

## **MANDATORY PROVIDENT FUND SCHEMES AUTHORITY**

### **VII.1 Guidelines on Determining Relevant Rate of Administration Fee for Constituent Fund by Mandatory Provident Fund Schemes Authority**

#### **INTRODUCTION**

The eMPF Platform (an electronic system to be designated under section 19I(1) of the Mandatory Provident Fund Schemes Ordinance (the Ordinance)) aims to standardise, streamline and automate the administration processes of registered schemes, and the stated overarching policy objective of the eMPF Platform project is to achieve early and material cost savings for all scheme members while ensuring smooth and secure transition from the existing scheme administration systems used by different approved trustees to the eMPF Platform. To this end, the Mandatory Provident Fund Schemes (Amendment) Ordinance 2021 has added a new Part 3B to the Ordinance to ensure the policy objective of the eMPF Platform project is met. The Mandatory Provident Fund Schemes Authority (the Authority) will administer Part 3B of the Ordinance which sets out, among other things, the regulation of fees relating to scheme administration in accordance with the said aims and objectives. The Authority is committed to exercising the powers conferred upon the Authority by the Ordinance reasonably, fairly and in the public interest.

#### **Legislative Process**

2. During the Legislative Council's scrutiny of the Mandatory Provident Fund Schemes (Amendment) Bill 2021, the policy statement of the eMPF Platform project was clear that where the existing rate of scheme administration fee of a constituent fund is not readily ascertainable due to, for example, bundled disclosure of scheme administration, trustee, and custodian

fees, suitable adjustments would be made by the Authority when determining the relevant rate of administration fee<sup>1</sup>. The said bundling usually involves disclosure of scheme administration, trustee and custodian fees of a constituent fund of a registered scheme as a single fee item, and that the administration fee covers functions which will not be performed by the eMPF Platform but will have to be performed by the approved trustee of the scheme. In this regard, for the said suitable adjustments to be made, considerations were given to taking into account (a) the net asset value-weighted average of trustee and custodian fees of constituent funds of registered schemes charged by those trustees which disclose standalone trustee and custodian fees in the offering documents of the schemes in existence as of 31 December 2020 and (b) the diversity in the scope of administrative services provided by different approved trustees.

3. The fee control provisions in Part 3B of the Ordinance reflect the outcome of a series of substantive discussions with approved trustees. In particular, noting the industry's concerns over the fee proposals, which would have bearing on trustees' business cases and fee charging models, suitable refinements to the fee proposals had been put forward during the legislative stage, the intention of which was to assist the industry financially to meet the costs of transition. Such refinements included, in particular:

- (a) an allowance of 10 basis points (bps) for the charging of trustee and custodian fees then bundled with the disclosed administration fees according to the industry average as of 31 December 2020; and
- (b) an allowance of 4 basis points (bps) for other charges to mainly help meet trustees' ongoing costs to maintain the payment function and connectivity to the eMPF Platform.

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<sup>1</sup> Legislative Council Brief: Mandatory Provident Fund Schemes (Amendment) Bill 2021 (MPF/2/1/43C), page 6 ([https://www.legco.gov.hk/yr20-21/english/brief/mpf2143c\\_20210707-e.pdf](https://www.legco.gov.hk/yr20-21/english/brief/mpf2143c_20210707-e.pdf)).

## **Overview of the Statutory Framework**

4. Section 19V of the Ordinance requires, among other things, the approved trustee of a registered scheme to determine the relevant rate of administration fee for a constituent fund that is not a capital preservation fund and to submit it to the Authority. Section 19V(3) provides that the approved trustee of a registered scheme is not required to comply with the aforementioned requirements if the relevant rate of administration fee is determined under section 19ZB of the Ordinance for the constituent fund.

5. Section 19X(4) of the Ordinance provides that, despite the specification in section 19X(2) and (3) of the Ordinance that the reference rate for a constituent fund is the relevant rate of administration fee determined under Parts 1 and 2 of Schedule 14 to the Ordinance respectively for a constituent fund of a registered scheme to which section 19W(2) and (3) of the Ordinance applies respectively, if the relevant rate of administration fee for a constituent fund of a registered scheme is determined under section 19ZB of the Ordinance, the reference rate for the constituent fund is the rate determined under that section for the fund.

6. Section 19ZB of the Ordinance provides that the Authority may determine, in the way the Authority considers appropriate, the relevant rate of administration fee for a constituent fund of a registered scheme. The section further provides that the Authority may exercise such power in relation to a constituent fund of a registered scheme if it is satisfied that:

- (a) for the purpose of determining the relevant rate of administration fee under Schedule 14 to the Ordinance for the constituent fund, the annual rate of the administration fee (or equivalent) of the constituent fund is not readily ascertainable by reference to the offering document of the registered scheme; and

- (b) the exercise of the power is justified.

7. Section 19ZB of the Ordinance further provides that, in determining the relevant rate of administration fee for a constituent fund of a registered scheme under that section, regard must be had to the guidelines.

### **Purpose of These Guidelines**

8. Section 6H of the Ordinance provides that the Authority may issue guidelines for the guidance of approved trustees, service providers, participating employers and their employees, self-employed persons, regulated persons and other persons concerned with the Ordinance.

9. The Authority hereby issues guidelines to provide guidance on:
- (a) the circumstances under which the Authority will normally be satisfied that (i) the annual rate of the administration fee (or equivalent) of a constituent fund of a registered scheme is not readily ascertainable by reference to the offering document of the scheme and (ii) the exercise of the power to determine the relevant rate of administration fee is justified; and
  - (b) the way by which the Authority will determine the relevant rate of administration fee for a constituent fund of a registered scheme under section 19ZB of the Ordinance, specifically, (i) the formula to be adopted and (ii) the applicable administrative procedures to be adopted by the Authority before finalizing its determination.

### **EFFECTIVE DATE**

10. These Guidelines (Version 1 – December 2022) shall become effective on 23 December 2022.

## **ANNUAL RATE OF ADMINISTRATION FEE (OR EQUIVALENT) NOT READILY ASCERTAINABLE**

11. Under section 19ZB(2)(a) of the Ordinance, whether the relevant annual rate of the administration fee (or equivalent) of a constituent fund of a registered scheme is readily ascertainable has to be considered by reference to the offering document of the registered scheme. This is a question of fact determined by the Authority.

12. Having reviewed the offering documents of registered schemes as in force on 31 December 2020 (specified date), the Authority is satisfied that the annual rate of the administration fee (or equivalent) of a constituent fund of a registered scheme is not readily ascertainable by reference to the offering document of the registered scheme for the purpose of section 19ZB(2)(a) of the Ordinance if:

- (a) the administration fee of the constituent fund of the registered scheme is bundled with other types of fees and disclosed as a combined fee item in the offering document of the registered scheme; or
- (b) the administration fee of the constituent fund of the registered scheme as disclosed in the offering document covers functions which will not be performed by the eMPF Platform but will have to be performed by the approved trustee of the scheme.

### **Bundling of Administration Fee with Other Types of Fees**

13. Bundling of administration fee with other types of fees referred to in paragraph 12(a) occurs when:

- (a) the administration fee of a constituent fund of a registered scheme is bundled with other types of fees, typically with the trustee and custodian fees at the constituent fund level, and disclosed as a

combined fee item, or is otherwise not separately disclosed as a standalone fee item in the offering document of the registered scheme as in force on the specified date. In this case and if the Authority reasonably believes that there is in fact such bundling, the Authority is minded to take the bundled fee as the Q factor of the constituent fund for the purpose of the formula described in paragraph 21 below; or

- (b) the administration fee of a constituent fund of a registered scheme disclosed in the offering document of the registered scheme as in force on the specified date is stated to be “nil” which, in the Authority’s view, does not reflect the fee actually charged for the scheme administration services provided to the registered scheme in relation to the constituent fund. In this case, the Authority will assess whether the fee actually charged for the scheme administration services provided to the registered scheme in relation to the constituent fund is in fact bundled with another fee item at either the constituent fund level or the underlying fund level, and if the Authority reasonably believes that there is in fact such bundling, the Authority is minded to nominate such another fee item as the Q factor of the constituent fund for the purpose of the formula described in paragraph 21 below.

### **Approved Trustees Performing Functions Not Performed by the eMPF Platform**

14. The annual rate of administration fee of a constituent fund of a registered scheme as disclosed in the offering document of the registered scheme should cover all of the scheme administration services performed to ensure that any cost savings derived from the eMPF Platform operation be passed directly to scheme members. In the event that the administration fee of a constituent fund

of a registered scheme as disclosed in the offering document of the registered scheme in fact covers functions which will not be performed by the eMPF Platform but will have to be performed by the approved trustee of the scheme, the Authority is of the view that the annual rate of the administration fee (or equivalent) of the constituent fund is not readily ascertainable for the purpose of section 19ZB(2)(a) of the Ordinance.

15. For background, upon the commencement of the material day which may be specified by a notice published in the Gazette under section 19N(1) of the Ordinance, certain functions will not be performed by the eMPF Platform but will have to be performed by the approved trustees of the registered schemes. These functions cover maintaining a payment system for contribution, and establishing and maintaining connectivity between an approved trustee and the eMPF Platform.

### **Justified Exercise of the Power**

16. The lack of a readily ascertainable annual rate of administration fee (or equivalent) of a constituent fund in the two situations described in paragraph 12 above may render it impossible to quantify the reduction of administration fee of a constituent fund brought about by the eMPF Platform and hence, it justifies the Authority's exercise of its power under section 19ZB(1) of the Ordinance to determine the relevant rate of administration fee for the constituent funds concerned, because such determination is essential for proper and effective operation of the regulation of fees relating to scheme administration under Part 3B of the Ordinance, without which the cost savings derived from the eMPF Platform operation cannot be reflected in the overall expenses level of a constituent fund. The Authority's exercise of such power is thus justified for reasons that it will be conducive to the successful implementation of the eMPF Platform and the achievement of the Government of the Hong Kong Special

Administrative Region's policy objective of lowering the fees of the MPF System for the benefit of scheme members, which is in the public interest.

### **DETERMINING THE RELEVANT RATE OF ADMINISTRATION FEE FOR A CONSTITUENT FUND**

17. It is a fundamental administrative law principle that statutory powers and discretions must be exercised reasonably, in good faith, on proper grounds, and in accordance with the principles of natural justice. The Authority will uphold this principle in determining the relevant rate of administration fee for a constituent fund under section 19ZB(1) of the Ordinance, taking into account all relevant facts and circumstances. To this end, in making a proposed determination, the Authority will consistently, fairly and transparently adopt a formula which is capable of taking into account factors and circumstances which are considered relevant to the Authority's determination.

### **Appropriate Adjustments to be Applied in Order to Determine the Relevant Rate of Administration Fee for a Constituent Fund**

18. In view of the policy objective that the fee control provisions are meant to meet, and the context in which such provisions were introduced, the Authority is minded to determine the relevant rate of administration fee in accordance with the ensuing paragraphs.

19. As the bundled fee situation described in paragraph 12(a) above typically covers trustee and custodian fees in addition to the administration fee, it is necessary to make adjustments for reasonable charges of the trustee and custodian fees. The Authority is minded to make such adjustments with reference to paragraph 2 in the context of paragraph 3(a) with a view to reflecting those trustee and custodian fees.



20. To account for the functions which will not be performed by the eMPF Platform but will have to be performed by the approved trustees described in paragraph 12(b), and to efficiently and effectively implement the regime for the regulation of fees relating to scheme administration under the Ordinance, the Authority is minded to make such adjustments with reference to paragraph 2 in the context of paragraph 3b with a view to reflecting the charges of approved trustees for performing those functions.

### **The Formula to be Adopted**

21. In light of the foregoing, the Authority will determine the relevant rate of administration fee for a constituent fund for the purpose of section 19ZB of the Ordinance in accordance with the following formula:

$$\mathbf{P} = \mathbf{Q} - \mathbf{R} - \mathbf{S}$$

where:

**P** is the relevant rate of administration fee for a constituent fund of a registered scheme determined by the Authority.

**Q** is:

(a) the annual rate of the administration fee (or equivalent) of the constituent fund separately disclosed as a standalone fee item in the offering document of the registered scheme as in force on the specified date; or

(b) the annual rate of the bundled fee of the constituent fund as described in paragraph 13(a) or the another fee item nominated by the Authority as described in paragraph 13(b) (as the case may be).

**R** is the adjustment described in paragraph 19 if the situation described in paragraph 12(a) applies (i.e. the administration fee of a constituent fund is bundled with other types of fees) in order to determine the

relevant rate of administration fee for the constituent fund.

**S** is the adjustment described in paragraph 20 if the situation described in paragraph 12(b) applies (i.e. the administration fee of a constituent fund as disclosed cover functions which will not be performed by the eMPF Platform) in order to determine the relevant rate of administration fee for the constituent fund.

22. For the avoidance of doubt, if Q is expressed in the form of a range of percentages of the net asset value of the constituent fund, it will be taken as the highest rate in the range. In the event that  $Q - R - S < \text{zero}$ , P will be taken as zero.

### **Administrative Procedures**

23. To strike a balance between facilitating the efficient and smooth implementation of the eMPF Platform and ensuring due process, the Authority will adopt the following administrative procedures in making a determination under section 19ZB(1) of the Ordinance:

- (a) the Authority will determine the relevant rate of administration fee for a constituent fund of a registered scheme on its own initiative, having regard to these Guidelines;
- (b) if necessary, the Authority may request the approved trustee of the scheme to provide additional relevant information to facilitate the Authority's determination;
- (c) after making a proposed determination in respect of the constituent fund, the Authority will notify the approved trustee, along with the reasons for the proposed determination, in writing as soon as reasonably practicable;

- (d) the approved trustee will be given an opportunity to make representations, if it wishes to, upon being notified of the Authority's proposed determination; and
- (e) in the event that the approved trustee makes representations in response to the Authority's proposed determination, the Authority will duly consider them and provide the trustee with a reply, before finalising its determination.

24. For the avoidance of doubt, section 19ZB(1) of the Ordinance empowers the Authority to determine the relevant rate of administration fee for constituent funds provided that the requirements in subsections (2) and (3) of that section are met. It is unnecessary for approved trustees to submit an application or make a request to the Authority for determination of relevant rates of administration fee for constituent funds of registered schemes. Approved trustees should await the Authority's notification as spelt out under paragraph 23(c) above.

## **DEFINITION OF TERMS**

25. Where a term used in the Guidelines is defined in the Ordinance or the subsidiary legislation then, except where specified in the Guidelines, that term carries the meaning as defined in the Ordinance or the subsidiary legislation.