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15 September 2014

By Post & Email: bc_10_13@legco.gov.hk

Honourable Chan Kin-por
Chairman
Bills Committee
Legislative Council

Dear Honourable Chan,

**Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2014
("Bill")**

Thank you for your letter dated 28 July 2014 in relation to the Bill to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 482) ("MPFSO") and other related pieces of legislation to improve the Mandatory Provident Fund ("MPF") system.

The Hong Kong Association of Banks ("HKAB") has reviewed the Bill and has a small number of comments to raise to your attention. These are contained in the enclosed submission.

In summary, HKAB suggests refinements in the following key areas to increase certainty and transparency in relation to the MPF schemes:

- 1 The number of free withdrawals of accrued benefits.
- 2 The powers of the Mandatory Provident Fund Schemes Authority to refuse to approve a constituent fund and the basic requirements that a constituent fund must fulfil before seeking the approval.
- 3 The proposed information disclosure provisions in the MPFSO and the Occupational Retirement Schemes Ordinance (Cap. 426).

We have also suggested a small number of drafting adjustments for clarification purposes.

We would be pleased to engage in further discussions with the Bills Committee in relation to the proposed changes and to provide further industry input where necessary.

Chairman Bank of China (Hong Kong) Ltd
Vice Chairmen The Hongkong and Shanghai Banking Corporation Ltd
Standard Chartered Bank (Hong Kong) Ltd
Secretary Eva Wong Mei Seong

主席 中國銀行（香港）有限公司
副主席 香港上海滙豐銀行有限公司
渣打銀行（香港）有限公司
秘書 黃美嫦



Thank you again for this opportunity to provide you with HKAB's feedback. Meanwhile, for any questions relating to this submission, please contact our Manager Ms Florence Ng at 2537 3220.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Eva Wong", is positioned above the printed name and title.

Eva Wong
Secretary

Enc.



Bills Committee
Mandatory Provident Fund Schemes (Amendment) Bill 2014

Submission of The Hong Kong Association of Banks

15 September 2014

Introduction

This paper sets out the views of The Hong Kong Association of Banks (“**HKAB**”) in relation to the proposed amendments to the Mandatory Provident Fund Schemes Ordinance (Cap 485 of the Laws of Hong Kong) (“**MPFSO**”) (and relevant subsidiary legislation), the Occupational Retirement Schemes Ordinance (Cap 426 of the Laws of Hong Kong) (“**ORSO**”) and certain other Ordinances and regulations.

With the assistance of King & Wood Mallesons, we have examined the changes proposed in the Mandatory Provident Fund Schemes (Amendment) Bill 2014 (“**Bill**”) and identified the areas of concern that we wish to raise with the Bills Committee. These are set out in the “HKAB’s response” section of this written submission.

We would be pleased to engage in further discussions with the Bills Committee in relation to the proposed changes and to provide further industry input where necessary.

Executive summary

HKAB and its members understand the policy intent of enhancing the operation of mandatory provident fund (“**MPF**”) schemes by providing flexible withdrawal arrangements for MPF accrued benefits and reducing MPF fees, keeping in mind the information disclosure obligations of approved trustees (each, a “**Trustee**”).

In summary, HKAB suggests the following key refinements to increase certainty and transparency in relation to the MPF schemes:

- 1 The number of free withdrawals of accrued benefits should be reduced from twelve to four times per year, and each withdrawal should be subject to a minimum of HK\$5,000, to ensure that such flexibility would not become administratively burdensome and compromise the overall objective of reducing MPF fees.
- 2 The power of the Mandatory Provident Fund Schemes Authority (“**MPFA**”) to refuse to approve a constituent fund if it is not satisfied that such fund is in the scheme members’ interests should be accompanied by guidance in relation to the meaning of “scheme members’ interests”. We also ask for greater certainty in relation to the basic requirements that a constituent fund must fulfil before seeking the MPFA’s approval.
- 3 The proposed information disclosure provisions in the MPFSO and ORSO should be enhanced to ensure that there is sufficient coverage for Trustees to

discharge their obligations under the United States Foreign Accounts Tax Compliance Act (“FATCA”).

- 4 A small number of drafting adjustments should be made for clarification purposes.

These suggestions are described in more detail on the following pages.

Structure of our response

Our comments are grouped into the following thematic categories:

- Part A** - The phased withdrawal of accrued benefits
- Part B** - The approval of new constituent funds
- Part C** - The disclosure of confidential information
- Part D** - Other amendments

HKAB would be pleased to discuss any of these matters further with the Bills Committee.

HKAB's response

HKAB understands the policy intent of enhancing the MPF schemes by providing flexible withdrawal arrangements for MPF accrued benefits and reducing MPF fees, keeping in mind Trustees' information disclosure obligations.

In connection with the proposals contained in the Bill, we have identified the following areas of concern that we wish to raise with the Bills Committee.

Part A - The phased withdrawal of accrued benefits

- 1 The Bill proposes to allow scheme members to withdraw their accrued benefits by phases upon their retirement. More specifically, Trustees will be required to process (free of charge) up to 12 withdrawals requested by a scheme member per year, with no restriction on the amount withdrawn in each installment.¹
- 2 The original proposal² was that Trustees should accept up to four withdrawal requests from scheme members, in each case subject to a minimum threshold of HK\$5,000 per installment, free of charge. However, we understand this was amended in response to feedback from certain scheme members.³
- 3 We acknowledge the policy considerations for providing flexibility to scheme members. However, HKAB is concerned that the high number of free withdrawals per year would pose a significant administrative burden, which is inconsistent with the MPFA's overall objective of reducing the costs of MPF schemes and consequently the fees charged to those schemes. Therefore, we suggest that the number of free withdrawals per year be reduced to four, with a minimum amount of HK\$5,000 withdrawn in each installment.
- 4 HKAB considers that these parameters strike the right balance between improving flexibility in withdrawal to scheme members and maintaining the cost-effectiveness of the MPF system. It may well be that as operations become more streamlined, the costs associated with withdrawals may diminish, so there may be scope to increase the number of free withdrawals and/or adjusting the minimum withdrawal amount over time. We would be pleased to discuss this further.

Part B - The approval of new constituent funds

- 5 With a view to reducing MPF fees,⁴ the Bill requires new constituent funds of registered schemes to be approved by the MPFA. It also empowers the MPFA

¹ See clauses 6(1), 6(2) and 25 of the Bill.

² Paragraph 20, "Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2014, Background brief" (LC Paper No.: CB(1)1835/13-14(01)) ("Background Brief")

³ Paragraph 20, Background Brief.

⁴ Paragraph 10, Background Brief.

to refuse to approve the fund if it is not satisfied that the fund is in the scheme members' interests.⁵

- 6 While we acknowledge that MPF fees should be kept to a minimum wherever possible, we seek clarity on how the MPFA would exercise its discretion in approving funds. Specifically, we are keen to ensure that the MPFA's approval would be based on transparent standards that funds could reasonably meet.
- 7 Our concern arises from the Legislative Council paper discussing the measures to reduce MPF fees:

*"MPFA has also recommended the Government to make fundamental changes to improve the MPF system. Options that could be further explored included mandating providing low-fee funds in all MPF schemes..."*⁶

- 8 In relation to this statement, the MPFA and the Government released a consultation paper seeking comments on the proposed new arrangement under which all MPF schemes will offer the same type of low-fee investment fund or funds, referred to as the "core fund".⁷ HKBA responded to the consultation questions on 12 September 2014⁸ stating its concerns about the challenges in its implementation, particularly that keeping total fee impact for the core fund at or under 0.75% is an ambitious target, and that keeping total expense impact under 1.0% would involve challenges.⁹
- 9 From the above consultation, MPFA seems to indicate its standards and targets, which HKAB considers challenging. MPFA's enhanced powers (i.e. approval for MPF funds) should be matched with greater clarity on how it would exercise such discretion. Specifically, what is meant by "*scheme members' interests*" in the proposed section 21BB(6) of the MPFSO.
- 10 Accordingly, we suggest that the MPFSO should set out the basic requirements a fund needs to fulfil before it seeks MPFA's approval. In assessing the basic requirements that may be set, HKAB would be pleased to assist the Bills Committee to reach an approach which balances fee reduction and practical feasibility.
- 11 HKAB also urges the MPFA to ensure that any associated initiatives in relation to constituent funds would not result in over-regulation of the industry, thus prejudicing the key objective of cost reduction.

⁵ Clause 7 of the Bill.

⁶ Paragraph 9, "Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2014" (LC Paper No.: CB(1)1835/13-14(01)).

⁷ Consultation Paper on "Providing Better Investment Solutions for MPF Members" issued in June 2014.

⁸ Comments submitted to the MPFA on 12 September 2014.

⁹ Answers to questions 6 and 7 in the comments submitted to the MPFA on 12 September 2014.

Part C - The disclosure of confidential information

- 12 HKAB welcomes the amendments which allow Trustees to better discharge their obligations under FATCA. In particular, we acknowledge the express provisions set out in clauses 9 to 11 and 55 of the Bill, which provide a range of grounds for disclosure of information.

- 13 However, we are concerned whether the draft wording is wide enough to enable Trustees to fully comply with their FATCA disclosure requirements. At present, the Intergovernmental Agreement between Hong Kong and the United States (“IGA”) that will facilitate compliance with the FATCA by financial institutions in Hong Kong has yet to be signed. There is no local legislation confirming Hong Kong’s application of the FATCA, and therefore no certainty as to the requirements in respect of compliance with FATCA.

- 14 We ask the Bills Committee to consider extending clause 9 of the Bill to cover all relevant authorities for the purpose of complying with FATCA requirements, taking into account that an IGA is likely to be signed in the near future.

Part D – Other amendments

- 15 HKAB appreciates the efforts made to reduce Trustees’ compliance burden by simplifying administrative processes, with a view to drive down MPF fees.¹⁰

- 16 To further facilitate efficient administrative processes, we also suggest the following amendments shown in underlined italics as follows:
 - (a) Clause 29 of the Bill – “in a form and language, and must contain the particulars, as reasonably required by the Authority by written notice to the Trustee”.

 - (b) Clause 44(4) of the Bill – “(f) any other information as may be reasonably required and specified for the purposes of this section by guidelines”.

We suggest that the addition of a “reasonable” criterion provides a fair protection to Trustees to assist in managing the volume of information required.

HKAB would be pleased to discuss any of these matters further with the Bills Committee.

¹⁰ For example, removing the requirement for Trustees to give membership certificates to employees under clause 27 of the Bill, removing the requirement for scheme members to obtain a confirmation letter from their former employers certifying the termination of a contract of employment and statutory declaration by scheme members for claiming early withdrawal of accrued benefits on the ground of total incapacity under clause 39 of the Bill, and facilitating use of electronic communications under clause 47 of the Bill.