

LEGISLATIVE COUNCIL BRIEF

MANDATORY PROVIDENT FUND SCHEMES ORDINANCE (CHAPTER 485)

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2011

INTRODUCTION

At the meeting of the Executive Council on 25 January 2011, the Council ADVISED and the Chief Executive ORDERED that the Mandatory Provident Fund Schemes (Amendment) Bill 2011 (“the Bill”), at Annex, should be introduced into the Legislative Council (“LegCo”).

Annex

JUSTIFICATIONS

2. Section 16 of the Mandatory Provident Fund Schemes Ordinance (“MPFSO”) (Cap. 485) provides that no part of accrued benefits derived from mandatory contributions (“MC accrued benefits”) in a registered Mandatory Provident Fund (“MPF”) scheme in respect of a scheme member shall be taken in execution of a judgment debt or be the subject of any charge, pledge, lien, mortgage, transfer, assignment or alienation by or on behalf of the scheme member and any purported disposition to the contrary is void.

3. In line with the aim of the MPF System to assist the working population to accumulate retirement savings, the legislative intent of this provision is to protect the MC accrued benefits of MPF scheme members in a registered scheme, such that, among others, in the event of bankruptcy of a scheme member, the relevant benefits would not be made available to the creditors of that scheme member.

4. In view of the court case Re. Ng Shiu Fan (CACV 298/2008) which concerned a teacher’s accrued benefits under the Subsidized Schools Provident Fund (paragraph 11 below), the Mandatory Provident Fund

Schemes Authority (“MPFA”) and the Government have reviewed section 16 of the MPFSO and considered that legislative amendment is required to make it expressively clear that the MC accrued benefits of a bankrupt MPF scheme member in a registered MPF scheme are protected against vesting in a trustee-in-bankrupt (“TIB”).

OTHER OPTIONS

5. The proposal is to clarify the intended effect of section 16 of the MPFSO. There is no alternative option other than legislative amendment.

THE BILL

6. The Bill adds a new subsection to section 16 of the MPFSO to the effect that if a scheme member is adjudicated bankrupt, the right or entitlement of the scheme member to any MC accrued benefits in a registered scheme is excluded from the property of the scheme member for the purposes of the Bankruptcy Ordinance (Cap. 6).

LEGISLATIVE TIMETABLE

7. The legislative timetable is as follows -

Publication in the Gazette	18 February 2011
First Reading and Commencement of Second Reading Debate	2 March 2011
Resumption of Second Reading Debate, Committee Stage and Third Reading	to be notified

IMPLICATIONS OF THE PROPOSAL

8. The legislative proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Bill will not affect the current binding effect of the MPFSO. The Bill itself has no financial, civil service, economic, productivity, environmental and sustainability

implications.

PUBLIC CONSULTATION

9. We briefed the LegCo Panel on Financial Affairs on the legislative proposal on 29 November 2010. Members of the Panel indicated their support.

PUBLICITY

10. The Bill will be gazetted on 18 February 2011. A press release will be issued. A spokesman will be available to answer media and public enquiries.

BACKGROUND

11. In *Re. Ng Shiu Fan* concerning the Subsidized School Provident Fund Rules (Cap. 279, sub. leg. D) made under the Education Ordinance (Cap. 279), which was considered by the Court of Appeal in 2009, questions considered by the Court of Appeal include, inter alia, whether the entitlement of a former subsidized school teacher who is a discharged bankrupt to his contribution to the Subsidized Schools Provident Fund formed part of his “estate” and vested in TIB when he was adjudged bankrupt. The Court of Appeal has granted leave to appeal to the Court of Final Appeal regarding the case.

12. The purpose of the Bill is to clarify the legislative intent as set out in paragraph 3 above. It will not affect the existing operation of the MPFSO, including the continued statutory obligation of a bankrupt scheme member who remains in employment to make mandatory contributions; and the existing arrangement adopted by the Official Receiver’s Office which is already premised on the understanding that the existing section 16 of the MPFSO has the effect of protecting MC accrued benefits in an MPF scheme from automatic vesting in a TIB.

ENQUIRIES

13. Enquiries in relation to the LegCo Brief should be directed to Mr

Frederick Yu, Assistant Secretary for Financial Services and the Treasury (Financial Services) at 2527 1181.

Financial Services and the Treasury Bureau
16 February 2011

A BILL

To

Amend the Mandatory Provident Fund Schemes Ordinance to provide explicitly that the statutory protection of accrued benefits under section 16 of the Ordinance covers the bankruptcy of a scheme member and to rectify a clerical error.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Mandatory Provident Fund Schemes (Amendment) Ordinance 2011.

2. Mandatory Provident Fund Schemes Ordinance amended

The Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended as set out in sections 3 and 4.

3. Section 2 amended (Interpretation)

Section 2(1), Chinese text, definition of ~~近親~~—

Repeal

“祖” (wherever appearing)

Substitute

“祖”.

4. Section 16 amended (Protection of accrued benefits)

(1) After section 16(1)—

Add

“(1A) To avoid doubt, if a scheme member is adjudicated bankrupt, the right or entitlement of the scheme member to any accrued benefits in a registered scheme is excluded from the property of the scheme member for the purposes of the Bankruptcy Ordinance (Cap. 6).”.

(2) Section 16(2)—

Repeal

“Subsection (1) applies”

Substitute

“Subsections (1) and (1A) apply”.

Explanatory Memorandum

Section 16 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (*principal Ordinance*) provides that no part of any accrued benefits derived from mandatory contributions in a registered scheme in respect of a scheme member shall be taken in execution of a judgment debt or be the subject of any charge, pledge, lien, mortgage, transfer, assignment or alienation by or on behalf of the scheme member and any purported disposition to the contrary is void.

2. This Bill amends section 16 of the principal Ordinance to provide in explicit terms, for the sake of clarity, that the statutory protection of accrued benefits (as defined in the principal Ordinance) derived from mandatory contributions under that section covers the bankruptcy of a scheme member. If a scheme member is adjudicated bankrupt, the member's right or entitlement to such accrued benefits is excluded from the member's property for the purposes of the Bankruptcy Ordinance (Cap. 6) and shall not vest in the trustee-in-bankruptcy.
3. The Bill also rectifies a clerical error in the Chinese text of the definition of *close relative* in section 2(1) of the principal Ordinance.