

**The proposed Committee Stage Amendments
for the Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2007**

Committee Stage Amendments (at Annex)	Clause (relevant section in bracket)	Rationale
1	3 (section 43B)	To make it clear that the penalty for an employer who fails to comply with section 7A(1) and (2) of the Mandatory Provident Fund Schemes Ordinance (“MPFSO”), i.e. to contribute the employer contribution from its own fund and to deduct the employee contribution from relevant income of the employee, will remain in force after the current legislative exercise. The maximum penalty level will remain the same as the existing one, i.e. a fine at level 6 (\$100,000) and imprisonment for 6 months on the first conviction and a fine of \$200,000 and imprisonment for 12 months on each subsequent conviction.
2	11 (section 43B)	The proposed section 7AA of the Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2007 (“the Bill”) stipulates that an employer is required to make contribution even if the employee has not been enrolled in an Mandatory Provident Fund (“MPF”) Scheme in accordance with section 7 of the MPFSO. The proposed section 7AA(3) imposes a requirement on the employer similar to that under section 7A(1) and (2) of the MPFSO. In this

Committee Stage Amendments (at Annex)	Clause (relevant section in bracket)	Rationale
		connection, it is proposed that the penalty for failure to comply with section 7AA(3) be also set out in section 43B. The maximum penalty level would be the same as that of section 7A(1) and (2).
3	3 (section 43B)	In response to the comments of the Assistant Legal Adviser (“ALA”) that the current drafting of the proposed section 43B(1C)(a) does not differentiate the case where (i) an employer has made a deduction from an employee’s relevant income but has not made the necessary contribution from the case where (ii) an employer has made a deduction and has also paid the deducted amount to the approved trustee as MPF contribution, we propose to make it clear that under section 43B(1C)(a), an employer would be liable to a heavier penalty (i.e. a fine of \$450,000 and imprisonment for four years) if he falls within the situation described in (i) above.
4	11 (Section 43B)	The proposed section 43B(1D)(a) is essentially the same as the proposed section 43B(1C)(a) (the former deals with the default contribution cases under the proposed section 7AA while the latter deals with the default contribution cases under section 7A of MPFSO) – please see item 3 above. We propose

Committee Stage Amendments (at Annex)	Clause (relevant section in bracket)	Rationale
		that section 43B(1D)(a) should be amended in the same manner as that of the proposed section 43B(1C)(a).
5	4 (section 2(1) of the MPFSO)	To amend the definition of “arrears” in section 2 of the MPFSO to clarify that it also covers the contributions payable under the proposed section 7AE of the Bill so that those contributions are also recoverable by the MPFA under section 18 of the MPFSO after they have become due for payment.
6	5 (section 7AA(11)) and section 122(4) of the Mandatory Provident Fund Schemes (Amendment) Regulation (“General Regulation”)	In response to the suggestion of ALA, we propose to exclude Saturday from the meaning of “contribution day” by amending the proposed section 7AA(11). It is also proposed that the meaning of “contribution day” under section 122(4) of the General Regulation be amended in the same manner to align with the contribution arrangement under the proposed section 7AA.
7	12 (section 43BA)	In order to increase the deterrent effect against non-compliance of the court order, this proposed amendment creates an offence such that an employer who does not comply with the court order issued under the proposed section 43BA

Committee Stage Amendments (at Annex)	Clause (relevant section in bracket)	Rationale
		<p>would be liable to a maximum penalty of a fine of \$350,000 and to imprisonment for three years, and a daily fine of \$500 for each day during which the offence is continued. This will provide certainty that there will be legal sanctions against an employer for non-compliance of a court order. The details of the proposal have been set out in paragraphs 9 and 10 of the paper LC Paper No. CB(1)1027/07-08(02).</p>

Financial Services and the Treasury Bureau
April 2008

MANDATORY PROVIDENT FUND SCHEMES
(AMENDMENT) (NO. 2) BILL 2007

COMMITTEE STAGE

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

	<u>Clause</u>	<u>Amendment proposed</u>
1	3(1)	In the proposed section 43B(1B), by deleting “section 7A(7)” and substituting “section 7A(1), (2) or (7)”.
2	11	In the proposed section 43B(1E), by deleting “section 7AA(6)” and substituting “section 7AA(3)(a) or (b) or (6)”.
3	3(1)	By deleting the proposed section 43B(1C)(a) and substituting – “(a) in the case where he has deducted any amount from the employee’s relevant income for the contribution period concerned as the employee’s contribution and the total amount of contribution paid in respect of the employee to the approved trustee for that contribution period is less than the amount so deducted, liable on conviction to a fine of \$450,000 and to imprisonment for 4 years; and”.
4	11	By deleting the proposed section 43B(1D)(a) and substituting – “(a) in the case where he has deducted any amount from the employee’s relevant income for the contribution period concerned as the employee’s contribution and the total amount of contribution paid in respect of the employee to the Authority for that contribution period is less than the amount so deducted, liable on

<u>Clause</u>	<u>Amendment proposed</u>
	conviction to a fine of \$450,000 and to imprisonment for 4 years; and”.
5	<p>4 By adding immediately before subclause (1) –</p> <p style="padding-left: 40px;">“(1A) Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) as amended by the Mandatory Provident Fund Schemes (Amendment) Ordinance 2008 (1 of 2008) is amended by repealing the definition of “arrears” and substituting –</p> <p style="padding-left: 80px;">““arrears” (欠款) means a mandatory contribution that is due for payment to the Authority under section 18 or 7AE;”.”.</p>
	<p>4(1) By deleting “of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)”.</p>
6	<p>5 In the proposed section 7AA(11), by adding “a Saturday,” before “a public holiday” where it twice appears.</p>
	<p>New By adding –</p> <p style="padding-left: 40px;">“18A. Participating employer to calculate relevant income and pay mandatory contributions</p> <p style="padding-left: 80px;">Section 122(4) is amended by adding “a Saturday,” before “a public holiday” where it twice appears.”.</p>
7	<p>12 In the proposed section 43BA, by adding –</p> <p style="padding-left: 40px;">“(4A) An employer who, without reasonable excuse, fails to comply with an order made under this section commits an offence and is liable on conviction to a fine of \$350,000 and to imprisonment for 3 years and, in the case of a continuing offence, to a daily penalty of \$500 for each day</p>

Clause

Amendment proposed

on which the offence is continued.”.