

**BILLS COMMITTEE ON MANDATORY PROVIDENT FUND SCHEMES
(AMENDMENT) (NO.2) BILL 2007**

VIEWS OF THE HONG KONG BAR ASSOCIATION

The Hong Kong Bar Association (“the Bar”) is being invited by the Bills Committee on Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2007 (“the Bill”), to express its views on the Bill. The Bar refers to the ‘Brief for Legislative Council’ (*File Ref: FSB CRG4/51C(2007)*) and the Explanatory Memorandum on the Bill. The main provisions of the Bill are to:

- (i) increase penalties for failure to enroll an employee or to make a mandatory contribution, (Part 2) of the Bill;
- (ii) impose obligations on an employer to pay contributions in respect of an employee not in a registered scheme and to enable the Court to compel enrolment of employees, (Part 3) of the Bill;
- (iii) provide that a person must not become a controller of a corporate approved trustee without MPFA approval (Part 4) of the Bill and;
- (iv) create a new offence for employers to provide false or misleading information in pay records, (Part 5) of the Bill.

As such, these amendments are designed to enhance enforcement and compliance within the existing legislative scheme for MPF provision. The need or rationale for the amendments are largely self evident.

As a matter of drafting the content of the No. 2 Bill appears to meet its objectives. This is unsurprising as the document would be the product of detailed work by professionals at the MPFA.

The views of the Bar are that these amendments are uncontroversial; intended to improve the existing statutory regime and would be received favourably by the community as a whole including the Bar.

Of course, there is some additional burden for employers to ensure that employees are enrolled in a registered scheme but that is no more than reinforcing duties which already exist from the original introduction of the MPF.

Accordingly, the Bar does not propose to comment further on any of the specific terms of the No. 2 Bill.

Hong Kong Bar Association
10 March 2008