

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

### The Administration's Responses to Public / Organisations' Comments

Proposed Amendment	View	The Administration's Response
<b>(I) Phased Withdrawal of Accrued Benefits</b>		
Withdrawal arrangements	<ul style="list-style-type: none"> <li>▪ Welcome the Administration's proposal to allow scheme members to withdraw accrued benefits more flexibly. [HKCTU, FHKKLU, HA, HKIFA]</li> <li>▪ Suggest the Administration not to prescribe in the law any restrictions on withdrawal frequency and amount of each withdrawal of accrued benefits. Separately, suggest the Administration to explain whether trustees must provide 12 free withdrawals of accrued benefits a year or they may determine the number of such withdrawals. [CC]</li> <li>▪ No strong views on the Administration's proposal to request trustees to handle scheme members' requests for withdrawal of accrued benefits free-of-charge at least 12 times a year. [EFHK]</li> <li>▪ Suggest the Administration to reduce the number of free phased withdrawals of accrued benefits to four times a year. [HKAB]</li> <li>▪ On allowing scheme members to withdraw accrued benefits by instalment free-of-charge,</li> </ul>	<ul style="list-style-type: none"> <li>▪ We suggest requiring trustees to handle scheme members' requests for withdrawal of accrued benefits free-of-charge at least 12 times a year. The objective of the proposal is to increase flexibility in withdrawing accrued benefits with a view to facilitating scheme members' financial management of their retirement. Of course, individual trustees may also choose to provide more than 12 free withdrawals a year.</li> <li>▪ Our proposal is devised upon the outcome of consultation with the public, stakeholders and the Panel on Financial Affairs of the Legislative Council. We consider that the proposal has already balanced between the need for providing flexibility to scheme members and maintaining administrative efficiency and cost effectiveness of the Mandatory Provident Fund ("MPF") System.</li> <li>▪ We do not intend to specify in the law the minimum amount of withdrawal and account</li> </ul>

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	<p>suggest the Administration to specify a minimum account balance or a minimum amount of at least \$5,000 (i.e. the current minimum account balance of small balance accounts) for each withdrawal. [HKTA, HKAB, HKIFA, HKFI, HKRSA]</p> <ul style="list-style-type: none"> <li>▪ Suggest the Administration to consider the implication of the proposal for administrative procedures, custodian or handling fees. [HA]</li> </ul>	<p>balance for each free phased withdrawal of accrued benefits.</p>
Costs or fees	<ul style="list-style-type: none"> <li>▪ Trustees should not impose the costs arising from phased withdrawal of accrued benefits on scheme members through cost switching to other MPF services. [FHKKLU, CC]</li> <li>▪ Suggest the Administration to require trustees to spell out clearly the fees for different payment arrangements of accrued benefits (including additional withdrawal arrangements) so that scheme members will understand the cost implication of each arrangement, and explain to scheme members the arrangement to allow trustees to charge necessary transaction costs in the Mandatory Provident Fund Schemes (Amendment) Bill 2014 (“the Bill”). [CC]</li> </ul>	<ul style="list-style-type: none"> <li>▪ According to the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“MPFSO”), trustees may impose administrative fees and other charges for managing scheme members’ contributions and investments. The Bill suggests adding provisions in the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) (“the General Regulation”) to require trustees not to charge any fees, impose any fines or deduct any amounts from scheme members for the first 12 phased withdrawals each year, other than necessary transaction costs,. Trustees must fully disclose the fee structure of their products under respective MPF schemes in the offering documents. Upon the implementation of the arrangements of phased withdrawal of accrued benefits, trustees are required to update the offering</li> </ul>

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		documents to stipulate the fees for the 13 <sup>th</sup> and subsequent withdrawals. The Mandatory Provident Fund Schemes Authority ("MPFA") is responsible for approving the offering documents and the subsequent amendments, and will continue to monitor the fees charged to scheme members to ensure that such fees are necessary transaction costs.
Operational arrangements	<ul style="list-style-type: none"> <li>▪ Suggest the Administration to advance the deadline for trustees to make payment of accrued benefits to the claimant (i.e. within 30 days after the date on which the claim is lodged). [CC]</li> </ul>	<ul style="list-style-type: none"> <li>▪ Upon receiving scheme members' application for withdrawal of accrued benefits, trustees will need time to arrange selling and purchasing of funds, make calculations and conduct other administrative procedures (e.g. verifying information) before making payment to scheme members. These procedures will take time. As such, we propose setting the deadline for payment of accrued benefits to no later than 30 days after the date on which the claim is lodged. While this is the statutory deadline, trustees may make payment of accrued benefits earlier.</li> </ul>
Tax arrangements	<ul style="list-style-type: none"> <li>▪ Suggest the Administration to specify in the law that the accrued benefits withdrawn by instalment are tax free.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The Bill has already included this proposal.</li> </ul>

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<p>Clause 23 of the Bill (drafting-related)</p>	<ul style="list-style-type: none"> <li>▪ Suggest the Administration to consider whether the addition of “on a scheme member” in section 34 of the General Regulation implies that trustees may still charge such fees to constituent funds in future. [Law Society]</li> </ul> <p><i>[The proposed amended section 34 of the General Regulation stipulates that:</i></p> <p><i>No fees or financial penalties may be charged to or imposed on a scheme member, or deducted from the member's account, for transferring accrued benefits –</i></p> <ul style="list-style-type: none"> <li><i>(a) from a registered scheme to another registered scheme;</i></li> <li><i>(b) from an account within a registered scheme to another account within the same registered scheme; or</i></li> <li><i>(c) in the same account within a registered scheme, from a constituent fund to another constituent fund,</i></li> </ul> <p><i>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.]</i></p>	<ul style="list-style-type: none"> <li>▪ Our suggestion of adding “on a scheme member” aims to prevent trustees from charging scheme members disincentive fees for transfer of accrued benefits. We do not intend to restrict trustees from charging necessary transaction costs, such as those incurred, or reasonably likely to be incurred, in selling or purchasing investments, in giving effect to transfer, and are payable to a party other than that approved trustee.</li> </ul>

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Clause 25 of the Bill (drafting-related)	<ul style="list-style-type: none"> <li>▪ Suggest the Administration to amend the words “any written instructions” in section 35B(2) of the General Regulation in the English text such that only forms prescribed by trustees can be used for giving the instructions. [Clifford Chance]</li> </ul> <p><i>[The proposed amended section 35B(2) of the General Regulation stipulates that:</i></p> <p><i>The approved trustee of the scheme must act according to any written instructions regarding the time, frequency or amount of payment of the member's accrued benefits by instalments that the member may give under the governing rules of the scheme if 30 days have passed since the member gave those instructions to the approved trustee.]</i></p>	<ul style="list-style-type: none"> <li>▪ Having considered this suggestion and making reference to Part 13 of the General Regulation, we are considering introducing committee stage amendments (“CSAs”) to replace “any written instructions” to “written instructions as set out in a form specified or approved by the Authority” to facilitate trustees’ payment of accrued benefits by instalment and ensure consistency in the ordinance.</li> </ul>
Publicity and education	<ul style="list-style-type: none"> <li>▪ Suggest MPFA to launch publicity or educational programmes to publicise the changes. [HKCTU, CC]</li> </ul>	<ul style="list-style-type: none"> <li>▪ We agree. Upon passage of the Bill, MPFA will launch publicity programmes to help the community understand the arrangements of phased withdrawal of accrued benefits.</li> </ul>
<b>(II) Allowing Early Withdrawal of Accrued Benefits on Terminal Illness Ground</b>		
The definition of “remaining life expectancy”	<ul style="list-style-type: none"> <li>▪ Support the proposal of adding “terminal illness” as an additional ground for early withdrawal of accrued benefits. [HA, CC]</li> <li>▪ Support the proposed definition of or have no objection to the definition of “remaining life</li> </ul>	<ul style="list-style-type: none"> <li>▪ Our suggestion of specifying the definition of “remaining life expectancy” aims to provide a practical mechanism for medical practitioners to make objective assessment to allow scheme members to withdraw accrued benefits early on the ground of “terminal</li> </ul>

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	<p>expectancy” (i.e. 12 months or less). [HA, EFHK]</p> <ul style="list-style-type: none"> <li>▪ Suggest the Administration not to define “remaining life expectancy”, but only require certification from a registered medical practitioner or a registered Chinese medicine practitioner as a proof. [CC]</li> <li>▪ Suggest the Administration to amend the definition of “remaining life expectancy” from 12 months or less to 36 months. [HKDU]</li> <li>▪ Suggest the Administration to define “remaining life expectancy” according to that of “critical illness” as adopted by the insurance industry. [HKDU, HKIFA, WS YEUNG]</li> </ul>	<p>illness”. We have considered the views received during the public consultation, especially those from medical practitioners (i.e. it will be more difficult to determine a longer period of “remaining life expectancy”). There are also international precedents in certifying patients whose “remaining life expectancy” are 12 months or less by medical practitioners (e.g. the Australian Superannuation System).</p> <ul style="list-style-type: none"> <li>▪ The insurance industry does not have a universal definition or a standard list for “critical illness”. The scope of “critical illness” differs depending on the coverage of different insurance policies. Unlike “terminal illness”, scheme members who suffer from “critical illness” will still require retirement protection after recovery. As such, we do not propose to allow early withdrawal of accrued benefits on the ground of “critical illness”.</li> </ul>
Issuing medical certification	<ul style="list-style-type: none"> <li>▪ For early withdrawal of accrued benefits, suggest the Administration to require two registered medical practitioners or Chinese medicine practitioners to certify that a scheme member suffers from “critical illness” and cannot take up employment. [WS YEUNG]</li> </ul>	<ul style="list-style-type: none"> <li>▪ During public consultation, majority of the respondents (75%) supported our proposal, i.e. requiring <u>one</u> registered medical practitioner or registered Chinese medicine practitioner to make certification in relation to a scheme member's request for early</li> </ul>

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	<ul style="list-style-type: none"> <li>▪ There is a concern that Chinese medicine practitioners may find it difficult to certify that a scheme member suffers from “critical illness” and cannot take up employment. [WS YEUNG]</li> <li>▪ Suggest the Administration to require registered medical practitioners or Chinese medicine practitioners to certify scheme members who have “terminal illness” for early withdrawal of accrued benefits and simplify the certification arrangements to prevent delay in processing scheme members’ withdrawal applications. [FHKKLU]</li> <li>▪ Suggest the Administration to require at least two registered medical practitioners to certify that a scheme member is terminally ill. [EFHK]</li> </ul>	<p>withdrawal of accrued benefits on the ground of “terminal illness”.</p> <ul style="list-style-type: none"> <li>▪ Accepting certification by registered Chinese medicine practitioners is also consistent with the current statutory requirement for a scheme member’s early withdrawal of accrued benefits on “total incapacity” ground. In fact, apart from MPFSO, at present the Employment Ordinance (Cap. 57), the Employees’ Compensation Ordinance (Cap. 282) and the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (“PMCO”) (Cap. 360) also recognise medical treatment, examination and certification given by registered Chinese medicine practitioners. In particular, PMCO also specifies that registered Chinese medicine practitioners may make assessment in relation to patients’ remaining life expectancy. Besides, the outcome of the consultation shows that respondents support the proposal of accepting relevant certifications issued by Chinese medicine practitioners.</li> </ul>
Legal liability	<ul style="list-style-type: none"> <li>▪ Suggest the Administration to specify that medical practitioners’ liability arising from certifying that a scheme member is terminally ill should be</li> </ul>	<ul style="list-style-type: none"> <li>▪ We suggest that registered medical practitioner or registered Chinese medicine practitioners are only required to issue</li> </ul>

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	minimal and reasonable. [HKDU]	certification of “terminal illness” based on their professional advice and standards. Even if the actual life span of a scheme member, who has been certified terminally ill, turns out to be longer, the medical practitioner or Chinese medicine practitioner concerned would not be held liable legally solely for this reason.
Other withdrawal grounds	<ul style="list-style-type: none"> <li>▪ Suggest the Administration to consider allowing scheme members to withdraw their accrued benefits early for meeting medical expenses, making down payments for property purchases or on incapacity ground. [WS YEUNG, Momentum 107, HKCTU]</li> <li>▪ Suggest the Administration to conduct regular reviews on the scope of the early withdrawal grounds. [CC]</li> <li>▪ Suggest the Administration to clarify further the definition of “ceasing employment or self-employment permanently” and consider allowing retired scheme members who take up unpaid or full time pro-bono appointments in community organisations (e.g. charities) to withdraw accrued benefits on this ground. [Clifford Chance]</li> </ul>	<ul style="list-style-type: none"> <li>▪ The MPF System aims to assist the working population in saving for their retirement. Employers and employees are required to contribute 5% of the income of the relevant employee. Any suggestion to withdraw accrued benefits early means less will be retained for the retirement needs of the scheme member concerned in future.</li> <li>▪ Having considered the outcome of the 2011-12 public consultation, MPF contribution rate, and the medical services provided by the public healthcare system to the community, we do not consider it appropriate to include property purchases and medical treatment purposes as grounds of early withdrawal of accrued benefits. Besides, under MPFSO, scheme members are already allowed to withdraw accrued benefits early on the ground of “total</li> </ul>



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		<p>incapacity”.</p> <ul style="list-style-type: none"> <li>▪ Some overseas retirement protection schemes are in fact multi-purpose social savings systems, providing separate sub-accounts to meet other expenditure needs (e.g. medical and property purchase, etc.) and their contribution rates can be as high as 36%. They cannot be compared directly with the MPF System.</li> <li>▪ On the suggestion of allowing members who receive full-time salary for community work to withdraw accrued benefits on the ground of “ceasing employment permanently” or “ceasing self-employment permanently”, MPFA will study the issue when conducting relevant review in future.</li> </ul>
<b>(III) Approval of New Constituent Funds</b>		
<p>To add the new approval criterion of “in scheme members’ interests”</p>	<ul style="list-style-type: none"> <li>▪ Support empowering MPFA to refuse an application for approval of a constituent fund if it is not satisfied that the fund is in scheme members’ interests. [CC]</li> <li>▪ Suggest MPFA to elaborate on the factors that it will consider when deciding if a new proposed constituent fund is “in scheme members’ interests” in guidelines instead of doing so under</li> </ul>	<ul style="list-style-type: none"> <li>▪ At present, if MPFA is not satisfied that a new constituent fund is in scheme members’ interests, it may refuse the application for introducing the fund. We propose to specify this approval criterion in MPFSO in order to provide MPFA with a clearer legal basis for performing its function and protecting scheme members’ interests.</li> </ul>

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	<p>the law. [Clifford Chance]</p> <ul style="list-style-type: none"> <li>▪ Suggest MPFA to provide regulations and guidelines to explain the criterion of “in scheme members’ interests”, the basic requirements for applications and the processing time required. [HKAB, HKIFA, FHKKLU, Clifford Chance]</li> </ul>	<ul style="list-style-type: none"> <li>▪ MPFA announced in 2011 the adoption of the criterion of “in scheme members’ interests” to the industry, and set out in the guidelines / circular letter its considerations (e.g. whether the fees charged are lower than those of similar MPF constituent funds). MPFA will take these into account when approving constituent funds, and continue to monitor the approved constituent funds to ensure that their operations are “in scheme members’ interests”.</li> </ul>
Review of the approval process	<ul style="list-style-type: none"> <li>▪ Suggest the Administration to review the need for an applicant to obtain approvals from both MPFA and the Securities and Futures Commission (“SFC”) for introducing a new constituent fund, and simplify the review process as appropriate. [HKIFA]</li> <li>▪ Suggest the Administration to adopt a holistic approach in reviewing the approval process instead of focusing on driving down fees only. [HKIFA]</li> </ul>	<ul style="list-style-type: none"> <li>▪ Trustees are required to obtain approval for establishing MPF constituent funds from both MPFA and SFC. When considering whether or not to approve an application, in addition to the proposed fees, MPFA will consider other factors (such as whether the fund will provide a more diversified investment choice to scheme members in terms of fund type, asset class and geographical exposure). SFC will be responsible for considering the qualifications and experience of the investment manager, reviewing the offering documents, advertisements and marketing materials to ensure compliance with the content requirements of the SFC Code on MPF Products.</li> </ul>

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		<ul style="list-style-type: none"> <li>▪ MPFA and SFC hold regular meetings to discuss individual applications and approval procedures, etc. We will also continue to liaise with the industry and review the current arrangements to ensure an efficient approval process.</li> </ul>
<p>Clause 7 of the Bill (drafting-related)</p>	<ul style="list-style-type: none"> <li>▪ Regarding the newly added section 22BB(6) in MPFSO, suggest the Administration to delete the word “the” if the provision aims to cover scheme members in general (including those who may join the scheme in future). [Law Society]</li> </ul> <p><i>[Section 22(6): “Without limiting any other ground on which the Authority may refuse to approve any constituent fund under subsection (1), the Authority may refuse to approve a constituent fund if it is not satisfied that the fund is in <u>the</u> scheme members’ interests.”]</i></p>	<ul style="list-style-type: none"> <li>▪ Considering that “scheme members” in the provision aims to cover scheme members in general, we agree with the suggestion and are considering introducing CSA to delete the word “the” before “scheme members” in “... if it is not satisfied that the fund is in the scheme members’ interest” in section 22B(6) in the English text.</li> </ul>
<p>Clause 19 of the Bill (drafting-related)</p>	<ul style="list-style-type: none"> <li>▪ Suggest the Administration to add the new item 6AA under Schedule 6 “after item 6A” instead of “after item 6”.</li> </ul> <p><i>[Schedule 6: 6. A decision of the Authority imposing conditions on an applicant for the registration of a provident fund scheme.</i></p>	<ul style="list-style-type: none"> <li>▪ In accordance with the existing drafting convention, any new item added between item 6 and item 6A should be titled as item 6AA. We thus do not accept the suggestion.</li> </ul>

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	<p>6AA. A decision of the Authority to reject an application for –</p> <p>(a) the approval of a constituent fund of a registered scheme; or</p> <p>(b) the cancellation of approval granted in respect of a constituent fund of a registered scheme.</p> <p>6A. A decision of the Authority amending conditions imposed on the administration or marketing of a registered scheme.</p> <p>6B. A decision of the Authority imposing conditions on the administration or marketing of a registered scheme subsequent to the scheme's registration.]</p>	
<p>Other suggestions to enhance fund efficiency and facilitate fee reduction</p>	<ul style="list-style-type: none"> <li>▪ Suggest MPFA to set up a mechanism to consolidate or terminate MPF funds that are smaller in scale or could not achieve satisfactory returns. [HKCTU, FHKKLU]</li> </ul>	<ul style="list-style-type: none"> <li>▪ MPFA has all along been encouraging the industry to consolidate MPF schemes or funds, especially those which are smaller in scale or less efficient. Since 2003, a total of 16 schemes and 104 constituent funds have been cancelled, mostly as a result of consolidation.</li> </ul>
<b>(IV) Electronic Communications</b>		
<p>Adoption of non-electronic means for managing MPF accounts</p>	<ul style="list-style-type: none"> <li>▪ Agree that electronic communications will enhance efficiency, reduce administrative procedures involving scheme members and trustees, increase flexibility in managing MPF and save administrative cost, but suggest MPFA to</li> </ul>	<ul style="list-style-type: none"> <li>▪ Clause 47 of the Bill aims to amend section 206 of the General Regulation to allow the use of electronic communications in sending documents for the purposes of MPFSO. That said, the use of electronic</li> </ul>

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	<p>take into consideration the needs of scheme members (e.g. the elderly) and allow them to opt for non-electronic means for managing their MPF accounts. [HA, FHKKLU]</p>	<p>communications requires prior consent from recipients. As such, scheme members (as well as employers) may still opt for non-electronic means of communication after the implementation of the new arrangement.</p>
<b>(V) Prosecution Time Bar</b>		
<p>Extending prosecution time bar</p>	<ul style="list-style-type: none"> <li>▪ Suggest the Administration to extend the prosecution time bar to six years after the commission of the offence, which will make it harder for employers to evade their legal responsibilities thereby increasing protection for employees. [HKCTU]</li> </ul>	<ul style="list-style-type: none"> <li>▪ The time bar for initiating prosecution against employers for offences relating to non-enrolment of employees into MPF schemes or non-payment of MPF contributions is six months after the offence is discovered by or comes to the notice of MPFA. The current arrangement already allows time for employees to file complaints to MPFA after terminating their employment with the employers concerned. We thus do not consider it necessary to amend the relevant provision.</li> </ul>
<p>Fine</p>	<ul style="list-style-type: none"> <li>▪ Suggest the Administration to increase the fines charged for default MPF contributions to the same levels as the fines charged for wage default so as to enhance the deterrent effect. [HKCTU]</li> </ul>	<ul style="list-style-type: none"> <li>▪ According to MPFSO, the maximum penalty to be imposed on employers for default MPF contributions is the same as those for wage default under the Employment Ordinance, i.e. a fine of \$350,000 and three-year imprisonment.</li> </ul>

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<b>(VI) Information Disclosure</b>		
Principles	<ul style="list-style-type: none"> <li>▪ Welcome the Administration's proposed amendments to MPFSO to facilitate trustees to discharge their obligations under the Foreign Account Tax Compliance Act, but express concern on whether the current wording in the Bill will be sufficient to serve this purpose. [HKAB]</li> <li>▪ Agree with the Administration's proposal to update the information disclosure-related provisions in the Bill to allow MPFA, frontline regulators [i.e. the Hong Kong Monetary Authority ("HKMA"), SFC and Insurance Authority ("IA")] to disclose information to other regulators. [HKAB]</li> <li>▪ Suggest the Administration to specify the safeguard measures for disclosure and protection of confidential information under MPFSO in order to prevent misuse of relevant provisions. [CC, HKRSA]</li> </ul>	<ul style="list-style-type: none"> <li>▪ Clauses 11 and 55 of the Bill aim to facilitate MPF trustees and Occupational Retirement Schemes Ordinance ("ORSO") administrators in complying with reporting requirements regarding disclosure of scheme members' personal and financial information obtained in the performance of their functions under MPFSO and ORSO to foreign tax authorities, in order to enhance tax transparency or combat tax evasion.</li> <li>▪ The relevant provisions in the Bill, which have been drafted in view of the international trend in combatting tax evasion, aim to provide greater flexibility for MPF trustees and ORSO administrators in reporting information to revenue departments of overseas jurisdictions under reasonable circumstances and for compliance with international reporting requirements.</li> <li>▪ To protect data privacy and interests of all scheme members, the relevant party has to fulfill specified conditions before disclosing the information, i.e. having obtained written consent from MPFA and the person to whom of the information relates. In providing</li> </ul>

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		<p>such consent, MPFA may also impose conditions as appropriate. MPF trustees and ORSO administrators have to comply with the information disclosure mechanism (e.g. due diligence procedures in identifying information to be disclosed, obtaining consent from the data subject, as well as the form and frequency of disclosure, etc.) before any disclosure.</p> <ul style="list-style-type: none"> <li>▪ On the other hand, with reference to the laws governing the relevant financial regulators, we propose to update the list of individuals or organisations to whom MPFA, HKMA, SFC and IA may disclose information under sections 42 and 42AA of MPFSO (clauses 9 and 10 of the Bill). In preparing the updated list, MPFA has balanced between the need for protection of data privacy and regulatory needs. To protect the interests of scheme members and the general public, the Bill also proposes to allow MPFA to report such breaches to the specified entity for consideration of initiating an investigation if MPFA becomes aware of any suspected breaches of disclosure requirements in the course of its performance of the regulatory functions under MPFSO.</li> </ul>

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		<ul style="list-style-type: none"> <li>▪ In addition, any data user (including MPF trustees and ORSO administrators) has to comply with the Personal Data (Privacy) Ordinance (Cap. 486) when handling personal data of scheme members.</li> </ul>
<p>Clause 9 of the Bill (drafting-related)</p>	<ul style="list-style-type: none"> <li>▪ Regarding the new section 42(1)(caa) of MPFSO, suggest the Administration to add “the purpose of” before “seeking advice from” in the English text (no need to change the Chinese text), and delete the words “or proposing to act”. [Law Society]</li> </ul> <p><i>[The English text of section 42(1)(caa): “disclose the information for seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with a matter arising under this Ordinance;”]</i></p>	<ul style="list-style-type: none"> <li>▪ We do not consider it necessary to make such amendments.</li> <li>▪ The use of “for” instead of “for the purpose of” in the English text of the new section 42(1)(caa) of MPFSO is in compliance with the current legal drafting policy of plain language. It is common to remove the reference “the purpose of” in the newer ordinances.</li> <li>▪ The addition of the words “or proposing to act in a professional capacity” could cover the scenario where MPFA may need to disclose information restricted under section 41 of MPFSO to a counsel, solicitor or professional adviser for preliminary enquiries before formal appointment of the person to act in a professional capacity to give advice. Other ordinances also have similar wording”.</li> </ul>



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Clause 9 of the Bill (drafting-related)	<ul style="list-style-type: none"> <li>▪ Regarding the new section 42(1A)(c) of MPFSO, suggest the Administration to consider whether the proposed change of wording (i.e. “the disclosure <u>enables</u> the exercise or performance of a function imposed or conferred by law”) is in line with the legislative intent. (The original wording of the provision is “the disclosure <u>is necessary to enable</u> the exercise or performance of a function imposed or conferred by law”.) [Law Society]</li> </ul>	<ul style="list-style-type: none"> <li>▪ The proposed wording of the new section 42(1A)(c) of MPFSO aims to ensure legal clarity and prevent legal challenges against the specified entities in the course of disclosure. Besides, if MPFA becomes aware of suspected breaches of the legislation administered by the specified entities (e.g. in the course of carrying out its supervisory duties with respect to MPFSO), it allows MPFA to report such breaches to the relevant specified entities for consideration of performing their statutory functions (e.g. initiating an investigation into such breaches).</li> </ul>
<b>(VII) Other Comments on Drafting of the Bill</b>		
Clauses 29 and 44(4) of the Bill (drafting-related)	<ul style="list-style-type: none"> <li>▪ Regarding clause 29 of the Bill, suggest the Administration to add the word “reasonably” in the General Regulation, such that the amended provision will read “in a form and language, and must contain the particulars, as <u>reasonably</u> required by the Authority by written notice to the Trustee”. [HKAB]</li> <li>▪ Regarding clause 44(4) of the Bill, suggest the Administration to add the word “reasonably” in section 168(f) of MPFSO, such that the amended provision will read “any information as may be <u>reasonably</u> required and specified for the purposes</li> </ul>	<ul style="list-style-type: none"> <li>▪ MPFA will, based on operational needs, issue guidelines specifying the scope of the requested information. In devising the guidelines, MPFA will liaise with the industry and seek the views of the MPF Guidelines Committee (whose members include representatives of professional bodies and industry), in order to strike a reasonable balance between regulatory needs and avoiding gathering unnecessary information from trustees.</li> <li>▪ Regarding the wording of clause 44(4) of the</li> </ul>

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	of this section by guidelines". [HKAB]	Bill, it is consistent with that of section 154 of the General Regulation. In addition, considering that MPFA will only request trustees to provide information in a reasonable manner, we do not consider it necessary to add the word "reasonably" in the provision.
<b>(VIII) Other Comments on the MPF System</b>		
Fees	<ul style="list-style-type: none"> <li>▪ Urge MPFA to monitor the range and charges of MPF products developed by the industry closely to ensure that the products are designed appropriately and not being priced too high. [CC]</li> </ul>	<ul style="list-style-type: none"> <li>▪ MPFA has been closely monitoring and maintaining communication with the industry to ensure that the range and charges of MPF products are in scheme members' interests. MPFA has been conducting regular reviews on the operational arrangements and streamlining the procedures (e.g. introducing various measures to enhance system transparency, facilitate market competition and reduce system operation costs and fees since 2007).</li> <li>▪ We are considering introducing a "Core Fund", which will be subject to fee control and has to comply with the objectives of retirement savings, as the default fund of MPF schemes. It will become a benchmark for fees and performance of MPF funds, thereby help to increase market competition and drive down the fees.</li> </ul>

<b>Proposed Amendment</b>	<b>View</b>	<b>The Administration's Response</b>
Investment	<ul style="list-style-type: none"> <li>▪ Suggest the Administration to allow scheme members to invest their MPF contributions and accrued benefits in fixed-term bank deposits, specific equities or Tracker Fund of Hong Kong. [Momentum107, Peter WONG]</li> </ul>	<ul style="list-style-type: none"> <li>▪ MPF is set up as a mandatory and long-term investment for retirement protection. Its administration is handled by professional approved trustees and its investment is handled by investment management companies registered with SFC. This arrangement helps save scheme members from undue investment risks. The design of investment regulations has also save scheme members from making small-amount transactions so as to lower the cost impact.</li> <li>▪ The arrangement of investing MPF benefits in equities through constituent funds is also more efficient and flexible. Constituent funds can also invest in Tracker Fund of Hong Kong. In addition, each MPF scheme has at least one Conservative Fund, which mainly invests in bank deposits, high quality money market instruments and bonds, for scheme members' selection.</li> </ul>
Management	<ul style="list-style-type: none"> <li>▪ Suggest the Administration to set up a [fund] that is similar to the Exchange Fund and have it managed by the Government, HKMA or MPFA. The proposed fund should charge low-fee and offer stable return. [FHKKLU]</li> </ul>	<ul style="list-style-type: none"> <li>▪ The MPF System, which forms one of the pillars of Hong Kong's retirement protection system, is eventually introduced in the form of private retirement protection schemes after almost thirty years of deliberation. MPF schemes are administered by</li> </ul>

<b>Proposed Amendment</b>	<b>View</b>	<b>The Administration's Response</b>
		<p>professional approved trustees, while the contributions are invested by investment management companies registered with SFC. This design aims to reduce the administrative burden and costs for employers, protect scheme members' interests and consolidate scheme members' contributions for management and investment in order to achieve efficiency.</p> <ul style="list-style-type: none"> <li>▪ The suggestion of having a public trustee to manage MPF schemes may have neglected the consideration of setting up a new operation system and repeating the administrative tasks undertaken by private trustees. As such, it may not be economically efficient. In addition, we cannot underestimate the difficulty for the public trustee in achieving certain scale and efficiency as well as a low level of fees within a short period of time for the fund. We are of the view that MPF schemes should continue to be operated by the industry, and will work with MPFA to continue to enhance the system to facilitate fund competition and fee reduction.</li> <li>▪ In addition, the statutory functions of HKMA are to maintain the stability of the</li> </ul>

<b>Proposed Amendment</b>	<b>View</b>	<b>The Administration's Response</b>
		<p>monetary, banking and financial systems in Hong Kong. HKMA is also responsible for managing the Exchange Fund, of which the statutory objectives are governed by the Exchange Fund Ordinance (Cap. 66). The Exchange Fund is designed to maintain the stability and integrity of the monetary and financial system of Hong Kong, as well as Hong Kong's position as an international financial centre. The suggestion of having HKMA operating MPF funds is not in line with the former's statutory functions and thus not feasible.</p>
<p>Offsetting severance payments ("SP") and long service payments ("LSP")</p>	<ul style="list-style-type: none"> <li>▪ Request the Administration to abolish the SP and LSP offsetting arrangements. [FHKKLU]</li> </ul>	<ul style="list-style-type: none"> <li>▪ The arrangement of offsetting SP and LSP against MPF accrued benefits is an issue of concern to the community. It involves different stakeholders, affecting both the retirement benefits of employees and operating costs of employers. We need to continue to listen to the views of different sectors and carefully consider the matter in a holistic manner.</li> </ul>

## Reference

	<b>Name of Organisation / Individual</b>	<b>LegCo Paper No.</b>
Momentum 107	Submission from Momentum 107 dated 14 August 2014 (Chinese version only)	CB(1)2033/13-14(01)
ASHK	Submission from the Actuarial Society of Hong Kong dated 22 September 2014	CB(1)2033/13-14(02)
Law Society	Submission from the Law Society of Hong Kong dated 17 September 2014	CB(1)2033/13-14(03)
HKIFA	Submission from Hong Kong Investment Funds Association dated 23 September 2014	CB(1)2033/13-14(04)
HKFI	Submission from the Hong Kong Federation of Insurers dated 15 September 2014	CB(1)2033/13-14(05)
HKAB	Submission from the Hong Kong Association of Banks dated 15 September 2014	CB(1)2033/13-14(06)
HKDU	Submission from Hong Kong Doctors Union dated 18 September 2014	CB(1)2033/13-14(07)
Clifford Chance	Submission from Clifford Chance, Hong Kong, dated 19 September 2014	CB(1)2033/13-14(08)
CC	Submission from Consumer Council dated October 2014	CB(1)2033/13-14(09)
HKTA	Submission from Hong Kong Trustees' Association dated 23 September 2014	CB(1)2033/13-14(10)
EFHK	Submission from Employers' Federation of Hong Kong dated 23 September 2014	CB(1)2033/13-14(11)
HA	Submission from Hospital Authority dated 23 September 2014	CB(1)2033/13-14(12)
WS YEUNG	Submission from Mr YEUNG Wai-sing, Eastern District Council Member, dated 23 September 2014 (Chinese version only)	CB(1)2033/13-14(13)
Peter WONG	Submission from Mr Peter WONG dated 24 September 2014 (Chinese version only)	CB(1)2057/13-14(01)
HKRSA	Submission from the Hong Kong Retirement Schemes Association dated 30 September 2014	CB(1)2057/13-14(02)

<b>Name of Organisation / Individual</b>		<b>LegCo Paper No.</b>
HKCTU	Submission from Hong Kong Confederation of Trade Unions dated October 2014 (Chinese version only)	CB(1)2072/13-14(01)
FHKKLU	Submission from The Federation of Hong Kong and Kowloon Labour Unions dated 29 September 2014 (Chinese version only)	CB(1)2072/13-14(02)

**Financial Services and the Treasury Bureau  
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