中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China

立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF :
本函檔號 OUR REF : LS/B/26/18-19
電話 TELEPHONE : 3919 3513
圖文傳真 FACSIMILE : 2877 5029
電郵 EMAIL : elee@legco.gov.hk

By Fax (2529 1663)

13 May 2020

Ms Joan HUNG
Prin AS for Financial Services & the Treasury
(Financial Services) Mandatory Provident Fund Reform
Mandatory Provident Fund Reform Division
Financial Services and the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Ms HUNG,

Mandatory Provident Fund Schemes (Amendment) Bill 2019

We are scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. We would be grateful if you would provide the following information.

Scope and explanation on immunity from civil liability provided under the Bill

2. According to paragraph 5 of the Legislative Council ("LegCo") Brief, a subsidiary in the form of a limited company wholly owned by the Mandatory Provident Fund Schemes Authority ("MPFA") would be set up by MPFA ("Subsidiary"). Further, MPFA would be able to delegate any of its functions (other than the power to delegate) to the Subsidiary under section 6F(1)(b) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) as proposed to be amended by the Bill (see clause 6). Clause 10 of the Bill further proposes to add a new section 42B(1A) to Cap. 485 to provide for

immunity from civil liability to be incurred by the Subsidiary, its directors and employees if certain conditions are satisfied. In this regard, please provide the following information:

(a) the nature of the functions that would be delegated to the Subsidiary by MPFA under the proposed section 6F(1)(b);

(b) whether it is anticipated that the Subsidiary would practise any commercial activity; and

(c) if the answer to (b) above is in the affirmative, clarification on whether the proposed immunity would be applicable to the Subsidiary, it directors and employees in respect of such activity (as opposed to any public law functions under Cap. 485), and the relevant justification.

Enforcement of the proposed new section 22C of Cap. 485

3. Under clause 9 of the Bill, the proposed new section 22C of Cap. 485 seeks to mandate the approved trustee of a registered scheme to ensure that no fee representing an annual registration fee payable by the trustee under section 22B of Cap. 485 is charged, in whole or in part, to the scheme, a constituent fund of the scheme or a member of the scheme. Please advise whether and how the proposed new section 22C would be enforced against an approved trustee if the trustee concerned tries to circumvent the section such as by charging the same amount of money under the disguise of a different label other than as a fee.

Cutting off date for the annual registration fee

4. Clause 13 of the Bill seeks to amend item 4 of Schedule 1 to the Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485C) with the effect that if the immediate preceding financial period of a registered scheme ends on or after 1 January 2020, the amount of annual registration fee payable in respect of the registered scheme would be equal to 0.03% of the net asset value of the scheme as at the end of that period. In view of the lapse of time since the Bill was introduced into LegCo, please clarify whether the date "1 January 2020" referred to in clause 13(2) would need to be amended by way of a committee stage amendment.

5. As the House Committee has decided to form a Bills Committee to study the Bill in detail and the first Bills Committee meeting is scheduled for 18 May 2020, please let us have your reply in both Chinese and English as soon as possible.

Yours sincerely,

(Evelyn LEE)
Assistant Legal Adviser

c.c. Department of Justice
(Attn: Ms. Phyllis POON, Senior Government Counsel (Fax: 3918 4613))
LA
SALA 3
Clerk to the Bills Committee