

立法會

Legislative Council

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Paper for the House Committee Meeting on 29 June 2007

Legal Service Division Report on Mandatory Provident Fund Schemes (Amendment) Bill 2007

I. SUMMARY

- 1. Object of the Bill** To amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (MPFSO), the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) and the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B) to implement proposals recommended by the Mandatory Provident Fund Authority.

- 2. Comments** The major legislative proposals of the Bill are to-
 - (a) amend the definition of "relevant income" in MPFSO to include housing allowance and other housing benefits for computation of mandatory contribution purpose;
 - (b) improve the mechanism for recovering contribution in arrears by employers;
 - (c) enhance the enforcement of the MPF system; and
 - (d) improve the administration and regulation of MPF schemes.

- 3. Public Consultation** The legislative proposals were considered and supported by the MPF Schemes Operation Review Committee and MPF Schemes Advisory Committee. The Labour Advisory Board was informed of the proposed amendments.

- 4. Consultation with LegCo Panel** The Panel on Financial Affairs was briefed on the legislative proposals during its meeting on 12 April 2007.

- 5. Conclusion** It is recommended that a Bills Committee be formed to study the Bill in detail.

II. REPORT

Object of the Bill

To amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (MPFSO), the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) (General Regulation) and the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B) (Exemption Regulation) to implement proposals recommended by the Mandatory Provident Fund Schemes Authority (MPFA).

LegCo Brief Reference

2. FSB CRG4/51C(2007) Pt. 17 issued by the Financial Services and the Treasury Bureau in June 2007.

Date of First Reading

3. 27 June 2007.

Comments

Background

4. The Mandatory Provident Fund (MPF) was launched in December 2000 for retirement protection for Hong Kong's working population. In general, apart from certain exempted classes of employers or employees, each employer and employee has to contribute 5% of the relevant income as mandatory contributions to the trustee of a MPF scheme, subject to the minimum and maximum levels of relevant income. An employee who has attained retirement age shall be entitled to have paid to him by the trustee the entirety of his benefits accrued in the MPF scheme.

5. The MPF scheme is regulated by MPFA established under MPFSO. The MPF Schemes Operation Review Committee (the Review Committee) was set up by MPFA in August 2001 to conduct review of the MPF system and the relevant legislation with regard to their operational and administrative aspects. The Review Committee comprises representatives of employer and employee bodies, service providers, professional organizations, Government and MPFA. Based on the advice of the Review Committee, MPFA has made a number of proposals on amending MPFSO, the General Regulation and the Exemption Regulation.

The Bill

6. The major legislative proposals of the Bill are to -
- (a) amend the definition of "relevant income" in MPFSO by repealing "(other than a housing allowance or other housing benefit)". The effect is that all remuneration items including housing/other housing benefits will be taken into account in determining the relevant income for computation of mandatory contribution purpose. The Administration has noted that some employers have intentionally restructured the remuneration package of their employees by converting a portion of salary and wages to what they claim to be a housing allowance or other housing benefit so as to reduce the amount of relevant income and to evade their responsibilities to pay mandatory contributions in respect of that portion of salary and wages;
 - (b) improve the mechanism for recovering contribution in arrears by employers. At present, if an employer is in default of payment of contribution, the trustee will issue a reminder to the employer requiring the employer to settle the default payment within 30 days. If the employer fails to pay the contribution within 30 days, the trustee must inform MPFA. MPFA will then issue another notice requiring the default employer to pay the contribution in arrears. The Administration proposes to remove the 30 days period. Instead, the trustee should inform MPFA within 10 days of default of payment. MPFA will then issue a notice requiring the employer to pay the contribution. Amendments will also be made to allow MPFA not to issue surcharge notices to employers in specified circumstances, and clarifying the uncertainty in the law to facilitate the recovery of default contribution by the MPFA even if some recovery steps could not be complied with;
 - (c) enhance the enforcement of the MPF system by extending the time limit for prosecuting certain offences under MPFSO and the Exemption Regulation from within six months from the time when the matter of such complaint arose to within six months after the offence is discovered by, or comes to the notices of MPFA and by providing an alternative mechanism for service of summons on an employer relating to an offence under MPFSO by allowing such summons be served on an employer by leaving it at, or sending it by post to, any place at which the employer carries on business; and
 - (d) improve the administration and regulation of MPF schemes in a number of areas -

- (i) contents requirements of annual benefit statement;
- (ii) transfer of accrued benefits on cessation of employment;
- (iii) withdrawal of accrued benefits of a deceased member;
- (iv) claiming of accrued benefits by scheme members;
- (v) unclaimed benefits;
- (vi) disclosure of information by MPFA;
- (vii) consent to restructuring of MPF schemes; and
- (viii) enrolment and contribution requirements for persons who cease to be exempt from MPF legislation.

7. The Bill will also make other technical and miscellaneous amendments. However, it will not cover the proposal to impose criminal and civil liability on employers who fail to make MPF contributions for employees who are not enrolled in a MPF scheme. According to paragraph 33 of the LegCo Brief, more time is needed to draft the relevant legislative provisions for implementing the proposal, which will be introduced as soon as possible after the current legislative exercise.

Public Consultation

8. According to the LegCo Brief, the legislative proposals have been considered and are supported by the Review Committee and the MPF Schemes Advisory Committee. The Labour Advisory Board has also been informed of the proposed amendments.

Consultation with LegCo Panel

9. MPFA and the Administration briefed the Panel on Financial Affairs on the proposed amendments to MPF legislation at its meeting on 12 April 2007. On the proposal to include housing allowance and other housing benefit in the scope of "relevant income" as defined in MPFSO, some members queried the implications of the revised definition on other labour legislation such as the Employment Ordinance (Cap. 57), as well as the justification for the proposed amendment. The proposal however had the support of some other members who opined that it would prevent abuse in cases where the employer designated a sizable portion of the employee's income as housing allowance, thereby reducing the amount of relevant income for calculating MPF contributions. Members supported proposed amendments to improve the enforcement of MPFSO. The Administration and MPFA were asked to

take into consideration members' views and concerns in refining the legislative proposals, where appropriate. Members had no objection to the introduction of the Bill.

Conclusion

10. The Bill will affect the working population of Hong Kong. It is recommended that a Bills Committee be formed to study the Bill in detail.

11. Scrutiny of the legal and drafting aspects of the Bill is continuing.

Prepared by

LEE Ka-yun, Kelvin
Assistant Legal Adviser
Legislative Council Secretariat
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