

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.:

LC Paper No. CB(1)1350/20-21(01)

20 September 2021

Mr Boris Lam
Clerk to Bills Committee on Mandatory Provident
Fund Schemes (Amendment) Bill 2021
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Mr Lam,

**Mandatory Provident Fund Schemes (Amendment) Bill 2021 (the Bill) –
Second Submission from the Hong Kong Trustees' Association (HKTA)**

I refer to the second submission from the HKTA dated 22 August 2021 to the Bills Committee on the captioned Bill. Further to our verbal response made at the meeting on 23 August 2021, we set out below our written reply to the issues concerned.

Safe harbour provisions

Proportionate basis

2. It has always been the policy and practice for the Mandatory Provident Fund Schemes Authority (MPFA) to decide on the appropriate

enforcement action after taking into account the principles of proportionality and reasonableness. Specifically, when assessing whether a non-compliance is substantiated and the extent of fault attributable to the trustee concerned, the MPFA would consider all relevant facts and circumstances, including the root cause of the breach and the respective involvement of a trustee and the system operator. The MPFA would decide on the appropriate enforcement action after assessing all available evidence (including representations made by the trustee concerned). The MPFA will issue guidance to the industry to explain its enforcement policy. The above enforcement policy has hitherto been working effectively and we do not consider it necessary to make changes to the law or current policy.

Trustees' duties under section 43 of the MPFSGR

3. As explained in our previous responses, the duties imposed on trustees with respect to the administration of MPF schemes under section 43 of the Mandatory Provident Fund Schemes General Regulation (Cap. 485, sub.leg. A) (MPFSGR) are generic and all-embracing. While trustees would be required to use the eMPF Platform for performing their scheme administration functions under the law, trustees will remain responsible for the general requirements with respect to the administration of MPF schemes under section 43 of the MPFSGR, and thus no amendment is proposed to this provision. In fact, there is already an existing defence of "reasonable excuse" available to trustees under section 67 of the MPFSGR in the event of non-compliance with section 43 of the MPFSGR.

4. In respect of trustees' specific scheme administration duties, the safe harbour provisions in the Bill will provide trustees with a statutory defence if a trustee's non-compliance with the relevant statutory requirements is only due to the failure of the system operator.

Determination of relevant rate of administration fee

5. Due to the different disclosure practices, business models and pricing strategy amongst trustees, the administration fee of some MPF schemes is bundled with custodian fee and trustee fee. As explained in our issued responses, the MPFA may exercise the power conferred by new section 19ZB in the Mandatory Provident Fund Schemes Ordinance (Cap. 485) to determine the

relevant rate of administration fee of the constituent fund if the rate of administration fee (or equivalent) is not readily ascertainable by reference to the offering documents and if it is justified for MPFA to do so. The determination, if any, will be made reasonably, fairly and impartially, taking into account relevant factors including the applicable guidelines. The MPFA will prepare guidelines in this regard and consult relevant stakeholders in around early 2022.

Scope of scheme administration

6. The scope of scheme administration functions and services to be provided by the system operator are based on the Common Standards, which have delineated clearly the core and essential processes and functions of scheme administration to be taken up and centrally delivered by the eMPF Platform. It should be noted that the functions and services concerned are arrived at after various in-depth discussions between the MPFA and the industry undertaken since 2017 and form the basis of the public tender covering the specific services and facilities to be provided by the system operator to facilitate trustees' performance of scheme administration functions. As explained in our previous written responses and at the Bills Committee meetings, the scope of scheme administration and current basis of charging administration fee for the use of eMPF Platform are clear and transparent.

Use of fund expense ratio (FER) for corresponding topline reduction

7. Our policy intent, as supported by the Bills Committee, is to ensure that the cost savings from operating the eMPF Platform would be passed onto scheme members in full and reflected in the overall fee level by requiring a corresponding reduction in the total fees and charges payable by scheme members. As the FER of each MPF fund measures the overall fund expenses (including out-of-pocket expenses) borne by scheme members, it is reasonable and logical to use the FER as the basis of calculating the corresponding reduction in the overall fees under eMPF Platform in the law. The Bill has included provisions on how the FER should be calculated, with reference to the prevailing practice and the Code on Disclosure for MPF Investment Funds published by the MPFA.

8. The above have been conveyed to the Bills Committee during the meetings and through our written responses. The Bills Committee has taken note of our responses without proposing amendments to the Bill.

Yours sincerely,



(Miss Cheryl Chow)

for Secretary for Financial Services and the Treasury

c.c. Hong Kong Trustees' Association Limited

(Attn: Ms LAU Ka-shi)

Mandatory Provident Fund Schemes Authority

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

Department of Justice

(Attn: Ms Frances HUI, Senior Assistant Law Draftsman
Mr Michael CHOI, Government Counsel)