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Paper for the House Committee

**Subcommittee on Mandatory Provident Fund Schemes Ordinance
(Amendment of Schedule 2) Notice 2011**

Purpose

This paper reports on the deliberations of the Subcommittee on Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2011 (the Amendment Notice).

Background

2. Under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (MPFSO), an employer and an employee must, unless exempted, each contribute 5% of the employee's relevant income to a Mandatory Provident Fund (MPF) scheme as mandatory contribution. Similarly, a self-employed person (SEP) must contribute 5% of his relevant income to an MPF scheme. However, if the relevant income of the employee or SEP concerned is less than the prescribed Minimum Relevant Income Level (Min RI), he is not required to make mandatory contribution himself, although his employer (in case of an employee) still has to make mandatory contribution for him. The purpose of setting a Min RI for MPF mandatory contributions is to lessen the financial burden of MPF contributions on low-paid employees and SEPs. For a relevant employee or SEP whose relevant income is above the prescribed Maximum Relevant Income Level (Max RI), both he and his employer (in case of an employee) are not required to make mandatory contribution in respect of the excess relevant income. The current prescribed Min RI and Max RI are \$5,000 and \$20,000 per month respectively.

3. Section 10A of MPFSO requires the Mandatory Provident Fund Schemes Authority (MPFA) to conduct a review of Min RI and Max RI at least once in every four years to ascertain whether there are grounds to amend the

levels. The latest review of Min RI and Max RI conducted by MPFA in 2010 has revealed that, according to the statutory factors¹, consideration may be given to increasing Min RI from \$5,000 to \$5,500, and Max RI from \$20,000 to \$30,000. MPFA has also suggested that the Administration may consider other relevant factors, such as the Statutory Minimum Wage (SMW). The Administration has consulted the Panel on Financial Affairs (the Panel) in February 2011, and further gauged the views of the public at a public hearing convened by the Panel in April 2011. Taking into account the policy objectives of Min RI and Max RI, the implementation of SMW on the income levels of the low income group, and the views received, the Administration has proposed to increase Min RI from \$5,000 to \$6,500, and Max RI from \$20,000 to \$25,000 per month.

The Amendment Notice

4. The Amendment Notice seeks to –

- (a) replace the existing Min RI of \$5,000 per month for employees (not being casual employees who are members of an industry scheme) who are remunerated on a monthly basis with \$6,500 per month;
- (b) replace the existing Min RI of \$160 per day with \$250 per day for employees (not being casual employees who are members of an industry scheme) who are remunerated more frequently than on a monthly basis, as well as casual employees who are members of an industry scheme;
- (c) replace the existing Min RI of \$5,000 per month for employees (not being casual employees who are members of an industry scheme) who are remunerated less frequently than on a monthly basis with \$6,500 per month, the amount as prorated; and
- (d) replace the existing Min RI of \$5,000 per month or \$60,000 per year for SEPs with \$6,500 per month or \$78,000 per year.

The Administration has given notice to move a motion on the Amendment Notice at the Council meeting on 29 June 2011. The Amendment Notice, if passed, will come into operation on 1 November 2011.

¹ The statutory factors in section 10A are –

- (a) for Min RI, 50% of the monthly median employment earnings prevailing at the time of the review as compiled from the General Household Survey (“GHS”) conducted by the Census and Statistics Department (“C&SD”); and
- (b) for Max RI, the monthly employment earnings at 90th percentile of the monthly employment earnings distribution prevailing at the time of the review as compiled from the GHS conducted by C&SD.

The Subcommittee

5. At the House Committee meeting held on 17 June 2011, Members agreed to form a Subcommittee to study the Amendment Notice. Under the chairmanship of Hon WONG Ting-kwong, the Subcommittee has held one meeting to discuss with the Administration. The membership list of the Subcommittee is in **Appendix I**.

Deliberations of the Subcommittee

6. In the course of deliberation of the Amendment Notice, members have examined issues relating to the Min RI level, implementation schedule, and review mechanism.

The Minimum Relevant Income level

7. A member has enquired about the basis upon which the proposed Min RI of \$6,500 per month is arrived at, and whether the proposed Min RI has gone through proper public consultation. The Administration has advised that when the findings of the latest review of Min RI and Max RI were presented to the Panel in February 2011, some Panel members and non-Panel Members attending the meeting stressed the need for the Administration and MPFA to take into account the effects of SMW in setting Min RI as otherwise the actual take-home pay of some low-income earners might be reduced. To further gauge views on the Min RI and Max RI levels, the Panel convened a public hearing in April 2011 to invite views from stakeholders, including political parties, trustee organizations, labour unions, employer associations etc. There was a general consensus that the Min RI level should be increased to about \$6,500 per month. Taking into the views collated, the Administration has made reference to, among others, the hourly SMW rate and the median monthly working hours in determining Min RI. For example, if the SMW rate is applied to the median working hours of the four low paying sectors identified by the Provisional Minimum Wage Commission (which is 8.5 hours), the monthly reference is \$6,188. The Administration therefore holds the view that the proposed increase in Min RI from \$5,000 to \$6,500 is acceptable, as this also reflects the broad-based consensus of the public.

Implementation schedule

8. The Subcommittee notes that the Amendment Notice provides that Min RI will come into operation on 1 November 2011.

9. As the objective of Min RI is to lessen the financial burden of MPF contribution on low-paid employees, members have suggested that efforts should be made to expedite the implementation of Min RI. According to the Administration, trustees and employers should be given reasonable time to adjust their systems to the new Min RI. In fact, in the earlier consultation with employers' groups conducted by MPFA, some employers have requested for a much longer period than proposed. Some members however have pointed out that trustees should have the responsibility and financial capability to adjust their systems within a very short time, given that this is not the first time when Min RI is revised. The Administration has emphasized the need for trustees to draw up user requirements and test the new systems regardless of whether the adjustments involved are simple or complicated in nature. Apart from adjusting their own systems, trustees may also need to assist some 25% of employers who are currently using the systems provided by trustees. As for the remaining 75% employers who are using their own systems, they would need to engage service providers in the market to adjust their systems. There may not be adequate supply of service providers at the same time. Given the many tasks involved and the views received, the Administration and MPFA consider the proposed commencement date strikes a reasonable balance, adding that a seven-month preparation period has been given in the last adjustment exercise in 2002.

10. While acknowledging that MPFA will step up publicity on the proposed increase in Min RI, some members are concerned that there may be cases where employers of small businesses, such as eateries, are not aware of the new arrangement and continue to use the obsolete Min RI for employees' contribution. These members have enquired whether these employers have committed an offence, and whether MPFA has put in place a refund mechanism to return the excess contributions to the employees. MPFA has advised that as the case does not involve failure to make MPF contribution, this should not constitute an offence under MPFSO. While the employers concerned may inadvertently contravene the labour law, they may not be subject to prosecution so long as the act is not carried out deliberately or without reasonable excuse. MPFA has further advised that, upon detection of an overpayment of contributions made by employers, the usual practice of trustees is to follow up with the employers concerned on the appropriate refund arrangement. In the case of casual employees who are members of industry schemes, MPFA would discuss with the trustees of the industry schemes on the arrangement of refunding the excess contributions directly to the casual employees concerned. Subcommittee members agree that the latter arrangement is a better alternative as trustees should have the correspondence addresses of casual employees of an industry scheme. To enhance awareness of the new Min RI, some members have suggested MPFA to obtain a list of licensed eateries from the Food and Environmental Hygiene Department, and issue letters to alert them of the new arrangement.

Review mechanism

11. As the implementation of the SMW regime will have direct impact on the earnings of low-income groups and possible rippling effect on the earnings of the rest of the workforce, the Subcommittee welcomes MPFA's plan to conduct a comprehensive review of the statutory adjustment mechanism under MPFSO. Subcommittee members however have emphasized the need for MPFA to expedite the review to tie in with the review of SMW.

Amendments to the Amendment Notice

12. The Administration and the Subcommittee have not proposed any amendment to the Amendment Notice. As the deadline for giving notice to amend the Amendment Notice has already expired, leave from the President would have to be obtained before any amendment can be moved.

Advice sought

13. Members are requested to note the deliberations of the Subcommittee.

**Subcommittee on Mandatory Provident Fund Schemes Ordinance
(Amendment of Schedule 2) Notice 2011**

Membership list

Chairman Hon WONG Ting-kwong, BBS, JP

Members Hon LEE Cheuk-yan
Hon LI Fung-ying, SBS, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon IP Wai-ming, MH
Hon IP Kwok-him, GBS, JP
Hon Alan LEONG Kah-kit, SC

(Total : 8 Members)

Clerk Miss Becky YU

Legal Adviser Miss Evelyn LEE

Date 23 June 2011