

**President's ruling on
Mandatory Provident Fund Schemes (Amendment) Bill 2001
proposed by Hon Andrew CHENG Kar-foo**

Hon Andrew CHENG has submitted the Mandatory Provident Fund Scheme (Amendment) Bill 2001 (the Bill) which he intends to introduce into this Council. I am required to rule whether it relates to the restrictions prescribed in Rule 51(3) and (4) of the Council's Rules of Procedure. Before making a ruling on the Bill, I have invited the Secretary for Financial Services (SFS) to offer his comments and Mr CHENG to offer his response to them. I have also sought the advice of Counsel to the Legislature in this regard.

Rule 51(3) and (4) of the Rules of Procedure

2. Rule 51(3) and (4) reads as follows:

"51(3) Members may not either individually or jointly introduce a bill which, in the opinion of the President, relates to public expenditure or political structure or the operation of the Government."

"51(4) In the case of a bill which, in the opinion of the President, relates to Government policies, the notice shall be accompanied by the written consent of the Chief Executive in respect of the bill."

Purpose of the Bill

3. The Bill seeks to amend Schedule 2 of the Mandatory Provident

Fund (MPF) Schemes Ordinance (Cap 485) by raising from \$4,000 to \$6,000 the minimum level of relevant monthly income for contribution purpose under section 9 of the Ordinance, i.e. an employee remunerated on a monthly basis or a self-employed person earning below \$6,000 a month will not need to contribute to an MPF scheme if the Bill is passed. In the case of a casual worker, the Bill seeks to raise the minimum level for the same purpose from \$130 per day to \$194 per day.

The Administration's views

4. SFS is of the view that the Bill will have a negative effect on the Government policies in respect of the provision and operation of the MPF system and the mechanism for reviewing the maximum and minimum levels of relevant income for the purpose of making MPF contributions.

5. According to SFS, the aim of the MPF system under the MPF Ordinance is "to cover as many persons in the workforce as possible" as stated by the Secretary for Education and Manpower (SEM) in the Legislative Council on 27 July 1995 when the Ordinance was enacted. To implement such a policy aim, employees and self-employed persons who earn more than \$4,000 per month or \$130 per day are required by the MPF Schemes Ordinance to contribute to MPF schemes. The Bill's proposal to raise the levels to \$6,000 and \$194 will have a negative effect on Government's retirement protection policy because nearly 200,000 employees and 17,900 self-employed persons earning below the income levels proposed in the Bill will be excluded from the requirement to contribute to MPF schemes.

6. Secondly, SFS states that the Bill has the effect of reducing substantively the level of retirement benefits of the employees now earning between \$4,000 to \$6,000 per month and eroding the financial security for this

group of employees in old age, contrary to the Government policy aim that members of MPS schemes should be provided with a reasonable level of benefits upon retirement. In support of the existence of such a policy, SFS has quoted another statement by SEM in the Legislative Council when the Council debated SEM's motion on the introduction of MPF schemes on 8 March 1995, i.e. before the MPF Schemes Bill was introduced into the Council on 14 June 1995. SEM said that "the basic aim of a retirement system must be to ensure that an employee accrues enough benefits by the end of his working life to allow him to enjoy an element of financial security in his retirement years". SFS estimates that raising the minimum income level to \$6,000 per month would result in an employee with a current income of \$4,000 being excluded from MPF schemes for 21 years. Such an employee will only receive \$368,466 upon retirement at the age of 65 after he has worked for 40 years, as compared to \$517,264 the employee would receive if he has started contributing to an MPF scheme at the minimum salary level of \$4,000. For a self-employed person, the proposal would similarly result in this person's retirement benefits being reduced from \$258,632 to \$109,834.

7. Lastly, SFS states that the proposals in the Bill disregards Government's policy that there would be a mechanism to adjust both the minimum and maximum income levels for contributions to MPF schemes. This mechanism would, according to SFS, involve a set of established criteria for assessing the need for changes, calculating and setting the appropriate monetary levels, and the frequency of such changes; it would also involve consultation with relevant bodies such as the Labour Advisory Board and the Legislative Council.

Response from Hon Andrew CHENG

8. In response to my invitation, Mr CHENG has stated that he has no

comments on SFS's views.

Advice of Counsel to the Legislature

9. Counsel to the Legislature advises that under section 9 of the Mandatory Provident Fund Schemes Ordinance (the Ordinance), an employee of 18 years of age or over and below retirement age, or a self-employed person, whose relevant income is less than the minimum level of relevant income specified in Schedule 2 of the Ordinance is not required to contribute to a registered mandatory provident fund (MPF) scheme. Schedule 2 was amended to its present form in July 1998 by Items 81 of Schedule 1 of the Provident Fund Schemes Legislation (Amendment) Ordinance 1998 (Ord. No. 4 of 1998). The purpose of the amendment was to clarify the then existing Schedule 3 (now, renumbered as Schedule 2) and to extend its operation to casual employees who are members of industry schemes. Schedule 2, as amended, commenced operation on 1 December 2000 (L.N. 119 of 2000).

10. The key issue for the President is whether, by proposing to raise the levels of minimum income, the Bill relates to government policies. According to the President's earlier rulings, in order for a bill not to be caught by Rule 51(4), the implementation of the bill must not have substantive effect on government policies.

11. It is likely that an amendment to the minimum levels of income provided in Schedule 2 of the Ordinance will result in a change in the number of persons who are not required to make contributions under section 9 of the Ordinance and consequentially a possible impact on retirement benefits that may be available under a registered MPF scheme.

12. It would be a question for the President to decide whether the

Administration's assessment of the changes in the number of persons required to make contributions to registered MPF schemes and of the level of retirement benefits resulting from the proposed amendment would have substantive effect on government policies.

13. As regards the Administration's claim that the Bill relates to the government policy of providing a mechanism to adjust both the minimum and maximum income levels, Counsel to the Legislature considers that the claim is not relevant to the President's forming an opinion under Rule 51(4). The Bill seeks to amend the minimum levels of income provided in Schedule 2 of the Ordinance. It is a procedure which is always available to the Council despite the delegation of the authority to amend to the Chief Executive in Council, under section 48 of the Ordinance.

My opinion

14. In my previous rulings relating to Rule 51(4), I have stated my opinion that the government policies referred thereto are those that have been decided by the Chief Executive or Chief Executive in Council under Basic Law 48(4) and 56. They include those decided by former Governors and Governors in Council prior to the implementation of the Basic Law which are still in force, those decided by authorized public officers and promulgated in the Legislative Council or its committees, and policies reflected in legislation. On the other hand, I do not regard policies that are being formulated as government policies.

15. The minimum levels of relevant income for the purpose of determining who should make contributions to MPF schemes are stipulated in Schedule 2 of the MPF Schemes Ordinance. Mr CHENG seeks to amend Schedule 2 by way of the Bill. I am of the opinion that the current minimum

levels stipulated in Schedule 2 reflects the Government's policy that they should be set at those levels. Mr CHENG's Bill therefore relates to the policy.

16. I should, however, pause at this point to state my view that "government policies" should not be used interchangeably with "policy aims or objectives", as by SFS in this case. In my opinion, objectives such as: that the MPF system should "cover as many persons in the workforce as possible"; that "the basic aim of a retirement system must be to ensure that an employee accrues enough benefits by the end of his working life to allow him to enjoy an element of financial security in his retirement years"; that "there would be an adjustment mechanism (regarding the income levels for contribution purpose) and the changes to the levels of relevant income should not be made on an ad hoc basis"; and that "the mechanism for future adjustments would also be established and agreed in (a consultation) process", are no more than expressions of intent and of the goals to be achieved. They cannot be the government policies which I have defined for the purpose of forming an opinion under Rule 51(4).

17. Policy aims or objectives are but ideals and remain as such until concrete policy decisions have been made to achieve them; these policy decisions should be unequivocal and should not be capable of being interpreted differently at different times. Terms such as "to cover as many persons as possible" and "to accrue enough benefits by the end of an employee's working life" are relative concepts and are of no assistance to me for the purpose of ruling under Rule 51(4).

18. Having formed my opinion that the Bill relates to the Government policy on the minimum levels stipulated in Schedule 2, my next question is whether the Bill will have a substantive effect on the policy. According to SFS, about 7% (217,900 persons) of Hong Kong's working population of 3.2 million would be excluded from contributing to MPF schemes if the Bill was

implemented. The Secretary also claims that the exclusion of these persons would result in substantial reduction in the amount of retirement benefits they would receive under the current income levels for making MPF schemes contributions. I accept that the Bill will have a substantial impact on the policy on MPF schemes.

19. As regards SFS's claim that there is a Government policy to have an adjustment mechanism regarding the income levels stipulated in Schedule 2 for MPF schemes contributions, I have yet to be satisfied that, apart from the mechanism provided under section 48 of the Ordinance to amend Schedule 2, and the procedure to amend the Schedule by way of a bill as Mr CHENG now seeks to adopt, there is a Government policy on an adjustment mechanism. I am therefore unable to form an opinion that Mr CHENG's proposal to amend Schedule 2 by means of a Bill relates to a Government policy.

Ruling

20. As the implementation of the Bill will have substantive effect on the Government's policy on MPF schemes, I rule that the introduction of the Bill requires the written consent of the Chief Executive.

(Mrs Rita FAN)
President
Legislative Council

26 February 2001