

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

**Clause-by-clause Examination
Draft Committee Stage Amendments**

Members are invited to examine the Administration's proposed draft Committee Stage Amendments ("CSAs") marked in the relevant parts of the Mandatory Provident Fund Schemes (Amendment) Bill 2014 (**Annex**). The reasons for proposing these amendments are set out in the footnotes. The proposed CSAs may be subject to revision.

**Financial Services and the Treasury Bureau
Mandatory Provident Fund Schemes Authority
November 2014**

Mandatory Provident Fund Schemes (Amendment) Bill 2014

Clause 7

In the proposed section 21BB(6)¹:

- “(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 ~~the~~ scheme members’ interests.”

In the proposed section 21BB(8), in the Chinese text²:

- “(8) 管理局如拒絕要求批給核准或取消核准的申請，則須 —
- (a) 向申請人發出關於拒絕申請的書面通知；及
 - (b) 在該通知內**加入包括**一項陳述，列明拒絕的理由。”

Clause 11

In the proposed section 42AAB, add after subsection (1)³:

- “(1A) The Authority may give consent only if —
- (a) the information is to be disclosed to a person located in a place outside Hong Kong;
 - (b) the person exercises or performs in that place functions that correspond to those of the Commissioner of Inland Revenue; and
 - (c) the Authority is satisfied that the disclosure will enable or assist the person to exercise or perform the person’s official functions.”

¹ This amendment is proposed subsequent to the submission made by the Law Society of Hong Kong to the Bills Committee [vide LC Paper No. CB(1)2033/13-14(03)]. It aims to ensure that the reference to “scheme members” in the new section 21BB(6) covers scheme members in general.

² This amendment is proposed to ensure consistency of the Chinese equivalent of the word “include” in the English text with other similar expressions in the Chinese text.

³ This amendment is proposed to specify the criteria on which the Mandatory Provident Fund Schemes Authority (“MPFA”) could give consent to Mandatory Provident Fund (“MPF”) trustees or Occupational Retirement Scheme administrators for disclosure of information. The policy objectives of allowing such disclosure are to enhance tax transparency and combat tax evasion by complying with international reporting requirements.

Clause 22

In the proposed section 31(4)⁴:

- “(4) An applicant for membership of or participation in a registered scheme must be given a notice of participation that complies with subsection (4A) within 30 days ~~beginning on~~after whichever is the later of the following dates—
- (a) the date on which all the information required for the application is submitted;
 - (b) the date on which the applicant agrees to comply with the governing rules of the scheme.”

Clause 25

In the proposed section 35B(2)⁵:

- “(2) 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 —
- (a) the instructions are given in a form specified or approved by the Authority; and
 - (b) 30 days have passed since the member gave those instructions to the approved trustee. ”

⁴ This amendment is proposed to clarify that the counting of the 30 days does not include the day in paragraph (a) or (b).

⁵ This amendment is proposed subsequent to the submission made by Clifford Chance to the Bills Committee [vide LC Paper No. CB(1)2033/13-14(08)]. It aims to facilitate trustees’ payment of accrued benefits by instalment and ensure consistency with other similar expressions in the Mandatory Provident Fund Schemes (General) Regulation (Cap.485A) (“the General Regulation”) in relation to trustees’ processing of claims / applications from scheme members. We have made reference to sections 159 to 165 of the General Regulation when drafting the amendment.

New Clause 26A

To add after clause 26⁶:

“26A. Section 42AA added

In Part 4, after section 42—

Add

“42AA. Transitional provision for Part 4—Mandatory Provident Fund Schemes (Amendment) Ordinance 2014

(1) Section 31(4) applies in relation to an application for membership of, or participation in, a registered scheme with a relevant date that is before the commencement date if, on the commencement date—

- (a) the period of 30 days from the relevant date has yet to expire; and
- (b) the applicant has not been given a notice of acceptance under section 31(4) of the pre-amended Regulation.

(2) In this section—

commencement date (生效日期) means the date on which section 22 of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2014 comes into operation;

pre-amended Regulation (《未修訂規例》) means this Regulation as in force immediately before the commencement date;

relevant date (有關日期), in relation to an application for membership of, or participation in, a registered scheme, means whichever is later of the following dates—

- (a) the date on which all the information required for the application is submitted;
- (b) the date on which the applicant agrees to observe and accept the governing rules of the scheme.” ”

⁶ This amendment is proposed to introduce a transitional provision for clause 22 of the Bill, which removes the requirement for trustees to give a Notice of Acceptance (“NoA”) to a scheme applicant under the current section 31(4) of the General Regulation, while adding the requirement for trustees to give a Notice of Participation (“NoP”) which contains information as currently set out in the Membership Certificate to the scheme applicant. The transitional provision aims to set out clearly that if a trustee has not given an NoA to a scheme applicant before the commencement date, it is required to give an NoP to the scheme applicant after the commencement date.

New Clause 27A

To add after clause 27⁷:

“27A. Section 67A added

In Part 5, after section 67—

Add

“67A. Transitional provision for Part 5—Mandatory Provident Fund Schemes (Amendment) Ordinance 2014

(1) Subsection (2) applies if—

(a) a relevant employee of a participating employer becomes a member of a registered scheme before the commencement date; and

(b) on the commencement date—

(i) the period of 60 days after the employee becomes such a member has yet to expire; and

(ii) the employee has not been given a membership certificate under section 55 of the pre-amended Regulation.

(2) The employee must be given a notice of participation that complies with section 31(4A) within the 60-day period.

(3) Subsection (2) does not apply in relation to a casual employee who is a member of an industry scheme.

(4) In this section—

commencement date (生效日期) means the date on which section 27 of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2014 comes into operation;

pre-amended Regulation (《未修訂規例》) means this Regulation as in force immediately before the commencement date.”

Clause 49

In the proposed item 11B, in the Chinese text⁸:

“11B 35B(1) 核准受託人須 10,000 20,000 50,000”
遵守就分期支
付累算權益的
規定

⁷ This amendment is proposed to introduce a transitional provision for clause 27 of the Bill, which removes the requirement for trustees to give a Membership Certificate to an employee under section 55(1) of the General Regulation. The transitional provision aims to set out clearly that if a trustee has given an NoA but not a Membership Certificate to an employee before the commencement date, it is required to give an NoP to the employee after the commencement date.

⁸ This amendment is proposed to ensure consistency of the reference “Requirements on payment of accrued benefits by instalments” in both the Chinese and English texts.

Clause 51

To add before subclause (1)⁹:

“(1A) Schedule 2, section 1(1), definition of *final average monthly relevant income*, paragraph (a), after “immediately preceding”—

Add

“the earliest of”.

(1B) Schedule 2, section 1(1), definition of *final average monthly relevant income*, paragraph (a)(iii), after “withdrawal;”—

Add

“or”.

(1C) Schedule 2, section 1(1), definition of *final average monthly relevant income*, after paragraph (a)(iii)—

Add

“(iv) the date on which the trustee of the scheme receives the latest claim lodged by the member under section 6(9A) for which benefits have not been paid;”.

(1D) Schedule 2, section 1(1), definition of *final average monthly relevant income*, paragraph (b), after “whichever is the later, to”—

Add

“the earliest of”.

(1E) Schedule 2, section 1(1), definition of *final average monthly relevant income*, paragraph (b)(iii), after “withdrawal;”—

Add

“or”.

(1F) Schedule 2, section 1(1), definition of *final average monthly relevant income*, after paragraph (b)(iii)—

Add

“(iv) the date on which the trustee of the scheme receives the latest claim lodged by the member under section 6(9A) for which benefits have not been paid;”.

(1G) Schedule 2, section 1(1), definition of *minimum MPF benefits*, paragraph (a), after “accrued”—

⁹ This amendment is proposed to set out an additional scenario in the definitions of “final average monthly relevant income” and “years of post-MPF service” in section 1(1) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485B) (“Exemption Regulation”) to facilitate the calculation of minimum MPF benefits (“MMB”) in case a member is entitled to withdraw MMB on the ground of terminal illness under the proposed section 6(9A) of Schedule 2 to the Exemption Regulation.

Add

“and held”.

(1H) Schedule 2, section 1(1), definition of *years of post-MPF service*—

Repeal

“or the relevant date, whichever is the later, to”

Substitute

“, the relevant date or (if the member was previously paid any benefits under section 6(9A)) the date on which the trustee of the scheme received the claim lodged by the member for which benefits were last paid under the section, whichever is the latest, to the earliest of”.

(1I) Schedule 2, section 1(1), definition of *years of post-MPF service*, paragraph (c)—

Repeal

“withdrawal.”

Substitute

“withdrawal; or”.

(1J) Schedule 2, section 1(1), definition of *years of post-MPF service*—

Add

“(d) the date on which the trustee of the scheme receives the latest claim lodged by the member under section 6(9A) for which benefits have not been paid.”.

(1K) Schedule 2, section 1(2), after “accrued”—

Add

“and held”. ”

Clause 55

In the proposed section 78A¹⁰:

“78A. Disclosure by administrator or relevant employer

- (1) Despite section 77, an administrator or the relevant employer of an occupational retirement scheme may disclose information if—
 - (a) the Registrar has given written consent; and
 - (b) any of the following applies—
 - (i) the person to whom the information relates has given written consent;
 - (ii) the information is disclosed in a manner that prevents particulars relating to the identity of the person to whom the information relates from being ascertained from the information.

(1A) The Registrar may give consent only if—

- (a) the information is to be disclosed to a person located in a place outside Hong Kong;
 - (b) the person exercises or performs in that place functions that correspond to those of the Commissioner of Inland Revenue; and
 - (c) the Registrar is satisfied that the disclosure will enable or assist the person to exercise or perform the person’s official functions.
- (2) The Registrar may, in giving consent, impose conditions that it considers appropriate.”.
 - ~~(3) The Registrar may issue guidelines on the criteria or circumstances for giving consent.”.~~ ”

¹⁰ This amendment is consequential to the proposed amendment made to clause 11. Please refer to footnote 3.

New Clause 58

To add after clause 57¹¹:

“Part 8

Transitional and Savings

58. Transitional and savings

- (1) If the date on which a person begins employment with an employer falls before the commencement date, the following provisions as in force immediately before the commencement date apply in relation to that employment—
 - (a) section 7AA of the Mandatory Provident Fund Schemes Ordinance (Cap. 485);
 - (b) section 122 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A);
 - (c) section 1 of the Mandatory Provident Fund Schemes (Specification of Permitted Periods) Notice (Cap. 485 sub. leg. F).
- (2) If the date on which a person becomes self-employed falls before the commencement date, section 2 of the Mandatory Provident Fund Schemes (Specification of Permitted Periods) Notice (Cap. 485 sub. leg. F) as in force immediately before the commencement date applies in relation to that self-employment.
- (3) If—
 - (a) the last day of the period prescribed in section 131 of the pre-amended Regulation in relation to a self-employed person falls on or after the commencement date; and
 - (b) that last day is a day specified in subsection (4),
the next following day that is not a day so specified is the contribution day for the self-employed person.
- (4) The day specified for subsection (3) is—
 - (a) a Saturday;
 - (b) a public holiday; or
 - (c) a gale warning day or black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).
- (5) In this section—

commencement date (生效日期) means the date on which section 4 of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2014 comes into operation;

pre-amended Regulation (《未修訂規例》) means the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) as in force immediately before the commencement date.”

¹¹ This amendment is proposed to introduce transitional provisions for clauses 4, 21(1), 30, 32, 52 and 53, which aim to clarify the definitions of permitted period and contribution day for employees and self-employed persons in different contexts as appropriate. The transitional provisions aim to set out clearly the application of the provisions before and after their commencement date.