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**Paper for the House Committee Meeting
of the Legislative Council
on 25 May 2001**

**Legal Service Division Report on
Mandatory Provident Fund Schemes (Amendment) Bill 2001**

Object(s) of the Bill

- (a) To introduce a number of technical amendments to the Mandatory Provident Fund Schemes Ordinance (Cap. 485) to better protect the interests of members of mandatory provident fund (MPF) schemes and enhance the effective operation of the MPF System; and
- (b) to confer on the Mandatory Provident Fund Schemes Authority (MPFA) certain functions and powers to facilitate its regulation of MPF schemes.

LegCo Brief Reference

- 2. G4/38C(2001) IX dated 16 May 2001 issued by the Financial Services Bureau.

Date of First Reading

- 3. 23 May 2001.

Comments

- 4. The Bill introduces a number of amendments dealing with various aspects relating to the operation of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("the Ordinance") and the implementation of the MPF System. The more important proposals are highlighted below:—

- (a) the membership of a master trust scheme will be widened to include persons who, having benefits in certain occupational retirement schemes ("ORSO schemes"), wish to have those benefits transferred

to the master trust scheme and employees of age 65 or above or below 18 whose employers wish to enrol them (and they agree to be so enrolled) in an MPF scheme to make voluntary contributions;

- (b) the membership of an employer sponsored scheme will be widened to include employees who are of age 65 or above or who are below the age of 18 in cases where employers wish to enrol them (and they agree to be so enrolled) in an MPF scheme to make voluntary contributions;
- (c) the definition of "mandatory contribution" will be expanded to include the minimum MPF benefits transferred from certain ORSO registered schemes to an MPF scheme;
- (d) the time at which an employee or a self-employed person becomes a member of a MPF scheme will be clarified to reflect the policy intent that membership should commence on the date of employment or self-employment; and
- (e) self-employed persons who are less than 18 years of age or who have reached the retirement age will not be required to become members of MPF schemes or make mandatory contributions.

5. To enhance the effectiveness of MPFA in its regulation of MPF schemes and its performance of statutory responsibilities for overseeing and monitoring the operation of the retirement protection systems in Hong Kong, the Bill also seeks to make the following provisions in respect of MPFA:—

- (a) to confer on MPFA the function of considering and proposing reforms of the law relating to occupational retirement schemes or provident fund schemes;
- (b) to confer on MPFA the function of promoting and encouraging the development of the retirement scheme industry in Hong Kong, including the adoption of a high standard of conduct and sound prudent business practices by trustees and other service providers;
- (c) to empower MPFA to amend existing conditions or impose new conditions on an approved trustee or on a registered scheme, whether it is an employer sponsored scheme, a master trust scheme or an industry scheme.
- (d) to empower MPFA to cancel the registration of a registered scheme on being satisfied that the scheme has no scheme members and no scheme assets;

- (e) to empower MPFA to borrow, with the approval of the Financial Secretary, on such security or other conditions as it considers expedient to ensure efficient financial management; and
- (f) to provide immunity from civil liability for MPFA, its directors and employees in respect of anything done, or omitted to be done in good faith in the performance or purported performance of any function under the Ordinance.

6. The Bill also proposes consequential and other technical amendments to the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.). These technical amendments include those relating to strengthening the mechanism of charging contribution surcharge when employers fail to pay contributions and providing flexibility to employers in making contributions in respect of casual employees.

7. Members may wish to note that in its original proposal to amend the Ordinance presented to the LegCo Panel on Financial Affairs in March 2001, the Administration proposed to confer on MPFA the power of prosecuting offences under the Ordinance in its own name. As a result of queries raised by some members of the Panel on the need for such power of prosecution, the Administration has not included in the Bill provisions dealing with this matter.

8. If enacted, the Bill will come into operation on the date of publication in the Gazette.

Public Consultation

9. The MPF Schemes Advisory Committee has been consulted on the proposed amendments. According to the Administration, the Committee has not raised any objection to the proposals. In preparing the Bill, the Administration has also taken into account of views expressed by employer associations and the relevant professional bodies in the retirement schemes industry.

Consultation with the LegCo Panel

10. The LegCo Panel on Financial Affairs was consulted on the proposal on 7 March 2001. While members of the Panel generally had no objection to amendments which were of technical nature, some members were of the view that the actual provisions should be examined after the Bill had been introduced into the Legislative Council.

Conclusion

11. Most of the proposed amendments are quite technical. The Legal Service Division is still scrutinizing the amendments proposed by the Bill. Meanwhile, Members may consider whether they wish to form a Bills Committee to study the Bill in detail or to defer their decision pending a further report from the Legal Service Division.

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