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Financial Services and the Treasury Bureau
18/F, Tower 1 Admiralty Centre
18 Harcourt Road
Hong Kong
(Attn : Mr Ryan CHIU, AS(FS)(3)2)

19 September 2007

BY FAX
Fax No. : 2528 3345

Dear Mr CHIU,

Mandatory Provident Fund Schemes (Amendment) Bill 2007

I am scrutinizing the legal and drafting aspects of the captioned Bill. I would be most grateful if you may clarify the points set out in the attached sheets.

Yours faithfully,

(Kelvin LEE)
Assistant Legal Adviser

Encl.

c.c. LA
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(Attn : Ms Monica Law, SALD) (Fax : 2869 1302)
CCS(1)5

Observations on the Mandatory Provident Funds Schemes (Amendment) Bill 2007

Part 2

1. It appears that the proposed amendments to the Chinese and English text in clauses 3, 8, and 9 have no substantial difference from the original text. Please clarify the significance of the proposed amendments.

2. I note that the proposed amendments in Part 2 seek to standardise the format of the undertaking to be given to the Authority. Please clarify whether amendment to section 44(2)(a) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) (the General Regulation) is necessary.

3. The Mandatory Provident Fund Authority (MPFA) may wish to consider whether "prescribed/specified forms" should be used in the future since "deed or like form" or "in a form approved by the Authority" may appear to be unclear to the public.

Part 7

4. Under the Mandatory Provident Fund Schemes Ordinance (the Ordinance), MPFA is required to keep certain registers. Members of the public are already entitled, without charge, to inspect the registers during the ordinary business hours of MPFA under the existing provisions. The right to inspection appears to be unconditional. Part 7 introduces additional provisions to make those registers available to the public to ascertain whether a trustee/scheme is approved/registered/exempted. The unconditional right to inspection under the existing provision may have been qualified under the additional provisions. Please clarify the purpose of introducing the additional provisions in Part 7.

Part 9

5. Clauses 28 and 29 are similar. Clause 28 amends section 145 of the General Regulation. Section 145(6) and (7A) requires an employer to inform the approved trustee of the cessation of the employment of a casual/relevant employee by written notice. The amendments add section 145(7B) and (7C) according to which if an employer fails/refuses to give notice or cannot be located, the approved trustee may accept a notice given by an employee by statutory declaration.

6. An employer's failure to comply with section 145(6) and (7A) will attract financial penalties, which is recoverable by MPFA as a civil debt. However, giving wrong information in a statutory declaration by an employee may attract criminal liability. Please clarify the consideration in requiring an employee to file statutory declaration in the proposal.

Part 11

7. Clause 33 amends section 6 of the General Regulation, introducing a mechanism for a person specified in the guidelines to apply to cancel the approval of a pooled investment fund. It appears that the power of the Authority in the proposed subsection (7) applies to an application for the cancellation of the approval of a pooled investment fund under the proposed subsection (5). It may be desirable, for the avoidance of doubt, to specify in the proposed subsection (7) that it only applies to an application under the proposed subsection (5). Same observations apply to clause 34.

8. Please explain under what circumstances the MPFA may cancel the approval of a pooled investment fund/constituent fund. If those circumstances have been set out in one of the existing guidelines, please identify the relevant guidelines.

Part 12

9. Part 12 seeks to streamline the existing procedures to deal with unclaimed benefits by repealing the detailed statutory procedures an approved trustee is required to follow and to replace them with the procedures set out in the guidelines. It appears that the making of guidelines and their amendments do not require the scrutiny of the Legislative Council. If those procedures have been set out in one of the existing guidelines, please identify the relevant guidelines.

10. Under the existing section 170 of the General Regulation, it takes 6 months for the accrued benefit to become unclaimed benefit. While the proposed section 170 imposes fewer duties on the trustee, it still takes at least 6 months to complete the process (proposed section 170(2)). It appears that the proposed section 170 does not speed up the process very much.

Part 14

11. Please clarify what type of "information" in the proposed section 42(1)(f) (introduced by clause 41(4)) is contemplated. The proposed section 42(1)(f) appears to be wide enough to cover information, for example, submitted by an approved trustee and received by MPFA which may be disclosed under the proposed section 42(1)(g). Please clarify whether this is the intention of the Administration.

Other

12. I would be most grateful if you may provide the list of recommendations made by the MPFA leading to the introduction of the present Bill.