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Legislative Council Brief

Mandatory Provident Fund Schemes Ordinance
(Chapter 485)

MANDATORY PROVIDENT FUND SCHEMES (COMPENSATION CLAIMS) RULES

MANDATORY PROVIDENT FUND SCHEMES (WINDING UP) RULES

INTRODUCTION

On 22 November 2000, the Rules Committee constituted under section 55 of the High Court Ordinance (the Rules Committee) made –

- (a) the Mandatory Provident Fund Schemes (Compensation Claims) Rules (the Compensation Claims Rules, at Annex A); and
- (b) the Mandatory Provident Fund Schemes (Winding Up) Rules (the Winding Up Rules, at Annex B) .

Annex A

Annex B

BACKGROUND AND ARGUMENT

The Compensation Claims Rules

2. Section 17B(1) of the Mandatory Provident Fund Schemes Ordinance (MPFSO) provides that where the Mandatory Provident Fund Schemes Authority (MPFA) reasonably believes that a loss of accrued benefits in an MPF scheme has occurred and there is evidence of misfeasance or illegal conduct on the part of the trustee or a person concerned with the administration of the scheme and the matter has not been resolved to the satisfaction of the person who may have suffered the loss of accrued benefits, the MPFA must make an application to the Court of First Instance (the Court) to have the matter determined by it.

Subsection (8) further provides that the Rules Committee may make rules with respect to the making of applications to the Court.

3. The Compensation Rules sets out how an application under section 17B of the Ordinance should be made and the accompanying documents.

The Winding Up Rules

4. Section 34A of the MPFSO provides that except for voluntary winding up of an employer sponsored scheme, a registered MPF scheme may be wound up only by the Court on application made by the MPFA. Subsections (6) and (7) further provide that the winding up of a registered scheme is to be conducted in accordance with rules made by the Rules Committee.

5. For the purposes of section 34A, it is necessary to make rules to provide for the mode of making the application to the Court and the accompanying information.

THE RULES

The Compensation Claims Rules

6. **Rule 4** stipulates that the application by the MPFA must be made by originating summons, and be accompanied by a report containing the information as required under section 185 of the Mandatory Provident Fund Schemes (General) Regulation¹, an affidavit and other documents as may be required by the MPFSO.

7. **Rule 5** requires the MPFA to apply to the Court for directions on the party to and notice of the proceedings.

¹ Section 185 states that an application to the Court for the purpose of the Ordinance must specify, inter alia, the name of the registered scheme, the amount of loss of accrued benefits in the scheme due to misfeasance or illegal conduct, and particulars of the investigation of the claim.

The Winding Up Rules

8. **Rule 4** stipulates that the application by the MPFA must be made by originating summons, and be accompanied by an affidavit and a winding up proposal containing information, inter alia, on the scheme assets and scheme members, and proposals on other aspects of winding up.

9. **Rule 5** requires the MPFA to apply to Court for directions.

10. **Rule 6** provides that the Court may order the scheme to be wound up according to the winding up proposal or otherwise.

PUBLIC CONSULTATION

11. For the Compensation Claims Rules, as the Rules are technical in nature and cover procedural matters, no public consultation is considered necessary. For the Winding Up Rules, the relevant professional bodies such as the Law Society of Hong Kong and the Hong Kong Society of Accountants have been consulted and they are content with the Rules.

BASIC LAW IMPLICATIONS

12. The Department of Justice advises that the Rules are consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

13. The Department of Justice advises that the Rules have no human rights implications.

FINANCIAL AND STAFFING IMPLICATIONS

14. There are no financial or staffing implications for the Government.

ECONOMIC IMPLICATIONS

15. The Rules will be beneficial by helping to enhance the means of enforcement of the MPF Schemes and facilitate the working of the MPFSO. There is no economic implication.

PUBLICITY

16. The Rules will be published in the Gazette on 24 November 2000. The MPFA will publicize the Rules on its web-page.

LEGISLATIVE TIMETABLE

17. The Rules will be tabled at the Legislative Council sitting on 29 November 2000 for negative vetting.

ENQUIRIES

18. Enquiries on this Brief may be directed to Miss Patricia So, Assistant Secretary for Financial Services, at 2527 8166.

Financial Services Bureau

23 November 2000

MANDATORY PROVIDENT FUND SCHEMES (WINDING UP) RULES

(Made under section 34A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) by the Rules Committee constituted under section 55 of the High Court Ordinance (Cap. 4)

1. Commencement

These Rules shall come into operation on 1 December 2000.

2. Definition

In these Rules, "winding up application" (清盤申請) means an application mentioned in section 34A(1) of the Ordinance.

3. Rules of High Court apply to winding up applications

The Rules of the High Court (Cap. 4 sub. leg.) apply to a winding up application to the extent that those Rules are not inconsistent with these Rules.

4. Requirements as to making of winding up applications

- (1) A winding up application must be made by originating summons.
- (2) A winding up application must be accompanied by -
 - (a) an affidavit of a designated person as defined in section 6F(2) of the Ordinance; and
 - (b) a winding up proposal.
- (3) The affidavit referred to in subrule (2)(a) must -

- (a) state the grounds for making the winding up application; and
 - (b) verify the facts on which the application is based.
- (4) The winding up proposal referred to in subrule (2)(b) -
- (a) must specify whether or not there are any scheme assets in the registered scheme to which the application relates and, if there are, the proposed arrangements for transferring, realizing or disposing of those assets;
 - (b) must specify whether or not there are any remaining scheme members in that scheme and, if there are, the proposed arrangements for transferring existing accrued benefits of those members to another registered scheme and for making future contributions; and
 - (c) may contain proposals on other aspects of the winding up, including arrangements in a case where the Court does not appoint a liquidator.

5. Authority to apply to Court for directions

As soon as practicable after issuing an originating summons for a winding up application, the Authority must apply to the Court for directions, including, in particular, directions as to -

- (a) the filing of further evidence;
- (b) the service of process and notification of proceedings; and
- (c) the advertisement of the winding up application.

6. Court may order winding up of registered schemes

On the hearing of a winding up application, the Court may, if satisfied that the registered scheme concerned ought to be wound up, order that -

- (a) the scheme be wound up in accordance with the winding up proposal accompanying the application;
- (b) the proposal be modified in a manner specified by the Court and the scheme be wound up in accordance with the proposal so modified; or
- (c) the scheme be wound up in any other way specified by the Court.

Made this 22nd day of November 2000.

Andrew LI
The Hon. Chief Justice

The Hon. Mr. Justice
ROGERS VP

The Hon. Madam Justice
YUEN

Mr. Robert G. KOTEWALL

Mr. Michael BUNTING

Mr. Nicholas HUNSWORTH

Mr. Michael LINTERN-SMITH

Mr. Anthony L. M. WU

Mr. Jeremy S.C. POON
Secretary

Explanatory Note

These Rules make provisions in respect of an application by the Mandatory Provident Fund Schemes Authority to the Court of First Instance ("the Court") under section 34A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) for the winding up of a registered scheme.

2. Rule 2 sets out the definition of a "winding up application".
3. Rule 3 provides that the Rules of the High Court (Cap. 4 sub. leg.) apply to a winding up application unless inconsistent with these Rules.
4. Rule 4 specifies the mode of making a winding up application and the required supporting documents, including a winding up proposal.
5. Rule 5 requires the Authority to apply to the Court for directions.
6. Rule 6 provides that the Court may order the registered scheme concerned to be wound up according to the winding up proposal or otherwise.

Drafter: SHANDY LIU

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DRAFTING HISTORY TABLE

Draft no.	Release date	DocsOpen version
1 st draft	6.9.2000	32788v1
2 nd draft	29.9.2000	32788v2
3 rd draft	13.10.2000	32788v3
4 th draft	19.10.2000	32788v4
5 th draft	26.10.2000	32788v6
6 th draft	30.10.2000	32788v7
7 th draft	10.11.2000	32788v8
7 th (revised) draft	13.11.2000	32788v9
8 th draft	18.11.2000	32788v10

MANDATORY PROVIDENT FUND SCHEMES (COMPENSATION CLAIMS) RULES

MANDATORY PROVIDENT FUND SCHEMES (COMPENSATION CLAIMS) RULES

(Made under section 17B of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) by the Rules Committee constituted under section 55 of the High Court Ordinance (Cap. 4))

1. Commencement

These Rules shall come into operation on 1 December 2000.

2. Definition

In these Rules, “section 17B application” (第 17B 條申請) means an application mentioned in section 17B(1) of the Ordinance.

3. Rules of High Court apply to section 17B applications

The Rules of the High Court (Cap. 4 sub. leg.) apply to a section 17B application to the extent that those Rules are not inconsistent with these Rules.

4. Requirements as to making of section 17B applications

- (1) A section 17B application must be made by originating summons.
- (2) A section 17B application must be accompanied by -
 - (a) a report containing the information mentioned in section 185 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.); and
 - (b) an affidavit of a designated person as defined in section 6F(2) of the Ordinance.
- (3) The affidavit referred to in subrule (2)(b) must –
 - (a) verify the contents of the report referred to in subrule (2)(a); and

Explanatory Note

These Rules make provisions in respect of an application by the Mandatory Provident Fund Schemes Authority to the Court of First Instance (“the Court”) under section 17B of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) for determining matters relating to alleged losses of accrued benefits under registered schemes that are attributable to misfeasance or illegal conduct committed by persons concerned with the administration of those schemes.

2. Rule 2 sets out the definition of a “section 17B application”.
3. Rule 3 provides that the Rules of the High Court (Cap. 4 sub. leg.) apply to a section 17B application unless inconsistent with these Rules.
4. Rule 4 specifies the mode of making a section 17B application and the required supporting documents.
5. Rule 5 specifies the matters on which the Authority must apply to the Court for directions.

MANDATORY PROVIDENT FUND SCHEMES (WINDING UP) RULES

(Made under section 34A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) by the Rules Committee constituted under section 55 of the High Court Ordinance (Cap. 4))

1. Commencement

These Rules shall come into operation on 1 December 2000.

2. Definition

In these Rules, “winding up application” (清盤申請) means an application mentioned in section 34A(1) of the Ordinance.

3. Rules of High Court apply to winding up applications

The Rules of the High Court (Cap. 4 sub. leg.) apply to a winding up application to the extent that those Rules are not inconsistent with these Rules.

4. Requirements as to making of winding up applications

- (1) A winding up application must be made by originating summons.
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 - (a) an affidavit of a designated person as defined in section 6F(2) of the Ordinance; and
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- (a) must specify whether or not there are any scheme assets in the registered scheme to which the application relates and, if there are, the proposed arrangements for transferring, realizing or disposing of those assets;
 - (b) must specify whether or not there are any remaining scheme members in that scheme and, if there are, the proposed arrangements for transferring existing accrued benefits of those members to another registered scheme and for making future contributions; and
 - (c) may contain proposals on other aspects of the winding up, including arrangements in a case where the Court does not appoint a liquidator.

5. Authority to apply to Court for directions

As soon as practicable after issuing an originating summons for a winding up application, the Authority must apply to the Court for directions, including, in particular, directions as to -

- (a) the filing of further evidence;
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- (a) the scheme be wound up in accordance with the winding up proposal accompanying the application;
- (b) the proposal be modified in a manner specified by the Court and the scheme be wound up in accordance with the proposal so modified; or
- (c) the scheme be wound up in any other way specified by the Court.

Made this day of 2000.

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