

For discussion on  
10 April 2008

**Bills Committee on  
Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2007**

**Administration's Response to the Views of the Bills Committee**

**Purpose**

At the meeting of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2007 ("the Bill") held on 27 March 2008, the Administration was requested to provide written response to the views and suggestions raised by Members and the Assistant Legal Adviser ("ALA") on certain issues related to the Bill. This paper sets out the Administration's response.

**Administration's Response**

2. The Administration has considered the views and suggestions by Members and ALA carefully. Our detailed response is given in the **Annex**.

Financial Services and the Treasury Bureau  
April 2008

Items	Views or suggestions by Members/Assistant Legal Adviser	Administration's response
1	<p><i>Proposed section 7AA(2)(a)</i></p> <p>Whether the current drafting of the proposed section 7AA(2)(a) is sufficiently clear on the liability of the employer to contribute to a registered scheme in respect of his employee.</p>	<ul style="list-style-type: none"> <li>Under the proposed section 7AA(2), even if the employer has not enrolled his employee into an Mandatory Provident Fund (“MPF”) scheme, he must for each contribution period pay the contributions in respect of the employee to the Mandatory Provident Fund Schemes Authority (“MPFA”). The term “contribution period” is defined in section 7A(10) of the Mandatory Provident Fund Schemes Ordinance (“MPFSO”) as each period “for which the employer pays or should pay relevant income to the employee”. We consider that it is sufficiently clear that the employer is liable to make MPF contributions in respect of a person only in the period during which he pays or should pay relevant income to that person as his employee.</li> </ul>
2	<p><i>Proposed section 7AA(10)</i></p> <p>Whether a separate “permitted period”</p>	<ul style="list-style-type: none"> <li>The definition of “permitted period” in section 7AA is the same as that in section 7 of the MPFSO, viz. 60 days in the case of a relevant employee who is not a casual employee and 10 days in</li> </ul>

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	<p>should be specified for section 7AA in the proposed section 7AA(10). In any event, any permitted period specified for the purposes of the existing section 7 must have expired long ago.</p>	<p>the case of a casual employee. Under section 7 of the MPFSO, the employer must enrol his employees into a registered MPF scheme within the permitted period after the “relevant time”. According to section 7(3)(b)(ii) of the MPFSO, the “relevant time” in the case of employment contracts entered after the commencement of the MPF System (i.e. 1 December 2000) would be the date on which the employment begins. Therefore, whether the permitted period in relation to a particular case has expired now depends on when did the employment in that particular case begins. The same would apply to what is meant by “permitted period” under proposed section 7AA. Therefore, there is no need to specify a “permitted period” for section 7AA.</p>
3	<p><i>Proposed section 7AA(11)</i></p> <p>Whether Saturdays should be excluded from "contribution day" in the proposed section 7AA(11) as payment</p>	<ul style="list-style-type: none"> <li>We agree to exclude Saturdays from the meaning of “contribution day” and will propose a committee stage amendment to amend the meaning of “contribution day” in section 7AA(11) accordingly.</li> </ul>

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	could not be made through banks on Saturdays nowadays.	<ul style="list-style-type: none"> <li>In this connection, section 122(4) of the Mandatory Provident Fund Schemes (General) Regulation will also need to be amended to exclude Saturdays from the meaning of "contribution day" to ensure consistency. We will prepare committee stage amendment accordingly.</li> </ul>
4	<p><i>Proposed sections 7AB and 7AC</i></p> <p>Whether a new provision should be added to stipulate that the MPFA should pass the statement provided by the employer under the proposed section 7AB to the approved trustee, together with the contributions received from the employer.</p>	<ul style="list-style-type: none"> <li>At present, where a defaulting employer pays the default contributions and surcharges to the MPFA, there are already established procedures for the MPFA to pass the amount of outstanding contributions and contribution surcharges recovered from the employer together with any relevant information to the trustee concerned so as to enable the latter to process the amount received. Similar procedures will apply to the remittance of contribution together with the statement received by the MPFA to the trustees under the proposed section 7AC. It will not be necessary to introduce a new provision in this regard.</li> </ul>

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5	<p>(i) Whether the MPFA should be authorized to recover retrospective outstanding contribution for non-enrolled employees.</p> <p>(ii) Whether the Bill should be amended to stipulate that non-complying employers should not be allowed to recover the employee mandatory contribution they have eventually paid from the relevant employees if it is proved that the non-compliance is wholly due to the fault of the employers concerned.</p>	<p>(i) In order to protect the retirement benefits of the employees, it is proposed that the MPFA should be authorized to recover the full amount of outstanding mandatory contributions including both the employer and employee portions. Taking into account members' views expressed at previous Bills Committee meetings on the issue of consistent treatment with the established arrangement for enrolled employees, we consider that it is appropriate to maintain the existing Clause 5 of the Bill under which, inter alia, the MPFA could recover from employers concerned the full amount of mandatory contributions that have remained outstanding for the non-enrolled employees since 1 December 2000.</p> <p>(ii) - As advised by the MPFA at the last Bills Committee meeting held on 27 March 2008, the outstanding amount paid eventually is settled through mutual agreement between the employers and employees concerned. The MPFA is not aware of any problems in relation to the settlement of</p>

<b>Items</b>	<b>Views or suggestions by Members/Assistant Legal Adviser</b>	<b>Administration's response</b>
		<p>employee mandatory contributions between the parties concerned and has not received any complaints in this regard.</p> <ul style="list-style-type: none"> <li>- We note that there is disagreement among Members on whether it is appropriate to stipulate in the MPFSO a particular circumstance under which the employers would be barred from recovering any portion of the employee mandatory contribution from the employees concerned. Indeed, such arrangement would raise the question why should the MPFSO not also set out in full how the outstanding contributions paid eventually should be settled between the employers and employees under other circumstances.</li> <li>• In the light of the above, we do not intend to make further amendments to the Bill in this regard.</li> </ul>