

LEGISLATIVE COUNCIL BRIEF

**MANDATORY PROVIDENT FUND SCHEMES ORDINANCE
(CHAPTER 485)**

**MANDATORY PROVIDENT FUND
SCHEMES ORDINANCE
(AMENDMENT OF SCHEDULE 2) NOTICE 2013
AND
MANDATORY PROVIDENT FUND
SCHEMES ORDINANCE
(AMENDMENT OF SCHEDULE 3) NOTICE 2013**

INTRODUCTION

At the meeting of the Executive Council on 28 May 2013, the Council ADVISED and the Chief Executive ORDERED that, the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2013, at **Annex A**, and the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2013, at **Annex B**, (collectively referred to as “the Amendment Notices”), should be made under section 48 of the Mandatory Provident Fund Schemes Ordinance (Cap 485) (“MPFSO”) and introduced into the Legislative Council (“LegCo”) for approval.

JUSTIFICATIONS

Rationale of Stipulating a Minimum Relevant Income Level (“Min RI”) and a Maximum Relevant Income Level (“Max RI”)

2. The purpose of setting Min RI for Mandatory Provident Fund (“MPF”) mandatory contributions is to lessen the financial burden of MPF contributions on lower-paid employees and self-employed persons (“SEPs”). As for the stipulation of Max RI, it reflects the policy objective of encouraging the workforce to save for basic retirement needs. Higher-income employees and SEPs may decide whether to top up their retirement savings through voluntary contributions or other investment.

Review by the Mandatory Provident Fund Schemes Authority (“MPFA”)

3. Section 10A of the MPFSO requires that the MPFA conducts a review on Min RI and Max RI not less than once in every four years. The MPFA conducted a review in 2010 in accordance with the mechanism stipulated in the Ordinance which builds on the monthly employment earnings data compiled from the General Household Survey conducted by the Census and Statistics Department. During the last adjustment exercise, there were views that the adjustment mechanism of Min RI should be updated having regard to the implementation of the Statutory Minimum Wage (“SMW”) on 1 May 2011. The existing Min RI was set with reference to, among other things, the first SMW rate of \$28. Currently, the MPFA is reviewing the statutory adjustment mechanism (“the review”) and pending its completion, the Authority has conducted an interim review of the relevant income levels in light of the increase of SMW rate to \$30 effective from 1 May 2013. The MPFA proposed to increase Min RI and Max RI to \$7,100 and \$30,000 respectively, and the two levels are to take effect at the same time approximately three months from passage of the necessary resolutions by LegCo.

The Recommended Levels

Min RI

4. Pending the review, we have adopted the recommendation of the MPFA to follow similar methodology for adjusting Min RI in 2011, and made reference to the new SMW rate (\$30), the latest statistics on the median daily working hours of the four low-paying sectors (9 hours) and assuming a 26-working day per month arrangement. On this basis, we recommend that the monthly Min RI be increased from \$6,500 to \$7,100. Again, following the practice adopted in the last amendment, we also recommend assuming a 26-day basis in converting the monthly Min RI into a daily income level for application to casual employees who are members of an industry schemes or employees remunerated more frequently than on a monthly basis. Accordingly, we recommend a daily Min RI of \$280.

5. With the increase of Min RI from \$6,500 to \$7,100, and based on Q3 2012 data, an additional 61 700 employees/SEPs (or a total of 283 400) will be excluded from making mandatory contributions. It should be noted that the figures are related to Q3 2012 data and are not expected to reflect the impact of the new SMW rate (\$30) effective from 1 May 2013. By way of

reference, a Min RI pitched at \$6,500 represented the 20th percentile of the monthly employment earnings as at the last review, while that for the recommended level of \$7,100 would represent the 17th percentile as at Q3 2012. The economic impact of increasing Min RI to \$7,100 is set out at **Annex C**.

Max RI

6. MPFA's 2010 review findings based on Q3 2010 data showed that consideration should be given to increasing Max RI from \$20,000 to \$30,000. The last increase to \$25,000, instead of \$30,000, effective from June 2012, has balanced the views of different sectors of the community, including those of some employers' associations which claimed that business cost had gone up considerably due to the implementation of SMW. We accept the recommendation of the MPFA to take the opportunity to increase Max RI to \$30,000 to achieve a greater coverage of income distributions, noting also that the 90th percentile of income intended in the MPFSO has reached \$35,000 as at Q3 2012. Similar to Min RI (para. 4 above), the MPFSO also specifies Max RI in a daily income level. We recommend continuing to adopt a 30-day basis in the conversion, pending outcome of the review. Accordingly, we recommend a daily Max RI of \$1,000.

7. With the increase of Max RI to \$30,000, and based on Q3 2012 data, an additional 377 200 employees (and their employers) and 71 600 SEPs will be required to make additional mandatory contribution. The economic impact of increasing Max RI to \$30,000 is set out at **Annex C**.

Implementation Schedule

8. Taking into account that the new SMW has become effective from 1 May 2013 and the time required for the adjustment of employer's payroll system and trustee's MPF scheme administration system by employers and trustees and for publicity by the MPFA, we recommend that the revised Min RI takes effect approximately three months from passage of the resolution to amend Schedule 2 by LegCo, i.e. 1 November 2013. We also recommend that the revised Max RI be put into force on 1 June 2014 i.e. two years after last adjustment became effective. While the different implementation timetables for Min RI and Max RI may necessitate extra efforts in changing the systems and procedures of trustees and employers, we consider it a reasonable arrangement to address the concerns of employers and employees, including the concern over increased business cost caused by MPF mandatory

contributions. In this connection, it is worth noting that no increase in Max RI has been introduced for the period from 2000 to 2011 and that last adjustments to Min RI and Max RI also adopted different commencement dates¹.

CONSEQUENTIAL AMENDMENTS

9. The Mandatory Provident Fund Schemes (Contributions for Casual Employees) Order (Cap. 485 sub. leg. E) (“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 RI and Max RI. The purpose of the Order is to provide easy reference to employers and employees. The MPFA will make consequential amendments to the Order which are of technical nature. The commencement of the amendments will tie in with the implementation of the Amendment Notices.

10. Section 16AA of the Inland Revenue Ordinance (Cap. 112) (“IRO”) provides for the deduction of mandatory contributions by SEPs for the purpose of calculating their tax payable under Profits Tax. Section 26G of the IRO provides for the deduction of contributions to recognized occupational retirement schemes and mandatory contributions to MPF Schemes by employees for the purposes of calculating tax payable under Salaries Tax or Personal Assessment. The maximum amount of allowable deduction under section 16AA or 26G of the IRO for each year of assessment is prescribed in Schedule 3B to the IRO, at \$15,000 (i.e. \$25,000 x 5% x 12 months) for the year of assessment 2013/14 and onwards. Subject to the implementation of an increase of Max RI to \$30,000 per month with effect from 1 June 2014, we aim to introduce an amendment bill into LegCo within the legislative year 2013-14 to amend Schedule 3B to the IRO to increase the maximum deduction to \$17,500 (i.e. \$25,000 x 5% x 2 months + \$30,000 x 5% x 10 months) for the year of assessment 2014/15 and \$18,000 (i.e. \$30,000 x 5% x 12 months) for

¹ Past and proposed adjustments to Min RI and Max RI :

Effective	Min RI (\$)	Max RI (\$)
12/2000	4,000	20,000
2/2003	5,000	-
11/2011	6,500	-
6/2012	-	25,000
(Proposed)11/2013	7,100	-
(Proposed) 6/2014	-	30,000

the year of assessment 2015/16 and onwards.

**MANDATORY PROVIDENT FUND SCHEMES ORDINANCE
(AMENDMENT OF SCHEDULE 2) NOTICE 2013 AND MANDATORY
PROVIDENT FUND SCHEMES ORDINANCE (AMENDMENT OF
SCHEDULE 3) NOTICE 2013**

11. The main provisions of the two Amendment Notices are set out as follows –

(a) Section 3 of the Amendment Notice at **Annex A** will –

- (i) replace the existing Min RI of \$6,500 per month for employees (not being casual employees who are members of an industry scheme) who are remunerated on a monthly basis with \$7,100 per month;
- (ii) replace the existing Min RI of \$250 per day with \$280 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, or casual employees who are members of an industry scheme;
- (iii) replace the existing Min RI of \$6,500 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 \$7,100 per month, the amount as prorated; and
- (iv) replace the existing Min RI of \$6,500 per month or \$78,000 per year for SEPs with \$7,100 per month or \$85,200 per year;

(b) Section 3 of the Amendment Notice at **Annex B** will –

- (i) replace the existing Max RI of \$25,000 per month for employees (not being casual employees who are members of an industry scheme) who are remunerated on a monthly basis with \$30,000 per month;
- (ii) replace the existing Max RI of \$830 per day with \$1,000 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, or casual employees who are members of an industry scheme;

- (iii) replace the existing Max RI of \$25,000 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 \$30,000 per month, the amount as prorated; and
- (iv) replace the existing Max RI of \$25,000 per month or \$300,000 per year for SEPs with \$30,000 per month or \$360,000 per year.

LEGISLATIVE TIMETABLE

12. The Secretary for Financial Services and the Treasury will give notice to LegCo on 29 May 2013 with a view to moving the Amendment Notices at the LegCo meeting on 19 June 2013 for approval. This is to enable implementation of the revised Min RI on 1 November 2013 and the revised Max RI on 1 June 2014.

IMPLICATIONS OF THE PROPOSAL

13. The legislative proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Amendment Notices will not affect the current binding effect of the MPFSO. The proposal itself has no civil service, productivity, environmental and significant sustainability implications. The financial, family as well as economic implications are set out at **Annex C**.

PUBLIC CONSULTATION

14. The MPFA consulted the MPF Schemes Advisory Committee on 15 January 2013 and the Labour Advisory Board (“LAB”) on 16 January 2013 on its review findings. LAB generally supported the proposed increase of Min RI and Max RI. However, LAB’s views on when the revised Max RI should take effect were quite diverse. Broadly speaking, employer representatives and an employee representative were against early implementation on account of the fact that the last adjustment was introduced

not more than a year ago and also of the skepticism towards the MPF System. The Financial Services and the Treasury Bureau and the MPFA consulted the Legislative Council Panel on Financial Affairs (“FA Panel”) on MPFA’s proposals on 4 March 2013. While the FA Panel supported the proposed increase of Min RI and Max RI, as well as their simultaneous commencement, only a handful of members were present. We have subsequently approached members representing the interests of different sectors. Our recommendations seek to balance their views.

PUBLICITY

15. We will issue a LegCo brief and a press release on 29 May 2013. A spokesman will be available to answer media and public enquiries.

BACKGROUND

16. The MPFSO provides that unless exempted, employers and employees must each contribute 5% of the employees’ relevant income to an MPF scheme as mandatory contributions, while SEPs must similarly contribute 5% of their relevant income. However, if the relevant income of the employees or SEPs concerned is less than Min RI, they are not required to make MPF contributions themselves, although their employers (in the case of employees) still have to make MPF contributions for them. For relevant employees or SEPs whose relevant income is above Max RI, both they and their employers (in the case of employees) are not required to make mandatory contributions in respect of the excess relevant income. The current Min RI and Max RI are \$6,500 and \$25,000, effective from 1 November 2011 and 1 June 2012 respectively.

ENQUIRIES

17. Enquiries in relation to the LegCo Brief should be directed to Mr Ronald HO, Assistant Secretary for Financial Services and the Treasury (Financial Services) at 3655 5695.

Financial Services and the Treasury Bureau
29 May 2013

Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 2) Notice 2013

(Made by the Chief Executive in Council under section 48 of the
Mandatory Provident Fund Schemes Ordinance (Cap. 485) subject to the
approval of the Legislative Council)

1. Commencement

This Notice comes into operation on 1 November 2013.

2. Mandatory Provident Fund Schemes Ordinance amended

The Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended as set out in section 3.

3. Schedule 2 amended (minimum level of relevant income per contribution period)

(1) Schedule 2, section 1(a)—

Repeal

“\$6,500”

Substitute

“\$7,100”.

(2) Schedule 2, section 1(b)—

Repeal

“\$250”

Substitute

“\$280”.

(3) Schedule 2, section 1(c)—

Repeal

“\$6,500”

Substitute

“\$7,100”.

(4) Schedule 2, section 2—

Repeal

“\$250”

Substitute

“\$280”.

(5) Schedule 2, section 3—

Repeal

“\$6,500”

Substitute

“\$7,100”.

(6) Schedule 2, section 3—

Repeal

“\$78,000”

Substitute


“\$85,200”.

4. Application of Schedule 2 as amended

Schedule 2 to the Mandatory Provident Fund Schemes Ordinance (Cap. 485) as amended by section 3 applies in relation to a contribution period that begins on or after the commencement date of that section.

Explanatory Note

The purpose of this Notice is to amend Schedule 2 to the Mandatory Provident Fund Schemes Ordinance (Cap. 485) so as to adjust the minimum level of relevant income for contribution purposes under that Ordinance.


Clerk to the Executive Council

COUNCIL CHAMBER

28th May, 2013

Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 3) Notice 2013

(Made by the Chief Executive in Council under section 48 of the
Mandatory Provident Fund Schemes Ordinance (Cap. 485) subject to the
approval of the Legislative Council)

1. **Commencement**
This Notice comes into operation on 1 June 2014.
2. **Mandatory Provident Fund Schemes Ordinance amended**
The Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended as set out in section 3.
3. **Schedule 3 amended (maximum level of relevant income per contribution period)**
 - (1) Schedule 3, section 1(a)—
Repeal
“\$25,000”
Substitute
“\$30,000”.
 - (2) Schedule 3, section 1(b)—
Repeal
“\$830”
Substitute
“\$1,000”.
 - (3) Schedule 3, section 1(c)—
Repeal

“\$25,000”

Substitute

“\$30,000”.

- (4) Schedule 3, section 2—

Repeal

“\$830”

Substitute

“\$1,000”.

- (5) Schedule 3, section 3—

Repeal

“\$25,000”

Substitute

“\$30,000”.

- (6) Schedule 3, section 3—

Repeal

“\$300,000”

Substitute

“\$360,000”.

4. **Application of Schedule 3 as amended**

Schedule 3 to the Mandatory Provident Fund Schemes Ordinance (Cap. 485) as amended by section 3 applies in relation to a contribution period that begins on or after the commencement date of that section.

Explanatory Note

The purpose of this Notice is to amend Schedule 3 to the Mandatory Provident Fund Schemes Ordinance (Cap. 485) so as to adjust the maximum level of relevant income for contribution purposes under that Ordinance.



Clerk to the Executive Council

COUNCIL CHAMBER

28th May, 2013

Financial, Family and Economic Implications

Financial Implications

Expenditure Implications

The proposal to increase the minimum level of relevant income (“Min RI”) from \$6,500 per month to \$7,100 per month will not affect the obligations of the Government as an employer.

2. As for the proposed increase of the maximum level of relevant income (“Max RI”) to \$30,000, the Government would need to make additional Mandatory Provident Fund (“MPF”) mandatory contributions in respect of Government employees earning a monthly income of \$25,000 or above and who currently only receive mandatory contributions from the Government. The Government has to make additional mandatory contributions for about 20 800 employees which amounts to around \$51 million per annum. Such increase would be “offset” by the reduction in gratuity payments for about 5 000 employees who are entitled to a contract gratuity. Thus, the net additional mandatory contributions to be made by the Government would be around \$37 million per annum.

3. Separately, subvented bodies with staff earning more than \$25,000 a month and receiving mandatory contributions from them under the MPF Scheme will be affected by the increase in Max RI. The additional monthly MPF contribution would be up to \$250 per head.

4. Likewise, contractors for Government services will be affected if they engage workers with monthly income above \$25,000 and receiving mandatory contributions from them under the MPF Scheme. Bureaux / departments concerned will handle relevant matters in accordance with contract terms.

Revenue Implications

5. Under the Inland Revenue Ordinance (Cap. 112) (“IRO”), contributions made by employers in respect of MPF schemes or recognized

occupational retirement schemes are deductible from the employers' chargeable profits to the extent that the total payments of which do not exceed 15% of the relevant employees' total emoluments for the period.

6. Also, under the IRO, employees and self-employed persons ("SEPs") can claim mandatory MPF contributions or contributions to recognized occupational retirement schemes as a concessionary deduction item for calculating tax payable under Salaries Tax, Profits Tax or Personal Assessment, as the case may be. If Max RI is adjusted to \$30,000 per month with effect from 1 June 2014, the corresponding maximum tax deduction should be increased from \$15,000 to \$17,500¹ for the year of assessment 2014/15 and to \$18,000 for the year of assessment 2015/16 and onwards.

7. If Max RI is adjusted to \$30,000 per month with effect from 1 June 2014 and the corresponding maximum tax reduction amount is increased to \$17,500 for the year of assessment 2014/15 and to \$18,000 for the year of assessment 2015/16 and onwards, the Inland Revenue Department's ballpark estimate is that the total amount of tax forgone under Salaries Tax, Profits Tax and Personal Assessment due to the adjustment in Max RI in 2014/15 and 2015/16 would be \$320 million and \$400 million respectively.

Family Implications

8. The increase of Min RI will lessen the financial burden of MPF contributions on lower-paid employees and SEPs with a monthly earning between \$6,500 and \$7,100, which means they will have more disposable income.

9. As for the increase of Max RI from \$25,000 to \$30,000, employees who earn more than \$25,000 would be required to pay an additional \$250 at most per month. We do not consider this adjustment will have any significant impact on the family of employees in this income band.

¹ $\$25,000 \times 5\% \times 2 + \$30,000 \times 5\% \times 10 = \$17,500$

Economic Implications

10. Based on the data of Q3 2012, the proposed adjustment of Min RI from \$6,500 to \$7,100 per month would exclude an additional 53 300 employees and 8 400 SEPs from contributing 5% of their income into MPF Schemes. The reduction in MPF contributions would amount to about \$21.09 million per month. There should be no impact on business operating cost as employers' share of MPF contributions will not be affected. On the other hand, the total disposable income of the employees and SEPs concerned would increase by \$21.09 million per month, or equivalent to around 0.6% of the estimated monthly contributions based on Q3 2012 data, which is likely to increase consumer spending. Given the relatively small amount involved, the effect is expected to be generally insignificant.

11. The proposed adjustment of Max RI from \$25,000 to \$30,000 per month would increase the monthly contributions of 377 200 employees (and their employers) and 71 600 SEPs. The increase in total MPF contributions is around \$194.03 million per month, or equivalent to around 5.4% of the estimated monthly contributions based on Q3 2012 data. Some small and medium enterprises indicate that this will further increase their costs. Given their relatively small number of high-paid employees and the maximum additional contribution required for each employee will not be more than \$250 per month, the impact should not be unmanageable. On the other hand, the proposal will reduce the disposable income of each affected relevant employee and SEP by up to \$250 per month. However, since the affected scheme members belong to the better-off group, we do not expect that it will seriously affect their expenditure pattern.

12. In longer term, the increase of Min RI will, on average, reduce the accrued benefits by \$213,500 per affected employee and \$217,200 per affected SEP respectively². This will reduce their accrued benefits upon retirement and may increase the pressure on welfare services in the long run. In contrast, the increase of Max RI will, on average, increase the accrued

² The estimations are based on the assumptions that the member concerned makes MPF contribution for 30 years and the MPF investment return (net of fees) is 3.4% per annum (i.e. the same rate as the annualized rate of return of MPF since the implementation of the MPF System in December 2000 to 30 September 2012).

benefits by \$294,000 per affected employee and \$148,600 per affected SEP respectively upon their retirement³.

13. The proposed adjustment of Min RI and Max RI will bring about a net increase of MPF contributions of \$172.94 million per month to the pool of retirement savings in MPF Schemes.

³ Same assumptions as per Footnote 2.