

For discussion on
22 November 2007

**Bills Committee on
Mandatory Provident Fund Schemes (Amendment) Bill 2007**
Administration's response to the views of the Bills Committee

Purpose

This paper sets out the Administration's response and the proposed Committee Stage Amendments ("CSAs") (at **Annex**) prepared in the light of the requests and views expressed by Members of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2007 ("the Bill") at the meeting on 1 November 2007.

Form of undertakings acceptable to MPFA

2. In response to Members' request, we have consulted the Securities and Futures Commission ("SFC") about the form of undertakings that it requires from entities in overseas jurisdictions. According to the SFC, there is no prescribed form of undertaking in the Securities and Futures Ordinance ("SFO"). While the SFC seeks written undertakings in various contexts, e.g. undertakings from contractors working in the SFC in relation to compliance with section 378 of the SFO, undertakings from licensed persons in relation to various compliance matters, and undertakings from overseas regulators in relation to use of records of interview taken in Hong Kong etc., the forms vary depending

on the circumstances.

3. With respect to drafting of the proposed amendments relating to “written undertakings”, we have considered and agreed with the Hon Alan Leong’s view that the drafting should achieve the purpose of requiring written undertakings which would give the “like effect”, instead of the “like form”, of an undertaking by deed, in order to more clearly reflect our policy intention. In this regard, CSAs are prepared to **Part 2 (Clauses 3 to 10)** and **Part 4 (Clauses 15 to 17)** of the Bill (at **Annex**) to stipulate that the Mandatory Provident Fund Schemes Authority (“MPFA”) could accept a written undertaking “by deed, or document of like effect acceptable to the Authority”.

Purposes of public registers

4. In the light of Members’ concern, we have re-considered the need to specify the purposes of the following public registers in the Bill –

- (i) register of exempt schemes (Part 7 – Clause 20);
- (ii) register of approved trustees (Part 7 – Clause 21);
- (iii) register of schemes (Part 7 – Clause 22); and
- (iv) register of unclaimed benefits (proposed CSA to amend s.172C in Clause 37 of Part 12. See *LC Paper No. CB(1)135/07-08(03)*).

5. As the public registers in (i) to (iii) above currently contain no personal data, we agree to remove, by way of CSA (at **Annex**), the

proposed amendments in Part 7 of the Bill which seek to specify the purposes of the registers in order to address Members' concern that the proposed amendments might inadvertently limit public access to information in the registers. We have consulted the Office of the Privacy Commissioner for Personal Data ("the PCPD") which has raised no objection to this course of action.

6. Regarding the unclaimed benefits register, we maintain that there is a need to highlight the purpose of the register through the proposed CSA (in LC Paper No. CB(1)135/07-08(03)) to define the scope for proper use of the data in view of the fact that the register contains information relating to individual scheme members. At present, the purpose of the unclaimed benefits register is buried in the proposed section 172C(4) which provides that any member of the public may inspect the register "to ascertain whether he has any unclaimed benefits in the scheme". The CSA seeks to create a new subsection under section 172C to better highlight the purpose which is "to enable a person who may be entitled to benefits in a registered scheme to ascertain whether he has any unclaimed benefits in the scheme". The PCPD is supportive of the proposed CSA.

Disclosure of information by MPFA

7. At present, the MPFA is not allowed to disclose to any person information it has obtained in the exercise and performance of functions except under certain specified circumstances. The general

public, particularly prospective and existing scheme members, need certain information at MPF scheme and fund level (e.g. fees and charges of the MPF constituent funds) to help them make informed investment decisions. In this connection, it is proposed that section 42(1)(g) (Clause 41 of the Bill) be added to allow the MPFA to disclose the information relating to MPF schemes and funds for specified purposes.

8. We have considered Members' suggestions to set out the items of information to be disclosed by the MPFA under the proposed section 42(1)(g) in order to provide for greater clarity and to use the expression "such information should include but is not limited to" so as to allow for the disclosure of additional information when the need arises. We agree with Members' suggestions and intend to move a CSA to **Part 14 (Clause 41)** (at **Annex**) to take on board Members' suggestions.

Financial Services and the Treasury Bureau

November 2007

MANDATORY PROVIDENT FUND SCHEMES
(AMENDMENT) BILL 2007

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
3	By deleting “a written undertaking to the Authority by deed, or by like form” and substituting “an undertaking to the Authority by deed, or by a document of like effect”.
4	By deleting “a written undertaking to the Authority by deed, or by like form” and substituting “an undertaking to the Authority by deed, or by a document of like effect”.
5	By deleting everything after “amended” and substituting “by repealing “a written undertaking to the Authority” and substituting “an undertaking to the Authority by deed, or by a document of like effect acceptable to the Authority,”.”.
6	By deleting everything after “amended” and substituting “by repealing “a written undertaking to the Authority” and substituting “an undertaking to the Authority by deed, or by a

document of like effect acceptable to the Authority,.”.”.

7(1) By deleting everything after “amended” and substituting “by repealing “a written undertaking” and substituting “an undertaking by deed, or by a document of like effect,.”.”.

7(2) By deleting everything after “amended” and substituting “by repealing “a written undertaking” and substituting “an undertaking by deed, or by a document of like effect,.”.”.

8 By deleting “a written undertaking to the Authority by deed, or by like form” and substituting “an undertaking to the Authority by deed, or by a document of like effect”.

9 By deleting “a written undertaking to the Authority by deed, or by like form” and substituting “an undertaking to the Authority by deed, or by a document of like effect”.

10 In the proposed section 7(3A) of Schedule 3, by deleting “like form” and substituting “a document of like effect”.

- 15 In the proposed section 20(6)(b), by deleting “a written undertaking to the Authority by deed, or by like form” and substituting “an undertaking to the Authority by deed, or by a document of like effect”.
- 16 In the proposed section 21(8), by deleting “a written undertaking with respect to the administration of the scheme by deed, or by like form” and substituting “an undertaking with respect to the administration of the scheme by deed, or by a document of like effect”.
- 17 In the proposed section 21A(8), by deleting “a written undertaking with respect to the administration of the scheme by deed, or by like form” and substituting “an undertaking with respect to the administration of the scheme by deed, or by a document of like effect”.
- Part 7 By deleting the Part.
- 41 By adding –
 “(5) Section 42 is amended by adding –
 “(5A) The information that may be disclosed under subsection (1)(g) includes (but is not limited to) information relating to –
 (a) the investment portfolios and

investment policies of
provident fund schemes,
constituent funds or
approved pooled investment
funds;

(b) the investment performances
of provident fund schemes,
constituent funds or
approved pooled investment
funds;

(c) the risks associated with
investing in provident fund
schemes, constituent funds or
approved pooled investment
funds;

(d) the fees and charges payable
under provident fund
schemes, constituent funds or
approved pooled investment
funds; and

(e) the types of services
available to members of
provident fund schemes.”.”.