

(6) in CB(3)/B/FS/2(97-98)Pt II
2869 9462
2877 9600

Urgent by Fax

Dr LAW Cheung Kwok
Room 602, Citibank Tower
3 Garden Road, Central
Hong Kong

24 February 1998

**Provident Fund Schemes Legislation
(Amendment) Bill 1997**

**Proposed Committee Stage Amendment -
new section 17(6A) of the Mandatory Provident Fund Schemes Ordinance**

In relation to the above Bill, you propose to add a new section 17(6A) to the Mandatory Provident Fund Schemes Ordinance (the Ordinance), to provide -

"Where the Financial Secretary is of the opinion that the compensation fund referred to in subsection (1) may not be sufficient for the purpose stated therein, he must as soon as practicable seek the approval of the Legislative Council for the provisions referred to in subsection (6)."

I am of the opinion that your proposal **has** a "charging effect" within the meaning of Rule 57(6) of the Rules of Procedure and, as such, may not be proposed by a Member except with the consent of the Chief Executive in writing. As promised, I explain below the reason for my opinion.

Under the existing section 17(1) of the Ordinance, the Mandatory Provident Fund Schemes Authority (the Authority) may establish a compensation fund (the Fund) for the purpose of compensating scheme members for losses in respect of accrued benefits attributable to his membership of a registered scheme caused by misfeasance or illegal conduct by the trustee of the registered scheme or by any other person in respect of the administration, management and maintenance of the registered scheme.

The Secretary for Financial Affairs has proposed, in the above Bill, to substitute this section with one stipulating that the Authority **is required to establish the fund**. Under the above Bill, the Fund, if established, would be a statutory fund. Its source of funding would be from levies payable by trustees of registered schemes in accordance with regulations made by the Authority pursuant to section 17(3). In addition to levies, section 17(6) provides that the Financial Secretary may provide grants or loans out of money from the general revenue that may be provided by the Legislative Council for that purpose. When he decides to exercise the power, he has to seek approval from the Legislative Council. The purpose of this subsection clearly indicates that, should the Fund need any financial support from Government, the Financial Secretary **is** the authority to decide whether to provide it in the form of grants or loans, but he can only do so if the Legislative Council approves such support.

Your proposed new section 17(6A), which should be read together with subsections (1) and (6), seeks to provide that, where the Financial Secretary considers that the Fund may not be sufficient for the purpose of subsection (1), he must as soon as practicable seek the approval of the Legislative Council to provide grants or loans to the Fund. Upon receiving such application, the Legislative Council may or may not approve it, or may approve it according to the terms set by the Council.

The practical effect of your proposal is that, where the Fund is not sufficient in the opinion of the Financial Secretary, he can **ONLY** seek, as soon as practicable, the Legislative Council's approval to inject funds to make grants or make out loans to the Fund. He **CANNOT** do anything else to boost the financial position of the Fund in a way that will not require the provision of funds out of the general revenue, such as to negotiate with the Authority the increase of the levies that the Authority may impose, or to negotiate for loans to the Authority from other sources.

Rule 57(6) of the Rules of Procedure provides -

"An amendment (to a bill), the object or effect of which may, in the opinion of the President or Chairman, be to dispose of or charge any part of the revenue or other public moneys of Hong Kong shall be proposed only by -

- (a) the Chief Executive; or
- (b) a public officer designated by the Chief Executive under Rule 9 (Attendance of Public Officers); or
- (c) a Member, if the Chief Executive consents in writing to the proposal."

In your letters to me and other Members of the Council, you categorically stated that the purpose of your proposed amendment is to stipulate that the Financial Secretary must seek the approval of the Legislative Council for the provision of funds to, in your own words, "make up for any insufficiency in funding the compensation arrangement (為賠償方案「包底」)". The Financial Secretary will be bound by law to follow just one route, not others. This effectively imposes on him a legal obligation to seek to incur public money in the circumstance. In my opinion, it creates a "charging effect"; whether or not the probability of the compensation fund becoming insufficient is high or low is not material; neither is the question of whether or not the Legislative Council will approve the application or approve it with modifications.

Furthermore, as explained to you at our meeting yesterday, even if the Financial Secretary applies to the Legislative Council for funds to make out loans to the Authority, a "charge" will still be imposed by the obligation on the Financial Secretary to seek the Legislative Council's approval whenever the Fund becomes insufficient.

Because your proposal has the object and effect of disposing of or charging the public revenue, I am therefore unable to allow the proposed amendment without the written consent of the Chief Executive.

Rita FAN
President