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中華人民共和國香港特別行政區政府總部教育局
Education Bureau

Government Secretariat, The Government of the Hong Kong Special Administrative Region
The People's Republic of China

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Legal Service Division
Legislative Council Secretariat
1 Legislative Council Road
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Hong Kong

Dear Miss WONG,

Education (Amendment) Bill 2013

Thank you for your letter dated 26 March 2013. Our response to your questions concerning the Education (Amendment) Bill 2013 is set out as follows:

“In this connection, please clarify the reasons for adopting a different conditions (i.e. if a provident fund member is an undischarged bankrupt) from that in MPFSO (i.e. if a scheme member is adjudicated bankrupt). It seems that an undischarged bankrupt may retain that status over a period of time but a scheme member is adjudicated bankrupt only at a specific point of time.”

The wording “if a provident fund member is an undischarged bankrupt” in the proposed section 85(4) of the Education Ordinance (EO) is aimed to express clearly the policy intent that protection is given to a provident fund member so long as the member is an undischarged bankrupt, regardless of whether the person is adjudicated bankrupt before or after becoming a provident fund member. On the other hand, it is noted that section 16(1A) of the MPFSO is a provision to avoid doubt.

"It is noted that in the MPFSO, the expression "any accrued benefits in a registered scheme" is used and "accrued benefits" is defined. Please clarify -

- (a) why a definition is considered unnecessary for "benefits accrued";
- (b) why the protection in the proposed section 85(4) of the Education Ordinance (Cap. 279) is extended to benefits "accruing" and "to be accrued";
- (c) how the right or entitlement of a provident fund member to any benefits in the fund which has not yet accrued (i.e. "accruing" and "to be accrued") could be excluded from the property for the purposes of the Bankruptcy Ordinance (Cap. 6)."

In the existing provisions of the EO, the Grant Schools Provident Fund Rules and the Subsidized Schools Provident Fund Rules (GSPF and SSPF Rules), the term "benefits" is used without being defined. In section 2 of the Bankruptcy Ordinance (BO), "property" is defined to include "...things in action... *present or future, vested or contingent*, arising out of or incident to property as above defined" (emphasis added). As the payment of provident fund benefits is subject to conditions stipulated under the GSPF and SSPF Rules, and Government donations (in the case of grant or subsidized schools) or school's donations (in the case of direct subsidy scheme schools) may not be payable at all under certain situations, it is arguable as to which point in time such donations or benefits become accrued to a contributor.

Yours sincerely,



(Miss Alice YU)

for Secretary for Education