Bills Committee to Study the Mandatory Provident Fund Schemes (Amendment) Bill 2001 Response of the Administration to matters discussed at the meeting on 13 November 2001¹

Clause in the Bill	Proposal in the Bill	Comments/Concern	The Administration's Response
N.A.	N.A.	The Amendment Bill would provide the Mandatory Provident Fund Schemes Authority (MPFA) with excessive power. Moreover, as the Mandatory Provident Fund (MPF) System has been launched for a short period of time, it is too early for legislative amendments. It would be preferable to wait for 2 to 3 years and see how the system works before pursuing legislative amendments.	The MPF System affects over two million employers, employees, self-employed persons as well as service providers. In view of its importance and complexity, the operation of the System should continuously be improved and enhanced, as necessary, even in its initial stage of operation. The Amendment Bill comprises largely technical amendments which were identified in the course of preparing for or during the first few months of the implementation of the MPF System. It aims at better protecting the interests of scheme members and enhancing the effective operation of the System.

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¹ A separate paper will be submitted on MPFA's power to impose additional conditions (or amend existing ones) upon approved trustees, MPF schemes and approved pooled investment funds.

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Clause 2(a)(iv)-(x) – definition of "governing rules", "offering documents" and "participation agreements"	To clarify that "governing rules" include, inter alia, those rules and provisions contained in the offering document and participation agreement governing the establishment or administration of the scheme.	Governing rules should not include offering documents. In accordance with the Memorandum of Understanding entered into between the Securities and Futures Commission ("SFC") and the MPFA, the SFC is responsible for approving offering documents. The proposed amendment of including offering document in the definition of "governing rules" and making those documents subject to the MPFA's approval would result in a duplication of function of MPFA and SFC.	The intention is that the provisions in the offering documents should be consistent with those in the trust document, which in turn shall be vetted by MPFA and shall comply with the provisions of the MPFSO. In view of the industry's concern, and to further clarify the provisions, we propose to maintain the current definition of "governing rules" in the Ordinance, and add a new definition for "offering documents", say, documents that (i) invite participation in the scheme by prospective participating employers and/or perspective members of the scheme; and (i) contain information relating to the establishment or administration of the registered scheme. We also propose to set out in the MPF legislation that "offering document" and any amendments thereto would require MPFA's prior approval. <i>The above</i>

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			proposals have been agreed with the industry and
			the relevant draft Committee Stage Amendments
			have been prepared.
		"Participation agreements" are	The intention is that the contents of the participation
		agreements between trustees and	agreements should not be inconsistent with the
		participating employers primarily	requirements set out in the MPFSO. It should also
		relating to voluntary contributions.	be consistent with the provisions in the trust
		The proposed definition of "governing	instrument establishing the scheme. MPFA would
		rules" would be too broad if such	not intervene into matters like vesting or voluntary
		agreements would also be covered.	contributions which may vary from employer to
			employer. Our intention is to empower MPFA to
			approve a standard form of participation agreement.
			The standard form would allow trustees and
			employers to have tailor-made clauses on vesting and
			voluntary contributions within the confinement of the
			MPF legislation, whilst ensuring that the other
			standard clauses are in compliance with legislative
			requirements. Amendments to those other clauses
			in the participation agreement would require MPFA's

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			prior approval. The above have been agreed with
			the industry. Draft Committee Stage Amendments
			have been prepared to clarify our intention.
Clause	To amend the	The proposed amendment cannot	This is a drafting matter. We have prepared draft
2(a)(v) –	definition of	achieve the purpose of allowing	Committee Stage Amendments to clarify the
definition of	"mandatory	prepayment of mandatory	provision.
"mandatory	contributions" to	contributions before they are due. In	
contributions"	clarify that	respect of a new employee, it was	
	mandatory	suggested to introduce some form of	
	contributions can be	contingency such that contributions	
	prepaid.	made before the end of the permitted	
		period was contingent upon the	
		employee remaining in the same	
		employment at the end of the	
		permitted period.	

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Clause 8(a) – voluntary contributions	To clarify that the employer of a person less than age 18 or is of or more than retirement age may arrange for the person to join and pay voluntary contributions to an MPF scheme. A self-employed person less than age 18 or is of or more than retirement age may also join and pay voluntary contributions to an MPF scheme.	The expansion of the scope of making voluntary contributions is not wide enough. It does not allow exempt persons to make voluntary contributions, in particular, non-permanent HKID card holders and members with an overseas retirement scheme who are exempted from the Mandatory Provident Fund Schemes Ordinance (MPFSO) by virtue of section 4(3) of the Ordinance. Such persons should be allowed to make voluntary contributions. Any voluntary contributions arrangement must be subject to the governing rules of the MPF scheme concerned.	Draft Committee Stage Amendments have been prepared to clarify that exempt persons can be enrolled in MPF Schemes and make voluntary contributions. Section 11(7) of the MPFSO already provides that any contributions paid to an MPF scheme as provided by that section are voluntary, but are subject to the governing rules of the scheme.

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Clause 18 -	To empower the	Since MPF scheme members can	The MPF System is a mandatory one, which was
Regulations	MPFA to make	choose among different investment	designed to help the working population to save for
	regulations	options within an MPF scheme, the	their retirement needs. We consider that the
	requiring the	guaranteed fund option is actually	reserving of guaranteed funds should be regulated to
	guarantor of an	voluntary in nature. As a result, the	ensure that the guarantees are properly backed up by
	APIF to maintain	regulation of guaranteed funds in	assets specifically set aside for the purpose. The
	adequate reserves	MPF schemes should not be in any	existing section 46(1A)(r) of the MPFSO already
	so as to provide	way different from other guaranteed	provides for the making of regulation by the Chief
	investment	funds in the market.	Executive in Council on the reserving requirements
	guarantees.		for investment guarantees of MPF schemes.
			However, most MPF schemes in practice have chosen
			to offer investment guarantees not underwritten
			directly by the scheme itself but indirectly by
			investing into approved pooled investment funds that
			provide investment guarantees. Therefore, we
			propose to include a new section 46(1A)(wa) to
			provide for the making of regulation on the reserving
			requirements for investment guarantees of approved
			pooled investment funds.

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		There is a concern that different regulators may impose different standards in regulating guaranteed funds.	In consultation with the Hong Kong Monetary Authority (HKMA) and the Insurance Authority (IA), the MPFA has already issued a set of guidelines prescribing the reserving requirements on guaranteed funds (whether it is at the constituent fund level or approved pooled investment fund level). The proposed legislative amendment will merely enable such existing guidelines to be prescribed into regulation, if necessary. Furthermore, any regulation made under the proposed provisions will be subject to vetting by the Legislative Council. MPFA will continue to work together with HKMA, IA and the Securities and Futures Commission to ensure consistency in regulatory standards in regulating MPF guaranteed funds taking into account the differences in product design and regulatory regimes. This point will be reflected in the speech of the Secretary for Financial Services during the
			resumption of the second reading of the Bill.

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Schedule -	To amend the	The definition should be further	While the primary purpose of "preserved account" is
section 1(b) –	definition of	amended so that only minimum MPF	to hold or receive the transfer of accrued benefits
definition of	"preserved	benefits could be received by a	derived from mandatory contributions (and minimum
preserved	account" to make it	preserved account, and minimum	MPF benefits) for preservation until the retirement
account	clear that it can	MPF benefits could only come from	age of 65, it can also hold voluntary contributions
	receive benefits	an ORSO registered scheme.	from former employment. This is set out in section
	transferred from an		78(8)(b) of the MPFS General Regulation. The
	Occupational		intention of the proposed amendment is to allow
	Retirement		benefits accumulated in the ORSO registered or
	Schemes Ordinance		ORSO exempted schemes of an employee to be
	(ORSO) exempted		transferred to MPF schemes.
	scheme or ORSO registered scheme.	If an employee joins an employer who does not have a voluntary contribution arrangement but he wants to make voluntary contributions himself, he should be allowed to use his preserved account for the purpose.	The MPF System is an employment based system. The primary aim of voluntary contributions in MPF is to facilitate voluntary contribution arrangements between employers and employees. MPFA will review the current provisions to see if any amendment is needed to facilitate the making of voluntary contributions by employees themselves in preserved account when reviewing the overall

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			regulation of voluntary contributions in future.
Schedule – section 6, Eligibility of delegate of custodian	To require the approved trustee to ensure that any custodial agreement it enters into with the custodian prohibits the custodian from delegating the custodian's function to a non-eligible person. If the trustee acts as the custodian itself, he should not delegate the custodian's function to a non-	In certain overseas markets, the trustee and the investment manager may not be able to obtain service of subcustodians meeting the MPFA's eligibility criteria. However, since the trustee (acting as the custodian) is ultimately responsible and provides indemnity should there be any losses arising, there should be no need to impose an offence provision for failure to appoint eligible persons to be subcustodians.	The legislative intent is that a trustee, when also acting as a custodian, should have the obligation to ensure that its appointed subcustodians comply with such eligibility requirements. Given the important bearing of custodians and subcustodians on the security of scheme assets, it is reasonable to have penalty provision imposed on approved trustees acting as custodians which, without reasonable excuse, appointed persons not eligible to act as subcustodians. Whether or not an approved trustee has a duty to indemnify any losses arising is a separate matter. The imposition of fine is not an automatic process. Before the MPFA may trigger off any penalty provision, it will look into the specific circumstances of each case in detail, including whether the trustees have used their best endeavour to comply with the

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	eligible person. An offence provision is added for trustees who fail to comply with the said requirements.		legislation. Under the existing legislation, the only way for the MPFA to enforce the relevant requirements is to revoke the approval of trustees. This enforcement option is not appropriate in all cases, as it may disrupt the operation of an MPF scheme and may not be in the interest of scheme members. We therefore consider the proposed penalty provision necessary.

Financial Services Bureau 5 December 2001