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**Paper for the House Committee**

**Report of the Subcommittee on Mandatory Provident Fund Schemes  
(Amendment) Ordinance 2015 (Commencement) Notice 2015**

**Purpose**

This paper reports on the deliberations of the Subcommittee on Mandatory Provident Fund Schemes (Amendment) Ordinance 2015 (Commencement) Notice 2015 ("the Subcommittee").

**Background**

2. The Mandatory Provident Fund Schemes (Amendment) Bill 2014 ("the Bill") was introduced into the Legislative Council ("LegCo") on 2 July 2014. In gist, the Bill sought to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO") and other pieces of legislation to improve and enhance the flexibility of Mandatory Provident Fund ("MPF") withdrawal arrangements, reduce trustees' compliance burden to provide greater scope for reduction of MPF fees, and covered certain technical amendments. A Bills Committee was formed at the House Committee on 4 July 2014 to study the Bill.

3. The Bill was passed by LegCo on 21 January 2015, and gazetted as the Mandatory Provident Fund Schemes (Amendment) Ordinance 2015 (1 of 2015) ("the Amendment Ordinance") on 30 January 2015. In accordance with section 1(3) of the Amendment Ordinance, certain provisions of the Amendment Ordinance come into operation on the day on which the Amendment Ordinance was published in the Gazette on 30 January 2015<sup>1</sup>. Section 1(2) of the Amendment Ordinance provides

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<sup>1</sup> The provisions are sections 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21(2), 23, 24, 26, 30, 31, 36, 37, 38, 50, 51(4) and (5), 52, 56 and 57 of the Amendment Ordinance, which according to the Administration, mainly cover the following aspects -

- (a) providing an express legal basis for MPFA to refuse to approve a constituent fund of registered schemes if it is not satisfied that the fund is in scheme members' interests;
- (b) revising the information disclosure arrangements in secrecy provisions to facilitate operations and compliance with reporting requirements to enhance tax transparency or combat tax evasion;
- (c) extending the time limit to institute criminal proceedings under the MPFSO and the Mandatory Provident Fund Schemes (Exemption Regulation) (Cap. 485B) from within six months to within three years after the commission of the offence; and
- (d) making consequential or related amendments.

that subject to those sections as specified under section 1(3) of the Amendment Ordinance, the Amendment Ordinance is to come into operation on a date to be appointed by the Secretary for Financial Services and the Treasury ("SFST") by notice published in the Gazette.

**Mandatory Provident Fund Schemes (Amendment) Ordinance 2015 (Commencement) Notice 2015 ("Commencement Notice")**

4. By the Commencement Notice (L.N. 98 of 2015) made under section 1(2) of the Amendment Ordinance, the SFST appoints 1 August 2015 as the day on which certain provisions of the Amendment Ordinance relating to the following eight aspects come into operation:

- (a) allowing early withdrawal of MPF accrued benefits on "terminal illness" ground (i.e. sections 6(4) to (7), 16, 39, 40, 42, 48, 53, 58 and 59 of the Amendment Ordinance);
- (b) clarifying the terms "permanently ceased employment or self-employment" and "departs from Hong Kong permanently" for the purpose of making early withdrawal of MPF accrued benefits (i.e. sections 6(8) and 39 of the Amendment Ordinance);
- (c) simplifying the process for making withdrawal of MPF accrued benefits on the ground of total incapacity (i.e. sections 41 and 51(6) of the Amendment Ordinance);
- (d) reducing the compliance burden on trustees and employers by simplifying operational processes and communication (i.e. sections 22, 27, 28, 29, 33, 35, 49, 51(1) and (3) of the Amendment Ordinance);
- (e) clarifying the definitions of permitted period and contribution day for employees and self-employed persons in different contexts (i.e. sections 4, 21(1), 32, 34, 54, 55 and 60 of the Amendment Ordinance);
- (f) allowing a committee of estate appointed under the Mental Health Ordinance (Cap. 136) to claim MPF accrued benefits on behalf of MPF scheme members (i.e. section 44 of the Amendment Ordinance);
- (g) making a technical amendment in relation to a claim for payment of MPF accrued benefits of small balance (i.e. section 43 of the Amendment Ordinance); and

- (h) clarifying the time frame for payment of MPF accrued benefits (i.e. section 45 (1) (in so far as it relates to the new section 166(1A)), 45(2), 45(3) (in so far as it relates to the new section 166(1A) and 45(4) of the Amendment Ordinance).

5. Taking into account the time required by trustees to update their procedural guidelines, systems and forms, the Administration and the Mandatory Provident Fund Schemes Authority ("MPFA") target to bring the remaining provisions of the Amendment Ordinance (i.e. sections 6(1), (2) and (3), 25, 45(1) (in so far as it relates to the new section 166(1B) and (3) (in so far as it relates to the new section 166(1B)), 46, 47, 51(2) and 51(7)) which relate to the withdrawal of MPF accrued benefits by instalments into operation in early 2016.

### **The Subcommittee**

6. At the House Committee meeting held on 22 May 2015, Members agreed to form a subcommittee to study the Commencement Notice. The membership list of the Subcommittee is in **Appendix**.

7. Under the chairmanship of Hon CHUNG Kwok-pan, the Subcommittee held one meeting on 3 June 2015 with the Administration to examine the Commencement Notice.

### **Deliberations of the Subcommittee**

8. The Subcommittee has no objection to the Commencement Notice and supports the commencement of the provisions of the Amendment Ordinance set out in paragraph 4 (a) to (h) above on 1 August 2015. During the scrutiny of the Commencement Notice, the Subcommittee has taken the opportunity to clarify scheme members' legal liability under the MPFSO in relation to early withdrawal of accrued benefits on the ground of terminal illness. Members have also made a number of suggestions on the publicity arrangements to help the public better understand the salient features and new arrangements arising from the commencement of the relevant provisions. Major views and concerns of members are set out in the ensuing paragraphs.

#### Early withdrawal of accrued benefits on the ground of terminal illness

9. Sections 6(4) to (7), 16, 39, 40, 42, 48, 53, 58 and 59 of the Amendment Ordinance provide for early withdrawal of MPF accrued benefits on "terminal illness" ground. A scheme member who suffers from a terminal illness that is likely

to reduce his/her life expectancy to 12 months or less as certified by a registered medical practitioner/registered Chinese medicine practitioner ("CMP") is allowed to withdraw the accrued benefits before the age of 65. The Subcommittee notes that registered medical practitioners/registered CMPs will not have legal liability under the MPFSO if the scheme member survives longer than the certified life expectancy. The Administration has also affirmed that a scheme member who has made early withdrawal of MPF accrued benefits on the ground of terminal illness but has subsequently recovered and re-entered the MPF system upon taking up employment again will not be held legally liable. The MPFA will not keep any record on scheme members making early withdrawals on "terminal illness" ground. A registered medical practitioner/registered CMP and a scheme member will however be held liable for intentionally making a false statement in support of the early withdrawal of MPF accrued benefits on "terminal illness" ground.

### Reducing compliance burden on trustees and employers

10. Members note that sections 22, 27, 28, 29, 33, 35, 49, 51(1) and (3) of the Amendment Ordinance seek to reduce the compliance burden on trustees and employers by simplifying operational processes, removing overlapping or unnecessary certification requirements and facilitating the use of electronic means of communication between trustees and scheme members to help reduce trustees' costs in servicing scheme members, thus creating room for fee reduction. In this connection, Hon TANG Ka-piu has enquired about the estimated cost savings upon the implementation of the new measures to help drive down MPF fees.

11. The Administration has advised that the actual fee reduction will depend on factors such as the take-up rate of usage of electronic communication by scheme members. Based on a study report published by an independent consultant commissioned by MPFA in 2012, if paper communication in relation to scheme member support is fully replaced by online communication, the potential saving in administration costs that could be achieved is estimated to be equivalent to 0.02% of system wide net asset value per annum (i.e. approximately \$119 million based on the aggregate net asset values of all MPF schemes as at 31 March 2015).

### Publicity arrangements

12. Subcommittee members are keen to ensure that the Administration and the MPFA, in collaboration with the MPF trustees, employers' associations, labour unions, medical practitioners' and patients' groups, etc. would conduct extensive publicity through various channels to ensure that the general public, especially MPF scheme members (including both employees and self-employed persons), employers and relevant parties are fully aware of the legislative changes and the relevant new arrangements, in particular, the new provisions regarding early withdrawal on "terminal illness" ground. The Administration has advised that the MPFA will roll

out various targeted publicity and education programmes including leaflets, internet announcements on MPFA website, briefing sessions, MPF publications and press releases, etc. to enhance public understanding of the legislative changes and the new arrangements for the withdrawal of accrued MPF benefits on the grounds of "terminal illness" and "total incapacity", and declaration in relation to "permanent departure from Hong Kong" and "permanent cessation of employment or self-employment" as well as the simplification of operational processes.

13. Hon Cyd HO has suggested that a dedicated telephone hotline be set up to answer telephone enquiries on matters pertaining to the operation of the MPF System. As regards publicity materials on new arrangements regarding the early withdrawal of MPF accrued benefits on "terminal illness" ground, Hon Cyd HO has suggested that two versions of publicity leaflets be prepared, one of which should be tailor made for grassroots employees and presented in simple language with no legal terms. To facilitate effective publicity and ensure receipt of the leaflets by MPF scheme members, Hon WONG Ting-kwong has suggested requesting trustees to mail the publicity materials to their respective scheme members.

14. The Administration has advised that apart from the hotline operated by the MPFA, MPF trustees have been requested to enhance their hotline services with trained staff to provide scheme members with up-to-date information on the new arrangements regarding the withdrawal of MPF accrued benefits. The MPFA is preparing two separate versions of publicity leaflets to facilitate scheme members' understanding of early withdrawal of accrued benefits on the ground of terminal illness. At members' request, a copy each of the two versions will be provided for members' reference when ready.

15. Hon Cyd HO and Hon LEUNG Yiu-chung are of the view that medical practitioners and medical social workers should be briefed on the early withdrawal arrangements on "terminal illness" ground so that they could proactively advise those scheme members who are diagnosed as suffering from a terminal illness. According to the Administration, leaflets will be distributed to medical practitioners and patient groups, as well as parties who may provide support to scheme members suffering from terminal illnesses, e.g. social workers, insurance agents and MPF intermediaries, to familiarize them with the early withdrawal arrangement on the additional ground of terminal illness. The Administration has advised that MPFA has been working closely with the medical associations on the issue to ensure that medical practitioners are familiar with the new arrangements and are able to remind patients of their right to withdraw MPF accrued benefits where necessary.

16. Hon LEUNG Yiu-chung has called on the Administration to publicize the legislative changes and the related new arrangements in collaboration with labour unions through sponsoring talks and seminars on the relevant topics organized by labour unions. The Administration has advised that the MPFA has cooperated with

various labour unions from time to time in the past and would continue to explore opportunities for future cooperation.

### **Recommendation**

17. The Subcommittee has no objection to the Commencement Notice. The Subcommittee will not propose any amendment to the Commencement Notice.

### **Advice sought**

18. Members are invited to note the deliberations of the Subcommittee as set out above.

Council Business Division 1  
Legislative Council Secretariat  
10 June 2015

**Subcommittee on Mandatory Provident Fund Schemes (Amendment) Ordinance  
2015 (Commencement) Notice 2015**

**Membership List**

<b>Chairman</b>	Hon CHUNG Kwok-pan
<b>Members</b>	Hon LEUNG Yiu-chung Hon WONG Ting-kwong, SBS, JP Hon Cyd HO Sau-lan, JP Hon SIN Chung-kai, SBS, JP Hon POON Siu-ping, BBS, MH Hon TANG Ka-piu, JP (Total : 7 members)
<b>Clerk</b>	Ms Annette LAM
<b>Legal Adviser</b>	Miss Evelyn LEE