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13 May 2009

Ms. Rosalind Ma
Clerk to Bills Committee
Legislative Council
3/F, CitiBank Tower
3 Garden Road, Hong Kong

Dear Ms. Ma,

Re: Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2009

I attach a copy of the Law Society's submissions on the Bill for circulation to members of the Bills Committee. A copy of the submissions has also been sent to the MPFS Authority.

Yours sincerely,

Joyce Wong

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Director of Practitioners Affairs
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c.c. MPFSA

Encl.

THE LAW SOCIETY OF HONG KONG
香 港 律 師 會

Mandatory Provident Fund Scheme (Amendment) Bill 2009
Comments of The Law Society of Hong Kong

The Law Society of Hong Kong supports the main objects in the Bill and has the following comments on the proposed amendments as follows:

1. Transfers within the same registered scheme

The proposed changes envisage enabling employees who are members of registered schemes to transfer certain amounts from one account to another *within the same scheme*. As the stated intention of this legislative change is to enable members to choose *between* ***different*** *registered schemes*, and having regard to the fact that all members of a registered scheme must be offered all investment choices available within such scheme, it does not seem necessary to introduce the ability for members to switch amounts between accounts in the same scheme.

The introduction of such power could simply result in an increase in administrative expenses which is clearly undesirable.

2. Expenses of a transfer

We have concerns over the meaning of "necessary transaction costs" in section 34. When is any cost truly "necessary"? There will inevitably be certain judgment calls which may have to be made on any transfer. For example, it may be that a particular broker is able to offer reduced fees, but for reputational reasons the manager and trustee prefer to use a more established broker with a slightly higher fee. In such circumstances would payment of the higher fee be "necessary"?

3. Election for transfer

(a) Ability to transfer more than once per year

It is noted that a registered scheme ***may*** permit a transfer more than once in a calendar year (section 148A(3)(b)). This is not, however, a mandatory requirement.

This will lead to problems for transferee trustees who, on receipt of more than one transfer request in a calendar year are not going to know whether or not the transferor scheme permits transfers more often than once per year.

It is also possible to transfer amounts from "any one or more" of several sub-accounts from any number of registered schemes. It appears to be the case that an employee may make one election per year per sub-account (this is the impact of the introductory wording of section 148A(4)). ***Is this correct?***

(b) *Impact of an election*

Section 153 sets out what happens where a written election is made to a transferee trustee. It does not appear to deal with the situation where an election is made to the transferor trustee under section 148A(5)(a) or 148B(4)(a) or (c).

It is unclear who is under an obligation to police the frequency of transfers.

What happens where a transfer request is made to a transferee trustee, but the member has already made an election in that calendar year and the transferor scheme does not permit multiple transfers?

4. Drafting suggestions

We have the following minor drafting suggestions:-

(a) Where a new section or sub-section is added it may be clearer to spell out ***where*** it is added (e.g. "immediately following the existing section [ ]").

(b) The phrase "in one or more than one sub-account" is used throughout the Bill. The term "in one or more sub-account" has the same meaning and is less cumbersome.

(c) The second to fifth lines of section 148A(4) could be replaced by "respect of each of the employees sub-accounts within a registered scheme".

The Law Society of Hong Kong
Retirement Scheme Committee
13 May 2009
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