



February 18, 2008

To: All Relevant Employer Scheme Holders

Dear Sir/Madam,

Mandatory Provident Fund Schemes (Amendment) Ordinance 2008

The Mandatory Provident Fund Schemes (Amendment) Ordinance 2008 (hereinafter called "the Amendment Ordinance") was gazetted on January 18, 2008. Major amendments include: (1) the inclusion of housing allowances and other housing benefits in the definition of "relevant income"; and (2) the removal of the 30-day settlement period for MPF contributions.

The amendment on housing allowances will plug a loophole that employers may take advantage of to evade their responsibilities to pay MPF contributions or to reduce the amount of relevant income by labeling a portion of their employees' salaries as housing allowances. The Mandatory Provident Fund Scheme Authority ("MPFA") will take action against non-compliant employers by taking civil action to recover outstanding contributions and to impose surcharges, as well as institute criminal prosecutions. An offender is liable to a maximum fine of HK\$100,000 and imprisonment for six months on first conviction.

The removal of the settlement period will also streamline administration and step up enforcement action by the MPFA against employers who deliberately delay paying MPF contributions by abusing the settlement period. With the enactment of the Amendment Ordinance, all employers are required to make their contributions by the contribution day, that is, within 10 days after the end of the contribution period. Employers who fail to pay contributions on time commit an offence. In such cases a surcharge and a financial penalty of \$5,000 or 10% of the payable contribution amount (whichever is the greater) would be imposed on them. The MPFA may also institute criminal prosecutions against defaulting employers. An offender on conviction is liable to a maximum penalty of imprisonment for six months and a fine of HK\$100,000 on first conviction.

Your company should be aware of the above changes and take the necessary action to ensure compliance. The Amendment Ordinance will improve the MPF System so as to better protect the interests of scheme members.

To give you a clearer understanding of the content of the Amendment Ordinance, we are pleased to enclose a copy of the publicity flyer issued by the MPFA and the FAQ (Chinese version only) for your reference. Should you have any queries on the above or the Amendment Ordinance, please feel free to contact our MASS MPF hotline at 2919 9115.

MPF Department
MassMutual Trustees Ltd.

致：有關僱主計劃持有人

貴客戶尊鑒：

2008 年強制性公積金計劃(修訂)條例

2008 年強制性公積金計劃(修訂)條例〔下稱「(修訂)條例」〕已於 2008 年 1 月 18 日刊憲。(修訂)條例的主要修訂包括：(1)將房屋津貼及利益納入「有關入息」的定義範圍之內；及(2)取消僱主 30 日供款結算期。

(修訂)條例取消把房屋津貼及利益豁除於「有關入息」的定義範圍之內。是次修訂可防止僱主刻意將僱員的部分入息列作房屋津貼，以逃避或減低強積金供款。強積金管理局〔下稱「積金局」〕會向違規僱主採取執法行動，包括循民事途徑追討欠款及徵收附加費，以及作出刑事檢控，首次定罪可被最高判監禁 6 個月及罰款 10 萬港元。

此外，取消結算期可精簡有關程序，讓積金局對個別蓄意以結算期拖延供款的違法僱主，採取更快和更有效的執法行動。實施新規定後，僱主必須在供款日，即供款期完結後的 10 日內作出供款；否則，即屬犯法，除會被徵收附加費外，可被罰款 5,000 港元或欠款額的 10%（以較高者為準），僱主同時可遭刑事檢控，初犯可被最高判監禁 6 個月及罰款 10 萬港元。

敬希 貴公司能夠知悉上述有關改變及採取相應措施，以配合新的規定。今次的條例修訂相信可持續改善強積金制度及其效率，以保障計劃成員的權益。

為協助 貴公司能夠更了解是次(修訂)條例內容，謹隨函附上由積金局印製、有關是次(修訂)條例的簡介及常見提問〔中文版〕以供參考。如對上述內容或是次(修訂)條例有任何查詢，歡迎致電萬全強積金熱線 2919 9115。

美國萬通信託有限公司

強積金部 謹啟

2008 年 2 月 18 日

Amendments aiming to enhance MPFA's enforcement actions

Item	Content / Focus	Purpose / Impact
Prosecution time bar	To amend sections 43C and 43E of the MPFSO as well as section 26 of the Mandatory Provident Fund Schemes (Exemption) Regulation, so that the time limit for prosecuting offenders will be extended from within six months after the occurrence of the offence to within six months after the offence comes to the notice of the MPFA or three years of the commission of the offence (whichever period expires first).	The amendment extends the prosecution time limit under certain existing provisions to enable the MPFA to take enforcement actions against offenders (e.g. employers and SEPs) more effectively.
Power to require production of records	To confer on the MPFA an explicit power to require employers or SEPs to produce records to the MPFA within a specified period, irrespective of whether the request is put forward during on-site inspections or not, for the purpose of ensuring compliance with the provisions of the MPF legislation.	The amendment will enable the MPFA to step up enforcement actions to ensure compliance with the MPFSO.
Service of summons	To introduce a new provision to clearly stipulate that a summons can also be served on the employer's business address.	The amendment provides an additional way for the service of a summons on an employer so as to increase the chance of successful service of summons.
Disclosure of information	To confer on the MPFA a statutory power to disclose certain public information, such as information in respect of defaulting companies or employers so convicted in open court proceedings.	The amendment will impose stronger deterrent effect on offenders.
Treatment of default contribution cases	To allow the MPFA not to issue a Payment Notice for Outstanding Contributions and Surcharge to an employer in specified circumstances (e.g. where the employer has gone bankrupt) to avoid wastage of enforcement resources.	The amendment will avoid wastage of enforcement resources and save administrative expenses.

Besides, several technical amendments in respect of MPF investment and scheme administration are also introduced. They include the relaxation of the eligibility of sub-custodians, the exemption of the requirement to appoint investment managers in relation to a constituent fund in specified circumstances, and the clarification of the effect of consent given by the MPFA to a trustee to restructure an MPF scheme. Those amendments serve to enhance the efficiency and effectiveness of the operations of trustees with a view to reducing their operation costs and expenses so that scheme members can benefit ultimately.



強制性公積金計劃管理局
MANDATORY PROVIDENT FUND
SCHEMES AUTHORITY

Hotline: 2918 0102

1 December 2008

Amendments Relating to Mandatory Provident Fund Schemes Ordinance

Introduction

The Mandatory Provident Fund Schemes Authority (MPFA) is responsible for regulating and supervising the Mandatory Provident Fund schemes (MPF schemes) and occupational retirement schemes (ORSO schemes). The MPFA is committed to improving the operation of the MPF System, and regularly reviews and refines the MPF System through legislative amendments, with a view to better protecting scheme members' interests and helping them manage their MPF accrued benefits. Moreover, the administration of trustees would be streamlined, thus enhancing the efficiency and effectiveness of their operations and reducing their costs to make room for fees reduction eventually.

The Legislative Council passed the Mandatory Provident Fund Schemes (Amendment) Bill 2007 at its third reading on 9 January 2008. The Bill covers a number of proposed amendments to the Mandatory Provident Fund Schemes Ordinance (MPFSO) put forward by the Government to the Legislative Council in mid 2007.

This flyer sets out the major amendments to the MPF legislation that have more direct impact on employers and scheme members, including employees and self-employed persons (SEPs).

**Look After Your MPF Investment
Add Value to Your Future**



強制性公積金計劃管理局
MANDATORY PROVIDENT FUND
SCHEMES AUTHORITY

Amendments aiming to better protect scheme members' interests

Item	Content / Focus	Purpose / Impact
Removal of the 30-day settlement period	To remove the 30-day settlement period immediately after the contribution day. Where an employer or SEP fails to pay mandatory contributions by the due date (i.e. the contribution day), the trustee will no longer need to issue a reminder urging the employer or SEP to settle the outstanding contributions. Instead, the trustee will report the default contribution case to the MPFA. Upon receipt of the report, the MPFA will issue a Payment Notice for Outstanding Mandatory Provident Fund Contributions and Surcharge to the defaulting employer or SEP or take legal action to recover the arrears.	The amendment aims at streamlining the recovery procedures for default MPF contributions and enhancing the efficiency and effectiveness of the recovery mechanism. Employers and SEPs should take note of the changes and take necessary action to ensure compliance with the new requirements (for details, please refer to the flyer "Amendment Relating to Removal of the 30-day Settlement Period").
Removing the special treatment on excluding housing allowance and other housing benefit from "relevant income"	To remove the special treatment of excluding housing allowance and other housing benefit from the definition of "relevant income". Housing allowance and other housing benefit will then be treated on the same basis as other remuneration items and any such item will be included in calculating MPF contributions if it satisfies the criteria for "relevant income".	The amendment will effectively prevent employers from evading their responsibilities to pay MPF contributions or reducing the amount of MPF contributions payable by deliberately labelling a portion of the salary of their employees as housing allowance. Employers should take note of the amendment and calculate the amount of mandatory contributions accurately (for details, please refer to the flyer "Amendment Relating to Removing the Special Treatment on Excluding Housing Allowance and Other Housing Benefit from Relevant Income").
Unclaimed benefits	To set out clearly the timeframe for accrued benefits to become unclaimed benefits and to remove the requirement for trustees to publish newspaper notices to locate untraceable scheme members. On the other hand, trustees are required to update the MPFA on unclaimed benefits information every quarter and to every year remind scheme members who have reached retirement age that they can apply for withdrawal of accrued benefits at any time.	On the premise that the interests of scheme members would not be affected, the amendment will shorten the period for trustees to report unclaimed benefits information to the MPFA and to streamline the procedures in handling unclaimed benefits. The MPFA will be able to update the unclaimed benefits register quarterly for scheme members' reference.
Notice of cessation of employment	To allow the trustee to accept a written notice by statutory declaration given by an employee as evidence of his cessation of employment where the employer concerned cannot be located or refuses to submit the notice of cessation of employment to the trustee.	The amendment can facilitate the transfer of employee's accrued benefits in his MPF account in a timely manner after the employee's cessation of employment. Trustees can also reduce administrative expenses, which may be incurred in locating untraceable employers when processing employees' applications to transfer their accrued benefits.

Item	Content / Focus	Purpose / Impact
Disclosure of information of MPF funds and schemes	To confer on the MPFA a statutory power to disclose information of MPF funds and schemes to the public.	The amendment confers on the MPFA a statutory power to disclose information of MPF funds and schemes to the public so as to enhance the transparency of MPF funds to help scheme members make better informed investment decisions.
Early withdrawal of MPF accrued benefits on the ground of permanent departure from Hong Kong	When a scheme member applies for withdrawal of MPF accrued benefits on the ground of permanent departure from Hong Kong, he will no longer need to declare that no mandatory contributions were paid or were required to be paid by or in respect of him to any MPF scheme since the specified date of permanent departure in the statutory declaration to be submitted.	The amendment gets over the situation where a scheme member is unable to withdraw accrued benefits when his employer is late in making mandatory contributions. The application process is also streamlined to save unnecessary administrative expenses.
Early withdrawal of MPF accrued benefits on the ground of small balance	When a scheme member applies for withdrawal of MPF accrued benefits on the ground of small balance, he will no longer be required to satisfy the following requirement:- no mandatory contributions were paid or were required to be paid by or in respect of the member to any MPF scheme during the 12 months immediately preceding the lodgement of the application. The new requirement is that as at the date of the application, at least 12 months have elapsed since the contribution day in respect of the latest contribution period.	The amendment gets over the situation where a scheme member is unable to withdraw accrued benefits when his employer is late in making mandatory contributions. The application process is also streamlined to save unnecessary administrative expenses.
Content requirement of Annual Benefit Statements	To confer on the MPFA a statutory power to require trustees to provide more detailed information in annual benefit statements.	The amendment will provide a more flexible mechanism to adjust the content of annual benefit statements to facilitate future enhancement of information disclosure to scheme members. With more detailed information of MPF schemes and investment, scheme members can select MPF funds or investment portfolios that better suit their needs.
Enrolment and contribution requirements for persons who cease to be exempt from MPF legislation	To clarify that where an exempt employee subsequently changes status to become a non-exempt person, the MPFSO applies to him and his employer as if his employment has begun on the first day he ceases to be exempt. The employer should enroll the eligible employee in an MPF scheme in accordance with the MPFSO. Such arrangements also apply to SEPs.	The amendment clarifies the enrolment and contribution requirements for exempt persons who cease to be exempt from MPF legislation (e.g. a person under 18 years old when the employment begins, a person who ceases to be a member of an MPF-exempted ORSO scheme).

有關《強制性公積金計劃條例》的修訂 常見提問

(A) 取消 30 日供款結算期

問 1. 為何現時才刪除供款結算期？

答 1. 在強積金制度實施初期，積金局考慮到或會有僱主未熟習強積金制度的運作及供款計算方法。而設立 30 日結算期的目的，就是讓受託人有時間協助僱主明白法例的要求及糾正技術錯誤，特別是那些因疏忽遺漏或其他非故意原因造成的欠款個案。在該 30 日內，僱主在接獲受託人有關欠款的通知後，可糾正在計算供款時因不小心而造成的錯誤。

積金局計劃已實施了7年，僱主已經熟悉強積金制度的運作及供款計算方法，故沒有需要設置結算期。

而另一方面，小部份僱主可能會利用該30日結算期來盡量拖延付款，在結算期接近終結時才向受託人繳付強制性供款。因此，積金局決定取消結算期，從而精簡有關程序，以助積金局對個別刻意拖欠供款的違法僱主採取更快和有效的執法行動，以保障僱員的強積金權益。

問 2. 新的規定何時生效？

答 2. 條例修訂已於2008年1月9日獲立法會三讀通過，當受託人及僱主準備妥當後即會實施。

問 3. 在取消供款日之後的 30 日供款結算期後，僱主或自僱人士是否仍可收到每月由受託人發出催交供款通知書？

答 3. 不會。如僱主或自僱人士沒有於限期（即供款日）或之前繳交強制性供款，受託人毋須再向僱主或自僱人士發出催交供款通知書，而會在限期後向積金局遞交拖欠供款報告。

問 4. 作為僱主，何時須繳交強制性供款？

答 4. 僱主須於供款期完結後的 10 天內將僱員及僱主的供款一併交給受託人。

問 5. 如僱主延遲繳交強積金供款，有甚麼後果？

答 5. 實施新規定後，僱主必須在供款日，即供款期完結後的 10 日內作出供款；否則，即屬犯法，除會被徵收附加費外，可被罰款 5,000 港元或欠款額的 10%（以較高者為準），僱主同時可遭刑事檢控，初犯可被最高判監禁 6 個月及罰款 10 萬港元。附加費計算方法如下：

$$\text{供款附加費} = \text{總供款額(僱主+僱員)} \times 5\%$$

問 6. 法例生效後，會否有適應期讓僱主適應新規定？

答 6. 積金局會在法例生效後即時執行新規定。積金局會透過不同媒體廣泛向各界人士宣傳，包括刊登廣告、發布新聞稿，積金局亦會與僱主團體合作，安排職員向僱主講解有關的修訂，令僱主能夠知悉有關改變及採取適當措施，以配合新的規定。

(B) 將房屋津貼納入「有關入息」

問 1. 實行修訂的目的是甚麼？

答 1. 新修訂可有效地防止少數不良僱主刻意將僱員的部份入息列作房屋津貼，以逃避或減低強積金供款。

問 2. 哪些行業的僱主最多會用房屋津貼逃避強積金？

答 2. 保安業少數僱主會採用這個方法逃避強積金。例如最近一個個案便涉及一間保安公司，案中員工的月薪約一半被列作房津，而底薪只有 500 元。

問 3. 違反這項規定的罰則是多少？

答 3. 積金局會向違規僱主採取執法行動，包括循民事途徑追討欠款及徵收附加費，以及作出刑事檢控，首次定罪可被最高判監禁6個月及罰款10萬港元，再犯則最高罰款20萬港元及監禁一年。