

**立法會**  
**Legislative Council**

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**Paper for the House Committee Meeting  
on 16 July 2021**

**Legal Service Division Report on  
Mandatory Provident Fund Schemes (Amendment) Bill 2021**

**I. SUMMARY**

- 1. The Bill**

The Bill mainly seeks to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and its subsidiary legislation to provide for a common electronic system to facilitate the administration and implementation of mandatory provident fund ("MPF") schemes registered under Cap. 485.
- 2. Public Consultation**

The Administration and the Mandatory Provident Fund Schemes Authority have conducted intensive discussions with the MPF industry on the overall framework, operation details and development of a common electronic platform, known as the eMPF Platform, and the related legislative proposals through established channels. The industry generally supported the development of the eMPF Platform Project while expressing concerns on fees, transitional arrangements and liabilities.
- 3. Consultation with LegCo Panel**

The Panel on Financial Affairs ("the Panel") was consulted on the legislative proposals on 4 January 2021 and the Panel members had no objection to the introduction of the Bill into the Legislative Council.
- 4. Conclusion**

The Legal Service Division is studying the legal and drafting aspects of the Bill. In the light of the concerns expressed by the Panel members on the proposed implementation of the eMPF Platform, Members may consider forming a Bills Committee to study the Bill in detail.

## **II. REPORT**

The date of First Reading of the Bill is 14 July 2021. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: MPF/2/1/43C) issued by the Financial Services and the Treasury Bureau on 7 July 2021 for further details.

### **Object of the Bill**

2. The Bill seeks to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and its subsidiary legislation to:

- (a) provide for a common electronic system for administering and implementing provident fund schemes registered under Cap. 485 ("MPF schemes");
- (b) provide for the appointment of deputy chairperson of the Mandatory Provident Fund Schemes Authority ("MPFA"); and
- (c) make related and technical amendments.

### **Background**

3. According to paragraphs 4 to 7 of the LegCo Brief, the Government has tasked MPFA to design, build and operate a common electronic platform (including an electronic system), known as the eMPF Platform, to standardize, streamline and automate the administration processes of MPF schemes. Following the completion of the first-stage legislative exercise in 2020 (i.e. the Mandatory Provident Fund Schemes (Amendment) Bill 2019 which was passed by LegCo in July 2020), the eMPF Platform Company Limited ("Company"), a wholly owned subsidiary of MPFA, has been established under section 6DA of Cap. 485 in March 2021 with the primary objectives to develop, build and operate the eMPF Platform. The Bill seeks to introduce the second-stage legislative amendments to Cap. 485 for the implementation of the eMPF Platform.

### **Provisions of the Bill**

4. The Bill, which consists of four Parts and 109 clauses, mainly seeks to provide the legal backing for the operation of the eMPF Platform and related matters. The main provisions of the Bill are summarized in the ensuing paragraphs.

#### Implementation of the eMPF Platform

##### *Designation of the system and mandatory use by trustees*

5. The Bill proposes to add a new Part 3B to Cap. 485 (containing proposed sections 19I to 19ZH) to:

- (a) empower the Secretary for Financial Services and the Treasury ("Secretary"), 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 MPF schemes ("approved trustees") to perform their scheme administration functions (proposed section 19I);
- (b) provide that the Company or a wholly owned subsidiary established under section 6DA of Cap. 485 would be the specified entity and system operator of the designated system (proposed section 19I);
- (c) empower MPFA to direct the system operator to suspend the operation or use of the designated system if MPFA reasonably considers it necessary to do so (proposed section 19J);
- (d) provide for the general duties and powers of the system operator, including operating the designated system in a proper manner, providing scheme administration services to facilitate the approved trustees in performing their scheme administration functions, 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, charging fees for providing any service or facility in relation to the designated system, and requiring an approved trustee to provide information reasonably required by the system operator to perform the system operator's functions (proposed sections 19K, 19L and 19R);
- (e) 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 (proposed sections 19M and 19N); and
- (f) provide for the duties of the approved trustees, including the duty to have in place effective plans, procedures and systems for enabling or facilitating the proper and efficient implementation of the designated system (proposed section 19P).

#### *Fees charged by the approved trustees*

6. According to paragraph 10 of the LegCo Brief, to ensure that cost savings derived from the operation of eMPF Platform would be passed directly to the scheme members, the Bill proposes to add new sections to Cap. 485 to regulate the fees charged by the approved trustees for scheme administration. Key provisions are summarized as follows:

- (a) under the proposed new section 19U, the aggregate amount that might be charged to a constituent fund of a MPF scheme by an approved trustee for the amount payable to the system operator for the use of the designated system or for the provision to the approved trustee of scheme

administration services ("related fees") should not exceed the total amount of the related fees ("fees restriction"); and

- (b) the proposed new sections 19V to 19ZC and new Schedules 13 to 16 mainly provide for a mechanism for calculating and determining the fund expense ratio and the permitted percentage for a constituent fund (other than capital preservation fund) of a MPF scheme. Under the proposed section 19ZA, if the fund expense ratio of a constituent fund in a specified period exceeds the permitted percentage, the approved trustee of that constituent fund should pay the amount calculated in accordance with the new Schedule 16 into the constituent fund as income of the fund ("pay back requirement").

7. Clause 101 of the Bill further proposes to amend Schedule 4 to the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) to provide for financial penalties in relation to certain provisions of Cap. 485 and Cap. 485A, including a financial penalty at \$5,000 or 10% of the amount of the fee overcharged, which is the greater, for non-compliance with the fees restriction or the pay back requirement.

#### Functions of MPFA

8. The Bill seeks to amend section 6E of Cap. 485 to, among others, empower MPFA to (i) oversee the operation of the designated system (including giving to the system operator and approved trustees directions or instructions MPFA considers appropriate for safeguarding the integrity and stability of the designated system), (ii) supervising the performance of the specified entity, and (iii) enhancing public understanding of the features, objectives, operations and investments of MPF schemes (clause 7 of the Bill).

#### Disclosure of information

9. 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 must not disclose the information to another person ("specified requirement"). Section 41 also provides certain exceptions to the specified requirement.

10. The Bill seeks to amend section 41 to the effect that the specified entity may exchange information obtained under Cap. 485 with the approved trustees and MPFA for the purposes of performing the functions under Cap. 485. The Bill also seeks to provide further exceptions to the specified requirement, including disclosing information by a person (other than MPFA) for the purpose of any criminal proceedings in Hong Kong or an investigation conducted with a view to bringing any such proceedings (clauses 33 and 34 of the Bill).

#### Immunity and liabilities

11. The Bill seeks to amend section 42B(3) of Cap. 485 to provide immunity from civil liability to the specified entity, or a director or employee of the specified

entity in respect of anything done, or omitted to be done, in good faith in the performance or purported performance of the specified functions (including complying with a direction or instruction given by MPFA to the specified entity) (clause 38 of the Bill).

12. The Bill further seeks to add a new section 44B to Cap. 485 to provide a defence for the approved trustees charged with the offence of non-compliance with the requirements under section 43A(1) or (3) of Cap. 485 (relating to payment of accrued benefits of a scheme member in accordance with an entitlement conferred by or under Cap. 485). Under that new section, it would be a defence to establish that the payment of the accrued benefits or failure to pay was only because of the failure of the system operator to discharge its duties.

#### Appointment of deputy chairperson of MPFA

13. Currently, section 6C(2) of Cap. 485 provides that the Managing Director ("MD") of MPFA is, by virtue of holding that office, the deputy chairperson ("DC") of MPFA. The Bill seeks to amend section 6C to the effect that MD would not automatically be DC of MPFA and the Chief Executive would be empowered to appoint one of the directors of MPFA to be DC of MPFA (clause 5 of the Bill).

#### Audit arrangement

14. Further, the Bill proposes to empower the Director of Audit to conduct an examination into the economy, efficiency and effectiveness with which MPFA or a wholly owned subsidiary of MPFA has used its resources in performing its functions (proposed new section 6PA).

#### Related and technical amendments

15. According to paragraph 14 of the LegCo Brief, some existing statutory provisions or requirements will become obsolete or redundant upon operation of the eMPF Platform. The Bill proposes to amend or repeal the relevant provisions in Cap. 485 and Cap. 485A, including removing the approved trustees' duties from checking calculations of mandatory contributions after starting to use the designated system, and modifying the requirements regarding payment of the accrued benefits or scheme assets by the approved trustees.

16. The Bill also provides for transitional arrangements (proposed Schedule 17 to Cap. 485 and proposed Schedule 5 to Cap. 485A).

#### Commencement

17. Except for the provisions mainly in connection with the specification made under the proposed section 19N<sup>1</sup>, and the provisions mainly concerning

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<sup>1</sup> 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.

establishing and maintaining certain registers as required by the Bill and Cap. 485A<sup>2</sup> which will come into operation on a day to be appointed by the Secretary by notice published in the Gazette, the Bill, if passed, would come into operation on the day on which the enacted Ordinance is published in the Gazette.

## **Public Consultation**

18. According to paragraph 22 of the LegCo Brief, the Administration and MPFA have conducted intensive discussions with the MPF industry, particularly trustees on the overall framework, operation details and development programme of the eMPF Platform, and the related legislative proposals through established channels such as the Working Group on eMPF and the Regulatory Work Group. The industry generally supported the development of the eMPF Platform Project while expressing concerns on fees, transitional arrangements and liabilities.

## **Consultation with LegCo Panel**

19. As advised by the Clerk to the Panel on Financial Affairs ("the Panel"), the Administration briefed the Panel on 4 January 2021 on the legislative proposals for taking forward the eMPF Platform Project. Members discussed various issues including possible cost savings arising from the implementation of the eMPF Platform and measures to ensure that the scheme members could benefit from the cost savings, charging of fees by the eMPF Platform, and additional funding required for taking forward the eMPF Platform Project. Members also urged the Administration and MPFA to meet with industry stakeholders to discuss and clarify issues and address their concerns with a view to ensuring a smooth transition from the existing system to the new eMPF Platform.

## **Conclusion**

20. The Legal Service Division is studying the legal and drafting aspects of the Bill. In light of the concerns expressed by the Panel members on the proposed implementation of the eMPF Platform, Members may consider forming a Bills Committee to study the Bill in detail.

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<sup>2</sup> 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.