

立法會
Legislative Council

LC Paper No. LS113/99-00

**Paper for the House Committee Meeting of the
Legislative Council
on 31 March 2000**

**Legal Service Division Report on
Resolutions under sections 46 and 48 of the
Mandatory Provident Fund Schemes Ordinance (Cap. 485)**

The Secretary for Financial Services has given notice to move two motions at the meeting of 12 April 2000 to seek the Council's approval of the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 1) Notice 2000 and Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2000.

Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 1) Notice 2000

2. Item 7 of Part I of Schedule 1 to the Mandatory Provident Fund Schemes Ordinance (the Ordinance) provides that any relevant employee (other than a casual employee) who has been employed under a contract of employment for a period of less than 60 days is exempted from the provisions of the Ordinance. It is unclear whether the phrase "for a period of less than 60 days" refers to "employed" or "contract of employment". The latter interpretation could result in granting unintended exemption to some of Hong Kong's workforce. Take for instance, according to section 5 of the Employment Ordinance (Cap. 57), an employee who has been employed for more than four weeks under a contract without specifying the duration of the contract will be deemed to be employed under a contract for one month renewable from month to month. All employers and employees operating under such mode might be exempted as presently worded. This was not the legislative intent. To clarify the provisions, it is proposed to amend that item so that only relevant employees who have been employed for a period of less than 60 days would be exempted from the Ordinance.

Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2000

3. According to the draft speech of the Secretary for Financial Services, some technical problems and anomalies have been shown after implementation of the Regulation. It is therefore necessary to amend the Regulation so as to :

- (a) clarify certain anomalies in the provisions of the Regulation;
- (b) resolve some of the operational difficulties encountered by the members of the Mandatory Provident Fund industry;
- (c) enhance the protection of the interests of employers and employees ; and
- (d) facilitate the work of the Mandatory Provident Fund Scheme Authority (MPFA).

4. Members may refer to the LegCo Brief (Ref. FSB CR G6/9//39C) issued by the Financial Services Bureau dated 24 March 2000 for details. In the proposed Resolution, there are some 23 clauses amending various provisions of the Regulation. Some of the principal amendments include:

- (a) adding new definitions such as "corporation", "delegate", "permitted period" and amending definitions such as "custodian" and "contribution day";
- (b) empowering the MPFA to waive or modify the contents of a custodial or sub-custodial agreement;
- (c) permitting encumbrances on scheme assets under certain circumstances ;
- (d) making it unlawful for an application for participation in a registered scheme made by an employer, or an application for membership of a registered scheme made by a person for the purpose of maintaining a preserved account within the scheme, to be refused if the applicant meets certain specified requirements; and
- (e) specifying new criteria which renders a person eligible to be a delegate of a custodian of scheme assets.

5. The proposed amendments to the Regulation are quite technical. The Legal Service Division is still scrutinizing the proposed amendments. Meanwhile, Members might wish to set up a Subcommittee to examine the proposed Resolutions in detail.

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28 March 2000