REFINING THE REGULATORY FRAMEWORK

OVERVIEW

Our role

- To review regulatory issues and operational policies of the MPF System
- To consider the need for amendments or reforms to existing legislation and make proposals to the Government where appropriate
- To review and amend existing MPF Guidelines and Codes as appropriate
- To prepare new MPF Guidelines and Codes as appropriate
- To conduct research in support of MPFA's role as regulator of the MPF System

In 2012–13, we

- Put forward to the Government fundamental reform approaches for the MPF System and commenced work on long-term reform proposals
- Released the results of a review of the regulation of withdrawal of MPF benefits and a public consultation thereon and commenced work to draw up relevant legislative proposals
- Commenced a review of the statutory adjustment mechanism for the minimum and maximum levels of relevant income for MPF contribution purposes and also conducted a review of the relevant income levels in the light of the increase of the Statutory Minimum Wage rate effective in 2013
- Reviewed the contribution calculation methods for casual employees in Industry Schemes and commenced work to draw up relevant legislative proposals
- Continued with the project to improve disclosure of information about MPF schemes
- Attended to the enactment and implementation of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012 which mainly provides for a statutory regime for regulating MPF intermediaries
- Assisted the Government in introducing into the Legislative Council the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2012 and attended to the subsequent enactment and implementation to put in place an automatic levy triggering mechanism for the Compensation Fund
- Amended eight sets of existing MPF Guidelines and one Code and issued seven sets of new MPF Guidelines

REFORMING THE MPF SYSTEM

In recent years, there have been many comments in the community concerning the MPF System. The most frequent comments are about high fees and unsatisfactory returns of MPF funds. We take the issues to heart and have been looking for measures to improve the situation.

"The MPF System plays an important role in shaping the retirement landscape in Hong Kong. The MPFA is determined to make the System better for the benefit of members of the working population. It is the right time to consider more substantial changes to the System."

— Hon Anna Wu, MPFA Chairman and Chairman of the Working Group on MPF Reform Issues

Fees and Charges of MPF Funds

As one of the responses to the fee issue, we commissioned a Consultancy Study on MPF Trustees' Administration Cost ("Cost Study"). The Cost Study suggested some initiatives for cost reduction and we have pressed ahead with measures[1] to drive down those costs thus creating scope for greater reduction in MPF fees. It also affirmed that cost reductions alone are unlikely to bring about fee changes addressing concerns about fee levels. Subsequently, we put forward to the Government four fundamental reform approaches for the MPF System in achieving more substantial fee reductions including controlling fees of MPF funds, mandating various types of low-fee funds in each MPF scheme, providing a type of simple choice, low-fee default fund arrangement, and introducing a not-for-profit operator to operate a simple and low-fee MPF scheme. The Chief Executive announced in the 2013 Policy Address that a multi-pronged approach will be adopted to bring down MPF fees and charges. In this regard, the Government and MPFA are working together on several long-term reform proposals.

Employees' Choices of MPF Schemes

On increasing employees' choices, the Employee Choice Arrangement[2] ("ECA") (commonly known as "MPF semi-portability") was launched on 1 November 2012, bringing about a significant change to the employer-based MPF System. The introduction of "MPF semi-portability"/ECA has stimulated an appetite for full portability, giving employees full control over their own MPF investments. We are studying the necessary supporting measures and will complete drawing up the implementation plans before 2016.

Withdrawal of MPF Accrued Benefits

We completed an open consultation in early 2012 on proposals to increase flexibility with regard to the withdrawal of MPF accrued benefits. There was overwhelming support for the proposals to provide an option to withdraw MPF accrued benefits in phases upon scheme members attaining age 65 or satisfying the criteria for early retirement, and to allow early withdrawal by scheme members having been certified as suffering from a terminal illness[3]. The consultation conclusions were released to the public and a report was sent to the Government in September 2012. Subsequently, we submitted to the Government details of the relevant legislative proposals to effect the proposed changes. It is the Government's aim to introduce legislative amendments into the Legislative Council within the 2013–14 legislative session.

1 Details of the measures are set out in the chapter "Supervising the Industry".

2 An arrangement to allow employees to elect to transfer the MPF accrued benefits derived from employee mandatory contributions made during current employment and held in a contribution account under an MPF scheme to an MPF scheme of their own choice at least once per calendar year. Details of the implementation of the arrangement are reported in the chapter "Preparing for and Implementing the Employee Choice Arrangement".

3 Terminal illness refers to an illness that is life endangering, such that the remaining life expectancy of the individual is reduced to 12 months or less.

Minimum and Maximum Levels of Relevant Income for MPF Contribution Purposes

With effect from 1 June 2012, the monthly maximum relevant income ("RI") level for MPF contribution purposes went up to $25,000 as a result of the review of the minimum and maximum RI levels conducted in 2010[4] (the "2010 Review").

During the relevant legislative process following the 2010 Review, there were views that the statutory adjustment mechanism of the minimum RI level should be updated having regard to the introduction of the Statutory Minimum Wage ("SMW") on 1 May 2011. It was then agreed that MPFA would review the mechanism after the effect of SMW on employees' income distribution has become apparent. We have commenced the review and will consult the public on the options in due course.

The current minimum RI level was set with reference to, among other factors, the SMW. Given that the SMW will be raised to $30 per hour effective from 1 May 2013, we conducted a review of the minimum and maximum RI levels pending a new statutory adjustment mechanism. We consulted the Labour Advisory Board, MPF Schemes Advisory Committee and MPF Industry Schemes Committee and reported the findings and made recommendations to the Government. The recommendations were put forward to and discussed by the Legislative Council Panel on Financial Affairs on 4 March 2013. The relevant legislative process has started.

Simplification of the Contribution Calculation Methods for Casual Employees in Industry Schemes

Scales of contribution amounts are set out in the MPF Schemes (Contributions for Casual Employees) Order ("Order") to provide simplified methods for employers to calculate the mandatory contributions payable for and in respect of their casual employees who are members of Industry Schemes. In the light of operational experience and comments received that the contribution calculation methods are too complicated, we have reviewed the methods with the aim to simplify them. We consulted the MPF Industry Schemes Committee and stakeholders, mainly employer groups and labour unions representing the construction and the catering industries, on the possible simplification options. It was agreed that new contribution calculation methods and contribution scales be adopted. The proposal was considered by the Legislative Council Panel on Financial Affairs on 4 March 2013. The relevant legislative process has started.

Information Disclosure

Improving the presentation and disclosure of MPF information has been an important ongoing project on MPFA's work agenda. During the year, we enhanced various tools on our website, including a calculator for projecting MPF accrued benefits to demonstrate the impact of different variables on accrued benefits over time. Also, we have launched a Trustee Service Comparative Platform for comparing fund choices, account administration, and customer services across trustees, enhanced access to past fund performance data[5] and modified the Fee Comparative Platform so that it ranks MPF funds from the lowest to the highest Fund Expense Ratios[6] ("FERs") to facilitate easy identification of low-fee funds.

Starting from 21 December 2012, we regularly publish on MPFA's website a list of funds with lower FERs. The list contains information on approximately 5% of MPF funds (excluding MPF Conservative Funds) that have the lowest FERs. The first list contains 20 MPF funds with FERs ranging from 0.44% to 1.29%. A print version of the list is also available for distribution together with our quarterly publication, *Summary of Fee Comparative Platform on MPF Funds*.

4 The MPF legislation provides that MPFA must, not less than once every four years, conduct a review of the minimum and maximum RI levels to ascertain whether or not there are grounds to amend the levels.

5 Fund performance figures are provided by Lipper.

6 Fund Expense Ratio is a ratio that measures the fees and expenses of an MPF fund as a percentage of fund size.

LEGISLATIVE AMENDMENTS

Several legislative programmes resulting from previous reviews came to fruition in 2012–13.

Statutory Regulatory Regime for MPF Intermediaries

The Mandatory Provident Fund Schemes (Amendment) Ordinance 2012 was enacted on 21 June 2012 and came into operation on 1 November 2012, giving a legal backing to an administrative regulatory regime for MPF intermediaries adopted since the inception of the MPF System. The new regime adopts an institution-based approach. MPF intermediaries are required to register with MPFA before they can carry out sales and marketing activities or give advice in relation to MPF schemes. The three frontline regulators (i.e. Hong Kong Monetary Authority, Insurance Authority and Securities and Futures Commission) are responsible for investigating and supervising registered MPF intermediaries whose core business falls within their respective authority. Substantiated cases of non-compliance with the statutory conduct requirements will be subject to disciplinary sanctions imposed by MPFA.

Deterrent Effect against Default Contributions

The Mandatory Provident Fund Schemes (Amendment) Ordinance 2012 also gave effect to two enforcement-related provisions with a view to enhancing the deterrent effect against default contributions by employers, thus better protecting scheme members' interests. The provisions make an employer's failure to pay mandatory contributions a continuous offence and an employer's failure to pay any sum payable under tribunal or court awards a criminal offence.

An Electronic Platform for Transmitting Data during Transfer of Accrued Benefits

The Mandatory Provident Fund Schemes (Amendment) Ordinance 2012 has also empowered MPFA to establish, operate and designate an electronic system for transmission of data among trustees to facilitate the transfer of MPF accrued benefits. This system was implemented successfully together with the commencement of ECA[7] .

Automatic Levy Triggering Mechanism for the Compensation Fund

Under the MPF legislation, a Compensation Fund has been set up to compensate scheme members for losses of MPF accrued benefits due to misfeasance or illegal conduct of MPF trustees or other persons concerned with the administration of those schemes. The funding of the Fund includes $600 million seed money from the Government, levies collected from MPF schemes at an annual rate of 0.03% of their net asset values and investment returns over the years. Following the passage of the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2012 in July 2012, an automatic levy triggering mechanism has been put in place for the Fund to suspend the levy when the reserve level of the Fund exceeds $1.4 billion and resume it when the reserve level falls below $1 billion. The balance of the Fund as at 31 March 2012 has exceeded $1.6 billion and suspension of the levy has been triggered and applied progressively to MPF schemes with financial years beginning on or after 1 September 2012.

7 Details of the implementation are reported in the chapter "Preparing for and Implementing the Employee Choice Arrangement".

REFINING THE REGULATORY FRAMEWORK (CONTINUED)

GUIDELINES AND CODES

We issue MPF Guidelines and Codes to elaborate on and support the legislative requirements, hence facilitating compliance with the MPF and ORSO legislation. During the year, we revised eight sets of MPF Guidelines, one Code and issued seven sets of new MPF Guidelines, mainly to:

(1) reflect the MPF legislative amendments in relation to the implementation of ECA, the statutory regulatory regime for MPF intermediaries, the electronic system for transmission of data on transfer of accrued benefits and the automatic levy triggering mechanism for the Compensation Fund; and

(2) include certain securities approved by MPFA as permissible investments and clarify the status and implication of securities, or a kind of securities, specified in the relevant MPF Guidelines.

As at 31 March 2013, 72 sets of Guidelines and two Codes were in force.