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立法會 CB(1)1240/20-21(01)號文件
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To: By email: bc_11_20@legco.gov.hk

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(English version only)

Chairman of the Bills Committee,
the Mandatory Provident Fund Schemes (Amendment) Bill 2021
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

cc: The Hon Chan Kin Por

From: Hong Kong Trustees' Association for and on behalf of MPF trustees

Subject: Trustees' Further Submission for the Bills Committee meeting on 23 August 2021

With the support of the Hon KP Chan, the HKTA for and on behalf of all MPF trustees made a submission to the Bills Committee on 3 August 2021 on various key issues in the Bill which have not been appropriately addressed despite the industry's efforts to bring them to the attention of the Government and the MPFA. The Administration presented a response to the Bills Committee on 18 August 2021. The industry notes that the Administration has not directly and fully addressed some key issues identified. So a further submission is hereby made to the Bills Committee for its meeting on 23 August 2021. We sincerely ask that the Bills Committee requests the Administration to properly address such issues with the industry with fair and reasonable solutions to those concerns.

Safe harbour provisions

In response to quite a few points raised by the industry on "safe harbour provisions" (including those relating to "**proportionate basis**", and "**trustees' duties under section 43 of MPFSGR**"), the FSTB essentially says that appropriate guidance will be issued to the industry in due course. This falls short of the expectation of the industry which has been requesting for more (by way of policy principles) to be set out in the law. Take for example the principles of proportionality and reasonableness which, the FSTB has confirmed in its response, will be adhered to in the formulation of the relevant enforcement policy. Despite such indication that the MPFA will issue guidance to the industry to explain its enforcement policy 'as appropriate', the industry still cannot understand why such principles cannot be set out in the law, as doing so is not only

a reasonable but also equitable arrangement for all stakeholders concerned. Also, setting out such principles in the law (rather than merely in the guidance notes to be issued, particularly with the uncertainty as to the timing of its issue, the exact contents and the adequacy of coverage) can provide the much needed assurance the industry seeks. With the very significant impact the introduction of eMPF will have on the industry and the pertaining uncertain regulatory risks the industry will face, the assurance it seeks of **having the said principles set out in the law is only reasonable.**

More particularly as regards the **section 43 duties** of the trustees, the FSTB's broad brush description of it as "*generic and all embracing...*" (quoted from para 12 of FSTB's response) fails to take into account the facts that:

- (a) the section 43 duties, as described in the **existing** law, are "*with respect to the administration of the scheme*"; and
- (b) whilst those duties **include** scheme administration functions **before** the implementation of *eMPF*, scheme administration functions will be **taken away** from the trustees **after** eMPF implementation in a manner that the trustees will not be in a position to supervise the carrying out of those functions.

In view of (a) and (b) above, suitable **amendments** (including appropriate *carve-outs*) to the wording of the trustees' section 43 duties should be made.

Determination of administration fee

As to "**the power of the MPFA to determine rate of administration fee**" under s. 19ZB (which power is also stated by the FSTB as their response to the "**bundled admin/custodian/trustee fees**" issues), the FSTB also says that guidelines on how that determinations are to be done will be issued after consultation with stakeholders. Again, more **certainty and transparency** can be afforded if guiding principles for the determination can be set out in the law. The industry is particularly concerned by the fact that the underlying commercial arrangements and pricing structures of different groups of providers (which form the basis of how the public information on fees is disclosed) are not mentioned in the FSTB's response as factors relevant to the determination in question; instead, FSTB's response simply states "*the determination of relevant rate of administration, will be made with reference to factors, ...including industry average figures of trustee/ custodian fee available from public information*" (quoted from para 19 of FSTB's response).

As referred to in HKTA's submission dated 3 August 2021, the industry would like to reiterate its concern about the effect of the proposed fee cap on trustees with bundled fee arrangements (which have been in use and are permitted under existing regulations). Such trustees would, if the proposed fee cap is not properly implemented by taking into account all relevant factors (including the above-mentioned factors regarding underlying commercial arrangements and differences between pricing structures), be put in a worse-off position than those who do not disclose fees in such a bundled manner. Failure to take such factors into account would call into a question whether trustees with bundled fee arrangement could remain financially viable to continue operating after implementation of eMPF. We respectfully urge the Administration to further look into this matter.

Absence of a proper definition for “administration”

Regarding the “scope of scheme administration”, the FSTB has not directly responded to the issues raised regarding the absence of a proper definition for “administration”. Likewise, it has not responded to the industry’s submission that “fund administration” (which is outside the scope of eMPF) should be distinguished from “scheme administration”. All the FSTB has stated is that the Common Standards drawn up by the MPFA and the industry provide the required delineation for the core and essential scheme processes and functions to be centrally delivered by the eMPF Platform. Such a vague response to such a significant and fundamental issue is disappointing, and the industry continues to urge the FSTB to properly set out a **clear definition of “administration” in the law (so that “fund administration” is clearly excluded from it)**.

Use of FER for corresponding topline reduction

While the FSTB admits that out-of-pocket expenses (OPE) is sometimes beyond the control of trustees, they expect the burden of unexpected increase in OPE will be offset by the expected and gradual OPE drop and the general growth in AUM. Such a response does not, however, taken into account **OPE items of a non-scheme administration nature**, which, in fact, contribute to a significant portion of OPE (e.g. increasing auditor fees (more than inflation and also, by reference to AUM) and other professional fees). The anticipated legal fees for documentation changes due to eMPF and other upcoming reforms (such as full portability and DSA in relation to LSP/SP offset arrangement) will be very significant, and trustees should **not** simply be asked to absorb such fees in effect.

The Administration should also note that “automation” and “digitization” may only help reduce printing expenses and postage, which is one out of many “out-of-pocket” items, for

example as referred to the OPE definition (for DIS).

- (i) auditor's fees for annual audit;
- (ii) printing expenses and postage;
- (iii) fund price publication expenses;
- (iv) bank charges;
- (v) governmental fees and charges (including stamp duties and licence fees); and
- (vi) other charges, expenses or fees that are properly incurred and permitted under this Ordinance or the governing rules.

[Please note that such OPE items are generally neither paid to nor charged by trustees.] The trustees, therefore, continue to maintain their position that the "use of FER" is inappropriate. However, if FER must somehow be used, It should only be used in a fair manner with **appropriate carve-outs of certain OPE items from the calculation of FER** (so that, for example, legal and other professional fees and expenses incurred in connection with or for the purpose of regulatory changes (including, but not limitation to, those pertaining to documentation changes) should be allowed to be carved out from the FER calculation).

Trustees sincerely urge the Bills Committee to consider the above key issues in vetting the said Amendment Bill. Thank you.