

For Discussion

Legislative Council Panel on Financial Affairs

**Treatment of accrued benefits derived from
mandatory contributions for Mandatory Provident Fund in the case of
bankruptcy of a scheme member**

Purpose

This paper briefs Members on the Administration's proposal to amend the Mandatory Provident Fund Schemes Ordinance ("MPFSO") (Cap. 485) to put it beyond doubt that accrued benefits derived from mandatory contributions ("MC accrued benefits") in a registered Mandatory Provident Fund ("MPF") scheme in respect of a scheme member are not to be vested in a trustee-in-bankruptcy ("TIB") in case of bankruptcy of the scheme member.

Background

2. Section 16 of the MPFSO provides that no part of MC accrued benefits 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.

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 interest of MPF scheme members in respect of their MC accrued benefits in a registered scheme, such that 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 a case concerning the Subsidized School Provident Fund Rules (Cap. 279D) made under the Education Ordinance (Cap. 279), which was considered by the Court of Appeal in 2009¹, 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

¹ Re. Ng Shiu Fan (CACV 298/2008)

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.

5. Against this background, the Mandatory Provident Fund Schemes Authority and the Government have reviewed the adequacy of section 16 of the MPFSO for the purpose stated in paragraph 3 above.

Legislative Proposal

6. We propose to amend section 16 of the MPFSO to stipulate clearly that where a scheme member is adjudged bankrupt, his right or entitlement 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). This proposed amendment will make it expressly clear that the MC accrued benefits of a bankrupt MPF scheme member in a registered MPF schemes are protected against vesting in a TIB.

Advice sought

7. Members are invited to comment on the legislative proposal. Subject to Members’ views, we aim to introduce a bill into the Legislative Council in the first quarter of 2011.

Financial Services and the Treasury Bureau
22 November 2010