

Legislative Council Brief

Mandatory Provident Fund Schemes Ordinance
(Chapter 485)

MANDATORY PROVIDENT FUND SCHEMES ORDINANCE (80 of 1995) (COMMENCEMENT) NOTICE 2000

INTRODUCTION

At the meeting of the Executive Council on 18 April 2000, the Council **ADVISED** and the Chief Executive **ORDERED** that the Mandatory Provident Fund Schemes Ordinance (80 of 1995) (Commencement) Notice 2000, at Annex A, should be made by the Chief Executive under section 1(2) of the Mandatory Provident Fund Schemes Ordinance to bring into operation on 1 December 2000 all the provisions of the Mandatory Provident Fund Schemes Ordinance that have not yet commenced.

Annex A

BACKGROUND AND ARGUMENT

General Background

2. In March 1999, we informed this Council the key stages of implementing the MPF System and that collection of MPF contributions would commence on 1 December 2000 subject to a review on the readiness of all parties for the full implementation of the MPF System, in particular the progress of the MPF Schemes Authority's (MPFA) Information Management System and the exemption process for retirement schemes governed by the Occupational Retirement Schemes Ordinance (ORSO).

3. A comprehensive review of the commencement date for MPF contributions has been conducted. The readiness of the community, the industry and the MPFA has been assessed.

THE COMMUNITY

(A) The Economy

4. Under the MPF System, an employer and an employee are each required to make a contribution of 5% of the salary of the employee (subject to a maximum monthly salary ceiling of \$20,000) to an MPF scheme. Such mandatory contributions would have an impact on our economy. Having suffered a severe downturn in 1998, the Hong Kong economy has staged a sharp rebound in the course of 1999 with real Gross Domestic Product (GDP) increased by 2.9%. Growth is expected to be robust in the year 2000 at 5% and for 2000-2003, at an annual average of 4%. Unemployment rate has probably peaked and is expected to come down gradually. In the year 2000, private consumption expenditure is forecast to grow by 2.5% in real terms, and wages is forecast to have a slight increase of about 1% in real terms, after discounting a forecast decline of 1% in consumer prices.

5. Notwithstanding the improvement in real wages in the year 2000, some employees may still generally encounter a net reduction in disposable income due to the need to make contributions to the MPF schemes. It is estimated that private consumption expenditure would be reduced by 0.4% and real GDP by 0.2% in the first year of the full implementation of the MPF System. However, the impact on employees would be less disturbing when real wages are higher rather than static or lower. With the economy picking up further, there should be less difficulty in absorbing this dampening effect.

6. At a more macro level, full implementation of the MPF System is not expected to have any unacceptable impact on employers. Although it has been reported that some employers are making use of the implementation of MPF as a pretext to reduce employee benefits, including those provided under the existing Occupational Retirement Schemes, such moves are more likely to be a reflection of employers' response to changes in the remuneration structure in the labour market in the context of adjustment in the overall economy. The increase in business operating cost arising from the implementation of the MPF System will vary for different economic sectors, with the highest impact on catering and construction, since only a very small proportion of employees in these two sections are covered by retirement plans¹. The likely increases in the annual operating costs of the

¹ This is partly the reason for setting up industry schemes for these two sectors. The special arrangements will help to reduce the direct cost of administering MPF schemes for employers and scheme members.

catering and construction sectors are estimated at around 1.6% and 1.5% respectively. Taking all economic sectors together, the overall increase in business operating costs will be modest, estimated at around 0.7%. We expect that employers will seek to contain the cost impact through adoption of more efficient production techniques or other management arrangements.

(B) Public Awareness

7. The MPF System is new to Hong Kong and it affects more than three million employees, self-employed persons and employers. It is therefore imperative that the public should be fully aware of their duties and obligations under the MPF System before its full implementation. Towards this end, Government has accorded the MPF a Major Publicity Campaign status for 2000-2001. The MPFA has commenced a \$40 million public education and publicity campaign in January 2000 with the aim of raising public awareness and understanding of the MPF System. The publicity drive comes in different stages with different target groups. Apart from organizing publicity campaigns, the MPFA has also joined forces with other bodies including the District Councils, employer and employee associations to maximize its publicity efforts. In response to recent concerns expressed by members of the community over the relatively low awareness of MPF, the MPFA has set up teams to proactively reach out to trade unions, employers' organizations, small and medium sized enterprises organizations, with a view to organizing tailor made seminars and talks for the benefit of their members. To facilitate employers and employees to choose among the various MPF service providers and products, an 'investor's guide' was distributed in early April. A further guide, in layman language setting out in greater detail, among other things, on the principal concepts and definitions related to investment arrangements, will be widely distributed in the next two months. A note setting out the public education strategy and the main features of the publicity programmes is at Annex B.

Annex B

8. Our assessment is that by December 2000, public awareness of MPF should have been enhanced to a level sufficiently conducive to the launch of the MPF System.

(C) Employer/Employee Relations

9. The MPF System imposes new contributory obligations on both employers and employees. Employers who hitherto have not provided any form of retirement benefits to employees voluntarily will now be required to

make mandatory contributions. They would naturally perceive this as adding on to their cost of operation. Some employees will also perceive the MPF as deducting their immediate take home pay, although the majority of the workforce which hitherto has no retirement provisions will welcome the safeguard provided by the MPF. At a time of economic restructuring when employees are relatively sensitive to measures taken by the employers to streamline their operations, the full implementation of the MPF might pose certain additional difficulties between some employers and employees. In this connection, both the Labour Department and the MPFA have appealed to employers who operate existing retirement schemes, reminding them of their statutory obligations and urging them to discuss with their employees in deciding whether to apply for MPF exemption for their existing schemes to continue. For the general employers and employees who are not covered by any form of retirement protection, the MPFA has organized a series of public education programmes and distributed publications to disseminate the message that the MPF System is for their long-term benefit. Publicity in the coming months will also focus on raising awareness of the meaning of the MPF System. The MPFA and Labour Department will work closely to ensure that employer/employee relationship would not come under undue strain when the MPF System is fully implemented.

THE INDUSTRY

(A) Service Providers and Products

10. Under the Mandatory Provident Fund Schemes Ordinance (the Ordinance), all MPF schemes must be established under a trust arrangement administered by an approved trustee². Upon the full implementation of the MPF System, employers will be obliged to arrange for employees to become members of a registered scheme³. Scheme members will also be empowered to choose to invest their contributions in any constituent fund⁴

² By virtue of the Ordinance, an approved trustee of an MPF scheme is obliged to administer, manage and maintain an approved MPF scheme in accordance with the prescribed standards.

³ A registered scheme can either be a master trust scheme (membership of which is opened to, inter alia, employees of more than one employer or self-employed persons), an employer sponsored scheme or an industry scheme.

⁴ Constituent fund is the fund that constitutes a registered scheme, or a fund that forms part of the scheme. A constituent fund must be approved by the MPFA and if a scheme comprises two or more constituent funds, each of the fund must have different investment policies so as to provide scheme members with a choice as to the investment of their accrued benefits.

under the registered scheme in which they participate. Constituent funds in turn can either make direct investments or invest in approved pooled investment funds⁵. Marketing and distribution of the relevant trust schemes are to be conducted by MPF intermediaries. Hence well before full implementation, it is necessary to have in place the relevant approval by the MPFA in respect of trustees, registered schemes, constituent funds, pooled investment funds and MPF intermediaries.

11. To facilitate the work of the service providers, detailed guidelines on the operation of the MPF System have been issued by the MPFA and amendments to the MPF legislation to address certain operational difficulties have been sought. To date, the MPFA has approved 21 trustees, registered 45 master trust schemes and approved 253 constituent funds. It is envisaged that the pooled investment funds will be approved before the target date of 31 July 2000. Of the 45 approved master trust schemes, 37 offer four or more constituent funds for scheme members to choose and 34 offer at least one guaranteed fund⁶. There are adequate choices in terms of service providers and products in the MPF market for employers, employees and self-employed persons to select. Furthermore, about 25 000 individuals have been registered as MPF intermediaries who will form an extensive network for marketing and distributing MPF products.

12. The MPFA is convinced that service providers will be fully ready for the launch of MPF on 1 December 2000; and the MPFA will also conduct on-site visits to ensure their readiness for full implementation.

(B) Industry Schemes

13. Under the Ordinance, the MPFA is also empowered to approve applications from trustees to operate industry schemes. Such schemes have special features to cater to the industries whose workforce has relatively higher intra-industry mobility. The MPFA have just registered two industry schemes to cover the catering and the construction industries and adequate time is allowed for the approved trustees to promote their schemes, with the support of MPFA, before the launch of the MPF System in December 2000.

⁵ A pooled investment fund is an investment fund, in the form of a unit trust, mutual fund or insurance policy approved by the MPFA, where the underlying investments of the fund comply with the MPF investment regulations.

⁶ Guaranteed funds provide for a guaranteed rate of return or a guarantee on the capital amount.

MPF Exemption of ORSO Schemes

14. One of the key tasks of the MPFA before the full implementation of the MPF System is the processing of applications for exemption from the MPF requirements of the existing retirement schemes governed by the ORSO. There are at present around 13 000 ORSO⁷ schemes which are eligible to be exempted from the Ordinance. All applications for exemption are required to be submitted to the MPFA by 3 May 2000. It is envisaged that all such applications will have been processed by July 2000. This should give employers sufficient time, after obtaining such exemption, to allow employees to choose between joining the exempted scheme or a new MPF scheme.

15. According to the findings of a survey conducted by the MPFA in March 2000, 72% of the employers operating ORSO registered schemes have indicated that they would apply for exemption. As at 20 April 2000, 4 312 applications covering 5 400 employers and 260 000 members have been received. We envisage that there will be a surge of applications in late April to meet the deadline and the MPFA is ready to tackle this last minute surge.

THE MPFA

(A) Staffing

16. Adequate human resources is fundamental to the efficient and effective operation of the MPFA. In this connection, the MPFA has so far been successful in recruiting the necessary staff to carry out its statutory functions. As at 31 March 2000, the MPFA has a strength of 172 staff. At present, 67 vacancies in the Compliance Division have not been filled because the MPF System is not yet fully in place. To prepare for the full implementation, it is envisaged that all managerial and supporting positions will be filled in mid-2000 and recruitment of the Inspectors will start in June to ensure that they are adequately trained to carry out their statutory functions effectively when the System is launched.

⁷ Including 2 000 ORSO exempted schemes and 11 000 ORSO registered schemes. Out of the 11 000 ORSO registered schemes, 54% of the schemes (representing 75% of the total number of members) have higher employer contributions than the MPF schemes while 44% of the schemes (representing 20% of the total number of members) have the same employer contributions as the MPF schemes.

(B) Information Management System

17. Given the large volume of data in respect of schemes and scheme members that would flow into the MPFA, an effective and reliable Information Management System (IMS) is crucial for it to carry out its regulatory and enforcement functions efficiently. The IMS project is expected to be delivered in two phases. Most of the critical functions for the commencement of the MPF System are covered under Phase I. Before the IMS is delivered, separate interim systems have been developed by the MPFA to meet its operational needs.

18. The project, however, has experienced slippage. The MPFA has conducted a thorough impact analysis on the delay of the IMS project and concluded that the slippage should not affect the implementation of the MPF System. As a contingent measure and to prepare for the unlikely event that Phase I of the IMS cannot be completed in time, interim systems that have been developed by the MPFA are being enhanced and new ones being developed to handle critical functions. In fact, the ORSO and Financial Intermediaries interim systems are already in use while the other systems are being developed ahead of schedule. Meanwhile, the contractor has devoted additional effort to recover the slippage and it now seems possible that the IMS Core System can be delivered in September 2000. In any event, with the interim systems, the MPFA should have no difficulty in handling the launching of the MPF System in December 2000.

(C) Legislative Amendments

19. In the course of applying the MPF legislative provisions, the MPFA has identified certain anomalies which may inhibit the smooth operation of the MPF System. To rectify these, the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 1) Notice 2000 and Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2000 have been introduced into this Council, which are being considered by a sub-committee under the House Committee.

20. Furthermore, a number of statutory notices, orders and rules in respect of the operational aspects of the MPF System would be required for

the full implementation of the MPF System⁸. These will be made under the Ordinance by the MPFA and the High Court Rules Committee and are expected to be in place before 1 December 2000.

(D) Liaison with Other Regulators and Government Departments

21. As the statutory body tasked to implement the provisions of the Ordinance, the MPFA needs to work closely with the other regulators in the financial market as well as Government Departments, in particular the Labour Department, Police and the Department of Justice in carrying out its statutory duties. The MPFA has established a good rapport with these bodies. The MPF intermediaries are also regulated by the Hong Kong Monetary Authority, Securities and Futures Commission or the Insurance Authority. Memoranda of Understanding have been signed with these financial regulators to facilitate the development of an effective regulatory framework for both MPF schemes and MPF intermediaries.

Overall Assessment

22. The MPF System is the result of years of debate at all levels of the community. The debate still continues in some quarters as this new System has wide and deep implications on the community. It would be difficult, if not impossible, to have a complete consensus on the most appropriate form of retirement protection in Hong Kong. Implementation of the MPF System would, regardless of the state of our economy, have an impact on both consumer spending and GDP and the relationship between employers and employees. In any case, MPF Schemes are long-term investments. In order to accumulate a sizable amount of funds to contribute towards supporting the needs in life after retirement, it is important for employers, employees and self-employed persons to start making contributions as soon as practicable. The community, the industry and the MPFA are all ready for the full implementation of the MPF System in December 2000. Delaying the commencement of the MPF contributions would reduce the amount of funds available at retirement. There would also

⁸ These include, inter alia, a notice to set out the 'permitted period' under the Ordinance within which an employer must ensure that the employee becomes a member of a registered scheme; Rules of the High Court on applications to the Court for a claim for compensation from the Compensation Fund and on compulsory winding up of registered schemes; Rules of the MPFA in respect of calculation of accrued benefits and types of information to be submitted on application to merge/divide registered schemes.

be adverse effects on the industry as service providers have committed vast resources to the MPF business based on the assumption that contributions will commence in December 2000. Delay in commencement would raise the costs of operation which might eventually be shifted to the MPF scheme members.

THE COMMENCEMENT NOTICE

23. The Commencement Notice at Annex A will bring into operation all remaining provisions in the Ordinance which have not yet come into operation. This will enable the full implementation of the MPF System, and in particular, mandatory contributions will become payable.

24. Separately, substantive amendments have been made to the Ordinance by the Provident Fund Schemes Legislation (Amendment) Ordinance 1998 (the Amendment Ordinance) and part of them have already been brought into effect on previous occasions. The remaining amendments should also be brought into force on 1 December 2000 to provide for the full implementation of the MPF System. Section 1(2) of the Amendment Ordinance provides that the provisions would come into force on a date to be appointed by the Financial Secretary. Furthermore, it is also necessary to bring the remaining provisions in the Mandatory Provident Fund Schemes (General) Regulation (the Regulation) into force on 1 December 2000. According to section 1 of the Regulation, the commencement date for the provisions in the Regulation should also be appointed by the Financial Secretary. The relevant Commencement Notices made by the Financial Secretary are at Annexes C and D.

Annexes
C & D

PUBLIC CONSULTATION

25. The Mandatory Provident Fund Schemes Advisory Committee was consulted on the proposed commencement date of 1 December 2000. Members of the Advisory Committee did not raise any objection to the proposal.

BASIC LAW IMPLICATIONS

26. The Department of Justice advises that the Commencement Notice is consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

27. The Department of Justice advises that the Commencement Notice has no human rights implications.

BINDING EFFECT OF THE PROVISIONS TO BE COMMENCED BY THE COMMENCEMENT NOTICE

28. Section 3 of the Ordinance provides for the Ordinance to bind the Government. Consequently, all the provisions to be commenced by the subject commencement notice made under the Ordinance are binding on the Government.

FINANCIAL AND STAFFING IMPLICATIONS

29. The making of the Commencement Notice has no financial and staffing implications for the Government.

LEGISLATIVE TIMETABLE

30. The legislative timetable for the Commencement Notice is as follows -

Publication in the Gazette	28 April 2000
Tabling at the Legislative Council	3 May 2000

The same legislative timetable will apply to the Commencement Notices made by the Financial Secretary.

PUBLICITY

31. A press release will be issued on 27 April 2000. A spokesman will be available for answering media enquiries.

ENQUIRIES

32. For any enquiries, please contact Miss Maureen To, Principal Assistant Secretary for Financial Services (Retirement Schemes and Insurance), at 2528 9016.

Financial Services Bureau
27 April 2000

**MANDATORY PROVIDENT FUND SCHEMES ORDINANCE (80 OF 1995)
(COMMENCEMENT) NOTICE 2000**

Under section 1(2) of the Mandatory Provident Fund Schemes Ordinance, after consultation with the Executive Council, I appoint 1 December 2000 as the day on which those provisions of the Ordinance that have not yet come into operation shall come into operation.

Chief Executive

19 April 2000

**Mandatory Provident Fund Schemes
Public Education and Publicity Campaign**

Structural Framework

The Mandatory Provident Fund (MPF) System ("the System") is new to members of the public. The Administration attaches a lot of importance to the relevant publicity and public education programmes to ensure that the employers, employees and self employed persons all have a good understanding of their respective rights and responsibilities under the System and are prepared for its full implementation. Towards this end, the MPF Publicity Campaign is one of Government's major publicity campaign in 2000-2001. To enhance coordination of efforts, a Coordinating Committee on the Public Education and Publicity Campaign was established in January 2000. All relevant Government Departments that have a role to play in promoting the MPF System are represented on the Committee.

The Strategy

2. The MPF Public Education and Publicity Campaign ("the Campaign") is divided into three phases, with different target groups and specific target messages disseminated through different channels at different phases. The MPF Authority (MPFA) has approved a budget of \$40 million for this 18 months' Campaign.

The Phases

3. Phase I of the Campaign commenced in January 2000 with the objective of building up public awareness of the System, in particular the fact that employees and self-employed persons are the beneficiaries of all the contributions made. The message is disseminated through a variety of exhibition channels including APIs and advertisements via the electronic and printed media, talks and seminars organized by employer organizations and trade unions.

4. Phase II of the Campaign commenced in March 2000. As service providers begin to market their MPF schemes, corresponding public education programmes focussing on the rights and responsibilities of the employers, employees and self-employed persons would be necessary. In addition to the Phase I programmes, an All-in-One Guidebook has been prepared, sent to 100 000 small and medium size enterprises, and made available to members of the public through the local offices of the Labour Department and the District Offices. This Phase also focuses on the deadline for existing Occupational Retirement Schemes (ORSO Schemes) to apply for exemption from the MPF Ordinance. A pamphlet on the interface arrangements was sent to the employers operating ORSO schemes that are eligible for exemption.

5. Reaching out is an important feature in this Phase of the Campaign. Staff of the MPFA are tasked with presenting the MPF System to the 18 District Councils in March/April. The MPFA has also set aside \$1.8 million for the District Councils to organize activities to promote the MPF System in their respective Districts. To reach out to employers, an 'Operation-All-Shops' exercise will be carried out in June/July: pamphlets and other publicity materials on the MPF System would be distributed directly to shops in Hong Kong. Other activities include a large-scale exhibition with the participation of all MPF service providers in August, seminars and talks for employers and employees. A guide to investment has also been published for distribution to members of the public.

6. Phase III of the Campaign will commence in September 2000 when the expected full implementation date of 1 December 2000 draws near. In addition to the programmes under Phases I and II, direct contact with all relevant parties would be important in conveying to them their respective statutory duties and responsibilities. With the assistance of the Home Affairs Department and Labour Department, the MPFA will set up enquiry counters in their respective District Offices to answer directly questions raised by members of the public.

7. The effectiveness of the public education and publicity programmes is being closely monitored and adequate resources are being provided so that the MPFA could respond positively to the needs of the community.

For example, in response to the growing community concern over the possibility of employers using the implementation of the MPF System as a pretext to cut the existing retirement benefits enjoyed by employees, the MPFA promptly re-orientated its publicity programmes. New APIs were produced and appeal letters were sent to employers and scheme trustees emphasizing the need to consult employees in deciding whether to apply for MPF exemption for existing Occupational Retirement Schemes. Employers were also reminded of the deadline for applying for exemption.

8. Included in the publicity Campaign are four opinion surveys to assess the public's awareness of the MPF System. The first Survey was conducted in late February 2000 and the results have just been made available. The second and the third surveys will be conducted in May and September respectively, while the last survey will be conducted in December 2000 immediately after the full implementation of the MPF System. Such surveys should provide the MPFA with objective yardsticks to assess public sentiments on the MPF System and enable the Authority to refine its public education and publicity strategy and programmes in the light of the findings.

9. During the entire Campaign period, on top of the above mentioned channels, members of the public can readily obtain any information on the MPF System by calling the MPFA's hotline or by accessing the MPFA website. They can also seek the assistance of Labour Department for matters relating to labour issues.

**PROVIDENT FUND SCHEMES LEGISLATION (AMENDMENT) ORDINANCE 1998
(4 OF 1998) (COMMENCEMENT) NOTICE 2000**

Under section 1(2) of the Provident Fund Schemes Legislation (Amendment) Ordinance 1998, I appoint 1 December 2000 as the day on which those provisions of the Ordinance that have not yet come into operation shall come into operation.

Financial Secretary

18 April 2000

**MANDATORY PROVIDENT FUND SCHEMES (GENERAL) REGULATION
(CAP. 485 SUB. LEG.) (COMMENCEMENT) NOTICE 2000**

Under section 1 of the Mandatory Provident Fund Schemes (General) Regulation, I appoint 1 December 2000 as the day on which those provisions of the Regulation that have not yet come into operation shall come into operation.

Financial Secretary

18 April 2000