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Paper for the House Committee Meeting on 9 January 2015

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

Purpose

This paper reports on the deliberations of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2014 ("the Bills Committee").

Background

2. The Mandatory Provident Fund ("MPF") System, incepted in December 2000, has been in operation for 14 years. It provides retirement protection for the working population in Hong Kong. At present, unless exempted, both employees and employers are required to make mandatory contributions at 5% of the income of the relevant employee to an MPF scheme, while self-employed persons are similarly required to make mandatory contributions at 5% of their relevant income. An MPF scheme member who has reached the age of 65 can withdraw MPF accrued benefits¹ derived from mandatory contributions in a lump sum immediately or at a later date. Claims may be lodged for early withdrawal of accrued benefits in specified circumstances². In 2011, the Mandatory Provident Fund Schemes Authority ("MPFA") launched a three-month public consultation on withdrawal of MPF accrued benefits and published the consultation

¹ References to accrued benefits in the paper refer to accrued benefits derived from mandatory contributions in the case of MPF schemes and the minimum MPF benefits in the case of occupational retirement schemes.

² Under existing legislation, a scheme member is allowed to withdraw the whole of the accrued benefits before the age of 65 on grounds of early retirement, permanent departure from Hong Kong, death, total incapacity or small balance account (i.e. the benefit in the relevant account does not exceed \$5,000 as at the date of claim for payment).

conclusions in September 2012. In light of the stakeholders' comments, operational experience and market developments, the Administration proposed recommendations to improve and enhance the flexibility of withdrawal arrangements.

3. To drive down MPF fees and charges, the Government and MPFA have been pursuing a range of measures, including encouraging mergers of existing schemes and funds. As proliferation of MPF constituent funds might render the individual fund size too small to achieve economies of scale and would not be conducive to fee reduction, MPFA has tightened approval of new funds in recent years. As at November 2014, there were 38 registered MPF schemes providing a total of 460 MPF constituent funds in the market.

The Bill

4. The Bill, which was introduced into the Legislative Council ("LegCo") on 2 July 2014, proposed to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO") and other related pieces of legislation to –

- (a) allow withdrawal of accrued benefits by instalments upon a scheme member's retirement or early retirement ("phased withdrawal");
- (b) require a trustee to process, free-of-charge, at least 12 withdrawal requests made by each scheme member per year on the ground of retirement or early retirement;
- (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 an express legal basis for MPFA to refuse to approve a constituent fund of registered schemes if it is not satisfied that the fund is in scheme members' interests;
- (f) reduce the compliance burden on trustees and employers by simplifying operational processes and communication;
- (g) revise the information disclosure arrangements in secrecy provisions to facilitate operations and compliance with reporting requirements to enhance tax transparency or combat tax evasion;
- (h) extend the time limit to institute criminal proceedings under MPFSO and the Mandatory Provident Fund Schemes (Exemption Regulation) (Cap. 485B) ("Exemption Regulation")

from six months to three years from the time when the matter arose; and

- (i) make consequential or related amendments.

The Bills Committee

5. At the House Committee meeting held on 4 July 2014, Members decided that a Bills Committee be formed to study the Bill. Hon CHAN Kin-por was elected Chairman of the Bills Committee. The membership list of the Bills Committee is in **Appendix I**.

6. The Bills Committee has held a total of six meetings with the Administration and received views on the Bill from relevant stakeholders and the public at its meeting held on 7 October 2014. A list of the organizations/individuals which/who have submitted views to the Bills Committee is in **Appendix II**.

Deliberations of the Bills Committee

7. The deliberations of the Bills Committee and the Administration's views are set out in the ensuing paragraphs.

Phased withdrawal of MPF accrued benefits (clauses 6(1), 6(2), 6(3) and 25)

8. The Bill proposes to allow a scheme member to withdraw MPF accrued benefits by instalments upon the member's retirement or early retirement. It also seeks to statutorily require a trustee to handle scheme members' requests for withdrawal free-of-charge at least 12 times a year with no statutory restriction on the minimum withdrawal amount in each instalment. The proposed withdrawal arrangement will also be applicable to the withdrawal of minimum MPF benefits from an MPF scheme by members of schemes under the Occupational Retirement Schemes Ordinance (Cap.426) ("ORSO") upon their termination of employment. The accrued benefits withdrawn by instalments, as in a lump sum, will be exempted from calculation of salary tax.

9. In light of prolonged life expectancy, members of the Bills Committee support in principle the phased withdrawal option which allows more flexibility for scheme members and facilitates scheme members' better financial management of their retirement. Members however hold different views on the minimum number of free-of-charge withdrawals per year and

whether a minimum amount should be set for each withdrawal. While supporting the option of phased withdrawal, some members share the MPF industry's concern about the potential increase in the administrative costs arising from more withdrawals. In line with the policy objective of driving down MPF fees and charges, the Chairman and some members suggest that the minimum number of free withdrawals be reduced to no more than four times a year or a minimum amount be set for each withdrawal to maintain administrative and operational efficiency. Some depositions, including Hong Kong Investment Funds Association, The Hong Kong Retirement Schemes Association and The Hong Kong Federation of Insurers, also call for setting a minimum amount, say \$5,000, for each withdrawal.

10. The Administration has explained that the original proposal, devised after considering views received during the 2011-2012 public consultation, was to statutorily require trustees to handle at least four requests for withdrawals free-of-charge a year with a minimum amount of \$5,000 for each withdrawal. Having considered the comments of members of the Panel on Financial Affairs, the Administration revised the proposal by increasing the minimum number of free withdrawals to 12 times a year. It also removed the minimum amount of \$5,000 for each withdrawal in light of comments from other stakeholders such as the Consumer Council.

11. The Administration notes that as with all service elements, having more withdrawals or imposing more withdrawal conditions will result in higher administrative costs. With due regard to the Bills Committee's deliberations, the industry's feedback, the depositions' suggestions and taking into account the policy consideration that any withdrawal arrangement should strike a reasonable balance between providing scheme members with greater flexibility in withdrawal and maintaining administrative efficiency and cost effectiveness of the MPF System, the Administration has agreed to revising the proposal to provide for a minimum of four free-of-charge withdrawals a year while no minimum withdrawal amount will be specified in the law. The Administration is of the view that compared to setting a minimum withdrawal amount, reducing the minimum number of free withdrawals will reduce trustees' operational requirements (e.g. manpower requirement) arising from handling such requests more directly, thereby lowering the potential costs for the system and scheme members. The Administration will move a Committee Stage amendment ("CSA") to the new section 35(B)(3) of the Mandatory Provident Fund Schemes (General) Regulation ("the General Regulation") (Cap. 485A) to reflect the suggestion of the Bills Committee.

12. Hon Starry LEE and Hon TANG Ka-piu request the Administration to review the operation of the phased withdrawal arrangement, and monitor the cost impact on trustees and the general withdrawal pattern of scheme

members after implementation to ascertain whether the new arrangements would satisfy scheme members' need. The Administration undertakes to review the new arrangements after implementation. In response to members' enquiry, the Administration has clarified that trustees are not prohibited from setting out in the governing rules of the respective MPF schemes a minimum withdrawal amount. That said, any amendment to the scheme rules will require approval from MPFA which will ensure that the terms and conditions are in scheme members' interests when processing such applications.

13. Hon LEE Cheuk-yan and some members suggest that to ensure that the administrative costs arising from the phased withdrawal arrangement would not be passed onto scheme members, trustees should be required to spell out clearly the fees for different payment arrangements of accrued benefits (including fees for withdrawals subsequent to the free-of-charge withdrawals). The Administration has advised that trustees must fully disclose the fee structure of their products under respective MPF schemes in the offering documents. Provisions are proposed in the Bill to require trustees not to charge any fee or impose any penalties or deduct any amount from scheme members for the payment of accrued benefits other than necessary transaction costs. Upon implementation of the phased withdrawal arrangements, trustees will update the offering documents to stipulate the fees for withdrawals subsequent to the statutorily required free-of-charge withdrawals. MPFA is responsible for approving the offering documents and the subsequent amendments, and will monitor the fees charged to scheme members to ensure that such fees are reasonable.

Early withdrawal of accrued benefits on the ground of terminal illness
(clauses 6(6), 37, 38, 40 and 51)

14. The Bill proposes to include "terminal illness" as an additional ground for early withdrawal of accrued benefits. A scheme member who suffers from a terminal illness that is likely to reduce the member's life expectancy to 12 months or less as certified by a registered medical practitioner or registered Chinese medicine practitioner ("CMP"), is allowed to withdraw the accrued benefits. Similar to other existing early withdrawal grounds, the benefits so withdrawn will be exempted from tax.

Definition of "terminal illness" and certification by registered medical practitioners

15. While members generally support the proposal of including the ground of "terminal illness" for early withdrawal of MPF accrued benefits, Dr Hon KWOK Ka-ki and some members have expressed disagreement to defining "terminal illness" as a remaining life expectancy of 12 months or less.

Pointing out that some medical practitioners may be reluctant to assess the remaining life expectancy of a terminally-ill patient as such an assessment would bring anxiety to the patient's family, these members consider that certification by a registered medical practitioner or a registered CMP that a scheme member suffers from a terminal illness should suffice to justify the early withdrawal.

16. The Administration has stressed that it is important to have an easy-to-understand and objective definition of "terminal illness" so that the claim procedure will be straightforward and operationally efficient. The proposed definition of "terminal illness" is necessary to provide a practical mechanism for medical practitioners to make an objective assessment, and can help prevent abuse of early withdrawal of accrued benefits on such ground. The Administration has further advised that the proposed definition is the outcome of the 2011-2012 public consultation and subsequent discussion with the medical professional bodies. Reference has also been made to the arrangement adopted for similar purposes in the Australian Superannuation System. The Administration is not aware of any overseas jurisdictions that have not provided a definition of "terminal illness" but only rely on medical practitioners' diagnosis of a "terminal illness" at any point in time for similar purposes.

17. Some members have expressed concern about the difficulties for CMPs to certify with certainty a scheme member's remaining life expectancy. The Administration has advised that accepting certification by registered CMPs is consistent with the current statutory requirement for a scheme member's early withdrawal of accrued benefits on "total incapacity" ground. 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 CMPs. In particular, PMCO specifies that registered CMPs may make assessment in relation to patients' remaining life expectancy. According to the Administration, the Chinese Medicine Council of Hong Kong has advised that relevant guidelines can be issued to registered CMPs if necessary.

18. Members note that registered medical practitioners and registered CMPs will not incur legal liability under the MPFSO if the actual life span of a scheme member, who has been certified terminally ill, turns out to be longer than 12 months. Hon NG Leung-sing suggests putting in place a mechanism to guard against abuse, such as making public the names of those medical practitioners who have frequently provided inaccurate assessment on the remaining life expectancy of scheme members. The Administration has

advised that a medical practitioner will be held liable for intentionally making a false statement. The Administration will keep in view the situation upon implementation of the proposal.

Appointment of a committee of estate under the Mental Health Ordinance

19. Members note that under the Bill, a committee of the estate appointed by the Court in accordance with the Mental Health Ordinance (Cap. 136) may claim early withdrawal of MPF accrued benefits on behalf of a mentally incapacitated scheme member and/or whose remaining life expectancy is certified by a registered medical practitioner or CMP to be less than 12 months. In this connection, Hon SIN Chung-kai and Dr Hon KWOK Ka-ki are concerned that the appointment by the Court may not be completed in time to address the pressing financial needs of the scheme member concerned. Members have suggested that the Administration should examine cases where the time required for the relevant appointment is unreasonably long, and consider issuing guidelines to help ensure a reasonable processing time.

20. The Administration has advised that according to the Judiciary, the time required for the appointment of a committee of the estate by the Court will depend on the complexity and circumstances of individual cases, e.g., whether the case will involve a variety of assets or whether there are disputes among parties who claim to have interests in the assets. Under normal circumstances, trustees will pay the benefits to the claimants as soon as practicable if they are satisfied with the relevant applications³. There should not be any undue delay caused by trustees.

Proposed addition of "critical illness" as a ground for early withdrawal of accrued benefits

21. Some members including Dr Hon KWOK Ka-ki and Hon SIN Chung-kai have expressed the view that scheme members who are certified to have "critical illness" should be allowed to make early withdrawal, and the Administration could make reference to the list of "critical illnesses" adopted by the insurance industry in this regard. These members consider that scheme members should have every right to use their MPF accrued benefits for treatment of critical illness to suit their urgent needs, particularly taking into account that some target therapy drugs for treatment of cancers or serious illness are not standard drugs in the Hospital Authority's Drug Formulary.

³ Trustees, having satisfied with the application, would pay the benefits to the claimant no later than whichever is the later of the of the following: (a) 30 days after the date on which the claim is lodged; (b) 30 days after the contribution day in respect of the last contribution period that ends before the claim is lodged.

22. The Administration has stressed that the MPF System is a dedicated scheme designed solely for saving for retirement purpose and its contribution rate is relatively low when compared to other overseas jurisdictions. "Terminal illness" is proposed to be included as a ground for early withdrawal because preservation of retirement savings for old age protection has become significantly less relevant to a dying scheme member. However, unlike "terminal illness", "critical illness" is not necessarily fatal and critically ill scheme members who recover after treatment will still require retirement protection. Allowing early withdrawal to meet medical expenses or other financial needs means less accrued benefits will remain for the retirement needs of the scheme member in future, which is inconsistent with the policy objective of the MPF System.

23. The Administration has supplemented that the insurance industry does not have a universal definition or a standard list of "critical illnesses", and the scope of "critical illness" differs depending on the coverage of different insurance policies. Moreover, under MPFSO, scheme members who can no longer perform the work prior to illness are already allowed to withdraw accrued benefits early on the ground of "total incapacity". Upon the enactment of the Bill, early withdrawal of benefits could be made on the ground of "terminal illness". Various social and welfare programmes have also been specifically developed to deal with a wide range of needs. For instance, the public healthcare system provides the community with medical treatment at a reasonably low cost and there are financial assistance programmes to assist patients in procuring medical treatments and drugs. In view of the above, the Administration does not consider it appropriate to, in addition to the existing ground of "total incapacity" and the proposed ground of "terminal illness", add "critical illness" or medical treatment purposes as grounds of early withdrawal of accrued benefits.

Statutory declaration for certain early withdrawals
(clauses 6(8), 37(4) and 51)

24. At present, a scheme member is required to make a statutory declaration for early withdrawal of his/her accrued benefits on the grounds of permanent departure from Hong Kong and early retirement pursuant to section 163 of the General Regulation and section 15 of MPFSO respectively. Members have no objection to the proposal in the Bill to amend the existing wordings of the relevant provisions to clarify that a permanently-departed declarant may return to Hong Kong later as a visitor and an early-retired declarant may take up employment again later, e.g. due to events or changes in financial conditions unforeseeable at the time of applying for early withdrawal of accrued benefits.

25. Members note that under the proposed new section 15(7) to MPFSO, a scheme member is deemed to have permanently ceased employment or self-employment if a declaration is made that he/she has ceased all employment or self-employment with no intention of becoming employed or self-employed again. Under the proposed new section 158(2) to the General Regulation, a scheme member departs from Hong Kong permanently if the member departs from Hong Kong to reside elsewhere with no intention of returning for employment or to resettle in Hong Kong as a permanent resident. Some members have expressed concern about potential abuse due to the difficulty in verifying whether a scheme member genuinely has no intention of becoming employed or self-employed again. In this regard, the Chairman suggests that the Administration should consider putting in place measures to guard against possible abuse.

26. The Administration notes members' concern and has advised that making a false or misleading statutory declaration may attract criminal liability. Section 43E of MPFSO makes it an offence, with a maximum of 1 year's imprisonment on the first occasion a person is convicted of making a false or misleading statement in a material respect and 2 years' imprisonment on each subsequent occasion the person commits this offence.

Driving down MPF fees

(clauses 4, 7, 19, 22, 27, 30, 31, 32, 34 and 44)

27. The Bill proposes to enable MPFA to refuse to approve the introduction of a new constituent fund by an approved trustee if MPFA is not satisfied that the fund is "in scheme members' interests", and to streamline compliance requirements to reduce compliance burden on trustees with a view to reducing trustees' costs in servicing scheme members which in turn will create room for fee reduction.

Approval criterion of "in scheme members' interests" for constituent funds

28. Members have no objection to the proposal in the Bill to specify the approval criteria of "in scheme members' interests" in MPFSO to provide MPFA with an express legal basis to refuse an application for introducing a constituent fund if MPFA is not satisfied that the fund is in scheme members' interests. To facilitate the operation and compliance of the MPF industry, some members share the industry's view that the Administration should issue guidelines to the industry setting out clearly the factors that MPFA will take into account when deciding whether a proposed constituent fund is "in scheme members' interests".

29. According to the Administration, MPFA has been adopting the criterion of "in scheme members' interests" in approving new MPF schemes/funds⁴. MPFA will continue to monitor the approved constituent funds to ensure that their operation is "in scheme members' interests" and will issue guidelines/circular letter for the industry's reference in the future.

Reducing trustees' compliance burden

30. Members have no objection to the amendments proposed in the Bill to reduce compliance burden on trustees by simplifying operational processes, removing overlapping or unnecessary certification requirements and facilitating the use of electronic means of communication between trustees and scheme members, thereby creating greater room for fee reduction.

31. While supporting the measures to drive down MPF fees, Dr Hon KWOK Ka-ki and some members are concerned that the full implementation of electronic communication between trustees and scheme members may prejudice employees' right to information, in particular those grassroots employees and the elderly who may not have access to the Internet. They hold the view that scheme members should be allowed to opt for non-electronic means for managing their MPF accounts, and call for measures to prevent trustees from charging scheme members for using paper correspondence.

32. The Administration has advised that the use of electronic communication 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. While there are no provisions in MPFSO prohibiting trustees from charging members administrative fee for the use of paper correspondence, none of the current 38 MPF registered schemes impose any fees or charges on scheme members for provision of documents as required under MPFSO. Moreover, all fees have to be specified in the fee table of the offering document that has to be approved by MPFA.

33. In response to members' enquiry on the extent to which the proposed use of electronic means of communications between trustees and scheme members can help drive down MPF fees, the Administration has advised that the actual fee reduction will depend on factors such as the take-up rate of usage of electronic communication by scheme members. According to an

⁴ MPFA has issued a circular letter to trustees in February 2011, elaborating on the adoption of the criterion of "in scheme members' interests".

independent consultancy study commissioned by MPFA in 2012, if paper communication in relation to scheme member support is fully replaced by online communication, a potential saving on administration costs equivalent to 0.02% of system wide net asset value per annum (i.e. approximately \$113 million based on the aggregate net asset values of all MPF schemes as at 31 August 2014) can be achieved.

Review of the dual approval process of new constituent funds

34. Relaying the industry's concern about the existing requirement to submit an application for new MPF funds to both MPFA and the Securities and Futures Commission ("SFC") for approval, some members urge the Administration to review the dual approval process of new constituent funds. There is a view that the Administration should simplify the approval procedure and eliminate the overlapping requirements as appropriate so as to expedite the approval process and reduce trustees' administrative costs to help drive down MPF fees.

35. The Administration has explained that the delineation of work of the two respective regulators (i.e. MPFA and SFC) is stipulated clearly in MPFSO and the Securities and Futures Ordinance (Cap. 571), relevant codes, and a Memorandum of Understanding⁵. MPFA and SFC hold regular meetings to discuss issues of common interest, such as application cases and processes. MPFA will continue to liaise with the industry and review the current arrangement to ensure an efficient approval process.

Other measures to enhance fund efficiency and facilitate fee reduction

36. Members have expressed concern about the low investment return of the MPF schemes and doubt whether the industry's efforts and the measures implemented by the Administration could enhance fund efficiency and achieve substantial reduction in MPF fees and charges. Hon LEUNG Kwok-hung has suggested that the Hong Kong Monetary Authority ("HKMA") be entrusted as a public trustee to manage MPF schemes and set up a fund, similar to the Exchange Fund ("EF"), that charges a low fee and offers a stable return to scheme members.

⁵ MPFA is responsible for approving applications to ensure the structure of MPF Investment Funds is in order and in compliance with approval criteria (such as fund type, asset class or geographical exposure). SFC is responsible for considering the qualifications and experience of investment managers, reviewing offering documents, advertisements and marketing materials to ensure compliance with the content requirements of the SFC Code on MPF products.

37. The Administration maintains that entrusting HKMA to operate MPF funds is not in line with its statutory functions⁶ and thus is not feasible. It is also inappropriate to compare the investment portfolio of EF with those of MPF schemes in view of their different investment objectives and strategies in asset allocation. According to the Administration, the suggestion of setting up a public trustee entails the establishment of a new operation system and repeating the administrative tasks undertaken by private trustees, and thus may not be economically efficient. 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 should not be underestimated. The Administration has also supplemented that the MPF System has been eventually introduced in the form of private retirement protection schemes after thirty years of deliberation. The MPF schemes should continue to be operated by the industry, i.e. administered by professional approved trustees, while the contributions are invested by investment management companies registered with SFC, to achieve efficiency.

38. The Administration has further advised that MPFA has been pursuing a basket of short, medium and long-term measures to enhance system efficiency and transparency, promote market competition and drive down MPF fees and charges. These measures include encouraging merger of existing smaller or less efficient MPF schemes or funds to achieve greater synergy and cost reduction, introducing the Fund Expense Ratio ("FER") and the Low Fee Fund List, implementing the Employee Choice Arrangement and encouraging personal account consolidation. According to the Administration, these initiatives have helped reduce MPF fees. In the period from July 2007 to November 2014, FER dropped from 2.1% to 1.68%, representing a reduction of some 20%. The report of the independent consultant commissioned by MPFA in 2012 found that consolidation of MPF schemes/funds would help trustees save administration costs by 0.05% (especially on compliance and out-of-pocket expenses). The Administration is also considering introducing a "Core Fund" to serve as default fund of each MPF scheme. The Core Fund, which will be subject to fee control, will become a benchmark and a driving force for competition and fee reduction in the MPF System. The Administration together with MPFA will conduct regular reviews to streamline operational arrangements and closely monitor MPF schemes to ensure that the range and charges of MPF products are in scheme members' interests.

⁶ The statutory functions of HKMA are to maintain the stability of the monetary, banking and financial systems in Hong Kong, as well as to manage the EF which statutory objectives are governed by the Exchange Fund Ordinance (Cap.66).

Revisions to disclosure arrangements in secrecy provisions
(clauses 9, 10, 11 and 55)

39. Members in general support the proposal in the Bill to update the secrecy provisions of the MPFSO and ORSO to allow MPF trustees and ORSO administrators to disclose scheme members' financial information to foreign tax authorities, subject to specified conditions,⁷ to facilitate compliance with international tax reporting obligations to enhance tax transparency or combat tax evasion. Members also have no objection to the proposal in the Bill to update the list of parties and organizations to whom the MPFA and frontline regulators of MPF intermediaries (i.e. HKMA, SFC, and the Insurance Authority) may disclose information.

40. The Bills Committee notes that section 41 of MPFSO does not prevent an approved MPF trustee or an ORSO administrator from disclosing certain information if MPFA has given written consent pursuant to the proposed section 42AAB(1)(a) of MPFSO and section 78A of ORSO. Members and the Legal Adviser to the Bills Committee have enquired about the factors which MPFA would take into account in deciding whether to give the written consent.

41. The Administration has advised that in considering giving written consent, MPFA may take into account a number of criteria, which include (i) the information is to be disclosed to a person located in a place outside Hong Kong; (ii) the person exercises or performs in that place functions that correspond to those of the Commissioner of Inland Revenue; and (iii) MPFA is satisfied that the disclosure will enable or assist the person to exercise or perform the person's official functions. The Administration will move a CSA to the Bill to include the criteria in the new section 42AAB(1A) of MPFSO and new section 78A(1A) of ORSO.

42. Highlighting the importance of obtaining specific information and data for policy analysis, Hon TANG Ka-piu has sought clarification on whether the secrecy provisions in the existing MPFSO or the Bill have empowered MPFA to request MPF trustees to provide specific information in relation to MPF schemes under their management to facilitate policy analysis.

43. The Administration has advised that MPFSO stipulates that MPFA may require an approved trustee to provide any specified information relating to a MPF scheme that is in the possession or control of the approved trustee.

⁷ MPFA may only disclose information under proposed section 42(1)(d) if it is satisfied that (a) the disclosure is in the interests of the scheme members concerned; (b) the disclosure is in the public interest; or (c) the disclosure enables the exercise or performance of a function imposed or conferred by law.

While the approved trustees are obliged to provide MPF scheme-related information requested by MPFA, both MPFA and trustees have to comply with the requirements stipulated in the Personal Data (Privacy) Ordinance (Cap. 486), including the requirement that the data to be collected have to be adequate but not excessive. Moreover, the Administration has to balance the costs and benefits in considering whether to collect specific data and information from trustees. Given that irregular collection schedule and collection of specific data or information from trustees can be time and resource consuming to trustees, and thus has possible cost implications, MPFA generally makes use of summary data obtained through regular data collection for analysis purposes.

Extending the prosecution time bar for offences
(clauses 13, 14, 15, 17 and 50)

44. Members note that unless otherwise specified in MPFSO, pursuant to section 26 of the Magistrates Ordinance (Cap. 227), MPFA is required to instigate criminal proceedings in respect of non-indictable offences under MPFSO within six months from the time when the matter arose. To increase protection for employees and facilitate effective enforcement by MPFA, members generally support the Administration's proposal to relax the prosecution time bar from six months to three years after the commission of the offence.

45. Hon Cyd HO and Hon POON Siu-ping have expressed concern that financial penalties imposed on employers for default MPF contributions has been low, and employees generally are hesitant to lodge a complaint whilst still in the employment of the defaulting employers. Hon Poon Siu-ping suggests that the prosecution time bar should be further extended to beyond three years from the commission of the offence to allow more time for MPFA to take enforcement actions against non-compliant employers. In this connection, the Hong Kong Confederation of Trade Unions has suggested increasing the fines charged for default MPF contributions to the same levels as those charged for wage default so as to enhance the deterrence effect, and to further extend the prosecution time bar to six years after the commission of the offence to tie in with the time limit for bringing up a civil claim so as to make it harder for employers to evade their legal responsibilities.

46. The Administration has explained that the maximum penalty to be imposed on employers for default MPF contributions under MPFSO is the same as those for wage default under the Employment Ordinance, i.e. a fine of \$350,000 and three-year imprisonment. In preparing the proposal of extending the prosecution time bar, the Administration and MPFA have taken into account the arrangements in similar legislation. 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. As the arrangement has already allowed time for employees to file complaints to MPFA after terminating their employment with the employers concerned, the Administration considers it not necessary to amend the relevant provision. The Administration has also explained that it is inappropriate to make direct comparison between the time bars for civil litigation and criminal prosecution.

Enhancing public education

47. Some members are gravely concerned that the MPF accrued benefits after deduction of fees will be unable to provide sufficient retirement protection for scheme members.

48. The Administration has pointed out that after the deduction of administrative and management fees, the annualized internal rate of return of MPF investments since the commencement of MPF System in 2000 is 4.3% while the average inflation rate during the same period is 1.6%. It has also pointed out that retirement protection system in Hong Kong is in line with the multi-pillar model recommended by the World Bank. MPF accrued benefits are not supposed to be the only source of retirement provision. The MPF System is complementary to other pillars, namely voluntary private savings and the non-contributory social security system, in providing retirement protection for the working population. As a retirement protection scheme, the MPF System is still at its initial stage and requires further development. The Government and MPFA will continue to enhance the MPF System such that it can provide greater retirement protection for the working population in Hong Kong.

49. Hon NG Leung-sing and some members urge the Administration to educate scheme members the role of the MPF System to complement personal savings in retirement planning, and launch publicity programmes to help the community understand the salient features of the Bill and the new phased withdrawal arrangements of accrued benefits after enactment of the Bill. The Administration and MPFA undertake to step up public education and publicity efforts after the passage of the Bill.

Committee Stage amendments to be moved by the Administration

50. Apart from the CSAs outlined in paragraphs 11 (clause 25) and 41 (clauses 11 and 55) above, the Administration has proposed to move CSAs to:

- (a) provide for transitional provisions regarding the requirement for giving a Notice of Acceptance, a Notice of Participation and a Membership Certificate upon commencement of the Ordinance (new clauses 26A and 27A);
- (b) clarify the definitions of permitted period and contribution day for employees and self-employed persons in different contexts (new clause 58);
- (c) clarify the calculation of minimum MPF benefits (clause 51);
- (d) refine the wording in relation to the counting of 30 days for the issue of notice of participation in a registered scheme (clause 22); and
- (e) refine the provisions for drafting clarity or consistency purposes (clauses 7 and 49).

A full set of the CSAs to be moved by the Administration is in **Appendix III**.

Resumption of Second Reading debate on the Bill

51. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting on 21 January 2015.

Advice sought

52. Members are invited to note the deliberations of the Bills Committee.

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

Membership List

Chairman Hon CHAN Kin-por, BBS, JP

Members Hon LEE Cheuk-yan
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon WONG Ting-kwong, SBS, JP
Hon Cyd HO Sau-lan, JP
Hon Starry LEE Wai-king, JP
Hon WONG Kwok-kin, SBS
Hon LEUNG Kwok-hung
Hon NG Leung-sing, SBS, JP
Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki
Hon SIN Chung-kai, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu, JP
Hon CHUNG Kwok-pan

(Total : 15 members)

Clerk Ms Annette LAM

Legal Adviser Miss Evelyn LEE

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

**List of organizations/individuals which/who have
submitted views to the Bills Committee**

1. Democratic Alliance for the Betterment and Progress of Hong Kong
2. The Federation of Hong Kong and Kowloon Labour Unions
3. Hong Kong Confederation of Trade Unions
4. Mr Peter WONG
5. Civic Party
6. The Actuarial Society of Hong Kong
7. The Law Society of Hong Kong
8. Hong Kong Investment Funds Association
- * 9. Momentum 107
- * 10. The Hong Kong Federation of Insurers
- * 11. The Hong Kong Association of Banks
- * 12. Hong Kong Doctors Union
- * 13. Clifford Chance, Hong Kong
- * 14. Consumer Council
- * 15. Hong Kong Trustees' Association
- * 16. Employers' Federation of Hong Kong
- * 17. Hospital Authority
- * 18. Mr YEUNG Wai-sing, Eastern District Council Member
- * 19. The Hong Kong Retirement Schemes Association

* submitted written views only

Mandatory Provident Fund Schemes (Amendment) Bill 2014

Committee Stage

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

<u>Clause</u>	<u>Amendment Proposed</u>
7	<p>(a) In the proposed section 21BB(6), by deleting “the scheme members’ interests” and substituting “scheme members’ interests”.</p> <p>(b) In the proposed section 21BB(8)(b), in the Chinese text, by deleting “加入” and substituting “包括”.</p>
11	<p>In the proposed section 42AAB, by adding—</p> <p>“(1A) The Authority may give consent only if—</p> <p>(a) the information is to be disclosed to a person located in a place outside Hong Kong;</p> <p>(b) the person exercises or performs in that place functions that correspond to those of the Commissioner of Inland Revenue; and</p> <p>(c) the Authority is satisfied that the disclosure will enable or assist the person to exercise or perform the person’s official functions.”.</p>
22(2)	<p>In the proposed section 31(4), by deleting “beginning on” and substituting “after”.</p>
25	<p>(a) In the proposed section 35B(2), by deleting everything after “if” and substituting—</p> <p>“—</p> <p>(a) the instructions are given in a form specified or approved by the Authority; and</p>

- (b) 30 days have passed since the member gave those instructions to the approved trustee.”
- (b) In the proposed section 35B(3), by deleting “12” and substituting “4”.

New

By adding—

“26A. Section 42AA added

Part 4, after section 42—

Add

“42AA. Transitional provisions 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 (of 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 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 observe and accept the governing rules of the scheme.”.”.

New By adding—

“27A. Section 67A added

Part 5, after section 67—

Add

“67A. Transitional provisions 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 (of 2014) comes into operation;

pre-amended Regulation (《未修訂規例》) means

this Regulation as in force immediately before the commencement date.”.”.

49(2) In the proposed item 11B, in the Chinese text, by deleting “核准受託人須遵守就”.

51 By adding before subclause (1)—

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

Add

“the earliest of the following”.

(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 the following”.

(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”—

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 that section, whichever is the latest, to the earliest of the following”.

(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*, after paragraph (c)—

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”.

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

Add

“and held”.

55

(a) In the proposed section 78A, by adding—

“(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.”.

(b) By deleting the proposed section 78A(3).

New

By adding—

“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 apply in relation to that employment—
 - (a) section 7AA of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) as in force immediately before the commencement date;
 - (b) section 122 of the pre-amended Regulation;
 - (c) section 1 of the pre-amended Notice.
- (2) If the date on which a person becomes self-employed falls before the commencement date, section 2 of the pre-amended Notice 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 (of 2014) comes into operation;

pre-amended Notice (《未修訂公告》) means the Mandatory Provident Fund Schemes (Specification of Permitted Periods) Notice (Cap. 485 sub. leg. F) as in force immediately before the commencement date;

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.”.