Mandatory Provident Fund Schemes (Amendment) Bill 2009
Response to Comments of the Law Society of Hong Kong

The response of the Administration and the Mandatory Provident Fund Schemes Authority to the comments of the Law Society of Hong Kong on the Mandatory Provident Fund Schemes (Amendment) Bill 2009 is set out in the **Annex**.

Transfer within the same registered scheme

The purpose of enabling an employee to transfer accrued benefits between accounts within the same Mandatory Provident Fund ("MPF") scheme is to provide for wider choice and allow greater flexibility for an employee to manage his/her accrued benefits.

Expenses of a transfer

2. "Necessary transaction costs" referred to in the proposed section 34 of the Mandatory Provident Fund Schemes (General) Regulation ("General Regulation") mean the costs that have to be incurred for the purpose of giving effect to a transfer. Based on the current market practice, such costs may include, for example, brokerage commissions, taxes, exchanges fees and commission, etc, but would not include the general administrative costs of the trustee.

3. It is not the intention to differentiate between different levels of costs as charged by different service providers in the commercial market in considering whether they are necessary under section 34. A choice of service provider is the fiduciary and commercial decision of a trustee who engages the particular service provider to perform the necessary work for the purpose of giving effect to a transfer. In making that decision, the trustee or its delegate must act in the interest of the scheme members as stipulated in section 43 of the General Regulation.

Election for transfer

<u>Ability to transfer more than once per year</u>

4. Section 153 of the General Regulation sets out the duty of a transferee trustee and / or a transferor trustee to complete the transfer as elected by a scheme member. Section 153(1) requires the transferee trustee to give a written notice of the election to the transferor trustee after being notified by a scheme member. Upon receipt of the notice, the transferor trustee will need to check if the election has been made in accordance with the law in respect of the number of transfers permitted, viz. either once per calendar year or as permitted in the governing rules of the transferor scheme. In this connection, the transferor trustee will need to keep record of the number of transfers completed in respect of each contribution account of its scheme members. The Mandatory Provident

Fund Schemes Authority ("MPFA") will have on-going discussions with the trustees on the system enhancement required to perform this duty.

5. The purpose of section 148A is to allow employees to transfer accrued benefits derived from their own mandatory contributions during their current employment from a contribution account to a personal account once in every calendar year or more than once per calendar year as provided for in the governing rules. It follows that an employee may make one election per year per sub-account (i.e. the sub-account of the contribution account holding employee's mandatory contributions) unless the governing rules allow more frequent transfers.

<u>Impact of an election</u>

6. In conjunction with the MPFA, we have reviewed the matter where an election is made to the transferor trustee under section 148A(5)(a), 148B(4)(a) or 148B(4)(c). We will move Committee Stage Amendments to provide for a transferor trustee to handle election made under the above-named sections by amending section 153(3).

7. Please refer to paragraph 4 above on the role of the transferor trustee to check that the election has been made in accordance with the law in respect of the number of permitted transfers.

Drafting suggestions

<u>Question (a)</u>

8. If a new section is added ***after*** an existing section, the drafting convention is to add a capital letter "A" after the section number. For example, the new "148A" and "148B" are all added immediately after section 148.

<u>Question (b)</u>

9. The suggestion is noted. The Department of Justice has considered the suggestion and advised that the present drafting already reflects the policy intent.

<u>Question (c)</u>

10. The suggested wording seems to presume that all employees must

have more than one sub-account referred to in section 78(6)(b) and this may not be the case.

Financial Services and the Treasury Bureau
Mandatory Provident Fund Schemes Authority
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