

Mandatory Provident Fund Schemes (Amendment) Bill 2009
Response to the questions raised by Assistant Legal Adviser

The response of the Administration and the Mandatory Provident Fund Schemes Authority (“MPFA”) to the questions raised by Assistant Legal Adviser in the letter dated 13 May 2009 on the Mandatory Provident Fund Schemes (Amendment) Bill 2009 (“the Bill”) is set out below –

Clause 11(3)

2. The proposed new definition of “personal account” provides that –

““personal account”, in relation to a member of a master trust scheme or an industry scheme, means an account (other than a contribution account) within the scheme –

(a) ...

(b) in which the member’s accrued benefits (if any) in respect of any former employment or former self-employment of the member are held; ...

and includes a former contribution account (if any) of the member in which accrued benefits retained under section 147(6) are held”.

3. The existing section 78(8) of the Mandatory Provident Fund Schemes (General) Regulation (“General Regulation”) provides that the trustee must arrange for a member’s preserved account (to be renamed as “personal account” under clause 14 of the Bill) to be divided into two sub-accounts. One specifies certain benefits including those derived from mandatory contributions paid by or in respect of the member that are attributable to the member’s former employments or former self-employments, and another specifies other benefits including those derived from voluntary contributions paid by or in respect of the member that are attributable to the member’s former employments or former self-employments. A “personal account” will show the balance of each sub-account (i.e. the amount of accrued benefits derived from mandatory contributions and voluntary contributions respectively of the member). Unlike the arrangements for a “contribution account”, a “personal account” will not show further breakdown of the portion of accrued benefits that are separately derived from contributions paid by or in respect of the employee, and in former employments or former self-employments.

Clause 13

Questions (a) and (b)

4. In unit trust administration, transfer requests are usually priced *before* any resultant underlying transactions are undertaken. The proposed drafting to allow a trustee to charge “...necessary transaction costs that are reasonably likely to be incurred” will cover such situation.

5. “Necessary transaction costs that are...reasonably likely to be incurred” include, for example, brokerage commissions, taxes, exchanges fees and commission, etc, but would not include the general administrative costs of the trustee.

Question (c)

6. Examples of “investment” include, for example, shares, debt securities, warrants, convertible debt securities, etc.

Clause 17

The proposed new sections 148A and 148B

7. Transfer of accrued benefits derived from any voluntary contributions between Mandatory Provident Fund (“MPF”) accounts is governed by the governing rules of individual MPF schemes and outside the scope of the Mandatory Provident Fund Schemes Ordinance (“the Ordinance”).

8. The Administration briefed the Panel on Financial Affairs (“FA Panel”) on the legislative proposal at its meetings on 8 April 2008 and 1 December 2008. The FA Panel also held a meeting with deputations (including employer and employee organizations as well as industry bodies) on 30 June 2008 to listen to their views.

9. The present proposal on the frequency of permissible transfers has taken into account feedback obtained from the consultation. A scheme member may make more than one transfer per calendar year if the governing rules of the relevant scheme allow for more frequent transfers.

Clause 19

10. The existing section 153 of the General Regulation applies to, among others, transfer of accrued benefits upon cessation of employment of an employee who has made an election for transfer under sections 145, 146 or 147 of the General Regulation, as appropriate.

11. When an employee elects to transfer his/her accrued benefits upon cessation of employment, the trustee must, pursuant to sections 153(2) and 153(3), take all practicable steps to ensure that all the accrued benefits concerned are transferred in accordance with the election within 30 days after being notified of an election. There may be cases where the deadline for trustees to transfer the benefits (i.e. 30 days after being notified of an election) is earlier than the contribution due day in respect of the last contribution period immediately preceding the termination of employment of the employee, which is the 10th day of the month following the month in which the employee ceases employment according to section 122(1)(aa)(i) of the General Regulation. In order to avoid the situation whereby multiple transfers of accrued benefits are to be made for the same employee by the trustee within a very short period of time, MPFA has proposed to amend section 153 of the General Regulation such that, in case a transfer request is made upon cessation of employment of an employee, a trustee will be required to transfer the benefits within 30 days after being notified of an election or the due date for payment of the last contribution, whichever is the later. This will enable the trustee to transfer all the accrued benefits (including those derived from the contributions made in respect of the last contribution period) in one go.

Clause 20(2)

12. The purpose of Clause 20(2) is to provide flexibility for the MPFA, in the light of operational experience in future, to specify through guidelines additional information required to be contained in a transfer statement which must be given by the transferor trustee to the scheme member concerned. The MPFA will consult the trustees where appropriate before issuance of any such guidelines.

Clause 20(3)

13. Under the relevant sections of the General Regulation, a transferee trustee will receive the original election notice from the scheme member, hence it is proposed to dispense with the requirement for the transferor

trustee to give a copy of the same to the transferee trustee.

Clause 22

The proposed new section 157A

14. The proposed new section 157A of the General Regulation deals with transfers of outstanding contributions received by a trustee after all the pre-existing accrued benefits have already been transferred. Since the issue of outstanding contribution will not arise in the context of the amended section 149 which concerns the transfer of accrued benefits from a personal account of a scheme member, section 157A does not make reference to the amended section 149.

Clause 24

15. We are not aware of any case of litigation in respect of the accrued benefits in an MPF preserved account. The proposed saving provisions regarding preserved account and personal account under clause 24(4) should be sufficient for the purpose of the Bill.

**Financial Services and the Treasury Bureau
Mandatory Provident Fund Schemes Authority
May 2009**