

**File Ref: G4/49C(2002)V**

## **LEGISLATIVE COUNCIL BRIEF**

Mandatory Provident Fund Schemes Ordinance  
(Chapter 485)

### **MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2002**

#### **INTRODUCTION**

At the meeting of the Executive Council on 16 April 2002, the Council **ADVISED** and the Chief Executive **ORDERED** that the Mandatory Provident Fund Schemes (Amendment) Bill 2002 (the Bill) at Annex A should be introduced into the Legislative Council to implement the recommendations put forward by the Mandatory Provident Fund Schemes Authority (MPFA).

Annex A

#### **BACKGROUND AND ARGUMENT**

2. Launched in December 2000, the Mandatory Provident Fund (MPF) System affects over two million employers, employees, self-employed persons as well as service providers. In view of the overriding need to ensure that the System is efficient, effective and user-friendly, we consider it necessary to conduct a comprehensive review of the operational aspects of the MPF System. Towards this end, MPFA established the MPF Schemes Operation Review Committee (the Review Committee) in August 2001. The Review Committee comprises representatives of employer and employee bodies, service providers, professional organizations, Government and MPFA. The composition of the Review Committee is at Annex B.

Annex B

3. The Review Committee completed the first phase of its work in end 2001 and made a number of proposals to MPFA to amend the Mandatory Provident Fund Schemes Ordinance (the Ordinance) to enhance its efficiency and effectiveness. We agree with such proposals, which are set out in paragraphs 4 to 27 below.

## **PROPOSED LEGISLATIVE AMENDMENTS**

### **(A) Mechanism to Adjust the Minimum and Maximum Levels of Relevant Income for MPF Contributions**

4. The Ordinance provides that a relevant employee or self-employed person (SEP) whose relevant income is less than the minimum level is not required to make MPF contributions, although his employer (if any) still has to make MPF contributions in respect of him. Also, if his relevant income is above the maximum level, he is not required to contribute to the MPF scheme in respect of the excess relevant income. The minimum and maximum levels are currently at \$4,000 and \$20,000 per month respectively, and they were adopted in 1995 when the Ordinance was enacted<sup>1</sup>.

5. The purpose of setting a minimum level is to lessen the financial burden of MPF contributions on lower-paid employees or SEPs. The rationale for setting a maximum level is that the MPF System is to encourage the workforce to save for basic retirement needs. It is recognized that such a need is less likely to arise in the case of higher income employees or SEPs who often make additional voluntary contributions or make other investment to increase their savings for retirement.

6. In setting the relevant income levels in 1995, Government indicated that a mechanism to adjust such levels should be established. MPFA has conducted a review and proposed a mechanism for adjustment with the following features –

- (a) a review would be conducted every four years;
- (b) 50% of the monthly median employment earnings (monthly median income) would be adopted as the basis to adjust the minimum level; and
- (c) monthly employment earnings at 90th percentile of the monthly employment earnings distribution would be adopted as the basis to adjust the maximum level.

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<sup>1</sup> The principles adopted in setting the minimum and maximum levels of income were based on the recommendation in the Report of the Consultancy on the MPF System in 1995, i.e. the \$4,000 was derived from 50% of the then monthly median employment earnings; and the \$20,000 was based on the target to cover the entire earnings of 90% of the working population.

Annex C

7. The details of MPFA's review are at Annex C. The MPF Schemes Advisory Committee was consulted and supported the proposed mechanism. Applying the above principles and taking into account the present economic situation, MPFA recommended the following for the coming four years –

- (a) the basis of 50% monthly median income level be applied and the minimum level of relevant income for MPF contributions be revised from \$4,000 to \$5,000 per month; and
- (b) the maximum level be retained at \$20,000 per month.

8. In determining the minimum level, a balance needs to be struck between avoiding to burden the lower income workers and protecting their future retirement needs. We have to avoid compromising one for the other. We agree that the "50% of the median income" principle is a reasonable yardstick in determining the minimum relevant income. This was the same principle adopted when devising the MPF System in 1995. Further uplifting of the minimum level would affect the future retirement protection for lower income workers substantially. At present, about 57 000 employees and SEPs are estimated to be excluded from the contribution net as their relevant income is below the \$4,000 level. It is estimated that another 56 800 employees and SEPs would be carved out if the minimum level is raised from \$4,000 to \$5,000 per month.

9. In relation to the maximum level of relevant income, if the principle set out in paragraph 6(c) above was applied, the present level should be increased to \$30,000 per month, resulting in an increase in contribution by both employers and employees. Given the current economic situation and to avoid imposing additional burden on employers/employees, we agree with MPFA's proposal that no adjustment to the maximum level should be made. According to MPFA, many employees in the income bands between \$20,000 and \$30,000 per month are members of MPF schemes receiving voluntary contributions on top of mandatory contributions. Some are exempted from the Ordinance altogether (e.g. teachers of subvented schools, civil servants on pension terms, overseas employees having joined other retirement schemes, members of exempted retirement schemes, etc.). Therefore, keeping the maximum level of relevant income at \$20,000 per month would unlikely affect the retirement protection for employees within these income bands.

10. For clarity, it would be desirable to stipulate the review mechanism, in particular, the principles to be adopted, in the MPF legislation. In this connection, flexibility should be allowed to take into account other relevant factors, for example the prevailing economic conditions, in the process.

**(B) Enhance Protection for Scheme Members**

11. In the light of operational experience, MPFA put forward a number of proposed amendments that would simplify the provisions in the legislation as well as enhance the protection rendered for scheme members.

*(a) Interest derived from monies-in-transit*

12. At present, the Ordinance prescribes that income derived from the investment of the accrued benefits of an MPF scheme member shall vest in the member as accrued benefits. In practice, to comply with such requirement, the approved trustee is required to allocate the interest earned to each individual member strictly in accordance with the amount of his contribution and the period during which the contribution was held in the interest-bearing account. There is no exception. In situations where the amount involved is small and the period for holding such assets is short, the administrative cost of placing the money in interest-bearing accounts and allocating the interest to each individual member in the above-mentioned manner would outweigh the benefit derived from the interest earned. Trustees therefore tend to place monies-in-transit in non-interest bearing accounts. This would not be beneficial to scheme members. To rectify the situation, we recommend to clarify in the Ordinance that interest derived from monies-in-transit need not be vested in individual members' accounts. Instead, such income shall be credited to the schemes as scheme income or be used to defray scheme administration expenses for the benefit of all scheme members.

*(b) Transfer of members and benefits*

13. Members of MPF schemes may be transferred from one scheme to another due to a change of employers as a result of a change in the ownership of a business or a transfer to an associated company. The Ordinance presently contains provisions covering such transfers but further streamlining of such provisions is needed in the light of operational experience. In effecting such transfers, it is necessary to ensure that there is no erosion of scheme members' entitlements and that the rights of the employees are protected.

14. At present, in the case of a change of business ownership and transfer between associated companies, where the employees are employed by the new owner or new associated company (the new employer), such employees may be enrolled into a new MPF scheme provided/selected by the new employer. In line with the spirit of the Employment Ordinance (Cap. 57), section 12A(6) of the Ordinance provides that the contributions made by the previous employer into the previous scheme may be used by the new employer to offset his severance payment / long service payment (SP/LSP) made to the employee on termination of service. Nonetheless, the other provisions of the Ordinance treat the above change as analogous to change in employment. Employees who are transferred to a new scheme are treated as new employees and they would not be required to contribute to the new scheme for the first 30 days. Besides, the employees are entitled to transfer the accrued MPF benefits derived from their previous employment to individual preserved MPF accounts of their choice. Within a preserved account, accrued benefits derived from the employees' former employment are commingled and not segregated. As a result, the amount of contributions made by the relevant previous employers cannot be readily ascertained for SP / LSP offsetting purposes. Therefore, we propose to amend the Ordinance to clarify that where there is a change of business ownership or transfer between associated companies and if certain conditions are satisfied e.g. the new employer agreed to assume the liability of the previous employer for SP/LSP in respect of the employee, the new employer may elect to have the accrued benefits of the relevant employee transferred to an account in an MPF scheme nominated by the new employer, and that the 30-day employee contributions holiday will not apply to such employee.

15. Upon occurrence of certain events such as restructuring of companies or occupational retirement schemes, members of an MPF exempted occupational retirement registered or exempted scheme (MPF exempted ORSO scheme) may be transferred to another such scheme. However, the Ordinance only provides that those members became members of an MPF exempted ORSO scheme on or before 1 December 2000 would be 'existing members' and would not be subject to the preservation of minimum MPF benefits (MMB)<sup>2</sup> requirement. MPFA recommended and we agree that the time bar should be lifted to allow those who are transferred from an MPF exempted ORSO scheme to another such scheme to retain the 'existing member' status, if certain conditions are satisfied. This would ensure that such members would continue to enjoy

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<sup>2</sup> MMB is the portion of benefits held in an MPF exempted ORSO scheme which is broadly equivalent to the accumulated mandatory contribution made by or on behalf of the employee if he participates in an MPF scheme.

their special status as under their old MPF exempted ORSO scheme and would not be subject to the MMB requirement.

***(c) Benefit payment on incapacitation***

16. The Ordinance only allows a scheme member who was employed/self-employed immediately before his becoming totally incapacitated to claim his accrued MPF benefits. It does not cater for the situation where a scheme member becomes incapacitated whilst being unemployed and not a SEP, thus depriving such a person from claiming his accrued benefits before retirement. Amendment to the Ordinance to allow for such situation is proposed.

***(d) Enhance enforcement provisions for scheme members' protection***

17. To improve the provisions on enforcement against non-enrolment in MPF schemes, we propose to make failure of an employer to enroll his employees into MPF schemes a “continuing offence” (i.e. an offender may be prosecuted again if he fails to take rectification action after conviction), and a daily fine after the first conviction is proposed. Moreover, to enable MPFA to take more effective enforcement action to protect scheme members, we propose to change the prosecution time-bar for non-enrolment in MPF schemes and non-payment of mandatory MPF contributions by employer from six months after the occurrence of the offence to six months after the discovery of the offence by, or coming to the notice of, MPFA.

**(C) Simplify MPF Scheme Administration**

18. In response to the comments made by service providers and employers, the following amendments are proposed to simplify the MPF scheme administration regime.

***(a) Provisions on contribution holiday***

19. The Ordinance provides that when making the first MPF contribution after the permitted period (i.e. 60 days commencing from the first date of employment), employers' contributions shall count from the first day of employment, but employees' contributions shall count from the 31st day of employment, i.e. employees enjoy a 30-day contribution holiday. In most cases, the 31st day of employment would not fall on the first day of the employee's regular payroll cycle. This results in an incomplete initial employee contribution period and requires the employer to undertake the

cumbersome exercise of prorating the relevant income and comparing it against the correspondingly prorated minimum and maximum levels of relevant income.

20. To keep the procedures simple and reduce the administrative work as well as to minimize the risk of error, we propose that for employees with monthly or more frequent than monthly payroll, the employee contributions for the first incomplete payroll period should be waived. As for employees with less frequent than monthly payroll, their contributions would be waived for the incomplete calendar month immediately following the 30-day contribution holiday.

*(b) Annual notices*

21. Approved trustees are now required to publish annual notices in newspapers continuously to search for lost members (i.e. scheme members with unclaimed MPF benefits) until the lost members, or their personal representatives, come forward to claim the benefits. For better administration and to minimize cost, approved trustees would be required to publish such notice in respect of those members once. MPFA would, with the information provided by approved trustees, set up a central register on lost members for the public's inspection. MPFA and the approved trustees would publicize the availability of such a search facility.

*(c) Other streamlining measures*

22. To simplify the prorating arrangements for the purpose of calculating contributions, we propose to adopt the generic minimum (present \$130 to be adjusted to \$160 per day) and maximum (\$650 per day) levels of relevant income for payroll cycle that is more frequent than monthly. We also propose to give MPFA the discretion to approve the extension of the length of the first financial period of a scheme beyond 12 months. Proposals are also included in the Bill to simplify the arrangements in respect of MPF contribution remittance and the notification for cessation of employment.

**(D) Improving the System of Regulating MPF Schemes**

23. A number of amendments are proposed by MPFA to enhance the system of regulating MPF schemes. The present legislation requires approved trustees to report to MPFA on non-payment of contributions after

the settlement period<sup>3</sup>, the first payment period<sup>4</sup> and subsequent payment periods<sup>5</sup>. MPFA will issue the first payment notice on receipt of the default report from trustees after the settlement period, and may issue further payment notices on receipt of the default reports after the first payment period. Furthermore, MPFA may impose a surcharge based on a rate of 15% and 20% per annum when issuing the first and subsequent payment notices. Since the surcharge will accrue during the period the contributions remain in arrears, its calculation is often cumbersome.

24. To simplify and streamline the recovery procedures, it is proposed that MPFA should serve only one payment notice. The notice would demand payment of contribution in arrears and impose a surcharge at a flat rate of 5% of the contribution in arrears. Continuing default at the end of the payment period would trigger off other follow-up actions including prosecution by MPFA.

25. Other proposed amendments to improve the regulatory system include introducing new provisions to facilitate different forms of scheme restructuring and retaining provisions to protect scheme members' interests; and streamlining and enhancing the requirements imposed upon approved trustees in relation to the reporting and recording of an event of significant nature<sup>6</sup>.

### **(E) Provisions on MPF Investment**

26. Central to the MPF legislation is the provisions on investments of funds. Whilst it is our overriding objective to ensure that the provisions are effective in protecting scheme members' interest, we are also mindful of the need to provide enough latitude in the law to allow the funds to be invested in and capitalized on quality products. Taking into account the developments in the market and the practical needs of the service providers, MPFA proposed amendments to the legislation with which we concur. The following proposed amendments would provide wider choices of investment vehicles, remove unnecessary restrictions and provisions which

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<sup>3</sup> The settlement period means the period of 30 days after the contribution day (i.e. contribution due date) for each contribution period.

<sup>4</sup> The first payment period refers to the period specified in the first payment notice issued by MPFA requiring the defaulter to pay the contributions in arrears within the period.

<sup>5</sup> The subsequent payment periods refer to the periods specified in the subsequent payment notices issued by MPFA requiring the defaulter to pay the contributions in arrears within the periods.

<sup>6</sup> Event of significant nature includes (but is not limited to) contravention of the Ordinance, the governing rules of the scheme or approval conditions by the approved trustees, and any material change to the approved trustee's capacity or ability to act as an approved trustee.

place undue restrictions on investment of funds –

- (a) the MPF Schemes (General) Regulation imposes some restrictions on the investment of a constituent fund<sup>7</sup> to ensure a spread of investments to avoid excessive risks, e.g. limits the investments of a constituent fund in securities and other permissible investments issued by any one person to 10 per cent of its total funds. However, those restrictions are considered generally unnecessary in the case of constituent fund with the sole investment objective of tracking a particular market index and index-tracking collective investment schemes<sup>8</sup> (CIS), which has already diversified the risks involved through a spread of investment. Therefore, we propose:
  - (i) subject to the prior approval of MPFA, the funds of a constituent fund be allowed to be invested up to 100% in an index-tracking CIS that is either authorized by the Securities and Futures Commission or listed on a recognized stock exchange approved by MPFA. Guidelines on what constitutes an index-tracking CIS and the criteria for granting the approval would be issued by MPFA;
  - (ii) to allow the constituent fund with the sole investment objective of tracking a particular market index, with the prior approval of MPFA, to invest in securities and other permissible investments issued by any one person to more than 10% of its total fund;
- (b) to allow the funds of a constituent fund to be invested in -

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<sup>7</sup> A constituent fund means the fund that constitutes a registered scheme, or a fund that forms part of the scheme, and complies with the requirement as set out in section 36 of the MPF Schemes (General) Regulation. A constituent fund may maintain a portfolio of direct investments in equities, bonds, etc., or invest in approved pooled investment funds which may be in the form of unit trusts authorized by the Securities and Futures Commission (SFC) or insurance policies issued by authorized insurers. A constituent fund needs to be approved by MPFA and be subject to investment standards applicable to MPF investment funds.

<sup>8</sup> An index-tracking collective investment scheme has the primary objective of tracking or replicating the investment performance of an index.

- (i) convertible debt securities with their underlying shares both listed on recognized, but not necessarily the same, stock exchange; or
  - (ii) a debt security where the security and the issuer are listed on recognized, but not necessarily the same, stock exchange;
- (c) to allow a constituent fund with a total market value less than \$8,000,000 and with MPFA's prior approval, to deposit more than 25% of its funds in a single authorized financial institution or eligible overseas bank; and
- (d) to remove the restriction that a constituent fund can only acquire a currency forward contract to sell Hong Kong dollars for the purpose of settlement of a transaction relating to the acquisition of securities denominated in a foreign currency already committed. This would provide the flexibility to allow the fund to reduce its over-hedged position on the market value of its foreign currency investments. The amendment would not affect the overriding requirement that a foreign currency contract may only be acquired by a constituent fund for hedging purposes.

## **(F) Technical Amendments**

27. We also propose several technical amendments. These amendments relate to serving of notices or documents, transfer of MMB, restructuring of MPF schemes, applying the same eligibility requirements to wholly owned subsidiaries of local and overseas banks and trust companies when acting as subcustodians, the notification requirement on the change of employers' names, and clarification of the provisions on the indemnification of subcustodians.

## **THE BILL**

28. **Clause 3** requires an employer to ensure that his relevant employee will continue to be enrolled in an MPF scheme throughout his employment after the permitted period. Failure to comply with this continuous requirement would be an offence (**Clause 11**) (see paragraph 17 above ).

29. **Clause 4** amends the definition of "contribution period" to extend the employee contribution holiday to the end of a wage period, or the end of a calendar month depending on the duration of the wage period. **Clause 5** sets out the mechanism for reviewing the minimum and maximum levels of relevant income. **Clause 6** seeks to clarify that interests derived from placing the monies-in-transit on deposit need not be vested as accrued benefits for individual members, but shall be used for the benefit of all scheme members.

30. **Clause 7** provides that in the event of a change in business ownership or a transfer of employees from one company to its associated company satisfying certain conditions, the new employer may elect to have accrued benefits of the employee under the previous scheme transferred to an account in an MPF scheme nominated by the new employer.

31. **Clause 9** sets out the application procedures in respect of different forms of scheme restructuring and empowers MPFA to approve such restructuring.

32. **Clause 11** extends the time-bar for prosecution of offences relating to non-enrolment and non-payment of mandatory contributions by employers from 6 months after the occurrence of the offence to 6 months after the discovery of the offence by, or coming to the notice of, MPFA.

33. **Clause 12** replaces the existing Schedules 2 and 3 of the Ordinance to reflect the proposed adjustment of the minimum relevant income from \$4,000 to \$5,000 per month, and to provide for the generic minimum and maximum levels (at \$160 and \$650 per day) to facilitate the calculation of MPF contributions for employees with payroll cycles more frequent than monthly.

34. **Clause 13** and the **Schedule** make consequential and other technical amendments to the subsidiary legislation, including the MPF Schemes (General) Regulation, the MPF Schemes (Exemption) Regulation, the MPF Schemes (Fees) Regulation, the MPF Schemes (Contribution for Casual Employees) Order and the MPF Schemes Rules.

35. These include setting out the new requirements for the approved trustees to notify MPFA of events of significant nature (section 1); amending the eligibility requirement of subcustodians (section 2); empowering MPFA to approve the extension of the first financial period of an MPF scheme to beyond 12 months (section 4); defining the contribution day as the 10<sup>th</sup> day of a calendar month for relevant employees (other than

casual employees) (section 6); simplifying the calculation of contribution surcharge (section 9); requiring employers to notify their approved trustees of changes in their names (section 12); allowing the notification of the cessation of employment to be lodged with the remittance statements (sections 13 and 14); allowing withdrawal of accrued benefits by members who were unemployed and not SEPs immediately before becoming totally incapacitated (section 17); setting up a public register of lost members by MPFA (section 18); relaxing some of the investment restrictions (section 20); rectifying the inconsistency in indemnification of losses in the contents of custodial agreements (section 21); retaining the “existing member” status of a member during transfers between MPF exempted ORSO schemes (section 22); amending the scale of amounts of contribution in respect of casual employees to tally with the changes in the minimum level of income (section 25); and setting out the documents to be provided in the case of an application for scheme restructuring (section 26).

36. **Clause 14** provides for the transitional arrangements in respect of the proposed amendments relating to the minimum and maximum levels of income, and the simplified contribution arrangement and calculation of surcharge.

## **PUBLIC CONSULTATION**

37. All the major proposed amendments of the Bill are supported by MPFA and the MPF Advisory Committee. The LegCo Panel on Financial Affairs was also briefed on 7 January 2002.

## **BASIC LAW IMPLICATIONS**

38. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

## **HUMAN RIGHTS IMPLICATIONS**

39. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

## **BINDING EFFECT OF THE LEGISLATION**

40. The Department of Justice advises that the Bill will not affect the binding effect of the Ordinance and its subsidiary legislation.

## **FINANCIAL AND STAFFING IMPLICATIONS**

41. The proposal to adjust the minimum level of income for MPF contributions will not affect the obligations of Government as an employer, as it will only affect employees' contributions. Other proposals of the Bill mainly seek to improve the operation of the MPF System, and will not generate additional workload for Government. The Bill will have no additional financial or staffing implications for Government.

## **ECONOMIC IMPLICATIONS**

42. The proposed adjustment of the minimum level of relevant income from \$4,000 to \$5,000 per month would exclude about 49 500 relevant employees and 7 300 SEPs<sup>9</sup> from the requirement of contributing 5% of their relevant income into MPF schemes. The reduction in MPF contributions in the first year would amount to less than 1%, or some \$145 million. The disposable income of the employees and SEPs concerned would increase by the same amount. This is likely to boost consumer spending. Yet the effect is expected to be small in overall terms, estimated at less than 0.01 of a percentage point of private consumption expenditure or GDP in the year of incidence. The associated employment impact is hence also expected to be small. As to business operating cost, there should be no impact as employers' share of MPF contribution will not be affected.

43. Other proposed amendments of the Bill will improve the operation of the MPF System or enhance the protection of scheme members. Some of them will also help reduce the administrative costs of the MPF System.

## **SUSTAINABILITY IMPLICATIONS**

44. The Bill should have no major sustainability implications but help enhance the efficiency of the administration of the MPF System by the pension fund industry and MPFA.

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<sup>9</sup> The two figures refer to employees and SEPs aged between 18 to 65, and exclude persons exempted under the Ordinance as reckoned in accordance with the latest statistics from the Census and Statistics Department and the estimation by MPFA.

## **LEGISLATIVE TIMETABLE**

45. The legislative timetable is as follows -

|   |                |
|---|----------------|
| Publication in the Gazette  | 19 April 2002  |
| First Reading and commencement of<br>Second Reading debate                | 24 April 2002  |
| Resumption of Second Reading debate,<br>committee stage and Third Reading | to be notified |

## **PUBLICITY**

46. A press release will be issued shortly. A spokesman will be available for answering media enquiries.

## **ENQUIRIES**

47. For any enquiries, please contact Miss Patricia So, Assistant Secretary for Financial Services (Retirement Schemes and Insurance), at 2527 8166.

Financial Services Bureau  
17 April 2002

MANDATORY PROVIDENT FUND SCHEMES (AMENDMENT) BILL 2002

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A BILL

To

Amend the Mandatory Provident Fund Schemes Ordinance.

Enacted by the Legislative Council.

**1. Short title and commencement**

(1) This Ordinance may be cited as the Mandatory Provident Fund Schemes (Amendment) Ordinance 2002.

(2) Subject to subsection (3), this Ordinance shall come into operation on the day on which it is published in the Gazette.

(3) Sections 4, 8, 12 and 14, and sections 1, 5, 6, 7, 8, 9, 10, 11, 12, 13(a), (b) and (c), 14(a), (b) and (c), 18 and 25 of the Schedule, shall come into operation on a day to be appointed by the Secretary for Financial Services by notice published in the Gazette.

**2. Interpretation**

Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended -

(a) in the definition of "total incapacity", by repealing "performing immediately" and substituting "last performing";

(b) by adding -

" "contribution account" (供款帳戶) has the same meaning as in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.);

"practicable" (可行範圍內) means reasonably practicable;".

**3. Employer to arrange for employees to become scheme members, etc.**

Section 7 is amended by adding -

"(1A) Every employer of a relevant employee must take all practicable steps to ensure that, after the expiration of the permitted period -

- (a) if the employer has complied with subsection (1) in respect of the employee, the employee continues to be a member of a registered scheme throughout his employment with that employer;
- (b) if the employer has not complied with subsection (1) in respect of the employee, the employee becomes a member of a registered scheme and thereafter continues to be a member of a registered scheme throughout his employment with that employer."

**4. Employer and relevant employees required to contribute to registered scheme**

Section 7A is amended -

- (a) by repealing subsection (7) and substituting -

"(7) An employer must not, in respect of an employee (not being a casual employee) whose wage period -

(a) is not more than 1 month, make a deduction under subsection (2)(b) in respect of the employee's relevant income earned for any wage period that commences on or before the 30th day of employment after the relevant time;

(b) is more than 1 month, make a deduction under subsection (2)(b) in respect of the employee's relevant income earned for the period commencing from the relevant time and ending on the last day of the calendar month in which the 30th day of employment after the relevant time falls.";

(b) in subsection (10) -

(i) in the definition of "contribution period", by repealing paragraph (b) and substituting -

"(b) in relation to a relevant employee (not being a casual employee) whose wage period -

(i) is not more than 1 month, means each period for which the employer pays or should pay relevant income to the employee,

but does not include any wage period commencing on or before the 30th day of employment after the relevant time;

(ii) is more than 1 month, means each period for which the employer pays or should pay relevant income to the employee, but does not include the period commencing from the relevant time and ending on the last day of the calendar month in which the 30th day of employment after the relevant time falls; and";

(ii) in the definition of "relevant time", by repealing "section 7(3)." and substituting "section 7(3);";

(iii) by adding -

"wage period" (工資期), in relation to an employee and his employer, means the period for which the

employee is paid, or should be paid,  
relevant income by the employer." .

**5. Section added**

The following is added -

**"10A. Authority to conduct review of  
minimum and maximum levels of  
relevant income every 4 years**

(1) The Authority must, not less than once in every period of 4 years beginning with the commencement of this section, conduct a review of the minimum level of relevant income and the maximum level of relevant income to ascertain whether or not there are grounds to amend Schedule 2 or 3 or Schedules 2 and 3.

(2) Without limiting the factors which the Authority may take into account for the purposes of conducting a review mentioned in subsection (1), the Authority must take into account -

(a) in respect of the minimum level of relevant income, 50 per cent of the monthly median employment earnings prevailing at the time of the review as compiled from the General Household Survey conducted by the Census and Statistics Department ;  
and

(b) in respect of the maximum level of relevant income, monthly employment earnings at 90th percentile of the monthly employment earnings distribution prevailing at the time of the review as compiled from the General Household Survey conducted by the Census and Statistics Department." .

**6. Contributions to vest in scheme members as accrued benefits**

Section 12 is amended -

(a) in subsection (2), by adding "subsection (2A) and" after "Subject to";

(b) by adding -

"(2A) The reference to income or profits in subsection (2) does not include interest derived from the placing on deposit of -

(a) contributions or benefits -

(i) received by the approved trustee of a registered scheme in respect of a member of the scheme; and

(ii) during the period that the payment of the contributions or benefits into the member's account is pending;

(b) benefits -

(i) moved from a constituent fund; and

(ii) during the period that the investment of the benefits into another

constituent fund is  
pending; and

(c) benefits -

(i) received from a  
constituent fund; and

(ii) during the period  
that -

(A) withdrawal of the  
benefits from the  
registered scheme  
concerned is  
pending; or

(B) transfer of the  
benefits to  
another  
registered scheme  
is pending.

(2B) Interest referred to in subsection (2A)  
must be retained by the approved trustee of the  
registered scheme concerned -

(a) for the payment of any  
administrative expenses of the  
scheme; or

(b) as income of the scheme,  
for the benefit of scheme members.".

**7. Certain amounts relating to severance payments and long service payments to be paid from accrued benefits**

Section 12A is amended by adding -

"(6A) Where -

- (a) subsection (6)(a) or (b) applies to a person;
- (b) the new owner or associated company, as the case may be, ("new employer") has assumed the liability of the previous owner or company ("previous employer") for severance payment or long service payment in respect of the person;
- (c) the new employer has agreed to recognize the person's length of employment with the previous employer for the purposes of that severance payment or long service payment; and
- (d) no accrued benefits held in a registered scheme in respect of the person have been paid in accordance with this section to the person or the previous employer,

then the new employer may elect, in accordance with the regulations, to have the accrued benefits of the person held in a contribution account in that scheme transferred to an account in a registered scheme nominated by the new employer.

(6B) Where a new employer has made an election under subsection (6A), then, for the purposes of that election -

- (a) section 7A(7) shall not apply to the new employer; and
- (b) paragraph (b) of the definition of "contribution

period" in section 7A(10) shall be construed as if it read as follows -

"(b) in relation to a relevant employee (not being a casual employee), means each period for which the employer pays or should pay relevant income to the employee; and".

**8. Recovery of mandatory contributions that are in arrears**

Section 18(2) is amended by repealing ", not exceeding 20 per cent per annum".

**9. Power to restructure registered schemes**

Section 34B is amended -

(a) by repealing subsections (1) and (2) and substituting -

"(1) The approved trustee of a registered scheme or the approved trustees of 2 or more registered schemes may apply to the Authority to consent to the restructuring of the scheme or schemes, as the case may be, including restructuring by the merger or division of the scheme or those schemes, as the case may be, with or into other existing or new scheme or schemes of the same kind.";

(b) by repealing subsections (5) and (6) and substituting -

"(5) As soon as practicable after receiving

an application to consent to the restructuring of a registered scheme or registered schemes, the Authority must consider the application. The Authority may consent to the restructuring only if satisfied -

- (a) that the interests of the members of the scheme or those schemes, as the case may be, will be adequately protected and that, if the restructuring is consented to, their accrued benefits will be transferred to the transferee scheme or schemes, as the case may be, as appropriate; and
- (b) that the transferee scheme or schemes, as the case may be, will be governed by the law of Hong Kong; and
- (c) that the transferee scheme or schemes, as the case may be, complies or comply with, or will if the restructuring is consented to, comply with, such requirements and standards as are prescribed by the regulations referred to in section 21C.

(6) The Authority must not reject an

application under this section without giving the applicant or applicants, as the case may be, an opportunity to make representations (either orally or in writing or both) as to why the Authority should consent to the restructuring of the scheme or schemes, as the case may be.”;

(c) by repealing subsection (8) and substituting -

“(8) On registering a new scheme derived from the restructuring of an existing scheme or schemes, the Authority must issue to the approved trustee of the new scheme a certificate of registration and cancel the registration of the existing scheme or such of the existing schemes as is appropriate as a result of the restructuring. The certificate must specify that the new scheme is an employer sponsored scheme, a master trust scheme, or an industry scheme, as the case requires.”.

#### **10. Power to divide registered scheme**

Section 34C is repealed.

#### **11. Offences by employers**

Section 43B(3) is repealed and the following substituted -

“(3) An employer who is convicted of an offence against this section is liable -

(a) to a fine at level 6 and to imprisonment for 6 months on the first occasion on which the person is

convicted of the offence; and

- (b) to a fine of \$200,000 and to imprisonment for 12 months on each subsequent occasion on which the person is convicted of the offence,

and, in the case of an offence consisting of a failure by the employer to comply with the requirement imposed on the employer by section 7(1A), a daily penalty of \$500 for each day on which the offence is continued after conviction therefor.

(4) Proceedings may be instigated for an offence against this section within 6 months after the offence is discovered by, or comes to the notice of, the Authority."

## 12. Schedules 2 and 3 substituted

Schedules 2 and 3 are repealed and the following substituted -

"SCHEDULE 2 [ss. 2, 9, 10A,  
11 & 48]

### MINIMUM LEVEL OF RELEVANT INCOME PER CONTRIBUTION PERIOD

1. The minimum level of relevant income for the purposes of section 9 of this Ordinance, in the case of a relevant employee (not being a casual employee who is a member of an industry scheme), is -

- (a) if the employee is remunerated on a monthly basis, \$5,000 per month;
- (b) if the employee is remunerated more frequently than on a monthly basis, \$160 per day;
- (c) if the employee is remunerated less frequently

than on a monthly basis, \$5,000 per month, that amount as prorated.

2. The minimum level of relevant income for the purposes of section 9 of this Ordinance is, in the case of a casual employee who is a member of an industry scheme, \$160 per day.
3. The minimum level of relevant income for the purposes of section 9 of this Ordinance is, in the case of a self-employed person, \$5,000 per month or \$60,000 per year.

SCHEDULE 3

[ss. 2, 10, 10A  
& 48]

MAXIMUM LEVEL OF RELEVANT INCOME  
PER CONTRIBUTION PERIOD

1. The maximum level of relevant income for the purposes of section 10 of this Ordinance, in the case of a relevant employee (not being a casual employee who is a member of an industry scheme), is -
  - (a) if the employee is remunerated on a monthly basis, \$20,000 per month;
  - (b) if the employee is remunerated more frequently than on a monthly basis, \$650 per day;
  - (c) if the employee is remunerated less frequently than on a monthly basis, \$20,000 per month, that amount as prorated.
2. The maximum level of relevant income for the purposes of section 10 of this Ordinance is, in the case of a casual employee who is a member of an industry scheme, \$650 per day.

3. The maximum level of relevant income for the purposes of section 10 of this Ordinance is, in the case of a self-employed person, \$20,000 per month or \$240,000 per year."

**13. Consequential and other amendments to subsidiary legislation made under principal Ordinance**

The provisions of the subsidiary legislation made under the principal Ordinance are amended as specified in the Schedule.

**14. Transitional**

(1) Where a relevant employee has commenced employment before the commencement of section 4 of this Ordinance, then the provisions of section 7A, as in force -

- (a) immediately before the commencement of section 4 of this Ordinance, shall apply to and in relation to that employment; and
- (b) immediately after the commencement of section 4 of this Ordinance, shall not apply to or in relation to that employment.

(2) Where a contribution period has commenced before the commencement of section 12 of this Ordinance, then the provisions of Schedules 2 and 3, as in force -

- (a) immediately before the commencement of that section, shall apply to and in relation to that contribution period; and
- (b) immediately after the commencement of that section, shall not apply to or in relation to that contribution

period.

(3) Where a contribution period for a contribution ends before the commencement of section 6 of the Schedule to this Ordinance, then the provisions of section 122 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.), as in force -

- (a) immediately before the commencement of section 6 of the Schedule to this Ordinance, shall apply to and in relation to that contribution; and
- (b) immediately after the commencement of section 6 of the Schedule to this Ordinance, shall not apply to or in relation to that contribution.

(4) Where a contribution period for a contribution ends before the commencement of section 7 of the Schedule to this Ordinance, then the provisions of section 123 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.), as in force -

- (a) immediately before the commencement of section 7 of the Schedule to this Ordinance, shall apply to and in relation to that contribution; and
- (b) immediately after the commencement of section 7 of the Schedule to this Ordinance, shall not apply to or in relation to that contribution.

(5) Where a contribution period for a contribution ends before the commencement of section 9 of the Schedule to this Ordinance, then the provisions of section 134 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.), as in force -

- (a) immediately before the commencement of section 9 of the Schedule to this Ordinance, shall apply to and in

- relation to that contribution; and
- (b) immediately after the commencement of section 9 of the Schedule to this Ordinance, shall not apply to or in relation to that contribution.

SCHEDULE

[ss. 13 & 14]

CONSEQUENTIAL AND OTHER AMENDMENTS TO SUBSIDIARY  
LEGISLATION MADE UNDER PRINCIPAL ORDINANCE

**Mandatory Provident Fund Schemes (General) Regulation**

1. **Approved trustee to notify  
Authority of events of  
significant nature**

Section 62(1) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.) is repealed and the following substituted -

"(1) If the approved trustee of a registered scheme becomes aware of the occurrence of an event of significant nature, the trustee must -

- (a) not later than the third working day after becoming aware of the event, give written notice to the Authority setting out particulars of the event (except an event specified in the guidelines as an event to which this paragraph shall not apply);
- (b) keep a record of particulars of the event;
- (c) permit the Authority to inspect the record at any reasonable time during ordinary business hours;

and

(d) give written notice to the Authority -

(i) setting out such further or better particulars of the event as the Authority requires; and

(ii) as soon as is practicable after the Authority makes that requirement.".

**2. Eligibility of delegate of custodian**

Section 71(1)(c) is repealed and the following substituted -

"(c) is an overseas bank or overseas trust company which is a wholly-owned subsidiary of an approved overseas bank, an approved overseas trust company, an authorized financial institution, or a registered trust company incorporated in Hong Kong, which -

(i) has a paid up capital of not less than US\$200,000,000 or an equivalent amount in another currency; and

(ii) satisfies a minimum credit rating set by the Authority based on a credit rating determined by an approved credit rating agency.".

**3. Separate accounts for each scheme member**

Section 78 is amended by adding -

"(6A) Where section 12A(6A) and (6B) of the Ordinance is applicable in the case of an employer and an employee, then, for the purposes of that case -

- (a) any reference to "current employer" in subsection (6)(a), (b), (d) or (e) shall include the previous employer mentioned in section 12A(6A) of the Ordinance;
- (b) any reference to "current employment" in subsection (6)(b) or (e) shall include employment with the previous employer mentioned in section 12A(6A) of the Ordinance;
- (c) any reference to "former employments" in subsection (6)(c) or (f) shall not include employment with the previous employer mentioned in section 12A(6A) of the Ordinance;
- (d) any reference to "former employer" in subsection (6)(c) or (f) shall not include the previous employer mentioned in section 12A(6A) of the Ordinance."

**4. Financial period of registered scheme**

Section 79 is amended -

- (a) in subsection (1), by adding "or such later date as the approved trustee, with the prior approval of the Authority, so determines" after "registration of the scheme";
- (b) in subsection (2)(b), by adding "or such later date as the approved trustee, with the prior approval of the Authority, so determines" after "that period".

5. **Definitions**

Section 119 is amended -

(a) by repealing the definitions of "first payment-period" and "subsequent payment-period";

(b) by adding -

"payment period" (付款期) means the period specified in a notice under section 136(1)(a);".

6. **Participating employer to calculate relevant income and pay mandatory contributions**

Section 122 is amended -

(a) in subsection (1), in the definition of "contribution day" -

(i) in paragraph (a), by adding "who is a casual employee" after "relevant employee";

(ii) by adding -

"(aa) in relation to a mandatory contribution payable by a participating employer in respect of a relevant employee (other than a casual employee), means, subject to subsection (4), the tenth day after the last day of -

(i) a calendar month

within which the  
relevant contribution  
period ends; or

- (ii) the month during which  
the permitted period  
ends,

whichever is the later; and”;

- (b) by repealing subsection (3) and substituting -

“(3) For the purposes of section 7A(8) of the  
Ordinance -

- (a) a participating employer in  
respect of a relevant employee who  
is a casual employee must, for each  
contribution period, pay the  
mandatory contribution to the  
approved trustee of the scheme in  
respect of each relevant employee  
on or before the contribution day;
- (b) a participating employer in  
respect of a relevant employee  
(other than a casual employee)  
must, for each contribution period  
which ends in the previous  
calendar month or during the  
permitted period, as the case may  
be, pay the mandatory contribution  
to the approved trustee of the

scheme in respect of each relevant employee on or before the contribution day.".

**7. Participating employer to provide remittance statement to approved trustee**

Section 123 is amended -

(a) in subsection (1), by adding "or periods" after "contribution period";

(b) in subsection (2) -

(i) in paragraph (a), by adding "or each of the contribution periods, as the case requires" after "period";

(ii) in paragraphs (b), (c), (d) and (e), by adding "or each of those periods, as the case may be" after "that period".

**8. Authority to give participation certificates to participating employers**

Section 124(1) is repealed and the following substituted -

"(1) On being satisfied that -

(a) an employer has complied with section 7(1) or 7(1A)(b) of the Ordinance; or

(b) an employer which has been previously issued a certificate under this section has changed its name from that shown in the certificate,

the Authority must give to the employer, through the approved trustee of the registered scheme in which the employer participates, a certificate (or, where paragraph (b) is applicable, a new certificate showing the employer's new name) certifying that the employer is a participating employer in the registered scheme specified in the certificate."

9. **Contribution surcharge for, and report on, failure to pay contributions**

Section 134(4) and (5) is repealed and the following substituted -

"(4) The contribution surcharge is an amount equal to 5 per cent of the amount of the arrears."

10. **Authority to give notice to defaulter and approved trustee to inform Authority of non-payment**

Section 136 is amended -

(a) in subsection (5), by repealing "first payment-period or any subsequent payment-period, must, by written notice given within 7" and substituting "payment period must, by written notice given within 10";

(b) by repealing subsection (7).

11. **Approved trustee to check calculations of arrears and contribution surcharge**

Section 137(2) is amended by repealing "before the end of the first payment-period or relevant subsequent payment-period, as the case may be" and substituting "as soon as is practicable".

**12. Participating employer to notify trustee of certain information**

Section 143(2) is amended -

- (a) in paragraph (b), by repealing "employer," and substituting "employer; and";
- (b) by adding -
  - "(c) the employer's name as shown in the participation certificate issued under section 124 to the employer,".

**13. Transfer of accrued benefits of member of employer sponsored scheme**

Section 145 is amended -

- (a) in subsection (6), by adding "casual" after "employment of the";
- (b) in subsection (7)(a), by adding "casual" after "following the";
- (c) by adding -
  - "(7A) The former employer must in respect of a relevant employee (other than a casual employee) -
    - (a) in the remittance statement that the former employer is required to lodge with the approved trustee of the employer sponsored scheme concerned immediately following the employee's cessation of

employment; or

- (b) by written notice given to the approved trustee of the employer sponsored scheme concerned no later than the date on which that remittance statement is required to be lodged,

inform the approved trustee -

- (c) of the employee's cessation of employment; and
- (d) of the date on which the employment ceased." ;

- (d) by adding -

"(9) This section shall not apply to or in relation to an election mentioned in section 12A(6A) and (6B) of the Ordinance or any concomitant transfer of the accrued benefits of an employee."

**14. Transfer of accrued benefits of member of master trust scheme or industry scheme (other than a casual employee who is a member of an industry scheme)**

Section 146 is amended -

- (a) in subsection (8), by adding "casual" after "employment of the";

(b) in subsection (9)(a), by adding "casual" after "following the";

(c) by adding -

"(9A) The former employer must in respect of a relevant employee (other than a casual employee) -

(a) in the remittance statement that the former employer is required to lodge with the approved trustee of the registered scheme concerned immediately following the employee's cessation of employment; or

(b) by written notice given to the approved trustee of the registered scheme concerned no later than the date on which that remittance statement is required to be lodged,

inform the approved trustee -

(c) of the employee's cessation of employment; and

(d) of the date on which the employment ceased." ;

(d) by adding -

“(12) This section shall not apply to or in relation to an election mentioned in section 12A(6A) and (6B) of the Ordinance or any concomitant transfer of the accrued benefits of an employee.”.

15. **Transfer by participating employer of employee's accrued benefits**

Section 150(b) and (c) is repealed and the following substituted -

“(b) the restructuring of the first-mentioned scheme under section 34B of the Ordinance; or”.

16. **Section added**

The following is added -

“150A. **Transfer of accrued benefits where section 12A(6A) and (6B) of the Ordinance is applicable**

Where section 12A(6A) and (6B) of the Ordinance is applicable, the new employer may only elect to have the employee's accrued benefits in the scheme transferred to a registered scheme -

- (a) in which the new employer is a participant; and
- (b) by giving written notice of the election to the trustee of the last-mentioned scheme.”.

17. **Claim for payment on ground of total incapacity**

Section 164 is amended by adding -

"(5) If a claim is made by a scheme member of a registered scheme who was, immediately before becoming totally incapacitated, unemployed, the approved trustee of the scheme may pay the member's accrued benefits to that member, but only if the member -

- (a) can provide the trustee with a medical certificate, in a form specified or approved by the Authority and issued by a registered medical practitioner, certifying that the member is permanently unfit to perform the kind of work specified in the certificate for a reason so specified; and
- (b) satisfies the trustee that the member was last engaged in that kind of work under a contract of employment before becoming totally incapacitated; and
- (c) can provide the trustee with -
  - (i) subject to subparagraph (ii), a letter from the member's last employer certifying that that contract of employment for that particular kind of work has been terminated;
  - (ii) if the member is unable to comply with subparagraph (i) or has been unemployed for more than 7 years, a statutory declaration, in a form approved by the Authority, stating that that contract of employment for that particular kind of work has been terminated.

(6) If a claim is made by a scheme member of a registered scheme who, immediately before becoming totally incapacitated, ceased to be a self-employed person, the approved trustee of the scheme may pay the member's accrued benefits to that member, but only if the member -

- (a) can provide the trustee with a medical certificate, in a form specified or approved by the Authority and issued by a registered medical practitioner, certifying that the member is permanently unfit to perform the kind of work specified in the certificate for a reason so specified; and
- (b) satisfies the trustee that the member was last engaged in that kind of work as a self-employed person before becoming totally incapacitated."

**18. Approved trustee to notify scheme member of entitlement**

Section 172 is amended -

- (a) in subsection (10), by repealing paragraphs (a) and (b) and substituting -

"(a) listing the names of all the scheme members -

- (i) who have unclaimed benefits in the scheme as at the end of the relevant financial period; and
- (ii) whose names have not previously been listed in accordance with this paragraph; and

(b) inviting those members and other persons to lodge a claim for payment of those benefits, and provide particulars of the scheme members included in that notice to the Authority on or before such publication of the notice.";

(b) by adding -

"(11) The Authority must establish and maintain a register -

(a) of scheme members of a registered scheme who have unclaimed benefits in the scheme; and

(b) in such form, and containing such information, as the Authority may determine.

(12) The register is to be kept at the head office of the Authority in Hong Kong and is to be available for inspection -

(a) by members of the public without charge during the ordinary business hours of the Authority;

(b) to enable a person who may be entitled to benefits in a registered scheme to ascertain whether he has unclaimed benefits in the scheme.".

19. **How notices etc. are to be served,  
etc. for purposes of the Ordinance**

Section 206 is amended -

(a) in subsection (1) -

(i) by repealing "or served for the purposes of the Ordinance may be given or served" and substituting ", served or lodged for the purposes of the Ordinance shall be given, served or lodged";

(ii) in paragraphs (a)(ii), (b)(ii) and (c)(ii), by repealing "registered post" and substituting "post";

(b) in subsection (2), by repealing "or served" and substituting ", served or lodged";

(c) by repealing subsection (3) and substituting -

"(3) In relation to a document given under section 55 or 124 -

(a) any reference to "post" in subsection (1) means registered post;

(b) neither subsection (2) nor (4) applies.";

(d) by adding -

"(4) A notice or other document to be given, served or lodged for the purposes of the Ordinance shall, in the absence of evidence to the contrary, be deemed to be so given, served or lodged if it

is sent by post to the last known place of business or residence of the person -

(a) to whom the notice or other document is required to be given or served;

(b) with whom the notice or document is required to be lodged,

as the case may be.".

## 20. Investment of Scheme Funds

Schedule 1 is amended -

(a) in section 1(1), by adding -

"collective investment scheme" (集體投資計劃) has the meaning assigned to it by the Securities and Futures Ordinance (5 of 2002);

"index-tracking collective investment scheme" (緊貼指數集體投資計劃) means a collective investment scheme which has the sole investment objective of tracking a particular market index;"

(b) in section 2, by repealing subsection (3) and substituting -

"(3) Notwithstanding subsections (1) and (2), where part or all of the funds of a constituent fund are invested in accordance with section 6(b)(i), (ii) or (iii), then subsections (1) and

(2) shall not apply to that part or all of the funds of the constituent fund so invested.

(4) Notwithstanding subsections (1) and (2), where a constituent fund has the sole investment objective of tracking a particular market index, then those subsections shall not apply to the constituent fund if the approved trustee has the prior approval of the Authority that those subsections shall not apply to the constituent fund.

(5) In granting an approval mentioned in subsection (4), the Authority may impose such conditions with respect to the constituent fund concerned as the Authority considers appropriate.

(6) Where the Authority -

(a) has decided that it is appropriate to -

(i) amend any conditions imposed under subsection (5) or this subsection with respect to a constituent fund; or

(ii) impose conditions with respect to a constituent fund; and

(b) has given to the approved trustee concerned -

(i) not less than 30 days' advance notice of its decision, specifying its grounds; and

(ii) an opportunity to make written representations as to why the conditions should not be amended or imposed,

then the Authority may, by written notice served on the approved trustee -

(c) amend any conditions imposed under subsection (5) or this subsection with respect to the constituent fund; or

(d) impose conditions with respect to the constituent fund.”;

(c) by repealing section 6(b) and substituting -

“(b) in -

(i) an approved pooled investment fund -

(A) that satisfies the requirements of Part IV of this Schedule; and

(B) the underlying investments of which would comply with this Part if references in this Part to "constituent fund" were references to "approved pooled investment fund";

(ii) an index-tracking collective investment scheme approved by the Authority for the purposes of section 6A of this Schedule; or

(iii) a combination of an approved pooled investment fund falling within subparagraph (i) and an index-tracking collective investment scheme falling within subparagraph (ii).";

(d) by adding -

**"6A. Permissible investments:  
index-tracking collective  
investment scheme**

(1) The funds of a constituent fund may be invested in an index-tracking collective investment scheme which is -

(a) either -

(i) authorized by the Securities and Futures Commission, within the

meaning of the  
Securities and Futures  
Ordinance (5 of 2002);  
or

(ii) listed on a recognized  
stock exchange  
approved by the  
Authority for the  
purposes of this  
section; and

(b) approved by the Authority for the  
purposes of this section.”;

(e) in section 7(2)(d), by repealing “so listed” and  
substituting “listed on that exchange or another  
recognized stock exchange”;

(f) by repealing section 8(1) and substituting -

“(1) The funds of a constituent fund may be  
invested in -

- (a) fully-paid up shares listed on  
recognized stock exchange other  
than the shares of a company which  
is a collective investment  
scheme; or
- (b) an index-tracking collective  
investment scheme.”;

(g) in section 9(a), by repealing "the exchange" and substituting "that exchange or another recognized stock exchange";

(h) in section 11, by adding -

"(3A) Notwithstanding subsection (3), where a constituent fund has a total market value of less than \$8,000,000, then that subsection shall not apply to the constituent fund if the approved trustee has the prior approval of the Authority that that subsection shall not apply to the constituent fund.

(3B) In granting an approval mentioned in subsection (3A), the Authority may impose such conditions with respect to the constituent fund concerned as the Authority considers appropriate.

(3C) Where the Authority -

(a) has decided that it is appropriate to -

(i) amend any conditions imposed under subsection (3B) or this subsection with respect to a constituent fund; or

(ii) impose conditions with respect to a constituent fund; and

(b) has given to the approved trustee concerned -

(i) not less than 30 days' advance notice of its decision, specifying its grounds; and

(ii) an opportunity to make written representations as to why the conditions should not be amended or imposed,

then the Authority may, by written notice served on the approved trustee -

(c) amend any conditions imposed under subsection (3B) or this subsection with respect to the constituent fund; or

(d) impose conditions with respect to the constituent fund.";

(i) by repealing section 15(3).

## 21. **Contents of custodial agreements**

Schedule 3 is amended, in section 5(b), by repealing "any" and substituting "direct".

**Mandatory Provident Fund Schemes (Exemption) Regulation**

**22. Interpretation**

Section 2 of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) is amended -

(a) in subsection (1), by adding -

“past service liability” (過去服務負債) has the same meaning as in section 2 of the relevant Ordinance;

“vested benefit” (既有利益) has the same meaning as in section 2 of the relevant Ordinance;”;

(b) by adding -

“(4) Where an existing member of an ORSO exempted scheme, or of an ORSO registered scheme, (“original scheme”) the subject of an exemption certificate is transferred to another scheme (“new scheme”) where -

(a) the new scheme is -

(i) an ORSO registered scheme the subject of an exemption certificate;  
and

(ii) the subject of a certificate referred to in section 14(1);

(b) the new scheme is -

- (i) operated by the same employer; and
- (ii) an ORSO exempted scheme, or an ORSO registered scheme, the subject of an exemption certificate;

(c) the new scheme is -

- (i) operated by a different employer in the circumstances specified in section 70A(6)(a) of the relevant Ordinance; and
- (ii) an ORSO exempted scheme, or an ORSO registered scheme, the subject of an exemption certificate; or

(d) the new scheme is -

- (i) operated by an associated company in the circumstances specified in section 70A(6)(b) of the

relevant Ordinance;

and

- (ii) an ORSO exempted scheme,  
or an ORSO registered  
scheme, the subject of  
an exemption  
certificate,

then the member shall be treated as an existing member of the new scheme if -

- (e) no benefits have been or are to be paid under the original scheme to the existing member as a result of the transfer;
- (f) an amount not less than the past service liability of the existing member has been or is to be transferred from the original scheme to the new scheme as a result of the transfer;
- (g) the value of vested benefit and the value of past service liability in respect of benefit entitlement conferred by or to be conferred by the new scheme to the existing member at the time immediately after the transfer will not, as a result of the transfer, be less

than the value of vested benefit and the value of past service liability respectively of the member under the original scheme immediately before the transfer;

(h) the period of employment of the existing member during which he is a member of the original scheme is recognized under the new scheme; and

(i) in any case where section 70A(6)(a) or (b) of the relevant Ordinance is applicable to the transfer, that section has been complied with and no benefits held in an occupational retirement scheme in respect of the person have been paid in accordance with section 70A(6) of the relevant Ordinance to the person or the previous owner or the company concerned."

**23. Mandatory conditions**

Schedule 2 is amended, in section 5(1)(b) -

- (a) by adding "or an industry scheme" after "trust scheme";
- (b) by repealing "from other registered schemes".

**Mandatory Provident Fund Schemes (Fees) Regulation**

**24. Fees prescribed for the purposes of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)**

Schedule 1 to the Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485 sub. leg.) is amended by repealing items 6 and 7 and substituting -

"6. 34B Fee payable when an application is lodged with the Authority in respect of the restructuring of a registered scheme Nil".

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

**25. Scales of amounts of contributions to be made in respect of casual employees**

The Schedule to the Mandatory Provident Fund Schemes (Contributions for Casual Employees) Order (Cap. 485 sub. leg.) is amended by repealing "\$130.00" wherever it appears and substituting "\$160.00".

**Mandatory Provident Fund Schemes Rules**

**26. Sections substituted**

Sections 4 and 5 of the Mandatory Provident Fund Schemes Rules (Cap. 485 sub. leg.) are repealed and the following substituted -

**"4. Application for Authority's consent to restructuring of registered schemes under section 34B of Ordinance**

(1) For the purposes of section 34B of the Ordinance, an application for the consent of the Authority to the restructuring of registered schemes must contain the following information -

- (a) the name and registration number of each of the registered schemes proposed to be restructured;
- (b) the name, correspondence address and telephone number of the contact person in relation to the proposed restructuring;
- (c) reasons for the proposed restructuring;
- (d) the number of the following persons in each of the registered schemes proposed to be restructured -
  - (i) participating employers;
  - (ii) members who are relevant employees;
  - (iii) members who are self-employed persons;
  - (iv) members holding preserved accounts;
- (e) a statement as to whether or not consent of the participating employers or scheme members to the restructuring must be obtained under the governing rules of those schemes and, if so, a statement specifying when and how the consent must be obtained under those rules;
- (f) a statement as to whether or not the cost of the restructuring is required to be borne (whether wholly or partly) by the participating employers

or scheme members under the governing rules of those schemes and, if so, a statement specifying how that cost is to be paid under those rules; and

(g) a restructuring proposal that complies with subsection (2).

(2) The restructuring proposal must -

- (a) specify the proposed effective date of the restructuring;
- (b) specify the proposed date on which notice of the restructuring is to be given to the participating employers and scheme members;
- (c) include a detailed plan on how to carry out the restructuring;
- (d) include a chart showing how the registered schemes concerned and the constituent funds of those schemes are to be restructured;
- (e) specify the arrangement for transferring the accrued benefits of scheme members to the transferee scheme;
- (f) specify the arrangement for compensating scheme members for any potential loss of accrued benefits due to the restructuring, and the mechanism (if any) for handling the grievances of scheme members arising from the restructuring;
- (g) include an estimation of the cost of the restructuring; and

(h) specify by whom that cost is proposed to be borne and, if borne (whether wholly or partly) by the participating employers or scheme members, the amount they have to bear and how it is to be paid.

(3) The application must also be accompanied by the following documents -

- (a) the drafts of all documents necessary for effecting the restructuring and, where any new scheme is to be established, for establishing the new scheme, and where any transferee scheme is an existing scheme, for amending the existing scheme as appropriate;
- (b) the draft notice to the participating employers and scheme members seeking their consent to the restructuring, if applicable; and
- (c) the draft notice to the participating employers and scheme members informing them of the restructuring, their rights, the actions that they need to take and all related arrangements."

#### **Explanatory Memorandum**

The principal object of this Bill is to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("the Ordinance") and its subsidiary legislation in order to make a number of technical amendments to its provisions which practical experience of the operation of the Ordinance and its subsidiary legislation has revealed are necessary or desirable.

2. Clause 3 amends section 7 to add a new section 7(1A) to require an employer of a relevant employee to, inter alia, take all practicable steps to ensure that, after the employee becomes a member of a registered scheme, the employee continues to be a member of a registered scheme throughout his employment. Clause 11 makes a consequential amendment to section 43B(3) to impose a daily penalty on an employer for a continuing failure to comply with the requirement after conviction for the offence of failing to comply with the requirement.

3. Clause 4(a) repeals and replaces section 7A(7) to specify that the period during which an employer must not make a deduction under section 7A(2)(b) from the employee's relevant income will be determined by reference to the employee's wage period. Clause 4(b) consequentially amends the definition of "contribution period" in section 7A(10) and adds a definition of "wage period" to that section.

4. Clause 5 adds a new section 10A to require the Mandatory Provident Fund Schemes Authority ("the Authority") to, not less than once in every 4 years, conduct a review of the minimum level of relevant income and the maximum level of relevant income to ascertain whether or not there are grounds to amend Schedules 2 and 3 to the Ordinance.

5. Clause 6(b) amends section 12 to add new section 12(2A) and (2B). New section 12(2A) prohibits interest derived from the placing on deposit of certain contributions or benefits from vesting, pursuant to section 12(2), in the members of a registered scheme. However, new section 12(2B) requires the approved trustee of the scheme to retain that interest for the payment of any administrative expenses of the scheme, or as income of the scheme, for the benefit of scheme members.

6. Clause 7 amends section 12A to add new section 12A(6A) and (6B).

New section 12A(6A) specifies the circumstances in which a new employer of an employee, who has assumed the liability of the previous employer for severance payment or long service payment in respect of the employee, may elect to have the employee's accrued benefits in a registered scheme in which the previous employer participated transferred to another registered scheme nominated by the new employer. New section 12A(6B) modifies the operation of section 7A in relation to such an election. Sections 3, 13(d) and 14(d) of the Schedule to the Bill make consequential amendments to sections 78, 145 and 146 respectively of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.) ("the General Regulation"). Section 16 of the Schedule to the Bill adds a new section 150A to the General Regulation to specify how the new employer may exercise his power to make the election.

7. Clause 9 amends section 34B to provide for the restructuring of a registered scheme or schemes by the merger or division of the scheme or schemes, as opposed to the present wording of section 34B which only provides for the merger of registered schemes. Clause 10 repeals section 34C, as that section is, in effect, incorporated into the amended section 34B. The consent of the Authority is still required to any proposed restructuring. Sections 24 and 26 of the Schedule to the Bill make consequential amendments to the Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485 sub. leg.) and the Mandatory Provident Fund Schemes Rules (Cap. 485 sub. leg.) respectively.

8. Clause 12 repeals and replaces Schedule 2 ("Minimum Level of Relevant Income per Contribution Period") and Schedule 3 ("Maximum Level of Relevant Income per Contribution Period").

9. Clause 14 sets out the transitional provisions necessitated by

the Bill.

10. The Schedule to the Bill amends the General Regulation to, inter alia -

- (a) repeal and replace section 62(1) to modify the reporting requirements imposed on an approved trustee of a registered scheme where the trustee becomes aware of the occurrence of an event of a significant nature in respect of the scheme (section 1);
- (b) repeal and replace section 71(1)(c) to modify the criteria which qualify certain entities to be delegates of a custodian of scheme assets (section 2);
- (c) amend the definition of "contribution day" in section 122(1) and repeal and replace section 122(3) to alter the basis for the calculation of the day on or before which an employer must pay an employee's mandatory contribution (section 6);
- (d) add a new section 164(5) and (6) to specify modified or new criteria which a member must meet in order to be paid accrued benefits where the member claims to be totally incapacitated, unemployed and not a self-employed person immediately before becoming totally incapacitated (section 17);
- (e) add a new section 172(11) and (12) to require the Authority to establish and maintain a register of scheme members of a registered scheme who have unclaimed benefits in the scheme (section 18(b));
- (f) specify the basis on which scheme funds may be invested

in collective investment schemes (including index-tracking collective investment schemes)(section 20(a), (b), (c), (d) and (f)); and

(g) specify the basis on which a constituent fund with a total market value of less than \$8,000,000 need not comply with section 11(3) of Schedule 1 to the General Regulation (section 20(h)).

11. Section 22(b) of the Schedule amends section 2 of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) by adding a new section 2(4) to specify the circumstances where an existing member of an ORSO exempted scheme or ORSO registered scheme who has been transferred to another scheme may be treated as an existing member of the other scheme.

**MEMBERSHIP OF MPF SCHEMES OPERATION REVIEW COMMITTEE  
(as at 1 March 2002)**

|  |                       |                     |
|--|-----------------------|---------------------|
| <b>Chairman</b>  | Mr. Ronald ARCULLI    |                     |
| <b>MPFA</b>  |                       |                     |
| Non-Executive Director                                 | Mr. LEE Kai-ming      |                     |
| Chief Operating Officer<br>(Corporate Affairs)         | Mrs. Diana CHAN       |                     |
| Executive Director<br>(Policy and Development)         | Mr. Raymond TAM       |                     |
|  | <u>Representative</u> | <u>Alternate</u>    |
| <b>Employee Representatives</b>                        |                       |                     |
| The Federation of Hong Kong<br>& Kowloon Labour Unions | Mr. LEE Kai-ming      | Mr. SIN Kai Ming    |
| Hong Kong Federation of<br>Trade Unions                | Mr. TING Kam Yuen     | Mr. C.K. KWONG      |
| Hong Kong Confederation of<br>Trade Unions             | Ms. CHEUNG Lai Ha     | Mr. WONG Ying Yu    |
| <b>Employer Representatives</b>                        |                       |                     |
| Employers' Federation of<br>Hong Kong                  | Ms. Mary TUNG         | Mrs. Jackie MA      |
| Hong Kong Institute of<br>Human Resource Management    | Mr. LAI Kam Tong      | Ms. Edith LEE       |
| <b>MPF Industry</b>                                    |                       |                     |
| Hong Kong Trustees'<br>Association                     | Mr. Nick CROUCH       | Mr. Alastair MURRAY |
| The Hong Kong Association<br>of Banks                  | Mr. Mark BAIN         | Mr. Sean FRASER     |
| The Hong Kong Federation of<br>Insurers                | Mr. Edward LAU        | Mr. Terry LO        |
| Hong Kong Investment Funds<br>Association              | Mr. Douglas NAISMITH  | Ms. Edith NGAN      |

The Law Society of Hong  
Kong

Mr. Duncan ABATE

Mr. Paul TAN

**HKSAR Government**  
Financial Services Bureau

Miss Susie HO

Miss Patricia SO

Labour Department

Mrs. Jennie CHOR

**Secretary**

Ms. Gabriella YEE  
(Senior Manager, MPFA)

**MINIMUM AND MAXIMUM LEVELS OF RELEVANT INCOME FOR  
MANDATORY PROVIDENT FUND CONTRIBUTION**

**Review and Proposals by the MPFA**

The Mandatory Provident Funds Scheme Authority (MPFA) has considered the matter and made the following proposals :-

- a) to review the minimum and maximum relevant income levels for MPF contribution concurrently every four years;
- b) to adopt 50% of the monthly median income as the basis to adjust the minimum relevant income level;
- c) to adopt monthly employment earnings at 90th percentile of the monthly employment earnings distribution as the basis to adjust the maximum relevant income level; and
- d) to raise the minimum relevant income level to \$5,000 per month in accordance with (b) above, and given the current economic conditions, to retain the current maximum relevant income level of \$20,000 per month until the next review.

The proposals are set out in greater detail in the following paragraphs.

Frequency of review

2. Adjustments to the minimum and maximum relevant income levels for MPF contributions will affect the level of retirement benefits ultimately enjoyed by employees and self-employed persons (SEPs). Frequent and ad-hoc revisions would result in disruptions to the smooth operation of the MPF System, as all the payroll and MPF-related systems operated by trustees and employers etc. will have to be adjusted every time. Furthermore, they have cost implications and such costs are likely to be passed on to employees and SEPs as well as employers.

3. On balance, MPFA has proposed that both the minimum and maximum relevant income levels be reviewed concurrently, and revised as appropriate, at intervals of four years.

*Adjustment basis for the minimum and maximum relevant income levels*

4. Various indicators reflecting changes in the price or wage levels can be used in adjusting the minimum and maximum relevant income levels. Indicators such as consumer price index, nominal wage index, scheme coverage, median income, projected median income have been considered by MPFA. For consumer price index, past experience shows that it tends to increase more slowly than earnings. If adopted as the adjustment basis, it would result in an increasing proportion of the lower income workers being required to make contributions. The nominal wage index covers wage movement of sample employees in selected industries only, instead of the entire working population. For projected median income, it would be difficult to make accurate projection.

5. After careful consideration, the adjustment bases recommended by MPFA are -

(a) Minimum relevant income level

The setting of the minimum relevant income level should strike a reasonable balance between the need to reduce the financial burden on lower income workers, and the need for accruing financial benefits for retirement protection. MPFA proposed to continue to adopt 50% of the median income as the minimum relevant income level. The use of median income is easily understood and relatively more objective, and will, in the long run, be more resilient to changes in economic conditions. Besides, the median income reflects not only the effect of price changes but also the overall wage trend.

(b) Maximum relevant income level

MPFA has recommended to continue to set the maximum level in order to cover employees with monthly earnings up to the 90 percentile of overall employment earnings distribution. Such basis has the advantage of being easier to understand. Moreover, it has not led to any problems since its adoption in 1995.

*Recommended adjustment to the minimum level of relevant income*

6. According to the latest statistics and following the mechanism referred to in paragraph 5(a) above, the minimum level of relevant income is proposed to be adjusted from the existing \$4,000 to \$5,000 per month.

7. The maximum level of relevant income should be increased to \$30,000 per month, if the adjustment mechanism referred to in paragraph 5(b) above were to be strictly followed. However, given the current economic situation and to avoid imposing additional burden on employers / employees, MPFA has proposed to maintain the maximum level at \$20,000 per month. According to the estimation of MPFA, many employees in the income bands between \$20,000 and \$30,000 per month are members of MPF schemes receiving voluntary contributions on top of mandatory contributions. Some are exempted from the MPFSO altogether (e.g. teachers of subvented schools, civil servants on pension terms, overseas employees having joined other retirement schemes, members of exempted retirement schemes, etc.). Therefore, keeping the maximum level of relevant income at \$20,000 per month would unlikely affect the retirement protection for employees in these income bands. The matter will be re-considered in the next review of the concerned income levels.