

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>  |
|---------------|--|
| 3(1)          | In the proposed section 43B(1), in the English text –<br>(a) by deleting “, and” and substituting “and,”;<br>(b) by adding “to” before “a daily penalty”.  |
| 3(1)          | In the proposed section 43B(1B), by deleting “section 7A(7)” and substituting “section 7A(1), (2) or (7)”.   |
| 3(1)          | By deleting the proposed section 43B(1C)(a) and substituting –<br>“(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             | By adding immediately before subclause (1) –<br>“(1A) Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended, in the definition of “arrears”, by adding “7AE or” after   |

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“section”.”.

4(1) By deleting “of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)”.

5 In the proposed section 7AA, by deleting subsections (2) and (3) and substituting –

“(2) The employer must, in the case referred to in subsection (1)(a), for each contribution period ending on or after that commencement during which the employee is not such a member –

- (a) from the employer’s own funds, contribute to a registered scheme that is to be determined in accordance with section 7AC the amount determined in accordance with subsection (4); and
- (b) subject to subsection (6), deduct from the employee’s relevant income for that period as a contribution by the employee to that scheme the amount determined in accordance with subsection (4).

(3) The employer must, in the case referred to in subsection (1)(b), for each contribution period ending after the date the employee becomes a relevant employee during which the employee is not such a member –

- (a) from the employer’s own funds, contribute to a registered scheme that is to be determined in

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accordance with section 7AC the amount determined in accordance with subsection (4); and

- (b) subject to subsection (6), deduct from the employee's relevant income for that period as a contribution by the employee to that scheme the amount determined in accordance with subsection (4)."

5 In the proposed section 7AA(4), by deleting "subsection (3)(a) and (b), the amount to be paid by an employer" and substituting "subsections (2) and (3), the amount to be contributed by an employer, or to be deducted from an employee's relevant income,".

5 In the proposed section 7AA(5), by deleting "the purposes of subsection (3)(a) and (b)" and substituting "those purposes".

5 In the proposed section 7AA(6)(a) and (b), by deleting "subsection (3)(b)" and substituting "subsection (2)(b) or (3)(b)".

5 In the proposed section 7AA, by adding –

“(6A) An employer must ensure that contributions required to be made in accordance with this section in respect of an employee of the employer are paid to the Authority on or before the contribution day.”.

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- 5 In the proposed section 7AA(11), by adding “a Saturday,”  
before “a public holiday” where it twice appears.
- 5 In the proposed section 7AB(2)(h), by deleting “section  
7AA(3)(a)” and substituting “section 7AA(2)(a) or (3)(a)”.
- 5 In the proposed section 7AB(2)(i), by deleting “section  
7AA(3)(b)” and substituting “section 7AA(2)(b) or (3)(b)”.
- 10 In the heading, by deleting “**mandatory contributions that are  
in arrears**” and substituting “**arrears and contribution  
surcharges**”.
- 10(2) By deleting everything after “amended” and substituting “by  
adding “under subsection (1) or section 7AE” after “due for  
payment to the Authority”.”.
- 11 By deleting the proposed section 43B(1D).
- 11 In the proposed section 43B(1E), by deleting “section 7AA(6)”  
and substituting “section 7AA(2), (3) or (6)”.
- 11 By adding after the proposed section 43B(1E) –  
“(1F) An employer who, without reasonable  
excuse, fails to comply with section 7AA(6A) commits  
an offence and is –  
(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

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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 conviction to a fine of \$450,000 and to imprisonment for 4 years; and

(b) in any other case, liable on conviction to a fine of \$350,000 and to imprisonment for 3 years.”.

12 In the proposed section 43BA(3), by deleting “(1D)” and substituting “(1F)”.

12 In the proposed section 43BA(4), by deleting “(1D)” and substituting “(1F)”.

12 In the proposed section 43BA, by adding –

“(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 on which the offence is continued.”.

17(5) In the proposed section 78(6)(c)(i), in the English text, by deleting “members” and substituting “member’s”.

**ALL PASSED**

New

By adding –

**“18A. Participating employer to calculate relevant income and pay mandatory contributions**

Section 122(4) is amended by adding “a Saturday,” before “a public holiday” where it twice appears.”.

20

By deleting the clause and substituting –

**“20. Rate of contribution surcharge**

Section 134 is repealed.”.

22

In the heading, by adding “**or contribution surcharges**” after “**contributions**”.

New

By adding immediately before clause 25 –

**“24A. Interpretation**

Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended –

- (a) in the definition of “associate”, by adding “a natural person referred to in paragraph (d) of the definition of “controller” or” after “in relation to”;
- (b) in the definition of “controller”, in paragraph (d), by repealing “, a close relative, partner or” and substituting “an associate, a close relative or an”.”.

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- 25(1) By deleting “of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)”.
- 31 In the proposed section 42A(2) –
- (a) by deleting the definition of “indirect controller”;
  - (b) by adding –  
““shadow director” (幕後董事), in relation to an approved trustee that is a company, means a person described in paragraph (b) of the definition of “controller” in section 2(1) of the Ordinance;”.
- 31 In the proposed section 42C, in the heading, by deleting “**indirect controllers**” and substituting “**shadow directors**”.
- 31 In the proposed section 42C(1) and (5), by deleting “an indirect controller” wherever it appears and substituting “a shadow director”.
- 31 In the proposed section 42C(4) –
- (a) by deleting “an indirect controller” and substituting “a shadow director”;
  - (b) by deleting “or indirect controller” and substituting “or shadow director”.
- 31 In the proposed section 42D(8)(a), by deleting “close relative, partner” and substituting “associate, close relative”.

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- 31 In the proposed section 42E(9) –
- (a) by deleting “an indirect controller” and substituting “a shadow director”;
  - (b) by deleting “the indirect controller” and substituting “the shadow director”.
- 31 In the proposed section 42F(4)(a), by deleting “close relative, partner” and substituting “associate, close relative”.
- 32(b) In the proposed item 12E in Part II of Schedule 4, by deleting “indirect controller” and substituting “shadow director”.
- 32(b) In the proposed item 12F in Part II of Schedule 4, by deleting “Indirect controller” and substituting “Shadow director”.
- 32(b) In the proposed item 12M in Part II of Schedule 4, by deleting “Indirect controller” and substituting “Shadow director”.

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