For discussion on
18 December 2018

Legislative Council
Panel on Financial Affairs

Charging Mandatory Provident Fund Approved Trustees the Annual Registration Fee

PURPOSE

This paper briefs Members on the Government's proposal on enabling the Mandatory Provident Fund Schemes Authority ("MPFA") to start charging Mandatory Provident Fund ("MPF") approved trustees the statutory Annual Registration Fee ("ARF") with effect from 1 January 2020.

BACKGROUND

2. It is the Government's policy that the MPFA should be self-financing by recovering its costs of exercising and performing its functions with respect to MPF registered schemes from approved trustees and other fees. Section 22B of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO") 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 net asset value ("NAV") with respect to registered schemes under management. Since the Government has yet to invoke the power pursuant to section 22B of MPFSO, the existing rate of ARF under Schedule 1 to the Mandatory Provident Fund Scheme (Fees) Regulation (Cap. 485C) ("MPFSFR") is set at 0%.

JUSTIFICATIONS

3. When the Government sought approval from the Legislative Council for a one-off Capital Grant of $5 billion to the MPFA in 1998 and enacted the Amendment Bill on the MPFSO in the same year, the Government made it clear that the MPFA should operate on a self-financing basis in the long term through fees and charges collected.

4. The ARF has not been collected since the commencement of the operation of the MPF System, i.e. for the past 18 years, due to various reasons. The MPFA has been relying mainly on investment returns from the Capital Grant to meet its operating expenses. However, making use of investment returns from the Capital Grant, which are unstable and highly susceptible to market volatility, to meet the MPFA's annual operating expenditure is unsustainable. As at 31 August 2018, the balance of the Capital Grant stood at $3.22 billion which is expected to be fully depleted by 2024-25. In the absence of a stable income stream, the MPFA has implemented cost-saving measures to minimize operating expenditure. For example, it has moved its office from central business districts on Hong Kong Island and in Kowloon to Kwai Chung in the New Territories and the Financial Secretary has imposed a cap on its personal emolument. To enable the MPFA to fulfill its statutory obligations and support the Government in enhancing the MPF System, which is the only Pillar 2 system of retirement protection in Hong Kong, it is essential for the Government to ensure that the policy in respect of the finance of the MPFA is implemented, i.e. putting in place a stable source of income through ARF to maintain its long term financial sustainability.

PROPOSAL

Level of the ARF

5. The Government proposes to amend the MPFSFR to set the ARF at a level of 0.03% of the NAV[1] with respect to registered schemes under management with effect from 1 January 2020 for the first six years. The ARF rate will be revised with effect from the seventh year after a review, with a view to achieving full cost recovery.

6. In determining the level of the ARF, the Government and the MPFA need to observe the statutory requirements under section 22B of the MPFSO as below –

(a) the amount of the 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 the MPFSO are also to be taken into account;

[1] It is further proposed that the NAV of a scheme as at the end of the immediately preceding financial period be used in the calculation of the ARF.

and

(c) the amount at which the 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.

7. According to the MPFA, the actual cost incurred in exercising and performing its functions with respect to registered schemes for 2017-18 was $460 million while the aggregate NAV of registered schemes (i.e. total MPF assets) stood at around $858 billion as at end September 2018, an ARF level at 0.05% of the NAV will be required for full cost-recovery. However, having considered that the Government will impose a prohibition on trustees from charging any constituent fund of the scheme, the scheme or a scheme member a new ARF fee item (please see paragraph 8 below), we propose adopting an incremental approach by starting with a level of 0.03% of the NAV for the first six years to allow room for trustees to adjust to the new expenses. Charging ARF at the rate of 0.03% will generate an estimated income of around $257 million annually for the MPFA and is in accordance with the statutory requirements under section 22B of the MPFSO. The ARF rate will be revised with effect from the seventh year after a review with a view to achieving full cost recovery.

Prohibition from Charging an ARF Fee Item

8. To protect the interests of scheme members, the Government plans to amend the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) to prohibit trustees from charging any constituent fund of the scheme, the scheme or a scheme member a new ARF fee item.

Review of the ARF Level

9. We will require the MPFA to submit an annual review to the Government through the annual budget exercise on whether the ARF collected in the previous financial year exceeded the cost incurred, or whether the projected ARF to be collected in the coming financial years would exceed the cost likely to be incurred by the MPFA, in exercising and performing its functions with respect to registered schemes as stipulated in section 22B of the MPFSO.

10. In view of the fiscal discipline already taken by the MPFA, we envisage that the MPFA's operating cost will remain relatively stable, save inflationary adjustment, general rise in labour cost or other unforeseeable

developments.

Transitional Arrangement

11. Section 22B(1) of the MPFSO requires the approved trustee of a registered scheme to pay the ARF no 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 year of the scheme. Since different schemes have different financial year end dates, it is not entirely certain when the approved trustee would become liable for the first payment of ARF if the commencement date of ARF falls between the financial year end of the concerned scheme and the date of lodging of the scheme's annual statement (which can be up to six months after the financial year end). For the avoidance of doubt, we propose that an approved trustee will be liable for its first payment of ARF for the scheme if the financial year end of the scheme falls on or after the commencement date of 1 January 2020[2].

FINANCIAL IMPLICATIONS

12. The current proposal has no financial implications on the Government.

IMPLEMENTATION TIMETABLE

13. The current target is to submit the legislative amendments to the Legislative Council ("LegCo") in the first quarter of 2019. Subject to the approval of LegCo, the charging of the ARF will be effective from 1 January 2020.

ADVICE SOUGHT

14. Members are invited to comment on the proposal set out in paragraphs 5 to 11 above.

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[2] When the ARF commences, for example, a scheme with financial year end on 30 September 2019 and annual statement submission date on 31 March 2020 will only be liable for the first payment of ARF at its next financial year end on 30 September 2020.