



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

LC Paper No. CB(1)1158/20-21(03)

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21 July 2021

Miss Cheryl CHOW
Principal Assistant Secretary for Financial Services
and the Treasury (Financial Services)
Mandatory Provident Fund Reform
Financial Services and the Treasury Bureau
24/F, Central Government Offices
2 Tim Mei Avenue, Tamar
Hong Kong

Dear Miss CHOW,

Mandatory Provident Fund Schemes (Amendment) Bill 2021

I am scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Bill, I should be grateful if you could clarify the following matters.

Proposed commencement of the Bill (Clause 1)

2. It is noted that the proposed sections under clause 1(3)(a)¹ and (b)² of the Bill, if passed, will come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury ("Secretary") by notice published in the Gazette. Please let Members know the proposed commencement arrangement for the proposed sections under clause 1(3)(a) and (b), and the reasons for the proposed arrangement.

¹ Those provisions are proposed sections 14, 15(2), 16 to 18, 20, 21, 23, 25, 40, 45, 48 (in so far as it relates to the proposed Schedule 17), 52, 55, 57(1) and (2), 59 to 61, 63, 64, 66, 67, 70 to 73, 77, 78, 80, 83, 87(2), 88(2) and (3), 92, 94, 96, 100, 101 (2), (3), (4), (6), (7), (9) to (11), (13), (14), (17) and (20), and 102.

² Those provisions are proposed new sections 19 (in so far as it relates to the proposed section 19S), 79, 84, 91, 93, 99 and 105.

Specification by the Secretary (proposed section 19I and proposed Schedule 12)

3. Under the proposed section 19I(1), the Secretary would be empowered, by notice published in the Gazette, to designate an electronic system ("designated system") administered and operated by a specified entity to provide services and facilities to facilitate the approved trustees of the mandatory provident fund schemes ("MPF schemes") to perform their scheme administration functions and to perform any other functions specified in the proposed Schedule 12. However, it is noted that no such other functions have been specified in the proposed Schedule 12. Please give examples of other functions that would be specified by the Secretary in the proposed Schedule 12 and the considerations/factors that would be taken into account in a specification of "any other functions".

Suspension of the designated system (proposed section 19J)

4. Under the proposed section 19J(1), the Mandatory Provident Fund Schemes Authority ("MPFA") would be empowered to direct the system operator of the designated system to suspend the operation or use of the designated system if MPFA reasonably considers it necessary to do so. Please explain the circumstances under which MPFA would exercise the power to give such a direction and the considerations/factors MPFA should take into account in giving a relevant direction.

Operating rules (proposed section 19K)

5. The proposed section 19K(2) seeks to impose certain duties on the system operator, including ensuring that there are in place rules made by the system operator and approved by MPFA governing the administration and operation of the designated system ("operating rules"), and that the designated system is administered and operated in a safe and efficient manner. The proposed section 19K(3) further provides that in determining whether the designated system is administered and operated in a safe manner, regard must be had in particular to certain specified matters and aspects, such as access control over the system and data protection and security. It is also noted that under the proposed section 19K(5), the operating rules would not be subsidiary legislation. In this regard, please:

- (a) provide information on the security or other measures which would be employed to protect the data (such as the personal data of MPF scheme members) processed by or stored in the designated system from being unlawfully accessed;

- (b) explain the justification for providing that the operating rules are not subsidiary legislation (and thus not subject to the scrutiny of the Legislative Council); and
- (c) clarify whether the operating rules would be available on the internet for public access. If not, please clarify whether and how the public and/or MPF scheme members would be able to know the content of the operating rules.

Mandatory use of the designated system (proposed sections 19M and 19N)

6. The proposed sections 19M and 19N seek to provide for the mandatory use of the designated system by the approved trustees, and empower the Secretary to specify by notice published in the Gazette a date from which the approved trustee of a pre-existing MPF scheme is required to use the designated system to perform their scheme administration functions. However, it appears that it is not specified in the Bill the legal consequence for the approved trustee's failure to comply with the above requirement. Please clarify whether there would be any legal consequence for the approved trustee who fails to comply with the mandatory use of the designated system.

Requirement for provision of information (proposed section 19R)

7. Under the proposed section 19R(1), the system operator would be empowered to require an approved trustee of a MPF scheme to provide any information reasonably required by the system operator to perform its functions. The approved trustee must comply with the above requirement. However, it appears that it is not specified in the Bill the legal consequence for the approved trustee's failure to comply with the requirement. Please clarify whether there would be any legal consequence for the approved trustee who fails to comply with the requirement.

Disclosure of information (proposed section 41A and 41B)

8. Currently, section 41(1) of Cap. 485 provides that a person who obtains information in the performance of functions conferred or imposed by or under Cap. 485 ("relevant information") must not disclose the relevant information to another person ("specified requirement"). Section 41(2) also provides certain exceptions to the specified requirement.

9. The proposed sections 41A and 41B seek to provide further exceptions to the specified requirement concerning disclosure of the relevant information by the system operator to the approved trustees of the

MPF schemes, and by persons other than MPFA. As personal data (including that of MPF scheme members) might be involved in such disclosure, please clarify:

- (a) whether the Data Protection Principles ("DPPs") under the Personal Data (Privacy) Ordinance (Cap. 486) should be complied with before disclosing any relevant information under proposed sections 41A and 41B; and
- (b) if the answer to question (a) above is in the affirmative, what measures would be adopted to ensure that the disclosure would be in compliance with DPPs, in particular the disclosure by persons other than MPFA under the proposed section 41B.

10. I look forward to receiving your reply in both English and Chinese as soon as possible, preferably by **30 July 2021**.

Yours sincerely,



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