中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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By Fax (2529 1663)

23 December 2015

Miss Wendy CHUNG
Prin AS for Financial Services & the Treasury
(Financial Services)3
Financial Services and the Treasury Bureau
Financial Services Branch
Financial Services Division
Division 3
24/F, Central Government Offices,
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Dear Miss CHUNG,

Mandatory Provident Fund Schemes (Amendment) Bill 2015

We are scrutinizing the legal and drafting aspects of the captioned Bill and shall be grateful if you could clarify the following matters:-

The proposed section 34DB(2) under clause 8

Under the proposed section 34DB(2), the approved trustee is expressly prohibited from investing the accrued benefits in a pre-existing account of a scheme member according to DIS if the member has reached 60 years of age before the commencement date of the proposed Part 4AA. However, section 34DB(2) also provides that the requirement under the provision is "without limiting section 27(2A)". Please clarify whether it is intended that the restriction on the investment of the accrued benefits of scheme members who have reached the age of 60 before the commencement date of the proposed Part 4AA in DIS under the proposed section 34DB(2) will apply generally, save for where a scheme member selects to invest in DIS, in which case the approved trustee has a duty under the proposed section 27(2A) to invest the accrued benefits in DIS in accordance with the member's selection.

Further, in relation to the effect of the proposed section 34DB(2), it is noted that under paragraph 6 of Part 2 of the proposed Schedule 10, there is a duty on the approved trustee to invest a DIS member's accrued benefits solely in the Age 65 Plus Fund if the trustee is not aware of the age of the member. Please consider and explain whether the two separate duties on the approved trustee under the proposed section 34DB(2) and paragraph 6 of Part 2 of the proposed Schedule 10 respectively would in operation be in conflict with each other. For instance, if in the event it transpires that the DIS member concerned has in fact reached the age of 60 before the commencement date, please clarify whether the approved trustee is taken to have acted in contravention of the proposed section 34DB(2), which specifically prohibits the investment of the scheme member's accrued benefits in DIS (including investing in the Age 65 Plus Fund).

<u>The transitional and savings provisions under clause 8</u>

Following from the above, if a scheme member who has reached the age of 60 before the commencement date can select to invest in DIS under the proposed sections 27(2A) and 34DB(2), please further consider and explain whether Divisions 3 and 4 in the proposed Part 4AA, which provides for the transitional and savings arrangements, should be made applicable to existing members who (i) have reached the age of 60 before the commencement date and (ii) whose accrued benefits are wholly or partially invested according to a pre-existing default investment arrangement.

<u>Specified notice and reply period under clause 8</u>

Under the proposed section 34DH(2), the approved trustee has to invest the existing member's accrued benefits into DIS if the member does not opt-out before the expiration of the reply period. The proposed section 34DH(3) states that "[d]espite section 27(2A), the trustee must comply with subsection (2) regardless of any specific investment instructions received by the trustee from the member for those benefits within the 14 days referred to in that subsection." The proposed section 34DI(6) is almost identical, save that it deals with the situation where the approved trustee fails to locate the scheme member or where the trustee has located the member and has given a specified notice to the member but the member does not opt-out before the expiration of the reply period. Please clarify whether, given that the proposed sections 34DH(3) and 34DI(6) prevail over the proposed section 27(2A), the proposed provisions are nevertheless subject to the right of members to switch out of DIS subsequently.

<u>The "de-risking" mechanism under clause 11</u>

Paragraphs 3 to 5 of Part 2 of the proposed Schedule 10 provide for the implementation of the "de-risking" mechanism, which is a part of DIS. Please clarify whether it is permissible for a DIS member to override the proposed "de-risking" mechanism by specifying to the approved trustee, pursuant to section 27(2A), the manner in which his accrued benefits are to be invested in the Core Accumulation Fund and the Age 65 Plus Fund, which may be substantially different from the proposed allocations specified in the proposed paragraphs 3 to 5.

It is appreciated that your reply in both English and Chinese could reach us before the next meeting scheduled for 11 January 2016.

Yours sincerely,

(Joyce CHAN)
Assistant Legal Adviser

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