立法會
*Legislative Council*

LC Paper No. LS83/01-02

**Paper for the House Committee Meeting on 26 April 2002**

# Legal Service Division Report on Mandatory Provident Fund Schemes (Amendment) Bill 2002

## I. SUMMARY

| | |
|---|---|
| 1. **Objects of the Bill** | To revise the minimum level of relevant income for Mandatory Provident Fund ("MPF") contributions and to introduce a number of miscellaneous amendments to the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and its subsidiary legislation to enhance efficiency and effectiveness of the MPF System. |
| 2. **Comments** | (a) The Bill seeks to implement the proposals made by the MPF Schemes Operation Review Committee to amend the MPF legislation to improve the operation and regulation of the MPF System.<br><br>(b) The more important proposals are as follows:<br>(i) Revising the minimum level of relevant income for MPF contributions from $4,000 to $5,000 per month;<br>(ii) Introducing measures to strengthen enforcement of the MPF System; and<br>(iii) Relaxing restrictions on investment of MPF funds. |
| 3. **Public Consultation** | All the major proposed amendments are supported by the Mandatory Provident Fund Schemes Authority and the MPF Advisory Committee. |
| 4. **Consultation with LegCo Panel(s)/Committee(s)** | The policy aspects of the Bill were discussed at the meeting of the Panel on Financial Affairs on 7 January 2002. |
| 5. **Conclusion** | (a) Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill.<br><br>(b) Members may wish to consider whether a Bills Committee is necessary as the proposed amendments may affect employers, employees, self-employed persons as well as service providers. |

## II. REPORT

**Objects of the Bill**

To revise the minimum level of relevant income for Mandatory Provident Fund ("MPF") contributions and to introduce a number of miscellaneous amendments to the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and its subsidiary legislation to enhance efficiency and effectiveness of the MPF System.

**LegCo Brief Reference**

2. G4/49C(2002)V dated 17 April 2002 issued by the Financial Services Bureau.

**Date of First Reading**

3. 24 April 2002.

**Comments**

4. The MPF Schemes Operation Review Committee ("the Review Committee") was set up by the Mandatory Provident Fund Schemes Authority ("MPFA") in August 2001 to review the operational aspects of the MPF system. It comprises representatives of employer and employee bodies, service providers, professional organizations, Government and MPFA. The Bill seeks to implement the proposals made by the Review Committee to amend the Mandatory Provident Fund Schemes Ordinance ("the Ordinance") with a view to improving the operation and regulation of the MPF System.

5. The more important proposals in the Bill relating to improving the operation of the Ordinance and implementation of the MPF System are:

(a) to revise the minimum level of relevant income for MPF contributions from 4,000 to $5,000 per month for employees remunerated on a monthly basis, and from $130 to $160 per day for employees remunerated more frequently than on a monthly basis;

(b) to require MPFA to conduct a review of the minimum and maximum levels of relevant income for the purposes of MPF contributions not less than once in every four years;

(c) to specify that the time from which a new employee is required to contribute to an MPF scheme will be determined by reference to the employee's wage period, having regard to the fact that some employees may have monthly or more frequent than monthly payroll while some may have less frequent than monthly payroll;

(d) to provide that a change of employer brought about by a change of business ownership and transfer between associated companies will not be treated as a change of employment for the purposes of MPF contributions in circumstances where the new employer has assumed the liability of the previous employer for severance payment or long service payment in respect of the employee; and

(e) to enable a scheme member who becomes totally incapacitated while being unemployed to claim his accrued benefits before reaching the retirement age.

6. To strengthen enforcement of the MPF System, the Bill proposes the following amendments:

(a) to require an employer to ensure that his employees will continue to be enrolled in an MPF scheme throughout their employment with the employer and to provide that failure of an employer to comply with this requirement is an offence;

(b) to provide that failure of an employer to enroll his employees into an MPF scheme is a continuing offence and to propose a daily penalty of $500 for each day on which the offence is continued; and

(c) to change the time limit for prosecuting an offence for non-enrolment in MPF schemes or non-payment of MPF contributions from 6 months after the occurrence of the offence to 6 months after the offence is discovered by, or comes to the notice of, MPFA.

7. The Bill also proposes amendments to the provisions on investment of funds contained in the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.) to provide wider choices of investment vehicles and to relax the restrictions on investment of funds. The effect of these proposed amendments is to:

(a) allow a 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) allow the funds of a constituent fund, with the prior approval of MPFA, to be invested up to 100% in an index-tracking collective investment scheme which is either authorized by the Securities and Futures Commission or listed on a recognized stock exchange approved by MPFA; and

(c) 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.

8. Other provisions of the Bill deal with consequential and miscellaneous technical amendments. These amendments relate to the service of notices or documents, restructuring of MPF schemes by merger or division of schemes, the notification requirement on the change of employer's names and measures streamlining the scheme administration.

9. If enacted, certain provisions of the Bill will come into operation on a day to be appointed by the Secretary for Financial Services by notice in the Gazette. These include the provisions on revision of the minimum level of relevant income for MPF contributions and the time from which a new employee should commence to contribute to an MPF scheme.

**Public consultation**

10. According to the LegCo Brief, all the major proposed amendments are supported by MPFA and the MPF Advisory Committee.

**Consultation with LegCo Panel(s)/Committee(s)**

11. When consulted on the legislative proposals on 7 January 2002, the Panel on Financial Affairs raised concern on a number of issues. These include the appropriateness of the proposed increase in the minimum level of relevant income for MPF contributions from $4,000 to $5,000 per month, the appropriateness of maintaining the maximum level of relevant income for MPF contributions at $20,000, the frequency of future reviews of the minimum and maximum levels of relevant income for MPF contributions and the effectiveness of the proposed amendments to strengthen protection for employees under the MPF System.

12. In response to these concerns, the Administration explained the basis and the rationale for the proposed adjustment to the minimum level, and retention of the maximum level, of relevant income for MPF contributions. The Administration clarified that the proposed amendments were based on the first phase of the work of the Review Committee, which would continue its review work covering a wider scope of issues relating to MPF schemes.

**Conclusion**

13. The Legal Service Division is still scrutinizing the legal and drafting aspects of the Bill. Meanwhile, Members may wish to consider whether a Bills Committee is necessary as the proposed amendments may affect employers, employees, self-employed persons as well as service providers.

Prepared by
FUNG Sau-kuen, Connie
Assistant Legal Adviser
Legislative Council Secretariat
23 April 2002