

BRIEF FOR LEGISLATIVE COUNCIL

**MANDATORY PROVIDENT FUND SCHEMES ORDINANCE
(CHAPTER 485)**

**MANDATORY PROVIDENT FUND
SCHEMES (AMENDMENT) BILL 2009**

INTRODUCTION

A At the meeting of the Executive Council on 21 April 2009, the Council ADVISED and the Chief Executive ORDERED that the Mandatory Provident Fund Schemes (Amendment) Bill 2009 (“the Bill”), at Annex A, should be introduced into the Legislative Council.

JUSTIFICATIONS

Existing Restrictions

2. Under the MPF system, an employee and his employer are required to contribute mandatory contributions at 5% each of the employee’s relevant income. The employee can choose from the funds offered by the MPF scheme¹ selected by his employer. On cessation of his employment with that employer, the employee may elect to transfer all the accrued benefits derived from that and other former employments from his contribution account to a preserved account in any one of the master trust schemes² of his own choice, or to the contribution account with respect to his new employment³.

¹ There are currently 19 MPF trustees operating a total of 38 MPF schemes with 340 approved constituent funds for selection by scheme members.

² Or industry schemes for the catering and construction industries if the employee is eligible to join.

³ There are two types of accounts under the MPF system – contribution accounts and preserved accounts. Contribution accounts are for employers, employees and self-employed persons (“SEPs”) to make contributions thereto during the period of employment. Preserved accounts are for the employees and SEPs to keep their MPF accrued benefits derived from former employment / self-employment.

MPFA's Proposal

3. As part of the on-going efforts of the Mandatory Provident Fund Schemes Authority ("MPFA") to enhance the efficiency of the MPF system, the MPFA has examined if there are feasible ways to increase employees' control over their MPF investment. The objective is to encourage more active management of MPF investment by the employees concerned and promote greater market competition. To ensure acceptance of any new arrangement to all key stakeholders viz. the employees, the employers and the trustees, and to facilitate early implementation of the proposed changes, the MPFA has taken into account the following key considerations in formulating its proposal on relaxation measures –

- (a) the proposal should increase employees' control over their mandatory MPF contributions made during their current employment;
- (b) the proposal should not create cumbersome procedures which would significantly add to the administrative burden and operating costs of the stakeholders (including employers and trustees); and
- (c) the scope of legislative changes to the Mandatory Provident Fund Schemes Ordinance ("the MPF Ordinance") should be minimized.

4. Under the proposal developed by the MPFA, the MPF Ordinance would be amended to provide that employees may transfer accrued benefits derived from their employee's mandatory contributions during their current employment from a contribution account under a registered scheme on a lump-sum basis to another MPF scheme of their own choice once per calendar year ("the Proposal"), or more than once per calendar year if the governing rules of the relevant scheme as determined by the trustee concerned allow for more frequent transfers by the scheme members. The proposed transfer procedures would be similar to the existing mechanism that applies to transfer of accrued benefits upon cessation of employment. The employee would only be required to give a standard written notice of election to the transferee trustee concerned. The transferee trustee would then be obliged to follow up with the transferor trustee to effect the transfer.

5. In terms of the key considerations set out in para. 3 above –
- (a) the Proposal would allow employees access to a broader spectrum of MPF service providers, MPF schemes and funds for investment of mandatory contributions made by them during their current employment. Upon implementation, the Proposal will result in around 60% of MPF benefits being portable between trustees;
 - (b) the proposed new arrangement would not add undue administrative burden on the trustees or the employers; and
 - (c) the Bill seeks to relax the portability restrictions on employee's mandatory contributions. The MPFA expects that the Proposal would be implemented within one year after completion of the necessary legislative exercise, taking into account the trustees' request for a one-year transitional period after enactment of the Bill for making necessary adjustments and other preparations including system enhancements.

6. The existing legislative requirement in the MPF Ordinance that trustees can only charge the actual and reasonable expenses incurred as a result of redeeming funds in connection with the transfer from a unit trust or similar type of investment and of purchasing units in another such investment (i.e. the bid and offer spread) would apply to transfers of employee's mandatory contributions under the Proposal. The Proposal has been considered and endorsed by the MPF Schemes Operation Review Committee and the MPF Schemes Advisory Committee, both of which are represented by the stakeholders concerned including employer and employee bodies.

Other Alternatives

7. The MPFA and the Administration have examined the following alternative arrangements but both are considered problematic and hence not adopted –

- (a) to allow employees to transfer also all of the accrued benefits derived from mandatory contributions made by the employers under the Proposal; or

- (b) in addition to the Proposal, to also allow employees to choose the trustees for making contributions in respect of both the employer's and the employee's portions.

B The assessment is set out at Annex B.

Legislative Proposals

8. The major legislative amendments for implementing the Proposal are set out below.

New provisions to provide for transfer of employee's mandatory contributions during current employment

9. We propose that a new section be added under Part XII of the Mandatory Provident Fund Schemes (General) Regulation ("the General Regulation") to provide that an employee member of a master trust scheme⁴ and an industry scheme⁵ may elect, at any time at least once in each calendar year, to transfer all his accrued benefits derived from his employee's mandatory contributions held in his contribution account to a preserved account under his name in another master trust scheme or industry scheme he chooses simply by giving a written notice of the election to the transferee trustee concerned. The new provision will stipulate that the same choices of election will be available to employee members of employer-sponsored schemes⁶.

10. To promote a wider range of choice of MPF schemes for employees, we propose to amend section 21A of the MPF Ordinance such

⁴ A master trust scheme is the most common type of MPF schemes. It is open to relevant employees of all participating employers, self-employed persons and persons with accrued benefits transferred from other schemes.

⁵ An industry scheme is specially established for employees of the catering and construction industries, where there are high labour mobility and turnover. Employees who work in these industries and are members of such schemes do not need to change schemes if they change jobs within those two industries, so long as their previous and new employers are both participating in the same industry scheme.

⁶ Membership of an employer-sponsored scheme is limited to relevant employees of a single employer and its associated companies.

that any persons may join industry schemes for the purpose of opening a preserved account and effecting transfers from their own accounts in the other MPF schemes. There will be no change to the other aspects of the operation of the industry schemes.

Changing “Preserved account” to “Personal account” and establishment of a register

11. “Preserved account” is defined in section 2 of the MPF Ordinance and the General Regulation to generally refer to an account in a master trust scheme or an industry scheme which holds accrued benefits derived from an employee’s former employment. Taking into account that, in future, these accounts may also hold the accrued benefits of employees in their current employment and with a view to instilling a greater sense of ownership by the employees concerned, we propose to rename “preserved account” as “personal account” and will suitably expand its definition to reflect the change in scope and nature of such accounts.

12. The General Regulation will also be amended to provide for the establishment of a register of personal accounts by the MPFA to enable a person to ascertain the trustees with which he has personal account(s). As the register contains personal data, it will only be made available to the data subjects for access to their own data. It will not be open for public inspection.

Removal of transfer restriction

13. Under section 156 of the General Regulation, if there are outstanding contributions or contribution surcharges in the employee’s contribution account, a transferor trustee is required, except under certain conditions, to obtain consent from the MPFA before he can give effect to an election on transfer initiated by the employee under Part XII. To streamline administrative procedures and facilitate more timely implementation of transfer requests under the Proposal in future, this section will be amended to remove this restriction.

14. If an outstanding sum of mandatory contributions is recovered after the transfer has been made on election of the employee, the transferor trustee

would be required to ensure that the amount is transferred in accordance with the employee's election within 30 days of receipt.

Other related amendments

15. In addition to the above, the Bill will include certain amendments to clarify text and streamline procedures etc. in relation to transfer of accrued benefits. These include -

- (a) the MPFA has proposed to improve the wording on section 34 of the General Regulation which governs the charging of transfer fees so as to better reflect the established policy that only those investment transaction costs incurred or reasonably likely to be incurred by the trustee and paid to a third party in selling and buying the underlying investments of the constituent funds for the purpose of effecting transfers between MPF schemes, accounts or funds, could be recovered by way of transfer fees, and that no other fees can be charged for effecting a transfer; and
- (b) the MPFA has also proposed to include a new provision in the General Regulation to allow an employee to transfer the accrued benefits derived from his former employment(s) which are held in his contribution account to a personal account of his choice under the proposed relaxed transfer arrangement.

OTHER OPTIONS

16. The Proposal could not be implemented if the MPF Ordinance and the General Regulation are not amended as proposed.

THE BILL

17. The main provisions of the Bill are set out below-

- (a) clause 9 of the Bill adds a new section 21A(2A) to the Ordinance and amends section 21A(8)(c) of the Ordinance to provide that an industry scheme may accept the application by any person for joining the scheme only for the purpose of maintaining a personal account within the scheme;

- (b) clause 11 of the Bill replaces the definition of “preserved account” in section 2 of the Regulation with a new definition of “personal account”. This new definition expands the scope of the existing “preserved account” by providing that accrued benefits derived from the mandatory contributions made by an employee under a registered scheme in respect of any current employment of the employee may be held in the account which is now renamed as “personal account”;
- (c) the proposed section 34 of the Regulation in clause 13 of the Bill clarifies that only the necessary transaction costs in respect of the selling or purchasing of investments that gives effect to a transfer of accrued benefits are chargeable;
- (d) the proposed section 148A of the Regulation in clause 17 of the Bill provides that an employee may elect to transfer the accrued benefits derived from the mandatory contributions made by the employee under a registered scheme, in respect of any current employment of the employee, from a contribution account of the employee within the registered scheme to a personal account of the employee within the same registered scheme (if it is a master trust scheme or an industry scheme) or another personal account of the employee within another registered scheme which is a master trust scheme or an industry scheme chosen by the employee;
- (e) the proposed section 148B of the Regulation in clause 17 of the Bill provides that an employee may elect to transfer the accrued benefits derived from the mandatory contributions made by the employee or any employer of the employee, in respect of any former employment or former self-employment of the employee, from a contribution account of the employee within the registered scheme to another contribution account of the employee within the same registered scheme or another registered scheme, or to a personal account of the employee within the same registered scheme (if it is a master trustee scheme or an industry scheme) or another personal account of the employee within another registered scheme which is a master trust scheme or an industry scheme chosen by the employee;
- (f) the proposed section 149 of the Regulation in clause 18 of the

Bill provides that a member of a master trust scheme or an industry scheme may elect to have all accrued benefits held in a personal account of the member within the scheme transferred to a contribution account or another personal account of the member within the same registered scheme, or to another personal account of the member within another master trust scheme or industry scheme nominated by the member, or to another contribution account of the member within another registered scheme nominated by the member;

- (g) clause 19 of the Bill amends section 153(2) and (3) of the Regulation by providing that an approved trustee must transfer accrued benefits within 30 days after being notified of an election or, if the election is made by an employee whose employment has ceased, within 30 days after the last contribution day in respect of the employment, whichever is the later, in accordance with the election;
- (h) clause 20 of the Bill amends section 154 of the Regulation by requiring an approved trustee to state in a transfer statement whether or not there are any outstanding contributions or any contribution surcharges in relation to accounts from which accrued benefits are to be transferred and, if so, the amount of each of the outstanding contributions or contribution surcharges if known to the transferor trustee and any other information as may be specified by MPFA;
- (i) clause 21 of the Bill amends section 156(1) of the Regulation so that accrued benefits may be transferred in accordance with an election made by a scheme member without the consent of or notice from MPFA even if there are outstanding contributions or contribution surcharges;
- (j) the proposed section 157A of the Regulation in clause 22 of the Bill provides that a trustee must transfer, in accordance with an election by a scheme member, the outstanding contributions or contribution surcharges in relation to an account within a registered scheme that have been received by the trustee after being notified of the election; and
- (k) the proposed section 157B of the Regulation in clause 22 of the

Bill provides for the establishment and maintenance by MPFA of a register of members of registered schemes who have established and maintained personal accounts within master trust schemes or industry schemes, for the purpose of providing information to people who want to ascertain whether a member has established and maintained any personal account within any master trust scheme or industry scheme.

LEGISLATIVE TIMETABLE

18. The legislative timetable will be:

Publication in the Gazette	24 April 2009
First Reading and commencement of the Second Reading Debate	6 May 2009
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

19. The Proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Bill will not affect the current binding effect of the MPF Ordinance. The Bill itself has no financial, civil service, productivity, environmental or significant sustainability implications. For economic implications, allowing the transfer of accrued benefits derived from employees' mandatory contributions during their current employment to MPF schemes of their own choice would lead to potentially more efficient investment of the funds.

PUBLIC CONSULTATION

20. We briefed the LegCo Panel on Financial Affairs ("FA Panel") on the key features of the Proposal on 4 April 2008. On 30 June 2008, the FA Panel convened a deputation hearing session to listen to the views of stakeholders concerned including employer and employee associations, and industry bodies. There was a general agreement among the various parties that the Proposal would benefit employees and represents an improvement

over the existing arrangements. Employer representatives in particular pointed out that in considering the scope of the Proposal, it is important to avoid imposing undue administrative burden on employers' operation and disrupting the existing system whereby the employers could apply the employer contributions to offset the Severance Payment/Long Service Payment ("SP/LSP offsetting arrangement"). At the same time, some employee representatives advocated that the Proposal should be extended to allow employees to transfer also the accrued benefits derived from their employer's mandatory contributions during their current employment to an MPF scheme of their own choice.

21. Having considered the public views received, we have developed the legislative proposals and briefed the FA Panel on 1 December 2008. The FA Panel indicated support for the preparation and introduction of the Bill into LegCo. A member of the Panel suggested that the Administration / MPFA consider shortening the existing statutory time limit of 30 days for the transferor trustees to complete transfer of accrued benefits. The MPFA has accordingly consulted the Hong Kong Trustees' Association ("HKTA") on whether it is practically feasible to shorten the time limit. After reviewing the actual time taken for processing transfer requests, the HKTA advises that it is necessary to maintain the maximum allowable transfer period at 30 days in order to allow adequate time for completion of all necessary steps to effect transfers, particularly for constituent funds which are traded on a weekly rather than daily basis. The MPFA has conveyed the practical difficulties faced by trustees to the Panel member, who noted and suggested that the MPFA should work with the trustees to see how the timeframe for processing transfer requests could be gradually reduced. As regards a suggestion of another member of the Panel that a "passbook" system similar to that of bank accounts be developed to facilitate employees in checking the account balance and the mandatory contributions made by their employers, the MPFA considers it not viable since not all trustees have retail branches for operation of the "passbook" system and the proposal would involve huge set-up costs. At present, there are already a number of means for the employees to assess their account information, including through telephone enquiries with the trustees or through their websites. The MPFA will further explore possible ways to promote better dissemination of information relating to MPF accounts.

PUBLICITY

22. The Bill will be gazetted on 24 April 2009. A press release will be issued. A spokesman will be available to answer media and public enquiries.

BACKGROUND

23. The MPF system has been in operation in Hong Kong since December 2000. Recently there have been increasing calls for allowing employees to select their preferred trustees for their MPF investments. In view of this and in order to promote greater market competition and encourage employees to take a more active interest in their MPF investments, the Chief Executive has announced in the 2008-09 Policy Address that the Government is drafting legislation for the Proposal which will be introduced into LegCo as early as possible.

ENQUIRIES

24. Enquiries in relation to the Bill should be directed to Ms Jenny Chan, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services)³, at 2527 3909.

Financial Services and the Treasury Bureau
April 2009

**MANDATORY PROVIDENT FUND SCHEMES
(AMENDMENT) BILL 2009**

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A BILL

To

Amend the Mandatory Provident Fund Schemes Ordinance and the subsidiary legislation made under it to provide for an election by an employee to transfer accrued benefits derived from any mandatory contributions made by the employee in respect of any current employment or, in respect of any former employment or former self-employment, by the employee or any employer to another account within a registered provident fund scheme, to rename preserved accounts and expand their scope, to provide for the establishment of a register, to remove certain restrictions on the transfer of accrued benefits of an employee or self-employed person, to clarify provisions relating to the charging of costs in respect of the transfer of accrued benefits, to amend the requirements under which trustees must transfer accrued benefits in accordance with elections, to provide for matters relating to the transfer of outstanding sums by trustees, to correct minor clerical errors, and for connected purposes.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Mandatory Provident Fund Schemes (Amendment) Ordinance 2009.

2. Commencement

This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

PART 2

AMENDMENTS TO MANDATORY PROVIDENT FUND SCHEMES ORDINANCE

3. Interpretation

(1) Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended by repealing the definition of “preserved account”.

(2) Section 2(1) is amended by adding –

““personal account” (個人帳戶) has the same meaning as in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A);”.

4. Authority may pay special contributions into accounts of scheme members

Section 19B(2)(a) is amended by repealing “preserved account” and substituting “personal account”.

5. Authority may require approved trustees to take actions necessary for paying special contributions

(1) Section 19D(3) is amended by repealing “preserved account” and substituting “personal account”.

(2) Section 19D(5)(a) is amended by repealing “preserved account” and substituting “personal account”.

6. Approval of trustees

Section 20(6)(b)(iii) is amended by repealing “preserved account” and substituting “personal account”.

7. Revocation of approval of approved trustee

Section 20B(4)(b)(ii) is amended, in the Chinese text, by repealing “自己” and substituting “自己”.

8. Application for registration as employer sponsored scheme or master trust scheme

Section 21(8)(b)(iii) is amended by repealing “preserved account” and substituting “personal account”.

9. Applications for registration of schemes as industry schemes

(1) Section 21A is amended by adding –

“(2A) Despite subsection (2), any person may also apply for the membership of such a scheme only for the purpose of maintaining a personal account within the scheme.”.

(2) Section 21A(8)(c) is repealed and the following substituted –

“(c) an application for membership of the scheme made by a person only for the purpose of maintaining a personal account within the scheme.”.

10. Regulations

Section 46(1A) is amended by adding –

“(da) providing for the keeping of records (including the establishment and maintenance of registers), and the provision of information in those records on request;”.

PART 3

**AMENDMENTS TO MANDATORY PROVIDENT FUND SCHEMES
(GENERAL) REGULATION**

11. Interpretation

(1) Section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended, in the definition of “participation agreement”, in paragraph (c), by repealing “preserved account” and substituting “personal account”.

(2) Section 2 is amended by repealing the definition of “preserved account”.

(3) Section 2 is amended by adding –

““personal account” (個人帳戶), in relation to a member of a master trust scheme or an industry scheme, means an account (other than a contribution account) within the scheme –

(a) into which special contributions (if any) are paid in respect of the member;

(b) in which the member’s accrued benefits (if any) in respect of any former employment or former self-employment of the member are held;

(c) in which the member’s accrued benefits (if any) in respect of any current employment of the member are held; and

(d) in which the member’s benefits (if any) transferred to the scheme from an ORSO exempted scheme or an ORSO registered scheme are held,

and includes a former contribution account (if any) of the member in which accrued benefits retained under section 147(6) are held;”.

12. Non-refusal of scheme applicants

(1) Section 31(1B) is amended by repealing “preserved account” and substituting “personal account”.

(2) Section 31(7) is amended by adding “and, subject to section 34” after “charged”.

13. No fees etc. for transfer of accrued benefits other than actual expenses

(1) Section 34 is amended, in the heading, by repealing “**actual expenses**” and substituting “**necessary transaction costs**”.

(2) Section 34 is amended by repealing everything after “may be imposed,” and substituting –

“for transferring accrued benefits –

- (a) from a registered scheme to another registered scheme;
- (b) from an account within a registered scheme to another account within the same registered scheme; or
- (c) in the same account within a registered scheme, from a constituent fund to another constituent fund,

other than an amount representing the necessary transaction costs that are incurred, or reasonably likely to be incurred, by the approved trustee in selling or purchasing investments in order to give effect to the transfer and are payable to a party other than that approved trustee.”.

14. Separate accounts for each scheme member

(1) Section 78(8) is amended by repealing “preserved account” wherever it appears and substituting “personal account”.

(2) Section 78(8)(a)(i) is amended by adding “current employments or” before “former employments”.

15. Transfer of accrued benefits of member of employer sponsored scheme

Section 145(8)(a) is amended by repealing “preserved account” and substituting “personal account”.

16. Transfer of accrued benefits of member of master trust scheme or industry scheme (other than a casual employee who is a member of an industry scheme)

Section 146(10)(a) is amended by repealing “preserved account” and substituting “personal account”.

17. Sections added

The following are added –

“148A. Transfer of accrued benefits derived from mandatory contributions in respect of current employment to personal accounts

(1) This section does not apply to a case in which an employee has ceased to be employed as referred to in section 145, 146 or 147.

(2) If accrued benefits of an employee are held in one or more than one sub-account referred to in section 78(6)(b) within a master trust scheme or an industry scheme, the employee may, at any time, subject to subsection (4), elect to have all accrued benefits in the sub-account, or in any one or more than one of those sub-accounts, transferred to –

(a) a personal account of the employee within the same registered scheme nominated by the employee; or

(b) a personal account of the employee within another registered scheme, which is a master trust scheme or an industry scheme, nominated by the employee.

(3) If accrued benefits of an employee are held in one or more than one sub-account referred to in section 78(6)(b) within an employer sponsored scheme, the employee may, at any time, subject to subsection (4), elect to have all accrued benefits in the sub-account, or in any one or more

than one of those sub-accounts, transferred to a personal account of the employee within a master trust scheme or an industry scheme, nominated by the employee.

(4) An employee may make an election under subsection (2) or (3) in respect of the employee's sub-account within a registered scheme (or if accrued benefits of the employee are held in more than one such sub-account, whether or not within the same registered scheme, in respect of each of those sub-accounts) –

- (a) only once in every calendar year; or
- (b) more than once in every calendar year in accordance with the governing rules of the registered scheme from which, or within which, the accrued benefits are transferred if those governing rules so provide.

(5) An election under subsection (2) or (3) is effective –

- (a) in relation to a personal account within a registered scheme referred to in subsection (2)(a), when written notice of the election is given to the transferor trustee; and
- (b) in relation to a personal account within a registered scheme referred to in subsection (2)(b) or (3), when written notice of the election is given to the transferee trustee.

148B. Transfer of accrued benefits derived from mandatory contributions in respect of former employment or former self-employment to contribution accounts or personal accounts

(1) This section does not apply to a case in which an employee has ceased to be employed as referred to in section 145, 146 or 147.

(2) If accrued benefits of an employee are held in one or more than one sub-account referred to in section 78(6)(c) within a master trust scheme or an industry scheme, the employee may, at any time, elect to have all accrued benefits in the sub-account, or in any one or more than one of those sub-accounts, transferred to –

- (a) another contribution account of the employee within the same registered scheme nominated by the employee;
- (b) a contribution account of the employee within another registered scheme, nominated by the employee;
- (c) a personal account of the employee within the same registered scheme nominated by the employee; or
- (d) a personal account of the employee within another registered scheme, which is a master trust scheme or an industry scheme, nominated by the employee.

(3) If accrued benefits of an employee are held in one or more than one sub-account referred to in section 78(6)(c) within an employer sponsored scheme, the employee may, at any time, elect to have all accrued

benefits in the sub-account, or in any one or more than one of those sub-accounts, transferred to –

- (a) another contribution account of the employee within the same registered scheme nominated by the employee;
 - (b) a contribution account of the employee within another registered scheme, nominated by the employee; or
 - (c) a personal account of the employee within a master trust scheme or an industry scheme, nominated by the employee.
- (4) An election under subsection (2) or (3) is effective –
- (a) in relation to a contribution account within a registered scheme referred to in subsection (2)(a) or (3)(a), when written notice of the election is given to the transferor trustee;
 - (b) in relation to a contribution account within a registered scheme referred to in subsection (2)(b) or (3)(b), when written notice of the election is given to the transferee trustee;
 - (c) in relation to a personal account within a registered scheme referred to in subsection (2)(c), when written notice of the election is given to the transferor trustee; and
 - (d) in relation to a personal account within a registered scheme referred to in subsection (2)(d) or (3)(c), when written notice of the election is given to the transferee trustee.”.

18. Section substituted

Section 149 is repealed and the following substituted –

“149. Transfer of accrued benefits in personal accounts to contribution accounts or other personal accounts

(1) If accrued benefits of a member of a master trust scheme or an industry scheme are held in one or more than one personal account of the member within the scheme, the member may, at any time, elect to have all accrued benefits in the account, or in any one or more than one of those accounts, transferred to –

- (a) a contribution account of the member within the same registered scheme nominated by the member;
- (b) a contribution account of the member within another registered scheme, nominated by the member;
- (c) another personal account of the member within the same registered scheme nominated by the member; or
- (d) a personal account of the member within another registered scheme, which is a master trust scheme or an industry scheme, nominated by the member.

(2) An election under subsection (1) is effective –

- (a) in relation to a contribution account within a registered scheme referred to in paragraph (a) of that subsection, when written notice of the election is given to the transferor trustee;
- (b) in relation to a contribution account within a registered scheme referred to in paragraph (b) of

- that subsection, when written notice of the election is given to the transferee trustee;
- (c) in relation to a personal account within a registered scheme referred to in paragraph (c) of that subsection, when written notice of the election is given to the transferor trustee; and
- (d) in relation to a personal account within a registered scheme referred to in paragraph (d) of that subsection, when written notice of the election is given to the transferee trustee.”.

19. Duty of approved trustee on being notified of election

(1) Section 153(2) is amended by adding “or if an election is made by an employee who ceases to be employed by the participating employer concerned in a registered scheme, within 30 days after the last contribution day in respect of the employment that has ceased, whichever is the later,” after “subsection (1),”.

(2) Section 153(3) is amended by adding “or if an election is made by an employee who ceases to be employed by the participating employer concerned in a registered scheme, within 30 days after the last contribution day in respect of the employment that has ceased, whichever is the later,” after “so notified,”.

20. Approved trustee to give transfer statement to scheme member

- (1) Section 154(1)(f) is repealed and the following substituted –
- “(f) whether or not there are any contributions or any contribution surcharges outstanding (whether or not recoverable) in relation to the account and, if so, the amount of each of the outstanding contributions or

contribution surcharges (whether or not recoverable) if known to the transferor trustee;”.

- (2) Section 154(1) is amended by adding –
 - “(g) such other information as may be specified by the Authority in the guidelines.”.
- (3) Section 154(2) is repealed and the following substituted –
 - “(2) As soon as practicable after giving a transfer statement in accordance with subsection (1), the transferor trustee must give a copy of the statement to the transferee trustee.”.
- (4) Section 154(3)(e) is repealed and the following substituted –
 - “(e) whether or not there are any contributions or any contribution surcharges outstanding (whether or not recoverable) in relation to the account and, if so, the amount of each of the outstanding contributions or contribution surcharges (whether or not recoverable) if known to the transferor trustee;”.
- (5) Section 154(3) is amended by adding –
 - “(f) such other information as may be specified by the Authority in the guidelines.”.

21. Accrued benefits not to be transferred if contributions or contribution surcharges outstanding

Section 156(1) is amended by repealing “this Part” and substituting “section 150 or 150A”.

22. Sections added

The following are added immediately after section 157 –

“157A. Transfer of outstanding sums received by transferor trustees

If a transferor trustee –

- (a) has been notified of an election made under section 145, 146, 147, 148, 150 or 150A and, at the time of the notification, contributions or contribution surcharges or both (“outstanding sums”) are due for payment to the Authority under section 7AE or 18 of the Ordinance in relation to the scheme member’s account concerned; and
- (b) has subsequently received any amount of the outstanding sums,

the transferor trustee must, within 30 days after receiving the amount, take all reasonably practicable steps to ensure that the amount is transferred in accordance with the election.

157B. Register of members of registered schemes who have established and maintained personal accounts within master trust schemes or industry schemes

(1) The Authority must establish and maintain, for the purposes of subsection (4), a register of members of registered schemes who have established and maintained personal accounts within master trust schemes or industry schemes.

(2) The register may be in the form determined by the Authority.

(3) The register must, in relation to each member of a registered scheme who has established and maintained a personal account, specify –

- (a) the member’s name;
- (b) the member’s Hong Kong Identity Card number or travel document number;
- (c) the name and business address of the approved trustee of the master trust scheme or industry

scheme within which the personal account is established and maintained; and

- (d) the name and telephone number of the contact person designated by the approved trustee for the purpose of providing information relating to the personal account.

- (4) If requested by –

- (a) any person (“the relevant person”);
- (b) the authorized representative of a person; or
- (c) the personal representative of a deceased person,

the Authority must, as soon as reasonably practicable, provide, without charge, to the person who made the request any information contained in the register for the purpose of enabling the person who made the request to ascertain whether the relevant person, the person who authorized the representative to make the request or the deceased person has established and maintained any personal account within any master trust scheme or industry scheme.”.

PART 4

AMENDMENT TO MANDATORY PROVIDENT FUND SCHEMES RULES

23. Application for Authority’s consent to restructuring of registered schemes under section 34B of Ordinance

Section 4(1)(d)(iv) of the Mandatory Provident Fund Schemes Rules (Cap. 485 sub. leg. G) is amended by repealing “preserved accounts” and substituting “personal accounts”.

PART 5

TRANSITIONAL AND SAVINGS

24. Transitional and savings

(1) Any special contributions, accrued benefits and other benefits held in a preserved account of a person within a registered scheme immediately before the commencement of this Ordinance are, on that commencement, to be treated as being held in a personal account of that person within that registered scheme.

(2) Any reference to a preserved account of a person within a registered scheme in any deed, notice or other document that is in force immediately before the commencement of this Ordinance is, on that commencement, to be construed as a reference to a personal account of that person within that registered scheme.

(3) If, before the commencement of this Ordinance, any application for membership of a registered scheme has been made only for the purpose of maintaining a preserved account within that registered scheme but such application has not yet been dealt with, that application is, on that commencement, to be processed as if it were an application for membership of that registered scheme made only for the purpose of maintaining a personal account within that registered scheme.

(4) In this section –
“personal account” (個人帳戶) has the same meaning as in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) as amended by section 11(3);
“preserved account” (保留帳戶) has the same meaning as in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) as in force immediately before the commencement of this Ordinance;

“registered scheme” (註冊計劃) means a master trust scheme or an industry scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

Explanatory Memorandum

This Bill amends the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“the Ordinance”) and its subsidiary legislation and its main objects are –

- (a) to enable an employee to transfer accrued benefits derived from any mandatory contributions made by the employee in respect of any current employment or, in respect of any former employment or former self-employment, by the employee or any employer to another account within a registered provident fund scheme;
- (b) to rename a preserved account as a personal account, and to expand the scope of the account for holding accrued benefits derived from the mandatory contributions made by an employee under a registered scheme in respect of any current employment of the employee;
- (c) to amend the requirements under which a trustee must transfer accrued benefits in an account within a registered scheme in accordance with an election;
- (d) to remove certain restrictions on the transfer of accrued benefits in an account within a registered scheme, in accordance with an election by an employee or a self-employed person, if there are outstanding contributions or contribution surcharges in relation to the account;
- (e) to provide that a trustee must transfer, in accordance with an election, the outstanding contributions or contribution surcharges in relation to an account within a registered

scheme that are received by the trustee after being notified of the election;

- (f) to clarify that only the necessary transaction costs in respect of the selling or purchasing of investments that gives effect to the transfer of accrued benefits may be chargeable; and
- (g) to provide for the establishment and maintenance of a register of members of registered schemes who have established and maintained personal accounts within certain registered schemes.

Part 1 of the Bill

2. Part 1 of the Bill is on preliminary matters. Clauses 1 and 2 provide for the short title and the commencement of the Bill when enacted respectively.

Part 2 of the Bill

3. Part 2 of the Bill amends the Ordinance.

4. In particular, clause 3 replaces the definition of “preserved account” in section 2(1) of the Ordinance with a new definition of “personal account”.

5. Clauses 4, 5, 6 and 8 substitute all references to “preserved account” in the Ordinance with references to “personal account”.

6. Clause 9 adds a new section 21A(2A) to the Ordinance and amends section 21A(8)(c) of the Ordinance to provide that an industry scheme may accept the application by any person for joining the scheme only for the purpose of maintaining a personal account within the scheme.

Part 3 of the Bill

7. Part 3 of the Bill amends the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) (“the Regulation”).

8. In particular, clause 11 replaces the definition of “preserved account” in section 2 of the Regulation with a new definition of “personal account”. That

new definition expands the scope of the existing “preserved account” by providing that accrued benefits derived from the mandatory contributions made by an employee under a registered scheme in respect of any current employment of the employee may be held in the account which is now renamed as “personal account”.

9. Clauses 12(1), 14(1), 15 and 16 substitute all references to “preserved account” in the Regulation with references to “personal account”.

10. Clause 13 amends section 34 of the Regulation to clarify that only the necessary transaction costs in respect of the selling or purchasing of investments that gives effect to a transfer of accrued benefits are chargeable.

11. The proposed section 148A of the Regulation in clause 17 provides that an employee may elect to transfer the accrued benefits derived from the mandatory contributions made by the employee under a registered scheme, in respect of any current employment of the employee, from a contribution account of the employee within the registered scheme to a personal account of the employee within the same registered scheme (if it is a master trust scheme or an industry scheme) or another personal account of the employee within another registered scheme which is a master trust scheme or an industry scheme nominated by the employee.

12. The proposed section 148B of the Regulation in clause 17 provides that an employee may elect to transfer the accrued benefits derived from the mandatory contributions made by the employee or any employer of the employee, in respect of any former employment or former self-employment of the employee, from a contribution account of the employee within the registered scheme to another contribution account of the employee within the same registered scheme or another registered scheme nominated by the employee, or to a personal account of the employee within the same registered scheme (if it is a master trustee scheme or an industry scheme) or another personal account of the employee within another registered scheme which is a master trust scheme or an industry scheme nominated by the employee.

13. The proposed section 149 of the Regulation in clause 18 provides that a member of a master trust scheme or an industry scheme may elect to have all accrued benefits held in a personal account of the member within the scheme transferred to a contribution account or another personal account of the member within the same registered scheme nominated by the member, or to another personal account of the member within another master trust scheme or industry scheme nominated by the member, or to a contribution account of the member within another registered scheme nominated by the member.

14. Clause 19 amends section 153(2) and (3) of the Regulation by providing that an approved trustee must transfer accrued benefits within 30 days after being notified of an election or, if the election is made by an employee whose employment has ceased, within 30 days after the last contribution day in respect of the employment that has ceased, whichever is the later, in accordance with the election.

15. Clause 20 amends section 154 of the Regulation by requiring an approved trustee to state in a transfer statement whether or not there are any outstanding contributions or any contribution surcharges (whether or not recoverable) in relation to accounts from which accrued benefits are to be transferred and, if so, the amount of each of the outstanding contributions or contribution surcharges (whether or not recoverable) if known to the transferor trustee (defined in section 144(1) of the Regulation) and any other information as may be specified by the Mandatory Provident Fund Schemes Authority (the “Authority”).

16. Clause 21 amends section 156(1) of the Regulation so that accrued benefits may be transferred in accordance with an election made otherwise by an employer without the consent of or notice from the Authority even if there are outstanding contributions or contribution surcharges.

17. The proposed section 157A of the Regulation in clause 22 provides that a trustee must transfer, in accordance with an election, the outstanding contributions or contribution surcharges in relation to an account within a

registered scheme that have been received by the trustee after being notified of the election.

18. The proposed section 157B of the Regulation in clause 22 provides for the establishment and maintenance by the Authority of a register of members of registered schemes who have established and maintained personal accounts within master trust schemes or industry schemes, for the purpose of providing information to people who want to ascertain whether a member has established and maintained any personal account within any master trust scheme or industry scheme.

Part 4 of the Bill

19. Part 4 of the Bill amends the Mandatory Provident Fund Schemes Rules (Cap. 485 sub. leg. G) (“the Rules”).

20. Clause 23 substitutes the reference to “preserved accounts” in the Rules with the reference to “personal accounts”.

Part 5 of the Bill

21. Part 5 of the Bill contains transitional and savings provisions.

22. Clause 24 deals with the transitional arrangements in relation to the change of the name of “preserved account” to “personal account”.

Assessment of Other Alternatives

(a) Transfer of accrued benefits derived from employer's mandatory contribution

The arrangement described in para. 7(a) of the paper would possibly place a new responsibility on an employee to inform his employer of each transfer that involves the employer's contributions. On cessation of employment, the employee would also possibly need to notify and provide documentation obtained from his employer to each trustee holding his employer's contributions to ensure that the benefits are treated as former employment benefits after offsetting of Severance Payment/Long Service Payment (SP/LSP) is completed.

2. Implementation of such arrangement would substantially slow down the settlement of SP/LSP. Under the SP/LSP offsetting arrangement, an employer is required to know the whereabouts of the benefits derived from employer's contributions and be able to ascertain from the trustees concerned the amount of accrued benefits that could be used to offset SP/LSP. However, if the employer's mandatory contribution is allowed to be transferred out of the employer chosen scheme, the employer concerned would no longer be able to trace the whereabouts of the said contribution in the absence of an elaborate communication arrangements between the employers and all their employees and trustees concerned, and an accurate account-keeping system for keeping track of all transfers made by his individual employees, as there would be no statutory restrictions on further transfers of benefits in an employee's preserved account from one scheme to another should the employee prefer another service provider to handle his preserved account. It should be noted that the majority of employers in Hong Kong are running only small to medium sized companies who do not have the capacity to put together and maintaining such elaborate arrangements.

3. The trustees would also need to revamp their record-keeping systems which would become very complicated and could be prone to errors when implemented. They would need to keep employee's contributions and employer's contributions in separate sub-accounts under each member's account. For those transferee trustees, they would also need to keep all relevant

information pertaining to the employer that is passed from the transferor trustee and to keep track of the movement of the employer's contributions.

(b) Employees' choice of MPF scheme for making contribution and for transfer of accrued benefits

4. The alternative arrangement described in para. 7(b) of the paper could make MPFA's enforcement of default contribution cases substantially more difficult than is the case in the current system which is built around trustees reporting defaults based on a comprehensive set of information of employees of each employer. The current system allows the MPFA to rely on one trustee's reporting of default contributions to identify a list of employees affected by the employer's default contribution and deal with the employer in relation to all the affected employees in one go. On recovery of arrears, the MPFA can also pass the recovered amount to the trustee concerned for allocating to the relevant individual employee accounts as soon as possible. However, under the arrangement described in para. 7(b) of the paper, since an employee may request the employer to make contributions to a different scheme at different times, it would become very difficult and time-consuming for the MPFA to get a full picture of the seriousness of any non-compliance by an employer.

5. In addition, an employee would need to take on the new role as the principal point of liaison between the employer and trustees(s) involved. In particular, the employee would need to keep the employer informed of his preserved account to which the mandatory contributions should be made and the whereabouts of the employer's contributions for the SP/LSP offsetting purpose.

6. There would also be substantial additional workload on the employers. Apart from the issues raised in paras.1-3 of this Annex, an employer would need to work with multiple trustees (up to 19 trustees at present) for payment of the monthly mandatory contributions to the individual accounts of each of his employees as well as other on-going exchanges of relevant information.