立法會
Legislative Council

LC Paper No. LS6/19-20

Legal Service Division Report on
Mandatory Provident Fund Schemes (Amendment) Bill 2019

I. SUMMARY

1. **The Bill**

The Bill seeks to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and its subsidiary legislation to:

(a) empower the Mandatory Provident Fund Schemes Authority ("MPFA") to establish a wholly owned subsidiary to facilitate the performance of its functions; and

(b) revise the amount of the annual registration fee ("ARF") payable to MPFA by the approved trustee of a registered provident fund scheme.

2. **Public Consultation**

Under the direction of the Financial Secretary, a working group comprising representatives of 14 MPF approved trustees was set up for the development of a centralized platform for the administration of mandatory provident fund schemes. The Administration also consulted the industry with MPFA regarding the proposed increase of ARF.

3. **Consultation with LegCo Panel**

The Panel on Financial Affairs was consulted on 18 December 2018 and members had no objection to the introduction of the Bill into the Legislative Council.

4. **Conclusion**

The Legal Service Division is studying the legal and drafting aspects of the Bill. In the light of the proposed changes relating to the powers of MPFA and the charging of ARF, Members may wish to consider whether a Bills Committee should be formed to examine the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 23 October 2019. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: MPF/2/1/42C) issued by the Financial Services and the Treasury Bureau on 26 June 2019 for further details.

Object of the Bill

2. The Bill proposes to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and its subsidiary legislation to:

(a) empower the Mandatory Provident Fund Schemes Authority ("MPFA") to establish a wholly owned subsidiary;

(b) revise the amount of the annual registration fee ("ARF") payable to MPFA by the approved trustee of a registered provident fund scheme;

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

(d) make related amendments.

Background

3. According to paragraphs 2 to 5 of the LegCo Brief, the centralization of the administration of mandatory provident fund ("MPF") schemes by a centralised platform ("CP") would create room for reduction of MPF management fees. The Administration considers that setting up a wholly owned subsidiary of the MPFA is the optimal way to create a CP. Under Cap. 485, there is no express power for MPFA to set up a wholly owned subsidiary to facilitate the performance of its functions.

4. Further, under section 22B of Cap. 485, an approved trustee of a registered MFP scheme must pay to MPFA an 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).[1] The amount of ARF is prescribed in Schedule 1 to the Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485C) 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.

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[1] Please refer to section 110 and the definition of "deadline" in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A).

Provisions of the Bill

5. The Bill is introduced for the main purposes of empowering MPFA to set up a wholly owned subsidiary and to revise the amount of ARF. The main provisions of the Bill are summarized in the ensuing paragraphs.

Power to establish a wholly owned subsidiary

6. The Bill proposes to empower MPFA to, with the approval of the Financial Secretary, establish a wholly owned subsidiary to facilitate the performance of its functions (proposed new section 6DA). In this connection, the Bill also proposes to make amendments to sections 6F, 6G, 6KA and 42B of Cap. 485 respectively so that:

(a) MPFA may delegate its functions to a wholly owned subsidiary (clause 6 of the Bill);

(b) MPFA may arrange for its staff to assist in the operation of the subsidiary (clause 7 of the Bill);

(c) an electronic system designated by MPFA would include the system that is established and operated by the subsidiary (clause 8 of the Bill); and

(d) no civil liability would be incurred by the subsidiary, its directors and its employees in respect of anything done or omitted to be done in good faith in the performance of any function delegated by MPFA (clause 10 of the Bill).

Proposed increase of ARF and the related prohibition

7. The Bill proposes to revise the amount of ARF as prescribed in Schedule 1 to Cap. 485C so that the amount of ARF payable in respect of a registered provident fund scheme on or after 1 January 2020 would be 0.03% of the NAV of the scheme (clause 13 of the Bill).

8. In addition, the Bill proposes to impose a new requirement that the approved trustee must ensure that no fee representing an ARF may be charged to a registered scheme, constituent fund of the scheme or scheme member (clause 9 of the Bill). An approved trustee who fails to comply with this requirement would be liable to a financial penalty of $5,000 or 10% of the amount of the fee charged, whichever is the greater (clause 11 of the Bill).

Commencement

9. The Bill, if passed, would come into operation on the day on which the enacted Ordinance is published in the Gazette.

Public Consultation

10. According to paragraph 20 of the LegCo Brief, the Administration has been engaging the industry for the development of CP. In June 2017, the Working Group on eMPF comprising representatives from the Office of the Government Chief Information Officer and 14 MPF approved trustees was set up under the direction of the Financial Secretary. Regarding the proposal on ARF, the Administration consulted the industry with MPFA.

Consultation with LegCo Panel

11. As advised by the Clerk to the Panel on Financial Affairs, on 18 December 2018, the Administration briefed the Panel on the proposals to set up a CP with public funding, and to amend Cap. 485C to enable MPFA to start charging ARF on approved trustees. Members raised enquiries on how the proposed ARF rate had been worked out and the review mechanism in future. In March 2019, the Administration provided an information paper to the Panel (LC Paper No. CB(1)791/18-19(01)) reporting the progress of the development of CP, and indicating that the Administration planned to take forward the first-phase legislative amendments to give MPFA explicit power to set up a wholly owned subsidiary to carry out the necessary work for the development of CP. No member has raised enquiries on the paper.

Conclusion

12. The Legal Service Division is studying the legal and drafting aspects of the Bill. In the light of the proposed changes relating to the powers of MPFA and the charging of ARF, Members may consider whether a Bills Committee should be formed to examine the Bill in detail.

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