

For discussion on
16 May 2008

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

Enforcement of court judgment

Purpose

At the meeting of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2007 (“the Bill”) held on 9 May 2008, the Administration / the Mandatory Provident Fund Schemes Authority (“MPFA”) were requested by Members to consider and respond to certain issues relating to the enforcement of court judgment on outstanding MPF contributions. This paper sets out the response of the MPFA.

Response of the MPFA

2. With respect to Members’ concern about the time involved for the procedures described in paras. 4 and 5 of LC Paper No. CB(1)1459/07-08(01) (“the Paper”), the MPFA would like to clarify that under the existing arrangement, it would commence those procedures to investigate the case and obtain necessary evidence after it is notified by an approved trustee that an employer has failed to settle the arrears and surcharge in accordance with the payment notice issued by the MPFA. Such investigation serves, amongst others, the immediate purpose of enabling the MPFA to file a civil claim against the employer for recovery of arrears and surcharge as well as the subsequent purpose of facilitating the MPFA to take the action of executing the court judgment if the employer still fails to settle the arrears and surcharge in accordance with the court judgment. During the investigation stage, the MPFA will have already started the process of obtaining information from relevant parties in order to ascertain the financial status and available assets of the employer. Hence, for normal cases, most of the procedures in paras. 4

and 5 of the Paper have usually been undertaken concurrently with other procedures at the initial stage of arrears recovery and they are therefore not expected to unduly delay the process of arrears recovery.

3. Within 14 days after the due date for payment of the judgment debt, the MPFA will check its records and those of the approved trustee and the court to ascertain whether the employer has settled the arrears and surcharge. Taking into account the facts and circumstances of the case, the MPFA will decide on the most appropriate enforcement strategy of enforcing the court judgment by applying for bailiff action, taking garnishee proceedings and / or taking a charging order within around 10 working days after having confirmed that the employer has not settled the payment and updated the previous findings on the available assets of the employer as necessary.

4. Having considered Members' views, the MPFA will give higher priority to the use of statutory demands and winding up orders to recover default contributions from employers. In response to Member's suggestions, the MPFA will change its practices and procedures to give consideration to the use of statutory demands at an earlier point in the recovery process. In effect, the MPFA will give consideration to the use of such demands at the same time as making decisions about the other recovery options of applying for bailiff action, taking garnishee proceedings and / or taking a charging order as mentioned in para. 3 above. In cases where bailiff action, garnishee proceedings and / or charging order have been taken to enforce the judgment debt, the MPFA will duly review the effectiveness of those actions and consider the merits of issuing statutory demands having regard to the latest development and particular circumstances of individual cases. Where warranted, the MPFA will proceed with the action of issuing statutory demands and filing winding-up petitions against employer companies without hesitation, particularly those that have persistently defaulted in making MPF contributions for their employees.

Mandatory Provident Fund Schemes Authority
May 2008