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17 September 2014

BY EMAIL & BY POST

Ms. Connie Ho,
For Clerk to Bills Committee,
Legislative Council Secretariat,
Legislative Council Complex,
1 Legislative Council Road,
Central, Hong Kong.

Dear Ms. Ho,

Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2014

We are pleased to attach the Law Society's submissions on the Mandatory Provident Fund Schemes (Amendment) Bill 2014 for consideration by the Bills Committee.

Yours sincerely,

Kenneth Fok
Director of Practitioners Affairs

Encl.

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**MANDATORY PROVIDENT
FUND SCHEMES (AMENDMENT) BILL 2014**

Submissions

Background

The Law Society has reviewed the MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2014 ("the Amendment Bill") which was gazetted on 27 June 2014. The comments of the Law Society on the Amendment Bill, by reference to the page number of the Gazette, are tabulated below.

Page Nos	Clause No.	Comments
C3723	new section 21BB(6):	<p>5th (last) line, this states - "...if it is not satisfied that the fund is in <u>the</u> scheme members' interest". [emphasis supplied].</p> <p>This clause is not clear as to which members are being referred to - existing members of that scheme, or scheme members in general (i.e. who may for example join in future?) If it is the latter, the word "the" underlined in the above should be deleted.</p>
C3725	new section 42(1)(caa)	<p>In the first line - "<i>the purpose of</i>" is proposed to be inserted immediately before "<i>seeking advice from</i>"</p> <p>In the third line - delete "<i>or proposing to act</i>"</p> <p>Also - there is similar text in many other new clauses in the Bill; there should be the same changes in all such clauses.</p>

Page Nos	Clause No.	Comments
C3727	new paragraph 42(1A)(c)	The old wording stated that such disclosure needed to be " <i>necessary to enable</i> " exercise or performance..., whereas now the requirement is " <i>enable</i> " rather than " <i>necessary to enable</i> ". The Law Society does not object to this change of wording, if this is the intention of the legislature but wishes to point out that this change has the effect of lowering the threshold for such disclosure.
C3741	Addition of item 6AA	This states the new item is " <i>after item 6</i> " but the Law Society suggests that it should be " <i>after item 6A</i> ".
C3747	section 34 – under "substitute"	<p>This states "<i>No fees or financial penalties may be charged to or imposed <u>on a scheme member...</u></i>" [emphasis supplied]</p> <p>The change in wording, particularly as underlined above, seems to imply that after this amendment, such fees or penalties could be charged, so long as not charged to (or imposed on) a scheme member - for example they could be charged directly to a constituent fund. The Law Society considers that the drafters, and the legislature, should consider whether this is the intention.</p>

THE LAW SOCIETY OF HONG KONG

17 SEPTEMBER 2014