

立法會
Legislative Council

LC Paper No. LS63/11-12

**Paper for the House Committee Meeting
on 18 May 2012**

**Legal Service Division Report on
Proposed Resolution under section 46 of the
Mandatory Provident Fund Schemes Ordinance (Cap. 485)**

The Secretary for Financial Services and the Treasury has given notice to move a motion at the Legislative Council meeting to be held on 30 May 2012. The motion seeks the Legislative Council's approval of the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2012 (the Amendment Regulation) made on 8 May 2012 by the Chief Executive in Council under section 46 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

2. The Mandatory Provident Fund Schemes Compensation Fund (the Compensation Fund) has been established with a one-off grant of \$600 million to compensate scheme members for losses of their accrued benefits that are attributable to misfeasance or illegal conduct committed by the approved trustees or other persons concerned with the administration of those schemes. Since the implementation of the Mandatory Provident Fund (MPF) system in 2000, the Mandatory Provident Fund Schemes Authority (MPFA) has been collecting an annual levy of 0.03% of the net asset value of MPF assets from trustees. The levy is deducted from the benefits of scheme members.

3. According to the Administration, the Compensation Fund has accumulated over \$1.6 billion and no claim has ever been received. Its assessment is that the chance of having claims made against the Compensation Fund should be remote. Hence, it is considered prudent to suspend accumulation of the Compensation Fund when it reaches a reasonable level and resume collection of the levy when it drops below a pre-set level.

4. The motion seeks to amend the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) (the General Regulation) to introduce a mechanism for suspension and resumption of the levy for the Compensation Fund. In the Amendment Regulation, MPFA is empowered to order suspension and resumption of the levy if the audited net asset value of the

Compensation Fund as at the end of a financial year exceeds \$1.4 billion¹ and falls below \$1 billion² respectively. It empowers MPFA not to order suspension or resumption of the levy even if the said maximum level or floor level has been breached, subject to prior consultation of the Financial Secretary. This is to cater for possible special circumstances.

5. Other amendments include a few technical and consequential amendments to the General Regulation.

6. Members may refer to the LegCo Brief (File Ref: G6/9/46C Pt.3) issued by the Financial Services and the Treasury Bureau on 9 May 2012 for background information. According to the Administration, MPFA consulted the MPF Schemes Advisory Committee on the proposed mechanism on 17 June 2011. The Advisory Committee, which consists of members representing the interests of employees, employers and MPF trustees, supported the proposal.

7. The Panel on Financial Affairs discussed on 21 November 2011 the review of the Compensation Fund and the proposed mechanism for suspension and resumption of levy. A member opined that suspension of levy should be effected as soon as practicable when the net asset value of the Compensation Fund exceeded \$1.4 billion at the end of a financial year. Another member was concerned that the introduction of the Employee Choice Arrangement (ECA) might increase the risk of claims on the Compensation Fund as some trustees might encounter financial problems arising from ECA. Panel members did not raise any objection or other queries about the proposed mechanism. Members may wish to refer to the minutes of the Panel meeting on 21 November 2011 (paragraphs 58 to 62 of LC Paper No. CB(1)975/11-12) for details.

8. If the proposed resolution is passed, the Amendment Regulation will come into operation on gazettal.

9. No difficulties relating to the legal and drafting aspects of the proposed resolution and the Amendment Regulation have been identified.

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¹ The amount of \$1.4 billion represents 140% of the floor level following the range adopted for the Investor Compensation Fund.

² The amount of \$1 billion represents about 10% of the average scheme asset amount as at 31 January 2012.