

# LEGISLATIVE COUNCIL BRIEF

## Mandatory Provident Fund Schemes Ordinance

(Chapter 485)

### **MANDATORY PROVIDENT FUND SCHEMES (CONTRIBUTIONS FOR CASUAL EMPLOYEES) (AMENDMENT) ORDER 2011**

#### **INTRODUCTION**

The Mandatory Provident Fund Schemes Authority (“MPFA”) made the Mandatory Provident Fund Schemes (Contributions for Casual Employees) (Amendment) Order 2011 (“the Amendment Order”), at **Annex A**, on 30 June 2011 in accordance with section 7A(6) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“MPFSO”). The purpose of the Amendment Order is to amend the scales of amounts of contributions prescribed in the Schedule to the Mandatory Provident Fund Schemes (Contributions for Casual Employees) Order (Cap. 485 sub. leg. E) (“the Order”), which provides a simplified method for employers participating in industry schemes to calculate the amount of mandatory contributions that needs to be made to the schemes in respect of their casual employees. The amendments to the Order are consequential to the amendments of the minimum level of relevant income (“Min RI”) in Schedule 2 to the MPFSO covered in the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011 (“the Amendment of Schedule 2 Notice”).

## JUSTIFICATIONS

### **Need to Make Consequential Amendments to the Order**

2. Under section 48 of the MPFSO, the Chief Executive in Council may, by notice published in the Gazette, amend the Schedules to the MPFSO and amendments made to Schedules 1 to 8 to the MPFSO shall be subject to the approval of the Legislative Council (“LegCo”).

#### *The Amendment of Schedule 2 Notice*

3. The Amendment of Schedule 2 Notice was made by the Chief Executive in Council under section 48 of the MPFSO and approved by the LegCo on 30 June 2011.

4. Accordingly, with effect from 1 November 2011, Schedule 2 to the MPFSO is amended by -

- (i) replacing the existing Min RI of \$5,000 per month for employees (not being casual employees who are members of an industry scheme) who are remunerated on a monthly basis with \$6,500 per month;
- (ii) replacing the existing Min RI of \$160 per day with \$250 per day for employees (not being casual employees who are members of an industry scheme) who are remunerated more frequently than on a monthly basis, as well as casual employees who are members of an industry scheme;

- (iii) replacing the existing Min RI of \$5,000 per month for employees (not being casual employees who are members of an industry scheme) who are remunerated less frequently than on a monthly basis with \$6,500 per month, the amount as prorated; and
- (iv) replacing the existing Min RI of \$5,000 per month or \$60,000 per year for self-employed persons with \$6,500 per month or \$78,000 per year.

5. Sections 7A(3)(b) and 7A(4)(b) of the MPFSO require employers of casual employees who are members of an industry scheme to contribute and deduct from the employees' relevant income an amount as MPF contribution which is determined by reference to a scale specified in an order made in accordance with section 7A(6) of the MPFSO. Section 7A(6) provides that the MPFA must, as the occasion requires, prescribe by order published in the Gazette scales of amounts of contributions by reference to amounts of relevant income of casual employees who are members of industry schemes.

6. Schedule 2 to the MPFSO specifies, among others, the daily Min RI applicable to a casual employee of an industry scheme. The Order, applicable to a casual employee of an industry scheme only, prescribes the corresponding amount of mandatory contributions to be made in respect of a casual employee of an industry scheme under different income bands with reference to the abovementioned daily Min RI in Schedule 2 to the MPFSO.

7. In light of the passage of the motion which resolved that the

Amendment of Schedule 2 Notice covering, among others, the amendment of the daily Min RI from \$160 per day to \$250 per day be approved by the LegCo on 30 June 2011 (para. 4(ii) above), corresponding amendments of technical nature to the Order based on the approved adjusted daily Min RI of \$250 will have to be made by the MPFA under section 7A(6) of the MPFSO.

### **Setting the Contribution Amount Payable in the Scales in the Schedule to the Order**

8. The MPFSO does not provide a mechanism for the determination of the amounts of employer and employee mandatory contributions payable to be set out in the scales in the Schedule to the Order. In proposing amendments to the Order, which is marked up with the amendments in **Annex B**<sup>1</sup> with explanatory notes, the following key factors have been considered.

#### **Key Factors Considered**

##### *Uphold fundamental principle of 5% mandatory contribution*

9. Sections 7A(3)(a) and 7A(4)(a) of the MPFSO provide that, unless exempted, an employee (other than a casual employee who is a member of an industry scheme) and his employer must each contribute an amount equal to the prescribed percentage of the employee's relevant income to an MPF scheme as mandatory contributions. The prescribed percentage is 5% as set out in section 7A(5) of the MPFSO.

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<sup>1</sup> Annex B sets out the scales in the Schedule to the Order with proposed changes to the Min RI marked up for easy reference.

10. In the case of a casual employee who is a member of an industry scheme, sections 7A(3)(b) and 7A(4)(b) of the MPFSO provide that, unless exempted, a casual employee and his employer have to contribute an amount determined by reference to a scale specified in the Order as mandatory contributions. The purpose of the Order is to provide a simplified method for employers participating in industry schemes to calculate the amount of mandatory contributions that needs to be made to the schemes in respect of their casual employees.

11. The Schedule to the Order contains Part I, Part II and Part III and each of which has a scale of amounts of contributions applicable to a casual employee with a particular payroll pattern as follows:

- (a) Part I – in a case of a casual employee to whom an employer pays the relevant income more than once a day;
- (b) Part II – in a case of a casual employee to whom an employer pays the relevant income at least, but not more than, once a day; and
- (c) Part III – in a case of a casual employee to whom an employer pays the relevant income less frequently than once a day.

12. It is observed that the amount of contributions payable currently prescribed in the scales in Part I and Part II of the Schedule to the Order roughly represents 5% of the average value of the relevant income in most income bands, and the scale in Part III of the Schedule to the Order requires the amount of employer and employee mandatory contributions to be calculated as 5% of the relevant income of an employee. Current practice keeps the required

contribution as close as practicable to 5% of an employee's relevant income. We propose to continue using the same method of requiring contributions at as close as practicable to 5% of the average relevant income of each income band when considering how to amend the contribution amounts set out in the Order.

*Minimal changes to facilitate smooth implementation*

13. As mentioned in paragraph 10 of the LegCo Brief for the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011 and Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2011, with the implementation of the Statutory Minimum Wage ("SMW") on 1 May 2011, there is a need to increase Min RI as soon as possible so that the lower-income group, who may earn more due to SMW, can continue to be spared the need to make mandatory contributions. The implementation date of the increase in Min RI in Schedule 2 to the MPFSO covered by the Amendment of Schedule 2 Notice is 1 November 2011.

14. The commencement of the amendments to the Order will tie in with the implementation of the Amendment of Schedule 2 Notice. We have minimized the changes to the ranges of respective income bands in order to minimize the time required for trustees and employers to adjust their systems, which would facilitate smooth implementation of the proposed changes to the Order on 1 November 2011.

## **Implementation Schedule**

15. As the proposed amendments to the Order are consequential to the main amendments covered in the Amendment of Schedule 2 Notice, the commencement of the amendments to the Order will tie in with the implementation of the Amendment of Schedule 2 Notice, i.e. on 1 November 2011.

## **OTHER OPTIONS**

16. Section 7A(6) of the MPFSO requires the MPFA to prescribe by order published in the Gazette scales of amounts of contributions by reference to the amounts of relevant income of casual employees who are members of industry schemes. The adjustment of the Min RI in Schedule 2 to the MPFSO entails consequential amendments to the scales of amounts of contributions in the Schedule to the Order.

## **THE AMENDMENT ORDER**

17. Having taken into consideration the factors in paragraphs 9 to 14 above, the main provision of the Amendment Order which is section 3 at **Annex A** will –

- (i) replace the existing daily Min RI of “\$160.00” in Parts I, II and III of the Schedule to the Order with the revised level of “\$250.00”;  
and
- (ii) in the existing income band of “\$160.00 or more but less than \$260.00” (which will be revised to “\$250.00 or more but less than

\$260.00” as proposed in (i) above) in Parts I and II of the Schedule to the Order, replace the contribution amount payable of “7.50” with “13.00”.

## **LEGISLATIVE TIMETABLE**

18. The legislative timetable is as follows -
- |   |                 |
|---|-----------------|
| Publication in the Gazette                | 8 July 2011     |
| Tabling at the LegCo for negative vetting | 13 July 2011    |
| Commencement Date                         | 1 November 2011 |

## **IMPLICATIONS OF THE PROPOSALS**

19. The proposals in the Amendment Order are amendments consequential to the main amendments in the Amendment of Schedule 2 Notice. The implications of the proposals in the Amendment Order have been covered in the implications of the proposals at paragraph 16 and Annex C of the LegCo Brief for the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2 Notice) and Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2011) (at [http://www.legco.gov.hk/yr10-11/english/subleg/brief/sc14\\_sc15\\_brf.pdf](http://www.legco.gov.hk/yr10-11/english/subleg/brief/sc14_sc15_brf.pdf)).

## **PUBLIC CONSULTATION**

20. The MPFA consulted the Industry Schemes Committee on 14 June 2011 and the Mandatory Provident Fund Schemes Advisory Committee on 17 June 2011 on the proposed amendments to be made to the Order. These

amendments were supported by the Committees. Both the Industry Schemes Committee and the Mandatory Provident Fund Schemes Advisory Committee comprise employers' and employees' representatives. The MPFA has also consulted labour unions and relevant Government departments on the proposals and they were generally supportive of the proposed amendments.

## **PUBLICITY**

21. An MPFA spokesman will be available for answering media and public enquiries.

## **BACKGROUND**

22. Following the completion of the review of the Min RI and maximum level of relevant income in accordance with section 10A of the MPFSO, the MPFA submitted a review report to the Government in July 2010. Taking into account the enactment of the SMW rate by LegCo in January 2011 and after due process, including consultation with the LegCo Panel on Financial Affairs and attending a public hearing convened by the Panel, and the necessary legislative procedures, the Government presented the Amendment of Schedule 2 Notice prescribing the revised Min RI to LegCo which was approved on 30 June 2011. The MPFA needs to make corresponding amendments to the Order to prescribe the scales of amounts of contributions for casual employees who are members of an industry scheme.

## **ENQUIRIES**

23. Enquiries in relation to the LegCo Brief should be directed to Ms Gabriella Yee, Head (Policy Development & Research) at 2292-1335.

Mandatory Provident Fund Schemes Authority

6 July 2011

Mandatory Provident Fund Schemes (Contributions for Casual Employees)  
(Amendment) Order 2011

Section 1

1

**Mandatory Provident Fund Schemes (Contributions for  
Casual Employees) (Amendment) Order 2011**

(Made by the Mandatory Provident Fund Schemes Authority under section  
7A(6) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485))

**1. Commencement**

This Order comes into operation on 1 November 2011.

**2. Mandatory Provident Fund Schemes (Contributions for Casual  
Employees) Order amended**

The Mandatory Provident Fund Schemes (Contributions for Casual  
Employees) Order (Cap. 485 sub. leg. E) is amended as set out in  
section 3.

**3. Schedule amended (Scales of amounts of contributions to be  
made in respect of casual employees)**

(1) The Schedule, Part I—

**Repeal**

“Less than \$160.00”

**Substitute**

“Less than \$250.00”.

(2) The Schedule, Part I—

**Repeal**

“\$160.00 or more but less than        \$7.50        \$7.50”  
\$260.00

**Substitute**

“\$250.00 or more but less than        \$13.00        \$13.00”.  
\$260.00

Mandatory Provident Fund Schemes (Contributions for Casual Employees)  
(Amendment) Order 2011

Section 4

2

(3) The Schedule, Part II—

**Repeal**

“Less than \$160.00”

**Substitute**

“Less than \$250.00”.

(4) The Schedule, Part II—

**Repeal**

“\$160.00 or more but less than        \$7.50        \$7.50”  
\$260.00

**Substitute**

“\$250.00 or more but less than        \$13.00        \$13.00”.  
\$260.00

(5) The Schedule, Part III—

**Repeal**

“\$160.00” (wherever appearing)

**Substitute**

“\$250.00”.

**4. Application of Schedule as amended**

The Schedule to the Mandatory Provident Fund Schemes  
(Contributions for Casual Employees) Order (Cap. 485 sub. leg. E)  
as amended by section 3 applies in relation to a contribution period  
that begins on or after the commencement date of that section.

  
Managing Director,  
Mandatory Provident Fund Schemes  
Authority

30 June  
2011

**Explanatory Note**

The purpose of this Order is to amend the Mandatory Provident Fund Schemes (Contributions for Casual Employees) Order (Cap. 485 sub. leg. E), so as to adjust—

- (a) certain amounts of contributions that an employer must make for the purposes of section 7A(3)(b) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) for a casual employee who is a member of an industry scheme; and
  - (b) certain amounts of contributions that the employer must deduct from the relevant income of the employee as a contribution by that employee to the scheme for the purposes of section 7A(4)(b) of that Ordinance.
2. The amendments are consequential to the adjustment of the minimum level of relevant income for contribution purposes under that Ordinance.

**Proposed Changes Relating to the Min RI**

**Mandatory Provident Fund Schemes  
(Contributions for Casual Employees) Order (Cap. 485E) (“the Order”)**

Part I of the Schedule to the Order

Scale of amounts of contributions to be made in the case of a casual employee to whom an employer pays the relevant income more than once a day

Total amount of relevant income paid by an employer to a casual employee in a day	Total amount to be contributed by the employer for that day	Total amount to be deducted by the employer from the employee’s relevant income for that day	Notes
Less than <del>\$250.00</del> <del>160.00</del>	\$7.50	Nil	(1)
<del>\$250.00</del> 160.00 or more but less than \$260.00	<del>\$13.00</del> 7.50	<del>\$13.00</del> 7.50	(1) & (2)
\$260.00 or more but less than \$390.00	\$15.00	\$15.00	
\$390.00 or more but less than \$520.00	\$22.50	\$22.50	
\$520.00 or more but not more than \$650.00	\$30.00	\$30.00	
More than \$650.00	\$30.00	\$30.00	

Part II of the Schedule to the Order

Scale of amounts of contributions to be made in the case of a casual employee to whom an employer pays the relevant income at least, but not more than, once a day

Amount of relevant income paid by an employer to a casual employee in a day	Amount to be contributed by the employer for that day	Amount to be deducted by the employer from the employee's relevant income for that day	Notes
Less than <b>\$250.00</b> <b>160.00</b>	\$7.50	Nil	(1)
<b>\$250.00</b> <del>160.00</del> or more but less than \$260.00	<b>\$13.00</b> <del>7.50</del>	<b>\$13.00</b> <del>7.50</del>	(1) & (2)
\$260.00 or more but less than \$390.00	\$15.00	\$15.00	
\$390.00 or more but less than \$520.00	\$22.50	\$22.50	
\$520.00 or more but not more than \$650.00	\$30.00	\$30.00	
More than \$650.00	\$30.00	\$30.00	

Notes for the scales in Part I and Part II of the Schedule:

(1) The marked-up proposed amendment is to reflect the amendment made to the daily Min RI covered in the Amendment of Schedule 2 Notice which was approved at the LegCo meeting on 30 June 2011, i.e. to change the daily Min RI from \$160.00 to \$250.00.

(2) The marked-up proposed amendment is to reflect the increase in the average value of RI in the income band.

Revised average value of \$250.00 and \$260.00 = \$255.00

5% mandatory contribution of \$255.00 = \$12.75

Hence, the rounded up amount of \$13.00 is proposed to replace the original amount of \$7.50.

Part III of the Schedule to the Order

Scale of amounts of contributions to be made in the case of a casual employee to whom an employer pays the relevant income less frequently than once a day

Average amount of relevant income paid by an employer to a casual employee per day in a contribution period	Amount to be contributed by the employer for that contribution period	Amount to be deducted by the employer from the employee's relevant income for that contribution period	Note
Less than <b>\$250.00</b> <b>160.00</b>	5% of the relevant income paid by the employer to the employee for that contribution period	Nil	(1)
<b>\$250.00</b> <b>160.00</b> or more but not more than \$650.00	5% of the relevant income paid by the employer to the employee for that contribution period	5% of the relevant income paid by the employer to the employee for that contribution period	(1)
More than \$650.00	\$32.50 per day in that contribution period	\$32.50 per day in that contribution period	

Note for the scale in Part III of the Schedule:

- (1) The marked-up proposed amendment is to reflect the amendment made to the daily Min RI covered in the Amendment of Schedule 2 Notice which was approved at the LegCo meeting on 30 June 2011, i.e. to change the daily Min RI from \$160.00 to \$250.00.