

A BILL

To

Amend the Mandatory Provident Fund Schemes Ordinance.

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Mandatory Provident Fund Schemes (Amendment) Ordinance 2002.

(2) Subject to subsection (3), this Ordinance shall come into operation on the day on which it is published in the Gazette.

(3) Sections 4, 8, 12 and 14, and sections 1, 5, 6, 7, 8, 9, 10, 11, 12, 13(a), (b) and (c), 14(a), (b) and (c), 18 and 25 of the Schedule, shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

2. Interpretation

Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended -

(a) in the definition of "total incapacity", by repealing "performing immediately" and substituting "last performing";

(b) by adding -

"contribution account" (供款帳戶) has the same meaning as in section 2 of the Mandatory Provident Fund Schemes (General) Regulation

or any subsequent payment-period, must, by written notice given within 7" and substituting "payment period must, by written notice given within 10";

(b) by repealing subsection (7).

11. **Approved trustee to check calculations of arrears and contribution surcharge**

Section 137(2) is amended by repealing "before the end of the first payment-period or relevant subsequent payment-period, as the case may be" and substituting "as soon as is practicable".

12. **Participating employer to notify trustee of certain information**

Section 143(2) is amended -

(a) in paragraph (b), by repealing "employer," and substituting "employer; and";

(b) by adding -

"(c) the employer's name as shown in the participation certificate issued under section 124 to the employer,".

13. **Transfer of accrued benefits of member of employer sponsored scheme**

Section 145 is amended -

(a) in subsection (6), by adding "casual" after "employment of the";

(b) in subsection (7)(a), by adding "casual" after "following the";

(c) by adding -

“(7A) The former employer must in respect of a relevant employee (other than a casual employee) -

(a) in the remittance statement that the former employer is required to lodge with the approved trustee of the employer sponsored scheme concerned in respect of the contribution period that ends immediately following the employee’s cessation of employment; or

(b) by written notice given to the approved trustee of the employer sponsored scheme concerned no later than the date on which that remittance statement is required to be lodged,

inform the approved trustee -

(c) of the employee’s cessation of employment; and

(d) of the date on which the employment ceased.”;

(d) by adding -

“(9) This section shall not apply to or in relation to an election mentioned in section

12A(6A) and (6B) of the Ordinance or any concomitant transfer of the accrued benefits of an employee.”.

14. **Transfer of accrued benefits of member of master trust scheme or industry scheme (other than a casual employee who is a member of an industry scheme)**

Section 146 is amended -

- (a) in subsection (8), by adding “casual” after “employment of the”;
- (b) in subsection (9)(a), by adding “casual” after “following the”;
- (c) by adding -

“(9A) The former employer must in respect of a relevant employee (other than a casual employee) -

- (a) in the remittance statement that the former employer is required to lodge with the approved trustee of the registered scheme concerned in respect of the contribution period that ends immediately following the employee’s cessation of employment; or
- (b) by written notice given to the approved trustee of the registered scheme concerned no later than the

date on which that remittance statement is required to be lodged,

inform the approved trustee -

(c) of the employee's cessation of employment; and

(d) of the date on which the employment ceased." ;

(d) by adding -

"(12) This section shall not apply to or in relation to an election mentioned in section 12A(6A) and (6B) of the Ordinance or any concomitant transfer of the accrued benefits of an employee." .

15. Transfer by participating employer of employee's accrued benefits

Section 150(b) and (c) is repealed and the following substituted -

"(b) the restructuring of the first-mentioned scheme under section 34B of the Ordinance; or".

16. Section added

The following is added -

"150A. Transfer of accrued benefits where section 12A(6A) and (6B) of the Ordinance is applicable

Where section 12A(6A) and (6B) of the Ordinance is applicable, the new employer may only elect to have the employee's accrued

(b) neither subsection (2) nor (4) applies.”;

(d) by adding -

“(4) A notice or other document to be given, served or lodged for the purposes of the Ordinance shall, in the absence of evidence to the contrary, be deemed to be so given, served or lodged if it is sent by post to the last known place of business or residence of the person -

(a) to whom the notice or other document is required to be given or served;

(b) with whom the notice or document is required to be lodged,

as the case may be.”.

20. **Investment of Scheme Funds**

Schedule 1 is amended -

(a) in section 1(1), by adding -

““collective investment scheme” (集體投資計劃) has the meaning assigned to it by the Securities and Futures Ordinance (5 of 2002);

“index-tracking collective investment scheme” (緊貼指數集體投資計劃) means a collective investment scheme which has the sole investment objective of tracking a

particular market index;" ;

- (b) in section 2, by repealing subsection (3) and substituting -

"(3) Notwithstanding subsections (1) and (2), where part or all of the funds of a constituent fund are invested in accordance with section 6(b)(i), (ii) or (iii) of this Schedule, then subsections (1) and (2) shall not apply to that part or all of the funds of the constituent fund so invested.

(4) Notwithstanding subsections (1) and (2), where a constituent fund has the sole investment objective of tracking a particular market index, then those subsections shall not apply to the constituent fund if the approved trustee has the prior approval of the Authority that those subsections shall not apply to the constituent fund.

(5) In granting an approval mentioned in subsection (4), the Authority may impose such conditions with respect to the constituent fund concerned as the Authority considers appropriate.

(6) Where the Authority -

(a) has decided that it is appropriate to -

(i) amend any conditions imposed under

subsection (5) or this subsection with respect to a constituent fund; or

- (ii) impose conditions with respect to a constituent fund; and

(b) has given to the approved trustee concerned -

- (i) not less than 30 days' advance notice of its decision, specifying its grounds; and

- (ii) an opportunity to make written representations as to why the conditions should not be amended or imposed,

then the Authority may, by written notice served on the approved trustee -

- (c) amend any conditions imposed under subsection (5) or this subsection with respect to the constituent fund; or

- (d) impose conditions with respect to the constituent fund.";

(c) by repealing section 6(b) and substituting -

"(b) in -

(i) an approved pooled investment fund -

(A) that satisfies the requirements of Part IV of this Schedule; and

(B) the underlying investments of which would comply with this Part if references in this Part to "constituent fund" were references to "approved pooled investment fund";

(ii) an index-tracking collective investment scheme approved by the Authority for the purposes of section 6A of this Schedule; or

(iii) a combination of an approved pooled investment fund falling within subparagraph (i) and an index-tracking collective investment scheme falling within subparagraph (ii).";

(d) by adding -

"6A. **Permissible investments:
index-tracking collective
investment scheme**

(1) The funds of a constituent fund may be invested in an index-tracking collective investment scheme which is -

(a) either -

(i) authorized by the Securities and Futures Commission, within the meaning of the Securities and Futures Ordinance (5 of 2002); or

(ii) listed on a recognized stock exchange approved by the Authority for the purposes of this section; and

(b) approved by the Authority for the purposes of this section.”;

(e) in section 7(2)(d), by repealing “so listed” and substituting “listed on that exchange or another recognized stock exchange”;

(f) by repealing section 8(1) and substituting -

“(1) The funds of a constituent fund may be invested in -

(a) fully-paid up shares listed on a recognized stock exchange other

than the shares of a company which is a collective investment scheme; or

(b) an index-tracking collective investment scheme approved by the Authority for the purposes of section 6A of this Schedule.";

(g) in section 9(a), by repealing "the exchange" and substituting "that exchange or another recognized stock exchange";

(h) in section 11, by adding -

"(3A) Notwithstanding subsection (3), where a constituent fund has a total market value of less than \$8,000,000, then that subsection shall not apply to the constituent fund if the approved trustee has the prior approval of the Authority that that subsection shall not apply to the constituent fund.

(3B) In granting an approval mentioned in subsection (3A), the Authority may impose such conditions with respect to the constituent fund concerned as the Authority considers appropriate.

(3C) Where the Authority -

(a) has decided that it is appropriate to -

(i) amend any conditions imposed under