Mandatory Provident Fund Scheme (Amendment) Bill 2009 Response by The Law Society of Hong Kong to Comments by the Financial Services and Treasury Bureau

The Law Society of Hong Kong notes the response dated "May 2009" from the Financial Services and the Treasury Bureau ("FSTB") and has the following comments:

1. Transfers within the same registered scheme

Original Law Society submission:

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.

Comment from FSTB:
"The purpose of enabling an employee to transfer accrued benefits between accounts within the same Mandatory Provident Fund ("MPF") scheme is to provide for wider choice and allow greater flexibility for an employee to manage his/her accrued benefits."

Law Society's Response:

We are still concerned that the FSTB may not have responded fully to the key point of our submission, namely: there is no clear benefit to permitting transfers within the same scheme which could lead to an unnecessary increase in administrative expenses. Not only is there, in our view, no clear benefit in allowing such transfers; in fact there is potential confusion and cost / time disadvantages by allowing them.

2. Expenses of a transfer

Original Law Society submission:

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"?

Comment from the FSTB

" 'Necessary transaction costs' referred to in the proposed section 34 o the Mandatory Provident Fund Schemes (General) Regulation ("General Regulation") mean the costs that have to be incurred for the purpose of giving effect to a transfer. Based on the current market practice, such costs may include, for example, brokerage commissions, taxes, exchanges fees and commission, etc, but would not include the general administrative costs of the trustee.

It is not the intention to differentiate between different levels of costs as charged by different service providers in the commercial market in considering whether they are necessary under section 34. A choice of service provider is the fiduciary and commercial decision of a trustee who engages the particular service provider to perform the necessary work for the purpose of giving effect to a transfer. In making that decision, the trustee or its delegate must act in the interest of the scheme members as stipulated in section 43 of the General Regulation."

Law Society's Response:

Given the FSTB's response, we are concerned that the wording used in the draft, specifically "necessary transaction costs", may not convey the intended meaning.
We recommend replacing by something such as:

"any [reasonable] costs in respect of any necessary transactions [related to the transfer]"

If the existing draft is retained it can be interpreted to mean "necessary costs", rather than "costs in relation to necessary transactions".

The Law Society of Hong Kong
Retirement Scheme Committee
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