

**Bills Committee on  
Mandatory Provident Fund Schemes (Amendment) Bill 2015**

**Clause-by-clause Examination  
Draft Committee Stage Amendments**

Members are invited to examine the mark-up version of the relevant parts of the Bill at Annex, with the proposed Government draft Committee Stage Amendments (“CSAs”) marked thereto. The reasons for these amendments are set out in the footnotes. The proposed CSAs are subject to revision.

**Financial Services and the Treasury Bureau  
Department of Justice  
Mandatory Provident Fund Schemes Authority  
February 2016**

## Mandatory Provident Fund Schemes (Amendment) Bill 2015

### Draft Committee Stage Amendments

#### Clause 1

In the proposed clause 1(2)<sup>1</sup>:

“(2) This Ordinance comes into operation on ~~the expiry of 6 months beginning on the day on which this Ordinance is published in the Gazette~~ 31 December 2016.”

#### Clause 8

In the proposed section 34DB (Approved trustee to invest accrued benefits according to default investment strategy) <sup>2</sup> :

“(1) An approved trustee of a registered scheme—

- (a) must provide in the governing rules of the scheme a default investment strategy that complies with Part 2 of Schedule 10;
- (b) must ensure that any investment related to the strategy accords with the requirements under this Part and Part 2 of Schedule 10;
- (c) subject to subsection (1A) and (2) and Divisions 3 and 4, must invest the accrued benefits of a scheme

<sup>1</sup> This amendment aims to provide certainty to the timing of the implementation of the Default Investment Strategy (“DIS”), i.e. on 31 December 2016.

<sup>2</sup> This amendment is made subsequent to the enquiry raised by the Assistant Legal Adviser of the Legislative Council (vide LC Paper No. CB(1)396/15-16(03)). It aims to specify that in respect of pre-existing accounts for which the age of the scheme members holding those accounts are known to have reached 60 years of age before the commencement date, the proposed section 34DB(1A)(b) would apply. In other words, those accounts will not be subject to the proposed transitional arrangements in the proposed Division 3 in the Bill. This necessitates some restructuring to the section.

member according to the strategy, ~~unless the member has given specific investment instructions for those benefits~~; and

- (d) must ensure that the strategy is available for selection by scheme members.

(1A) The operation of subsection (1)(c) is subject to—

(a) any specific investment instructions given by the member for the accrued benefits; and

(b) Divisions 3 and 4.

- (2) ~~Without limiting section 27(2A), the~~ The trustee must not invest the accrued benefits in a pre-existing account of a scheme member according to the strategy if the trustee is aware that the member has reached 60 years of age before the commencement date, ~~unless the member has given specific investment instructions to invest those benefits according to the strategy.~~

After the proposed section 34DB, add a new proposed section 34DBA (Transfer of accrued benefits to an account within same registered scheme)<sup>3</sup>:

“(1) If any or all of accrued benefits in an account of a scheme member of a registered scheme (transferor account) are transferred to another account of the member within the scheme (*transferee account*), then the approved trustee of the scheme must ensure that the transferred benefits remain invested in the same manner as they were invested immediately before the transfer, unless the member otherwise instructs as permitted under the governing rules.

(2) For the purposes of this section—

(a) section 27(2A) does not apply to oblige the trustee to invest the transferred benefits according to any specific investment instructions that the member has given before the transfer for the accrued benefits in the transferee account.

(b) section 34DB(1)(c) does not apply to oblige the trustee to invest the transferred benefits according to the default investment strategy if the member has given specific investment instructions for the transferred benefits before the transfer.

(3) In this section—

*transferred benefits* (轉移權益) means the accrued benefits in the transferor account that are transferred, or have been transferred, to the transferee account.”

<sup>3</sup> This amendment aims to reflect the prevailing practice of preserving the investment of the accrued benefits of scheme members in transferor accounts when being transferred to transferee accounts within the same scheme, thus avoiding unnecessary sale of fund units. For instance, when a scheme member ceases employment, his accrued benefits in the contribution account in a scheme would be transferred to a personal account in the same scheme if he has failed to give any instructions as to how to treat those benefits. The objective of the amendment is that the pre-existing investment mandate for investment of the benefits in the contribution account would be carried over to the personal account for investment of the transferred benefits. Consequential amendments will also be made to clauses 6, 8 (on the interpretation of specific investment instructions), 15, 21, 23, 24 and 26 of the Bill.

In the proposed section 34DF (Scheme members to whom this Division applies) <sup>4</sup> :

“(1) This Division applies to a scheme member of a registered scheme if—

- (a) ~~the member is below 60 years of age, or becomes 60 years of age, on the commencement date~~ either of the following descriptions is met—
  - (i) the member is below 60 years of age, or becomes 60 years of age, on the commencement date;
  - (ii) the trustee is not aware of the age of the member; and
- (b) ~~immediately before the commencement date,~~ all of the accrued benefits in a pre-existing account of the member were, as at the commencement date, have been invested according to a default investment arrangement of the scheme and, since then, have remained so invested.; and
- (c) ~~the approved trustee of the scheme reasonably believes that the trustee has not received specific investment instructions from the member for those benefits.~~

(2) Despite subsection (1), this Division does not apply to the member if the trustee reasonably believes that the trustee has received specific investment instructions from the member to invest any of the accrued benefits in the pre-existing account

---

<sup>4</sup> This amendment aims to clarify which scheme member will be subject to the proposed transitional arrangements. The policy intent is that the transitional arrangements will apply to a pre-existing account of a scheme member where all of the accrued benefits in that account have been invested according to a default investment arrangement of the scheme on and since the commencement date except where the approved trustee (1) is aware that the scheme member has, before the commencement date, reached 60 years of age; or (2) reasonably believes that the approved trustee has received specific investment instructions from the scheme member for any of the scheme member's accrued benefits in that account. It aims to make clear that if there is any change in circumstances (e.g. age, availability of investment instructions) during the period between the commencement date and the completion of the procedures under the transitional arrangements for that scheme member, and as a result, the criteria set out in the proposed sections 1(a) and (b) and (2) would not be fulfilled, the approved trustee is not required to complete the remaining procedures under the transitional arrangements (e.g. issue the Specified Notice or transfer the benefits concerned to the DIS). It also clarifies that a default scheme member with unknown age should be covered by the transitional arrangements.

| according to the default investment arrangement.”

In the proposed section 34DG (Accrued benefits in pre-existing account) <sup>5</sup> :

“(1) ~~Unless the~~ The approved trustee of a registered scheme must continue to invest the accrued benefits in the DIA account of an existing member according to the default investment arrangement of the scheme unless the trustee has received specific investment instructions from ~~an existing~~ the member for ~~those the accrued benefits in the member's DIA account, the trustee must continue to invest those benefits according to the default investment arrangement of the scheme.~~

(1A) Despite subsection (1), if those benefits have become invested according to the default investment strategy under section 34DH(2) or 34DI(3) or (5), the trustee must continue to invest any accrued benefits in that account according to the default investment strategy, whether or not the member is still an existing member, unless the trustee has received specific investment instructions from the member for those benefits.

(2) Subsection (1) does not limit the operation of sections 34DH, 34DI and 34DJ.”

---

<sup>5</sup> This amendment aims to clarify that after investing the accrued benefits in the account according to the DIS pursuant to the proposed sections 34DH and 34DI, any new accrued benefits coming into the account (e.g. new contributions or any benefits transferred to the account from an account of another scheme) must be invested according to the DIS.

In the proposed section 34DH (Approved trustee to give specified notice to scheme member) <sup>6</sup> :

- “(1) The approved trustee of a registered scheme must, within 6 months after the commencement date—
- (a) give a specified notice to each existing member in respect of the DIA account, or each of the DIA accounts, of the member; and
  - (b) in the specified notice, inform the member of the requirements under subsection (2).
- (2) Subject to section 34DJ, if, by the expiry day of the reply period for ~~the a~~ specified notice given under subsection (1) to a scheme member,—
- (a) the trustee has not received specific investment instructions from the member for the accrued benefits in a DIA account of the member; and
  - (b) the member is still an existing member,
- the trustee must, within 14 days after the expiry day, invest those benefits in the account according to the default investment strategy of the scheme.
- (3) Despite 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.”

---

<sup>6</sup> This amendment aims to clarify the obligation of an approved trustee to invest a scheme member's accrued benefits according to the DIS within the 14-day period following the 42-day reply period in a situation where there is a change in circumstances of the scheme member on or before the expiry date of the reply period. That is, the approved trustee will not be required to complete the steps under the proposed section 34DH(2) of investing a scheme member's accrued benefits held in a DIA account according to the DIS if the approved trustee is aware, on or before the expiry date of the reply period, that the scheme member no longer meets the description set out in footnote 4 above.

In the proposed section 34DI (Locating scheme members whose addresses are unknown etc.) <sup>7</sup>:

“(1) This section applies if—

- (a) it comes to the knowledge of an approved trustee of a registered scheme that a specified notice given to an existing member under section 34DH(1) is not taken to have been given under section 206(1A) or (2) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A); or
  - (b) the trustee ~~is not aware of~~~~does not know~~ any contact details of an existing member that enable the trustee to give the specified notice to the member under section 34DH(1).
- (2) The trustee must proceed to locate the member in the manner, and within the time limit (*time limit*), specified in the guidelines for the purposes of this section.
- (3) Subject to section 34DJ, if, after subsection (2) has been complied with in respect of a scheme member,—
- (a) the member cannot be located before the expiry of the time limit; and
  - (b) the member is still an existing member,
- the trustee must, within 14 days after the expiry of the time limit, invest the accrued benefits in the DIA account, or all of the DIA accounts, of the member, according to the default investment strategy.
- (4) ~~If, after subsection (2) has been complied with, the a scheme member~~ in relation to whom subsection (2) applies is located before the expiry of the time limit, and the member is still an existing member, the trustee must, within 14 days after the day on which the member is located—
- (a) in a case ~~that falls~~falling within subsection (1)(a), give another specified notice to the member informing the member of the requirements under subsection (5); or
  - (b) in a case ~~that falls~~falling within subsection (1)(b), give a specified notice to the member informing the member of

<sup>7</sup> This amendment is consequential to the amendments to the proposed section 34DH.

the requirements under subsection (5).

- (5) For the purposes of subsection (4) and subject to section 34DJ, if, by the expiry day of the reply period for the notice given under that subsection,—

(a) the trustee has not received specific investment instructions from the member for the accrued benefits in a DIA account of the member; and

(b) the member is still an existing member,

the trustee must, within 14 days after the expiry day, invest those benefits in the account according to the default investment strategy of the scheme.

- (6) Despite section 27(2A), the trustee must comply with subsection (3) or (5) 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.”

## Clause 11

In the proposed section 4(2) <sup>8</sup> :

“(1) Subject to section 34DB(2), this section applies to a scheme member of a registered scheme who is 50 years of age or above, but below 65 years of age.

(2) The approved trustee of the scheme must—

(a) invest the accrued benefits of the member in the Core Accumulation Fund and the Age 65 Plus Fund;

(aa) if the member’s accrued benefits have been invested under section 3 but not yet invested under this section—

(i) invest, within 60 days beginning on the member’s 50<sup>th</sup> birthday, a portion of the member’s investments in the Core Accumulation Fund in the Age 65 Plus Fund; and

(ii) ensure that immediately after the investment is made, the investments in the respective Funds, each relative to the member’s total investments in both funds, are of the percentages set out in columns 2 and 3, opposite to the age of 50 in column 1, in the table in subsection (3) (*Table*);

(b) if the member’s accrued benefits have been invested under this section—ensure that—

(i) allocate once in each year within 60 days beginning on the birthday of the member in each that year, the member’s investments in the Core Accumulation Fund and the Age 65 Plus Fund respectively; and

---

<sup>8</sup> This amendment aims to specify clearly the time limit (i.e. within 60 days beginning on the birthday of a scheme member) for reallocation of the accrued benefits by the approved trustee under the de-risking mechanism. It also aims to clarify that the approved trustee is required to ensure that the allocation of accrued benefits of the scheme member is of the requisite percentage at the point of reallocation and not other points in time. Moreover, this amendment improves clarity to cater for the situation where an approved trustee is subsequently aware of the age of a scheme member whose age is previously unknown, such that the accrued benefits which have all been allocated to the Age 65 Plus Fund could be reallocated between the Core Accumulation Fund and the Age 65 Plus Fund according to the proposed section 4(3) of Schedule 10 to the MPF Schemes Ordinance.

(ii) ensure that immediately after the allocation, the investments in the respective Funds, each relative to the member's total investments in both funds, are of the percentages set out in columns 2 and 3, opposite to the member's age in column 1, of the Table~~table in subsection (3)~~; and

(c) for accrued benefits in the member's account in a particular year that have not been invested under this section, invest those benefits in the Core Accumulation Fund and the Age 65 Plus Fund according to the proportion expressed in the percentages set out in columns 2 and 3, opposite to the member's age in column 1, of the Table~~table in subsection (3)~~.

(3) The table of percentages for the purposes of subsection (2) is as follows—

Column 1	Column 2	Column 3
Age	Core Accumulation Fund	Age 65 Plus Fund
50	93.3%	6.7%
51	86.7%	13.3%
52	80.0%	20.0%
53	73.3%	26.7%
54	66.7%	33.3%
55	60.0%	40.0%
56	53.3%	46.7%
57	46.7%	53.3%
58	40.0%	60.0%
59	33.3%	66.7%
60	26.7%	73.3%
61	20.0%	80.0%
62	13.3%	86.7%
63	6.7%	93.3%
64	0.0%	100.0%

”

**Financial Services and the Treasury Bureau  
Department of Justice  
Mandatory Provident Fund Schemes Authority  
February 2016**