



Legislative Council Panel on Financial Affairs
立法會財經事務委員會

Proposed amendments to
Mandatory Provident Fund Schemes Ordinance
強制性公積金計劃條例的擬議修訂

12 April 2007

2007年4月12日



BACKGROUND 背景

Review Committee (August 2001)

- Review MPF System/ legislation with regard to operational/ administrative aspects
- Membership: Employee (“EE”)/ employer (“ER”)/ industry representatives, Government & MPFA

Proposed Bill

- Items endorsed by Review Committee

檢討委員會 (2001年8月)

- 檢討強積金制度/ 法例的運作/行政事宜
- 成員名單: 僱員/ 僱主/ 行業代表/ 政府及積金局

擬議《條例草案》

- 項目經由檢討委員會審批



MAJOR LEGISLATIVE PROPOSALS

主要立法建議



MPF treatment of housing allowance and other housing benefit

強積金對房屋津貼及其他房屋利益的處理

Issue

- Housing allowances/ benefits not “relevant income” (“RI”) ⇒ no mandatory contributions (“MC”) payable
- ERs convert a portion of EEs’ salary as housing allowances/ benefits => reduce MC payable

議題

- 房屋津貼/利益不屬於「有關入息」=> 無須供款
- 僱主把僱員部分薪金轉為房屋津貼/利益 => 減低強制性供款



MPF treatment of housing allowance and other housing benefit

強積金對房屋津貼及其他房屋利益的處理

Primary justification in 1995

- Large housing allowances excluded from RI
=> ↓ EEs' contribution burden
=> unlikely to affect low-paid EEs

1995年提及的主要理據

- 從有關入息中豁除數額頗大的房屋津貼
=> ↓ 僱員供款負擔
=> 應不會影響低薪僱員



MPF treatment of housing allowance and other housing benefit

強積金對房屋津貼及其他房屋利益的處理

Re-examination of justification

- If the intention was to alleviate EE contribution burden, exclusion arrangement should extend to –
 - => all EEs incurring housing expenses
 - => other significant expenses
- End up with MCs substantially reduced

重新考慮理據

- 如豁免安排是爲了減輕僱員的供款負擔，則該安排應適用於 –
 - => 所有須付房屋開支的僱員
 - => 其他數額龐大的支出
- 強制性供款會減至極少



MPF treatment of housing allowance and other housing benefit

強積金對房屋津貼及其他房屋利益的處理

Proposals

- ⇒ Remove housing allowances/ benefits exclusion
- ⇒ Treat housing allowances/ benefits on the same basis as other remuneration items

建議

- ⇒ 取消房屋津貼/利益的豁免安排
- ⇒ 用相同方法處理房屋津貼/利益及其他薪津項目



Non-payment of mandatory contribution in non-enrolment cases

在沒有登記參加強積金計劃的情況下沒有支付強制性供款

Issue

- ERs must enrol EEs into MPF scheme & make MCs
- Where ER does not enrol EE into MPF scheme:
 - "non-enrolment" => criminal action
 - "non-payment" => no criminal/ civil action

議題

- 僱主須安排僱員參加強積金計劃及供款
- 僱主沒有安排僱員加入強積金計劃：
 - “沒有參加計劃” => 刑事檢控
 - “沒有供款” => 不能採取刑事/ 民事法律行動



Non-payment of mandatory contribution in non-enrolment cases

在沒有登記參加強積金計劃的情況下沒有支付強制性供款

Proposals

- ⇒ MPFA can simultaneously bring criminal proceedings against ER for “non-enrolment” & “non-payment”
- ⇒ Court has power to compel the convicted ER to rectify

建議

- ⇒ 積金局可同時就僱主沒有為僱員登記參加強積金計劃及沒有供款提起刑事法律程序
- ⇒ 法庭可要求僱主(被裁定有罪後)作出糾正



Improvement of arrears recovery mechanism

改善追討欠款機制

Issue

- ERs take advantage of settlement period to delay payment => may inhibit recovery action
- MPFA can impose surcharge/ institute civil proceedings only after timeframe specified in respect of each step been complied with => no action possible in exceptional cases
- Issue surcharge notice to unreachable/ wound up ERs => resources wastage

議題

- 僱主利用結算期拖延付款 => 或會阻礙追討行動
- 只有在遵從法例所定時限行事，積金局才可向僱主徵收附加費/ 提起民事法律程序 => 不足以處理特殊個案
- 向不能聯絡/已清盤的僱主發出附加費通知 => 浪費資源



Improvement of arrears recovery mechanism 改善追討欠款機制

Proposals

- ⇒ Remove settlement period
- ⇒ Clarify legal uncertainty to facilitate arrears recovery
- ⇒ Provide MPFA with discretion to issue notices to ERs

建議

- ⇒ 取消結算期
- ⇒ 澄清有關法律條文，以便追討拖欠供款
- ⇒ 賦予積金局酌情權向僱主發出通知



OTHER LEGISLATIVE PROPOSALS

其他立法建議

(A) Enhance the enforcement of the MPF System

加強強積金制度的執法



Greater effectiveness of service of MPF summonses 提高送達強積金傳票的成效

Issue

- Serve summons on body corporate – send to registered office
=> registered address not valid => not good service of summons

Proposal

⇒ Also allow service of summons on ER's business address

議題

- 向法人團體送達傳票 – 送交註冊辦事處
=> 註冊辦事處地址失效 => 沒有妥善送達傳票

建議

⇒ 亦可把傳票送達僱主的業務地址



Expansion of power to require production of records 擴大有關要求出示記錄的權力

Issue

- MPFA can only request production of records from ERs/ self-employed persons (“SEPs”) during on-site inspections

Proposal

- ⇒ Confer general power to MPFA to request production of records to ensure compliance with MPF legislation

議題

- 積金局只能在實地巡查時才可要求僱主/ 自僱人士出示紀錄

建議

- ⇒ 賦予積金局一般權力，可要求僱主/ 自僱人士出示紀錄，以確保他們遵守強積金法例的規定



Extension of the prosecution time bar 延長檢控時限

Issue

- Prosecution time bar under s.43C & s.43E of MPFSO & s.26 of Exemption Regulation
=> 6 months after occurrence of offence

議題

- 《強積金條例》第43C及43E條和《豁免規例》第26條之檢控時限
=> 發生罪行後的 6 個月內



Extension of the prosecution time bar 延長檢控時限

Proposal

- ⇒ Extend time bar to 6 months after offence is discovered by MPFA
- ⇒ Ref: s.43B of MPFSO amended in 2002

建議

- ⇒ 延長時限為積金局發現罪行後6個月內
- ⇒ 參考: 2002年修訂之《強積金條例》第43B條



(B) Improve administration and regulation of MPF scheme

改善強積金計劃的行政及規管



Content requirement of annual benefits statement 周年權益報表的內容規定

Issue

- No mechanism for adjustments to the content requirements

Proposal

- ⇒ Allow for the addition of further ABS content requirements as prescribed by MPFA

議題

- 沒有機制調整周年權益報表內容規定

建議

- ⇒ 容許在周年權益報表加入由積金局訂明的內容規定



Transfer of accrued benefits on cessation of employment 終止受僱時轉移累算權益

Issue

- MPF legislation : ER to notify TR of cessation of EE employment
- ER's failure => TR cannot transfer EE's accrued benefits

Proposal

⇒ Allow EE to submit notice by statutory declaration if ER fails to do so

議題

- 強積金法例：僱主須通知受託人僱員終止受僱一事
- 僱主沒有通知 => 受託人無法轉移僱員的累算權益

建議

⇒ 如僱主沒有呈交通知，准許僱員以法定聲明呈交通知



Withdrawal of accrued benefits of a deceased member

提取已故成員的累算權益

Issue

- Unclear whether the Official Administrator is the deceased's “personal representative” (“PR”) for benefits withdrawal

Proposal

⇒ Explicitly state that the Official Administrator is the PR

議題

- 難以確定是否可視遺產管理官為已故成員的「遺產代理人」，提取累算權益

建議

⇒ 清楚說明遺產管理官可視為「遺產代理人」

Claiming of accrued benefits by scheme members

計劃成員申索累算權益



Issue

- ERs may delay making contributions => Members unable to claim accrued benefits in:
 - (1) **account balance \leq \$5,000 case** => 12 months preceding the claim, no MCs were paid/ required to be paid to any MPF schemes
 - (2) **permanent departure on a specified date case** => no MCs were paid/ required to be paid to any MPF scheme since specified date

議題

- 僱主可能延遲作出供款 => 成員未能申索累算權益:
 - (1) **帳戶結餘 \leq \$5,000個案** => 申索前12個月，沒有向/沒有被規定向任何強積金計劃支付供款，亦沒有人就該成員向/被規定向任何強積金計劃支付供款
 - (2) **在某指明日期永久離開個案** => 自指明日期起，沒有向/沒有被規定向任何強積金計劃支付供款，亦沒有人就該成員向/被規定向任何強積金計劃支付供款



Claiming of accrued benefits by scheme members 計劃成員申索累算權益

Proposal

⇒ Revise arrangement to facilitate benefits withdrawal

建議

⇒ 修訂安排以便提取累算權益



Unclaimed benefits 無人申索的權益

Issue

- Unclear timeframe for treating benefits as unclaimed benefits
- Ineffective publication of newspaper notices to locate lost members
- Cumbersome treatment of benefits of members reaching retirement age

議題

- 把累算權益視為無人申索的權益之期限不明確
- 報章公告尋找已失去聯絡的成員之方法無效
- 處理已屆退休年齡成員之權益的程序繁複



Unclaimed benefits 無人申索的權益

Proposals

- ⇒ Treat payment cheque un-presented for a specified period as unclaimed benefits
- ⇒ Set out timeframe for accrued benefits to become unclaimed benefits
- ⇒ Remove the newspaper publication requirements

建議

- ⇒ 把在某段期間內仍未兌現的權益支票當作無人申索的權益
- ⇒ 列明累算權益成爲無人申索權益的期限
- ⇒ 刪除在報章刊登公告的規定



Unclaimed benefits 無人申索的權益

Proposals – Cont'd

- ⇒ TRs report new unclaimed benefits and those claimed by members to MPFA on quarterly basis
- ⇒ TRs to remind members annually reaching retirement age to apply for benefits withdrawal

建議

- ⇒ 受託人每季向積金局匯報新的無人申索權益及已被成員申索的無人申索權益
- ⇒ 受託人每年提醒已屆退休年齡的成員可申請提取累算權益



Disclosure of information by the MPFA 積金局披露的資料

Issue

- MPFA cannot disclose information obtained in the exercise/ performance of functions
- May not be in the interest of information subject/ public

議題

- 積金局不能披露在行使/ 執行職能時取得的資料
- 未必符合資料當事人/ 公眾的利益



Disclosure of information by the MPFA 積金局披露的資料

Proposals

- ⇒ Amend MPFSO to enable MPFA to disclose information:
 - about MPF funds/ schemes; or
 - with consent of information subject; or
 - already in public domain (including court proceedings); or
 - to Official Receiver/ liquidator

建議

- ⇒ 修訂《強積金條例》，讓積金局可披露：
 - 關於強積金成分基金/計劃的資料; 或
 - 得到資料當事人的同意可發放的資料; 或
 - 已在公共領域內(包括法庭聆訊)的資料; 或
 - 予破產管理署署長/ 清盤人的資料



Consent to restructuring of MPF schemes

同意重組強積金計劃

Issue

- Law unclear on effect of MPFA's consent to restructure

Proposal

- ⇒ Spell out the effect of MPFA's consent
 - binding on parties concerned
 - overcome inability to obtain all ERs' / members' consent

議題

- 法例就積金局准許計劃重組的效力不清晰

建議

- ⇒ 訂明積金局所給予的准許的效力
 - 對各方具法律約束力
 - 解決不能取得所有僱主/ 成員准許的問題



Enrolment and contribution requirements for persons who cease to be exempt from MPF legislation

不再獲豁免遵守強積金法例的人士登記參加計劃及供款的規定

Issue

- Exempt persons cease to be exempt whilst in same employment/ being an SEP

Proposal

- ⇒ Clarify that enrolment and contribution requirements apply as if his employment has begun on 1st day ceasing to be exempted

議題

- 豁免人士在同一受僱期間 / 仍屬自僱人士的情況下終止豁免資格

建議

- ⇒ 闡明有關登記參加計劃及供款的規定適用，豁免人士不再獲豁免首日將被視為開始受僱首日



Serving of membership certificates and participation certificates 送達成員證明書及參與證明書

Issue

- Send membership certificates/ participation certificates by post => must be registered
- Ordinary post => cheaper & more convenient

Proposal

⇒ Also allow these certificates be sent by ordinary post

議題

- 郵遞方式送遞成員證明書/參與證明書 => 必須掛號
- 普通郵遞 => 較廉宜及方便

建議

⇒ 上述證明書亦可以普通郵遞方式送遞



(C) Other technical and miscellaneous amendments

其他技術及雜項修訂



Other amendments 其他修訂

- Other technical & miscellaneous amendments to the MPF legislation
- 對強積金法例作出的其他技術及雜項修訂



END
完