employed persons were enrolled in the MPF schemes, with total assets of the schemes amounting to over \$257 billion. The MPF System is reviewed from time to time to ensure that it continues to serve the needs of the existing and potential scheme members. The present proposed amendments are recommended by the Mandatory Provident Fund Schemes Authority (“MPFA”). They cover different aspects of the operation, in particular the enforcement, of the MPF System, so as to better protect the interests of employees and scheme members.

Legislative Proposals

(a) Non-payment of mandatory contributions in non-enrolment cases

3. Under section 7(1) of the Mandatory Provident Fund Schemes Ordinance (“MPFSO”), every employer of a relevant employee is required to ensure that the employee becomes a member of an MPF scheme within a prescribed period. Section 7(1A) further stipulates that an employer is

required to ensure the enrolment of its employee in an MPF scheme throughout his employment. Under sections 7A(1) and 7A(2) of the MPFSO, it is the legal responsibility of the employer to make mandatory contributions to the MPF scheme for the employee.

4. However, where an employer has failed to enrol an employee in an MPF scheme and thus has not been making mandatory contributions for the employee, while criminal prosecution could be brought against the employer for non-enrolment, no legal action could be taken against the employer for its non-payment of mandatory contributions under the existing MPF legislation. To plug this loophole and ensure that employees in non-enrolment cases will not be deprived of their entitlement to mandatory contributions, it is proposed to amend the MPF legislation to make it clear that an employer who does not enrol its relevant employee in an MPF scheme is still liable to pay mandatory contributions for the employee and such contributions become due to the MPFA by a prescribed due date. The amended legislation will provide for both criminal and civil routes of actions to deal with default contributions in respect of non-enrolled employees, similar to that stipulated under the existing legislation in respect of enrolled employees. An employer's obligation will cover mandatory contributions which would have been payable had the employee been enrolled in a registered scheme in accordance with section 7 of the MPFSO and this obligation will commence from 1 December 2000 irrespective of whether the employee is still in the employment of the same employer on the commencement date of the Bill. The legislative proposals will also introduce a mechanism to facilitate the depositing of the contributions received by the MPFA into an MPF scheme for the benefit of the employee concerned.

5. To facilitate effective enforcement, we also propose to amend the MPFSO so that in cases of non-enrolment or non-payment of mandatory contributions, the court will have a discretionary power to compel an employer to enrol its employees in an MPF scheme and to pay the outstanding contributions and contribution surcharges as appropriate. These measures are expected to enhance the deterrent effect against non-enrolment and non-payment of mandatory contributions.

(b) Increasing the maximum penalty for non-payment of contributions and non-enrolment

6. An employer who fails to enrol its employees in an MPF scheme in accordance with section 7 of the MPFSO or fails to make mandatory

contributions in accordance with section 7A of the MPFSO commits an offence under section 43B of the MPFSO and is liable, upon conviction, to a fine at level 6 (\$100,000) and to imprisonment for 6 months on the first occasion, and to a fine of \$200,000 and to imprisonment for 12 months on each subsequent occasion.

7. Some labour unions and legislators consider that the existing penalty provisions are not adequate in providing effective deterrence against non-compliant employers, particularly in view of the relatively low level of fines imposed by the courts in prosecution cases. They also hold the view that default in making MPF contributions is akin to default in wage payment, and hence the maximum penalty for default contributions should be adjusted upward to align with that for wage defaults under section 63C of the Employment Ordinance (Cap. 57) (“EO”), i.e. a maximum fine of \$350,000 and imprisonment for three years.

8. The MPFA agrees that it is necessary to send a strong message to employers that they should enrol employees in MPF schemes and make MPF contributions on time. To achieve this purpose for providing stronger deterrence against possible breaches, we propose to increase the maximum penalty under section 43B of the MPFSO for failure to comply with the enrolment or contribution obligation to a fine of \$350,000 and imprisonment for three years. After the adjustment, the maximum penalty under section 43B of the MPFSO for a failure to comply with the enrolment or contribution obligation will become on a par with that for wage defaults under section 63C of the EO.

(c) **Increasing the maximum penalty for failure of employers to remit the deducted wages as employee mandatory contributions**

9. Under section 7A(1) and (2) of the MPFSO, an employer is required to deduct from an employee’s relevant income his MPF contributions, and pay the employee and employer mandatory contributions to the relevant MPF scheme before the contribution due date. However, the MPFA’s enforcement experience indicates that it is not uncommon for employers to deduct mandatory contributions from the employees’ relevant income without remitting the deducted sum to MPF schemes. Such act by employers severely jeopardises employees’ interests, particularly if the employers later run into financial difficulties and are unable to settle the outstanding employee (and often employer) contributions. The employees not only lose the employer mandatory contributions to which they should be entitled but also the employee mandatory contributions that have been

deducted from their salaries¹.

10. The sanctions under the current MPF legislation against default contributions, however, do not distinguish between cases where an employer has deducted MPF contributions from an employee's wage for its own use and cases where no such deduction has been made. Concerns have therefore been expressed by some labour unions and legislators that, in non-payment of mandatory contribution cases, employers who have deducted employee mandatory contributions should be subject to a heavier punishment than employers who have not, so as to reflect the severity of the former type of cases which are by nature similar to illegal deduction of wages. Illegal deduction of wages is prosecutable under the EO. Section 32 of the EO prohibits employers from deducting from employee's wages except where allowed in specified circumstances. One of such circumstances is that the deductions are required or authorized to be made under any enactment such as deductions from the employee's relevant income for making MPF contributions under section 7A(1) and 7A(2) of the MPFSO. In this connection, the fact that the employer fails to remit the deducted wages as the employee mandatory contribution does not make him liable for wage deduction offence under section 32 of the EO.

11. In order to deter such unscrupulous acts by employers, we propose to impose a higher penalty on employers who do not remit the deducted employee mandatory contributions from employees' wages to the relevant MPF schemes. It is proposed that upon conviction, the employer will be liable to *a fine of \$450,000* and to *imprisonment for four years*. The higher maximum penalty level proposed compared to that for default contributions where the employers have not made deduction from their employees' wages (i.e. *a fine of \$350,000* and *imprisonment for three years* as explained in paragraph 8 above) is prepared with reference to the maximum penalty for breaching section 32 of the EO (i.e. *a fine of \$100,000* and *imprisonment for one year*).

(d) Offence for providing false pay-records to employees

12. Section 139 of the Mandatory Provident Fund Schemes (General) Regulation ("General Regulation") requires an employer to give monthly pay-records to its employees who are MPF scheme members. The pay-record should be given to the employee not later than 7 working days

¹ Where the insolvent employers deduct employees' wages for making employees' MPF contributions and default on these sums, such arrears of wages are already covered by the Protection of Wages on Insolvency Fund.

after the payment, or the last payment if there is more than one payment, of mandatory contributions during the month concerned.

13. The pay-record contains information on the amount of relevant income of the employee, the amount of employer mandatory/voluntary contributions paid by the employer and the amount of employee mandatory/voluntary contributions deducted from the income of the employee, and the date on which these contributions are paid to the trustee of the MPF scheme. The contribution details contained in the pay-record can be used by the employee to verify if the employer has properly ascertained the amount of relevant income and correctly calculated the amount of employer contributions and the amount of employee contributions. It is also intended to serve as an evidence of payment of contributions by the employer to the trustee concerned.

14. There is concern that some employers, though giving monthly pay-records as required under the law, could deliberately provide false or misleading contribution details (e.g. by stating that contributions have been duly paid on a certain date when in fact no such payment has been made) to deceive their employees. To protect the interests of scheme members, it is proposed to create a new offence against the employer which, in a pay-record given to an employee, provides any information that it knows to be false or misleading in a material respect, or recklessly provides any information that is false or misleading in a material respect. The employer, upon conviction, is liable to a fine at level 6 and to imprisonment for one year on the first occasion and to a fine of \$200,000 and to imprisonment for 2 years on each subsequent occasion. The new provision is modeled on section 43E of the MPFSO which sanctions a person for making a false or misleading statement in any document given to certain prescribed persons (i.e. the MPFA, a trustee, an auditor of a trustee or an auditor of a MPF scheme), but not including an employee.

(e) Approval of controllers of approved trustees

15. Trustees of MPF schemes play an important role in ensuring that MPF schemes are operated in compliance with the law and that the interests of scheme members are well protected. The MPF legislation provides that a trustee must first be approved by the MPFA if it intends to conduct MPF business. One of the eligibility requirements for a trustee company applying to conduct MPF business is that the MPFA is satisfied that the controllers of the company are suitable.

16. According to section 2 of the MPFSO, the following persons are controllers of an approved trustee:

- (a) the chief executive officer and directors of the company;
- (b) a person in accordance with whose instructions those directors are accustomed to act (“indirect controller”); and
- (c) a natural person or another company who, directly or indirectly, controls at least 15% of the voting shares of the trustee (“substantial shareholder”).

17. Indirect controllers and substantial shareholders are required to satisfy the same criteria as the chief executive officer and directors when a trustee company is first approved to carry on MPF business. Subsequent to the approval of the trustee, section 28 of the General Regulation provides that any new appointment of chief executive officer and directors in respect of the trustee requires the prior consent of the MPFA. However, no similar requirement for prior consent in respect of subsequent acquisition of the status of indirect controllers and substantial shareholders is stipulated in the MPF legislation. It is inconsistent and unreasonable that persons who become indirect controllers or substantial shareholders after initial approval of the trustee are not subject to scrutiny to ensure that they are suitable.

18. Moreover, once the MPFA has given consent to the appointment of a chief executive officer or director of the company under section 28 of the General Regulation, the MPFA is not empowered to withdraw the consent even if the person is no longer suitable to continue performing such role. For the better supervision of the trustees, the MPFA should be empowered to withdraw the consent previously given to any chief executive officers or directors as well as other types of controllers from continuing holding such positions if such persons are no longer suitable.

19. It is also envisaged that a person may have become the controller of a trustee by virtue of his acquiring, without the MPFA’s prior consent, voting shares of an approved trustee exceeding the threshold of 15%. In that case, the person is prohibited from exercising the voting rights conferred by the shares until and unless consent is given by the MPFA to the person’s continuing to be controller of the trustee.

20. To address the above issues, it is proposed to amend the MPF legislation to set out clearly the approval requirements in respect of indirect controllers and substantial shareholders and the withdrawal of approval of controllers under specified circumstances. This seeks to enhance the supervision of the trustees so as to better protect scheme members’ interests.

THE BILL

21. The main provisions of the Bill are:

- (i) Part 2 of the Bill amends section 43B of the MPFSO to increase the maximum penalty for a failure to enrol a relevant employee in a registered scheme under section 7 of MFPSO or to make a mandatory contribution under section 7A of the MPFSO. In particular, a higher penalty is imposed on an employer who, having deducted an employee's mandatory contribution from the employee's relevant income, fails to pay the contributions to the approved trustee under section 7A of the MPFSO;
- (ii) Part 3 of the Bill adds new sections to the MPFSO and amends the General Regulation to impose an obligation on an employer whose employee is not a member of a registered scheme to pay mandatory contributions to the Authority and to provide for the relevant procedures for handling such contributions. It also adds a new section 43BA to the MPFSO to empower the court to, in specified circumstances, make an order requiring an employer to enrol its employee in a registered scheme and pay any outstanding mandatory contribution or contribution surcharge;
- (iii) Part 4 of the Bill adds new sections to the General Regulation to provide that a person must not become a controller of a corporate approved trustee unless prior consent from the MPFA has been sought and to empower the MPFA to object to existing controllers and give directions in relation to substantial shareholders; and
- (iv) Part 5 of the Bill adds a new section 43F to the MPFSO to create a new offence for participating employers to provide false or misleading information in pay-records given to employees.

LEGISLATIVE TIMETABLE

22. The legislative timetable will be:

Publication in the Gazette	28 December 2007
First and commencement of the Second Reading Debate	9 January 2008

Resumption of Second Reading to be notified
debate, committee stage and Third
Reading

IMPLICATIONS OF THE PROPOSAL

23. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Bill will not affect the current binding effect of the MPFSO. It has no civil service, financial, staffing, sustainability, productivity or environmental implications. The proposal will enhance the supervision, operation and enforcement of the MPF System to the benefit of the economy at large and the workers in particular.

PUBLIC CONSULTATION

24. The legislative proposals have been thoroughly deliberated by the MPF Schemes Operation Review Committee (“the Review Committee”) and the MPF Schemes Advisory Committee and are supported by them. Both the Review Committee and the Advisory Committee comprise employers’ and employees’ representatives. We briefed the Legislative Council Panel on Financial Affairs on the proposals at the meeting on 8 November 2007. The Panel members were generally supportive of the proposed amendments. We have also informed the Labour Advisory Board of the proposed amendments.

PUBLICITY

25. A press release will be issued and a spokesman will be available to answer media and public enquiries.

BACKGROUND

26. The Review Committee was established by the MPFA in August 2001 for the purpose of conducting comprehensive review of the MPF System and relevant legislation with regard to their operational and administrative aspects. The Review Committee comprises representatives of employer and employee bodies, service providers, professional organizations, Government and MPFA. Based on the advice of the Review Committee, the MPFA has made a number of recommendations on amendments to the MPFSO and the General Regulation.

ENQUIRIES

27. Enquiries in relation to the Bill should be directed to Ms Jenny Chan, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)³, at 2527 3909.

Financial Services and the Treasury Bureau
27 December 2007

**MANDATORY PROVIDENT FUND SCHEMES
(AMENDMENT) (NO. 2) BILL 2007**

CONTENTS

Clause Page

PART 1

PRELIMINARY

- | | | |
|----|--------------|---|
| 1. | Short title | 1 |
| 2. | Commencement | 1 |

PART 2

OFFENCES BY EMPLOYERS

Mandatory Provident Fund Schemes Ordinance

- | | | |
|----|-----------------------|---|
| 3. | Offences by employers | 1 |
|----|-----------------------|---|

PART 3

**PAYMENT OF CONTRIBUTIONS WHERE RELEVANT
EMPLOYEE IS NOT SCHEME MEMBER**

Mandatory Provident Fund Schemes Ordinance

- | | | |
|----|--|---|
| 4. | Interpretation | 3 |
| 5. | Sections added | |
| | 7AA. Employer required to pay contributions to Authority where relevant employee not member of registered scheme | 4 |
| | 7AB. Contributions paid under section 7AA be accompanied by statement | 8 |

7AC.	Authority to pay contributions received under section 7AA to approved trustee	9
7AD.	Approved trustee's duties with regard to contributions received from Authority	10
7AE.	Certain contributions due for payment to the Authority on commencement of section 7AA	11
6.	Sections 7 and 7A not to apply to certain employees	12
7.	Section substituted	
9.	Minimum level of income for contribution purposes	12
8.	Section substituted	
10.	Maximum level of income for contribution purposes	12
9.	Voluntary contributions	13
10.	Recovery of mandatory contributions that are in arrears	13
11.	Offences by employers	14
12.	Section added	
43BA.	Court may make certain orders in proceedings for offences under section 43B	14
13.	Minimum level of relevant income per contribution period	16
14.	Maximum level of relevant income per contribution period	17

Mandatory Provident Fund Schemes (General) Regulation

15.	Interpretation	17
16.	Acceptance of contributions and accrued benefits being transferred	17
17.	Separate accounts for each scheme member	18
18.	Definitions	20
19.	Net loss sustained in respect of self-employed person's business	21
20.	Contribution surcharge for, and report on, failure to pay contributions	21
21.	Crediting of payments	21
22.	Accrued benefits not to be transferred if contributions outstanding	21
23.	Section added	
207.	Rate of contribution surcharge	21
24.	Financial Penalties	21

PART 4

CONTROLLERS OF CORPORATE APPROVED TRUSTEES

Mandatory Provident Fund Schemes Ordinance

25.	Suspension of approval of approved trustee	22
26.	Revocation of approval of approved trustee	22
27.	Regulations with respect to registered schemes	22
28.	Power to make regulations for purposes of sections 45B and 45C	23
29.	Regulations	23

**Mandatory Provident Fund Schemes (General)
Regulation**

30.	Appointment of officer of approved trustee that is a company	23
31.	Part IVA added	

PART IVA

PROVISIONS RELATING TO CONTROLLERS OF
APPROVED TRUSTEES

42A.	Application and interpretation	24
42B.	Authority's consent required in respect of appointment of officers	24
42C.	Authority's consent required in respect of persons proposing to become indirect controllers	26
42D.	Authority's consent required in respect of persons proposing to become substantial shareholders	27
42E.	Authority may object to existing controllers	29
42F.	Authority's power to give directions in relation to substantial shareholders	31
32.	Financial Penalties	34

PART 5

PROVIDING FALSE OR MISLEADING INFORMATION
IN PAY-RECORDS

Mandatory Provident Fund Schemes Ordinance

33.	Section added	
	43F.	Offence relating to pay-record 37

A BILL

To

Amend the Mandatory Provident Fund Schemes Ordinance and the subsidiary legislation made under it.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Mandatory Provident Fund Schemes (Amendment) (No. 2) Ordinance 2007.

2. Commencement

This Ordinance shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

PART 2

OFFENCES BY EMPLOYERS

Mandatory Provident Fund Schemes Ordinance

3. Offences by employers

(1) Section 43B(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is repealed and the following substituted –

“(1) An employer who, without reasonable excuse, fails to comply with a requirement imposed on employers by section 7 commits an offence and is liable on conviction to a fine of \$350,000 and to imprisonment for 3 years, and in the case of an offence consisting of a failure by the employer to comply with the

requirement imposed by section 7(1A), a daily penalty of \$500 for each day on which the offence is continued.

(1A) For the purposes of subsection (1), an employer does not have a reasonable excuse for failing to comply with a requirement imposed by section 7 by reason only that the relevant employee's not becoming or continuing to be a member of a registered scheme was wholly or partly due to the fault of the employee.

(1B) An employer who, without reasonable excuse, fails to comply with section 7A(7) commits an offence and is liable on conviction –

- (a) to a fine at level 6 and to imprisonment for 6 months on the first occasion on which the person is convicted of the offence; and
- (b) to a fine of \$200,000 and to imprisonment for 12 months on each subsequent occasion on which the person is convicted of the offence.

(1C) An employer who, without reasonable excuse, fails to comply with section 7A(8) commits an offence and is –

- (a) in the case where he has deducted a contribution from the employee's relevant income under section 7A(1)(b) or (2)(b), liable on conviction to a fine of \$450,000 and to imprisonment for 4 years;
- (b) in any other case, liable on conviction to a fine of \$350,000 and to imprisonment for 3 years.”.

(2) Section 43B(2) is amended by repealing the full stop and substituting –

“and is liable on conviction –

(a) to a fine at level 6 and to imprisonment for 6 months on the first occasion on which the person is convicted of the offence; and

(b) to a fine of \$200,000 and to imprisonment for 12 months on each subsequent occasion on which the person is convicted of the offence.”.

(3) Section 43B(3) is repealed.

PART 3

PAYMENT OF CONTRIBUTIONS WHERE RELEVANT EMPLOYEE IS NOT SCHEME MEMBER

Mandatory Provident Fund Schemes Ordinance

4. Interpretation

(1) Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended, in the definition of “mandatory contribution” –

(a) in paragraph (a), by repealing “or” at the end;

(b) by adding –

“(aa) an amount that is required to be paid as a contribution to the Authority under section 7AA;

(ab) an amount that is payable to the Authority under section 7AE; or”.

(2) Section 2(1) is amended, in the definition of “master trust scheme” –

(a) in paragraph (b), by adding “and former self-employed persons” after “persons”;

(b) by repealing paragraph (c).

(3) Section 2(1) is amended, in the definition of “maximum level of relevant income”, by repealing everything after “Schedule 3” and substituting a semicolon.

(4) Section 2(1) is amended, in the definition of “minimum level of relevant income”, by repealing everything after “Schedule 2” and substituting a semicolon.

5. Sections added

The following are added –

“7AA. Employer required to pay contributions to Authority where relevant employee not member of registered scheme

(1) This section applies if –

(a) at the date of commencement of this section; or

(b) at any time after that date,

a relevant employee of an employer is not a member of a registered scheme as required by section 7.

(2) The employer must –

(a) in the case referred to in subsection (1)(a), for each contribution period ending on or after that commencement date during which the employee is not such a member; or

(b) in the case referred to in subsection (1)(b), for each contribution period ending after the date the employee becomes a relevant employee during which the employee is not such a member,

pay to the Authority, in respect of the employee, the amounts referred to in subsection (3) on or before the contribution day.

- (3) The employer must for each contribution period pay –
 - (a) as a contribution by the employer, an amount from his own funds that is determined in accordance with subsection (4); and
 - (b) subject to subsection (6), as a contribution by the employee, an amount that –
 - (i) is deducted from the employee’s relevant income for the contribution period; and
 - (ii) is determined in accordance with subsection (4).

(4) For the purposes of subsection (3)(a) and (b), the amount to be paid by an employer for a contribution period is an amount equal to the prescribed percentage of the employee’s relevant income for that contribution period.

(5) For the purposes of subsection (4), the prescribed percentage is 5 per cent or, if some other percentage is prescribed by the regulations, that other percentage. The regulations may prescribe different percentages for the purposes of subsection (3)(a) and (b).

(6) An employer must not, in respect of an employee (not being a casual employee) whose wage period –

- (a) is not more than 1 month, make a deduction under subsection (3)(b) in respect of the employee’s relevant income earned for any wage period that commences on or before the 30th day of employment after the relevant time; or
- (b) is more than 1 month, make a deduction under subsection (3)(b) in respect of the employee’s relevant income earned for the period

commencing from the relevant time and ending on the last day of the calendar month in which the 30th day of employment after the relevant time falls.

(7) This section is subject to sections 9 and 10.

(8) A relevant employee does not have a claim against the employee's employer for payment of the amounts that the employer has, in accordance with this section, deducted from the employee's relevant income and paid to the Authority. However, nothing in this subsection affects any entitlement that the employee has in respect of those amounts under the rules governing the scheme to which the Authority has paid those amounts.

(9) For the avoidance of doubt, an employer is not required to make a contribution in respect of a relevant employee under section 7A for a contribution period for which a contribution is payable in respect of the employee to the Authority under this section.

(10) In this section –
“contribution day” (供款日) –

(a) in relation to a contribution payable for a contribution period by an employer in respect of a relevant employee who is not a casual employee, means, subject to subsection (11) –

(i) where the contribution period is wholly or partly within the permitted period after the relevant time, the tenth day after –

(A) the last day of the month in which the permitted period ends; or

(B) the last day of the month in which the contribution period ends,

whichever is the later; or

- (ii) where the contribution period is not wholly or partly within the permitted period after the relevant time, the tenth day after the last day of the month in which the contribution period ends; and
- (b) in relation to a contribution payable for a contribution period by an employer in respect of a relevant employee who is a casual employee, means, subject to subsection (11) –
 - (i) where the contribution period is wholly or partly within the permitted period after the relevant time, the tenth day after the last day of the contribution period in which the permitted period ends; or
 - (ii) where the contribution period is not wholly or partly within the permitted period after the relevant time, the tenth day after the last day of the contribution period;

“contribution period” (供款期) has the same meaning as in section 7A(10);

“permitted period” (特准限期) has the same meaning as in section 7(3)(a);

“relevant time” (有關時間) has the same meaning as in section 7(3)(b);

“wage period” (工資期) has the same meaning as in section 7A(10).

(11) If the contribution day as determined under subsection (10) is a public holiday, or a gale warning day or black rainstorm warning day within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1), then the contribution day means the next following day, not being a public holiday or such a gale warning day or black rainstorm warning day.

**7AB. Contributions paid under section 7AA
be accompanied by statement**

(1) When paying contributions to the Authority under section 7AA, an employer must ensure that the contributions are accompanied by a statement, in a form specified or approved by the Authority, for the contribution period or periods to which the contributions relate.

(2) The statement must include the following information –

- (a) the name and business registration number of the employer;
- (b) the address and telephone number of the employer;
- (c) the name of the contact person of the employer and the means by which the person can be contacted;
- (d) the registered scheme nominated by the employer to which the contributions are to be paid;
- (e) the name of the relevant employee and his Hong Kong Identity Card number or, if he is not the holder of a Hong Kong Identity Card, the number and issuing agency of any passport held by him;
- (f) the contribution period or periods to which the contributions relate;
- (g) the amount of relevant income of the relevant employee for the contribution period or periods;
- (h) the amount of contributions paid under section 7AA(3)(a) by the employer in respect of the relevant employee for the contribution period or periods;
- (i) the amount of contributions deducted from the relevant income of the relevant employee under

section 7AA(3)(b) by the employer for the contribution period or periods;

- (j) the date of commencement of the employment of the relevant employee;
- (k) such other information as may be specified by the Authority.

7AC. Authority to pay contributions received under section 7AA to approved trustee

The Authority must pay any contribution that is paid to it in respect of a relevant employee under section 7AA –

- (a) where the employee is still employed by the employer concerned at the time the Authority makes payment –
 - (i) to the approved trustee of the registered scheme nominated by the employer for this purpose; or
 - (ii) if the employer has not nominated a registered scheme, to the approved trustee of the registered scheme nominated by the employee for this purpose; or
 - (iii) if neither the employer nor the employee has nominated a registered scheme, to the approved trustee of a registered scheme that the Authority considers appropriate; or
- (b) where the employee has ceased to be employed by the employer concerned at the time the Authority makes payment –

- (i) to the approved trustee of the registered scheme nominated by the employee for this purpose; or
- (ii) if the employee has not nominated a registered scheme, to the approved trustee of a registered scheme that the Authority considers appropriate.

7AD. Approved trustee's duties with regard to contributions received from Authority

(1) An approved trustee of a registered scheme must, on receiving a contribution paid in respect of a relevant employee from the Authority under section 7AC, check that the arithmetical calculation of the contribution payable by the employer concerned is correct.

(2) An approved trustee must also take such action with regard to the contribution as may be reasonably required by the Authority, including, in the case of a discrepancy between the relevant calculation in respect of the contribution and the amount paid by the employer concerned as a contribution, requiring the employer to rectify the discrepancy.

(3) On being satisfied that the amount of the contribution paid by the employer concerned is correct, the approved trustee must credit the amount to the relevant employee's account.

(4) An approved trustee who, without reasonable excuse, fails to comply with subsection (3) commits an offence and is liable on conviction to a fine at level 5.

7AE. Certain contributions due for payment to the Authority on commencement of section 7AA

(1) This section applies if at any time during the specified period, a relevant employee of an employer was not a member of a registered scheme as required by section 7.

(2) On the commencement date, the amount of contributions that –

(a) would have been payable by the employer under section 7A to a registered scheme for each contribution period occurring in the specified period during which the relevant employee was not a member of a registered scheme, had the employee been such a member for the relevant contribution period; and

(b) remains unpaid as at the commencement date, becomes due for payment to the Authority.

(3) For the avoidance of doubt, this section applies to an employer even if the relevant employee is no longer employed with the employer on the commencement date.

(4) In this section –

“commencement date” (生效日期) means the date of commencement of section 7AA;

“contribution period” (供款期) has the same meaning as in section 7A(10) except that it does not include the contribution period that begins on a date before the commencement date and ending on or after the commencement date;

“specified period” (指明期間) means the period beginning on 1 December 2000 and ending on the day immediately before the commencement date.”.

6. Sections 7 and 7A not to apply to certain employees

(1) The heading of section 7B is amended by repealing “7 and 7A” and substituting “7, 7A and 7AA”.

(2) Section 7B is amended by repealing “7 and 7A” and substituting “7, 7A and 7AA”.

7. Section substituted

Section 9 is repealed and the following substituted –

“9. Minimum level of income for contribution purposes

(1) A relevant employee whose relevant income is less than the minimum level of relevant income is not required to contribute to a registered scheme but he may, if he so wishes, by notice in writing to his employer elect to do so.

(2) An employer who receives a notice under subsection (1) must give effect to the election by making deductions and paying contributions in respect of the employee in accordance with section 7A.

(3) A relevant employee may not make an election under subsection (1) in respect of a contribution period during which he is not a member of a registered scheme as required by section 7.

(4) A self-employed person whose relevant income is less than the minimum level of relevant income is not required to contribute to a registered scheme.”.

8. Section substituted

Section 10 is repealed and the following substituted –

“10. Maximum level of income for contribution purposes

(1) A relevant employee whose relevant income is more than the maximum level of relevant income is not required to contribute to a

registered scheme in respect of the excess relevant income but he may, if he so wishes, by notice in writing to his employer elect to do so.

- (2) An employer who receives a notice under subsection (1) –
- (a) must give effect to the election by making deductions and paying contributions in respect of the employee in accordance with section 7A; and
 - (b) may also make contributions to the scheme in respect of that excess relevant income, but is not obliged to do so.

(3) A relevant employee may not make an election under subsection (1) in respect of a contribution period during which he is not a member of a registered scheme as required by section 7.

(4) A self-employed person whose relevant income is more than the maximum level of relevant income is not required to contribute to a registered scheme in respect of the excess relevant income.”.

9. Voluntary contributions

Section 11(6) is amended by repealing “specified in Schedule 2”.

10. Recovery of mandatory contributions that are in arrears

(1) Section 18(1) is repealed and the following substituted –

“(1) If a mandatory contribution that falls within paragraph (a) or (aa) of the definition of “mandatory contribution” in section 2(1) is not paid on or before the day by which it is required to be paid under this Ordinance, it becomes due for payment to the Authority on the expiry of that day.”.

(2) Section 18(2) is amended by repealing “is in arrears” and substituting “becomes due for payment to the Authority under subsection (1) or section 7AE”.

11. Offences by employers

Section 43B is amended by adding –

“(1D) An employer who, without reasonable excuse, fails to comply with section 7AA(2) commits an offence and is –

- (a) in the case where he has deducted a contribution from the employee’s relevant income under section 7AA(3)(b), liable on conviction to a fine of \$450,000 and to imprisonment for 4 years;
- (b) in any other case, liable on conviction to a fine of \$350,000 and to imprisonment for 3 years.

(1E) An employer who, without reasonable excuse, fails to comply with section 7AA(6) commits an offence and is liable on conviction –

- (a) to a fine at level 6 and to imprisonment for 6 months on the first occasion on which the person is convicted of the offence; and
- (b) to a fine of \$200,000 and to imprisonment for 12 months on each subsequent occasion on which the person is convicted of the offence.”.

12. Section added

The following is added –

“43BA. Court may make certain orders in proceedings for offences under section 43B

(1) Where an employer is convicted by a court of an offence against section 43B(1), the court may, in addition to any penalty imposed under that section, make an order requiring the employer to procure for the employee concerned membership in a registered scheme within the time specified in the order.

(2) Where an employer is acquitted by a court of an offence against section 43B(1) on the ground that there was a reasonable excuse for the default, the court may make an order requiring the employer to procure for the employee concerned membership in a registered scheme within the time specified in the order.

(3) Where an employer is convicted by a court of an offence against section 43B(1C) or (1D), the court may, in addition to any penalty imposed under that section, make an order requiring the employer to pay any mandatory contribution or contribution surcharge that is outstanding at the time of the conviction and in respect of which the offence was committed.

(4) Where an employer is acquitted by a court of an offence against section 43B(1C) or (1D) on the ground that there was a reasonable excuse for the default, the court may make an order requiring the employer to pay any mandatory contribution or contribution surcharge that is outstanding at the time of the acquittal and in respect of which the charge was brought.

(5) The Authority must pay any contribution or surcharge that is paid to it in respect of a relevant employee pursuant to an order made under subsection (3) or (4) –

(a) where the employee is still employed by the employer concerned at the time the Authority makes payment –

(i) to the approved trustee of the registered scheme nominated by the employer for this purpose; or

(ii) if the employer has not nominated a registered scheme, to the approved trustee of the registered scheme nominated by the employee for this purpose; or

- (iii) if neither the employer nor the employee has nominated a registered scheme, to the approved trustee of a registered scheme that the Authority considers appropriate; or
- (b) where the employee has ceased to be employed by the employer concerned at the time the Authority makes payment –
 - (i) to the approved trustee of the registered scheme nominated by the employee for this purpose; or
 - (ii) if the employee has not nominated a registered scheme, to the approved trustee of a registered scheme that the Authority considers appropriate.

(6) On receiving a payment under subsection (5), the approved trustee must credit the amount of the payment to the relevant employee's account.

(7) An approved trustee who, without reasonable excuse, fails to comply with subsection (6) commits an offence and is liable on conviction to a fine at level 5.

(8) Nothing in subsection (3) or (4) affects the rights conferred on the Authority or any other person by this Ordinance or any other law to bring proceedings to recover from the employer any outstanding mandatory contribution or contribution surcharge.”.

13. Minimum level of relevant income per contribution period

(1) Schedule 2 is amended, within the square brackets, by repealing “2, 9, 10A, 11” and substituting “2, 10A”.

(2) Schedule 2 is amended, in section 1, by repealing “for the purposes of section 9 of this Ordinance”.

(3) Schedule 2 is amended, in section 2, by repealing “for the purposes of section 9 of this Ordinance”.

(4) Schedule 2 is amended, in section 3, by repealing “for the purposes of section 9 of this Ordinance”.

14. Maximum level of relevant income per contribution period

(1) Schedule 3 is amended, within the square brackets, by repealing “, 10”.

(2) Schedule 3 is amended, in section 1, by repealing “for the purposes of section 10 of this Ordinance”.

(3) Schedule 3 is amended, in section 2, by repealing “for the purposes of section 10 of this Ordinance”.

(4) Schedule 3 is amended, in section 3, by repealing “for the purposes of section 10 of this Ordinance”.

Mandatory Provident Fund Schemes (General) Regulation

15. Interpretation

Section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended by adding –

““remittance statement” (付款結算書) means a remittance statement required by section 123;”.

16. Acceptance of contributions and accrued benefits being transferred

(1) The heading of section 32 is amended by repealing “**and accrued benefits being transferred**” and substituting “**etc.**”.

(2) Section 32(1) is repealed and the following substituted –

“(1) All contributions and contribution surcharges paid to the approved trustee of a registered scheme in accordance with

the Ordinance or a court order made under section 43BA of the Ordinance must be accepted by the trustee.”.

(3) Section 32(2) is amended by adding “benefits transferred to the scheme” after “or”.

17. Separate accounts for each scheme member

(1) Section 78(6)(a)(i) is amended by repealing “under section 7A(1)(a) or (2)(a) of the Ordinance”.

(2) Section 78(6)(a)(ii) is amended by repealing “per month”.

(3) Section 78(6)(b)(i) is amended by repealing “under section 7A(1)(b) or (2)(b) of the Ordinance”.

(4) Section 78(6)(b)(ii)(A) is amended by repealing “per month”.

(5) Section 78(6)(c)(i) is repealed and the following substituted –

“(i) all mandatory contributions paid by or in respect of the member that are attributable to the member’s former employments or former self-employments and transferred to the members’ contribution account in accordance with Part XII, and any contribution surcharges paid in respect of any such mandatory contributions;”.

(6) Section 78(6)(c) is amended by adding –

“(iia) all mandatory contributions paid by or in respect of the member that are attributable to the member’s former employments or former self-employments, and any contribution surcharges paid in respect of any such mandatory contributions, other than mandatory contributions or contribution surcharges mentioned in subparagraph (i) or (ii);”.

(7) Section 78(6)(c)(iii) is amended by repealing “and (ii)” and substituting “, (ii) and (iia)”.

(8) Section 78(6)(f)(i) is repealed and the following substituted –

- “(i) all voluntary contributions paid by or in respect of the member that are attributable to the member’s former employments or former self-employments and transferred to the member’s contribution account;
 - (ia) all voluntary contributions paid by or in respect of the member that are attributable to the member’s former employments or former self-employments, other than voluntary contributions mentioned in subparagraph (i);”.
- (9) Section 78(6)(f)(iii) is amended by adding “, (ia)” after “(i)”.
- (10) Section 78(7)(b)(i) is repealed and the following substituted –
- “(i) all mandatory contributions paid by or in respect of the member that are attributable to the member’s former employments or former self-employments and transferred to the member’s contribution account in accordance with Part XII, and any contribution surcharges paid in respect of any such mandatory contributions;”.
- (11) Section 78(7)(b) is amended by adding –
- “(iia) all mandatory contributions paid by or in respect of the member that are attributable to the member’s former employments or former self-employments, and any contribution surcharges paid in respect of any such mandatory contributions, other than mandatory contributions or contribution surcharges mentioned in subparagraph (i) or (ii);”.
- (12) Section 78(7)(b)(iii) is amended by repealing “and (ii)” and substituting “, (ii) and (iia)”.
- (13) Section 78(7)(d) is amended by adding –
- “(ia) all voluntary contributions paid by or in respect of the member that are attributable to the member’s former

employments or former self-employments, other than voluntary contributions mentioned in subparagraph (i);”.

(14) Section 78(7)(d)(iii) is amended by adding “, (ia)” after “(i)”.

(15) Section 78(8)(a)(i) is repealed and the following substituted –

“(i) all mandatory contributions paid by or in respect of the member that are attributable to the member’s former employments or former self-employments and transferred to the member’s preserved account in accordance with Part XII, and any contribution surcharges paid in respect of any such mandatory contributions;”.

(16) Section 78(8)(a) is amended by adding –

“(iia) all mandatory contributions paid by or in respect of the member that are attributable to the member’s former employments or former self-employments, and any contribution surcharges paid in respect of any such mandatory contributions, other than mandatory contributions or contribution surcharges mentioned in subparagraph (i) or (ii);”.

(17) Section 78(8)(a)(iii) is amended by repealing “and (ii)” and substituting “, (ii) and (iia)”.

(18) Section 78(8)(b) is amended by adding –

“(ia) all voluntary contributions paid by or in respect of the member that are attributable to the member’s former employments or former self-employments, other than voluntary contributions mentioned in subparagraph (i);”.

(19) Section 78(8)(b)(iii) is amended by adding “, (ia)” after “(i)”.

18. Definitions

Section 119 is amended by repealing the definition of “remittance statement”.

19. Net loss sustained in respect of self-employed person's business

Section 130(1)(b) is amended by repealing “as specified in section 3 of Schedule 2 to the Ordinance”.

20. Contribution surcharge for, and report on, failure to pay contributions

Section 134(4) is repealed.

21. Crediting of payments

Section 138(1) is amended by repealing “by a participating employer or a self-employed person” and substituting “in respect of a scheme member”.

22. Accrued benefits not to be transferred if contributions outstanding

Section 156(1) is amended by adding “7AE or” after “under section”.

23. Section added

The following is added –

“207. Rate of contribution surcharge

The contribution surcharge is an amount equal to 5 per cent of the amount of the arrears.”.

24. Financial Penalties

(1) Schedule 4 is amended, in Part I, by adding –

“1A	7AA	Employer to pay contributions to Authority	\$5,000 or 10 per cent of the amount to be paid, whichever is the greater
1B	7AB	Employer to provide statements	10,000 20,000 50,000
1C	7AD(1)	Approved trustee to check calculations of	10,000 20,000 50,000

contributions

1D 7AD(2) Approved trustee to 10,000 20,000 50,000”.
take actions required
by Authority

(2) Schedule 4 is amended, in Part II, in item 8, in column 3, by repealing “and accrued benefits being transferred” and substituting “etc.”.

PART 4

CONTROLLERS OF CORPORATE APPROVED TRUSTEES

Mandatory Provident Fund Schemes Ordinance

25. Suspension of approval of approved trustee

(1) Section 20A(1)(d) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended by repealing the full stop and substituting “; or”.

(2) Section 20A(1) is amended by adding –

“(e) the trustee has failed to comply with section 42B(6) or (7) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A).”.

26. Revocation of approval of approved trustee

(1) Section 20B(1)(d) is amended by repealing the full stop and substituting “; or”.

(2) Section 20B(1) is amended by adding –

“(e) the trustee has failed to comply with section 42B(6) or (7) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A).”.

27. Regulations with respect to registered schemes

Section 21C(2)(g) is repealed.

28. Power to make regulations for purposes of sections 45B and 45C

(1) Section 45A(1)(c) is amended by repealing the full stop and substituting “; and”.

(2) Section 45A(1) is amended by adding –

“(d) subject to subsection (2), prescribe a daily penalty for each day on which a failure to perform a duty, or to comply with a requirement or standard, specified in a prescribed provision continues.”.

(3) Section 45A(2)(a) is amended by repealing “is \$50,000; and” and substituting –

“is –

- (i) in the case of a daily penalty, \$1,000 per day; and
- (ii) in any other case, \$50,000; and”.

29. Regulations

Section 46(1A) is amended by adding –

“(sa) providing for, in relation to approved trustees that are companies –

- (i) the composition of the board of directors of those trustees and the composition of committees of those boards;
- (ii) any change or proposed change of controllers of those trustees; and
- (iii) the objection by the Authority to the existing controllers of those trustees continuing to be such controllers;”.

Mandatory Provident Fund Schemes (General) Regulation

30. Appointment of officer of approved trustee that is a company

Section 28 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is repealed.

31. Part IVA added

The following is added immediately after section 42 –

“PART IVA

PROVISIONS RELATING TO CONTROLLERS OF APPROVED TRUSTEES

42A. Application and interpretation

(1) This Part applies in relation to an approved trustee that is a company.

(2) In this Part –

“indirect controller” (間接控權人), in relation to an approved trustee that is a company, means a person described in paragraph (b) of the definition of “controller” in section 2(1) of the Ordinance;

“relevant date” (有關日期) means the date of commencement of this Part;

“substantial shareholder” (大股東), in relation to an approved trustee that is a company, means a person described in paragraph (d) or (e) of the definition of “controller” in section 2(1) of the Ordinance.

42B. Authority’s consent required in respect of appointment of officers

(1) An approved trustee must not, on or after the relevant date, appoint a person to be an officer of the trustee unless the Authority has, on the application of the trustee, given prior written consent to the person’s becoming such an officer.

(2) An application for the consent of the Authority under this section must –

- (a) be in a form approved by the Authority; and
- (b) contain such information, and be accompanied by such documents, as are specified in the form.

(3) The Authority may only give consent if it is satisfied as to the following –

- (a) that the person in relation to whom the application is made is of good reputation and character and, in particular, has not been found guilty, whether in Hong Kong or elsewhere, of an offence involving fraud or dishonesty;
- (b) where the person proposes to become a chief executive officer or a Hong Kong chief executive officer, that the person has the skill, knowledge, experience and qualifications that are, in the opinion of the Authority, necessary for the successful administration of provident fund schemes;
- (c) where the person proposes to become a director, if consent is given, that a majority of the directors (which must include an independent director) of the approved trustee have the skill, knowledge, experience and qualifications that are, in the opinion of the Authority, necessary for the successful administration of provident fund schemes.

(4) The Authority may give its consent subject to such reasonable conditions as the Authority may impose on the approved trustee, and may at any time by notice in writing served on the trustee, amend or revoke any such conditions or impose new conditions as may be reasonable in the circumstances.

(5) An approved trustee must, on becoming aware that an appointment has been made in contravention of subsection (1), terminate the appointment.

(6) Where the office of a director of an approved trustee becomes vacant with the result that –

- (a) the number of directors falls below the minimum number prescribed in section 16(1)(b) or 17(1)(c), as appropriate; or
- (b) the number of directors (which must include an independent director) who have satisfied the Authority that they have the skill, knowledge, experience and qualifications that are, in the opinion of the Authority, necessary for the successful administration of provident fund schemes does not exceed half of the total number of directors,

the trustee must apply to the Authority for its consent to the appointment of a replacement director within 30 days after the vacancy arises.

(7) Where an approved trustee has only one chief executive officer or Hong Kong chief executive officer and the office of the chief executive officer or Hong Kong chief executive officer becomes vacant, the trustee must apply to the Authority for its consent to the appointment of a replacement chief executive officer or Hong Kong chief executive officer, as appropriate, within 30 days after the vacancy arises.

42C. Authority’s consent required in respect of persons proposing to become indirect controllers

(1) A person must not, on or after the relevant date, become an indirect controller of an approved trustee unless the Authority has, on the application of the trustee, given prior written consent to the person’s becoming such an indirect controller.

(2) An application for the consent of the Authority under this section must –

- (a) be in a form approved by the Authority; and
- (b) contain such information, and be accompanied by such documents, as are specified in the form.

(3) The Authority may only give consent if it is satisfied that the person in relation to whom the application is made is of good reputation and character and, in particular, has not been found guilty, whether in Hong Kong or elsewhere, of an offence involving fraud or dishonesty.

(4) The Authority may give its consent subject to such reasonable conditions as the Authority may impose on the approved trustee and the person proposing to become an indirect controller of the approved trustee, and may at any time by notice in writing served on the trustee or indirect controller, amend or revoke any such conditions or impose new conditions as may be reasonable in the circumstances.

(5) A person who becomes an indirect controller of an approved trustee in contravention of subsection (1) must not give instructions to any director of the trustee.

(6) If a person gives instructions to a director of an approved trustee in contravention of subsection (5), the director must, within 3 working days after receiving the instructions, by notice in writing inform the Authority.

42D. Authority's consent required in respect of persons proposing to become substantial shareholders

(1) A person must not, on or after the relevant date, become a substantial shareholder of an approved trustee unless the Authority has, on the application of the trustee, given prior written consent to the person's becoming such a substantial shareholder.

- (2) Where a person –
- (a) becomes a substantial shareholder of an approved trustee in contravention of subsection (1);
 - (b) did not know the act or circumstances by virtue of which he became such a substantial shareholder were such as to have that effect; and
 - (c) subsequently becomes aware of the fact that he has become such a shareholder,

he must, within 3 working days after becoming aware of that fact, serve a notice in writing on the trustee and the Authority stating that he has become such a shareholder.

(3) An approved trustee must, within 3 working days after becoming aware that a person has become its substantial shareholder in contravention of subsection (1), apply to the Authority for its consent to the person's continuing to be its substantial shareholder.

(4) An application for the consent of the Authority under this section must –

- (a) be in a form approved by the Authority; and
- (b) contain such information, and be accompanied by such documents, as are specified in the form.

(5) The Authority may only give consent if it is satisfied that the person in relation to whom the application is made is of good reputation and character and, in particular, has not been found guilty, whether in Hong Kong or elsewhere, of an offence involving fraud or dishonesty.

(6) The Authority may give its consent subject to such reasonable conditions as the Authority may impose on the approved trustee and the person who has become or is proposing to become a substantial shareholder of the approved trustee, and may at any time by notice in writing served on the trustee or substantial shareholder, amend or revoke

any such conditions or impose new conditions as may be reasonable in the circumstances.

(7) Subject to subsection (9), a person who becomes a substantial shareholder of an approved trustee in contravention of subsection (1) must not exercise or purport to exercise any voting rights in respect of the person's shares specified in subsection (8).

(8) The shares referred to in subsection (7) are –

- (a) where the person concerned is a natural person, all the shares in the trustee that are held by the person or his close relative, partner or employee, or by a company of which the person is a director, or by his nominee, and by virtue of which the person is a substantial shareholder of the trustee, but does not include any such shares so held immediately before the person became such a shareholder; or
- (b) where the person concerned is a company, all the shares in the trustee that are held by the company, its associate or an employee of its associate, or by its nominee, and by virtue of which the company is a substantial shareholder of the trustee, but does not include any such shares so held immediately before the person became such a shareholder.

(9) Subsection (7) ceases to apply in relation to the shares of a substantial shareholder if an application made in relation to him under subsection (3) is approved by the Authority.

42E. Authority may object to existing controllers

(1) The Authority may serve a notice on a controller of an approved trustee, other than a person who has become such a controller in

contravention of this Part, objecting to his continuing to be a controller of the trustee on the ground that –

- (a) he –
 - (i) is no longer a person of good reputation and character; or
 - (ii) has been found guilty, whether in Hong Kong or elsewhere, of an offence involving fraud or dishonesty; and
- (b) his continuing to be a controller of the trustee is not in the interests of the members of the scheme administered by the trustee.

(2) The Authority must, before serving a notice of objection on a controller, serve a preliminary notice in writing on him stating –

- (a) that the Authority intends to serve a notice of objection on him;
- (b) the ground on which the Authority intends to serve the notice; and
- (c) that he may make representations in writing to the Authority within 1 month from the date of service of the preliminary notice.

(3) The Authority must take into consideration any representations made in the manner specified in subsection (2)(c) before serving a notice of objection.

(4) The Authority is not obliged to disclose to the controller or approved trustee any particulars of the ground on which the Authority intends to serve, or serves, a notice of objection on the controller.

(5) The Authority must –

- (a) include in the notice of objection the ground on which the Authority serves the notice; and

(b) specify in the notice the date from which the controller is to cease to be a controller of the approved trustee (“specified date”).

(6) When the Authority serves a notice of objection, the Authority must also serve a copy of the notice on the approved trustee concerned.

(7) Where a notice of objection is served on an officer of an approved trustee, the trustee must, not later than the specified date, terminate his appointment with effect from the specified date.

(8) An approved trustee is not required to comply with subsection (7) if the officer has tendered his resignation and the resignation takes effect on or before the specified date.

(9) Where a notice of objection is served on an indirect controller of an approved trustee, the indirect controller must not give instructions to any director of the trustee from the specified date.

(10) If a person gives instructions to a director of an approved trustee in contravention of subsection (9), the director must, within 3 working days after receiving the instructions, by notice in writing inform the Authority.

42F. Authority’s power to give directions in relation to substantial shareholders

(1) The power under subsection (2) is exercisable where –

(a) a person has become a substantial shareholder of an approved trustee in contravention of section 42D;

(b) a notice of objection is served on a substantial shareholder of an approved trustee under section 42E; or

- (c) a person continues to be a substantial shareholder of an approved trustee despite a notice of objection served on him under section 42E.

(2) The Authority may by notice in writing direct the approved trustee to do any one or more of the following –

- (a) not to permit or acquiesce in the involvement of the substantial shareholder concerned in the management of the business of the trustee;
- (b) to deem void and of no effect any votes cast by the substantial shareholder concerned and any of the persons specified in subsection (3) at any meeting of the trustee;
- (c) to reconvene any such meeting for voting anew on the business on which the votes were cast;
- (d) to take such other reasonable steps as it may specify in the notice.

(3) The persons referred to in subsection (2)(b) are –

- (a) a person who is a connected person of the substantial shareholder concerned and who, together with the shareholder, controls at least 15% of the voting shares of the approved trustee; and
- (b) a person who is a nominee of the substantial shareholder concerned and through whom the shareholder controls at least 15% of the voting shares of the approved trustee.

(4) For the purposes of subsection (3)(a), “connected person” (有關連者) –

- (a) in relation to a substantial shareholder who is a natural person, means his close relative, partner or

employee or a company of which he is a director;
and

- (b) in relation to a substantial shareholder who is a company, means its associate or an employee of its associate.

(5) Without prejudice to the operation of subsection (2), where a person has become a substantial shareholder of an approved trustee in contravention of section 42D, the Authority may by notice in writing direct the substantial shareholder –

- (a) to reduce, within such reasonable time as the Authority may require, the interest in shares by virtue of which he became a substantial shareholder of the trustee to the extent that he is no longer a substantial shareholder of the trustee;
and
- (b) to take such other reasonable steps as the Authority may specify in the notice.

(6) Without prejudice to the operation of subsection (2), where the Authority serves a notice of objection on a substantial shareholder of an approved trustee under section 42E, the Authority may by notice in writing, given at the same time as the notice of objection is served or at a later date, direct the substantial shareholder –

- (a) to reduce, within such reasonable time as the Authority may require, the interest in shares by virtue of which he is a substantial shareholder of the trustee to the extent that he is no longer a substantial shareholder of the trustee; and
- (b) to take such other reasonable steps as the Authority may specify in the notice.

(7) If a person fails to comply with any direction under subsection (2), (5) or (6), the Authority may, by originating summons or originating motion, make an application to the Court in respect of the failure, and the Court may inquire into the case and –

- (a) if the Court is satisfied that there is no reasonable excuse for the person not to comply with the direction, order the person to comply with the direction within the period specified by the Court; and
- (b) if the Court is satisfied that the failure was without reasonable excuse, punish the person, and any other person knowingly involved in the failure, in the same manner as if he and, where applicable, that other person had been guilty of contempt of court.

(8) An originating summons under subsection (7) must be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).”.

32. Financial Penalties

Schedule 4 is amended, in Part II –

(a) by repealing item 5;

(b) by adding –

“12A	42B(1)	Approved trustee to obtain Authority’s consent to appointment of officer	10,000	20,000	50,000
------	--------	--	--------	--------	--------

12B	42B(5)	Approved trustee to terminate appointment of officer	a daily penalty of \$1,000 for each day on which the failure to terminate the appointment continues		
12C	42B(6)	Approved trustee to apply for consent to appointment of replacement director	a daily penalty of \$1,000 for each day on which the failure to make an application for consent continues after the expiry of the 30 day period		
12D	42B(7)	Approved trustee to apply for consent to appointment of replacement chief executive officer	a daily penalty of \$1,000 for each day on which the failure to make an application for consent continues after the expiry of the 30 day period		
12E	42C(1)	Authority's consent required in respect of person proposing to become indirect controller	10,000	20,000	50,000
12F	42C(5)	Indirect controller not to give instructions to directors of approved trustee	10,000	20,000	50,000
12G	42C(6)	Director to notify Authority of contravention of section 42C(5)	10,000	20,000	50,000

12H	42D(1)	Authority's consent required in respect of person proposing to become substantial shareholder	10,000	20,000	50,000
12I	42D(2)	Substantial shareholder who has contravened section 42D(1) to notify approved trustee and Authority		a daily penalty of \$1,000 for each day on which the failure to serve the required notice continues after the expiry of the 3 day period	
12J	42D(3)	Approved trustee to apply for Authority's consent in respect of person who has become substantial shareholder without Authority's prior consent	10,000	20,000	50,000
12K	42D(7)	Substantial shareholder not to exercise voting right	10,000	20,000	50,000
12L	42E(7)	Approved trustee to terminate appointment of officer		a daily penalty of \$1,000 for each day on which the failure to terminate the appointment of the officer continues	
12M	42E(9)	Indirect controller not to give instructions to directors of approved trustee	10,000	20,000	50,000

12N	42E(10)	Director to notify Authority of contravention of section 42E(9)	10,000	20,000	50,000”.
-----	---------	--	--------	--------	----------

PART 5

PROVIDING FALSE OR MISLEADING INFORMATION IN PAY-RECORDS

Mandatory Provident Fund Schemes Ordinance

33. Section added

The Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended by adding –

“43F. Offence relating to pay-record

(1) A participating employer who, in a pay-record given to an employee, provides any information that the employer knows to be false or misleading in a material respect, or recklessly provides any information that is false or misleading in a material respect, commits an offence and is liable on conviction –

- (a) to a fine at level 6 and to imprisonment for 12 months on the first occasion on which the person is convicted of the offence; and
- (b) to a fine of \$200,000 and to imprisonment for 2 years on each subsequent occasion on which the person is convicted of the offence.

(2) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), proceedings may be instituted for an offence against this section –

- (a) within 6 months after the offence is discovered by, or comes to the notice of, the Authority; or

(b) within 3 years of the commission of the offence, whichever period expires first.

(3) In this section, “pay-record” (供款紀錄) means a pay-record prepared under section 139 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A).”.

Explanatory Memorandum

The purpose of this Bill is to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“the Ordinance”) and the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) (“the Regulation”) to implement the proposals of the Mandatory Provident Fund Schemes Authority (“the Authority”).

2. The Bill is divided into 5 Parts.
3. Part 1 contains preliminary provisions providing for the short title and the commencement of the Bill when enacted.
4. Part 2 amends section 43B of the Ordinance to increase the penalties for certain offences by employers. The penalty for a failure to comply with section 7 of the Ordinance (which requires an employer to ensure his relevant employee becomes a member of a registered scheme within the prescribed period and continues to be such a member throughout the employee’s employment with the employer) will be a fine of \$350,000 and imprisonment for 3 years. A failure to comply with section 7A(8) of the Ordinance (which requires an employer to ensure that contributions are paid to the approved trustee in the prescribed manner) attracts the same penalty but where the employer has deducted a contribution from the employee’s relevant income, a higher penalty of a fine of \$450,000 and imprisonment for 4 years will be imposed.
5. Part 2 also adds a new subsection to section 43B of the Ordinance to provide that an employer does not have a reasonable excuse for failing to comply with section 7 of the Ordinance by reason only that the relevant

employee's not becoming or continuing to be a member of a registered scheme was due to the fault of the employee.

6. Part 3 deals with the situation where a relevant employee is not a member of a registered scheme as required by section 7 of the Ordinance, whether due to the fault of the employee or the fault of the employer, and as a result section 7A of the Ordinance cannot be complied with. Clause 5 adds 5 new sections to the Ordinance, namely, sections 7AA to 7AE. The proposed section 7AA provides that where a relevant employee is not a scheme member, the employer must pay the employee's contribution and employer's contribution to the Authority. The total amount of contributions payable under the proposed section 7AA is the same as that payable under section 7A of the Ordinance.

7. The proposed section 7AB requires an employer to provide a statement containing information about the employee concerned and the contributions paid, etc. when the employer makes payment to the Authority under the proposed section 7AA.

8. The proposed section 7AC requires the Authority to pay a contribution it receives under the proposed section 7AA to the approved trustee of the registered scheme nominated by the employer or, if the employer has not made a nomination, the approved trustee of the registered scheme nominated by the employee. If neither of them has made a nomination, the Authority is to pay the contribution to the approved trustee of a registered scheme it considers appropriate.

9. The proposed section 7AD sets out the duties of approved trustees with regard to contributions they receive from the Authority under the proposed section 7AC.

10. The proposed section 7AE enables the Authority to recover any contribution that an employer had not paid in respect of a relevant employee for any contribution period occurring within the period from 1 December 2000 (the date of commencement of sections 7 and 7A of the Ordinance) and the commencement of the proposed section 7AA.

11. Clause 11 amends section 43B of the Ordinance to prescribe the penalty for a contravention of the proposed section 7AA. The penalty for a failure to pay contributions to the Authority under the proposed section 7AA(2) will be a fine of \$350,000 and imprisonment for 3 years but where the employer has deducted a contribution from the employee's relevant income, a higher penalty of a fine of \$450,000 and imprisonment for 4 years will be imposed.

12. Clause 12 adds a new section 43BA to the Ordinance to empower the court to, in proceedings for an offence against section 43B(1), (1C) or (1D), make an order requiring the employer to procure for the employee concerned membership in a registered scheme or to pay any outstanding mandatory contribution or contribution surcharge.

13. Part 4 contains provisions prohibiting persons from becoming controllers of corporate approved trustees without the Authority's prior consent. Clause 31 adds to the Regulation a new Part IVA which contains new sections 42A to 42F. The proposed section 42B provides that an approved trustee must not appoint a person to be its director or chief executive officer unless the Authority has given prior consent to the appointment.

14. The proposed section 42C provides that a person must not become an indirect controller (meaning a person in accordance with whose instructions the directors of the approved trustee are accustomed to act) of an approved trustee unless the Authority has given prior consent to the person's becoming such a controller.

15. The proposed section 42D provides that a person must not become a substantial shareholder (meaning a person falling within paragraph (d) or (e) of the definition of "controller" in section 2(1) of the Ordinance) of an approved trustee unless the Authority has given prior consent to the person's becoming such a shareholder.

16. The proposed section 42E enables the Authority to serve a notice of objection on an existing controller of a corporate approved trustee objecting to the person's continuing to be such a controller.

17. The proposed section 42F enables the Authority to give directions to approved trustees or substantial shareholders in specified circumstances.

18. Part 5 adds a new section 43F to the Ordinance to make it an offence for a participating employer to provide false or misleading information in pay-records given to employees.