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By Fax (2529 1663)
9 February 2012

Miss Emmy WONG
Principal Assistant Secretary for Financial Services and
the Treasury (Financial Services)
Financial Services and the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue, Admiralty
Hong Kong


Dear Miss WONG,

Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011

I am scrutinizing the above Bill with a view to advising Members. Set out at the Annex are my initial observations on the drafting aspects of the Bill.

I would be grateful if you would let me have the Administration's reply in both languages before the next meeting on 23 February 2012.

Yours sincerely,


(Carrie WONG)
Assistant Legal Adviser

Encl.

c.c. DoJ (Attn: Mr Lawrence PENG, SALD and Miss Selina LAU, SGC)
Clerk to Bills Committee

**Observations on the proposed amending sections of the
Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011**

Section 6KA (Designation of electronic system by Authority)

1. The Chinese text of subsection (5) appears to empower the Authority to suspend a designated electronic system that is operated by the Authority and fails to correspond to the English text which empowers the Authority to suspend the system from being used by an entity other than the Authority. The following may illustrate my point above as well as the dispensing of "決定" in the Chinese text of subsection (6) which does not appear in the English text:

"(5) 管理局如合理地認為有此需要，對為施行本條例某條文而被管理局指定的電子系統，就該條文的施行而言，可予以暫停使用。

(6) 指定電子系統根據第(5)款的暫停使用..."

A similar problem is noted in the proposed amendments to section 153(1C)(a) and (b) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A).

Section 34E (Interpretation)

2. Please clarify the usage of "a person" in paragraphs (a)(ii) to (iv), (b)(ii) and (c) of the definition of "Type B regulatee" vis-à-vis "an individual" in paragraph (b)(i) or vice versa.

Section 34F (Regulated activity, material decision and regulated advice)

3. Please clarify whether the words "該" in subsection (5)(a), (b), (c) and (i) are really necessary in their particular context.

4. Would it suffice to simply adopt "或何時作轉移" instead of "或何時轉移該累算權益" at the end of the proposed section 34F(5)(e) in the Chinese text? The same comment applies to subsection (5)(g).

Section 34I (Responsible officer and specified responsibilities)

5. "Ensure" and "secure/securing" are both rendered as "確保" in the Chinese text of the proposed section 34I(3)(a) and (b). Please consider a more appropriate expression for "secure/securing" to reflect the difference of the two expressions.

Section 34K (Revocation or suspension of qualification as Type B regulatee)

6. Please confirm that the usage of "person" in the proposed section 34K(1)(c)(i) and (1)(d)(i) does not include corporate person.

7. Under section 34K(1)(d), "kept" a register is rendered as "保存"登記冊. Should "備存" be used as a rendition for "kept" to achieve consistency? The same problem is noted in section 3(4)(c)(ii) of the proposed Schedule 5B.

8. "Terminated" is rendered as "被中止" in the proposed section 34K(1)(a) and (b). Please note the rendition of "terminated" as "被終止" in section 34J. The same problem is also noted in the proposed section 3(2)(a)(i) and (ii) of Schedule 5B.

Section 34O (Initiating investigation)

9. Is the word "該" in "進行該調查" under section 34O(1)(b) necessary?

Section 34P (Investigation powers)

10. The word "produce" is rendered as "交出" in the proposed section 34P(1)(a) and (3), but as "出示" in the proposed section 34O(3)(b) in a similar context. Similarly, "produce" is rendered as "交出" in the proposed sections 34ZR(3) and 34ZU(1)(a) and (3), but as "出示" in the proposed sections 34ZQ(3)(b) and 34ZT(2)(b).

11. The phrase "may raise" is rendered as "提出" in section 34P(1)(b) and (c). The meaning of "may" in those sections is not reflected in the corresponding Chinese text. The same problem is also noted in section 34ZU(1)(b) and (c).

Section 34Q (Register of intermediaries)

12. In proposed sections 34Q(5) and 34X(6), please consider adding in the Chinese text "方可" before "行使" as the rendition of "is only exercisable" to make it consistent with sections 34ZW(7) and 34ZY(2).

13. In the proposed section 34Q(6)(b), both "evidence" and "proof" are rendered as "證據". Please consider adopting "證明" as the rendition for "proof" so as to distinguish it from "evidence" ("證據").

14. The expression "is presumed" is rendered as "被視為" in the proposed section 34Q(6)(b)(i) and (ii). Please consider adopting "須被推定為" as the rendition for "is presumed" to distinguish it from "須被視為" ("is regarded as").

15. Please consider replacing "接納為證據" by "獲接納為證據" in section 34Q (6)(b) to achieve consistency with section 34Q(6)(a).

Section 34R (Register to be made available as on-line record)

16. In the proposed section 34R, the phrase "available to the public in the form of an on-line record" is rendered as "以聯機紀錄形式供公眾閱覽". It is noted that in sections 99(7) and 136(7) of the Securities and Futures Ordinance Cap. 571, the same English text is rendered as "以聯機紀錄形式提供予公眾".

Section 34T (Registration as principal intermediary and related matters)

17. The expression "it is satisfied that" is rendered as "它信納" in the Chinese text of the proposed sections 34T(4) and 34U(4) but "它信納" is omitted in the proposed sections 34U(6), 34V(3), 34W(3) in similar contexts.

Section 34U (Registration as subsidiary intermediary)

18. The phrase "(as may be applicable)" in the proposed section 34U(11) appears to modify "the application or accompanying application". Please consider if the rendition in the corresponding Chinese text can reflect the same meaning.

Section 34Z (Assignment of frontline regulator for principal intermediary)

19. In subsections (5) and (6), the expression "同時" is adopted in the Chinese text but words of the same effect cannot be found in the English text although the context is identical. The same problem is also noted in section 8(5) and (6) of Schedule 5B.

Section 34ZC (Principal intermediary ceasing to be Type A regulatee etc.)

20. Please consider adding in the Chinese text of section 34ZC(1)(b)(ii) "有任何" before "作為..." so as to be consistent with the Chinese text in sections 34ZE(1)(c)(iii), 34ZF(1)(b)(ii) and 34ZI(1)(c)(iii). Please also consider the inconsistent use of comma after "資格" in these sections.

Section 34ZF (Subsidiary intermediary ceasing to be Type B regulatee etc.)

21. The meaning of "If" in subsection (2) seems to be missing from the corresponding Chinese text.

Section 34ZK (Responsible officer ceasing to have sufficient authority within principal intermediary etc.)

22. In subsection (2), "or" may be incorrectly rendered as "和" after "resources" ("資源").

Section 34ZR (Inspection powers)

23. In section 34ZR(1)(c), the meaning of "may" in "may make copies" is missing from the corresponding Chinese text.

24. In section 34ZR(4), the phrase "is not exercisable" is rendered as "不可...行使" but that phrase is rendered as "不得行使" in section 34ZD(3), 34ZN(5) and 34ZO(4).

25. The expressions "gives an answer" and "the answer" are rendered as "回答問題" and "該答案" respectively in section 34ZR(6) but such renditions do not tally with the renditions in other sections. In sections 34P(4) and (5), 34ZU(4) and (5) and 34ZZE(1) and (2)(a), "the answer, the response, explanation or particulars" is rendered as "回答或回應問題、給予解釋、或給予詳情". Please consider adopting "給予答案" and "答案" as the respective renditions for "gives an answer" and "the answer", as in section 34ZZC(3)(a)

and (b), (4), (5)(b). The same problem is also noted in the Chinese text of section 34ZR(7).

Section 34ZV (Investigation powers exercisable in relation to former regulated persons)

26. The meaning of "may" in "may have failed to comply with" in section 34ZV(1) is not reflected in the corresponding Chinese text, as in section 34ZT(1). Also, it is noted that compliance is rendered as "遵從" in section 34ZV(1), but as "遵守" in section 34I(3)(a) while observance is rendered as "遵從" in section 34I(3)(b).

Section 34ZW (Authority may make disciplinary order)

27. The expression "the person" is rendered as "該人" in the Chinese text of sections 34ZW(3)(a) and (b). It appears from the context of the abovementioned sections that "the person" refers to the regulated person ("該受規管者") rather than the registered intermediary (該註冊中介人). The same problem is noted in section 34ZX(2).

Section 34ZX (When disciplinary order takes effect)

28. The meaning of "as varied" is not reflected in the Chinese text of subsection (4)(c).

Section 35 (Appeal Board)

29. The word "appoint" is rendered as "委任" in subsection (5), but as "委出" in subsection (5A).

Section 42AB (Person not to disclose information obtained in the course of inspection or investigation)

30. The expression "a person" used under subsection (1)(a) and (b) is rendered as "對象". As "a person" is a defined term under the Interpretation and General Clauses Ordinance, Cap. 1 and its Chinese rendition does not include "對象", please reconsider the Chinese rendition of "a person" under subsection (1).

31. Is "如" at the beginning of subsection (2) necessary?

32. Please confirm whether it is necessary to use "行事" twice to modify "身分" in the first scenario of subsection (2)(c), as "行事" is only used once in the second scenario in similar circumstances.

Section 44A(6)(b) (Proof of certain matters in proceedings for offence under section 42B(3A))

33. "Those proceedings" is rendered as "該法律程序" under subsection (6)(b). Please consider replacing it with "該等法律程序" to achieve consistency with sections 34ZZC(7)(b) and 34ZZF(8)(b).

Schedule 5B (Transitional and Saving Provisions for Part IVA)

Section 1(2)

34. "Expression" is rendered as "詞句" or "該詞句" in the Chinese text but when it last appears in that section, it is rendered as "該詞".

Section 9(3)

35. The meaning of "the approval of" is missing in section 34ZF(3)(a) of the Chinese text. Please refer to section 34ZF(2).

Schedule 6 (Decisions which may be the subject of an appeal)

Item 15(f)

36. Please consider replacing "該等條件" by "該條件" in the Chinese text for the rendition of "such a condition".

Part 3 (Consequential and related amendments)

Amendments to the Insurance Companies Ordinance (Cap. 41)

37. Reference is made to "any other Ordinance" in the proposed amendments to section 4A(2)(g) and (3) of the Insurance Companies Ordinance (Cap. 41). Please clarify what "any other Ordinance" means in such context.