

Mandatory Provident Fund Schemes (Amendment) Ordinance 2015 (Commencement) Notice 2015

Purpose

This paper brief Members on the implementation of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2015 (Commencement) Notice 2015 (“Commencement Notice”).

Background

2. The Mandatory Provident Fund Schemes (Amendment) Ordinance 2015 (1 of 2015) (“Amendment Ordinance”), passed by the Legislative Council on 21 January 2015, aims to improve and enhance the flexibility of the withdrawal arrangements of Mandatory Provident Fund (“MPF”) accrued benefits, reduce trustees’ compliance burden to provide greater scope for reduction of MPF fees and to cover certain technical amendments. In accordance with section 1(3) of the Amendment Ordinance, certain provisions come into operation on the day on which the Amendment Ordinance was published in the Gazette on 30 January 2015.¹ Section 1(2) of the Amendment Ordinance provides that subject to those sections as specified under section 1(3) of the Amendment Ordinance, the Ordinance is to come into operation on a date to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

The Commencement Notice

3. Having reviewed the progress of the preparatory work, including revision of relevant guidelines and withdrawal forms, system enhancement by MPF trustees, and preparation for publicity, the Mandatory Provident Fund Schemes Authority (“MPFA”) recommends to bring into operation the following eight groups of proposals in the Amendment Ordinance on 1 August 2015 –

¹ Sections 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21(2), 23, 24, 26, 30, 31, 36, 37, 38, 50, 51(4) and (5), 52, 56 and 57 of the Amendment Ordinance, mainly covering the following proposals -

- (a) providing 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;
- (b) revising the information disclosure arrangements in secrecy provisions to facilitate operations and compliance with reporting requirements to enhance tax transparency or combat tax evasion;
- (c) extending the time limit to institute criminal proceedings under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and the Mandatory Provident Fund Schemes (Exemption Regulation) (Cap. 485B) (“Exemption Regulation”) from within six months to within three years after the commission of the offence; and
- (d) making consequential or related amendments.

- (a) allowing early withdrawal of MPF accrued benefits on “terminal illness” ground (i.e. sections 6(4)-(7), 16, 39, 40, 42, 48, 53, 58 and 59 of the Amendment Ordinance);
- (b) clarifying the terms “permanently ceased employment or self-employment” and “departs from Hong Kong permanently” for the purpose of making early withdrawal of MPF accrued benefits (i.e. sections 6(8) and 39 of the Amendment Ordinance);
- (c) simplifying the process for making withdrawal of MPF accrued benefits on “total incapacity” ground (i.e. sections 41 and 51(6) of the Amendment Ordinance);
- (d) reducing the compliance burden on trustees and employers by simplifying operational processes and communication (i.e. sections 22, 27, 28, 29, 33, 35, 49, 51(1) and (3) of the Amendment Ordinance);
- (e) clarifying the definitions of “permitted period” and “contribution day” for employees and self-employed persons in different contexts (i.e. sections 4, 21(1), 32, 34, 54, 55 and 60 of the Amendment Ordinance);
- (f) allowing committee of estate appointed under the Mental Health Ordinance to claim MPF accrued benefits on behalf of MPF scheme members (i.e. section 44 of the Amendment Ordinance);
- (g) making a minor technical amendment in relation to claim for payment of MPF accrued benefits of small balance (i.e. section 43 of the Amendment Ordinance); and
- (h) clarifying the time frame for payment of MPF accrued benefits (i.e. section 45(1) (in so far as it relates to the new section 166(1A)), 45(2), 45(3) (in so far as it relates to the new section 166(1A)) and 45(4) of the Amendment Ordinance).

4. Taking into account that much time is required by trustees to update their procedural guidelines, systems and forms, a few provisions relating to withdrawal of accrued benefits by instalments² will not be brought into operation by this Commencement Notice. MPFA targets to bring these provisions into operation in early 2016 the earliest. We will specify the commencement date of these provisions by a separate notice.

Publicity Arrangements

5. To ensure that the general public, especially MPF scheme members (i.e. including both employees and self-employed persons), employers and relevant parties are fully aware of the new arrangements, MPFA will roll out the following targeted publicity and education programmes to facilitate their understanding of the legislative changes—

² Sections 6(1) to (3), 24, 45(1) (in so far as it relates to the new section 166(1B)) and (3) (in so far as it relates to the new section 166(1B)), 46, 47, and 51(2) and (7) of the Amendment Ordinance.

(i) *Publication of leaflets*

- Distributing leaflets to medical practitioners' and patients' groups, as well as parties who may provide support to scheme members suffering from terminal illnesses, e.g. social workers, insurance agents and MPF intermediaries, to introduce the arrangements regarding the early withdrawal of MPF accrued benefits on the "terminal illness" ground.
- Making leaflets available to scheme members to explain the new arrangements regarding the withdrawal of MPF accrued benefits, including early withdrawal on the grounds of "terminal illness", "total incapacity" and "permanent departure from Hong Kong" and declaration in relation to "permanent cessation of employment or self-employment", etc.

(ii) *Internet announcements*

- Upon the completion of scrutiny on the Commencement Notice by the Legislative Council, MPFA will publish the implementation date and details regarding amendments in relation to removal of overlapping or unnecessary certification requirements on its website.

(iii) *Briefings*

- MPFA will also collaborate with employers' associations and human resources organisations to introduce details of the new arrangements (especially those proposals relating to employers) during their briefings to employers.

(iv) *MPF publications and press release*

- MPFA will include in its publications the new arrangements in relation to the early withdrawal of MPF accrued benefits and information in relation to simplifying operational processes. MPFA will also issue a press release to announce the implementation of the relevant amendments and contribute articles to various newspapers and magazines prior to commencement of the new arrangement.