

香港特別行政區政府
財經事務及庫務局
財經事務科
香港添馬添美道二號
政府總部二十四樓



FINANCIAL SERVICES BRANCH
FINANCIAL SERVICES AND
THE TREASURY BUREAU
GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

24TH FLOOR
CENTRAL GOVERNMENT OFFICES
2 TIM MEI AVENUE
TAMAR
HONG KONG

電話 TEL.: 2810 2061
圖文傳真 FAX.: 2529 1663
本函檔號 OUR REF.: MPF/2/1/43C
來函檔號 YOUR REF.: LS/B/39/20-21

LC Paper No. CB(1)1158/20-21(04)

2 August 2021

Mr Chui Ho-yin, Alvin
Assistant Legal Adviser
Legal Services Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr Chui,

Mandatory Provident Fund Schemes (Amendment) Bill 2021

Thank you for your letter dated 21 July 2021 regarding the captioned Bill. Our response to your questions is as follows.

Proposed commencement of the Bill (Clause 1)

2. The phased commencement of the Bill as proposed under clause 1(3)(a) and (b) takes into account that approved trustees of registered Mandatory Provident Fund (MPF) schemes (thereafter referred to as 'approved trustees') will be required to use the designated electronic MPF system to be administered and operated by the specified entity (i.e. the eMPF Platform) in batches. This is to ensure that the relevant provisions would take effect as and when the approved trustee of a pre-existing scheme (as defined by new section 19M(4)) is ready and able to comply with those provisions.

3. The proposed sections under clause 1(3)(a) will come into operation when the approved trustee of the first registered MPF scheme to get onboard to the eMPF Platform is ready and commences using the eMPF Platform. For those trustees the registered schemes of which are yet to use the new system, the transitional provisions in the proposed new Schedule 17 of Mandatory Provident Fund Schemes Ordinance (MPFSO) and the proposed new Schedule 5 of the Mandatory Provident Fund Schemes (General) Regulation (MPFSGR) will apply.

4. The proposed sections under clause 1(3)(b), relating mostly to the transfer of accrued benefits between MPF schemes and the maintenance of a central register by the system operator, will come into operation when all the pre-existing schemes get on board to the eMPF Platform.

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

5. The intention of the proposed new section 19I(1)(b) and Schedule 12 is to allow for flexibility such that the eMPF Platform may be conferred or assigned new functions which may not otherwise fall within the scope of “scheme administration functions” in paragraph (a) of section 19I(1). Such other functions that may be specified in the proposed new Schedule 12 include (i) providing administrative services of the designated savings account to support the policy of the Labour and Welfare Bureau to abolish the arrangement of using employers’ MPF mandatory contributions to offset severance payments and long service payments; and (ii) supporting the Government’s initiative to pay 5% MPF contribution for low-income persons.

Suspension of the designated system (proposed new section 19J)

6. The operation of the eMPF Platform will concern many users and thus the decision to suspend the system under the proposed new section 19J must not be made lightly. We envisage that the Mandatory Provident Fund Schemes Authority (MPFA) will only exercise the power under section 19J(1) in very exceptional or extreme circumstances, such as serious non-compliance with the conditions, operating manual and rules governing the use of the eMPF Platform, or in the event of major systemic failure or malfunctioning of the system. In exercising its power to direct suspension of the system, the MPFA will give due regard to the interests of scheme members and stability of the eMPF Platform. The MPFA will set out these general considerations or

factors for information and guidance of approved trustees and users of the eMPF Platform.

Operating rules (proposed new section 19K)

(a) Security or other measures to protect the data

7. The eMPF Platform operator is required to observe and adhere to all relevant and applicable laws, regulations, guidelines, codes of practice and international requirements/ standards concerning data privacy and data security. In fact, the design and technical specifications of the eMPF Platform and the supporting data centers, which have become part of the contracts for the development of the Platform, has made reference to the Government's prevailing policies and standards on storing and processing confidential information, as well as international security standards and best practices. Comprehensive security controls with multi-layer of protection measures as set out below will be implemented :

- Multi-layer of security firewalls, intrusion detection and prevention system, and other protection measures;
- Advanced security technologies such as biometrics authentication, AI (artificial intelligence)-based analysis of large volume security data and immediate response to cyber attacks, etc.;
- Managed security services for 7x24 threat prevention, detection and response; and
- Business continuity plan and incident response plan to handle security incidents.

8. Both the primary and secondary data centers of the eMPF Platform would be hosted locally in Hong Kong and operated under the framework of the next generation Government Cloud of the Office of the Government Chief Information Officer.

(b) Operating Rules not being subsidiary legislation

9. The Operating Rules of the eMPF Platform, which will cover the detailed operation of the eMPF Platform including the scheme administration process flows, are a set of administrative document. Given the highly operational nature of the Operating Rules, flexibility is required to ensure that prompt updates, fine-tuning and

improvements could be made to cater for the operating needs and changing circumstances. The Operating Rules are not intended to have legislative effect and a person or user does not incur criminal liability or financial penalty only because the person/user has failed to comply with the Operating Rules.

(c) Public access to the Operating Rules

10. The Operating Rules are meant to be a public document and will be made available to the public, for example through publication on the website of the MPFA and the system operator.

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

11. While an approved trustee of a pre-existing scheme must use the eMPF Platform in relation to the scheme on a date to be specified in the notice published in the Gazette under new section 19N, an approved trustee of a newly registered scheme (as defined by new section 19M(4)) is required to use the Platform once it is so registered.

12. Insofar as facilitating the implementation of the eMPF Platform is concerned, new section 19P(1) provides that an approved trustee must have in place effective plans, procedures and systems for enabling or facilitating (a) the proper and efficient implementation of the eMPF Platform; and (b) the effective and efficient provision of scheme administration services by the system operator. The new section 19P(2) requires an approved trustee to (i) take actions reasonably required for any of the purposes mentioned in section 19P(1); and (ii) take such other actions that the MPFA considers necessary for any of the purposes mentioned in section 19P(1) if required by the MPFA under section 19P(3).

13. The MPFA as regulator of the approved trustees will give suitable guidance or directives to trustees on their mandatory use of the eMPF Platform. An approved trustee who fails to comply with the requirements imposed by MPFA under section 19P(2) may be subject to a daily financial penalty (\$10,000 (1st occasion), \$20,000 (2nd occasion) and \$50,000 (3rd or subsequent occasion)) for each day on which the trustee's failure continues (proposed new item 2H of Schedule 4 to the MPFSGR refers).

14. In addition, under the current section 45F(2) of the MPFSO, where an approved trustee refuses or fails to do any act or thing that the trustee is required to do under the MPFSO, the MPFA may apply to the Court for an order to require the trustee to do the act or thing.

Requirement for provision of information (proposed new section 19R)

15. Prior to the launch of the eMPF Platform, the system operator and approved trustees would put in place administrative and binding arrangements to ensure the proper and efficient implementation and continuous operation of the system. The details concerning the day-to-day operation and work processes of the eMPF Platform, including the provision of and access to information and the responsible parties, will be governed by the Operating Rules. The system operator may also specify, in a notice to the approved trustee under the new section 19R(1), the information it reasonably required to perform its functions to administer and operate the eMPF Platform and provide scheme administrative services.

16. Non-compliance with the section 19R(1) requirement could be resolved administratively by making reference to the Operating Rules. In situation where the non-compliance persists or an approved trustee continues to be uncooperative, the system operator may escalate the matter to the MPFA, who has the function to monitor the compliance with the Operating Rules under the proposed new section 6E(ec). Depending on what the information is about, the MPFA may formally require the trustee concerned to take action under section 19P(2)(b) (see paragraph 12 above). The MPFA is also empowered, under the current section 45F(2) of the MPFSO, to apply for court order to compel compliance (paragraph 14 refers).

Disclosure of information (proposed new sections 41A and 41B)

17. In general, any disclosure of relevant information under the MPFSO is subject to the Data Protection Principles (DPPs) unless exemptions provided in the Personal Data (Privacy) Ordinance (PDPO) applies.

18. Section 60B(a) of the PDPO provides that personal data is exempt from the provisions of data protection principle 3 (DPP3) if the use of the data is required or authorized by or under any enactment, by any rule of law or by an order of a court in Hong Kong.

19. The proposed new sections 41A and 41B of the MPFSO provide for further exceptions to the requirement under the existing section 41 that a person who obtains information in the performance of functions conferred or imposed by or under the MPFSO must not disclose the information to another person. By virtue of section 60B(a) of the PDPO, any disclosure authorized under the proposed new sections 41A and 41B should be exempted from compliance with DPP3.

20. Please do not hesitate to contact us for further information or clarification.

Yours sincerely,



(Miss Cheryl Chow)

for Secretary for Financial Services and the Treasury

c.c. Clerk to Bills Committee

Department of Justice

(Attn: Ms Frances HUI, Senior Assistant Law Draftsman

Mr Michael CHOI, Senior Government Counsel (Acting))

Mandatory Provident Fund Schemes Authority

(Attn: Ms Gabriella YEE, Executive Director (Policy))