

**Extract from the Minutes of Financial Affairs Panel
meeting on 7 January 2002**

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V Mandatory Provident Fund Schemes - Proposed amendments to legislation and situation of default contributions

LC Paper No. CB (1) 716/01-02(04) - Information paper provided by the
Administration

33. The Chairman welcomed representatives of the Administration and invited the Deputy Secretary for Financial Services (DS/FS) to brief members on the proposed legislative amendments relating to Mandatory Provident Fund (MPF) Schemes.

34. DS/FS advised that the Mandatory Provident Fund (MPF) Schemes Operation Review Committee (the Review Committee) established by the Mandatory Provident Fund Schemes Authority (MPFA) in August 2001 was undertaking a comprehensive review of the MPF legislation in relation to the administrative and operational aspects of MPF schemes. The Review Committee had completed the first phase of its work. In the light of the recommendations of the MPFA, the Administration intended to put forward proposals to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (MPFSO). The proposed amendments had been set out in the information paper (CB(1)716/01-02(04)). DS/FS highlighted that one of the proposed amendments was to increase the minimum level of relevant income for MPF contributions from \$4,000, which was set in 1995 with the enactment of the MPFSO, to \$5,000 in the light of changing economic conditions.

35. Mr Bernard CHAN declared interest that he was a representative of an MPF trustee company and a member of the Mandatory Provident Fund Schemes Advisory Committee.

Minimum and maximum levels of MPF contribution

36. Mr Andrew CHENG said that those earning a monthly income of \$5,000 in Hong Kong could barely make ends meet. While he did not dispute against the principle of saving for the future, he considered that the MPF contribution should not cause undue financial hardship to the lower wage earners. He asked if the Administration would consider raising the current minimum level of relevant income from 50% to 55% or 60% of the monthly median employment earnings of the working population.

37. Mr LEE Cheuk-yan pointed out that with a worsening unemployment problem, many previously dual-income families now only had one source of income, and therefore those earning a monthly income of \$6,000 or below would be driven into serious hardship having to make MPF contributions. He

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therefore reiterated the suggestion of the Confederation of Trade Unions made to the Review Committee that the minimum level of relevant income for MPF contributions should be 60%, i.e. \$6,000, of the monthly median employment earnings.

38. DS/FS said that in determining the minimum level of relevant income for MPF contributions, there was a need to strike a balance between achieving the maximum coverage of the workforce under the MPF Schemes, and causing minimum immediate financial pressure on the lower-paid employees. She said that if the minimum level of relevant income were to be increased to a higher percentage than 50% of the monthly median income, the amounts of savings for a portion of the working population for their retirement would be progressively reduced. In this regard, the Administration was of the view that setting the minimum level at 50% of the median income could suitably strike the balance.

39. As regards the maximum level of relevant income for MPF contributions, Mr LEUNG Fu-wah asked if retaining the maximum relevant income level at \$20,000 instead of adjusting it to \$30,000 according to the proposed adjustment basis of 90% scheme coverage would set an undesirable precedent for future reviews of the maximum level. DS/FS replied that the retention of the maximum relevant income at the existing level on this occasion was an exceptional arrangement to avoid imposing additional financial burden on employers and employees in the light of the current economic situation. The decision had also taken into account the fact that many employees in the income bands between \$20,000 and \$30,000 per month (\$30,000 was the income of 90 percentile of the working population) were members of MPF schemes receiving voluntary contributions on top of mandatory contributions and some were exempted from the MPFSO altogether. In reply to Mr James TIEN's enquiry, DS/FS advised that maintaining the maximum relevant income level at \$20,000 would result in a coverage of about 83% of the working population under the MPF Schemes.

40. As regards the frequency of conducting reviews of the minimum and maximum levels, ED(P&D)/MPFA explained that MPFA took into consideration that each time the minimum and maximum relevant income levels for MPF contributions were adjusted, it would require costly system adjustments on the part of employers and trustees. On the other hand, it was necessary to ensure that the minimum and maximum levels could duly reflect the overall wage trend. After reviewing options between conducting reviews ranging from three to five years, the MPFA decided that four years would be an appropriate interval.

41. Mr NG Leung-sing expressed support for the bases for future adjustment of the minimum and maximum levels of relevant income for MPF contributions as proposed by the MPFA, as well as the decision to retain the maximum level at \$20,000 in the light of the current economic climate. Since it had been proposed that 90% of the scheme coverage would be adopted as the basis to adjust the maximum relevant income level, whereas the Administration had decided to maintain the maximum relevant income level at \$20,000, instead

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of adjusting to \$30,000 according to the aforesaid adjustment basis, under the current review, Mr NG suggested that if the proposed adjustment bases were to be incorporated into the MPF legislation, the wordings of the relevant provisions should accordingly provide the option and flexibility to maintain the maximum relevant income level where appropriate. DS/FS said that the Administration would duly consider Mr NG's suggestion.

42. Mr CHAN Kam-lam observed that volatile economic conditions could cause substantial fluctuations in the minimum and maximum levels of relevant income for MPF contributions, if the latter were to be adjusted according to the prevailing income levels of the working population at the time of the review. As the MPFA had proposed to review the minimum and maximum levels every four years, he suggested that the average income levels over the four years before each review be used as the adjustment bases to better reflect the overall wage trend. DS/FS said that the Administration would consider Mr CHAN's suggestion.

Enforcement of the MPFSO

43. Mr HO Chun-yan said that the proposed legislative amendments did not address the issues relating to the need to strengthen protection for employees under the MPFS. For example, there were employees who were coerced by employers to switch to a self-employed status. There were also cases in which employers not only evaded MPF contributions, but also absconded with their employees' MPF contributions. These contributions were unlikely to be salvaged if the company had wound up. He suggested that the Administration should urgently review the legislation in relation to the Insolvency Fund in this connection, and take comprehensive measures such that employees were fully protected in respect of their MPF contributions.

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44. DS/FS replied that the current proposed legislative amendments were based on the first phase of the Review Committee's work and the Review Committee would continue its review work covering a wider scope of issues relating to MPFS. As to whether the existing legislation concerning the Insolvency Fund should be amended to provide protection for employees in respect of their MPF contributions, DS/FS agreed to provide a written response to the Panel after the meeting.

45. In regard to enforcement actions against those employers who defaulted on their MPF contributions, the Executive Director (Enforcement), MPFA (ED(E)/MPFA) advised that MPFA had been expeditious and stringent in dealing with such cases. The time taken to study and resolve a case varied according to the nature and complexity of individual cases, and on some occasions MPFA needed to seek legal advice before taking follow-up enforcement actions. Past experience revealed that most cases could be resolved within three months. He reported that in 2001, out of the 160 reported cases of employees being forced by employers to switch to a self-employed status, only 13 cases were found substantiated, and all the employers concerned had been convicted. For

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employers who defaulted on MPF contributions, 172 summons had been issued in 2001 and 26 employers had been prosecuted. He remarked that taking prosecution action was the last resort. MPFA had put a lot of efforts on improving employers' and employees' knowledge of MPF legislation and their respective responsibilities, and in assisting both parties to resolve MPF-related problems.

46. Mr LEUNG Fu-wah asked if the time limit of 6 months for taking prosecution action on default contribution cases could be extended so as to reduce the number of lapsed cases in this regard. In response, ED(E)/MPFA pointed out that the Magistrates Ordinance (Cap. 227) imposed a requirement that information or summons in respect of an offence must be laid within 6 months of the occurrence of that offence. Hence, it would not be appropriate to amend the Magistrates Ordinance specifically for cases of default MPF contributions. To tackle non-enrolment and default contributions more effectively, MPFA proposed that MPFA be empowered to serve a statutory notice on an employer who had failed to enrol employees on a MPF scheme, as well as to impose a surcharge on contributions in arrears. Employers would be required to make necessary rectification or to pay the stipulated surcharge within a specified period, or MPFA might take follow-up enforcement action.

47. Noting that there were on average 5 700 employers whose MPF contributions remained in arrears per month, Mr LEE Cheuk-yan asked if MPFA would step up enforcement actions against these employers. ED(E)/MPFA clarified that in regard to these 5 700 cases, some of the companies had already wound up. He explained that MPFA could not initiate prosecution action against employers defaulting on MPF contributions or collect outstanding payments unless the employee concerned came forward to officially file a complaint against his employer. Unfortunately, many employees were not willing to come forward to lodge a complaint. In view of this problem, MPFA would monitor employers' enrollment in MPFS more proactively and would consider if legislation could be put in place to summon employees to stand as witnesses against employers defaulting on MPF contributions, and to provide employees with legal protection while doing so.

48. Mr LEE Cheuk-yan expressed concern with the frequent occurrence of cases where employers absconded with their employees' MPF contributions. He felt that the severity of these cases warranted a harsher penalty and prompt handling. He opined that these cases should be reported to the Police and sought MPFA's view in this regard. ED(E)/MPFA responded that employees had the option to report such cases to the Police if not to the MPFA, and MPFA would work closely with the Police on these cases. He also advised that the severity of the penalty to be imposed on the employers concerned depended on the circumstances of individual cases.

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Other issues

49. Mr Bernard CHAN sought clarification on the proposed amendments regarding "simplification of 30-day contribution holiday" as set out in paragraphs 16 to 18 of the Administration's information paper. ED(P&D)/MPFA explained that the current 30-day contribution holiday arrangement for new employees under section 7A of the MPFS had resulted in a cumbersome administrative process in relation to a new employee's first MPF contributions. To simplify the arrangement, MPFA had proposed that for employees with monthly payroll or more frequent than monthly payroll (e.g. weekly), the employee contributions for the first incomplete employee payroll period should be waived. As for employees with less frequent than monthly payroll, their contributions would be waived for the incomplete calendar month immediately following the first 30 days of employment. The contribution period for employers would remain unchanged, i.e. employers' contributions would continue to count from the first day of employment.

50. DS/FS noted Mr Andrew CHENG 's request to introduce the proposed legislative amendments to the Legislative Council as soon as possible with a view to completing the legislative process within the current legislative session.

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