

Mandatory Provident Schemes (Amendment) Bill 2015 (“the Bill”)

Debate and voting arrangements

Object of the Bill :

To amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“the Ordinance”) and the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485, subsidiary legislation A) (“the Regulation”), to provide for matters concerning the introduction of a default investment strategy and to make miscellaneous amendments for more effective management of the Ordinance and the Regulation.

First debate	: Clauses with no amendment	– Clauses 2, 3, 5, 10, 12, 13, 14, 16 to 20, 22 and 25
Voting	: To vote on the above clauses standing part of the Bill	
Second debate	: Clauses of the first group of amendments by the Secretary for Financial Services and the Treasury (“SFST”)	– Clauses 4, 6 to 9, 15, 21, 23, 24 and 26
Joint debate on the original clauses and the amendments thereto.		
Theme of debate: SFST’s amendments to the above clauses		
Clauses 4, 6, 7, 15, 21, 23 and 24		
<ul style="list-style-type: none"> - <u>In view of the addition of section 34DBA (Transfer of accrued benefits to an account within the same registered scheme) in clause 8, to make consequential technical amendments by adding the reference to section 34DBA(1) to the following clauses:</u> the proposed section 20B(1)(d) in clause 4, the proposed section 30(1A) in clause 6(2), the proposed section 33(1)(c) in clause 7(3), the proposed section 33(6)(c) in clause 7(6), the proposed section 39(2)(ca) in clause 15, the proposed section 75(1)(aa) in clause 21, the proposed section 102(2)(e) in clause 23(2) and the proposed section 103(1)(ab) in clause 24. - <u>In view of the addition of section 34DG(1A) (relating to accrued benefits in pre-existing account) in clause 8, to make consequential technical amendments by adding the reference to section 34DG(1A) to the following clauses:</u> the proposed section 20B(1)(d)(v) in clause 4, the proposed section 33(1)(c)(iv) in clause 7(3), the proposed section 33(6)(c)(iv) in clause 7(6), the proposed section 39(2)(ca)(iv) in clause 15 and the proposed section 75(1)(aa)(iv) in clause 21. 		

Clause 8

- To amend the proposed section 34DB

- (a) to amend the proposed section 34DB(1)(c) and add section 34DB(1A) to expressly state that an approved trustee of a registered scheme must provide a default investment strategy that complies with the statutory requirements set out in the Bill to invest the accrued benefits of a default scheme member according to the default investment strategy, but the member concerned may give specific investment instructions to state whether he or she opts for investment according to the default investment strategy;
- (b) to amend the proposed section 34DB(2) to expressly state that in the case of a pre-existing account, the trustee must not invest the accrued benefits in the pre-existing account of a scheme member according to the default investment strategy if the trustee is aware that the member has reached 60 years of age before the commencement date of the strategy, unless the member has given specific investment instructions to invest the accrued benefits according to the strategy; and
- (c) to add section 34DB(3) to expressly state that section 34DB(1)(c) as amended does not oblige an approved trustee to invest the accrued benefits in an account of a scheme member of a registered scheme according to the default investment strategy under the circumstances of a restructuring of the registered scheme and a merger of constituent funds.

- to add section 34DBA (Transfer of accrued benefits to an account within the same registered scheme)

to enable a scheme member to transfer all or any of the accrued benefits in an account of a registered scheme (*transferor account*) to another account of the member within the same scheme (*transferee account*) while the pre-existing investment mandate for investment in the transferor account will be carried over to the investment of the accrued benefits that have been transferred to the transferee account, in order to avoid unnecessary sale of fund units.

- to amend the proposed section 34DD

to make a textual amendment to the Chinese text of the proposed section 34DD(1)(a)(v).

- to amend two definitions in the proposed section 34DE

- (a) in view of the proposed amendment to section 34DB(3), to make a consequential technical amendment to the definition of “default investment arrangement”; and
- (b) in view of the proposed amendment to section 34DF, to make a consequential technical amendment to the definition of “default investment arrangement account”.

- to amend the proposed section 34DF

to clarify that the transitional arrangements will only apply to a pre-existing account of a scheme member where all of the accrued benefits in the account have been invested according to a default investment arrangement of a registered scheme on and since the commencement date of the arrangement except where the approved trustee (i) is aware that the scheme member has, before the commencement date of the arrangement, reached 60 years of age or (ii) reasonably believes that he or she has received specific investment instructions from the scheme member. The amendment also provides that those default scheme members with unknown age would be covered by the transitional arrangements.

- to amend the proposed section 34DG

to amend the proposed section 34DG(1) and add section 34DG(1A) to clarify that after investing the accrued benefits in the account of a scheme member according to the default investment strategy pursuant to sections 34DH and 34DI as amended, 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 default investment strategy.

- to amend the proposed sections 34DH and DI

- (a) to amend the proposed section 34DH(2) to clarify the obligation of an approved trustee to invest a scheme member's accrued benefits according to the default investment strategy 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 of investing a scheme member's accrued benefits held in a default investment arrangement account according to the default investment strategy 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 section 34DF as amended; and
- (b) in view of the amendments to section 34DH(2), to make consequential amendments to the proposed sections 34DI(1)(b), (3), (4) and (5).

Clause 9

- In the English text of section 9(2), to delete "After" and substitute "At" for consistency in the meanings of the English and Chinese texts.

Clause 26

- In view of the amendment to section 34DB(2), to make consequential amendments to item 4F of the proposed Schedule 4 (financial penalties) in clause 26;
- in view of the new section 34DBA, to add item 4FA to the proposed Schedule 4 (financial penalties) in clause 26 to expressly state the amount of financial penalties if an approved trustee fails to comply with the following requirement: an approved trustee must ensure that the transferred benefits remain invested in the same manner as they were invested immediately before the transfer unless the scheme member otherwise instructs; and
- in view of the new section 34DG(1A), to add item 4IA to the proposed Schedule 4 (financial penalties) in clause 26 to expressly state the amount of financial penalty if an approved trustee fails to comply with the following requirement: an approved trustee must continue to invest any accrued benefits in the default investment arrangement account according to the default investment strategy after the accrued benefits have been invested according to the strategy under section 34DH(2) or 34DI(3) or (5) unless having received specific investment instructions.

Voting : To vote on the above amendments together, and then the original clauses or the clauses as amended standing part of the Bill

Third debate	: Clauses of the first to third groups of amendments by Hon TAM Yiu-chung, clauses of the first and second groups of amendments by Hon TANG Ka-piu and clauses of the first group of amendments by Hon WONG Yuk-man	– Clauses 8 and 11
---------------------	--	---------------------------

Joint debate on the original clauses and the amendments thereto.

Theme of debate: Fee control mechanism and annual review

- **Hon TAM Yiu-chung (First group of amendments - to amend clause 8)** : – In the proposed section 34DA in clause 8, to add the definition of “**out-of-pocket expenses**” and to make a consequential technical amendment to the section, to add section 34DC(4)(c) and to make consequential technical amendments to sections 34DC(4)(a) and (b) to include “out-of-pocket expenses” in calculating the payment for services to the default investment strategy (i.e. management fees) and the fees should not in total exceed 0.75% of the net asset value of a default investment strategy constituent fund per annum (i.e. a daily rate equivalent to an annualized rate of 0.75% of the net asset value of the constituent fund).

<ul style="list-style-type: none"> ● Hon TAM Yiu-chung (Second group of amendments - to amend clauses 8 and 11) 	<ul style="list-style-type: none"> – In the proposed section 34DA in clause 8, to add the definition of “out-of-pocket expenses” and to make a consequential technical amendment to the section, to amend the proposed section 34DC(4), and in clause 11, to make a consequential amendment to section 1 of the proposed Schedule 11 and to add section 2 to the proposed Schedule, to stipulate that the total amounts of the management fees and “out-of-pocket expenses” are subject to the percentages specified in sections 1 and 2 of Schedule 11 respectively, i.e. the total amounts of the management fees and “out-of-pocket expenses” must not exceed 0.75% (daily rate) and 0.2% (annual rate) respectively of the net asset value of a default investment strategy constituent fund per annum.
<ul style="list-style-type: none"> ● Hon TANG Ka-piu (First group of amendments - to amend clause 8) 	<ul style="list-style-type: none"> – To delete the proposed section 34DC(3)(b) in clause 8 and to make a consequential amendment to the definition of “underlying investment fund fee” in the proposed section 34DC(5) to prohibit an approved trustee from charging a default investment strategy constituent fund or a scheme member custodian service fees which are customarily not calculated as a percentage of the net asset value of the constituent fund to prevent overcharging of transaction-based custodian fees.
<ul style="list-style-type: none"> ● Hon TAM Yiu-chung (Third group of amendments - to amend clause 8) 	<ul style="list-style-type: none"> – To add the new section 34DCA (expiry of section 34DC and mandatory review) in clause 8 to propose that section 34DC (regulation of the payment for services provided in connection with the default investment strategy) ceases to have effect on 31 December 2021 and the Mandatory Provident Fund Schemes Agency (“MPFA”) must conduct a review and public consultation on the implementation of the default investment strategy, in particular its effect on the payment for services charged to the default investment strategy constituent funds before 1 October 2020 and prepare a report to be laid on the table of the Legislative Council before 1 March 2021.
<ul style="list-style-type: none"> ● Hon TANG Ka-piu (Second group of amendments - to amend clauses 8 and 11) 	<ul style="list-style-type: none"> – To add the new section 34DCA (Annual review of Schedule 11) in clause 8 and to make consequential technical amendments to the proposed Schedule 11 in clause 11 to stipulate that SFST must conduct an annual review on the percentage specified in Schedule 11.

- **Hon WONG Yuk-man**
(First group of amendments - to amend clause 11) – To amend section 1 of the proposed Schedule 11 in clause 11 to stipulate that the management fee must not exceed 0.59% (daily rate) of the net asset value of the default investment strategy constituent fund per annum.

Mover	Voting	Remarks	Amendment(s)
Hon TAM Yiu-chung	Hon TAM Yiu-chung's 1 st group of amendments	<p>If Hon TAM Yiu-chung's 1st group of amendments is <u>passed</u>, he will <u>withdraw</u> his 2nd and 3rd groups of amendments; and Hon TANG Ka-piu and Hon WONG Yuk-man <u>may not move</u> their 1st groups of amendments.</p> <p>If Hon TAM Yiu-chung's 1st group of amendments is <u>negatived</u>, he <u>may move</u> his 2nd group of amendments.</p> <p>Irrespective of whether Hon TAM Yiu-chung's 1st group of amendments is passed or not, Hon TANG Ka-piu <u>may move</u> his 2nd group of amendments.</p>	LC Paper No. <u>CB(3) 472/15-16</u>
Hon TAM Yiu-chung	Hon TAM Yiu-chung's 2 nd group of amendments	<p>If Hon TAM Yiu-chung's 2nd group of amendments is <u>passed</u>, he will <u>withdraw</u> his 3rd group of amendments; and Hon TANG Ka-piu and Hon WONG Yuk-man <u>may not move</u> their 1st groups of amendments.</p> <p>If Hon TAM Yiu-chung's 2nd group of amendments is <u>negatived</u>, he <u>may move</u> his 3rd group of amendments; and Hon TANG Ka-piu and Hon WONG Yuk-man <u>may move</u> their 1st groups of amendments.</p> <p>Irrespective of whether Hon TAM Yiu-chung's 2nd group of amendments is passed or not, Hon TANG Ka-piu <u>may move</u> his 2nd group of amendments.</p>	LC Paper No. <u>CB(3) 472/15-16</u>

Hon TANG Ka-piu	Hon TANG Ka-piu's 1 st group of amendments	<p>If Hon TANG Ka-piu's 1st group of amendments is <u>passed</u>, he <u>may move</u> his 2nd group of amendments, but Hon WONG Yuk-man <u>may not move</u> his 1st group of amendments.</p> <p>If Hon TANG Ka-piu's 1st group of amendments is <u>negatived</u>, he <u>may move</u> his 2nd group of amendments and Hon WONG Yuk-man <u>may move</u> his 1st group of amendments.</p>	<p>LC Paper No. <u>CB(3) 472/15-16</u></p>
Hon TAM Yiu-chung	Hon TAM Yiu-chung's 3 rd group of amendments	<p>If Hon TAM Yiu-chung's 3rd group of amendments is <u>negatived</u>, Hon TANG Ka-piu <u>may move</u> his 2nd group of amendments and Hon WONG Yuk-man <u>may move</u> his 1st group of amendments.</p> <p>If Hon TAM Yiu-chung's 3rd group of amendments is <u>passed</u>, Hon TANG Ka-piu must <u>revise</u> his second group of amendments to renumber the heading numbering of section 34DCA in clause 8 to 34DCB and add the reference to the new section 34DCA; and Hon WONG Yuk-man <u>may move</u> his first group of amendments.</p>	<p>LC Paper Nos. <u>CB(3) 472/15-16</u> and <u>CB(3) 482/15-16</u></p>
Hon TANG Ka-piu	Hon TANG Ka-piu's 2 nd group of amendments	Irrespective of whether Hon TANG Ka-piu's 2 nd group of amendments is passed or not, Hon WONG Yuk-man <u>may move</u> his 1 st group of amendments.	<p>LC Paper No. <u>CB(3) 472/15-16</u></p>
Hon WONG Yuk-man	Hon WONG Yuk-man's 1 st group of amendments	--	<p>LC Paper No. <u>CB(3) 472/15-16</u></p>

Fourth debate	: Clauses of the third group of amendments by Hon TANG Ka-piu	– Clauses 4, 8 and 11
----------------------	--	------------------------------

Joint debate on the original clauses and the amendments thereto.

Theme of debate: Introduction of a performance-based penalty and MPFA's supervision

Clauses 4 and 11

- To add section 7 to the proposed Schedule 10 in clause 11 and to make consequential amendments to the proposed Schedule 10 and the proposed section 20B(1)(d) in clause 4 to stipulate that the annualized average investment return rate of the Core Accumulation Fund under the default investment strategy for the past five years must not be lower than the percentage increase of the Consumer Price Index of the same respective period, failing which the approved trustee concerned will face revocation of its approval by MPFA.

Clause 8

- To add the new section 34DBA (The Authority must prepare a report relating to the performance of Core Accumulation Fund) to request MPFA to, as far as practicable, prepare a report including the ranking of the investment return rate of the Core Accumulation Fund after the end of each financial year and cause the report to be laid on the table of the Legislative Council and to be delivered to scheme members for reference.

Mover	Voting	Remarks	Amendment(s)
Hon TANG Ka-piu	Hon TANG Ka-piu's 3 rd group of amendments	If SFST's 1 st group of amendments is <u>passed</u> , Hon TANG Ka-piu must <u>revise</u> his third group of amendments to renumber the heading numbering of the new section 34DBA in clause 8 to 34DBB.	LC Paper Nos. <u>CB(3) 472/15-16</u> and <u>CB(3) 482/15-16</u>

Fifth debate : Clause of the second – Clause 11 groups of amendments by SFST and by Hon WONG Yuk-man respectively			
Joint debate on the original clause and the amendments thereto.			
Theme of debate: De-risking mechanism			
<ul style="list-style-type: none"> ● Hon WONG Yuk-man (Second group of amendments) – To amend sections 3 and 4 of the proposed Schedule 10 in clause 11 and the headings of the two sections to require an approved trustee to commence de-risking when a scheme member whose investments are made according to the default investment strategy reaches the age of 42, that is to transfer the investments of the member's accrued benefits from higher risk constituent funds to lower risk constituent funds so as to diversify investment risk. 			
<ul style="list-style-type: none"> ● SFST (Second group of amendments) : – To amend section 4(2) of the proposed Schedule 10 in clause 11 to specify the time limit (e.g. within 60 days beginning on the birthday of a scheme member) for reallocation of the accrued benefits by an approved trustee under the de-risking mechanism and to expressly state 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 also specifies that when an approved trustee is subsequently aware of the age of a scheme member whose age is previously unknown, the trustee must reallocate the accrued benefits which have all been allocated to the Age 65 Plus Fund between the Core Accumulation Fund and the Age 65 Plus Fund according to the percentage specified in the proposed section 4(3) of Schedule 10; and – to make a textual amendment to the Chinese text of the proposed section 4(3) of the proposed Schedule 10 in clause 11. 			
Mover	Voting	Remarks	Amendment(s)
Hon WONG Yuk-man	Hon WONG Yuk-man's 2 nd group of amendments	<p>If Hon WONG Yuk-man's 2nd group of amendments is passed, SFST may not move his 2nd group of amendments.</p> <p>If Hon WONG Yuk-man's 2nd group of amendments is negated, SFST may move his 2nd group of amendments.</p>	LC Paper No. CB(3) 472/15-16
SFST	SFST's 2 nd group of amendments	--	LC Paper No. CB(3) 461/15-16

Sixth debate	: Clause of the third and – Clause 1 fourth groups of amendments by SFST		
Joint debate on the original clause and the amendments thereto.			
Theme of debate: Commencement date of default investment strategy			
● SFST : – To amend section 1(2) to specify the time the default investment strategy comes into operation (i.e. 31 December 2016). (Third group of amendments)			
● SFST – To amend section 1(2) to provide that the default investment strategy comes into operation starting from the date SFST specifies by Gazette notice. (Fourth group of amendments)			
Mover	Voting	Remarks	Amendment(s)
SFST	SFST’s 3 rd group of amendments	If SFST <u>moves</u> his 3 rd group of amendments, he will <u>withdraw</u> his 4 th group of amendments.	LC Paper No. <u>CB(3) 461/15-16</u>
SFST	SFST’s 4 th group of amendments	If SFST <u>moves</u> his 4 th group of amendments, he will first <u>withdraw</u> his 3 rd group of amendments.	LC Paper No. <u>CB(3) 461/15-16</u>

SFST's amendments

(printed in LC Paper No. CB(3) 461/15-16 issued on 14 March 2016)

Hon TAM Yiu-chung's amendments

(printed in LC Paper No. CB(3) 472/15-16 issued on 15 March 2016)

Hon WONG Yuk-man's amendments

(printed in LC Paper No. CB(3) 472/15-16 issued on 15 March 2016)

Hon TANG Ka-piu's amendments

(printed in LC Paper No. CB(3) 472/15-16 issued on 15 March 2016)

Hon TANG Ka-piu's revised amendments

(printed in LC Paper No. CB(3) 482/15-16 issued on 17 March 2016)

Council Business Division 3
Legislative Council Secretariat
17 March 2016