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**Paper for the House Committee meeting
on 28 June 2002**

**Report of the Bills Committee on
Mandatory Provident Fund Schemes (Amendment) Bill 2002**

Purpose

This paper reports on the deliberations of the Bills Committee on Mandatory Provident Fund Schemes (Amendment) Bill 2002 (the Bill).

Background

2. The MPF Schemes Operation Review Committee (the Review Committee) was set up by the Mandatory Provident Fund Schemes Authority (MPFA) in August 2001 to review the operational aspects of the Mandatory Provident Fund (MPF) System which was launched in December 2000. The Review Committee comprises representatives of employer and employee bodies, service providers, professional organizations, the Government and MPFA.

3. The Review Committee completed the first phase of its work in end 2001 and made a number of proposals to MPFA to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (MPFSO) with a view to improving the operation and regulation of the MPF System. The Administration agrees with the proposals which are set out in the Bill.

The Bill

4. The principal objects of the Bill are to revise the minimum level of relevant income for MPF contributions and to introduce a number of miscellaneous amendments to the MPFSO and its subsidiary legislation to enhance the efficiency and effectiveness of the MPF System.

The Bills Committee

5. Members agreed at the House Committee meeting on 26 April 2002 to form a Bills Committee to study the Bill. Hon Ambrose LAU Hon-chuen was elected chairman of the Bills Committee and the membership list of the Committee is at **Appendix I**. The Bills Committee has held a total of six meetings to examine the Bill.

Deliberations of the Bills Committee

The minimum and maximum levels of relevant income for contribution purposes (Clauses 5 and 12)

Proposed amendments

6. Under the existing MPFSO, a relevant employee or self-employed person (SEP) whose relevant income is less than \$4,000 per month is not required to make MPF contributions, although his employer (if any) has to make contributions in respect of him. If the relevant income of the relevant employee or SEP is above \$20,000 per month, he is not required to contribute to the MPF scheme in respect of the excess relevant income. The current minimum and maximum levels of relevant income were set in 1995 when the MPFSO was enacted.

7. To establish a mechanism for future adjustment, the Administration has proposed to add a new section 10A to the MPFSO to provide that MPFA must conduct a review of the minimum and maximum levels of relevant income not less than once in every period of four years. Proposed section 10A(2) stipulates that without limiting the factors which MPFA may take into account, it must take into account the following findings prevailing at the time of the review as compiled from the General Household Survey conducted by the Census and Statistics Department:

- (a) In respect of the minimum level of relevant income, 50% of the monthly median employment earnings (monthly median income); and
- (b) In respect of the maximum level of relevant income, monthly employment earnings at 90th percentile of the monthly employment earnings distribution.

8. Accordingly, the Administration has proposed in the Bill to revise the minimum level of relevant income from \$4,000 to \$5,000 per month. As regards the maximum level of relevant income, the Administration has explained that having considered the prevailing economic conditions, it proposes to retain the existing level of \$20,000 per month instead of adjusting

it to \$30,000 in accordance with the relevant findings. In deliberating on the minimum and maximum levels of relevant income, members have sought explanation from the Administration on the latest findings on monthly median income and the monthly employment earnings at 90th percentile of monthly employment earnings distribution.

Minimum level of relevant income

9. Hon Andrew CHENG considers that it should be stipulated in the legislation that not less than 60% (instead of 50% as proposed by the Administration) of the monthly median income should be adopted as the minimum level of relevant income. This will help relieve low-income earners of the financial burden of making MPF contributions and enable them to have more disposable income for improving their immediate livelihood. Under his proposal, the minimum level of relevant income will be adjusted to \$6,000 per month. Hon LEE Cheuk-yan and Hon LEUNG Yiu-chung have also expressed the view that the minimum level of relevant income should be adjusted to \$6,000, instead of \$5,000 per month. Other members of the Bills Committee have not expressed any strong views on the Administration's proposed amendments. They also note that Hon Andrew CHENG will move the necessary CSAs to amend the minimum level of relevant income accordingly.

10. To strike a balance between relieving the burden of lower income workers and providing for their future retirement needs, the Administration considers it reasonable to adopt \$5,000 per month (i.e. 50% of the monthly median income) as the minimum level of relevant income. Further uplifting of the said percentage will have the effect of excluding a greater number of lower income workers from retirement protection. According to the Administration, some 148 100 relevant employees/SEPs (excluding those aged below 18 or above 65 and those exempted under MPFSO such as domestic helpers) would fall outside the scope of the MPF System if the minimum level of relevant income is raised to \$5,000 per month. The number would reach 278 700 if the minimum level is raised to \$6,000 per month.

11. Members have also pursued with the Administration the economic implications, in particular whether consumer spending will be boosted, if the minimum income threshold is lifted from \$4,000 to \$5,000 per month as currently proposed, and from \$4,000 to \$6,000 per month as suggested by some members. The Administration estimates that if the minimum level of relevant income is raised from \$4,000 to \$5,000, the private consumption expenditure (PCE) and gross domestic product (GDP) are estimated to increase by 0.004 and 0.001 of a percentage point respectively in the first year of incidence. Using the 2001 figures, these would amount to \$29.6 million and \$12.6 million respectively. If the minimum level is raised from \$4,000 to \$6,000, PCE and GDP are estimated to increase by 0.013 and 0.005 of a percentage point respectively in the first year of incidence. In 2001

figures, these would amount to \$96.1 million and \$63.1 million respectively. Members nevertheless note that the precise beneficial effect on consumption and standard of living is difficult to assess because much will depend on the propensity of the individuals or households to consume or save.

Maximum level of relevant income

12. In explaining the reason for maintaining the maximum level of relevant income at \$20,000 per month instead of adjusting it to \$30,000 per month in accordance with the relevant findings, the Administration and MPFA highlight the need to give due regard to the current economic situation and to avoid additional burden on employers and employees. On some members' concern about retirement protection for higher income employees, the Administration has advised that based on the information from MPFA and relevant government departments, more than 70% of the relevant employees earning more than \$20,000 per month are already exempt from the MPF System. They include civil servants covered by the Civil Service Pension Schemes, teachers covered by the Grant Schools or Subsidized Schools Provident Funds, expatriates who are covered by overseas retirement schemes etc. For the remaining relevant employees earning more than \$20,000 per month, many of them may already be receiving or making voluntary contributions on top of mandatory MPF contributions. The Administration therefore considers that maintaining the existing maximum level of relevant income at \$20,000 per month will unlikely affect the retirement protection for relevant employees earning over \$20,000 per month.

13. Most of the members of the Bills Committee have not raised any objection to the Administration's proposal. However, Hon LEUNG Yiu-chung is of the view that the Administration has adopted a double standard in not adjusting the maximum level of relevant income in accordance with the relevant findings as in the case of the minimum level of relevant income. Hon Andrew CHENG considers that a lower percentile of the monthly employment earnings distribution should be stipulated in the legislation so as to obviate the need to deviate from the agreed principle every now and then and to rely on the administrative decision of the MPFA/Administration to determine the appropriate level. He has proposed CSAs to the effect that the monthly employment earnings at a percentile not exceeding 80th of the monthly employment earnings distribution should be adopted as the maximum level of relevant income.

Review conducted by MPFA

14. Upon enactment of the Bill, MPFA will be required to conduct a review of the minimum and maximum levels of relevant income not less than once in every four years to ascertain whether or not there are grounds to amend Schedule 2 or Schedule 3 to the MPFSO or both. Any proposed changes to the said Schedule(s) require legislative amendments and the approval of the

Legislative Council (LegCo). Some members are concerned about the transparency of the reviews conducted by MPFA, in particular whether and how LegCo Members will be informed of such reviews and their outcomes. In response, the Administration has assured members that it will report to the Panel on Financial Affairs on each review conducted by MPFA under proposed section 10A, irrespective of whether adjustments are proposed to the minimum and/or maximum levels of relevant income. The Administration has agreed to give an undertaking to this effect during the Second Reading debate on the Bill.

15. As to whether an interval of four years is an appropriate time-frame for the review, the Administration considers the proposed arrangements reasonable as it will not be desirable to require service providers to adjust their computer systems at too frequent intervals. Members are also concerned about the fluctuations in income levels which may be caused by volatile economic conditions. On a member's suggestion to adopt the average income levels over the four-year period before each review as the basis for adjustment, the Administration has advised that if wages are on an upward trend during the four-year period, using the four-year average will result in a lower figure, and this may not reflect the prevailing wage level for determining the minimum level of relevant income.

Enhancing protection for MPF scheme members

Penalty provisions (Clause 11)

16. To strengthen deterrence against failure of an employer to enrol his employees in MPF schemes, the Administration has included in the Bill provisions to confer on the court the power to impose a daily fine of \$500 upon the second or subsequent conviction of the employer for each day the offence is continued. The Administration will move a CSA to proposed section 43B(3) to better reflect its intention. To facilitate prosecution of offences, the Bill also proposes to amend the prosecution time-bar for non-enrolment in MPF schemes and non-payment of mandatory MPF contributions from six months after the occurrence of the offence to six months after the discovery of the offence by, or coming to the notice of, MPFA.

17. Some members are gravely concerned about the serious nature of the offence of non-enrolment in MPF schemes and have enquired whether a fixed penalty can be imposed for such an offence. In response, the Administration has advised that it is not appropriate to impose a fixed penalty on a continuing offence. Given the nature of the proposed section 7(1A), only the court can determine whether the section had been contravened and impose the appropriate level of penalty.

Transfer of members and benefits (Clause 7)

18. Members of MPF schemes may be transferred from one scheme to another due to a change of employers as a result of a change in the ownership of a business or a transfer to an associated company. In line with the spirit of the Employment Ordinance (Cap.57), section 12A(6) of the MPFSO provides that the contributions made by the previous employer into the previous scheme may be used by the new employer to offset his severance payment/long service payment (SP/LSP) payable to the employees on termination of employment. Nonetheless, the other provisions of the MPFSO treat the above arrangement as a change in employment whereby the employees concerned will not be required to contribute to the new scheme for the first 30 days and are also entitled to transfer the accrued MPF benefits derived from their previous employment to individual preserved MPF accounts of their choice.

19. To further streamline the transfer arrangements, clause 7 of the Bill amends the existing section 12A(6) of MPFSO to clarify that where there is a change of business ownership or transfer between associated companies and if certain conditions are satisfied, including the new employer's agreement to take up the liability of the previous employer for SP/LSP in respect of the employee, then, the new employer may elect to have the accrued benefits of the relevant employee transferred to an account in an MPF scheme nominated by the new employer. This arrangement will facilitate continuity in making contributions and enable the new employer to ascertain readily the amount of contributions made by the previous employer for SP/LSP offsetting purposes. Members are keen to ensure that in effecting such transfers, there is no erosion of scheme members' entitlements and that the rights of the employees are protected. In response to members' enquiry, the Administration has advised that the new employer is required to take up the SP/LSP liability of the previous employer in full upon such transfers.

Total incapacity (Clause 2)

20. Under the existing MPFSO, a scheme member who is employed/self-employed immediately before his becoming totally incapacitated can withdraw his accrued benefits before attaining retirement age. However, the said provision does not cater for the situation where a scheme member is unemployed or not a SEP immediately before he is totally incapacitated. As such, clause 2 of the Bill amends the existing definition of "total incapacity" under section 2 of the MPFSO to mean permanent unfitness to perform the kind of work that the scheme member was last performing before becoming incapacitated.

21. While agreeing with the need for the proposed amendment, members have also noted that different definitions of "total incapacity" exist in various employment-related legislation and asked whether a uniform definition

should be adopted. In response, the Administration refers to the definition of "total incapacity" under the Employees' Compensation Ordinance (Cap.282) and under the Pneumoconiosis (Compensation) Ordinance (Cap.360) which are different and drafted for the specific purposes of the Ordinances. The Administration also clarifies that the proposed amendment will not change the policy underlying the definition of "total incapacity" in the MPFSO. It merely ensures that a person who becomes totally incapacitated whilst being unemployed will also be eligible to withdraw his accrued benefits under the MPF scheme.

Administration and regulation of MPF schemes

Restructuring of registered schemes (Clause 9)

22. The existing section 34B of the MPFSO provides for the MPFA's power to consent to the merger of registered MPF schemes. The Administration has proposed to amend the said section to facilitate MPFA's regulation of different forms of scheme restructuring. Some members are concerned about how far scheme members' interest is taken into consideration in such restructuring activities which are usually initiated by the trustee(s). In response, MPFA assures members that in deciding whether a proposed restructuring should be consented to, one of the major considerations of MPFA is whether the interests of the members of the scheme(s) will be adequately protected. It will consider each application on its merits and will ensure that the interests of scheme members will be properly safeguarded.

Calculation of contributions (Clauses 4 and 12)

23. Members note that to keep the procedures simple and to minimize the risk of error, it is proposed in the Bill that for employees with monthly or more frequent than monthly payroll, the employee contributions for the first incomplete 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 30-day contribution holiday. Other streamlining measures include adopting the generic minimum (currently \$130, to be adjusted to \$160 per day) and maximum (\$650 per day) levels of relevant income for payroll cycle that is more frequent than monthly. In view of the technicalities involved, members have urged the Administration to step up publicity on the new arrangements to facilitate understanding by the public.

Other regulatory measures (sections 18 and 9 of Schedule to the Bill)

24. The Bills Committee note that other proposed measures to improve the administration and regulation of the MPF System include the setting up of a public register of lost members by MPFA instead of the publication of annual notices in newspapers continuously by approved trustees

to search for lost members, and simplifying the calculation of surcharge for non-payment of MPF contribution at a flat rate of 5% of the contribution in arrears. While members do not dispute the need for improving and streamlining various arrangements in the light of operational experience, they have also stressed the need to ensure that protection for scheme members will not be compromised.

Investment of scheme funds (section 20 of Schedule to the Bill)

25. At present, there are provisions in the principal ordinance and related subsidiary legislation governing the investment of funds of MPF Schemes. The Administration has stressed the need to ensure that on one hand, the provisions are effective in protecting scheme members' interest. On the other hand, there should be enough flexibility in the legislation to allow the funds to be invested in and capitalized on quality products. Taking into account the developments in the market and the practical needs of the service providers, the Bill provides for a series of amendments to the MPF Schemes (General) Regulation seeking to provide wider choices of investment vehicles and remove unnecessary restrictions on the investment of funds.

26. In examining the proposed amendments to reduce or remove restrictions on investment of funds, members have sought assurance that scheme members' interests will not be compromised as a result. On the relaxation in the investment of funds in index-tracking collective investment schemes (CIS), for example, the Administration and MPFA have advised that the proposed relaxation is in line with current market practice where a large portion of funds in retirement schemes are invested in index-tracking CISs as the risks involved are already diversified through a spread of investment. Moreover, the prior approval of MPFA is required for relaxing the restriction on investment of funds in index-tracking CISs. In granting approval, MPFA must be satisfied that certain conditions are met, such as the requirement that the index-tracking CIS is either authorized by the Securities and Futures Commission or listed on a recognized stock exchange approved by MPFA. The Administration and MPFA consider that the proposed amendments have taken into regard the dual need for flexibility and prudence.

Consultation

27. Members note that in preparing the relevant legislative proposals, the employers and employees representatives have been consulted via the MPF Schemes Operation Committee, the MPF Schemes Advisory Committee and the MPF Industry Schemes Committee. The Administration has also sought the views of the Chinese General Chamber of Commerce, Federation of Hong Kong Industries, Hong Kong General Chamber of Commerce and the Chinese Manufacturers' Association. By and large, they are in support of the proposed amendments in the Bill. However, some members of the Bills Committee are of the view that as the MPF System affects a significant portion of the workforce

and is of widespread concern to both employers and employees, the Labour Advisory Board should also be consulted if changes are contemplated to the System in future. The Administration has noted their view for consideration.

Committee Stage Amendments

28. The full set of CSAs to be moved by the Administration is at **Appendix II**. Some of the CSAs seek to better reflect the intention of the proposed amendments while others are mainly textual and consequential in nature. The Bills Committee will not move any CSA in its name.

29. Members have also noted Hon Andrew CHENG's proposed CSAs (at **Appendix III**) to clauses 5, 12 and the Schedule to the Bill.

Recommendation

30. The Bills Committee supports the resumption of the Second Reading debate on the Bill on 10 July 2002.

Advice sought

31. Members are invited to note the recommendation of the Bills Committee in paragraph 30 above.

Legislative Council Secretariat

25 June 2002

**Bills Committee on
Mandatory Provident Fund Schemes (Amendment) Bill 2002**

Membership list

Chairman	Hon Ambrose LAU Hon-chuen, GBS, JP
Members	Hon LEE Cheuk-yan Hon NG Leung-sing, JP Hon CHAN Yuen-han, JP Hon Bernard CHAN Hon CHAN Kam-lam Hon LEUNG Yiu-chung Hon SIN Chung-kai Dr Hon YEUNG Sum Hon YEUNG Yiu-chung, BBS Hon Andrew CHENG Kar-foo Hon LI Fung-ying, JP Hon Henry WU King-cheong, BBS Hon Michael MAK Kwok-fung Hon LEUNG Fu-wah, MH, JP Hon Audrey EU Yuet-mee, SC, JP Hon James TIEN Pei-chun, GBS, JP (up to 5 June 2002)
Clerk	Miss Polly YEUNG
Legal Adviser	Miss Connie FUNG
Date	5 June 2002

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Secretary for
Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
1(3)	By adding "and the Treasury" after "Services".
4(a)	By deleting the proposed section 7A(7) and substituting - “(7) 如僱員(臨時僱員除外)的工資期 — (a) 不多於 1 個月，則就在有關時間之後受僱工作的第 30 日當日或之前開始的工資期而言，僱主不得根據第(2)(b)款，就該僱員在該工資期所賺取的有關入息作出扣除； (b) 多於 1 個月，則就由有關時間至有關時間之後受僱工作的第 30 日所在的公曆月的最後一日為止的期間而言，僱主不得根據第(2)(b)款，就該僱員在該期間所賺取的有關入息作出扣除。”。
11	By deleting the proposed section 43B(3) and (4) and

substituting -

"(3) An employer who is convicted of an offence against this section is liable -

- (a) to a fine at level 6 and to imprisonment for 6 months on the first occasion on which the person is convicted of the offence; and
- (b) to a fine of \$200,000 and to imprisonment for 12 months on each subsequent occasion on which the person is convicted of the offence and, in the case of an offence consisting of a failure by the employer to comply with the requirement imposed on the employer by section 7(1A), a daily penalty of \$500 for each day on which the offence is continued.

(4) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), proceedings may be instigated for an offence against this section within 6 months after the offence is discovered by, or comes to the notice of, the Authority."

New

By adding -

**"12A. Decisions which may
be the subject of
an appeal**

Schedule 6 is amended by repealing items 10 and 11 and substituting -

"10. A decision of the Authority to reject an application for its consent to the restructuring of one or more registered schemes."."

- Schedule
- (a) In section 13(c), in the proposed section 145(7A)(a), by adding "in respect of the contribution period that ends" after "concerned".
 - (b) In section 14(c), in the proposed section 146(9A)(a), by adding "in respect of the contribution period that ends" after "concerned".
 - (c) In section 16, in the proposed section 150A(b) -
 - (i) by adding "within the permitted period" after "scheme";
 - (ii) by deleting "(a)段所述" and substituting "上述註冊".
 - (d) In section 17, in the proposed section 164(5)(c), by deleting "在該成員失業的情況下 -".
 - (e) In section 20 -
 - (i) in paragraph (b), in the proposed section 2(3), by adding "of this Schedule" after "section 6(b)(i), (ii) or (iii)";
 - (ii) in paragraph (f), in the proposed section 8(1) -

(A)

in paragraph (a), by adding "a"
after "on";

(B) in paragraph (b), by adding

"approved by the Authority for the
purposes of section 6A of this
Schedule" after "scheme".

(f) In section 21, by deleting "repealing "any" and
substituting "direct"" and substituting "adding
"direct" after "any"".

(g) In section 26, in the proposed section 4(3)(b) and
(c), by deleting "或" and substituting "及".

Appendix III

REVISED

MANDATORY PROVIDENT FUND SCHEMES
(AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Honourable Andrew Cheng Kar-foo

<u>Clause</u>	<u>Amendment Proposed</u>
5	<p>In the proposed section 10A –</p> <ul style="list-style-type: none">(a) in subsection (2), by deleting “Without limiting the factors which the Authority may take into account for the purposes of conducting” and substituting “For the purposes of conducting ”.(b) in subsection (2) (a), by deleting “50” and substituting “not less than 60 ”.(c) in subsection (2) (b), by deleting “monthly employment earnings at 90th ” and substituting “ monthly employment earnings at a percentile not exceeding 80th ”.
12	<p>In the proposed Schedule 2 –</p> <ul style="list-style-type: none">(a) in section 1 –<ul style="list-style-type: none">(i) in paragraphs (a) and (c), by deleting“\$5,000”and substituting \$6,000”.(ii) in paragraph (b), by deleting “\$160” and substituting “\$193”.(b) in section 2, by deleting “\$160” and substituting “\$193”.(c) in section 3, by deleting “\$5,000 per month or \$ 60,000 per year” and substituting “\$6,000 per month or \$72,000 per year”.
Schedule	<p>In section 25, by deleting “ “\$160.00” ” and substituting “ “\$193.00” ”.</p>