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Bills Committee on
Mandatory Provident Fund Schemes (Amendment) Bill 2009

Background Brief

Purpose

This paper sets out the background of the Mandatory Provident Fund Schemes (Amendment) Bill 2009 (the MPFS(A) Bill) and summarizes the views and concerns of the Panel on Financial Affairs (FA Panel) on the legislative amendments.

Background

2. The Mandatory Provident Fund Schemes Ordinance (Cap. 485) (MPFSO) was enacted in 1995 to provide a statutory framework for the establishment of mandatory, privately managed retirement schemes for the retirement protection of the general workforce. It is supplemented by subsidiary legislation passed in 1998, 1999 and 2000. The MPF System was launched in December 2000. The MPF System is subject to review from time to time to ensure that it continues to serve the needs of existing and potential scheme members. For this purpose, the Mandatory Provident Fund Schemes Authority (MPFA) set up the MPF Schemes Operation Review Committee (the Review Committee) in August 2001[1].

3. Under the MPF System, an employee may choose among the constituent funds offered by the scheme selected by his employer, and upon cessation of his employment with the employer, he may choose to transfer all accrued benefits from his contribution account of the said MPF scheme to another scheme of his own choice. The employees, however, are not allowed to choose the MPF scheme for the accrued benefits derived from their contributions. This has given rise to concern about the rights of employees to control the accrued

[1] The Review Committee comprises representatives of employer and employee bodies, MPF service providers, professional organizations, the Government and MPFA.

benefits derived from MPF contributions to enhance retirement protection, particularly in light of the high management fees and unsatisfactory investment returns.

4. Based on the recommendations of the Review Committee, the Administration has introduced amendments to MPFSO to improve the operation and enforcement of the MPF System. The Mandatory Provident Fund Schemes (Amendment) Bill 2007 and the Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2007 were passed in January 2008 and June 2008 respectively. Among other issues of concerns raised during the scrutiny of the legislative amendments, Members have expressed concern about the need to allow employees to choose their preferred MPF trustees.

5. In order to promote greater market competition and encourage employees to take a more active interest in their MPF investments, MPFA proposes that amendments be made to the MPF legislation so that employees may transfer accrued benefits derived from their employee's mandatory contributions during their current employment from a contribution account under a registered scheme on a lump-sum basis to another MPF scheme of their own choice once per calendar year (the Proposal), or more than once per calendar year if the governing rules of the relevant scheme as determined by the trustee concerned allow for more frequent transfers by the scheme members. The Administration introduced the MPFS(A) Bill into the Legislative Council on 6 May 2009.

The MPFS(A) Bill

6. The MPFS(A) Bill seeks to amend the MPFSO and the Mandatory Provident Fund Schemes General Regulation (the General Regulation) to implement the Proposal. The major amendments under the Bill are as follows-

(a) A new section is added under Part XII of the General Regulation to provide for transfer of employee's mandatory contributions during current employment, by giving a written notice of the transfer to the transferee trustee concerned.

(b) Section 21A of MPFSO is amended such that any persons may join industry schemes[2] for the purpose of opening a preserved account and effecting transfers from their own accounts in the other MPF schemes.

[2] An industry scheme is specially established for employees of the catering and construction industries, where there are high labour mobility and turnover. Employees who work in these industries and are members of such scheme do not need to change schemes if they change jobs within those two industries, so long as their previous and new employers are both participating in the same industry scheme.

(c) The definition of "preserved account"[3] in section 2 of MPFSO and the General Regulation is replaced by a new definition of "personal account". This new definition expands the scope of the existing "preserved account" to cover accrued benefits derived from employee's mandatory contributions in respect of a member's current employment which are transferred from the relevant employer chosen scheme, as well as accrued benefits derived from the voluntary contributions of the member concerned.

(d) The General Regulation is amended to provide for the establishment of a register of personal accounts by MPFA to enable a person to ascertain the trustees with which he has personal account(s).

(e) Section 156 of the General Regulation is amended by removing the restriction that a transferor trustee is required to obtain consent from MPFA before he can give effect to an election on transfer initiated by the employee, if there are outstanding contributions or contribution surcharges in the employee's contribution account.

(f) Other related amendments are made to clarify the text and streamline the procedures in relation to transfer of accrued benefits, such as —

(i) improving the wording on section 34 of the General Regulation to better reflect the established policy that only those investment transaction costs incurred by the trustee for the purpose of effecting transfers between MPF schemes, accounts or funds, could be recovered by way of transfer fees, and that no other fees can be charged for effecting a transfer; and

(ii) including a new provision in the General Regulation to allow an employee to transfer the accrued benefits derived from his former employment(s) which are held in his contribution account to a personal account of his choice.

7. According to the Administration, the Proposal has been considered and endorsed by the Review Committee and the MPF Schemes Advisory Committee, both of which are represented by the stakeholders concerned including employer and employee bodies.

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[3] Under the existing MPF legislation, the employee may on cessation of employment with this employer open a preserved account to hold all the accrued benefits relating to his past employment(s) in any one of the master trust schemes.

Major views and concerns expressed by the Panel on Financial Affairs

8. The Administration and MPFA first briefed FA Panel on the key features of the Proposal at the meeting on 8 April 2008. The FA Panel discussed the Proposal again on 30 June 2008 and received views from the public and relevant stakeholders. The Administration and MPFA further consulted the FA Panel on the proposed legislative amendments under the Bill at the meeting on 1 December 2008. Panel members expressed various views as summarized below —

(a) Some members were dissatisfied with the Proposal as they considered that employees should be allowed to transfer all the accrued benefits derived from both the employer's and employee's mandatory contributions to MPF schemes of their own choice.

(b) Some other members supported the Proposal and considered it a pragmatic approach which could balance the interests of different stakeholders. These members considered that a fair and reasonable proposal should take into account both the demand of employees to increase control over their MPF benefits and right of employers to offset Severance Payment/Long Service Payment (SP/LSP) with the accrued benefits attributable to the employer's mandatory contributions.

(c) Some members were of the view that the SP/LSP offsetting arrangement should be abolished, if alternative proposals to allow employees full control of their MPF investment would increase the complexity of offsetting SP/LSP.

(d) Some members were concerned whether the intended purpose of driving down fees and charges of MPF funds could be achieved through the Proposal, as individual employees might not possess the expertise and the bargaining power in negotiating with scheme trustees the terms and fees of MPF funds. Concerns were also raised about the level of fees and charges for the transfers.

(e) A member opined that in implementing the Proposal, the Administration and MPFA should take heed of the need to ensure convenient transfer arrangements at minimal cost and suggested consideration be given to shortening the existing statutory time limit of 30 days for the transferor trustees to complete transfer of accrued benefits.

(f) To facilitate scheme members in checking of MPF accounts balance and monitoring of their MPF accounts, some members suggested that consideration be given to setting up a passbook system or electronic card system by the scheme trustees.

Relevant papers

9. A list of relevant papers is at **Appendix**.

Council Business Division 1
Legislative Council Secretariat
18 May 2009

Appendix

List of relevant papers

Committee	Paper	LC Paper No.
Meeting of the Panel on Financial Affairs (the FA Panel) on 8 April 2008	✧ Administration/Mandatory Provident Fund Schemes Authority's paper on increasing employees' control over Mandatory Provident Fund investment http://www.legco.gov.hk/yr07-08/english/panels/fa/papers/fa0408cb1-1163-4-e.pdf	CB(1)1163/07-08(04)
	✧ Minutes of meeting (paragraphs 22 to 44) http://www.legco.gov.hk/yr07-08/english/panels/fa/minutes/fa080408.pdf	CB(1)1381/07-08
Meeting of the FA Panel on 30 June 2008	✧ Minutes of meeting (paragraphs 1 to 32) http://www.legco.gov.hk/yr07-08/english/panels/fa/minutes/fa080630.pdf	CB(1)2317/07-08
Meeting of the FA Panel on 17 October 2008	✧ Administration's paper on policy initiatives of the Financial Services and the Treasury Bureau (paragraphs 28 to 30) http://www.legco.gov.hk/yr08-09/english/panels/fa/papers/fa1017cb1-53-1-e.pdf	CB(1)53/08-09(01)
Meeting of the FA Panel on 1 December 2008	✧ Administration's paper on enhancing employee control over Mandatory Provident Fund investment – proposed legislative amendments http://www.legco.gov.hk/yr08-09/english/panels/fa/papers/fa1201cb1-275-6-e.pdf	CB(1)275/08-09(06)

Committee	Paper	LC Paper No.
	✧ Background Brief on enhancing employee control over Mandatory Provident Fund investment – proposed legislative amendments prepared by the Legislative Council Secretariat http://www.legco.gov.hk/yr08-09/english/panels/fa/papers/fa1201cb1-274-e.pdf ✧ Minutes of meeting (paragraphs 57 to 73) http://www.legco.gov.hk/yr08-09/english/panels/fa/minutes/fa20081201.pdf	CB(1)274/08-09 CB(1)680/08-09
	✧ LegCo Brief on Mandatory Provident Fund Schemes (Amendment) Bill 2009 http://www.legco.gov.hk/yr08-09/english/bills/brief/b07_brf.pdf	FSB CRG4/51C(2007) Pt.4