

**For discussion on  
5 May 2014**

**Legislative Council Panel on Financial Affairs**

**Mandatory Provident Fund Schemes (Amendment) Bill 2014**

**PURPOSE**

This paper consults Members on key legislative proposals, including those related to withdrawal of accrued benefits<sup>1</sup>, powers of the Mandatory Provident Fund Schemes Authority (“MPFA”) to approve constituent funds, measures to facilitate trustees’ compliance with statutory obligations for more room to reduce Mandatory Provident Fund (“MPF”) fees, disclosure arrangements, extension of prosecution time bar and other technical amendments.

**PROPOSED KEY LEGISLATIVE AMENDMENTS**

2. We plan to introduce into the Legislative Council (“LegCo”) a bill to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and relevant subsidiary legislation thereunder (collectively referred as “MPFSO”) and Occupational Retirement Schemes Ordinance (“ORSO”) (Cap. 426); and to make consequential amendments to the Inland Revenue Ordinance (“IRO”) (Cap. 112). Details of the key legislative proposals are set out in ensuing paragraphs.

**I. Withdrawal of accrued benefits**

3. Under the existing MPFSO, scheme members, when they reach the age of 65, may withdraw MPF accrued benefits in a lump sum. MPFSO also specifies that claims may also be lodged for early withdrawal of MPF accrued benefits in a lump sum on specified statutory

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<sup>1</sup> References to accrued benefits in the paper refer to accrued benefits derived from mandatory contributions in the case of MPF schemes and that from the minimum MPF benefits (“MMB”) in the case of Occupational Retirement (“ORSO”) schemes.

grounds, namely (a) early retirement at the age of 60 with statutory declaration by scheme members who have permanently ceased employment or self-employment; (b) permanent departure from Hong Kong; (c) death; (d) total incapacity; and (e) small balance account.

4. Over the years, there have been requests for providing scheme members with an option to withdraw their MPF accrued benefits by phase, in addition to lump sum withdrawal, either to accommodate the financial planning for scheme members' retirement or to help manage negative shocks in the financial market at the time when they are entitled to lump sum withdrawal, where applicable. There have also been requests to allow additional grounds for early withdrawal of MPF accrued benefits.

5. MPFA consulted the public on the subject in late 2011 to early 2012. There was general support for (a) the additional option of phased-withdrawal of MPF accrued benefits upon retirement and early retirement of scheme members; and (b) adding terminal illness as the new additional ground for early withdrawal, against the background that the MPF system's contribution rate is relatively low (5% of relevant income each by employees and employers) and its objective is to help the working population save for their retirement. MPFA has since then consulted the industry and employer and employee representative bodies on the details of the two proposals.

6. On this basis, we propose to amend MPFSO to –

- (a) allow scheme members to withdraw MPF accrued benefits by instalments upon retirement and early retirement: to strike a balance between the administration cost to the MPF system and the flexibility of withdrawal to scheme members, trustees are required to accept scheme members' request to withdraw up to four times a year and with at least \$5,000 in each instalment<sup>2</sup> free of charge. Non-compliance of trustees therewith will be subject to financial penalty; and

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<sup>2</sup> Or the remaining amount in scheme member's account (if the amount of MPF accrued benefits remaining in the account is less than \$5,000).

- (b) allow scheme members before they reach the age of 65 to withdraw MPF accrued benefits if they suffer from a terminal illness that reduces their remaining life expectancy to 12 months or less, as certified either by a registered medical practitioner or a registered Chinese medicine practitioner, with the certification dated no more than 12 months before the date of the lodgment of the claim by scheme members with the trustees concerned.

7. We have also taken the opportunity to propose other enhancement of the withdrawal arrangements, as follows –

- (a) clarifying that scheme members who have withdrawn their MPF accrued benefits on the ground of permanent departure would not be barred from returning to Hong Kong in future (e.g. for travelling purpose);
- (b) clarifying that scheme members who have withdrawn their MPF accrued benefits on the ground of early retirement at the age of 60 with permanent cessation of employment or self-employment would not be barred from returning to employment / self-employment in future due to change in circumstances;
- (c) simplifying the process to claim MPF accrued benefits on the ground of total incapacity by removing the requirement for scheme members to obtain a confirmation letter from their former employers or to make a statutory declaration that they have ceased the employment concerned; and
- (d) making clear that a committee of the estate appointed under the Mental Health Ordinance (Cap.136)<sup>3</sup> may make claims on behalf of a mentally incapacitated scheme member.

8. We also propose that the above legislative amendments in relation to withdrawal of MPF accrued benefits, except the one on phased-withdrawal of MPF accrued benefits, would also be applicable to withdrawal of minimum MPF benefits under MPF-exempted ORSO schemes. On phased-withdrawal of accrued benefits, MMB accrued in an MPF-exempted ORSO scheme will normally be transferred to an MPF scheme upon the termination of employment of the relevant scheme member, and the relevant scheme members may choose withdrawal of

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<sup>3</sup> Under Section 11 of the Mental Health Ordinance (Cap. 136), the Court may appoint a committee of the estate to manage and administer the property and affairs of a person who is incapable to do so by reason of mental incapacity.

accrued benefits in lump sum or by phase from the MPF scheme upon retirement or early retirement.

9. We further propose to make consequential amendments to the IRO to ensure that phased-withdrawal of accrued benefits by scheme members who reach the age of 65 or on early retirement ground, as in the case of lump sum withdrawal, will not attract tax liability. In addition, early withdrawal of accrued benefits on the additional ground of terminal illness will follow the tax treatment for early withdrawal on existing grounds and thus will also be tax exempted.

## **II. Approval of new MPF schemes and constituent funds**

10. Pursuant to MPFSO, new MPF schemes and constituent funds require approval of MPFA. Given the existing fund range, MPFA currently approves new funds only if applicants can demonstrate that the new addition is in scheme members' interests. MPFA will take into account factors such as whether the fund is sufficiently diversified and not having an excessively narrow focus on certain markets or industries, and fee levels (e.g. total fees are comparable or lower than those of similar fund types).

11. As at end of March 2014, there were 41 registered MPF schemes providing a total of 477 MPF funds in the market. Going forward, MPFA may need to further tighten the approval of new MPF schemes and funds to avoid proliferation of fund choices which will not be conducive to fee reduction. We thus propose to amend MPFSO to provide MPFA with a clear legal basis to refuse applications for new MPF schemes and funds where the applicant cannot satisfy MPFA that the approval would be in the interests of scheme members. To allow applicants to understand the requirements and / or criteria that MPFA might take into account in considering whether applications would be in scheme members' interests<sup>4</sup>, MPFA may also publish from time to time guidelines and / or circulars to the industry. Moreover, we propose to make clear in MPFSO that as a procedural safeguard, applicants will be given an opportunity to make representations to MPFA to justify why the application is in the interests of scheme members and hence should not be

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<sup>4</sup> For example, a reduction in fees as compared to those of a similar fund would be considered to be in scheme members' interests.

rejected by MPFA. The existing appeal avenue will continue to cover such decisions of MPFA.

### **III. Facilitating trustees' compliance with statutory obligations to provide greater scope for reduction of MPF fees**

12. As a retirement protection scheme, MPF system is still at its initial stage and requires improvement. Over the past 13 years, the Government and MPFA have put in place a variety of measures to help reduce MPF fees, promote market competition and enhance system administration. These measures include the introduction of the Fund Expense Ratio ("FER") and "Employee Choice Arrangement" ("ECA"), publication of a low-fee fund list, encouraging mergers of existing schemes and funds, and consolidation of personal accounts. As at end of March 2014, FER is 1.69%, representing a reduction of around 20% from an FER of 2.1% first published in 2007. Moreover, since the implementation of ECA, the management fee of 36% of MPF funds (or 173 funds) has been reduced, ranging from a reduction of 1 basis point to 118 basis points. We believe that there is further room to reduce fees.

13. We have proposed in the bill a number of amendments to provide greater scope for fee reduction by trustees, mostly related to facilitating the use of electronic means of communication (e.g. allowing electronic means for giving or sending of prescribed documents between trustees and scheme members) and removing overlapping or unnecessary certification requirements (e.g. combining the membership certificate with the notice of acceptance to scheme members).

### **IV. Revisions to disclosure arrangements in secrecy provisions**

14. At present, MPF trustees and ORSO administrators are subject to stringent requirements as regards disclosure of information they collect in discharging the functions under MPFSO and ORSO, as the case may be. By way of illustration, they are not allowed to disclose the said information to third parties, even with the consent of the scheme member concerned.

15. As Members may be aware, some jurisdictions are contemplating requirements on foreign financial institutions to report to their tax authorities in respect of accounts or taxpayers that may be subject to their tax regimes, for the overall purpose of enhancing tax transparency or combatting tax evasion. To facilitate trustees of MPF schemes and administrators of ORSO schemes to comply with any such requirements in future as the interests of scheme members so require, we propose to amend the secrecy provisions of MPFSO and ORSO to allow these trustees and administrators (a) to disclose information with the consent of individual members; or (b) to disclose a summary of information without identifying the scheme members concerned. As an additional safeguard, consent of MPFA will be required in both cases. The current thinking is that MPFA will issue guidelines in accordance with which blanket consent, subject to necessary conditions, will be given.

16. In addition, we propose to take the opportunity to modernise the secrecy provisions under MPFSO and allow MPFA to disclose information to other regulatory bodies such as the Privacy Commissioner for Personal Data, etc., if such disclosure is (a) in the interests of scheme members; (b) in the public interest; or (c) to enable the exercise or performance of a function imposed or conferred by law. We have also included an express prohibition against further disclosure to any other party of such information received by organisations or parties from MPFA, save otherwise provided for in MPFSO.

## **V. Extending the prosecution time bar for offences**

17. Currently, the time bar for instigating criminal proceedings for offences under MPFSO, unless otherwise specified, are governed by section 26 of the Magistrates Ordinance (Cap. 227), i.e. within six months after the occurrence of the offence. To enable MPFA to take more effective enforcement action and to better protect scheme members, we propose to extend the prosecution time bar for those offences currently subject to the Magistrates Ordinance, to within three years from the commission of the offence. This proposed amendment has taken into account the arrangements in the legislation for other financial services sectors.

## **VI. Other technical amendments**

18. A number of miscellaneous amendments will also be included in the bill. They seek to clarify the ambiguities in existing law or are of a minor technical nature. For example, clarifying the determination of the contribution day and permitted period in MPF schemes in case where the contribution day or the last day of the permitted period falls on a Saturday or a public holiday; and amending the Chinese term of “Authority” (from “監督” to “管理局”) to ensure consistency throughout the Ordinance.

## **CONSULTATION**

19. As mentioned in paragraph 5 above, MPFA consulted the public from December 2011 to March 2012 on withdrawal of MPF accrued benefits, and published the consultation conclusions in September 2012. The consultation revealed that there was clear support (about 90% of the respondents) for allowing withdrawal of MPF accrued benefits by instalments and early withdrawal of MPF accrued benefits on the ground of terminal illness. Moreover, MPFA has engaged the industry and employer and employee representative bodies when working out the detailed administrative arrangements for implementing the proposals. MPFA has also worked with the industry on most of the aforementioned legislative proposals for streamlining administrative procedures and reducing fees.

## **NEXT STEPS**

20. After considering Members’ views, we aim to finalise the bill for introduction into LegCo by July this year.

**Financial Services and the Treasury Bureau  
Mandatory Provident Fund Schemes Authority  
24 April 2014**