

**President's ruling on
Committee Stage amendment to
Mandatory Provident Fund Schemes (Amendment) Bill 2008
proposed by Hon CHAN Yuen-han, SBS, JP**

Hon CHAN Yuen-han has given notice to move a Committee Stage amendment (CSA) to the Mandatory Provident Fund Schemes (Amendment) Bill 2008 (the Bill), if the motion for the Second Reading of the Bill is agreed to at the Legislative Council meeting of 9 July 2008. Before making a ruling on the admissibility of the CSA, I have invited the Secretary for Financial Services and the Treasury (SFST) to offer his comments on the CSA, and Miss CHAN to offer her response. I have also sought the advice of Counsel to the Legislature.

Hon CHAN Yuen-han's proposed CSA

2. Miss CHAN's proposed CSA seeks to add an interpretative provision to the Bill to describe a special contribution as a contribution paid by the Government when the annual consolidated surplus of the budget is more than \$50 billion.

Relevant rule in the Rules of Procedure

3. Rule 57(4)(a) of the Rules of Procedure provides that an amendment must be relevant to the subject matter of the bill and to the subject matter of the clause to which it relates.

The Administration's views and the Member's response

4. SFST is of the view that Miss CHAN's proposed CSA is not relevant to the subject matter of the Bill and should not be admissible under Rule 57(4). Miss CHAN does not agree to SFST's views. SFST's comments and Miss CHAN's response are summarized in the **Appendix**.

Advice of Counsel to the Legislature

5. Counsel points out that Miss CHAN's proposed CSA seeks to add new section 19AA to the proposed new Part IIIA to define the expression "special contribution" as "the contribution paid into an account of a member of a registered scheme by the Government when the annual consolidated surplus of the budget is more than \$50 billion".

6. Counsel considers that the purported effect of proposed new section

19AA on proposed new section 19B is that, as a condition, the special contribution that the Mandatory Provident Fund Schemes Authority (MPFA) may pay into an account of a member of a registered scheme must be of such a description matching that provided in proposed section 19AA. However, since "special contribution" in the proposed CSA refers to "contribution paid ... by the Government", which signifies that the contribution concerned is one which has already been paid by the Government, and new section 19B(1) in the Bill refers to contribution that may be paid by MPFA, it is doubtful whether the CSA will:

- (a) result in MPFA not being able to pay any special contribution into an account when the annual consolidated surplus of the budget is less than \$50 billion; or
- (b) result in MPFA not being able to pay any special contribution at all; or
- (c) have no effect whatsoever on the power of MPFA to pay the contribution.

7. Counsel advises that generally speaking, a proposed CSA which seeks to provide a definition or an interpretation and has no substantive effect on an expression used in a bill would unlikely be considered as not relevant to the subject matter of the bill. Where a proposed CSA is seeking to impose a mere condition through the device of a definition or interpretive provision such as Miss CHAN's, it is also unlikely that it will be considered as not relevant to the subject matter of the relevant bill, unless the subject matter or effect of such proposed CSA makes it clearly not relevant.

8. Counsel also advises me that notwithstanding his view on the purported or possible effect of the proposed CSA on MPFA's ability to pay special contributions into an account of a member of a scheme registered under the Mandatory Provident Fund Schemes Ordinance, which should be a merit point for Members to consider, it does not appear that there is any procedural basis for concluding that the proposed CSA does not comply with any of the requirements provided in Rule 57(4).

My opinion

9. I note the doubtful effect of the proposed CSA on MPFA's ability or power to pay special contribution into accounts of members of provident fund schemes, as explained by Counsel in paragraph 6 above. My opinion is that whether the proposed CSA can achieve its intended purpose goes to its merit and does not, from a procedural point of view, render the CSA not relevant to the subject matter of the Bill. I consider that the proposed CSA is admissible.

Ruling

10. Having considered SFST's comments, Miss CHAN's response and the advice of Counsel to the Legislature, I rule that Hon CHAN Yuen-han's proposed CSA is admissible.

(Mrs Rita FAN)
President
Legislative Council

7 July 2008

Mandatory Provident Fund Schemes (Amendment) Bill 2008

**Summary of Hon CHAN Yuen-han's proposed Committee Stage amendment (CSA),
Secretary for Financial Services and the Treasury's comments
on the admissibility of the CSA under Rule 57(4)(a) of the Rules of Procedure and
Ms CHAN's response to such comments**

CSA	Secretary for Financial Services and the Treasury's comments	Hon CHAN Yuen-han's response
<p><u>Clause 4</u> To add a new interpretative provision (i.e. new section 19AA) immediately before the proposed section 19B</p>	<p>Hon CHAN Yuen-han's proposed CSA seeks to add an interpretative provision to the Mandatory Provident Fund Schemes (Amendment) Bill 2008 to describe a special contribution as a contribution paid by the Government when the annual consolidated surplus of the budget is more than \$50 billion. The CSA is not relevant to the subject matter of the Bill.</p> <p>As the government injection will be made via MPFA, the major purpose of the Bill is to provide MPFA with the necessary powers to implement the injection exercise. The long title and the Explanatory Memorandum of the Bill have made it clear that the Bill seeks to enable MPFA (not the Government) to pay special contributions into accounts of Mandatory Provident Fund scheme members. In this connection, the interpretative provision which describes a special contribution as a contribution paid by the Government under specified circumstances is not relevant to the subject matter of the Bill as required by Rule 57(4) of RoP.</p>	<p>According to the explanation contained in the Legislative Council Brief provided to this Council by the Government, the reason for enacting the Mandatory Provident Fund Schemes (Amendment) Bill 2008 is: "To demonstrate the Government's commitment to enhancing retirement protection for the lower-income working people, the Financial Secretary announced in the 2008-2009 Budget and subsequently during the Budget Concluding Speech on 23 April 2008 that a one-off injection of \$6,000 would be made to the accounts of different categories of persons if they meet the monthly income threshold requirement of earning not more than \$10,000 a month". It can therefore be seen that the injection of funds is to be allocated from the Treasury of the Government to MPF accounts of people who earn less than \$10,000 a month.</p> <p>The proposed amendment is to specify that when the consolidated surplus of the government budget is more than \$50 billion, the Government shall allocate funds as special contributions to be injected into accounts of members of registered Mandatory Provident Fund</p>

CSA	Secretary for Financial Services and the Treasury's comments	Hon CHAN Yuen-han's response
		schemes. This amendment is in line with the reason for the Government's enacting this Bill, and stipulates the specific conditions for allocating such special contributions. Therefore, it is not irrelevant to the Bill.

Abbreviations

CSA	Committee Stage amendments
MPFA	Mandatory Provident Fund Schemes Authority
RoP	Rules of Procedure