

立法會
Legislative Council

LC Paper No. LS73/05-06

**Paper for the House Committee Meeting
on 2 June 2006**

**Legal Service Division Report on
Proposed Resolution under section 46 of the
Mandatory Provident Fund Schemes Ordinance (Cap. 485)**

The Secretary for Financial Services and the Treasury has given notice to move a motion at the Legislative Council meeting to be held on 14 June 2006. The purpose of the motion is to seek the Legislative Council's approval of the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2006 ("the Amendment Regulation") made by the Chief Executive in Council under section 46 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

2. Investment of Mandatory Provident Fund ("MPF") scheme funds is governed by Part V of and Schedule 1 ("the Schedule") to the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) ("the Regulation"). Under section 40 of the Regulation, the funds of a registered MPF scheme may be invested only in the investments permitted under Part V and the Schedule, and in accordance with that Part and that Schedule.

3. The Amendment Regulation seeks to amend the Regulation with a view to enhancing protection of scheme members' interests, improving operation of the investment regulations, enhancing flexibility of MPF investments, and removing undue restrictions on investment of MPF scheme funds. According to the draft speech of the Secretary for Financial Services and the Treasury, the proposed amendments are introduced following a series of reviews on the operation of the MPF legislation conducted by the MPF Schemes Operation Review Committee established by the Mandatory Provident Fund Schemes Authority ("MPFA"). In making these proposals, the Administration has considered the operational experience and the current situation of the financial markets.

4. Proposals which aim at enhancing protection of scheme members' interests and improving operation of the Regulation are summarized as follows:

- (a) in calculating the 10% limit on the total amount of funds that may be invested in securities and other permissible investments issued by any one

issuer, all investment instruments having values linked to one entity will be taken into account regardless of who the issuers are;

- (b) debt securities issued or guaranteed by any entity are to be aggregated in ascertaining whether the 10% investment limit is exceeded in relation to the entity;
- (c) the 10% limit on the total amount of funds that may be invested in securities and other permissible investments issued by any one issuer is not to apply to pure deposits;
- (d) a constituent fund will not be allowed to acquire partly-paid up shares and shares of collective investment schemes listed on non-approved stock exchanges;
- (e) deposits for the purpose of the Regulation will not include debt securities and convertible debt securities to reflect the different risk nature between pure deposits and other types of investments;
- (f) deposits may be made with non-Hong Kong branches of authorized financial institution (“AFIs”) incorporated outside Hong Kong provided that those AFIs satisfy certain credit rating requirements;
- (g) currency forward contracts may be acquired from non-Hong Kong branches of foreign incorporated AFIs provided that those AFIs satisfy certain credit rating requirements; and
- (h) the funds of a constituent fund may be applied for acquiring a stock futures contract only if the securities to which the contract relates are themselves permissible investments under the Schedule.

5. To enhance flexibility and remove unnecessary restrictions on MPF investments, the Amendment Regulation proposes to:

- (a) expand the scope of investment types to cover securities listed on an approved stock exchange that are approved, or of a kind approved by MPFA;
- (b) facilitate acquisition of specified kinds of securities that are to be listed on an approved stock exchange or an approved futures exchange, irrespective of whether they are offered to the public for subscription or not, and to remove the restriction that the total value of securities to be subscribed for must not exceed the amount of money held on deposit for the constituent fund;

- (c) allow acquisition of currency forward contracts and certificates of deposits from eligible overseas banks; and
- (d) confer on MPFA the power to allow a constituent fund with a total market value under HK\$8 million to deposit more than 25% of its funds with a group of associated AFIs or eligible overseas banks.

6. Other amendments seek to improve the drafting of the definitions of certain terms in the Regulation, and rationalize the references to “stock exchange” in various sections of the Schedule which were not picked up as consequential amendments when the Securities and Futures Ordinance (Cap. 571) was enacted in 2002.

7. Members may refer to the LegCo Brief (File Ref: G4/51C(2006) Pt.9) issued by the Financial Services Branch, Financial Services and the Treasury Bureau on 17 May 2006 for background information.

8. According to the LegCo Brief, the proposed amendments are supported by MPFA, the MPF Schemes Advisory Committee (“the Advisory Committee”) and the MPF Schemes Operation Review Committee (“the Review Committee”). The membership of the Advisory Committee includes employer and employee representatives, whilst that of the Review Committee additionally comprises representatives of service providers. The Labour Advisory Board was briefed on 28 February 2006, and its members did not raise any objection to the proposals.

9. The Panel on Financial Affairs (“the FA Panel”) was briefed on the proposals covered by the Amendment Regulation at its meeting on 6 February 2006. Members of the Panel took note of the purposes and scope of the proposed amendments. The FA Panel supported in principle the proposed amendments. Members may wish to refer to the minutes of the FA Panel meeting on 6 February 2006 (paragraphs 61 to 72 of LC Paper No. CB(1)1178/05-06) for details.

10. If the proposed resolution is passed, the Amendment regulation will come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

11. No difficulties relating to the legal and drafting aspects of the proposed resolution and the Amendment Regulation have been identified.

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30 May 2006
LS/R/15/05-06