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**Bills Committee on  
Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011**

**Background Brief**

**Purpose**

This paper provides background information on the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011 ("the Bill"), and summarizes members' concerns raised during the relevant discussion at the Panel on Financial Affairs ("the Panel").

**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 Mandatory Provident Fund ("MPF") System was launched in December 2000.

3. At present, the Mandatory Provident Fund Schemes Authority ("MPFA") implements an administrative regulatory regime for MPF intermediaries through its Code of Conduct for MPF Intermediaries. Under this regime, MPFA is the standard-setter and the registration authority. It relies, as far as practicable, on the regulatory efforts made by the Hong Kong Monetary Authority ("HKMA"), the Insurance Authority ("IA") and Securities and Futures Commission ("SFC") for the supervision of registered MPF intermediaries who are also their own regulatees under the Banking Ordinance (Cap. 155), the Insurance Companies Ordinance (Cap. 41) and the Securities and Futures Ordinance (Cap. 571). A liaison mechanism between MPFA and the FRs has been in place since inception of the MPF System in 2000.

4. In July 2009, the Mandatory Provident Fund Schemes (Amendment) Ordinance 2009 was enacted to amend MPFSO to introduce the Employee Choice Arrangement ("ECA"), i.e. the arrangement to enable an employee to transfer accrued benefits derived from any mandatory contributions made by the employee in respect of any current employment, or made by the employee or his employer in respect of any former employment or former self-employment, to another account within a MPF scheme.

5. With rising public expectation towards investor protection and in anticipation of more proactive sales and marketing activities targeted at MPF scheme members upon implementation of the ECA, the Administration considers it prudent to put in place a statutory framework for the regulation of registered MPF intermediaries, to be modelled on the existing administrative registration regime to facilitate implementation of the ECA for the better protection of MPF scheme members.

6. The Administration and MPFA jointly issued a paper entitled "Enhanced Regulation of Mandatory Provident Fund Intermediaries" on 28 March 2011 to commence a consultation exercise on the relevant legislative proposals, and received a total of 13 written submissions from various organizations. According to the Administration, there was general support for enhancing the regulation of MPF intermediaries before implementation of the ECA and the majority of respondents did not indicate disagreement with the proposal that the statutory regulatory regime be modelled on the existing administrative regulatory arrangements. Those written submissions which commented on the proposals to establish an E-platform and to enhance the deterrent against default contributions by employers were supportive of these proposals. The Administration and MPFA issued the consultation conclusions on 29 July 2011.<sup>1</sup>

## **The Bill**

7. The Administration introduced the Bill into the Legislative Council on 14 December 2011. The objects of the Bill are to amend the MPFSO to provide for a statutory regulatory regime for MPF intermediaries to facilitate implementation of the ECA and for related matters.

8. The main provisions of the Bill include the following -

- (a) clauses 1 and 29 provide that if the Bill is passed, the newly enacted MPF Schemes (Amendment) (No. 2) Ordinance 2011 and

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<sup>1</sup> LC Paper No. CB(1)2845/10-11(01)

the MPF Schemes (Amendment) Ordinance 2009 (enacted in July 2009 to introduce the ECA) will both come into operation on 1 November 2012;

- (b) clause 13 adds a new Part IVA on "Sales and Marketing Activities, and Giving of Advice, in relation to Registered Schemes" to MPFSO. This new Part contains provisions regarding the registration of MPF intermediaries, the making of rules on conduct and other requirements, supervision and investigation, sanctions for non-compliance with a conduct requirement etc.;
- (c) clause 8 empowers MPFA to designate an electronic system for use for the purposes of MPFSO (i.e. for transfer of accrued benefits and mandates its use by trustees) and to charge a fee to be payable by the relevant trustees for the use of the electronic system;
- (d) clause 17 amends section 43B of MPFSO to create a new offence for an employer's failure to comply with a court order made in civil proceedings for the payment of arrears of mandatory contributions and contribution surcharges, and to provide for a daily penalty for each day on which an offence committed by an employer for failing to make mandatory contributions for an employee continues;
- (e) clause 14 amends section 35 of MPFSO to revise the criteria for the appointment of the Chairman of the Appeal Board, and for the appointment to the panel of persons whom the Chief Executive considers suitable for appointment as members of the Appeal Board; and
- (f) Clause 21 contains transitional and saving provisions for the proposed Part IVA to MPFSO. All the existing MPF intermediaries with valid registration with MPFA immediately before the commencement of the proposed statutory regime may continue to carry on the regulated activities for two years, during which they may apply to MPFA for registration under the proposed statutory regime.

### **Discussion at the Panel on Financial Affairs**

9. On 4 April 2011, the Administration and MPFA briefed the Panel on the legislative proposals. The major concerns expressed by members and the

responses of the Administration and MPFA are summarized in the ensuing paragraphs.

### *Scope of the proposed statutory regulatory regime*

10. Some Panel members were concerned whether apart from regulating frontline staff, the senior staff and owners of MPF corporations would be held liable for malpractices in MPF sales and marketing activities. The Administration advised that under the proposed statutory regulatory regime, a MPF corporate intermediary would be required to appoint a responsible officer for maintaining proper internal controls and procedures for compliance with the conduct requirements, and the corporate intermediary would be held liable for breaches of conduct requirements if the breaches were attributable to inadequacies of the internal controls and procedures and/or supervision of MPF individual intermediaries they sponsored.

### *Regulatory approach*

11. Noting that the proposed regulatory regime involved three frontline regulators (i.e. HKMA, IA and SFC), Panel members expressed concern on the delineation of powers/functions between MPFA and the three frontline regulators, and how consistency in regulatory standard and a level-playing field could be ensured.

12. The Administration advised that as MPF activities were incidental to the main lines of business of most MPF intermediaries, the institution-based approach would allow each financial institution to deal with a single frontline regulator for their financial activities, including MPF intermediary service. Under the proposal, MPFA would be the sole authority to issue the Code of Conduct for MPF intermediaries. It would also provide a number of "one-stop" arrangements including maintaining a MPF Intermediaries Register and receiving complaints from MPF scheme members. The frontline regulators would be empowered to inspect, investigate and discipline<sup>2</sup> the MPF intermediaries under their regulatory purview. A single appeals channel would be established to handle appeals against disciplinary decisions. A forum for regular communication among MPFA and the three other regulators would be established to help maintain consistency in supervision and enforcement.

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<sup>2</sup> Under the Bill, the frontline regulators will be responsible for supervision and investigation of relevant registered MPF intermediaries. In misconduct cases, MPFA will be the sole authority to impose disciplinary sanctions.

*Register of MPF intermediaries*

13. Regarding the particulars to be provided in the MPF Intermediaries Register, a member opined that apart from public-related disciplinary actions taken by MPFA/frontline regulators within a period of five years, other relevant records that were pertinent to the integrity of a MPF intermediary should also be included, and a MPF intermediary's bankruptcy/insolvency records should also be included.

14. MPFA responded that a balance had to be struck between the interests of different stakeholders. The Administration and MPFA would examine whether the scope of particulars to be provided in the MPF Intermediaries Register should be expanded, taking into account Members' views.

*Risk tolerance level assessment and dispute resolution mechanism*

15. A Panel member enquired whether the assessment of the risk tolerance level of MPF scheme members by MPF intermediaries would be a mandatory requirement, and whether any mechanism would be available for resolution of disputes between MPF scheme members and MPF intermediaries.

16. The Administration and MPFA advised that the majority of MPF intermediaries currently conducted their main line business in banking and insurance sectors, and thus they were familiar with the requirements on the assessment of their clients' risk tolerance level under the respective regulatory regimes. Guidelines for risk assessment would be compiled and the relevant stakeholders would be consulted in the process.

17. As regards resolution of disputes, the Administration advised that under the proposed statutory regulatory regime, if an MPF intermediary was found to mis-sell MPF products, frontline regulators would have the power to arrange dispute resolution between the MPF intermediary and the affected MPF scheme member(s), and to enter into a settlement agreement with the MPF intermediary.

*E-platform for transfer of MPF benefits*

18. Panel members expressed concern about the possible transfer of the fee for the proposed E-platform from MPF trustees to MPF scheme members. MPFA advised that MPF trustees currently conducted the transfer of benefits among MPF schemes through written documents. The fee payable by MPF trustees to fund the operation of the proposed E-platform would likely be lower than the existing cost incurred for benefit transfers through written documents,

and thus the fee for the E-platform would not result in an increase in the administration fee chargeable on MPF scheme members.

#### *Transitional arrangements for pre-existing MPF intermediaries*

19. A Panel member considered that the proposed transitional period of two years might be too long, which might be exploited by persons not eligible for registration under the new regime. The Administration advised that a short transitional period might cause operational problems in the processing of registration applications from MPF intermediaries. Upon commencement of the statutory regime, the frontline regulators would have powers to conduct inspection and investigations, and take disciplinary actions in respect of the MPF activities of the financial intermediaries under their purview.<sup>3</sup>

#### *Implementation of Employee Choice Arrangement*

20. Panel members were concerned about the timeframe for implementation of the ECA. The Administration and MPFA advised that implementation of the ECA hinged on the readiness of four prerequisite conditions, namely, the availability of a suitable electronic platform, suitable education for members of the public, sufficient training for MPF intermediaries, and proper regulation of MPF intermediaries. MPFA was carrying out the preparatory work in full steam. It was anticipated that the ECA would be launched in the second half of 2012.

#### *Fees and charges on MPF scheme members*

21. Panel members called for reduction of the fees charged by MPF trustees and intermediaries on MPF scheme members. A member opined that further streamlining of the administrative procedures of the MPF system would provide room for fee reduction. Another member opined that the existing arrangement of charging the administration fee by trustees based on a fixed percentage of the amount of accumulated assets should be reviewed, as the arrangement was unfair to MPF scheme members with larger amounts of assets. He suggested dividing the administration fee into two components: a fixed fee based on fixed costs and a variable fee based on the amount of assets.

22. The Administration concurred that there was room for MPF trustees to further reduce fees, and advised that MPFA had been making progress in this

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<sup>3</sup> Under the Bill, during the transitional period, the pre-existing MPF intermediaries will be required to observe the relevant requirements in the same way as any other newly registered MPF intermediary under the proposed statutory regime. They will be subject to disciplinary sanctions by MPFA for failure to do so.

regard. For example, MPFA had set up a fee comparative platform to facilitate MPF scheme members to compare the fees of MPF funds, and streamlined the administrative work of MPF trustees to minimize compliance burden and hence create more room for fees reduction. The Administration would further discuss the fees issue with MPFA.

*Early withdrawal of accrued benefits*

23. On a Panel member's enquiry about the early withdrawal of accrued benefits by MPF scheme members, MPFA advised that a relevant review had commenced and it would submit a proposal to the Administration in the second half of 2011.

**Relevant papers**

24. The relevant papers are available at the following links:

Papers relating to the Bill	<a href="#">The Bill</a> <a href="#">Legislative Council Brief</a> <a href="#">Legal Service Division Report</a>
Meeting of Panel on Financial Affairs on 4 April 2011	<a href="#">Agenda</a> <a href="#">Administration's paper</a> <a href="#">Background brief</a> <a href="#">Minutes</a> (paragraphs 6-42) <a href="#">Administration's paper on consultation conclusions issued in July 2011</a>