

## LCQ6: Regulation of occupational retirement schemes

Following is a question by the Hon Ho Kai-ming and a reply by the Secretary for Financial Services and the Treasury, Mr James Lau, in the Legislative Council today (June 20):

Question:

It has been reported that last month, a company was placed into voluntary liquidation and made more than 100 employees redundant. Among them, more than 40 were members of an occupational retirement scheme (commonly known as "ORSO scheme"). However, since the liquidator has all along not furnished the employees' information to the trustee of the ORSO scheme, the employees concerned have so far been unable to withdraw the benefits totalling \$40 million under the ORSO scheme. As the ORSO scheme has been granted Mandatory Provident Fund (MPF) exemption, the Mandatory Provident Fund Schemes Authority (MPFA) is unable to provide assistance, and the trustee has only advised them to request the liquidator to furnish the relevant information expeditiously. Regarding the regulation of ORSO schemes, will the Government inform this Council:

(1) of the current number of ORSO schemes that have been granted MPF exemption; whether it knows the respective current numbers of employers and employees who have joined such schemes, and the total accrued benefits under such schemes;

(2) whether a liquidator is required under the existing legislation to furnish, within a certain timeframe, the account information of the ORSO scheme of the company in liquidation to the trustee of the scheme; if not, whether the Government will enact legislation in this regard with a view to expediting the relevant procedure; and

(3) whether it will study the enactment of legislation to include ORSO schemes in the regulatory scope of the MPFA?

Reply:

Acting President,

The objective of the Occupational Retirement Schemes Ordinance (Cap. 426) (the Ordinance) is to establish a registration system for occupational retirement schemes (ORSO schemes) voluntarily established by employers to ensure that such schemes are properly regulated, and to provide greater certainty that retirement scheme benefits of these schemes promised to employees will be paid when they fall due. Employers who operate ORSO schemes that fall under the ambit of the Ordinance are required to apply to the Registrar of Occupational Retirement Schemes, i.e. the Mandatory Provident

Fund Schemes Authority (MPFA), for registration or exemption of their schemes.

When the MPF System was launched on December 1, 2000, registered schemes and exempted schemes under the Ordinance may apply to the MPFA for MPF exemption pursuant to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485B).

With regard to the case of voluntary winding up of a company as mentioned in the question, after receiving enquiries from affected scheme members since May 17 about contributions held in the relevant ORSO scheme, the MPFA has in fact immediately contacted the trustee, the third party administrator and the liquidator, urging them to handle enquiries from affected scheme members and arrange for payment of benefits as soon as possible. The MPFA has requested the trustee concerned to provide dedicated hotline service for account enquiries by affected scheme members and arrange a meeting with affected scheme members together with the MPFA and the liquidator for providing one-stop services to the scheme members.

In response to LegCo (Legislative Council) members, the MPFA met with around 40 affected scheme members on May 31 to understand their concerns and explain to them follow-up actions of the MPFA. The trustee also met with scheme members on June 13 together with the MPFA and the liquidator, to explain the procedures for withdrawal of benefits and process relevant applications.

My replies to the questions raised by the Hon Ho Kai-ming are as follows:

(1) As at March 31, 2018, there were 3 358 MPF exempted ORSO schemes, of which 3 149 were ORSO registered schemes and 209 were exempted schemes. The 3 149 ORSO registered schemes covered 4 955 employers and 327 911 members with assets totalling about HK\$302.9 billion. As for the 209 exempted schemes, they were generally offshore schemes registered or approved by overseas authorities or ORSO schemes where the majority of members were not Hong Kong employees. Exempted schemes are not required to provide such information to the MPFA.

(2) The Ordinance does not require a liquidator to send account information of an insolvent company's provident fund schemes to a trustee within a prescribed period. Under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the main duty of a liquidator is to complete the winding-up procedures of the company as soon as possible, including realisation of the company's assets, payment of the company's debts, and adjustment of the rights of the contributories (i.e. every person liable to contribute to the assets of a company in the event of its being wound up) among themselves, etc.

In general, the liquidator will first collect the relevant documents and member information and then process and verify such information as soon as practicable. After agreeing with members on the amount of their severance

payment, the liquidator will pass the information to the relevant trustees for arrangement of offsetting and payment of members' assets. The winding-up procedures will be carried out in accordance with the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32). The time required to complete an individual task depends on the actual circumstances.

(3) As mentioned above, all ORSO schemes operating in or from Hong Kong are governed by the Ordinance and fall under the regulatory ambit of the MPFA. Under the Ordinance, registered schemes must comply with the statutory requirements in relation to assets, trusteeship, investment, funding, and other requirements related to audit and actuarial review and disclosure of information to employees. Assets of a registered scheme must be separated from assets of the relevant employer.