

立法會
Legislative Council

LC Paper No. LS81/10-11

**Paper for the House Committee Meeting
on 17 June 2011**

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

The Secretary for Financial Services and the Treasury intends to move two motions at a meeting of the Legislative Council on 22 June 2011 to seek the Legislative Council's approval to adjust the minimum relevant income (Min RI) and maximum relevant income (Max RI) specified respectively in Schedules 2 and 3 to the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (the Ordinance).

2. Under section 48 of the Ordinance, the Chief Executive in Council may, by notice published in the Gazette, amend the Schedules to the Ordinance and amendments made to Schedules 1 to 8 to the Ordinance shall be subject to the approval of the Legislative Council. Two amendment notices have been made by the Chief Executive in Council under section 48 of the Ordinance and Legislative Council's approval is proposed to be approved respectively under the two resolutions. The Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011 amends Schedule 2 to the Ordinance to adjust the minimum level of relevant income (Min RI) for contribution purpose under the Ordinance (Amendment of Schedule 2 Notice). The Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2011 amends Schedule 3 to the Ordinance to adjust the maximum level of relevant income (Max RI) for contribution purpose under the Ordinance (Amendment of Schedule 3 Notice).

3. The Administration proposed that the Amendment of Schedule 2 Notice is to come into operation on 1 November 2011 and the Amendment of Schedule 3 Notice is to come into operation on 1 June 2012. The respective amendments made to the two schedules shall apply in relation to a contribution period that begins on or after the respective commencement dates.

4. The Administration proposed the following adjustments-

(a) Proposed Min RI under the Amendment of Schedule 2 Notice

The Min RI is proposed to be increased from HK\$5,000 per month to HK\$6,500 per month by making reference to the hourly SMW rate and the median monthly working hours. According to the Administration, the proposed figure also reflects the broad base consensus of the public.

(b) Proposed Max RI under the Amendment of Schedule 3 Notice

The Max RI is proposed to be increased from HK\$20,000 to HK\$25,000 per month. According to the Administration, the figure is the result of balancing the view that the Max RI has not been amended for the last 10 years against comments from employers' associations expressing their views that they are digesting the cost implications of the SMW and absorbing the increase in Max RI would be difficult.

(c) Proposed increase in Daily Income Level (DIL) under the above 2 respective Amendment Notices

DIL prescribed under the Ordinance is computed by converting the Min RI (under Schedule 2) and Max RI (under Schedule 3) respectively with reference to a number-of-days basis. According to the Administration, prior to the SMW, a 30-day basis has been assumed in converting the Min and Max RIs respectively into daily rate, which leads to a daily income level of HK\$160 per day (for Min RI) and HK\$650 per day (for Max RI). The proposed daily income level in relation to Min RI is calculated by referring to a 26-day basis and applying the proposed Min RI of HK\$6,500 per month to the same, upon which the new figure converted from the Min RI to daily income level is reached ($\text{HK\$6500} / 26 \text{ days} = \text{HK\$250}$). Similar computation is applied to arriving at the new figure (HK\$830) in relation to Max RI by converting the proposed Max RI with reference to a 30-day-basis arrangement.

Consequential Amendments

5. According to the Administration, consequential amendments are required to be made to the Mandatory Provident Fund Schemes (Contributions for Casual Employees) Order (Cap. 485 sub leg. E) (the Order) and Schedule 3B to the Inland Revenue Ordinance (Cap. 112) (IRO). The Order prescribes the corresponding amount of MPF contributions to be made in respect of casual employees of industry schemes under different income bands with reference to Min and Max RIs respectively. The commencement of the amendments to the Order will tie in with the implementation of the two Amendment Notices. Further, a bill will be introduced in the coming legislative year to amend Schedule 3B to the Inland Revenue Ordinance (Cap. 112) (IRO). The Schedule prescribes the maximum amount of deductions allowed under section 16AA of IRO for the mandatory contributions to MPF schemes made by a self-employed person for calculating the profits tax payable by that person and under section 26G of IRO for contributions to recognised occupational retirement schemes and mandatory contributions to MPF schemes made by employees for calculation of tax payable under salaries tax or personal assessment. The maximum amount of deduction is proposed to be increased from HK\$12,000 to HK\$15,000 upon the increase of Max RI from HK\$20,000 to HK\$25,000.

6. Members may refer to the LegCo Brief issued by the Financial Services and the Treasury Bureau in June 2011 (File Ref: G6/9/44/1C (2011) Pt.9) for further information.

Consultation with LegCo

7. The Panel on Financial Affairs discussed on 21 February 2011 the findings of the review on the minimum and maximum relevant income levels for Mandatory Provident Fund (MPF) contributions conducted by the Mandatory Provident Fund Schemes Authority. The Panel noted the following findings of the review -

- (a) Based on the statutory adjustment factors, the minimum and maximum levels of relevant income might be adjusted from \$5,000 to \$5,500 per month and from \$20,000 to \$30,000 per month respectively; and
- (b) Upon taking other relevant factors and views gathered in consultation into account, there would appear to be general support for increases in the two levels as set out in (a) above. Regarding the minimum level of relevant income, some stakeholders suggested an increase beyond \$5,500. As for the maximum level

of relevant income, some stakeholders suggested a phased approach.

8. A number of Panel members and non-Panel Members joining the discussion expressed the view that the minimum level of relevant income for MPF contributions should take into account the effects of the statutory minimum wage and make reference to the income criteria of other relevant schemes such as the Work Incentive Transport Subsidy Scheme. Members opined that an increase beyond \$5,500 should be considered.

9. While some Members expressed support for increasing the maximum level of relevant income to \$30,000, there was a concern that the increase might add to the burden of small and medium sized enterprises which were already affected by the implementation of statutory minimum wage.

10. The Panel held a special meeting on 20 April 2011 to receive views from concerned parties and members of the public. The Panel noted that based on the views expressed by deputations and given in the written submissions received, there was a general consensus that the minimum relevant income level for MPF contributions should be revised to about \$6,500. As for the maximum relevant income level, the views were rather diverse regarding the extent of increase.

11. Noting that some low-income workers would become obliged to make MPF contributions after the implementation of the statutory minimum wage on 1 May 2011, Members urged the Administration to expedite the legislative work to revise the minimum and maximum relevant income levels for MPF contributions, and where necessary to take forward the upward revision of the minimum relevant income level in the first place.

12. No difficulties in the legal or drafting aspects of the two amendment notices have been identified.

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