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**Subcommittee on Mandatory Provident Fund Schemes (Amendment)
Ordinance 2015 (Commencement) Notice 2015**

Background Brief

Purpose

This paper provides background information on the Mandatory Provident Fund Schemes (Amendment) Ordinance 2015 (Commencement) Notice 2015 ("Commencement Notice"). It also gives a brief account of the relevant views and concerns expressed by members of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2014.

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 benefits 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 circumstances¹.

¹ 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).

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

The Mandatory Provident Fund Schemes (Amendment) Bill 2014

4. The Mandatory Provident Fund Schemes (Amendment) Bill 2014 ("the Bill") was introduced into the Legislative Council ("LegCo") on 2 July 2014. The Bill sought to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO") and other related pieces of legislation to provide for benefits withdrawal on terminal illness and by instalments from MPF schemes, and on terminal illness from certain schemes under the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485B) ("Exemption Regulation"), reduce trustees' compliance burden to provide greater scope for reduction of MPF fees, and also covered certain technical amendments. A Bills Committee was formed at the House Committee on 4 July 2014 to study the Bill.

5. The Bill was subsequently passed by the LegCo on 21 January 2015, and gazetted as the Mandatory Provident Fund Schemes (Amendment) Ordinance 2015 (1 of 2015) ("MPFSAO") on 30 January 2015. By virtue of section 1(3) of MPFSAO, certain provisions (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) came into operation on 30 January 2015. These provisions mainly cover 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 MPFSO and the Exemption Regulation from within six months to within three years after the commission of the offence; and
- (d) making consequential or related amendments.

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

6. By the Commencement Notice (L.N. 98 of 2015) made under section 1(2) of MPFSAO, the Secretary for Financial Services and the Treasury has appointed 1 August 2015 as the day on which the following provisions of MPFSAO come into operation: (a) sections 4, 6(4) to (8), 16, 21(1), 22, 27 to 29, 32 to 35, 39, 40 to 44; (b) section 45(1) in so far as it relates to the new section 166(1A) only; (c) section 45(2); (d) section 45(3) in so far as it relates to the new section 166(1A) only; (e) section 45(4); (f) sections 48, 49, 51(1), (3) and (6) and 53; and (g) Parts 5, 7 and 8 (i.e. sections 54 to 55 and sections 58 to 60). According to the Administration, the aforementioned provisions cover the following eight groups of proposal:

- (a) allowing early withdrawal of MPF accrued benefits on "terminal illness" ground (i.e. sections 6(4) to (7), 16, 39, 40, 42, 48, 53, 58 and 59 of MPFSAO);
- (b) clarifying the terms "permanently ceased employment or self-employment" and "departs from Hong Kong permanently" for the purpose of making early withdrawal (i.e. sections 6(8) and 39 of MPFSAO);
- (c) simplifying the process for withdrawal on total incapacity ground (i.e. sections 41 and 51(6) of MPFSAO);
- (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 MPFSAO);
- (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 MPFSAO);
- (f) allowing a committee of estate appointed under the Mental Health Ordinance (Cap. 136) to claim MPF accrued benefits on behalf of mandatory provident fund scheme members (i.e. section 44 of MPFSAO);
- (g) making a minor technical amendment in relation to a claim for payment of MPF accrued benefits of small balance (i.e. section 43 of MPFSAO); and
- (h) clarifying the time frame for payment of MPF accrued benefits (i.e.

section 45 of MPFSAO).

7. As regards the remaining provisions of MPFSAO (i.e. sections 6(1), (2) and (3), 25, 45(1) and (3), 46, 47, 51(2) and 51(7)) which relate to the withdrawal of MPF accrued benefits by instalments, the Administration intends to bring them into operation in early 2016 taking into account the time required by trustees to update their procedural guidelines, systems and forms.

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

8. The Bills Committee supported the Administration's proposals in the Bill to allow phased withdrawal of MPF accrued benefits by scheme members upon retirement and early retirement; include "terminal illness" as an additional ground for early withdrawal of MPF accrued benefits by scheme members; provide a legal basis for the MPFA to refuse applications for introducing new MPF funds if it is not satisfied that the fund is in scheme members' interest; simplify the withdrawal process on total incapacity ground and reduce trustees' compliance burden to provide greater scope for reduction of MPF fee. Members also raised no objection to other proposals in the Bill in relation to clarification of the terms "permanently ceased employment or self-employment" and "departs from Hong Kong permanently" for the purpose of making early withdrawal, revisions to disclosure arrangements in secrecy provisions and extension of the prosecution time bar for offences from six months to three years. The major views and concerns expressed by members of the Bills Committee that are relevant to the Commencement Notice are summarized below.

Early withdrawal of accrued benefits on the ground of terminal illness

9. While members generally supported the proposal of including the ground of "terminal illness"² for early withdrawal of MPF accrued benefits, some members had expressed disagreement to defining "terminal illness" as a remaining life expectancy of 12 months or less. These members considered that certification by a registered medical practitioner or a registered Chinese medicine practitioner that a scheme member suffered from a terminal illness should suffice to justify the early withdrawal.

² 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, is allowed to withdraw the accrued benefits. Similar to other existing early withdrawal grounds, the benefits so withdrawn will be exempted from tax.

10. The Administration advised that an easy-to-understand and objective definition of "terminal illness" would provide a practical mechanism for medical practitioners to make an objective assessment and help prevent abuse of early withdrawal of accrued benefits on such ground. The proposed definition of "terminal illness" was the outcome of the 2011-2012 public consultation and subsequent discussion with the medical professional bodies. Reference had also been made to the arrangement adopted for similar purposes in the Australian Superannuation System.

11. To guard against possible abuse, some other members suggested putting in place a mechanism, such as making public the names of those medical practitioners who had frequently provided inaccurate assessment on scheme members' remaining life expectancy. The Administration advised that a medical practitioner would be held liable for intentionally making a false statement.

12. Some members held the view that scheme members who were certified to have "critical illness" should be allowed to make early withdrawal as they should have every right to use their MPF accrued benefits for treatment of critical illness to suit their urgent needs. The Administration could make reference to the list of "critical illnesses" adopted by the insurance industry for this purpose. The Administration advised that the insurance industry did not have a universal definition or a standard list of "critical illness". Unlike "terminal illness", "critical illness" was not necessarily fatal and critically ill scheme members who recovered after treatment would still require retirement protection. Allowing early withdrawal to meet medical expenses or other financial needs meant less accrued benefits would remain for the retirement needs of the scheme member in future, which was inconsistent with the policy objective of the MPF System.

Reducing compliance burden on trustees

13. The Bills Committee supported in principle the proposals in the Bill to reduce compliance burden on trustees by facilitating the use of electronic means of communication between trustees and scheme members, thereby creating greater room for fee reduction. However, some members were concerned that the full implementation of electronic communication between trustees and scheme members might prejudice employees' right to information. These members considered that scheme members should be allowed to opt for non-electronic means for managing their MPF accounts, and called for measures to prevent trustees from charging scheme members for using paper correspondence. The Administration advised that the use of electronic communication required prior consent from recipients. While there were 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 imposed any fees or charges on scheme members for provision of documents as required under MPFSO. Moreover, all fees had to be specified in the fee table of the offering document that had to be approved by MPFA.

Clarification of certain terms for the purpose of making early withdrawal

14. The Bills Committee had no objection to the proposals in the Bill to clarify "permanently ceased employment or self-employment" and "departs from Hong Kong permanently" to provide that a scheme member would be deemed to have permanently ceased employment or self-employment or departed from Hong Kong if a declaration was made that he/she had ceased all employment or self-employment with no intention of becoming employed or self-employed again or that he/she had departed from Hong Kong to reside elsewhere with no intention of returning for employment or to settle in Hong Kong as a permanent resident. Some members expressed concern about the potential abuse in view of the difficulty in verifying the genuine intention of the scheme members concerned. The Administration advised that making a false or misleading statutory declaration might attract criminal liability under section 43E of MPFSO.

Appointment of a committee of estate under the Mental Health Ordinance

15. Some members enquired about the processing time for the appointment of a committee of estate by the Court under the Mental Health Ordinance (Cap. 136) to claim early withdrawal of MPF accrued benefits on behalf of a mentally incapacitated scheme member and/or whose remaining life expectancy was certified by a registered medical practitioner or Chinese medical practitioner to be less than 12 months. Members were concerned whether the appointment by the Court and the disbursement of funds by trustees would be completed in time to address the pressing financial needs of the scheme members concerned. The Administration advised that the time required for the appointment depended on the complexity and circumstances of individual cases. Trustees, if satisfied with the relevant applications, would pay the benefits to the claimants as soon as practicable.

Enhancing public education

16. Some members were gravely concerned that the MPF accrued benefits after deduction of fees would not be able to provide sufficient retirement protection for scheme members. In this connection, some members urged 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 undertook to step up public education and publicity efforts after the passage of the Bill.

Latest development

17. At the House Committee meeting on 22 May 2015, Members agreed to form a subcommittee to examine the Commencement Notice.

Relevant papers

18. A list of relevant papers is set out in **Appendix**.

Council Business Division 1
Legislative Council Secretariat
2 June 2015

List of relevant papers

Date	Event	Paper/Minutes of meeting
July 2014 to January 2015	Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2014	Legislative Council Brief File Ref: MPF/2/1/38C Pt. 2 Legal Service Division Report (LC Paper No. LS70/13-14) Background brief (LC Paper No. CB(1)1835/13-14(01)) Report (LC Paper No. CB(1)414/14-15)
22 May 2015	House Committee meeting	Legal Service Division Report (paragraphs 64 to 69) (LC Paper No. LS66/14-15)
3 June 2015	Meeting of Subcommittee on Mandatory Provident Fund Schemes (Amendment) Ordinance 2015 (Commencement) Notice 2015	Administration's paper (LC Paper No. CB(1)928/14-15(02))