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**Background brief on
Mandatory Provident Fund Schemes Ordinance (Amendment of
Schedule 2) Notice 2011 and Mandatory Provident Fund Schemes
Ordinance (Amendment of Schedule 3) Notice 2011**

Purpose

This paper provides background information on the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011 ("Amendment of Schedule 2 Notice") and the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2011 ("Amendment of Schedule 3 Notice"). The paper also provides a summary of the relevant discussions at the Panel on Financial Affairs (FA Panel) on 21 February 2011 and 20 April 2011.

Background

2. Under section 7A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO"), each employee and employer has to contribute 5% of the relevant income as mandatory contributions, subject to the minimum and maximum levels of relevant income. The minimum and maximum levels of relevant income are currently prescribed in Schedules 2 and 3 to MPFSO as \$5,000 and \$20,000 per month respectively. A relevant employee or self-employed person ("SEP") earning less than the minimum level of relevant income ("Min RI") is not required to contribute to a Mandatory Provident Fund ("MPF") scheme while the employer of the employee still has to contribute for the employee. A relevant employee or SEP earning more than the maximum level of relevant income ("Max RI") is not required to contribute to an MPF scheme in respect of the earnings in excess of that maximum level. The employer of the employee is also not required to contribute for the employee in excess of that maximum level.

3. When the Mandatory Provident Fund System was first launched in December 2000, the Min RI and Max RI were \$4,000 and \$20,000 per month respectively. These minimum and maximum levels were adopted in 1995 when MPFSO was enacted. According to the Administration, the \$4,000 was derived from 50% of the then monthly median employment earnings, and the \$20,000 was based on the target to cover the entire earnings of 90% of the working population.

Review in 2002

4. In April 2002, the Administration introduced the Mandatory Provident Fund Schemes (Amendment) Bill 2002, which proposed, inter alia, a new section 10A of MPFSO to provide a mechanism for future review of the Min RI and Max RI. The proposed new provision stipulates that:

- (a) The Mandatory Provident Fund Schemes Authority ("MPFA") must conduct a review of the minimum and maximum levels of relevant income not less than once in every four years; and
- (b) Without limiting the factors which MPFA may take into consideration, MPFA 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:
 - (i) in respect of the Min RI, 50% of the monthly median employment earnings; and
 - (ii) in respect of the Max RI, monthly employment earnings at 90th percentile of the monthly employment earnings distribution.

5. Applying the above principles, the Administration also proposed in the Bill to revise the Min RI from \$4,000 to \$5,000. However, for the Max RI, the Administration proposed to maintain it at \$20,000, instead of raising it to \$30,000 in accordance with the relevant findings, on account of the prevailing economic conditions at that time. The Bill was passed by the Legislative Council on 12 July 2002. The new section 10A, as proposed in the Bill, has since then been incorporated into MPFSO, while the revised Min RI of \$5,000 per month became effective on 1 February 2003.

Review in 2006-2007

6. The MPFA conducted a review of the minimum and maximum relevant income levels in mid-2006, which was the first such review conducted since the commencement of section 10A of MPFSO. Based on the adjustment bases under the said provision, MPFA put forward the following recommendations for the Administration's consideration:

- (a) maintaining the Min RI at \$5,000 per month; and
- (b) increasing the Max RI from \$20,000 to \$30,000 per month.

7. The Administration and MPFA briefed the FA Panel on MPFA's recommendations at the meeting on 5 January 2007, and the Panel held a special meeting on 1 February 2007 to receive views of deputations from trade associations and trade unions.

8. On MPFA's recommendation to maintain the existing Min RI at \$5,000 per month, some members considered that it should be raised to \$6,000 to relieve the financial burden of lower income earners in making MPF contributions and enable them to have more disposable income to make their ends meet. Some other members cautioned that excluding more workers from the contribution net might not be consistent with the objective of the MPF system to provide retirement protection to the general workforce.

9. As regards MPFA's recommendation to increase the Max RI from \$20,000 to \$30,000 per month, while some members supported the proposed increase, some other members were concerned that the resultant increase in employers' MPF contributions would inevitably increase the operating costs of employers, in particular small and medium enterprises which had been hard hit during the economic downturn in the preceding years.

10. After the Panel meetings in January and February 2007, the Administration did not put up any legislative proposal to revise the Min RI and Max RI, which have remained at \$5,000 and \$20,000 per month respectively.

Review in 2010-2011

11. The MPFA conducted a review of the Min RI and Max RI in 2010 with the following findings:

- (a) Based on the statutory adjustment factors, the Min RI and Max RI might be adjusted from \$5,000 to \$5,500 per month and from \$20,000 to \$30,000 per month respectively; and
- (b) Upon taking into account other relevant factors and views gathered during consultation, there would appear to be general support for increases in the two levels as set out in (a) above. Regarding the Min RI, some stakeholders suggested an increase beyond \$5,500. As for the Max RI, some stakeholders suggested a phased approach.

12. The FA Panel discussed on 21 February 2011 the review findings of the review. A number of Panel members and non-Panel Members attending the meeting expressed the view that the Min RI should take into account the effects of the statutory minimum wage ("SMW") and make reference to the income criteria of other relevant schemes such as the Work Incentive Transport Subsidy Scheme. Some members pointed out that the actual take-home pay of some low-income earners might be reduced if the SMW factor was not considered in determining the Min RI. There was a consensus among Members that an increase beyond \$5,500 per month should be considered.

13. As regards the Max RI, while some Members expressed support for increasing it to \$30,000 per month, there was a concern that the increase might add to the burden of small and medium sized enterprises which were already affected by the implementation of the SMW. Among the Members who supported increasing the Max RI to \$30,000 per month, some suggested that the Administration should consult relevant stakeholders to decide whether the increase should be implemented in phases while a Member considered that the increase should be made in one-go.

14. The FA Panel held a special meeting on 20 April 2011 to receive views from concerned parties and members of the public. The Panel noted that based on the views expressed by deputations and given in the written submissions received, there was a general consensus that the Min RI for MPF contributions should be revised to about \$6,500 per month. As for the Max RI, the views were diverse regarding the extent of increase.

15. Noting that some low-income workers would become obliged to make MPF contributions after the implementation of the SMW on 1 May 2011, Members urged the Administration to expedite the legislative work to revise the Min RI and Max RI, and where necessary to take forward the upward revision of the Min RI in the first place. Some members also suggested that a review on the mechanism and factors to be considered for revising the Min RI and Max RI should be undertaken.

The legislative proposals

16. Under section 48 of MPFSO, the Chief Executive in Council may, by notice published in the Gazette, amend the Schedules to MPFSO, and amendments made to Schedules 1 to 8 to MPFSO shall be subject to LegCo's approval.

Proposed increase in the minimum relevant income level

17. Under the Amendment of Schedule 2 Notice, the Min RI is proposed to be increased from \$5,000 to \$6,500 per month. According to the Administration, it has made reference to the hourly SMW rate and the median monthly working hours in determining the proposed Min RI. The proposed Min RI at \$6,500 per month also reflects the broad-based consensus of the public.

Proposed increase in the maximum relevant income level

18. Under the Amendment of Schedule 3 Notice, the Max RI is proposed to be increased from \$20,000 to \$25,000 per month. According to the Administration, the proposed increase is the result of balancing the view that the Max RI has not been amended for the last 10 years against the comments from employers' associations that they are digesting the cost implications of the SMW and absorbing the increase in Max RI would be difficult.

Proposed increase in the daily income level

19. A daily minimum level of relevant income ("daily Min RI") is specified under Schedule 2 to MPFSO and a daily maximum level of relevant income ("daily Max RI") is specified under Schedule 3 to MPFSO for application to casual employees who are members of an industry scheme and employees (not being casual employees who are members of an industry scheme) remunerated more frequently than on a monthly basis.¹

20. Since the implementation of the MPF System in 2000, a 30-day basis has been assumed in converting the monthly Min RI and Max RI into the daily Min RI and Max RI. The Administration proposes to revise the daily Min RI to \$250 by converting the proposed Min RI of \$6,500 per month on a 26-day basis², and to revise the daily Max RI to \$830 by converting the proposed Max RI of \$30,000 per month on a 30-day basis.

¹ Employees who fall under this category include casual employees under the two industry schemes (i.e. the catering and construction industries) as well as those employees who receive payment of salaries more frequently than on a monthly basis.

² According to the Administration, the 26-day basis is adopted for computing the proposed daily Min RI because the 26-working day per month arrangement is assumed when reference is made to the SMW in determining the proposed monthly Min RI.

21. The increase in the daily Min RI is proposed under the Amendment of Schedule 2 Notice, whereas the increase in the daily Max RI is proposed under the Amendment of Schedule 3 Notice.

22. The Administration proposes that the Amendment of Schedule 2 Notice is to come into operation on 1 November 2011 and the Amendment of Schedule 3 Notice is to come into operation on 1 June 2012.

Consequential Amendments

23. According to the Administration, consequential amendments are required to be made to the Mandatory Provident Fund Schemes (Contributions for Casual Employees) Order (Cap. 485 sub leg. E) ("the Order") and Schedule 3B to the Inland Revenue Ordinance (Cap. 112) ("IRO"). The Order prescribes the corresponding amount of MPF contributions to be made in respect of casual employees of industry schemes under different income bands with reference to the Min and Max RIs respectively. The commencement of the amendments to the Order will tie in with the implementation of the two Amendment Notices.

24. The Administration has indicated that a bill will be introduced in the coming legislative year to amend Schedule 3B to IRO. The Schedule prescribes the maximum amount of deductions allowed under section 16AA of IRO for the mandatory contributions to MPF schemes made by a self-employed person for calculating the profits tax payable by that person and under section 26G of IRO for contributions to recognized occupational retirement schemes and mandatory contributions to MPF schemes made by employees for calculation of tax payable under salaries tax or personal assessment. The maximum amount of deduction will be proposed to be increased from \$12,000 to \$15,000 for each assessment year upon the increase of the Max RI from \$20,000 to \$25,000 per month.

Recent developments

25. The Administration has given notice to move the motion on the Amendment of Schedule 2 Notice covering the increase of Min RI to \$6,500 at the Council meeting on 29 June 2011. At the request of the House Committee, the Administration has withdrawn the notice to move the motion on the Amendment of Schedule 3 Notice.

Relevant papers

26. The relevant papers are available at the following links:

Report by Legal Service Division on Proposed Resolutions under section 48 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (LC Paper No. LS81/10-11)	Report
Legislative Council Brief issued by the Administration on the "Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011" and the "Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2011"	Legislative Council Brief
Meeting of the FA Panel on 21 February 2011	Agenda Minutes (paragraphs 33-58)
Special meeting of the FA Panel on 20 April 2011	Agenda

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