**For discussion on**
**1 December 2008**

CB(1)275/08-09(06)

## Legislative Council Panel on Financial Affairs

## Enhancing Employee Control Over Mandatory Provident Fund Investment – Proposed Legislative Amendments

### Introduction

This paper sets out the legislative proposals to enhance employees' control over their Mandatory Provident Fund ("MPF") investment. Members' view on the legislative proposal is sought.

### Background and Considerations

2. 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.

3. On 8 April 2008, the Mandatory Provident Fund Schemes Authority ("MPFA") briefed the LegCo Panel on Financial Affairs ("FA Panel") on a proposal to increase employees' control over transfer of accrued benefits derived from their own mandatory contributions. The objective is to encourage more active management of MPF investment by the employees concerned and promote greater market competition. Under the proposal, the Mandatory Provident Fund Schemes Ordinance ("MPFSO") would be amended to oblige MPF trustees to allow employees to transfer all accrued benefits derived from their employee mandatory contributions during his current employment on a lump-sum basis to another MPF scheme of their own choice at least once per calendar year. Trustees may at their own discretion provide for more frequent transfers by their scheme members. The existing statutory requirement that a trustee may only charge the actual and reasonable expenses incurred as a result of redeeming funds in connection with the transfer from a unit trust or similar type of investment and of purchasing

units in another such investment will apply to the new type of transfers to be permitted under the proposal. Key features and relevant considerations of the proposal are set out in paragraphs 4 to 11 of LC Paper No. CB(1)1163/07-08(04) which was issued to the FA Panel in March 2008.

4. On 30 June 2008, the FA Panel convened a deputation hearing session to listen to the views of stakeholders concerned including employer and employee associations, and industry bodies. There was a general agreement among the various parties that the proposal would benefit employees and represents an improvement over the existing arrangements. Employer representatives in particular pointed out that in considering the scope of the proposal, it is important to avoid imposing undue administrative burden on employers' operation and to avoid disrupting the existing system whereby the employers could apply the employer contributions to offset the Severance Payment/Long Service Payment ("SP/LSP offsetting arrangement"). On the other hand, some employee representatives advocated that the proposal should be extended to allow employees to also transfer the accrued benefits derived from their employer mandatory contributions during their current employment to an MPF scheme of their own choice.

5. We are pleased to note that the there is general recognition from all relevant parties that the proposal is a positive step forward. As regards the different views expressed on the scope of the proposal, we note that if the proposal were to be extended to cover transfers of the employer mandatory contributions, it would lead to important issues which cannot be resolved satisfactorily, in particular concerning the operation of the LP/LSP offsetting arrangement which is provided in law. It may impact on the existing enforcement arrangements of the MPFA to deal with default contribution cases for the protection of employees' interests. Also, as we explained at the FA Panel meetings in April and June this year, such further changes would require a revamp of the existing comprehensive record-keeping systems maintained by the trustees, and all these must be supported by a requirement on all employers, large and small, to put in place elaborate systems to keep track of all of the transfers made by each of their employees at different times.

6. In the circumstances, we believe that the MPFA's proposal represents the most practicable way forward at this stage to allow employees more control over their MPF investment. As the Secretary for Financial Services and the Treasury said at the meeting of the FA Panel on 17 October 2008, the Administration is preparing a bill to implement the proposal to allow employees to transfer their employee mandatory contributions to another MPF scheme of their own choice. The MPFA estimates that upon implementation, the proposal would result in around 60% of MPF benefits being portable between trustees.

**Legislative Proposals**

7. The major legislative amendments for implementing the proposal are set out below.

<u>New provisions to provide for transfers of employee mandatory contributions during current employment</u>

8. Portability of accrued benefits in MPF schemes is currently governed by Part XII of the Mandatory Provident Fund Schemes (General) Regulation ("the General Regulation"). Part XII provides that an employee may elect to transfer all the accrued benefits in his contribution account from the employer-selected MPF scheme to a scheme of his own choice upon cessation of his employment with the relevant employer and that the transferor trustee is obliged to complete the transfer within 30 days after being notified by the transferee trustee of an election made by the employee.

9. We propose that a new section be added under Part XII to provide that an employee may also transfer the accrued benefits of the employee mandatory contributions in his account to another MPF scheme of his own choice during his current employment. The procedures that would apply to such transfer will be the same as the procedures currently applicable to transfers of the employees' accrued benefits in his account upon cessation of his current employment.

10. We will also stipulate in Part XII that an employee member

of a master trust scheme[1] and an industry scheme[2] may elect, at any time once in a calendar year, to transfer all his accrued benefits derived from his employee mandatory contributions held in his contribution account to a personal account under his name (please see paragraph 12 below) in another master trust scheme or industry scheme he chooses simply by giving a written notice of the election to the transferee trustee concerned. There will not be any restriction that would prohibit trustees from permitting more frequent transfers by scheme members. The new provision will stipulate that the same choices of election will be available to employee members of employer-sponsored schemes[3].

11. To provide a wider range of choice of MPF schemes for employees, we propose to amend section 21A of the MPFSO such that employees from all industries may join industry schemes for the purpose of opening a personal account and effecting transfers from their own accounts in the other MPF schemes. There will be no change to the other aspects of the operation of the industry schemes.

<u>Changing "Preserved account" to "Personal account" and establishment of a database</u>

12. "Preserved account" is defined in section 2 of the MPFSO to generally refer to an account in a master trust scheme or an industry scheme which holds accrued benefits derived from an employee's former employment. Taking into account that, in future, these accounts may also hold the accrued benefits of an employees in his current employment and with a view to instilling a greater sense of ownership by the employees concerned, we propose to rename "preserved account" as "personal account" and will suitably expand its definition in the MPFSO to reflect the change in scope and nature of such accounts.

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[1] A master trust scheme is the most common type of MPF schemes. It is open to relevant employees of all participating employers, self-employed persons and persons with accrued benefits transferred from other 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 schemes 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.

[3] Membership of an employer-sponsored scheme is limited to relevant employees of a single employer and its associated companies.

13. The General Regulation will also be amended to provide for the establishment of a database of personal accounts by the MPFA to enable a person to ascertain the scheme(s) with which he has personal account(s). As the database contains personal data, it will be made available for the data subjects to access to their own data but not for public inspection.

Removal of transfer restriction

14. Under section 156 of the General Regulation, if there are outstanding contributions or contribution surcharges in the employee's contribution account, a transferor trustee is required to obtain consent from the MPFA[4] before he can give effect to an election on transfer initiated by the employee under Part XII. To streamline administration procedures and facilitate quick implementation of transfer requests under the proposal in future, this section will be amended to remove this restriction.

15. Outstanding sum of mandatory contributions may be recovered after the transfer has been made on election of the employee on cessation of employment. We propose to introduce a new requirement in the General Regulation to require the transferor trustee to take all reasonable steps to ensure that such outstanding sums of mandatory contributions are transferred in accordance with the employee's election within 30 days of receipt.

Other related amendments

16. In addition to the above, the bill will include other amendments to streamline procedures, etc. For example, we propose to amend the General Regulation to allow an employee to transfer the former employment benefits held in a contribution account to a personal account of his choice.

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[4] The trustees could also give effect to the election on transfer if other conditions are met including – (a) all of the outstanding contributions and contribution surcharges have been paid to the transferor trustee; or (b) the MPFA has, by written notice, informed the trustee that all of the outstanding contributions and contribution surcharges are irrecoverable; or (c) some of the outstanding contributions and contribution surcharges have been paid to the trustee and the MPFA has, by written notice, informed the trustee that the other outstanding contributions and surcharges are irrecoverable.

## Next Steps

17. Subject to Members' views, we aim to introduce the bill in this legislative year.

Financial Services and the Treasury Bureau
Mandatory Provident Fund Schemes Authority
November 2008