

**Bills Committee on
Mandatory Provident Fund Schemes (Amendment) Bill 2015**

Responses to Enquiries Raised by the Assistant Legal Adviser

Purpose

This paper sets out the responses of the Government and the Mandatory Provident Fund Schemes Authority (“MPFA”) to the enquiries raised by the Assistant Legal Adviser (“ALA”) of the Bills Committee on 23 December 2015.

The proposed section 34DB(2) under clause 8 of the Bill

2. On whether an approved trustee should comply with the proposed section 27(2A) to invest a scheme member’s accrued benefits according to the Default Investment Strategy (“DIS”) in accordance with the member’s selection even if the member concerned has already reached the age of 60 before the commencement date of the proposed Part 4AA, we confirm that ALA’s interpretation is consistent with our policy intention. That is, the restriction under the proposed section 34DB(2) applies to accrued benefits in a pre-existing account of members who have already reached the age of 60 before the commencement date, except for those members who have selected and instructed the approved trustee of the scheme concerned to invest according to the DIS, in which case the trustee must, under the proposed section 27(2A), invest those members’ accrued benefits accordingly.

3. Regarding the second enquiry on the operation of the proposed section 34DB(2) and section 6 of Part 2 of the proposed Schedule 10, the obligation on the trustee in section 34DB(2) is in relation to pre-existing accounts while the requirement in section 6 of Part 2 of Schedule 10 is in relation to accounts with benefits invested according to DIS in general. In respect of new accounts opened on or after the commencement date, section 6 of Part 2 of Schedule 10 would be applicable if the age of the member is unknown and the member has not given specific investment instructions. In respect of pre-existing

accounts for which the age of the members holding those accounts are known to have reached 60 before the commencement date, section 34DB(2) applies and those accounts should not be affected by the introduction of DIS. In respect of pre-existing accounts for which the age of the members holding those accounts are unknown, the policy intention is that those accounts should be subject to the transitional arrangement under the proposed Division 3 if the conditions in the proposed section 34DF(b) and (c) are satisfied. We will propose a Committee Stage Amendment to better reflect the aforementioned policy intent.

The transitional and savings provisions under clause 8 of the Bill

4. Our policy intention is that the transitional and savings arrangements in the proposed Divisions 3 and 4 of Part 4AA will not apply to a default scheme member¹ who has reached the age of 60 before the commencement date of the Bill. This is based on the consideration that investing the accrued benefits in an account of that default scheme member according to the DIS with a de-risking mechanism is unlikely to bring significant benefits to the member as he is about to retire and may be withdrawing his accrued benefits from the Mandatory Provident Fund (“MPF”) System shortly. Under the MPF Schemes Ordinance (Cap. 485), a scheme member is entitled to withdraw his accrued benefits upon attaining the age of 65 or falling within any of the circumstances prescribed therein, including early retirement upon reaching the age of 60. That said, the above default scheme member has the right to select to invest his accrued benefits according to the DIS. Scheme members who do so, regardless of their age, are not subject to the transitional provisions in Division 3 as they do not fall within the proposed section 34DF(c).

Specified notice and reply period under clause 8 of the Bill

5. We confirm that our policy intention is that a scheme member will be able to switch out from the DIS to make other investment

¹ A “default scheme member” refers to a scheme member whom the trustee reasonably believes that the trustee has not received specific investment instructions from the scheme member (section 34DF(c)), i.e., the scheme member has not made a choice of constituent funds.

selection subsequently, i.e. after the approved trustee concerned has invested the accrued benefits into the DIS subsequent to the expiry of the reply period under the proposed sections 34DH(3) and 34DI(6). In other words, sections 34DH(3) and 34DI(6) would not infringe the right of scheme members to switch out from the DIS subsequently.

The “de-risking” mechanism under clause 11 of the Bill

6. The Core Accumulation Fund and the Age 65 Plus Fund are constituent funds of an MPF scheme. A scheme member may choose to invest his accrued benefits according to his selection, including the proportion of allocation of the accrued benefits in one or more constituent funds, as permitted under the governing rules of the scheme pursuant to the proposed section 27(2A).

**Financial Services and the Treasury Bureau
Department of Justice
Mandatory Provident Fund Schemes Authority
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