

立法會
Legislative Council

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Tel : 3919 3329

Date : 8 October 2021

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 20 October 2021

**Proposed amendments to
the Mandatory Provident Fund Schemes (Amendment) Bill 2021**

Further to LC Paper No. CB(3) 1041/20-21 issued on 4 October 2021, the President has given permission for the Secretary for Financial Services and the Treasury to move amendments to the captioned Bill, subject to the Bill receiving Second Reading.

2. As directed by the President, the proposed amendments are attached for Members' consideration.

(Cindy FUNG)
for Clerk to the Legislative Council

Encl.

Mandatory Provident Fund Schemes (Amendment) Bill 2021

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
1(3)(a)	By adding “64A,” after “64,”.
19	By deleting the proposed section 19P(2) and (3) and substituting— “(2) The Authority may, by written notice given to an approved trustee of a registered scheme— (a) require the approved trustee to take any action the Authority considers necessary for any of the purposes mentioned in subsection (1); (b) require the approved trustee to do either or both of the following— (i) to take any action the Authority considers necessary for ensuring compliance by the approved trustee with section 19M; (ii) to comply with section 19M; and (c) if the system operator of an electronic MPF system has given the approved trustee a notice under section 19R(1), require the approved trustee to do either or both of the following— (i) to take any action the Authority considers necessary for ensuring compliance by the approved trustee with section 19R(3); (ii) to comply with section 19R(3). (3) An approved trustee of a registered scheme must— (a) take— (i) actions that are reasonably required for any of the purposes mentioned in subsection (1); and (ii) other actions required by the Authority under subsection (2)(a);

- (b) comply with the requirements imposed on the approved trustee under subsection (2)(b); and
- (c) comply with the requirements imposed on the approved trustee under subsection (2)(c).”.

19 In the proposed section 19S(3), by adding—

“(ca) the information contained in the most recent benefit statement for the member with respect to each specified scheme;”.

19 In the proposed section 19S, by adding—

“(9) In this section—

benefit statement (權益報表), in relation to a member of a registered scheme, means a benefit statement provided to the member under section 56(1) or (2) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A).”.

19 In the proposed section 19ZE, in the English text, in the heading, by deleting “**section**” and substituting “**sections**”.

34 In the proposed section 41B, by adding—

“(6) A person who uses or discloses any information in contravention of subsection (5) commits an offence and is liable on conviction to a fine at level 4.”.

54 By deleting the clause and substituting—

“54. Section 56 amended (approved trustee to provide scheme members with annual benefit statements)

(1) Section 56(1)—

Repeal

“trustee of the scheme”

Substitute

“trustee of a registered scheme”.

(2) Section 56(1)(a)—

Repeal

“a registered scheme, each of the scheme members”

Substitute

“the scheme, each scheme member”.

- (3) Section 56(1)(b)—

Repeal

“subsequent audit adjustments made to the benefit statements affecting the members’ balances, members are”

Substitute

“any subsequent audit adjustments made to a benefit statement affecting the member’s balance, the member is”.

- (4) Section 56(2)—

Repeal

everything after “must”

Substitute

“also ensure that within 3 months after the end of the first 12 months of the financial period, each scheme member is provided with a benefit statement setting out the member’s position with respect to the scheme as at the end of that first 12-month period (*first 12-month period*).”.

- (5) Section 56(3)(b), (c), (d), (e) and (f)—

Repeal

“financial”

Substitute

“prescribed”.

- (6) After section 56(3)(f)—

Add

“(faa) give an estimate of the return on the member’s investments in each account in the scheme over the prescribed period; and

(faab) give an estimate of the cumulative return on the member’s investments in each account in the scheme over the period that begins on the account opening date and ends on the last day of the prescribed period (*entire period*); and

(faac) give an estimate of the annualized return on the member’s investments in each account in the scheme over the entire period; and”.

(7) Section 56(3)(fa), English text—

Repeal

“such information as may be”

Substitute

“the information”.

(8) After section 56(3)—

Add

“(3AA) Without affecting subsection (3), a benefit statement required to be provided under subsection (1)(a) to a member of a registered scheme for a financial period of the scheme must also—

- (a) specify the applicable FER for the relevant corresponding period of each relevant fund in which the member invested at any time during the financial period; and
- (b) give an estimate of the fees charged in respect of each account in the scheme during the financial period, including an estimate of the fee charged under each type of fee specified by the Authority.

(3AAB) An estimate required to be given under subsection (3)(faa) or (faab) or (3AA)(b) is to be—

- (a) determined in the manner specified by the Authority; and
- (b) expressed both in Hong Kong dollars and as a percentage.

(3AAC) An estimate required to be given under subsection (3)(faac) is to be—

- (a) determined in the manner specified by the Authority; and
- (b) expressed as a percentage.”.

(9) Section 56(5)—

Repeal

“(b) to (fa)”

Substitute

“(b), (c), (d), (e), (f) and (fa)”.

(10) Section 56—

Repeal subsection (6).

(11) Section 56(7)—

Repeal

“this section in relation to a person who has ceased to be a scheme member during the period of 3 months after the end of a financial period of the scheme”

Substitute

“subsection (1) or (2) in relation to a person who has ceased to be a scheme member during the period specified in subsection (8)”.

(12) After section 56(7)—

Add

“(8) The period specified for subsection (7) is—

(a) in relation to the compliance with subsection (1)—the period of 3 months after a financial period of the registered scheme; and

(b) in relation to the compliance with subsection (2)—the period of 3 months after the end of the first 12 months of a financial period of the registered scheme.

(9) Subsection (3)(faa), (faab) and (faac) only applies to a benefit statement that sets out a scheme member’s position as at the end of a financial period, or the first 12 months of a financial period, of the registered scheme that begins on or after the commencement of section 19S of the Ordinance.

(10) Subsection (3AA) only applies to a benefit statement that sets out a scheme member’s position as at the end of a financial period of the registered scheme that begins on or after the commencement mentioned in subsection (9).

(11) For a scheme member’s benefit statement that relates to a financial period mentioned in subsection (10)—

(a) subsection (3AA)(a) does not apply to a relevant fund in which the member invested at any time

during the financial period if the relevant corresponding period of the relevant fund begins on the inception date of that fund; and

- (b) any fees incurred in the investment of the member in a relevant fund to which paragraph (a) applies are not to be taken into account when determining an estimate under subsection (3AA)(b) for the benefit statement.

(12) In this section—

applicable FER (適用 FER), in relation to a relevant corresponding period of a relevant fund in which a member of a registered scheme has invested, means—

- (a) the audited fund expense ratio submitted to the Authority under section 19Y of the Ordinance (***audited FER***) for the relevant corresponding period of the relevant fund; or
- (b) (if at the time of preparing the benefit statement, the audited FER for the relevant corresponding period of the relevant fund is not available) the most recently available fund expense ratio determined by the approved trustee of the scheme in accordance with Schedule 13 to the Ordinance for the relevant corresponding period;

corresponding period (相應期間) has the meaning given by section 19T(1) of the Ordinance;

fees (費用) include charges;

inception date (成立日) has the meaning given by section 19T(1) of the Ordinance;

prescribed period (訂明期間)—

- (a) for the purposes of a benefit statement mentioned in subsection (1)(a), means the financial period to which the benefit statement relates; and
- (b) for the purposes of a benefit statement mentioned in subsection (2), means the first 12-month period to which the benefit statement relates;

relevant corresponding period (相關相應期間), in relation to a relevant fund in which a member of a registered scheme has invested, means the corresponding period, or the part of the corresponding period, of the relevant fund that coincides with a financial period of the scheme;

relevant fund (相關基金), in relation to a member of a registered scheme, means a constituent fund of the scheme in which the member has invested.”.”.

New

By adding—

“64A. Section 119 amended (definitions)

Section 119—

Repeal the definition of *defaulter*.”.

72

In the Chinese text, by deleting subclause (1) and substituting—

“(1) 第 136 條，標題 ——

廢除

在“局須”之後的所有字句

代以

“向欠款人給予通知”。”.

72(2)

(a) By adding “serve on the defaulter” after “an approved trustee,”.

(b) By deleting everything after “of it)” and substituting “or any amount of a contribution surcharge liable to be paid by the employer or person under section 18(2) of the Ordinance (*outstanding sum*), the Authority must as soon as practicable serve on the person (*defaulter*)”.”.

72

By adding—

“(2A) Section 136(1)(a)—

Repeal

“arrears and the contribution surcharge payable on the arrears”

Substitute

“outstanding sum”.

(2B) Section 136(1)—

Repeal paragraph (b)

Substitute

“(b) (regardless of whether the outstanding sum relates only to a contribution surcharge liable to be paid by the defaulter) to give to the Authority an explanation with respect to the failure to pay the arrears;”.

(2C) Section 136(1)(d)—

Repeal

everything after “paying”

Substitute

“the outstanding sum, a remittance statement.”.

72(4)

(a) By adding “are” after “subsection (1)”.

(b) By adding “are as follows” after “subsection (1AA)”.

72

By deleting subclause (5) and substituting—

“(5) Section 136(1A)(a) and (b), Chinese text—

Repeal

“拖欠供”

Substitute

“欠”.

(6) Section 136(1A)—

Repeal paragraphs (c), (d) and (e).

(7) Section 136—

Repeal subsection (2).

(8) Section 136(3)—

Repeal

“is in default”

Substitute

“has failed to pay the arrears”.

(9) Section 136—

Repeal subsections (4), (5), (6) and (9).

(10) Section 136(10), Chinese text—

Repeal

“拖欠供款人必須遵守根據本條向他”

Substitute

“欠款人須遵守根據本條向其”.

- 101(5) In the proposed item 2H—
- (a) by deleting “2H 19P(2)” and substituting “2H 19P(3)(a)”;
 - (b) by deleting “Approved trustee to take actions required under section 19P(2)” and substituting “Approved trustee to take actions under section 19P(3)(a)”;
 - (c) by deleting “fails to take actions required under section 19P(2)” and substituting “fails to comply with section 19P(3)(a)”.

101(5) By adding—

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| <p>“2HA 19P(3)(b) Approved trustee to comply with requirements imposed under section 19P(2)(b) of the Ordinance</p> | <p>If approved trustee fails to comply with section 19P(3)(b) of the Ordinance—</p> <ul style="list-style-type: none"> (a) for the first occasion on which the trustee fails to do so—a daily penalty of \$10,000 for each day on which the failure continues; (b) for the second occasion on which the trustee fails to do so—a daily penalty of \$20,000 for each day on which the failure continues; and (c) for the third or subsequent occasion on which the trustee fails to do so—a daily |
|---|---|

		penalty of \$50,000 for each day on which the failure continues
2HB	19P(3)(c)	Approved trustee to comply with requirements imposed under section 19P(2)(c) of the Ordinance
		If approved trustee fails to comply with section 19P(3)(c) of the Ordinance—
		(a) for the first occasion on which the trustee fails to do so—a daily penalty of \$10,000 for each day on which the failure continues;
		(b) for the second occasion on which the trustee fails to do so—a daily penalty of \$20,000 for each day on which the failure continues; and
		(c) for the third or subsequent occasion on which the trustee fails to do so—a daily penalty of \$50,000 for each day on which the failure continues”.

102

In the proposed Schedule 5, in section 16(1), by deleting “section 72 of the 2021 Amendment Ordinance (*amendment provision*), section 136 as in force immediately before the commencement date applies” and substituting “sections 64A and 72 of the 2021 Amendment Ordinance (*amendment provisions*), sections 119 and 136 as in force immediately before the commencement date apply”.

- 102 In the proposed Schedule 5, in the English text, in section 16(4), in the definition of **commencement date**, by deleting “provision comes” and substituting “provisions come”.
- 102 In the proposed Schedule 5, in section 17(1), by deleting “section 73 of the 2021 Amendment Ordinance (**amendment provision**), section 137 as in force immediately before the commencement date (**pre-amended section 137**) applies” and substituting “sections 64A and 73 of the 2021 Amendment Ordinance (**amendment provisions**), sections 119 and 137 as in force immediately before the commencement date (**pre-amended provisions**) apply”.
- 102 In the proposed Schedule 5, in section 17(2), by deleting “section 137 applies” and substituting “provisions apply”.
- 102 In the proposed Schedule 5, in the English text, in section 17(3), in the definition of **commencement date**, by deleting “provision comes” and substituting “provisions come”.
- 102 In the proposed Schedule 5, in the English text, in section 20(2), by deleting “date applies” and substituting “date apply”.
- 102 In the proposed Schedule 5, in the English text, in section 30(3), in the definition of **relevant provision**, in paragraph (b), by deleting “Schedule.” and substituting “Schedule.”.
- 104 In the proposed section 78B(3), by deleting “fails to comply with” and substituting “uses or discloses any information in contravention of”.