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**Paper for the House Committee Meeting
on 4 July 2014**

**Legal Service Division Report on
Mandatory Provident Fund Schemes (Amendment) Bill 2014**

I. SUMMARY

- 1. The Bill** The Bill amends the Mandatory Provident Fund (MPF) Schemes Ordinance (Cap. 485) and other related pieces of legislation to –

 - (a) allow phased withdrawal of accrued benefits upon a scheme member's retirement or early retirement;
 - (b) require a trustee to process, free of charge, no more than 12 withdrawal requests made by each scheme member per year;
 - (c) add "terminal illness" as a ground for the application of making early withdrawal;
 - (d) clarify the terms "permanently ceased employment or self-employment" and "departs from Hong Kong permanently" for the purpose of making early withdrawal;
 - (e) provide a legal basis for the Mandatory Provident Fund Schemes Authority (MPFSA) to refuse an application for introducing MPFs if the fund is not in the interest of scheme members;
 - (f) reduce the compliance requirements on trustees and scheme members;
 - (g) comply with the disclosure and reporting requirements in respect of foreign taxation and update the list of parties to whom the MPFSA and certain frontline regulators may disclose information;
 - (h) extend the limitation period to institute criminal proceedings under Cap. 485 from six months to three years; and
 - (i) make consequential or related amendments.

- 2. Public Consultation** According to the Administration, the MPFSA has consulted the public from December 2011 to March 2012 on withdrawal of MPF accrued benefits. A majority of the respondents support the proposal to allow withdrawal of MPF accrued benefits by instalments and early withdrawal on the ground of terminal illness.

- 3. Consultation with LegCo Panel** According to the Clerk to Panel on Financial Affairs, the Panel was consulted on 5 May 2014. Panel members have raised a number of concerns on the proposed amendments.

- 4. Conclusion** The Bill involves policy changes. In view of the concerns raised by the Panel members, Members may wish to study the Bill in greater detail. Scrutiny of the Bill is continuing and a further report may be made if necessary.

II. REPORT

The date of First Reading of the Bill is 2 July 2014. Members may refer to the LegCo Brief (File Ref.: MPF/2/1/38C Pt.2) issued by the Financial Services and the Treasury Bureau dated 25 June 2014 for further details.

Object of the Bill

2. The Bill proposes to amend the Mandatory Provident Fund (MPF) Schemes Ordinance (Cap. 485) and other related pieces of legislation to –

- (a) allow phased withdrawal of accrued benefits upon a scheme member's retirement or early retirement;
- (b) require a trustee to process, free of charge, no more than 12 withdrawal requests made by each scheme member per year;
- (c) add "terminal illness" as a ground for the application of making early withdrawal;
- (d) clarify the terms "permanently ceased employment or self-employment" and "departs from Hong Kong permanently" for the purpose of making early withdrawal;
- (e) provide a legal basis for the Mandatory Provident Fund Schemes Authority (MPFSA) to refuse an application for introducing MPFs if the fund is not in the interest of scheme members;
- (f) reduce the compliance requirements on trustees and scheme members;
- (g) comply with the disclosure and reporting requirements in respect of foreign taxation and update the list of parties to whom the MPFSA and certain frontline regulators may disclose information;
- (h) extend the limitation period to institute criminal proceedings under Cap. 485 from six months to three years; and
- (i) make consequential or related amendments.

Background

3. According to the LegCo Brief, the MPF System has been in operation for more than 13 years. The Administration considers that, in the light of operational experience, comments from stakeholders and market developments, Cap. 485 and the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) should be amended as proposed.

Key provisions of the Bill

Phased withdrawal and early withdrawal

4. At present, trustees are required to allow an MPF scheme member who has reached the age of 65 to withdraw MPF accrued benefits in a lump sum immediately or on a later day. The Bill proposes to allow a scheme member to withdraw the accrued benefits by phases (phased withdrawal) upon the member's retirement or early retirement. It also seeks to require a trustee to process a scheme member's request to make such withdrawal for no more than 12 times a year, free of charge, with no restriction on the amount withdrawn in each instalment.

5. In respect of making withdrawals of accrued benefits before a scheme member reaches the age of 65¹ (early withdrawal), the Bill proposes to allow such a member who suffers from any illness that is likely to reduce the member's life expectancy to 12 months or less (terminal illness) as certified by a registered medical practitioner or registered Chinese medicine practitioner to withdraw the accrued benefits. The accrued benefits so withdrawn would be exempted from the calculation of salaries tax. Further, for a scheme member who wishes to make an early withdrawal based on the ground of the member's early retirement or permanent departure from Hong Kong, the Bill seeks to clarify respectively that the member may take up employment again in the future and return to Hong Kong as visitor.

6. In addition, the Bill proposes to provide that a trustee concerned must not charge a scheme member any fee² or impose any penalty for the payment of accrued benefits other than any necessary transaction cost.

¹ Under existing legislation, in gist, a scheme member is only allowed to withdraw the whole of the accrued benefits before reaching the age of 65 on the ground of early retirement, permanent departure from Hong Kong, death, total incapacity or the benefit in the relevant account does not exceed \$5,000 as at the date of claim for payment.

² The requirement is subject to the 12 free-of-charge requests in respect of phased withdrawal.

Approval criteria of MPF constituent funds

7. According to the LegCo Brief, the MPFSA, in considering whether to grant an approval for the introduction of a new MPF constituent fund, has adopted an assessment criterion of whether the fund is in the scheme members' interest. However, the criterion is not provided in Cap. 485. As such, the Bill proposes to add the criterion to Cap. 485 to provide the legal basis for making an assessment with respect to the introduction of such funds.

Reduction of compliance duties on trustees and scheme members

8. The Bill proposes to remove the requirement for a trustee to give a membership certificate to an employee and to provide that a notice or other document may be given to the intended recipient by facsimile transmission or the specified electronic means. According to the LegCo Brief, the proposed amendments will help to reduce MPF fees. The Bill also seeks to remove the requirement for a scheme member to obtain a confirmation letter from the scheme member's former employer to certify the termination of contract of employment and a statutory declaration made by a scheme member for claiming early withdrawal of accrued benefits on the ground of total incapacity.

Disclosure arrangements

9. In respect of disclosure arrangements, according to the Administration, the respective provisions in the Occupational Retirement Schemes Ordinance (Cap. 426) and Cap. 485 do not allow an MPF trustee or an administrator under Cap. 426 to disclose certain personal or financial information of a scheme member even if the member consents to such disclosure. The Bill seeks to amend the said Ordinances to allow the said trustee or administrator to disclose such information, subject to specified conditions, to foreign tax authorities for complying with reporting requirements. The Bill also proposes to update the list of parties or organizations to which the MPFSA or relevant regulators may disclose information.

Extension of time limit for instituting prosecution

10. Section 26 of the Magistrates Ordinance (Cap. 227) provides that for a non-indictable offence where no time is limited by any enactment for making any complaint or laying any information in respect of such offence, such complaint shall be made or such information laid within 6 months from the time when the matter of such complaint or information respectively arose. The Bill seeks to extend the time limit for instituting prosecution of such offence from 6 months to 3 years under Cap. 485.

Consequential or related amendments

11. In addition, the Bill also proposes certain consequential or related amendments, which include –

- (a) a clarification on the determination of the contribution day and permitted period in MPF schemes;
- (b) allowing a committee of estate appointed under the Mental Health Ordinance (Cap. 136) to make a claim on behalf of a scheme member;
- (c) allowing certain scheme members under Cap. 426 to make withdrawal on the ground of terminal illness and providing that the proposed clarification in respect of early retirement and permanent departure from Hong Kong will be applicable to such members; and
- (d) certain textual amendments.

Commencement

12. If the Bill is passed, the amendments proposed under the Bill which concern phased withdrawal, the addition of terminal illness as a ground for making early withdrawal and the streamlining of procedures for trustees will come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette. The rest of the proposed amendments will come into operation on the day on which the Bill is published in the Gazette as an Ordinance.

Public Consultation

13. According to the Administration, the MPFSA has consulted the public from December 2011 to March 2012 on withdrawal of MPF accrued benefits. A majority of the respondents support the proposal to allow withdrawal of MPF accrued benefits by instalments and early withdrawal on the ground of terminal illness.

Consultation with LegCo Panel

14. According to the Clerk to Panel on Financial Affairs, the Panel was consulted on 5 May 2014. Panel members supported the various proposals in the Bill in principle. In respect of the proposal to allow early withdrawal on ground of terminal illness, Panel members were concerned about adopting "12 months or less life expectancy" in the definition of terminal illness and the difficulties in obtaining the required medical certification. Further, there were suggestions to allow early withdrawal on other grounds, such as meeting medical expenses for early diagnosis and healing of terminal illnesses. Regarding the proposal on phased withdrawal, Panel members suggested that the Administration should allow more free-of-charge withdrawals per year and provide incentives to encourage phased withdrawals.

Conclusion

15. The Bill involves policy changes. In view of the concerns raised by the Panel members, Members may wish to study the Bill in greater detail. Scrutiny of the Bill is continuing and a further report may be made if necessary.

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