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Legislative Council

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Paper for the House Committee Meeting on 8 May 2009

Legal Service Division Report on Mandatory Provident Fund Schemes (Amendment) Bill 2009

I. SUMMARY

1. **Object of the Bill**

To amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (MPFSO) 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 employer in respect of any former employment or former self-employment, to another account within a Mandatory Provident Fund (MPF) scheme and provide for related amendments.

2. **Comments**

The Bill proposes to—
(a) enable an employee to transfer accrued benefits derived from any mandatory contributions made by the employee in respect of any current employment to a personal account in an MPF scheme;
(b) enable an employee to transfer the accrued benefits from the mandatory contributions of his former employment(s) which are held in his contribution account to another account in an MPF scheme of his choice;
(c) rename a preserved account as a personal account;
(d) establish a register of personal accounts;
(e) remove the requirement for the transferor trustee to obtain the consent from the Mandatory Provident Fund Schemes Authority (MPFA) before he can transfer the accrued benefits of an employee in specified circumstance; and
(f) clarify the circumstances in which fees, etc. are to be charged upon transfer of accrued benefits.

3. **Public Consultation**

The Administration did not conduct public consultation but heard the views expressed by the stakeholders and members of the LegCo's Panel on Financial Affairs (the FA Panel) at the FA Panel's meetings.

4. **Consultation with LegCo Panel**

The Administration and MPFA consulted the FA Panel on three occasions about the proposals in 2008. Some members of the FA Panel expressed concerns over the proposals and the related legislative amendments.

5. **Conclusion**

In view of the public importance of the proposals, members are recommended to form a Bills Committee to study the Bill in detail.

II. REPORT

Object of the Bill

To—

(a) amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (MPFSO) to provide that an employee may transfer accrued benefits derived from his employee's mandatory contributions during his current employment from a contribution account under a registered scheme on a lump sum basis to a personal account in a Mandatory Provident Fund (MPF) scheme of his own choice at least once per calendar year;

(b) allow an employee to transfer the accrued benefits from the mandatory contributions of his former employment(s) which are held in his contribution account to another account in an MPF scheme of his choice; and

(c) provide for related amendments.

LegCo Brief Reference

2. FSB CRG4/51C(2007) Pt.4 issued by the Financial Services and the Treasury Bureau in April 2009.

Date of First Reading

3. 6 May 2009.

Comments

<u>To enable an employee to transfer accrued benefits derived from any mandatory contributions made by the employee in respect of any current employment to a personal account in an MPF scheme</u>

4. Under the MPF system[1], an employee and his employer are required to contribute mandatory contributions at 5% each of the employee's relevant income.

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[1] There are two types of accounts under the MPF system.

Contribution accounts are for employers, employees and self-employed persons to make contributions thereto during the period of employment.

Preserved accounts are for the employees and self-employed persons to keep their MPF accrued benefits from former employment or self-employment.

An employee is only allowed to choose constituent from the funds offered by the registered scheme selected by his employer.

5. Clause 17 of the Bill adds a new section 148A to the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) (MPFS(G)R) to provide that if accrued benefits derived from the mandatory contributions of an employee are held within an MPF scheme[2], the employee may, at any time, subject to certain conditions (such as at least one transfer in each calendar), elect to have all the benefits to be transferred to—

(a) in respect of an employee in a master trust scheme or an industry scheme—

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

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

(b) in respect of an employee in an employer sponsored scheme—

(i) a personal account of the employee within a master trust scheme nominated by the employee; or

(ii) a personal account of the employee within an industry scheme nominated by the employee

6. To promote a wider range of choice of MPF schemes, clause 9 of the Bill adds a new section 21A(2A) to the MPFSO and amends section 21A(8)(c) of the MPFSO 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.

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2 There are three types of MPF schemes.

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

An industry scheme is specially established for employees of the catering and construction industries, where there are high labour mobility and turnover. An employee in these industries (provided that he is also a member of such a scheme), does not need to change schemes if he changes his job within these two industries, so long as his previous and new employers are both participating in the same industry scheme.

An employer-sponsored scheme is limited to employees of a single employer and its associated companies. Because of this, it is only cost-effective to run an employer-sponsored scheme if the number of employees is large.

7. To give members of an MPF scheme better control over their personal accounts, clause 18 of the Bill also proposes to substitute section 149 of the MPFS(G)R with a new section 149 to provide for the transfer of accrued benefits in personal accounts to contribution accounts or other personal accounts.

<u>To enable an employee to transfer the accrued benefits from the mandatory contributions of his former employment(s) which are held in his contribution account to another account of his choice</u>

8. Clause 17 of the Bill adds a new section 148B to the MPFS(G)R to provide 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 in an MPF scheme to—

(a) in respect of an employee in a master trust scheme or an industry scheme—

(i) another contribution account of the employee within the same registered scheme nominated by the employee;

(ii) a contribution account of the employee within another registered scheme, nominated by the employee;

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

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

(b) in respect of an employee in an employer sponsored scheme—

(i) another contribution account of the employee within the same registered scheme nominated by the employee;

(ii) a contribution account of the employee within another registered scheme nominated by the employee; or

(iii) a personal account of the employee within a master trust scheme or an industry scheme, nominated by the employee.

Rename a preserved account as a personal account

9. Clause 11 of the Bill replaces the definition of "preserved account" in section 2 of the MPFS(G)R 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".

10. Clauses 12(1), 14(1), 15 and 16 substitute all references to "preserved account" in the MPFS(G)R with "personal account".

Register of personal accounts

11. Clause 22 of the Bill adds a new section 157B to provide for the establishment and maintenance by the Mandatory Provident Fund Schemes Authority (MPFA) of a register of members of registered schemes who have established and maintained personal accounts within a master trust scheme or industry scheme, 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.

Removal of certain transfer restriction

12. Under section 156 of the MPFS(G)R, if there are outstanding contributions or contribution surcharges in the employee's contribution account, a transferor trustee is required, among other things, to obtain the consent from MPFA before he can give effect to an election on transfer of accrued benefits, initiated by the employee under Part XII. Clause 21 of the Bill amends section 156 by limiting, among other requirements, the requirement of consent from MPFA to section 150 or 150A of the MPFS(G)R (which relates to transfer of an employee's accrued benefits initiated by his employer).

13. Under section 156 of the MPFS(G)R, accrued benefits are not to be transferred if contributions or contribution surcharges are outstanding. Clause 22 of the Bill adds a new section 157A to provide that a transferor 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 transferor trustee after being notified of the election.

14. Clause 19 of the Bill amends section 153 of the MPFS(G)R to require a transferor trustee to transfer accrued benefits within a specified time.

15. Clause 20 of the Bill amends section 154 of the MPFS(G)R to require a transferor trustee to state specified information in a transfer statement, such as whether or not there are any outstanding contributions or any contribution surcharges in relation to accounts from which accrued benefits are to be transferred.

Fees, etc. for transfer of accrued benefits

16. Section 34 of the MPFS(G)R provides that no fees may be charged for transferring accrued benefits from a registered scheme to another scheme or from one account to another account within the scheme, other than actual and reasonable expenses incurred by the trustee 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. There are ambiguities as to—

(a) whether fees are chargeable in respect of transfer from one constituent fund to another constituent fund within the same registered scheme; and

(b) whether the term "similar type of investment" covers the selling or purchasing of certain underlying investments, such as insurance policies, approved by MPFA.

17. Clause 13 of the Bill amends section 34 to clarify that—

(a) no fees are payable in respect of transfer from one constituent fund to another constituent fund within the same registered scheme; and

(b) the approved trustee could recover an amount representing the necessary transaction costs that are incurred, or reasonably likely to be incurred, by him in selling or purchasing investments in order to give effect to the transfer of accrued benefits and are payable to a party other than that approved trustee.

Public Consultation

18. The Administration did not conduct public consultation but heard the views expressed by the stakeholders and members of the LegCo's Panel on Financial Affairs (the FA Panel) at the FA Panel's meetings. Details of the meetings are contained in paragraphs 20 and 21 of the LegCo Brief.

Consultation with LegCo Panel

19. The Administration and MPFA first briefed the FA Panel on the key features of the legislative proposals at the meeting on 8 April 2008. The FA Panel discussed the proposals again on 30 June 2008 and received views from the public and relevant stakeholders. The Administration and MPFA further consulted the FA

Panel on the proposed legislative amendments under the Bill at the meeting on 1 December 2008. Members expressed the following views on the proposal—

(a) Some members expressed dissatisfaction about the proposals as they would not give the employees full control over their MPF investments. They considered that employees should be allowed to transfer all the accrued benefits derived from both the employer and employee mandatory contributions to MPF schemes of their own choice.

(b) Some other members supported the proposals and considered them a pragmatic approach which could balance the interests of different stakeholders. These members considered that a fair and reasonable proposal should take into account both the demand of employees to increase control over their MPF benefits and right of employers to offset Severance Payment/Long Service Payment (SP/LSP) with the accrued benefits attributable to the employer mandatory contributions.

(c) Some members were of the view that the SP/LSP offsetting arrangement should be abolished, if alternatives to allow employees full control of their MPF investment would increase the complexity of offsetting SP/LSP.

(d) Some members were concerned whether the intended purpose of driving down fees and charges of MPF funds could be achieved through the proposals. Concerns were also raised about the level of fees and charges for the transfers.

(e) A member opined that in implementing the proposal, the Administration and MPFA should take heed of the need to ensure convenient transfer arrangements at minimal cost and suggested consideration be given to shortening the existing statutory time limit of 30 days for the transferor trustees to complete transfer of accrued benefits.

(f) To facilitate scheme members in checking of MPF accounts balance and monitoring of their MPF accounts, some members suggested that consideration be given to setting up a passbook system or electronic card system by the scheme trustees.

Conclusion

20. The Bill contains important proposals to enable an employee to transfer the accrued benefits derived from his employee's mandatory contributions during his current employment and 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, to another account. Some members of the FA

Panel had expressed concerns over the proposals. Members are recommended to form a Bills Committee to study those proposals and the related legislative amendments in detail. In the meantime, the Legal Service Division will continue to scrutinise the legal and drafting aspects of the Bill.

Prepared by

LAM Ping-man, Stephen
Assistant Legal Adviser
Legislative Council Secretariat
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