

This is a submission on the ORSO Amendment Bill before LegCo.

There appears to be no publicly available evidence to support the MPFA's assertions that more regulation and increased powers are needed, to combat abuse or poorly run ORSO schemes. If there is any evidence, it is secret and the MPFA itself appears to have listened only to a closed small circle. The MPFA ORSO Schemes Section is hostile to any submissions apart from those invited. Furthermore, the Section has been inventing legal concepts on applications for registration and drafting of pension by-laws that have no legal basis in ORSO. This insistence on scheme design being acceptable to MPFA in a rigid form, is leading to some businesses being unable to establish ORSO Schemes in any satisfactory form that meets international standards and tax law requirements. For instance, hand-in-hand with US Tax Counsel, I pioneered Section 402(b) retirement plans compliant with the USA Tax Code years ago, leading to very happy clients who love the Hong Kong jurisdiction.

The beauty of ORSO is that it is outward-looking and has a conceptual approach to retirement planning. The MPFA has been trying to narrow the legal design of plans with a bias towards trusts that is unsupported in ORSO. Changing the definition of an ORS is ill-conceived and will lead to a growth of unregulated schemes inside and outside Hong Kong.

The Secretary For Financial Services and the Treasury was reported to have said, on page 12740 of the Legislative Council Record on 20 June 2018, ..."the objective of the Occupational Retirement Schemes Ordinance (Cap 426) is to establish a registration system for occupational retirement schemes ("ORSO schemes") voluntarily established by employers to ensure that such schemes are properly regulated and to provide greater certainty that retirement benefits of these schemes promised to employees will be paid when they fall due."

That statement is an example of administrative expansion of a registration system into a regulation system. There will be only one result from the Amendment Bill: increased administration costs. It will not lead to improved scheme governance because, from personal knowledge of current scheme litigation before the High Court, a determined abuser is hard to stop and I have no confidence that increased powers will put a stop to abuse. The Court is adequate.

I am sorry for the direct tone of this submission but, after more than 40 years in pension administration, I fail to see anything useful in the Amendment Bill. It needs re-thinking.

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