

立法會
Legislative Council

LC Paper No. CB(1)1951/08-09

Ref : CB1/BC/3/08

Paper for the House Committee meeting on 19 June 2009

**Report of the Bills Committee on
Mandatory Provident Fund Schemes (Amendment) Bill 2009**

Purpose

This paper reports on the deliberations of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2009 (the Bill).

Background

2. The Mandatory Provident Fund Schemes Ordinance (Cap. 485) (the Ordinance) was enacted in 1995 to provide a statutory framework for the establishment of mandatory, privately managed retirement schemes for the retirement protection of the general workforce. It is supplemented by subsidiary legislation passed in 1998, 1999 and 2000. The Mandatory Provident Fund (MPF) System was launched in December 2000. The MPF System is subject to review from time to time to ensure that it continues to serve the needs of existing and potential scheme members.

3. Under the MPF System, an employee may choose among the constituent funds offered by the scheme selected by his employer, and upon cessation of his employment with the employer, he may choose to transfer all accrued benefits from his contribution account of the MPF scheme selected by his employer to another scheme of his own choice. The employees, however, are not allowed to choose the MPF scheme for the accrued benefits derived from contributions made during the period of current employment. This has given rise to concern about the rights of employees to control the accrued benefits derived from MPF contributions to enhance retirement protection.

4. Based on the recommendations of the Mandatory Provident Fund Schemes Authority (MPFA), the Administration has introduced amendments to the Ordinance

to improve the operation and enforcement of the MPF System. The Mandatory Provident Fund Schemes (Amendment) Bill 2007 and the Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2007 were passed in January 2008 and June 2008 respectively. Among other issues of concerns raised during the scrutiny of the legislative amendments, Members have expressed concern about the need to allow employees to choose their preferred MPF trustees.

5. In order to promote greater market competition and encourage employees to take a more active interest in their MPF investments, the MPFA proposes that amendments be made to the MPF legislation so that employees may transfer accrued benefits derived from their employee's mandatory contributions during their current employment, from a contribution account under an MPF scheme on a lump-sum basis, to another MPF scheme of their own choice once per calendar year, or more than once per calendar year if the governing rules of the relevant scheme allow for more frequent transfers by the scheme members (the Proposal). The Administration introduced the Bill into the Legislative Council (LegCo) on 6 May 2009.

The Bill

6. The Bill seeks to amend the Ordinance and the Mandatory Provident Fund Schemes General Regulation (the General Regulation) to -

- (a) enable an employee to transfer accrued benefits derived from mandatory contributions made by the employee in respect of any current employment to a personal account in an MPF scheme of his/her choice;
- (b) enable an employee to transfer the accrued benefits derived from mandatory contributions made in respect of his/her former employment(s) which are held in his/her contribution account to another account in an MPF scheme of his/her own 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 MPFA before he can transfer the accrued benefits of an employee in specified circumstance; and
- (f) clarify the circumstances in which fees are chargeable upon transfer of accrued benefits.

The Bills Committee

7. At the House Committee meeting on 8 May 2009, Members agreed to form a Bills Committee to study the Bill. Hon CHAN Kam-lam was elected Chairman of the Bills Committee. The Bills Committee has held two meetings with the Administration/MPFA. It has also examined views of the Law Society of Hong Kong (the Law Society) on the Bill. The membership list of the Bills Committee is at **Appendix I**.

Deliberations of the Bills Committee

8. In principle, the Bills Committee supports the Bill which seeks to amend the MPF legislation to increase employees' control over their MPF investments. The Bills Committee has examined a number of issues related to the legislative proposals under the Bill during its scrutiny work. Concerns raised by the Bills Committee and information provided by the Administration are summarized in the ensuing paragraphs.

Transfer of accrued benefits in MPF accounts by scheme members

Scope of transfer

9. The Bills Committee has noted that the Proposal will allow employees to transfer accrued benefits derived from their own mandatory contributions, but not the accrued benefits derived from their employer's contributions, from a contribution account under an MPF scheme to an MPF scheme of their own choice. Members including Hon WONG Kwok-hing, Hon IP Wai-ming and Hon Starry LEE have expressed concern that the Administration/MPFA should allow full control of MPF investments by employees through enabling transfer of the accrued benefits derived from both employee's and employer's mandatory contributions to a scheme of employees' choice.

10. The Bills Committee has noted the Administration's explanation that in examining the scope of the Proposal, the Administration and the MPFA have taken into consideration important issues which could not be resolved satisfactorily should the Proposal be extended to cover transfers of accrued benefits derived from employer's mandatory contributions. One of the major issues relates to the difficulties in tracing the movement of accrued benefits derived from employer's contributions for individual employees by keeping detailed records of each transfer, which give rise to concerns about disruption to the operation of the existing system whereby employers could apply the accrued benefits derived from employer's contributions to offset the Severance Payment/Long Service Payment (the SP/LSP offsetting arrangement).

11. As regards the concern of Hon IP Wai-ming that the MPFA should review the SP/LSP offsetting arrangement with a view to enabling full control of MPF investments by employees, the Bills Committee has noted the Administration's further advice that the SP/LSP offsetting arrangement permitted under the existing MPF legislation is a subject of great concern to different stakeholders. The decision of incorporating the offsetting arrangement in the MPF System has been made after extensive discussion by stakeholders during the scrutiny of the MPF legislation. The Administration maintains its position that it has no plan to change the offsetting arrangements especially when there is no common view among the relevant stakeholders.

12. The Bills Committee has noted the view of the Law Society about the necessity of enabling scheme members to transfer accrued benefits between accounts within the same scheme, given that the legislative proposal aims to enable members to choose between different schemes. In this connection, the Administration has explained that the purpose of enabling an employee to transfer accrued benefits between accounts within the same MPF scheme is to provide for wider choice and allow greater flexibility for an employee to manage his/her accrued benefits.

Expenses of a transfer (Clause 13)

13. Members including Hon WONG Kwok-hing, Hon IP Wai-ming and Hon CHEUNG Kwok-che have expressed concern about the fees and charges arising from the transfer. They are concerned that high costs incurred for the transfer may discourage employees from electing the transfer. MPFA has explained that the existing law has prohibited the charging of fees on transfer of accrued benefits except for recovery of necessary transaction costs.

14. The legal adviser to the Bills Committee has raised questions on the proposed amendments to section 34 of the General Regulation under clause 13 of the Bill. He has sought clarification on the meaning of "necessary transaction costs that are incurred" and "costs reasonably likely to be incurred", as well as the reason for not limiting the charge to the actual expenses incurred by the trustee. The Bills Committee has noted a similar concern raised by the Law Society. The Law Society has pointed out that the word "necessary" will inevitably involve judgement to be made on any transfer, for example, the scheme trustee may prefer to use a more established broker for reputational reasons with a higher fee, and whether under such circumstances the payment of the higher fee is considered "necessary".

15. The Bills Committee has noted the Administration's explanation that the amendments to section 34 of the General Regulation are proposed to better reflect the established policy that only those investment transaction costs incurred or reasonably likely to be incurred by 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 such as administration fees can be charged for effecting a

transfer. In unit trust administration, transfer requests are usually priced before any resultant underlying transactions are undertaken. The proposed drafting to allow a trustee to charge "necessary transaction costs that are.... reasonably likely to be incurred" will cover such situation. 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.

16. The Bills Committee has noted the Administration and the MPFA's advice that they have no 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.

Frequency of transfer (Clause 17)

17. The Bills Committee has noted that the legislative amendment under the Bill will enable employees to transfer accrued benefits derived from their own mandatory contributions at least once per calendar year. Members including Hon WONG Kwok-hing and Hon IP Wai-ming have expressed the view that there should not be restrictions on the frequency of transfers. Hon IP Wai-ming and Hon CHEUNG Kwok-che have also expressed concern about the effect of the governing rules determined by scheme trustees on the frequency of transfers by their members. As regards the proposed section 148A under clause 17 of the Bill, the legal adviser to the Bills Committee has also sought clarification from the Administration on the reasons for not giving a statutory right of transfer for more than once a year to an employee.

18. The Administration has explained that the purpose of the amendment is to impose a statutory obligation on scheme trustees to effect the election of transfer by their members at least once per calendar year. The present proposal on the frequency of permissible transfers has taken into account feedback obtained from consultation. More frequent transfers may be made as permitted in the governing rules of the schemes. Given that the Proposal will affect over two million MPF scheme members and result in around 60% of MPF benefits being portable between trustees, it will help promote competition in the MPF market and bring about benefits to the scheme members in general. The MPFA will step up public education on the impact and choices of the transfers upon implementation of the Proposal. However, scheme members should take heed of the long-term nature of their MPF investments when making investment decisions, instead of making frequent transfers between schemes in response to market volatilities.

19. Members including Hon CHAN Kam-lam and Hon WONG Ting-kwong have expressed the view that changes to the current arrangement should be introduced gradually. The current proposal of allowing employees to transfer the accrued

benefits derived from their own mandatory contributions at least once per calendar year could help enhance market competition and benefit the scheme members.

20. The Bills Committee has noted the Law Society's view that as there is no mandatory requirement for the trustees to accept requests of a scheme member for more than one transfer in one calendar year, upon receipt of a transfer request, transferee trustees may face problems in ascertaining whether the transferor scheme permits more frequent transfers.

21. The Administration has advised that section 153 of the General Regulation sets out the duty of a transferee trustee and/or a transferor trustee to complete the transfer as elected by a scheme member. Section 153(1) requires the transferee trustee to give a written notice of the election to the transferor trustee after being notified by a scheme member. Upon receipt of the notice, the transferor trustee will need to check if the election has been made in accordance with the law in respect of the number of transfers permitted, viz. either once per calendar year or as permitted in the governing rules of the transferor scheme. In this connection, the transferor trustee will need to keep record of the number of transfers completed in respect of each contribution account of its scheme members. The MPFA will conduct on-going discussions with the trustees on the system enhancement required to perform this duty.

Duty of approved trustee on being notified of election (Clauses 17 and 19)

22. The legal adviser to the Bills Committee has sought clarification on the need to add the reference to notification of election by an employee upon cessation of employment to section 153(2) and 153(3) of the General Regulation under clause 19 of the Bill.

23. The Bills Committee has noted the Administration's advice that the existing section 153 of the General Regulation applies to, among others, transfer of accrued benefits upon cessation of employment of an employee who has made an election for transfer under sections 145, 146 or 147 of the General Regulation, as appropriate. When an employee elects to transfer his/her accrued benefits upon cessation of employment, the trustee must, pursuant to sections 153(2) and 153(3), take all practicable steps to ensure that all the accrued benefits concerned are transferred in accordance with the election within 30 days after being notified of an election. There may be cases where the deadline for trustees to transfer the benefits (i.e. 30 days after being notified of an election) is earlier than the contribution due day in respect of the last contribution period immediately preceding the termination of employment of the employee, which is the 10th day of the month following the month in which the employee ceases employment according to section 122(1)(aa)(i) of the General Regulation. In order to avoid the situation whereby multiple transfers of accrued benefits are to be made for the same employee by the trustee within a very short period of time, the MPFA has proposed to amend section 153 of the General Regulation such that, in case a transfer request is made upon cessation of employment of an employee, a trustee will be required to transfer the benefits within 30 days after

being notified of an election or the due date for payment of the last contribution, whichever is the later. This will enable the trustee to transfer all the accrued benefits (including those derived from the contributions made in respect of the last contribution period) in one go.

24. The Law Society has expressed the view that while proposed amendments to section 153 of the General Regulation sets out the transferee trustee's obligation to complete the transfer within 30 days after being notified of an election by a scheme member, the provision does not appear to deal with the situation where an election is made to the transferor trustee under the proposed sections 148A5(a), 148B(4)(a) or 148B(4)(c) added to the General Regulation under clause 17 of the Bill. The Administration has advised that it has, in conjunction with the MPFA, reviewed the matter where an election is made to the transferor trustee under section 148A(5)(a), 148B(4)(a) or 148B(4)(c). The Administration has proposed to move Committee Stage amendments (CSAs) to amend section 153(3), which obliges the transferor trustee to transfer accrued benefits to a separate account in the scheme within 30 days upon notification of the election, to extend its application to the afore-mentioned sections, as well as the proposed sections 149(2)(a) and 149(2)(c), in the Bill. In this connection, the Administration has also proposed another CSA to section 153 of the General Regulation to clearly stipulate that a transferor trustee should also comply with the same 30 days requirement in the case of an election made by a scheme member under existing section 145(8)(b) of the General Regulation which involves transfer of accrued benefits to a preserved account in a master trust scheme nominated by the transferor trustee concerned. The proposed CSAs are at **Appendix II**.

Measures to facilitate scheme members' checking of account balance

25. Members including Hon WONG Kwok-hing and Hon Starry LEE have expressed concern about measures to facilitate employees' checking of their MPF account balance and the mandatory contributions made by their employers. They have requested the MPFA to examine means to facilitate employees' checking of the account balance, such as through developing a "passbook" system similar to that of bank accounts.

26. The Administration and the MPFA have advised that, apart from the monthly pay-records of employers and annual benefit statements of trustees, the MPFA has put in place measures to facilitate scheme members to check the contribution status of their MPF accounts in respect of the immediate past three months to facilitate early detection of default contribution cases. A central enquiry hotline (183 3030) which is jointly administrated by the MPFA and MPF trustees was launched in late 2007 for employees to check their latest contribution records. In addition, all trustees have set up their own hotlines to enable their scheme members to enquire about details of their MPF accounts such as the balance of their accounts. Some trustees also provide access to MPF account details via the internet. The Administration has requested the MPFA to step up publicity of the hotline and explore ways to further improve its operation. The MPFA will also consider other measures such as the concept of a

“passbook” system to provide more avenues to facilitate employees’ checking of their account balance and the mandatory contributions made by their employers.

Measures to facilitate scheme members' consolidation of accounts

27. Members including Hon Starry LEE, Hon WONG Ting-kwong and Hon CHEUNG Kwok-che have expressed concern that some employees may maintain multiple preserved accounts across different schemes, which will increase the difficulties in managing the investments in these accounts. As preserved accounts will be renamed as personal accounts and a register of personal accounts will be established upon the implementation of the amendments under the Bill, these members have requested the MPFA to consider means to facilitate or remind employees to consolidate their preserved accounts.

28. The MPFA has advised that it is possible to identify from the monthly returns from the trustees, those scheme members who maintain multiple preserved accounts across different MPF schemes. The MPFA will review the situation of multiple accounts holding after implementation of the Proposal for a certain period, and will consider appropriate means to remind relevant scheme members of the arrangements to consolidate their multiple accounts. The Administration has proposed to move CSAs to the proposed section 157B of the General Regulation under clause 22 of the Bill to enable the MPFA to notify scheme members in writing the information contained in the register, including the number of personal accounts they have established with different trustees, and also a CSA to the proposed section 46(1A)(da) of the Ordinance under clause 10 of the Bill to enable the MPFA to notify a scheme member of any information contained in the register in relation to that member on its own initiative. The proposed CSAs are at **Appendix II**.

Committee Stage Amendments

29. The full set of CSAs to be moved by the Administration in relation to paragraphs 24 and 28 above is at **Appendix II**. The Bills Committee has no objection to the proposed CSAs.

30. The Bills Committee has not proposed any CSAs to the Bill.

Recommendation

31. The Bills Committee supports the resumption of the Second Reading debate on the Bill on 8 July 2009.

Advice sought

32. Members are invited to note the Bills Committee's recommendation in paragraph 31.

Council Business Division 1
Legislative Council Secretariat
18 June 2009

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

Membership list

Chairman Hon CHAN Kam-lam, SBS, JP

Members Hon Albert HO Chun-yan
Hon LEE Chuek-yan
Hon LI Fung-ying, BBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon WONG Kwok-hing, MH
Hon Andrew LEUNG Kwan-yuen, SBS, JP
Hon WONG Ting-kwong, BBS
Hon CHIM Pui-chung
Hon Starry LEE Wai-king
Hon Tanya CHAN
Hon CHEUNG Kwok-che
Hon WONG Sing-chi
Hon WONG Yuk-man
Hon IP Wai-ming, MH

(Total: 15 Members)

Clerk Ms Rosalind MA

Legal Adviser Mr Stephen LAM

Date 19 May 2009

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2009

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
10	In the proposed section 46(1A)(<i>da</i>), by deleting “on request”.
19	<p>(a) By adding –</p> <p style="padding-left: 40px;">“(1A) Section 153(3) is amended by adding “, 148A(5)(<i>a</i>), 148B(4)(<i>a</i>) or (<i>c</i>) or 149(2)(<i>a</i>) or (<i>c</i>)” after “(10)(<i>b</i>)”.</p> <p>(b) By adding –</p> <p style="padding-left: 40px;">“(3) Section 153 is amended by adding –</p> <p style="padding-left: 80px;">“(3A) A transferor trustee who is taken to have been notified of an election under section 145(8)(<i>b</i>) must, within 30 days after the end of the period referred to in that section, arrange for the accrued benefits concerned to be transferred to the personal account referred to in section 145(8)(<i>a</i>).”.</p> <p style="padding-left: 40px;">(4) Section 153(5) is amended by repealing “and (3)” and substituting “, (3) and (3A)”.</p> <p style="padding-left: 40px;">(5) Section 153(5)(<i>b</i>) is amended by adding “made or taken to have been made” after “the election”.</p>

- 20 By adding before subclause (1) –
- “(1A) Section 154(1) is amended by adding “or (3A)” after “153(2)”.”.
- 22 (a) By deleting the proposed section 157B(1) and substituting –
- “(1) The Authority must establish and maintain a register of members of registered schemes who have established and maintained personal accounts within master trust schemes or industry schemes for the purposes of enabling –
- (a) a person who made a request under subsection (4) to ascertain in accordance with that subsection any information contained in the register; and
- (b) the Authority to notify under subsection (5) a member of a registered scheme of any information contained in the register.”.
- (b) In the proposed section 157B(3), by adding –
- “(ba) the number of personal accounts established and maintained by the member;”.
- (c) In the proposed section 157B(3)(c), by adding “, or each of the personal accounts,” after “personal account”.
- (d) In the proposed section 157B(3)(d), by deleting “for the purpose of providing information relating to the personal account” and substituting “, or each of the approved trustees, for the purpose of providing information relating to the personal account concerned”.
- (e) In the proposed section 157B(4), by deleting everything after “information contained in the register” and substituting –

“about the personal accounts (if any) established and maintained within any master trust scheme or industry scheme by the relevant person, the person who authorized the representative to make the request or the deceased person.”.

(f) In the proposed section 157B, by adding –

“(5) If the Authority considers appropriate, it may, on its own initiative, notify a member of a registered scheme in writing of any information contained in the register about the personal accounts (if any) established and maintained within any master trust scheme or industry scheme by the member.”.