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**Panel on Financial Affairs**

**Meeting on 6 February 2017**

**Background brief on the statutory regulatory regime for Mandatory Provident Fund intermediaries and revision of fees in relation to Occupational Retirement Schemes**

**Purpose**

This paper provides background information on the statutory regulatory regime for Mandatory Provident Fund ("MPF") intermediaries, and the Occupational Retirement Schemes ("ORSO schemes"). It also summarizes the major views and concerns raised by Members on related issues at the meeting of the Panel on Financial Affairs ("FA Panel") on 4 April 2011 and during scrutiny of the Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2011.

**Background**

2. The MPF System was launched in December 2000 as a privately managed, fully-funded contribution scheme established under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO") to offer basic retirement protection for the working population.

3. Since the implementation of the MPF System and before the implementation of the statutory regulatory regime in 2012, the regulation of sales and marketing activities of MPF intermediaries had been conducted under administrative arrangements through the issuance of Code of Conduct for MPF Intermediaries by the Mandatory Provident Fund Schemes Authority ("MPFA"). Under the administrative registration regime, MPFA was the standard-setter and the registration authority. It relied on the regulatory efforts of the Monetary Authority ("MA"), the Insurance Authority ("IA") and the Securities and Futures

Commission ("SFC") for the supervision of registered MPF intermediaries who were also their own regulatees under the Banking Ordinance (Cap. 155), the Insurance Ordinance (Cap. 41) and the Securities and Futures Ordinance (Cap. 571). The administrative registration regime was considered appropriate and proportionate at that time when the major sales and marketing targets were primarily employers.

### **Employee Choice Arrangement**

4. In July 2009, the Mandatory Provident Fund Schemes (Amendment) Ordinance 2009 was enacted 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/her employer in respect of any former employment or former self-employment, to another MPF scheme of his/her own choice at least once per calendar year.

5. In anticipation of more proactive sales and marketing activities targeted at MPF scheme members upon implementation of ECA, the Government considered it prudent to put in place a statutory framework for the regulation of registered MPF intermediaries, to be modelled on the administrative registration regime to facilitate implementation of ECA for the better protection of MPF scheme members. In March 2011, the Government and MPFA jointly launched a consultation exercise on the legislative proposal to enhance the regulation of MPF intermediaries. According to the Government, there was general support for the proposal and the majority of respondents did not indicate disagreement that the new regulatory regime be modelled on the administrative arrangements.

### **Statutory regulatory regime of registered Mandatory Provident Fund intermediaries**

6. The Legislative Council ("LegCo") passed the Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2011 in June 2012 to provide for the statutory regulatory regime of registered MPF intermediaries. The Bill was later enacted as the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012 which commenced operation in November 2012. Under the new regulatory regime, MPFA is the authority to administer the registration of MPF intermediaries, issue guidelines on compliance with the statutory requirements applicable to intermediaries, and impose disciplinary sanctions. MA, IA and SFC are given the statutory role of frontline regulators responsible for the supervision and investigation of registered MPF intermediaries whose

core business is in the banking, insurance and securities sectors respectively. MPFA is empowered to collect registration and annual fees from registered MPF intermediaries. In order to facilitate a smooth migration of MPF intermediaries to the new regulatory regime, MPFA has decided not to collect fees from intermediaries in the initial years of operation of the regime. MPFA will conduct consultation in determining the level of fees in future. Any proposal to collect fees from MPF intermediaries as well as changes to the level of fees would be introduced by way of subsidiary legislation (i.e. the Mandatory Provident Fund Schemes (Fees) Regulation (Cap.485C)) subject to the approval of LegCo under the positive vetting procedure. The level of fees will be determined based on the cost-recovery principle.

### **Occupational Retirement Schemes**

7. ORSO schemes refer to retirement schemes regulated under the Occupational Retirement Schemes Ordinance (Cap. 426) ("ORS Ordinance"). ORSO schemes are retirement schemes set up voluntarily by employers prior to the implementation of the MPF System. As such, the governing rules of the schemes (such as employee eligibility, contribution levels and withdrawal) are drawn up by individual employers. Employers who operate ORSO schemes that fall under the ambit of ORS Ordinance are required to apply to the ORSO Registrar for registration (i.e. ORSO registered schemes) or exemption (i.e. ORSO exempted schemes) of their schemes.

8. Since the implementation of the MPF System in 2000, MPFA has exempted a number of ORSO schemes that meet the relevant requirements in accordance with the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485B) ("MPF (Exemption) Regulation") (i.e. MPF exempted ORSO schemes). Employers of these MPF exempted ORSO schemes are required to give new eligible employees a one-time option to choose between joining an MPF scheme or the MPF exempted ORSO scheme. MPF exempted ORSO schemes are regulated by MPF (Exemption) Regulation, apart from ORS Ordinance.

9. As at 31 December 2016, there were 4 580 ORSO schemes, comprising 3 897 ORSO registered schemes and 683 ORSO exempted schemes. Out of these 4 580 ORSO schemes, 3 521 schemes were MPF exempted ORSO schemes.

10. Under ORS Ordinance, relevant employers are required to pay registration fees, annual fees, and other one-off or ad-hoc fees for their ORSO registered schemes or exempted schemes. The fees relating to ORSO schemes

are prescribed in subsidiary legislation (i.e. the Occupational Retirement Schemes (Fees) Rules (Cap. 426D)) subject to the negative vetting procedure of LegCo.

### **Major views and concerns expressed by Members**

11. The major views and concerns on issues related to the MPF intermediaries regulatory regime expressed by Members at the FA Panel meeting on 4 April 2011 and meetings of the Bills Committee on the Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2011 are summarized in the ensuing paragraphs.

#### Regulatory approach and scope of the regulatory regime

12. Noting that the proposed new regulatory regime involved MPFA and three frontline regulators (i.e. MA, IA and SFC), Members expressed concerns about the delineation of powers/functions between MPFA and the regulators and how the new regime could ensure regulatory consistency.

13. The Government advised that as MPF activities were incidental to the main lines of business of most MPF intermediaries, the institution-based regulatory approach would allow each financial institution to deal with a single frontline regulator for their financial activities, including MPF intermediary service. Under the new regulatory regime, MPFA would be the sole authority to register MPF intermediaries, make rules on conduct requirements and issue guidelines on compliance with the statutory requirements. To ensure conformity and effectiveness in the regulatory approach, an Memorandum of Understanding would be signed between MPFA and the three frontline regulators. MPFA would receive all complaints on MPF sales and marketing activities as a one-stop shop to facilitate the handling of complaints. Frontline regulators would be responsible for supervision and investigation of relevant MPF intermediaries. In misconduct cases, MPFA would be the sole authority to impose disciplinary sanctions. An independent Appeal Board would be established to handle appeals against any registration and disciplinary decisions. A regular liaison mechanism would be established to enhance communication among MPFA and the three frontline regulators.

14. Some Members expressed concern on whether the senior staff and owners of MPF corporations would be held liable for malpractices in MPF sales and marketing activities under the new regulatory regime.

15. The Government advised that there were three types of regulated persons under the new regulatory regime, namely, principal intermediaries ("PIs"), subsidiary intermediaries ("SIs") and responsible officers ("ROs"). Generally speaking, PIs were corporations carrying on businesses in regulated MPF activities.<sup>1</sup> In their day-to-day business, PIs engaged SIs to carry on regulated MPF activities for them in the capacity as their employees, agents or representatives. PIs were required to appoint ROs to supervise their own conduct of regulated activities to ensure that they had established and maintained proper control and procedures, and use their best endeavour to secure observance of the control and procedures by SIs engaged by them. If the misconduct of SIs engaged by the relevant PI was attributable to the failure of the RO concerned in complying with the conduct requirements, MPFA could impose disciplinary sanctions against the RO.

#### Registration and annual fees

16. On MPFA's plan of not charging MPF intermediaries registration fee or annual fee in the initial stage of the implementation of the new regulatory regime, some Members expressed concern that there would be controversies when MPFA introduced charges/fees subsequently. There was also concern that as the fees were part of the operating costs of the MPF intermediaries, it was inappropriate for MPFA, which was partly funded by public money, to subsidize such costs.

17. The Government advised that under the existing administrative arrangements for the regulation of MPF intermediaries, MPFA was not empowered to, and consequently had not, charged regulated persons any relevant fees or charges. During the consultation for developing the Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2011, different industry participants had raised concern about the impact of fees under the new statutory regime in conjunction with other costs of implementing the regime. Whilst the new regime was built on the existing administrative arrangements, it was accepted that the industry would incur some other initial and transitional costs in moving to the new regime. In order to minimize transitional impacts and costs on existing intermediaries and also to allow some time for an assessment of the actual costs involved in handling applications, MPFA considered it appropriate not to charge registration or annual fees during the initial period. This position was made public in mid-2011, including when the Government and MPFA issued the response to the comments of consultation. Moreover, during

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<sup>1</sup> As defined under section 34F of the Mandatory Provident Fund Schemes Ordinance (Cap. 485), a person carries on a regulated activity if the person (a) invites or induces, or attempts to invite or induce, another person to make a material decision; or (b) gives regulated advice.

discussion on this issue with the industry, MPFA had made it clear that fees would be imposed after the initial period.

### **Latest position**

18. The Government and MPFA will brief FA Panel on a proposal to charge MPF intermediaries registration, approval and annual fees and to revise fees in relation to ORSO schemes.

### **Relevant papers**

19. A list of relevant papers with hyperlinks is at **Appendix I**.

Council Business Division 1  
Legislative Council Secretariat  
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## Appendix I

### List of relevant papers

Date	Event	Paper/Minutes of meeting
4 April 2011	Meeting of the FA Panel	<u>Administration's paper</u> (LC Paper No. CB(1)1748/10-11(03))  <u>Background brief</u> (LC Paper No. CB(1)1746/10-11)  <u>Minutes</u> (paragraphs 6-42) (LC Paper No. CB(1)2637/10-11)
21 June 2012	The Legislative Council passed the Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2011	<u>Hansard</u>  <u>The Bill passed</u>  <u>Report of the Bills Committee</u> (LC Paper No. CB(1)2068/11-12)