

# LEGISLATIVE COUNCIL BRIEF

## Mandatory Provident Fund Schemes Ordinance

(Chapter 485)

### **MANDATORY PROVIDENT FUND SCHEMES (CONTRIBUTIONS FOR CASUAL EMPLOYEES) (AMENDMENT) (NO.2) ORDER 2011**

#### **INTRODUCTION**

The Mandatory Provident Fund Schemes Authority (“MPFA”) made the Mandatory Provident Fund Schemes (Contributions for Casual Employees) (Amendment) (No.2) Order 2011 (“the Amendment No.2 Order”), at **Annex A**, on 28 November 2011 in accordance with section 7A(6) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“MPFSO”). The purpose of the Amendment No.2 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 maximum level of relevant income (“Max RI”) in Schedule 3 to the MPFSO covered in the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2011 (“the Amendment of Schedule 3 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 3 Notice*

3. The Amendment of Schedule 3 Notice was made by the Chief Executive-in-Council under section 48 of the MPFSO and approved by the LegCo on 23 November 2011.

4. Accordingly, with effect from 1 June 2012, Schedule 3 to the MPFSO is amended by -

- (i) replacing the existing Max RI of \$20,000 per month for employees (not being casual employees who are members of an industry scheme) who are remunerated on a monthly basis with \$25,000 per month;
- (ii) replacing the existing Max RI of \$650 per day with \$830 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, and for casual employees who are members of an industry scheme;

(iii) replacing the existing Max RI of \$20,000 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 \$25,000 per month, the amount as prorated; and

(iv) replacing the existing Max RI of \$20,000 per month or \$240,000 per year for self-employed persons with \$25,000 per month or \$300,000 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 mandatory 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 3 to the MPFSO specifies, among others, the daily Max 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 Max RI in Schedule 3 to the MPFSO.

7. In the light of the passage of the motion which resolved that the Amendment of Schedule 3 Notice covering, among others, the amendment of the daily Max RI from \$650 per day to \$830 per day be approved by the LegCo on 23 November 2011 (para. 4(ii) above), corresponding amendments of technical nature to the Order based on the approved adjusted daily Max RI of \$830 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 for a mechanism to determine the amounts of employer and employee mandatory contributions payable in the Order. In this connection, the MPFA considered that the proposed amount should maintain the contribution level at around 5% of the relevant income of the relevant employee. The proposed amendments are marked up in **Annex B**<sup>1</sup> with explanatory notes.

#### *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.

10. In the case of a casual employee who is a member of an industry

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

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 value of the relevant income in each income band when considering how to amend the contribution amounts set out in the Order.

### **Implementation Schedule**

13. As the proposed amendments to the Order are consequential to the main amendments covered in the Amendment of Schedule 3 Notice, the commencement of the amendments to the Order will tie in with the implementation of the Amendment of Schedule 3 Notice, i.e. on 1 June 2012.

### **OTHER OPTIONS**

14. 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 Max RI in Schedule 3 to the MPFSO entails consequential amendments to the scales of amounts of contributions in the Schedule to the Order.

### **THE AMENDMENT NO.2 ORDER**

15. Having taken into consideration the factors in paragraphs 9 to 12 above, the main provision of the Amendment No.2 Order which is section 3 at **Annex A** will –

In Part I and Part II of the Schedule

- (a) Replace the existing last row of

|                           |                |                |
|---------------------------|----------------|----------------|
| <i>More than \$650.00</i> | <i>\$30.00</i> | <i>\$30.00</i> |
|---------------------------|----------------|----------------|

with the following two new rows

|  |                |                |
|--|----------------|----------------|
| <i>More than \$650.00 but<br/>not more than \$830.00</i> | <i>\$37.50</i> | <i>\$37.50</i> |
| <i>More than \$830.00</i>                                | <i>\$41.50</i> | <i>\$41.50</i> |

In Part III of the Schedule

- (b) Replace the existing “\$650.00” with “\$830.00” wherever it appears; and
- (c) Replace the existing “\$32.50” with “\$41.50” wherever it appears.

**LEGISLATIVE TIMETABLE**

16. The legislative timetable is as follows -
- |   |                 |
|---|-----------------|
| Publication in the Gazette                | 2 December 2011 |
| Tabling at the LegCo for negative vetting | 7 December 2011 |
| Commencement Date                         | 1 June 2012     |

## **IMPLICATIONS OF THE PROPOSALS**

17. The proposals in the Amendment No.2 Order are amendments consequential to the main amendments in the Amendment of Schedule 3 Notice. The implications of the proposals in the Amendment No.2 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 2011 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**

18. The MPFA has consulted the relevant advisory bodies in the process of proposing the Max RI.

19. The MPFA consulted the Mandatory Provident Fund Schemes Advisory Committee on 17 June 2011 on the proposed amendments to be made to the Order and the Committee supported the amendments. The MPFA informed the Industry Schemes Committee, labour unions and relevant Government departments on the proposed amendments in mid June 2011 and they did not have any comments on the amendments. Both the Mandatory Provident Fund Schemes Advisory Committee and the Industry Schemes Committee comprise employers' and employees' representatives.

## **PUBLICITY**

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



## **BACKGROUND**

21. Following the completion of the review of the minimum relevant income level and Max RI in accordance with section 10A of the MPFSO, the MPFA submitted a review report to the Government in July 2010. The Administration and MPFA consulted the LegCo Panel on Financial Affairs on MPFA's review report, including attending a public hearing organized by the Panel in April 2011. The LegCo set up a Subcommittee to scrutinize the Amendment of Schedule 3 Notice which sets out, among others, the proposal to increase the Max RI from \$20,000 to \$25,000 in June 2011. The Administration and the MPFA attended three meetings of the Subcommittee, including a public hearing, to explain the proposal. The Amendment of Schedule 3 Notice was approved by the LegCo on 23 November 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**

22. 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

29 November 2011

Mandatory Provident Fund Schemes (Contributions for Casual Employees)  
(Amendment) (No. 2) Order 2011

Section 1

1

**Mandatory Provident Fund Schemes (Contributions for Casual Employees) (Amendment) (No. 2) 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 June 2012.

**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**

“More than \$650.00            \$30.00            \$30.00”

**Substitute**

“More than \$650.00 but not  
more than \$830.00    \$37.50            \$37.50

More than \$830.00            \$41.50            \$41.50”.

(2) The Schedule, Part II—

**Repeal**

“More than \$650.00            \$30.00            \$30.00”

**Substitute**

Mandatory Provident Fund Schemes (Contributions for Casual Employees)  
(Amendment) (No. 2) Order 2011

Section 4

2

“More than \$650.00 but not    \$37.50            \$37.50  
more than \$830.00

More than \$830.00            \$41.50            \$41.50”.

(3) The Schedule, Part III—

**Repeal**

“\$650.00” (wherever appearing)

**Substitute**

“\$830.00”.

(4) The Schedule, Part III—

**Repeal**

“\$32.50” (wherever appearing)

**Substitute**

“\$41.50”.

**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

28 November 2011

Mandatory Provident Fund Schemes (Contributions for Casual Employees)  
(Amendment) (No. 2) Order 2011

Explanatory Note  
Paragraph 1

3

**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 maximum level of relevant income for contribution purposes under that Ordinance.

**Proposed Amendments Relating to the Max 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 \$250.00  | \$7.50  | Nil  |           |
| \$250.00 or more but less than \$260.00   | \$13.00   | \$13.00  |           |
| \$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  |           |
| <del>More than \$650.00</del>   | <del>\$30.00</del>  | <del>\$30.00</del>   | (1)       |
| <u>More than \$650.00 but not more than \$830.00</u>                              | <u>\$37.50</u>  | <u>\$37.50</u>   | (1) & (2) |
| <u>More than \$830.00</u>   | <u>\$41.50</u>  | <u>\$41.50</u>   | (1) & (3) |

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 \$250.00  | \$7.50  | Nil  |         |
| \$250.00 or more but less than \$260.00                                     | \$13.00   | \$13.00  |         |
| \$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  |         |
| <del>More than \$650.00</del>   | <del>\$30.00</del>                                    | <del>\$30.00</del>   | (1)     |
| <u>More than \$650.00 but not more than \$830.00</u>                        | <u>\$37.50</u>  | <u>\$37.50</u>   | (1)&(2) |
| <u>More than \$830.00</u>   | <u>\$41.50</u>  | <u>\$41.50</u>   | (1)&(3) |

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

(1) Proposed amendments (including deletions and additions) to the current scales in Part I and Part II of the Schedule are marked up. The proposed amendments, which are either underlined or strikethrough, are to reflect the amendment made to the daily Max RI covered in the Amendment of Schedule 3 Notice which was approved at the LegCo meeting on 23 November 2011, i.e. to change the daily Max RI from \$650.00 to \$830.00.

(2) The proposed amount of mandatory contributions payable of \$37.50 is calculated as follows:

$$\begin{aligned} &\text{Average value of RI in the income band} \\ &= (\$650.00 + \$830.00)/2 = \$740.00 \\ &\text{Mandatory contribution payable} = \$740.00 \times 5\% = \underline{\$37.00} \end{aligned}$$

To be consistent with the existing pattern of setting contributions payable as a multiple of \$7.50 as far as practicable, an amount of \$37.50 is proposed.

(3) There is no upper value on the amount of relevant income in this income band. The proposed amount of mandatory contributions payable of \$41.50 is calculated as follows:

$$\text{Mandatory contribution payable} = \$830.00 \times 5\% = \underline{\$41.50}$$

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 | Notes   |
|---|---|--|---------|
| Less than \$250.00  | 5% of the relevant income paid by the employer to the employee for that contribution period | Nil  | (1)     |
| \$250.00 or more but not more than <del>\$830.00</del> <del>\$650.00</del>                                  | 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)&(2) |
| More than <del>\$830.00</del> <del>\$650.00</del>   | <del>\$41.50</del> <del>\$32.50</del> per day in that contribution period                   | <del>\$41.50</del> <del>\$32.50</del> per day in that contribution period                              | (1)&(2) |

Notes for the scale in Part III of the Schedule:

- (1) Proposed amendments (including deletions and additions) to the current scale in Part III of the Schedule are marked up. The proposed amendments, which are either underlined or strikethrough, are to reflect the amendment made to the daily Max RI covered in the Amendment of Schedule 3 Notice which was approved at the LegCo meeting on 23 November 2011, i.e. to change the daily Max RI from \$650.00 to \$830.00.
- (2) There is no upper value on the amount of relevant income in this income band. The proposed amount of mandatory contributions payable of \$41.50 is calculated as follows:

$$\text{Mandatory contribution payable} = \$830.00 \times 5\% = \underline{\$41.50}$$