

LEGISLATIVE COUNCIL BRIEF

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2019

INTRODUCTION

At the meeting of the Executive Council on 11 June 2019, the Council ADVISED and the Chief Executive ORDERED that the Mandatory Provident Fund Schemes (Amendment) Bill 2019 (the Amendment Bill), at **Annex**, should be introduced into the Legislative Council (LegCo).

JUSTIFICATIONS

Wholly Owned Subsidiary of the Mandatory Provident Fund Schemes Authority (MPFA) for the Centralised Platform (CP)

2. The CP will facilitate the centralization of Mandatory Provident Fund (MPF) scheme administration to create room for reduction of MPF management fees, and to create a predominantly paperless MPF experience.

3. We have evaluated four options of institutional arrangements for building, owning and operating the CP, namely, (i) a private entity operating on a commercial basis, (ii) a dedicated statutory body, (iii) a government-owned company, or (iv) a subsidiary of the MPFA. We consider that option (iv) is the optimal way forward, after taking into account the following considerations –

- (a) securing public trust and confidence in centralized scheme administration in terms of data protection and achieving maximum efficiency on a non-profit-making basis;
- (b) ensuring an optimal timeframe for establishing the institutional set-up;
- (c) ensuring a lean institutional structure, cost efficiency and effective management;

- (d) ensuring a clear chain of command as well as better alignment of objectives and priorities between the MPFA and the operator of the CP;
- (e) ensuring smoother collaboration among the MPFA, operator of the CP and MPF trustees in the streamlining, standardization and automation of MPF scheme administration; and
- (f) maximizing operational flexibility.

4. The subsidiary is not an approved trustee and hence not a regulatee of the MPFA. In terms of the governance of the subsidiary, its Board of Directors will include directors of the MPFA, representatives of the Government, and persons who have relevant professional expertise to ensure proper oversight of the operation of the subsidiary.

5. The development of the CP for improving the reliability, accuracy and operational efficiency of MPF scheme administration falls within the MPFA's statutory function to "promote and encourage the development of the retirement scheme industry in Hong Kong" (see section 6E(1)(eb) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)). However, there is no express power under Cap. 485 for the MPFA to set up a limited company to perform its own functions. Hence, whilst the MPFA may develop and operate the CP, it is not entirely certain whether it has the power to set up a wholly owned subsidiary to take forward the necessary work. The prudent approach is to amend Cap. 485 to provide a legal basis for the MPFA to set up a wholly owned subsidiary for the purpose of building, owning and operating the CP.

The Annual Registration Fee (ARF)

6. It is the Government's policy that the MPFA should be self-financing by recovering from approved trustees its costs of exercising and performing its functions with respect to MPF registered schemes. However, due to various reasons, the MPFA has never charged trustees the ARF. As such, the ARF level has been set at 0% of the net asset value (NAV) of a registered scheme since the commencement of the operation of the MPF regime in 2000.

7. In the absence of a stable income stream, the MPFA has to meet its operating expenses by relying mainly on investment returns from the Capital Grant which are highly susceptible to market volatility. As at 31

March 2019, the balance of the Capital Grant stood at \$3.01 billion. It will be fully depleted by 2024-25 despite the implementation of cost-saving measures over the years to minimize operating expenditure such as office relocation from central business districts to Kwai Chung in the New Territories and the cap on the MPFA's personal emolument imposed by the Financial Secretary (FS). To enable the MPFA to fulfill its statutory obligations and enhance the administration of MPF schemes, it is essential for the MPFA to attain financial sustainability through charging MPF trustees the ARF to generate a stable stream of income.

8. In determining the level of ARF, the Government and the MPFA need to observe the statutory requirements under section 22B of Cap. 485 as set out below –

- (a) the amount of ARF must not be fixed at a level that exceeds that which will enable the MPFA to recover the costs incurred, or likely to be incurred, in exercising and performing its functions with respect to registered schemes;
- (b) the amounts likely to be received by the MPFA from other fees payable to it under Cap. 485 are also to be taken into account; and
- (c) the amount at which ARF may be fixed is not to be affected by the fact that, in exercising or performing a function for or in relation to a particular person, the fee payable to the MPFA by the person may exceed the actual cost to the MPFA of exercising or performing the function.

9. With the total MPF assets standing at around \$893 billion as at end March 2019, the ARF level should be set at 0.05% to recover the MPFA's costs of about \$460 million for performing its functions with respect to registered schemes. This ARF level is compliant with the statutory requirements under section 22B of Cap. 485. However, having considered our proposal on prohibiting trustees from passing on the cost of ARF to scheme members (see paragraph 12 below), we suggest adopting an incremental approach by starting with a lower level of 0.03% of the NAV of a scheme for the first six years to allow room for trustees to adjust to the new expenses. Charging ARF at the level of 0.03% will generate an estimated income of around \$268 million annually for the MPFA. The ARF level will be revised with effect from the seventh year after review with a view to achieving full cost recovery in the long run.

Proposed Amendments and Implementation

The CP

10. Specifically, a new provision will be added to provide that with the approval of the FS, the MPFA may establish a wholly owned subsidiary to facilitate the performance of its functions. Provisions on the employment of staff, immunity from civil liability and delegation of powers will also be amended accordingly.

The ARF

11. We propose to amend the Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485C) to set ARF at a level of 0.03% of the NAV with respect to registered schemes under management with effect from 1 January 2020.

12. To protect the interests of scheme members, we propose to amend Cap. 485 to prohibit trustees from charging any constituent fund of a registered scheme, any registered scheme or any scheme member any ARF-related fee. At the same time, the Government will require the MPFA to submit an annual review through its annual budget exercise to ascertain that MPFA will not overcharge the trustees.

Commencement of payment

13. Section 22B(1) of Cap. 485 requires the approved trustee of a registered scheme to pay ARF not later than the date on which the scheme's annual statement is required to be lodged with the MPFA (i.e. within six months after the end of the financial period of that particular scheme)¹. To make it clear whether ARF is payable by the approved trustees where the commencement date of ARF (i.e. 1 January 2020) falls between the end of a financial period of the concerned registered scheme and the deadline of lodging of the scheme's annual statement (which can be up to six months after the end of financial period), Cap. 485C will be amended to provide that an approved trustee shall pay ARF for any registered scheme at a level of 0.03% of the NAV of a scheme where the immediately preceding financial period of the scheme ends on or after 1 January 2020.

¹ See section 22A of Cap. 485, section 110 of Cap. 485A and the definition of 'deadline' in section 2 of Cap. 485A.

Financial penalty

14. We propose to amend the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) to impose a financial penalty on an approved trustee for breaching the prohibition under paragraph 12 above.

OTHER OPTIONS

15. There is no alternative option to give effect to the above proposals without introducing the Amendment Bill.

THE AMENDMENT BILL

16. The Amendment Bill is divided into four parts and contains the following provisions –

- (a) **Part 1** sets out the short title. The Amendment Bill, when enacted as an Ordinance, will come into operation on the date on which it is published in the Gazette;
- (b) **Part 2** contains amendments to Cap. 485. The main provisions are set out as follows –
 - (i) **Clause 4** – amends the existing section 6 of Cap. 485 to enable the MPFA to receive and expend monies;
 - (ii) **Clause 5** – adds a new section 6DA to Cap. 485 to empower the MPFA to establish a wholly owned subsidiary with the approval of the FS;
 - (iii) **Clauses 6, 7, 8, 10** – amend the existing sections 6F, 6G, 6KA and 42B of Cap. 485 to –
 - i. empower the MPFA to delegate its functions to a wholly owned subsidiary;
 - ii. empower the MPFA to arrange for its staff to assist in the operation of the subsidiary;
 - iii. provide that an electronic system designated by the MPFA includes the system that is established and operated by the subsidiary;

and

- iv. to provide for immunity from civil liability of the subsidiary, its directors and its employees in the performance of the functions delegated by the MPFA;
- (iv) **Clause 9** – adds a new section 22C to Cap. 485 requiring an approved trustee to ensure that no fee representing an ARF that is payable to the MPFA under section 22B may be charged to a registered scheme, constituent fund or scheme member.
- (c) **Part 3** adds a new item to Schedule 4 to Cap. 485A to provide for the financial penalties that may be imposed on an approved trustee if the trustee fails to comply with the requirement under section 22C of Cap. 485.
- (d) **Part 4** revises the rate prescribed in item 4 of Schedule 1 to Cap. 485C so that the amount of ARF payable in respect of a registered scheme is 0.03% of the NAV of the scheme as at the end of its immediately preceding financial period if that period ends on or after 1 January 2020.

LEGISLATIVE TIMETABLE

17. The legislative timetable will be –

Publication in the Gazette	28 June 2019
First Reading and commencement of Second Reading debate	3 July 2019
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

18. The proposals are in conformity with the Basic Law, including the provisions concerning human rights. The proposals will not affect the binding effect of the existing provisions of Cap. 485 and its subsidiary

legislation. They have no financial implications for the Government. There are also no civil service, productivity, environmental, family, and gender implications arising from taking forward the proposals. Apart from the economic implications as set out below, there are no other sustainability implications.

Economic Implications

19. The ARF proposal would increase the operating costs of MPF trustees, though the additional cost burden should be very small in comparison to their total operating costs. The setting up of the wholly owned subsidiary will facilitate the development of the CP project, which would help enhance operational efficiency of the administration of MPF schemes.

PUBLIC CONSULTATION

20. We have been engaging the industry for the development of the CP. Under the direction of the FS, we set up the Working Group on eMPF in June 2017, the members of which include representatives from the Office of the Government Chief Information Officer and 14 MPF approved trustees. At its meeting on 18 December 2018, the LegCo Panel on Financial Affairs (FA Panel) supported the development of the CP at an estimated cost of about \$3.3 billion, as well as the proposal to task the MPFA to set up a company to build, own and operate the CP.

21. Before drawing up the proposal on ARF, we have consulted the industry with the MPFA. At its meeting on 18 December 2018, the FA Panel supported the proposal.

PUBLICITY

22. We will issue a press release upon the gazettal of the Amendment Bill, and arrange a spokesperson to answer media enquiries.

BACKGROUND

The CP

23. The decentralized administration of MPF registered schemes, a number of cumbersome administration processes, the proliferation of MPF accounts and a high volume of paper-based transactions have contributed to the high administration cost of the MPF System. In

response to the recommendations of the consultancy studies commissioned by the MPFA, the Government proposes to commit public funding for the development of the CP.

24. The CP is a common platform to assist all MPF trustees in discharging their scheme administration duties by streamlining, standardizing and automating scheme administration processes through the provision of (a) automated processing capability with one set of common standards which enable data and payment instructions to be routed to trustees from the CP for further processing; (b) a user interface connecting the CP with MPF trustees that would enable access by employers and members (employees, self-employed persons and personal/tax deductible voluntary contribution account holders); and (c) a database containing necessary data to support its operation.

25. The Government and the MPFA will conduct a comprehensive overhaul of Cap. 485 to streamline scheme administration workflows by reducing regulatory burden on MPF trustees and re-aligning their regulatory responsibilities under Cap. 485 to support the establishment and operation of the CP commencing in 2022.

The ARF

26. When the Government sought approval from LegCo for a one-off Capital Grant of \$5 billion to the MPFA in 1998 and enacted the relevant amendment legislation in the same year, the Government made it clear that the MPFA should operate on a self-financing basis in the long term through collection of fees and charges. Section 22B of Cap. 485 stipulates that an approved trustee of a registered scheme must pay to the MPFA an ARF in respect of the scheme, and the MPFA must not charge ARF at a level that exceeds the costs incurred, or likely to be incurred, in exercising and performing its functions with respect to registered schemes. The rate of ARF is calculated as a percentage of the NAV with respect to registered schemes under management. Since the Government has yet to invoke the power pursuant to section 22B of Cap. 485, the existing rate of ARF under Schedule 1 to Cap. 485C is set at 0%.

27. According to section 22B(2) of Cap. 485, the ARF is to be an amount prescribed by regulations and may be determined by reference to the current value of the assets of a registered scheme under management. Section 46(1)(a) of Cap. 485 provides that the Chief Executive in Council may make regulations for any matter that is permitted to be prescribed by regulations under Cap. 485. Section 46(3) stipulates that regulations

made under section 46 shall be subject to the approval of LegCo.

ENQUIRY

28. Enquiries on this brief may be directed to Ms Joan Hung, Principal Assistant Secretary (Financial Services) Mandatory Provident Fund Reform, Financial Services and the Treasury Bureau, at 2810 2061.

Financial Services and the Treasury Bureau
26 June 2019

**Mandatory Provident Fund Schemes (Amendment) Bill
2019**

Contents

Clause	Page
Part 1	
Preliminary	
1. Short title	1
2. Enactments amended	1
Part 2	
Amendments to Mandatory Provident Fund Schemes Ordinance (Cap. 485)	
3. Section 2 amended (interpretation).....	2
4. Section 6 amended (establishment of Mandatory Provident Fund Schemes Authority)	2
5. Section 6DA added	2
6DA. Authority may establish wholly owned subsidiary	3
6. Section 6F amended (Authority may delegate functions).....	3
7. Section 6G amended (power to appoint staff and consultants).....	3
8. Section 6KA amended (designation of electronic system by Authority)	3
9. Section 22C added	4

Clause	Page
22C. Approved trustee must not charge certain fees	4
10. Section 42B amended (immunity)	4
Part 3	
Amendment to Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A)	
11. Schedule 4 amended (financial penalties).....	6
Part 4	
Amendments to Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485 sub. leg. C)	
12. Section 1A added	7
1A. Interpretation	7
13. Schedule 1 amended (fees prescribed for the purposes of the Mandatory Provident Fund Schemes Ordinance (Cap. 485))	7

A BILL

To

Amend the Mandatory Provident Fund Schemes Ordinance to empower the Mandatory Provident Fund Schemes Authority to establish a wholly owned subsidiary; to revise the amount of the annual registration fee payable by the approved trustee of a registered provident fund scheme; to prohibit the trustee from passing on the fee to the scheme or its constituent fund or scheme members; and to make related amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Mandatory Provident Fund Schemes (Amendment) Ordinance 2019.

2. Enactments amended

The enactments specified in Parts 2, 3 and 4 are amended as set out in those Parts.

Part 2

Amendments to Mandatory Provident Fund Schemes Ordinance (Cap. 485)

3. Section 2 amended (interpretation)

(1) Section 2(1), Chinese text, definition of ~~職業退休計劃~~—

Repeal

“scheme”

Substitute

“scheme”.

(2) Section 2(1)—

Add in alphabetical order

“*wholly owned subsidiary* (全資附屬公司) means a wholly owned subsidiary established under section 6DA;”.

4. Section 6 amended (establishment of Mandatory Provident Fund Schemes Authority)

After section 6(2)(c)(iv)—

Add

“(v) receive and expend monies; and”.

5. Section 6DA added

After section 6D—

Add

“6DA. Authority may establish wholly owned subsidiary

The Authority may, with the approval of the Financial Secretary, establish a wholly owned subsidiary to facilitate the performance of the Authority’s functions.”.

6. Section 6F amended (Authority may delegate functions)

Section 6F—

Repeal subsection (1)**Substitute**

“(1) The Authority may delegate any of its functions (other than this power of delegation) to—

- (a) a committee established under section 6D;
- (b) a wholly owned subsidiary; or
- (c) a designated person.”.

7. Section 6G amended (power to appoint staff and consultants)

After section 6G(4)—

Add

“(5) The Authority may arrange for any of its staff to assist in the operations of a wholly owned subsidiary.”.

8. Section 6KA amended (designation of electronic system by Authority)

(1) Section 6KA(2)—

Repeal

“by it.”

Substitute

“by—

- (a) the Authority; or

(b) a wholly owned subsidiary.”.

(2) Section 6KA—

Repeal subsection (4)**Substitute**

“(4) The Authority or the wholly owned subsidiary operating a designated electronic system (*operator*) may recover from a person who uses the system any fee or charge paid or payable by the operator to a third party in relation to the operation and administration of the system that is attributable to the person’s use.”.

9. Section 22C added

After section 22B—

Add**“22C. Approved trustee must not charge certain fees**

The approved trustee of a registered scheme must ensure that no fee representing an annual registration fee payable by the trustee under section 22B is charged, whether in whole or in part, to—

- (a) the scheme;
- (b) a constituent fund of the scheme; or
- (c) a member of the scheme.”.

10. Section 42B amended (immunity)

After section 42B(1)—

Add

“(1A) No civil liability is incurred by—

- (a) a wholly owned subsidiary; or

(b) a director or employee of the subsidiary,
in respect of anything done, or omitted to be done, by
the subsidiary, director or employee, as the case may be,
in good faith in the performance or purported
performance of any function delegated to the subsidiary
under section 6F(1)(b).”

Part 3

**Amendment to Mandatory Provident Fund Schemes
(General) Regulation (Cap. 485 sub. leg. A)**

11. Schedule 4 amended (financial penalties)

Schedule 4, Part 1, after item 4—

Add

“4AA	22C	Approved trustee to ensure that no fee is charged to registered schemes, constituent funds or scheme members for annual registration fees payable under section 22B of the Ordinance	\$5,000 or 10% of the amount of the fee charged, whichever is the greater”.
------	-----	--	---

Part 4**Amendments to Mandatory Provident Fund Schemes
(Fees) Regulation (Cap. 485 sub. leg. C)****12. Section 1A added**

Before section 2—

Add**“1A. Interpretation**

In item 4 of Schedule 1—

immediately preceding financial period (對上一個財政期),
in relation to a registered scheme, means the
immediately preceding financial period determined in
accordance with section 79 of the Mandatory Provident
Fund Schemes (General) Regulation (Cap. 485 sub. leg.
A).”

**13. Schedule 1 amended (fees prescribed for the purposes of the
Mandatory Provident Fund Schemes Ordinance (Cap. 485))**

(1) Schedule 1—

Repeal

“[ss. 2 & 3]”

Substitute

“[ss. 1A, 2 & 3]”.

(2) Schedule 1, item 4—

Repeal everything in column 4**Substitute**

“An amount equal to—

- (a) if the immediately preceding financial period of the scheme ends before 1 January 2020—0% of the net asset value of the scheme as at the end of that period; or
- (b) if the immediately preceding financial period of the scheme ends on or after 1 January 2020—0.03% of the net asset value of the scheme as at the end of that period”.

Explanatory Memorandum

The main objects of this Bill are—

- (a) to empower the Mandatory Provident Fund Schemes Authority (*Authority*) to establish a wholly owned subsidiary with the approval of the Financial Secretary; and
 - (b) to revise the amount of the annual registration fee payable to the Authority by the approved trustee of a registered provident fund scheme with effect from 1 January 2020.
2. The Mandatory Provident Fund Schemes Ordinance (Cap. 485) (*Ordinance*) provides for, among other things—
- (a) the establishment of non-governmental mandatory provident fund schemes for the purpose of funding benefits on retirement, the contributions to the schemes, the registration of the schemes and a regulatory regime in respect of the registered schemes; and
 - (b) the creation of the Authority to oversee the administration and management of the registered schemes.
3. The Bill amends the following enactments to give effect to the objects—
- (a) the Ordinance;
 - (b) the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) (*General Regulation*); and
 - (c) the Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485 sub. leg. C) (*Fees Regulation*).

Part 1—Preliminary

4. Clause 1 sets out the short title. The Bill, when enacted as an Ordinance, comes into operation on the day on which it is published in the Gazette.

Part 2—Amendments to Ordinance

5. Clause 3 amends section 2(1) of the Ordinance to rectify a typographical error in the Chinese text of the definition of *occupational retirement scheme* and adds a new defined term *wholly owned subsidiary*.
6. Clause 4 amends section 6 of the Ordinance to clarify that the Authority may receive and expend monies.
7. Clause 5 adds a new section 6DA to the Ordinance to empower the Authority to establish a wholly owned subsidiary with the approval of the Financial Secretary.
8. Clauses 6, 7, 8 and 10 amend sections 6F, 6G, 6KA and 42B of the Ordinance respectively—
 - (a) to empower the Authority to delegate its functions to a wholly owned subsidiary;
 - (b) to empower the Authority to arrange for its staff to assist in the operations of the subsidiary;
 - (c) to provide that an electronic system designated by the Authority includes the system that is established and operated by the subsidiary; and
 - (d) to provide for immunity from civil liability of the subsidiary, its directors and its employees in the performance of the functions delegated to the subsidiary by the Authority.
9. Clause 9 adds a new section 22C to the Ordinance requiring the approved trustee of a registered scheme to ensure that no fee

representing an annual registration fee that is payable to the Authority under section 22B of the Ordinance is charged to the scheme, a constituent fund of the scheme or a scheme member.

Part 3—Amendment to General Regulation

10. Clause 11 adds a new item to Schedule 4 to the General Regulation to provide for the financial penalty that may be imposed on an approved trustee of a registered provident fund scheme if the trustee fails to comply with the requirement under section 22C of the Ordinance.

Part 4—Amendments to Fees Regulation

11. Currently, under section 22B of the Ordinance read together with item 4 of Schedule 1 to the Fees Regulation, the approved trustee of a registered scheme is required to pay to the Authority an annual registration fee in respect of the scheme of an amount equal to 0% of the net asset value of the scheme as at the end of the immediately preceding financial period. Clause 12 adds the definition of *immediately preceding financial period* which has the meaning determined in accordance with section 79 of the General Regulation.
12. Clause 13 revises the rate prescribed in item 4 so that the amount of an annual registration fee payable in respect of the scheme is 0.03% of its net asset value as at the end of the immediately preceding financial period if that period ends on or after 1 January 2020.