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來函檔號 YOUR REF.:

4 June 2019

Mr Mark Lam
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr Lam,

Re: Occupational Retirement Schemes (Amendment) Bill 2019

Thank you for your letter dated 20 May 2019. Our responses to your inquiries are set out in the ensuing paragraphs.

Proposed section 2B(2) – “a period of more than 4 years”

For the sake of clarity, we will move a Committee Stage Amendment to add “continuous” to the phrase “a period of more than 4 years” to make it clear that it refers to a continuous period of more than 4 years”.

Proposed section 2B(2) – duty of the proprietor

As expressly stated in the proposed section 2B(1), this section only applies for the purposes of the definition of an occupational retirement scheme in section 2(1) and of section 3 (i.e. Restrictions on operation of occupational retirement schemes). The interpretation of employment in this section is confined to serving the purpose of administering the Occupational

Retirement Schemes Ordinance (Cap. 426) only. As such, it would not have any implication for the duty of the proprietor of the organization under the Employment Ordinance (Cap. 57).

Sections 11, 12, 18, 42 and 45 – “public interest”

When deciding whether there is a “public interest” consideration, the Registrar will take into account all relevant factors and circumstances of a case, including but not limited to the interests of the members of the relevant scheme, whether the regulatory regime of Hong Kong will be compromised, and whether the scheme may be used to cause material negative impact on Hong Kong (e.g. impact on its reputation as an international financial centre).

For example, if the Registrar has reasonable belief that a scheme is involved in illegal activities such as money laundering or tax evasion, the Registrar may consider regulatory actions on the ground of public interest as Hong Kong’s reputation as an international financial centre may otherwise be undermined. We wish to emphasize that the Registrar will have to consider all relevant matters on a case-by-case basis when deciding on taking such action. The Registrar envisages that only in exceptional circumstances will the ground of “public interest” be invoked.

Part VIIIA – legal professional privilege

The concept of legal professional privilege at common law has not been overridden by the Bill and will continue to be applicable in this context.

A person who is subject to inspection or investigation under Part VIIIA can refuse the provision of certain documents that are subject to legal professional privilege. If the Registrar considers such refusal as a “reasonable excuse” pursuant to the proposed section 66E or 79A, the Registrar will not pursue such information in the inspection or investigation.

As such, we do not consider an express provision for upholding the concept of legal professional privilege to be necessary.

Part VIII A – “warrant of authority”

Under the proposed section 80A, the Registrar may in writing appoint or authorise a person to perform functions, or specified functions, under or for the purposes of the Ordinance. Furthermore, the proposed section 66B(6) enables the Registrar to appoint outside experts (e.g. actuaries or auditors) to carry out an inspection on its behalf. The “warrant” as mentioned in the proposed section 66B(6) is a “warrant of authority” (in Chinese rendition a “授權書”). The proposed section is modelled on section 30A(5) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

In essence, the “warrant of authority” should be regarded as a “copy of appointment” / “委任的文本” to show that certain person is appointed by the Registrar to carry out an inspection on its behalf. It should not be interpreted as a “court warrant”.

Considering the nature of such warrant of authority, and that the conditions (i.e. for ascertaining whether or not the provisions of the Ordinance are being complied with or have been complied with) for the Registrar to conduct inspections in a non-private dwelling are already set out in the proposed section 66B(1) of the Amendment Bill, we do not consider it necessary to explicitly empower the Registrar to issue a warrant of authority or to specify the conditions to be satisfied by him before so doing.

We hope the above would be able to provide more clarity on the Amendment Bill.

Yours sincerely,



(Joan HUNG)

for Secretary for Financial Services and
the Treasury