立法會
Legislative Council

LC Paper No. CB(3) 742/11-12

Ref. : CB(3)/M/OR

Tel : 3919 3300

Date : 10 May 2012

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 30 May 2012

Proposed resolution under the Mandatory Provident Fund Schemes Ordinance

I forward for Members' consideration a proposed resolution which the Secretary for Financial Services and the Treasury will move at the Council meeting of 30 May 2012 under section 46 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485). The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The speech, in both Chinese and English, which the Secretary will deliver when moving the proposed resolution is also attached.

(Mrs Justina LAM)
for Clerk to the Legislative Council

Encl.

Mandatory Provident Fund Schemes Ordinance

Resolution

(Under section 46 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485))

Resolved that the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2012, made by the Chief Executive in Council on 8 May 2012, be approved.

Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2012

(Made by the Chief Executive in Council under section 46 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) subject to the approval of the Legislative Council)

1. Mandatory Provident Fund Schemes (General) Regulation amended

The Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended as set out in sections 2 to 5.

2. Section 189 amended (approved trustee to pay levy to administrator of compensation fund)

Section 189—

Repeal

"The approved"

Substitute

"Subject to section 191A, the approved".

3. Section 191 amended (Authority to publish rate of levy and other particulars)

Section 191(1)(b), after "levy"—

Add

"in accordance with section 189".

4. Sections 191A and 191B added

Part XIV, after section 191—

Add

"191A. Exemption of approved trustee from payment of compensation fund levy

(1) If a report prepared under section 184(3)(b) for a financial year of the compensation fund shows that the net asset value of the fund exceeds $1.4 billion as at the end of that financial year, the Authority must by notice (***exemption notice***) published in the Gazette exempt the approved trustee of a registered scheme from paying the levy in accordance with section 189 for—

(a) the financial period of the registered scheme beginning on or after a date specified in the exemption notice, which date must not be later than 2 months after publication of the exemption notice in the Gazette; and

(b) each subsequent financial period of the registered scheme.

(2) The exemption notice must be published in the Gazette as soon as practicable after a copy of the report is given to the Authority under section 184(4) or, if the Authority is the administrator, after the report is delivered to the administrator under section 184(3)(c).

(3) The Authority is not required to grant the exemption under subsection (1) if the Authority has reason to believe that the net asset value of the compensation fund would likely fall below $1 billion as at or before the end of the next financial year of the fund and has consulted the Financial Secretary on its intention of not granting the exemption.

(4) An exemption granted under subsection (1) remains in force until it is revoked under section 191B(1).

(5) If an exemption granted under subsection (1) is in force, the Authority is not required to grant another exemption under that subsection.

(6) An exemption notice is not subsidiary legislation.

191B. Revocation of exemption

(1) If a report prepared under section 184(3)(b) for a financial year of the compensation fund shows that the net asset value of the fund is below $1 billion as at the end of that financial year, the Authority must by notice (***revocation notice***) published in the Gazette revoke the exemption granted under section 191A(1).

(2) The revocation notice must be published in the Gazette as soon as practicable after a copy of the report is given to the Authority under section 184(4) or, if the Authority is the administrator, after the report is delivered to the administrator under section 184(3)(c).

(3) The Authority is not required to revoke the exemption under subsection (1) if the Authority has reason to believe that the net asset value of the compensation fund would likely exceed $1.4 billion as at or before the end of the next financial year of the fund and has consulted the Financial Secretary on its intention of not revoking the exemption.

(4) If the exemption is revoked under subsection (1), the approved trustee of a registered scheme must pay the levy in accordance with section 189 for—

(a) the financial period of the registered scheme beginning on or after a date specified in the revocation notice, which date must not be later than 2 months after publication of the revocation notice in the Gazette; and

(b) each subsequent financial period of the registered scheme.

(5) The revocation of the exemption does not revive the obligation to pay any levy not payable under the exemption.

(6) A revocation notice is not subsidiary legislation.".

5. Schedule 1 amended (investment of scheme funds)

(1) Schedule 1, Chinese text, section 1(1), definition of ***認購權證***—

Repeal the full stop

Substitute a semicolon.

(2) Schedule 1, Chinese text, section 1(1), definition of ***緊貼指數集體投資計劃***—

Repeal the semicolon

Substitute a full stop.

Clerk to the Executive Council

COUNCIL CHAMBER

8 MAY 2012

Explanatory Note

1. This Regulation amends the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) (***the principal Regulation***) to provide that—

   (a) the Mandatory Provident Fund Schemes Authority (***the Authority***) must exempt the approved trustee of a registered scheme from paying the compensation fund levy if the auditor's report for a financial year of the fund shows that the net asset value of the fund exceeds $1.4 billion but the Authority is not required to grant the exemption if it has reason to believe that the net asset value of the fund would likely fall below $1 billion as at or before the end of the next financial year of the fund and has consulted the Financial Secretary (new section 191A added by section 4); and

   (b) the Authority must revoke the exemption granted under the new section 191A if the auditor's report for a financial year of the fund shows that net asset value of the fund is below $1 billion but the Authority is not required to revoke the exemption if it has reason to believe that the net asset value of the fund would likely exceed $1.4 billion as at or before the end of the next financial year of the fund and has consulted the Financial Secretary (new section 191B added by section 4).

2. The Regulation also contains a few technical amendments to the principal Regulation.

DRAFT

Legislative Council Meeting on 30 May 2012

Speech of the Secretary for Financial Services and the Treasury for moving the motion for approval of the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2012 under the Mandatory Provident Fund Schemes Ordinance

President,

I move that the motion, as printed on the Agenda, be passed.

2. The motion seeks to amend the Mandatory Provident Fund Schemes (General) Regulation ("General Regulation") to introduce the proposed mechanism for suspension and resumption of levy for the Mandatory Provident Fund Compensation Fund ("Compensation Fund").

3. The Compensation Fund was set up under section 17(1) of the Mandatory Provident Fund Schemes Ordinance ("MPFSO"). Its purpose is to compensate scheme members for losses of their accrued benefits that are attributable to misfeasance or illegal conduct committed by trustees approved by the Mandatory Provident Fund Schemes Authority ("MPFA") or other persons concerned with the administration of those schemes, when the latter are unable to do so.

4. The Government provided a one-off seed money of $600 million when the Compensation Fund was set up. Since the implementation of the Mandatory Provident Fund ("MPF") System in 2000, MPFA has been collecting an annual levy of 0.03% of the net asset value of MPF schemes. Currently, the Compensation Fund has accumulated to over $1.6 billion.

5. Taking into account the regulatory system and strict requirements under the MPFSO, the assessment of MPFA is that the chance of claims against the Compensation Fund should be very remote. In fact, since the implementation of the MPF System, no claim for compensation has ever been received. Hence, we consider it prudent to suspend collection of the levy when the Compensation Fund accumulates to a reasonable level and resume collection when it drops below the pre-determined level. Such an approach seeks to avoid continuation of levy collection from scheme members unnecessarily. It is also consistent with the approach for the

Investor Compensation Fund in the securities sector and the Deposit Protection Scheme Fund in the banking sector.

6. Due to the lack of local or overseas MPF claim history for actuarial modeling, in determining the optimal reserve level for the Compensation Fund, MPFA has made reference to the more likely risk that may give rise to claims against the Compensation Fund. Under the MPFSO, generally speaking, individual MPF funds cannot invest more than 10% of their total assets into investment products of a single issuer. MPFA has recommended that the floor level and maximum level of reserve be set at $1 billion and $1.4 billion respectively taking into account the impact of non-compliance with the said diversification requirement. MPFA will keep under review the optimal reserve levels to ensure their continued effectiveness.

7. To ensure that MPFA can make timely response to changing market situations, we propose to put in place a mechanism for resuming and suspending levy modeling on the approach adopted for the Investor Compensation Fund in the securities sector. We accordingly propose that MPFA be empowered to order suspension and resumption of the levy if the audited net asset value of the Compensation Fund as at the end of a financial year reaches above the maximum level ($ 1.4 billion) or falls below the floor level ($1 billion) respectively. In addition, we also propose that, after consultation with the Financial Secretary, MPFA can decide not to order suspension or resumption of the levy in special circumstances, mainly when MPFA expects some developments in the near future that may cause relatively significant fluctuations to the reserve level of the Compensation Fund.

8. President, the current Compensation Fund levy of 0.03% is paid from MPF scheme assets. If the proposal is approved, the Compensation Fund can suspend levy with effect from the third quarter of 2012. On the basis of the scheme asset level of $356 billion as at end December 2011, the suspension of levy can save for scheme members about $100 million per year which will be employed direct for their retirement protection.

9. I beg the motion be passed to implement the proposal to introduce the mechanism for the suspension and resumption of levy for the Compensation Fund.

Financial Services Branch
Financial Services and the Treasury Bureau
9 May 2012