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Report of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2019

Purpose

This paper reports on the deliberations of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2019 ("the Bills Committee").

Background

2. The Mandatory Provident Fund ("MPF") System was launched in Hong Kong in 2000 to provide retirement protection to the working population, complementary to other pillars of the retirement protection framework. The operation of the MPF System is governed by the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO"). Employees and self-employed persons are required under MPFSO to join a registered MPF scheme selected by the employers or self-employed persons (as the case may be) and make choices from a range of constituent funds available under the scheme for investment of MPF contributions. All provident fund schemes intended to be operated as MPF schemes must be registered with the Mandatory Provident Fund Schemes Authority ("MPFA"), and registered MPF schemes must be operated by trustees approved by MPFA ("approved trustees").

Proposal to establish a centralized electronic platform

3. According to the Administration, there are currently about 4.4 million scheme members with about 10 million accounts in 28 MPF schemes administered by 14 trustees either internally or through third-party administrators, involving 12 scheme administration platforms with different scheme administration processes of varying standards. The multiple business models, data standards, process designs and administration system infrastructure make it difficult to achieve standardization and economies of scale. Moreover, among the around 30 million MPF administration transactions (e.g. enrolment of scheme

members, collection and allocation of contributions, recovery of outstanding contributions, handling transfers between schemes and fund switches within schemes, and administration of withdrawals of accrued benefits) per year, more than 65% are paper-based. All these have contributed to the high administration costs of the MPF System.

4. The Administration considers that the development of an eMPF Platform, which provides a common, integrated electronic platform to facilitate the standardization, streamlining and automation of MPF scheme administration processes will enhance the operational efficiency of MPF schemes, and achieve cost savings, thereby provides more room for reduction in the administration fee of MPF funds. After evaluating four options[1] of institutional arrangements for owning and operating the eMPF Platform, the Administration considers that the optimal option is to task MPFA to own and operate the Platform. MPFA will establish a wholly-owned subsidiary as a legal entity for this purpose (i.e. "the eMPF Platform Company"). The Legislative Council ("LegCo") approved a total funding of $3,903.63 million in 2019 and 2020 for developing the eMPF Platform, and for setting up the eMPF Platform Company and its initial operation.

<u>Proposal to start charging Annual Registration Fee payable by approved trustees</u>

5. Under section 22B of MPFSO, an approved trustee of a registered MPF scheme must pay to MPFA an annual registration fee ("ARF") in respect of the scheme not later than the date on which the annual statement relating to the scheme is required to be lodged with MPFA (i.e. within six months after the end of the financial period of that particular scheme). The amount of ARF is prescribed in Schedule 1 to the Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485C) ("MPF Fees Regulation") as a percentage of the net asset value ("NAV") of the scheme as at the end of its immediately preceding financial period. Since 2000, the amount of ARF has been set at 0% of the NAV of the scheme. In order to help MPFA to attain financial sustainability, the Administration proposes to amend the MPF Fees Regulation to collect ARF from approved trustees.

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[1] The four options considered by the Administration are:
(a) setting up a privately-owned entity;
(b) setting up a dedicated statutory body;
(c) forming a government-owned company; and
(d) tasking the Mandatory Provident Fund Schemes Authority to own and operate the eMPF Platform.

The Bill

6. The Bill was published in the Gazette on 28 June 2019 and received its First Reading at the LegCo meeting of 23 October 2019. The Bill seeks to amend MPFSO and its subsidiary legislation to:

(a) empower MPFA to establish a wholly owned subsidiary (i.e. the eMPF Platform Company);

(b) revise the amount of ARF payable to MPFA by the approved trustee of a registered provident fund scheme. The Administration's proposal is to charge an amount equivalent to 0.03% of the NAV with respect to the scheme with effect from 1 January 2020;

(c) prohibit the trustee from passing on ARF to the scheme or its constituent fund or scheme members; and

(d) make related amendments.

7. Details of the major provisions of the Bill are set out in **Appendix I.**

The Bills Committee

8. At the special meeting of the House Committee held in the afternoon of 8 May 2020, Members agreed to form a Bills Committee to study the Bill. The membership list of the Bills Committee is in **Appendix II**. Under the chairmanship of Mr Christopher CHEUNG Wah-fung, the Bills Committee has held two meetings to study the Bill. The Bills Committee has written to the 18 District Councils and posted a notice on the LegCo website to invite interested parties to provide written views on the Bill, and has received two submissions. The list of individual and organization who/which have provided submissions to the Bills Committee is in **Appendix III**.

Deliberations of the Bills Committee

9. The major deliberations of the Bills Committee are set out in the ensuing paragraphs.

Establishment of the eMPF Platform

Functions of the eMPF Platform Company

10. Clause 6 of the Bill amends section 6F of MPFSO to add a new section 6F(1)(b) to empower MPFA to delegate its functions to the eMPF Platform Company, and clause 10 further adds a new section 42B(1A) to provide for immunity from civil liability to be incurred by the eMPF Platform Company, its directors and employees if certain conditions are satisfied. The Bills Committee has enquired about the nature of the functions that will be delegated to the eMPF Platform Company. Further, as it seems that the eMPF Platform Company may undertake commercial activities such as engaging service providers in operating the eMPF Platform, the Bills Committee has sought clarification on whether the proposed immunity will be applicable to the eMPF Platform Company as well as its directors and employees in respect of such commercial activities. In this regard, the Bills Committee notes that the existing section 42B(1) of MPFSO regarding immunity from civil liability for MPFA as well as its directors and employees covers their performance of any statutory functions in good faith under MPFSO only.

11. The Administration has explained that the legislative amendments for the implementation of the eMPF Platform will be taken in two phases. The Bill is the first phase to empower MPFA to establish the eMPF Platform Company to facilitate the performance of MPFA's functions. Hence, the immunity from civil liability is provided for the eMPF Platform Company as well as its directors and employees only in respect of the performance of the statutory functions delegated to the Company by MPFA. The relevant function is to "promote and encourage the development of the retirement scheme industry in Hong Kong" as stipulated in section 6E(1)(eb) of MPFSO. The existing section 42B(1) of MPFSO has provided MPFA with immunity from civil liability in the performance of statutory functions under MPFSO in good faith. The arrangement is similar to other financial regulators such as the Insurance Authority and the Securities and Futures Commission. The provision of immunity from civil liability under the proposed section 42B(1A) of MPFSO will not bar any party to apply for judicial review. The eMPF Platform Company will be set up and governed under the Companies Ordinance (Cap. 622) as a private company. Details on the future operation of the eMPF Platform Company such as the implementation of the eMPF Platform will be dealt with in the second phase legislative exercise. The Administration has reiterated that as the eMPF Platform Company will be run as a non-profit making entity to operate the eMPF Platform as a public utility, even when it undertakes commercial activities, such activities are not for profit making purposes.

12. Given that the eMPF Platform Company will be tasked to develop and implement the eMPF Platform which involve substantial public funds, the

Administration will designate the eMPF Platform Company to be established by MPFA under the proposed new section 6DA of MPFSO as a public body specified in Schedule 1 to the Prevention of Bribery Ordinance (Cap. 201) through introducing an amendment to add a new clause 14 to the Bill. The Bills Committee supports the Administration's proposed amendment.

Benefits and operation of the eMPF Platform

13. Members of the Bills Committee have enquired about the benefits of implementing the eMPF Platform, in particular how the Platform can help lower the administration fee of MPF funds, and expedite the introduction of "Full Portability" of MPF benefits as well as abolition of the arrangement of offsetting severance payments ("SP") and long service payments ("LSP") against MPF accrued benefits ("the offsetting arrangement").

14. The Administration has pointed out that the implementation of the eMPF Platform will facilitate the standardization, streamlining and automation of MPF scheme administration processes, thus providing more room for reduction in the administration fee of MPF funds and enhancing the transparency of administration costs and fees of various approved trustees. The Administration and MPFA will continue to work with approved trustees to ensure scheme members can benefit from the anticipated savings to be brought by the eMPF Platform. The actual rate and pace of fee reduction will depend on factors such as the actual operating cost of the eMPF Platform (which is also subject to the tender result), the additional expenditure by approved trustees in system adjustments for interfacing and inter-operability, and the digital take-up rate of the eMPF Platform in the future. Furthermore, the eMPF Platform will improve efficiency, reliability and accuracy of the MPF System and facilitate MPFA's enforcement actions. MPFA will also ensure a level playing field for the healthy and sustainable development of the MPF System for the benefit of scheme members and Hong Kong. The eMPF Platform may also pave way for future MPF reform initiatives such as Full Portability.

15. On the abolition of the offsetting arrangement, the Administration has advised that it involves preparation at various fronts such as establishing the proposed designated saving accounts ("DSA") to which each employer will need to contribute 1% of his/her employees' relevant income so as to save up in advance to meet the employer's SP/LSP liabilities after the abolition of the offsetting arrangement. MPFA has been assisting the Administration to incorporate the DSA component into the eMPF Platform. The eMPF Platform will facilitate the abolition of the offsetting arrangement, which is one of the pre-requisites for allowing Full Portability of MPF benefits.

Annual Registration Fee payable by approved trustees

Determination of the Annual Registration Fee

16. The Bills Committee has enquired about the reasons for MPFA to start charging approved trustees for ARF some 20 years after implementation of the MPF System, and setting the ARF level at 0.03% of the NAV of a scheme instead of 0.05% the latter of which can enable MPFA to fully recover the cost of about $453 million for performing its functions with respect to registered MPF schemes in 2018-2019. Some members have also enquired about the mechanism for reviewing ARF in future.

17. The Administration has advised that during the past years, MPFA has been meeting its operating expenses by relying mainly on investment returns from the Government's Capital Grant of $5 billion provided in 1998. The unaudited balance of the Capital Grant as at March 2020 was $2.58 billion, and the Grant is projected to be fully depleted by 2024-2025. The proposed ARF will provide MPFA with a stable source of income. In determining the level of ARF, the Administration and MPFA need to observe the statutory requirements under section 22B of MPFSO including the amount of ARF must not be fixed at a level that exceeds that which will enable MPFA to recover the costs incurred, or likely to be incurred, in exercising and performing its functions with respect to registered schemes; and the amounts likely to be received by MPFA from other fees payable to it under MPFSO are also to be taken into account. While an ARF of 0.05% of the NAV of a scheme is compliant with the statutory requirements under section 22B, having considered the proposal of prohibiting approved trustees from passing on the cost of ARF to scheme members (see new section 22C added by clause 9), the Administration and MPFA consider it appropriate to adopt 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 approved trustees to adjust to the new expenses. Charging ARF at the level of 0.03% will generate an estimated annual income of around $268 million for MPFA. The ARF level will be revised with effect from the seventh year after MPFA's review with a view to achieving full cost recovery in the long run. Given that the aggregate NAV of registered MPF schemes is growing, it is expected that the ARF level may not be increased significantly after the review.

Cutting off date for the annual registration fee

18. Clause 13(2) of the Bill seeks to amend item 4 of Schedule 1 to the MPF Fees Regulation with the effect that if the immediate preceding financial period of a registered scheme ends on or after 1 January 2020 ("the cutting off date"), the amount of annual registration fee payable in respect of the registered scheme will be equal to 0.03% of the NAV of the scheme as at the end of that period. In view of the lapse of time since the Bill was introduced into LegCo, the Bills

Committee notes that the Administration will move an amendment to the clause to revise the cutting off date to 1 October 2020. The Bills Committee has no objection to the Administration's proposed amendment.

Resources management of the Mandatory Provident Fund Schemes Authority

19. The Bills Committee considers that MPFA should enhance its resources management to ensure cost effectiveness in operation. Noting that office rentals is a major expenditure item of MPFA, some members have enquired whether MPFA will consider purchasing its own office premises with a view to achieving savings in rental expenses in the long run.

20. MPFA has responded that it has implemented a number of cost saving measures over the years to minimize its operating expenditure such as relocating its office from the central business area to Kwai Chung (which has saved $50 million annually) and capping its personal emolument at $365 million annually since 2015-2016.[2] MPFA has stressed that it will continue to exercise prudence in managing its resources. In the absence of a stable income stream, MPFA will not consider purchasing its own office premises for the time being.

<u>Review of the Mandatory Provident Fund System</u>

21. Some members of the Bills Committee consider that the Administration and MPFA should reform the MPF System to address issues including high administration fee and poor investment performance of many MPF funds, as well as restrictive requirements for early withdrawal of MPF benefits by scheme members. These members have noted that some members of the public have urged for abolishing the MPF System or permitting early withdrawal of the MPF benefits by scheme members to cope with financial hardship during adverse economic situations like those arising from the coronavirus disease 2019 ("COVID-19") epidemic.

22. The Administration has stressed that MPFA has taken a number of measures, such as introducing the Employee Choice Arrangement in 2012 and the Default Investment Strategy in 2017, to create more room to reduce the administration fee of MPF funds. It is envisaged that the implementation of the eMPF Platform will further reduce the administration cost of the MPF System and enhance competition, thus providing further room for trustees to lower the administration fee. Moreover, the implementation of the eMPF Platform can lower the threshold for potential trustees to enter the MPF market as the Platform can automatically and electronically handle many MPF scheme administration processes currently performed by trustees, thus reducing the cost barrier for them in entering the market and increase competition in the market. The Bill is the

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[2] The cap is imposed by the Financial Secretary and is subject to inflationary adjustments.

first phase legislative exercise to empower MPFA to set up the eMPF Platform Company to take forward the eMPF Platform project. The Administration and MPFA will conduct a comprehensive review of MPFSO for the implementation of the eMPF Platform and engage various stakeholders at a later stage on related issues.

23. As regards allowing scheme members to withdraw their MPF benefits for relieving financial hardship due to the outbreak of COVID-19, the Administration has stressed that the purpose of the MPF System is to provide retirement protection for the working population, and allowing easy withdrawal of MPF benefits may undermine the integrity of the System and adversely affect the benefits available to scheme members upon retirement. Any changes to the requirements on early withdrawal of MPF benefits need prudent consideration. The Administration has already launched a number of relief measures including the Employment Support Scheme and the Cash Payout Scheme to help the public cope with the difficulties arising from the COVID-19 epidemic.

Amendments to the Bill to be moved by the Administration

24. The Administration will move amendments to the Bill as explained in paragraphs 12 and 18.

25. The Bills Committee will not propose amendments to the Bill.

Resumption of Second Reading debate

26. The Bills Committee has no objection to the resumption of the Second Reading debate on the Bill at the LegCo meeting of 8 July 2020.

Consultation with the House Committee

27. The Bills Committee reported its deliberations to the House Committee on 12 June 2020.

Council Business Division 1
Legislative Council Secretariat
2 July 2020

Appendix I

Major provisions of the Mandatory Provident Fund Schemes (Amendment) Bill 2019

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

(1) **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.

(2) **Part 2** contains amendments to Cap. 485. The main provisions are set out as follows –

(a) **Clause 4** – amends the existing section 6 of Cap. 485 to enable the Mandatory Provident Fund Schemes Authority ("MPFA") to receive and expend monies;

(b) **Clause 5** – adds a new section 6DA to Cap. 485 to empower MPFA to establish a wholly owned subsidiary to facilitate the performance of MPFA's functions with the approval of the Financial Secretary;

(c) **Clauses 6, 7, 8, 10** – amend the existing sections 6F, 6G, 6KA and 42B of Cap. 485 to –

(i) empower MPFA to delegate its functions to a wholly owned subsidiary;

(ii) empower MPFA to arrange for its staff to assist in the operation of the subsidiary;

(iii) provide that an electronic system designated by MPFA includes the system that is established and operated by the subsidiary; and

(iv) provide for immunity from civil liability of the subsidiary, its directors and its employees in the performance of the functions delegated by MPFA; and

(d) **Clause 9** – adds a new section 22C to Cap. 485 requiring an approved trustee to ensure that no fee representing an Annual Registration Fee ("ARF") that is payable to MPFA under section 22B may be charged to a registered scheme, constituent fund or scheme member.

(3) **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.

(4) **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 net asset value of the scheme as at the end of its immediately preceding financial period if that period ends on or after 1 January 2020.

(Source : Paragraph 16 of Legislative Council Brief (File Ref : MPF/2/1/42C))

Appendix II

Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2019

Membership list

Chairman	Hon Christopher CHEUNG Wah-fung, SBS, JP
Members	Hon Abraham SHEK Lai-him, GBS, JP Hon WONG Ting-kwong, GBS, JP Hon CHAN Kin-por, GBS, JP Hon Paul TSE Wai-chun, JP Hon CHUNG Kwok-pan Hon CHAN Chun-ying, JP Hon LUK Chung-hung, JP
	(Total： 8 members)
Clerk	Ms Connie SZETO
Legal Advisers	Miss Evelyn LEE

Appendix III

Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2019

List of organization/individual from which the Bills Committee has received written submissions

1. Liberal Party

2. Mr YUEN