

C013e

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 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 (Cap. 485 sub. leg.);

"practicable" (切實可行) means reasonably practicable;".

3. Employer to arrange for employees to become scheme members, etc.

Section 7 is amended by adding---

"(1A) Every employer of a relevant employee must take all practicable steps to ensure that, after the expiration of the permitted period---

(a) if the employer has complied with subsection (1) in respect of the employee, the employee continues to be a member of a registered scheme throughout his employment with that employer;

(b) if the employer has not complied with subsection (1) in respect of the employee, the employee becomes a member of a registered scheme and thereafter continues to be a member of a registered scheme throughout his employment with that employer.".

4. Employer and relevant employees required

to contribute to registered scheme

Section 7A is amended---

(a) by repealing subsection (7) and substituting---

"(7) An employer must not, in respect of an employee (not being a casual employee) whose wage period---

(a) is not more than 1 month, make a deduction under subsection (2)(b) in respect of the employee's relevant income earned for any wage period that commences on or before the 30th day of employment after the relevant time;

(b) is more than 1 month, make a deduction under subsection (2)(b) in respect of the employee's relevant income earned for the period commencing from the relevant time and ending on the last day of the calendar month in which the 30th day of employment after the relevant time falls.";

(b) in subsection (10)---

(i) in the definition of "contribution period", by repealing paragraph (b) and substituting---

"(b) in relation to a relevant employee (not being a casual employee) whose wage period---

(i) is not more than 1 month, means each period for which the employer pays or should pay relevant income to the employee, but does not include any wage period commencing on or before the 30th day of employment after the relevant time;

(ii) is more than 1 month, means each period for which the employer pays or should pay relevant income to the employee, but does not include the period commencing from the relevant time and ending on the last day of the calendar month in which the 30th day of employment after the relevant time falls; and";

(ii) in the definition of "relevant time", by repealing "section 7(3)." and substituting "section 7(3);";

(iii) by adding---

"wage period" (工資期), in relation to an employee and his employer, means the period for which the employee is paid, or should be paid, relevant income by the employer.".

5. Section added

The following is added---

"10A. Authority to conduct review of minimum and maximum levels of relevant income every 4 years

(1) The Authority must, not less than once in every period of 4 years beginning with the commencement of this section, conduct a review of the minimum level of relevant income and the maximum level of relevant income to ascertain whether or not there are grounds to amend Schedule 2 or 3 or Schedules 2 and 3.

(2) Without limiting the factors which the Authority may take into account for the purposes of conducting a review mentioned in subsection (1), the Authority must

take into account---

(a) in respect of the minimum level of relevant income, 50 per cent of the monthly median employment earnings prevailing at the time of the review as compiled from the General Household Survey conducted by the Census and Statistics Department; and
(b) in respect of the maximum level of relevant income, monthly employment earnings at 90th percentile of the monthly employment earnings distribution prevailing at the time of the review as compiled from the General Household Survey conducted by the Census and Statistics Department."

6. Contributions to vest in scheme members
as accrued benefits

Section 12 is amended---

(a) in subsection (2), by adding "subsection (2A) and" after "Subject to";

(b) by adding---

"(2A) The reference to income or profits in subsection (2) does not include interest derived from the placing on deposit of---

(a) contributions or benefits---

(i) received by the approved trustee of a registered scheme in respect of a member of the scheme; and

(ii) during the period that the payment of the contributions or benefits into the member's account is pending;

(b) benefits---

(i) moved from a constituent fund; and

(ii) during the period that the investment of the benefits into another constituent fund is pending; and

(c) benefits---

(i) received from a constituent fund; and

(ii) during the period that---

(A) withdrawal of the benefits from the registered scheme concerned is pending; or

(B) transfer of the benefits to another registered scheme is pending.

(2B) Interest referred to in subsection (2A) must be retained by the approved trustee of the registered scheme concerned---

(a) for the payment of any administrative expenses of the scheme; or

(b) as income of the scheme,
for the benefit of scheme members."

7. Certain amounts relating to severance
payments and long service payments
to be paid from accrued benefits

Section 12A is amended by adding---

"(6A) Where---

- (a) subsection (6)(a) or (b) applies to a person;
- (b) the new owner or associated company, as the case may be, ("new employer") has assumed the liability of the previous owner or company ("previous employer") for severance payment or long service payment in respect of the person;
- (c) the new employer has agreed to recognize the person's length of employment with the previous employer for the purposes of that severance payment or long service payment; and
- (d) no accrued benefits held in a registered scheme in respect of the person have been paid in accordance with this section to the person or the previous employer, then the new employer may elect, in accordance with the regulations, to have the accrued benefits of the person held in a contribution account in that scheme transferred to an account in a registered scheme nominated by the new employer.

(6B) Where a new employer has made an election under subsection (6A), then, for the purposes of that election---

- (a) section 7A(7) shall not apply to the new employer; and
- (b) paragraph (b) of the definition of "contribution period" in section 7A(10) shall be construed as if it read as follows---

"(b) in relation to a relevant employee (not being a casual employee), means each period for which the employer pays or should pay relevant income to the employee; and".

8. Recovery of mandatory contributions
that are in arrears

Section 18(2) is amended by repealing ", not exceeding 20 per cent per annum".

9. Power to restructure registered schemes

Section 34B is amended---

- (a) by repealing subsections (1) and (2) and substituting---

"(1) The approved trustee of a registered scheme or the approved trustees of 2 or more registered schemes may apply to the Authority to consent to the restructuring of the scheme or schemes, as the case may be, including restructuring by the merger or division of the scheme or those schemes, as the case may be, with or into other existing or new scheme or schemes of the same kind.";

- (b) by repealing subsections (5) and (6) and substituting---

"(5) As soon as practicable after receiving an application to consent to the restructuring of a registered scheme or registered schemes, the Authority must consider the application. The Authority may consent to the restructuring only if satisfied---

- (a) that the interests of the members of the scheme or those schemes, as the case

may be, will be adequately protected and that, if the restructuring is consented to, their accrued benefits will be transferred to the transferee scheme or schemes, as the case may be, as appropriate; and

(b) that the transferee scheme or schemes, as the case may be, will be governed by the law of Hong Kong; and

(c) that the transferee scheme or schemes, as the case may be, complies or comply with, or will if the restructuring is consented to, comply with, such requirements and standards as are prescribed by the regulations referred to in section 21C.

(6) The Authority must not reject an application under this section without giving the applicant or applicants, as the case may be, an opportunity to make representations (either orally or in writing or both) as to why the Authority should consent to the restructuring of the scheme or schemes, as the case may be.";

(c) by repealing subsection (8) and substituting---

"(8) On registering a new scheme derived from the restructuring of an existing scheme or schemes, the Authority must issue to the approved trustee of the new scheme a certificate of registration and cancel the registration of the existing scheme or such of the existing schemes as is appropriate as a result of the restructuring. The certificate must specify that the new scheme is an employer sponsored scheme, a master trust scheme, or an industry scheme, as the case requires."

10. Power to divide registered scheme

Section 34C is repealed.

11. Offences by employers

Section 43B(3) is repealed and the following substituted---

"(3) An employer who is convicted of an offence against this section is liable---

(a) to a fine at level 6 and to imprisonment for 6 months on the first occasion on which the person is convicted of the offence; and

(b) to a fine of \$200,000 and to imprisonment for 12 months on each subsequent occasion on which the person is convicted of the offence,

and, in the case of an offence consisting of a failure by the employer to comply with the requirement imposed on the employer by section 7(1A), a daily penalty of \$500 for each day on which the offence is continued after conviction therefor.

(4) Proceedings may be instigated for an offence against this section within 6 months after the offence is discovered by, or comes to the notice of, the Authority."

12. Schedules 2 and 3 substituted

Schedules 2 and 3 are repealed and the following substituted---

"SCHEDULE 2 [ss. 2, 9, 10A,

11 & 48]

Minimum Level of Relevant Income

Per Contribution Period

1. The minimum level of relevant income for the purposes of section 9 of this Ordinance, in the case of a relevant employee (not being a casual employee who is a member of an industry scheme), is---

- (a) if the employee is remunerated on a monthly basis, \$5,000 per month;
- (b) if the employee is remunerated more frequently than on a monthly basis, \$160 per day;
- (c) if the employee is remunerated less frequently than on a monthly basis, \$5,000 per month, that amount as prorated.

2. The minimum level of relevant income for the purposes of section 9 of this Ordinance is, in the case of a casual employee who is a member of an industry scheme, \$160 per day.

3. The minimum level of relevant income for the purposes of section 9 of this Ordinance is, in the case of a self-employed person, \$5,000 per month or \$60,000 per year.

SCHEDULE 3 [ss. 2, 10, 10A
& 48]

Maximum Level of Relevant Income

Per Contribution Period

1. The maximum level of relevant income for the purposes of section 10 of this Ordinance, in the case of a relevant employee (not being a casual employee who is a member of an industry scheme), is---

- (a) if the employee is remunerated on a monthly basis, \$20,000 per month;
- (b) if the employee is remunerated more frequently than on a monthly basis, \$650 per day;
- (c) if the employee is remunerated less frequently than on a monthly basis, \$20,000 per month, that amount as prorated.

2. The maximum level of relevant income for the purposes of section 10 of this Ordinance is, in the case of a casual employee who is a member of an industry scheme, \$650 per day.

3. The maximum level of relevant income for the purposes of section 10 of this Ordinance is, in the case of a self-employed person, \$20,000 per month or \$240,000 per year."

13. Consequential and other amendments to subsidiary legislation made under principal Ordinance

The provisions of the subsidiary legislation made under the principal Ordinance

are amended as specified in the Schedule.

14. Transitional

(1) Where a relevant employee has commenced employment before the commencement of section 4 of this Ordinance, then the provisions of section 7A, as in force--

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(a) immediately before the commencement of section 4 of this Ordinance, shall apply to and in relation to that employment; and

(b) immediately after the commencement of section 4 of this Ordinance, shall not apply to or in relation to that employment.

(2) Where a contribution period has commenced before the commencement of section 12 of this Ordinance, then the provisions of Schedules 2 and 3, as in force---

(a) immediately before the commencement of that section, shall apply to and in relation to that contribution period; and

(b) immediately after the commencement of that section, shall not apply to or in relation to that contribution period.

(3) Where a contribution period for a contribution ends before the commencement of section 6 of the Schedule to this Ordinance, then the provisions of section 122 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.), as in force---

(a) immediately before the commencement of section 6 of the Schedule to this Ordinance, shall apply to and in relation to that contribution; and

(b) immediately after the commencement of section 6 of the Schedule to this Ordinance, shall not apply to or in relation to that contribution.

(4) Where a contribution period for a contribution ends before the commencement of section 7 of the Schedule to this Ordinance, then the provisions of section 123 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.), as in force---

(a) immediately before the commencement of section 7 of the Schedule to this Ordinance, shall apply to and in relation to that contribution; and

(b) immediately after the commencement of section 7 of the Schedule to this Ordinance, shall not apply to or in relation to that contribution.

(5) Where a contribution period for a contribution ends before the commencement of section 9 of the Schedule to this Ordinance, then the provisions of section 134 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.), as in force---

(a) immediately before the commencement of section 9 of the Schedule to this Ordinance, shall apply to and in relation to that contribution; and

(b) immediately after the commencement of section 9 of the Schedule to this Ordinance,

shall not apply to or in relation to that contribution.

SCHEDULE [ss. 13 & 14]

Consequential and Other Amendments to Subsidiary Legislation

Made Under Principal Ordinance

Mandatory Provident Fund Schemes (General) Regulation

1. Approved trustee to notify Authority of events
of significant nature

Section 62(1) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.) is repealed and the following substituted---

"(1) If the approved trustee of a registered scheme becomes aware of the occurrence of an event of significant nature, the trustee must---

(a) not later than the third working day after becoming aware of the event, give written notice to the Authority setting out particulars of the event (except an event specified in the guidelines as an event to which this paragraph shall not apply);

(b) keep a record of particulars of the event;

(c) permit the Authority to inspect the record at any reasonable time during ordinary business hours; and

(d) give written notice to the Authority---

(i) setting out such further or better particulars of the event as the Authority requires; and

(ii) as soon as is practicable after the Authority makes that requirement.".

2. Eligibility of delegate of custodian

Section 71(1)(c) is repealed and the following substituted---

"(c) is an overseas bank or overseas trust company which is a wholly-owned subsidiary of an approved overseas bank, an approved overseas trust company, an authorized financial institution, or a registered trust company incorporated in Hong Kong, which---

(i) has a paid up capital of not less than US\$200,000,000 or an equivalent amount in another currency; and

(ii) satisfies a minimum credit rating set by the Authority based on a credit rating determined by an approved credit rating agency.".

3. Separate accounts for each scheme member

Section 78 is amended by adding---

"(6A) Where section 12A(6A) and (6B) of the Ordinance is applicable in the case of an employer and an employee, then, for the purposes of that case---

(a) any reference to "current employer" in subsection (6)(a), (b), (d) or (e) shall include the previous employer mentioned in section 12A(6A) of the Ordinance;

(b) any reference to "current employment" in subsection (6)(b) or (e) shall include

employment with the previous employer mentioned in section 12A(6A) of the Ordinance;
(c) any reference to "former employments" in subsection (6)(c) or (f) shall not include employment with the previous employer mentioned in section 12A(6A) of the Ordinance;

(d) any reference to "former employer" in subsection (6)(c) or (f) shall not include the previous employer mentioned in section 12A(6A) of the Ordinance."

4. Financial period of registered scheme

Section 79 is amended---

(a) in subsection (1), by adding "or such later date as the approved trustee, with the prior approval of the Authority, so determines" after "registration of the scheme";

(b) in subsection (2)(b), by adding "or such later date as the approved trustee, with the prior approval of the Authority, so determines" after "that period".

5. Definitions

Section 119 is amended---

(a) by repealing the definitions of "first payment-period" and "subsequent payment-period";

(b) by adding---

"payment period" (付款期) means the period specified in a notice under section 136(1)(a);".

6. Participating employer to calculate relevant income and pay mandatory contributions

Section 122 is amended---

(a) in subsection (1), in the definition of "contribution day"---

(i) in paragraph (a), by adding "who is a casual employee" after "relevant employee";

(ii) by adding---

"(aa) in relation to a mandatory contribution payable by a participating employer in respect of a relevant employee (other than a casual employee), means, subject to subsection (4), the tenth day after the last day of---

(i) a calendar month within which the relevant contribution period ends; or

(ii) the month during which the permitted period ends, whichever is the later; and";

(b) by repealing subsection (3) and substituting---

"(3) For the purposes of section 7A(8) of the Ordinance---

(a) a participating employer in respect of a relevant employee who is a casual employee must, for each contribution period, pay the mandatory contribution to the approved trustee of the scheme in respect of each relevant employee on or before the

contribution day;

(b) a participating employer in respect of a relevant employee (other than a casual employee) must, for each contribution period which ends in the previous calendar month or during the permitted period, as the case may be, pay the mandatory contribution to the approved trustee of the scheme in respect of each relevant employee on or before the contribution day."

7. Participating employer to provide remittance statement to approved trustee

Section 123 is amended---

(a) in subsection (1), by adding "or periods" after "contribution period";

(b) in subsection (2)---

(i) in paragraph (a), by adding "or each of the contribution periods, as the case requires" after "period";

(ii) in paragraphs (b), (c), (d) and (e), by adding "or each of those periods, as the case may be" after "that period".

8. Authority to give participation certificates to participating employers

Section 124(1) is repealed and the following substituted---

"(1) On being satisfied that---

(a) an employer has complied with section 7(1) or 7(1A)(b) of the Ordinance; or

(b) an employer which has been previously issued a certificate under this section has changed its name from that shown in the certificate,

the Authority must give to the employer, through the approved trustee of the registered scheme in which the employer participates, a certificate (or, where paragraph (b) is applicable, a new certificate showing the employer's new name) certifying that the employer is a participating employer in the registered scheme specified in the certificate."

9. Contribution surcharge for, and report on, failure to pay contributions

Section 134(4) and (5) is repealed and the following substituted---

"(4) The contribution surcharge is an amount equal to 5 per cent of the amount of the arrears."

10. Authority to give notice to defaulter and approved trustee to inform Authority of non-payment

Section 136 is amended---

(a) in subsection (5), by repealing "first payment-period 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 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 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 benefits in the scheme transferred to a registered scheme---

(a) in which the new employer is a participant; and

(b) by giving written notice of the election to the trustee of the last-mentioned scheme.".

17. Claim for payment on ground of total incapacity

Section 164 is amended by adding---

"(5) If a claim is made by a scheme member of a registered scheme who was, immediately before becoming totally incapacitated, unemployed, the approved trustee of the scheme may pay the member's accrued benefits to that member, but only if the member---

(a) can provide the trustee with a medical certificate, in a form specified or approved by the Authority and issued by a registered medical practitioner, certifying that the member is permanently unfit to perform the kind of work specified in the certificate for a reason so specified; and

(b) satisfies the trustee that the member was last engaged in that kind of work under a contract of employment before becoming totally incapacitated; and

(c) can provide the trustee with---

(i) subject to subparagraph (ii), a letter from the member's last employer certifying that that contract of employment for that particular kind of work has been terminated;

(ii) if the member is unable to comply with subparagraph (i) or has been unemployed for more than 7 years, a statutory declaration, in a form approved by the Authority, stating that that contract of employment for that particular kind of work has been terminated.

(6) If a claim is made by a scheme member of a registered scheme who, immediately before becoming totally incapacitated, ceased to be a self-employed person, the approved trustee of the scheme may pay the member's accrued benefits to that member, but only if the member---

(a) can provide the trustee with a medical certificate, in a form specified or approved by the Authority and issued by a registered medical practitioner, certifying that the member is permanently unfit to perform the kind of work specified in the certificate for a reason so specified; and

(b) satisfies the trustee that the member was last engaged in that kind of work as a self-employed person before becoming totally incapacitated."

18. Approved trustee to notify scheme member of entitlement

Section 172 is amended---

(a) in subsection (10), by repealing paragraphs (a) and (b) and substituting---

"(a) listing the names of all the scheme members---

(i) who have unclaimed benefits in the scheme as at the end of the relevant financial period; and

(ii) whose names have not previously been listed in accordance with this paragraph; and

(b) inviting those members and other persons to lodge a claim for payment of those

benefits,

and provide particulars of the scheme members included in that notice to the Authority on or before such publication of the notice.";

(b) by adding---

"(11) The Authority must establish and maintain a register---

(a) of scheme members of a registered scheme who have unclaimed benefits in the scheme; and

(b) in such form, and containing such information, as the Authority may determine.

(12) The register is to be kept at the head office of the Authority in Hong Kong and is to be available for inspection---

(a) by members of the public without charge during the ordinary business hours of the Authority;

(b) to enable a person who may be entitled to benefits in a registered scheme to ascertain whether he has unclaimed benefits in the scheme."

19. How notices etc. are to be served, etc.

for purposes of the Ordinance

Section 206 is amended---

(a) in subsection (1)---

(i) by repealing "or served for the purposes of the Ordinance may be given or served" and substituting ", served or lodged for the purposes of the Ordinance shall be given, served or lodged";

(ii) in paragraphs (a)(ii), (b)(ii) and (c)(ii), by repealing "registered post" and substituting "post";

(b) in subsection (2), by repealing "or served" and substituting ", served or lodged";

(c) by repealing subsection (3) and substituting---

"(3) In relation to a document given under section 55 or 124---

(a) any reference to "post" in subsection (1) means registered post;

(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), 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 recognized stock exchange other than the shares of a company which is a collective investment scheme; or

(b) an index-tracking collective investment scheme.";

(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 subsection (3B) 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 (3B) or this subsection with respect to the constituent fund; or

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

(i) by repealing section 15(3).

21. Contents of custodial agreements

Schedule 3 is amended, in section 5(b), by repealing "any" and substituting "direct".

Mandatory Provident Fund Schemes (Exemption) Regulation

22. Interpretation

Section 2 of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) is amended---

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

"past service liability" (過去服務負債) has the same meaning as in section 2 of the relevant Ordinance;

"vested benefit" (既有利益) has the same meaning as in section 2 of the relevant Ordinance.";

(b) by adding---

"(4) Where an existing member of an ORSO exempted scheme, or of an ORSO registered scheme, ("original scheme") the subject of an exemption certificate is transferred to another scheme ("new scheme") where---

(a) the new scheme is---

(i) an ORSO registered scheme the subject of an exemption certificate; and

(ii) the subject of a certificate referred to in section 14(1);

(b) the new scheme is---

(i) operated by the same employer; and

(ii) an ORSO exempted scheme, or an ORSO registered scheme, the subject of an exemption certificate;

(c) the new scheme is---

(i) operated by a different employer in the circumstances specified in section 70A(6)(a) of the relevant Ordinance; and

(ii) an ORSO exempted scheme, or an ORSO registered scheme, the subject of an exemption certificate; or

(d) the new scheme is---

(i) operated by an associated company in the circumstances specified in section 70A(6)(b) of the relevant Ordinance; and

(ii) an ORSO exempted scheme, or an ORSO registered scheme, the subject of an exemption certificate,

then the member shall be treated as an existing member of the new scheme if---

(e) no benefits have been or are to be paid under the original scheme to the existing member as a result of the transfer;

(f) an amount not less than the past service liability of the existing member has been or is to be transferred from the original scheme to the new scheme as a result of the transfer;

(g) the value of vested benefit and the value of past service liability in respect of benefit entitlement conferred by or to be conferred by the new scheme to the existing member at the time immediately after the transfer will not, as a result of the transfer, be less than the value of vested benefit and the value of past service liability respectively of the member under the original scheme immediately before the transfer;

(h) the period of employment of the existing member during which he is a member of the original scheme is recognized under the new scheme; and

(i) in any case where section 70A(6)(a) or (b) of the relevant Ordinance is applicable to the transfer, that section has been complied with and no benefits held in an occupational retirement scheme in respect of the person have been paid in accordance with section 70A(6) of the relevant Ordinance to the person or the previous owner or the company concerned."

23. Mandatory conditions

Schedule 2 is amended, in section 5(1)(b)---

(a) by adding "or an industry scheme" after "trust scheme";

(b) by repealing "from other registered schemes".

Mandatory Provident Fund Schemes (Fees) Regulation

24. Fees prescribed for the purposes of the

Mandatory Provident Fund Schemes

Ordinance (Cap. 485)

Schedule 1 to the Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485 sub. leg.) is amended by repealing items 6 and 7 and substituting---

"6. 34B Fee payable when an application is lodged with the Authority
Nil".

in respect of the restructuring of a registered scheme
Mandatory Provident Fund Schemes (Contributions
for Casual Employees) Order

25. Scales of amounts of contributions to be
made in respect of casual employees

The Schedule to the Mandatory Provident Fund Schemes (Contributions for Casual Employees) Order (Cap. 485 sub. leg.) is amended by repealing "\$130.00" wherever it appears and substituting "\$160.00".

Mandatory Provident Fund Schemes Rules

26. Sections substituted

Sections 4 and 5 of the Mandatory Provident Fund Schemes Rules (Cap. 485 sub. leg.) are repealed and the following substituted---

"4. Application for Authority's consent to
restructuring of registered schemes
under section 34B of Ordinance

(1) For the purposes of section 34B of the Ordinance, an application for the consent of the Authority to the restructuring of registered schemes must contain the following information---

(a) the name and registration number of each of the registered schemes proposed to be restructured;

(b) the name, correspondence address and telephone number of the contact person in relation to the proposed restructuring;

(c) reasons for the proposed restructuring;

(d) the number of the following persons in each of the registered schemes proposed to be restructured---

(i) participating employers;

(ii) members who are relevant employees;

(iii) members who are self-employed persons;

(iv) members holding preserved accounts;

(e) a statement as to whether or not consent of the participating employers or scheme members to the restructuring must be obtained under the governing rules of those schemes and, if so, a statement specifying when and how the consent must be obtained under those rules;

(f) a statement as to whether or not the cost of the restructuring is required to be borne (whether wholly or partly) by the participating employers or scheme members under the governing rules of those schemes and, if so, a statement specifying how that cost is to be paid under those rules; and

(g) a restructuring proposal that complies with subsection (2).

(2) The restructuring proposal must---

- (a) specify the proposed effective date of the restructuring;
- (b) specify the proposed date on which notice of the restructuring is to be given to the participating employers and scheme members;
- (c) include a detailed plan on how to carry out the restructuring;
- (d) include a chart showing how the registered schemes concerned and the constituent funds of those schemes are to be restructured;
- (e) specify the arrangement for transferring the accrued benefits of scheme members to the transferee scheme;
- (f) specify the arrangement for compensating scheme members for any potential loss of accrued benefits due to the restructuring, and the mechanism (if any) for handling the grievances of scheme members arising from the restructuring;
- (g) include an estimation of the cost of the restructuring; and
- (h) specify by whom that cost is proposed to be borne and, if borne (whether wholly or partly) by the participating employers or scheme members, the amount they have to bear and how it is to be paid.

(3) The application must also be accompanied by the following documents---

- (a) the drafts of all documents necessary for effecting the restructuring and, where any new scheme is to be established, for establishing the new scheme, and where any transferee scheme is an existing scheme, for amending the existing scheme as appropriate;
- (b) the draft notice to the participating employers and scheme members seeking their consent to the restructuring, if applicable; and
- (c) the draft notice to the participating employers and scheme members informing them of the restructuring, their rights, the actions that they need to take and all related arrangements."

Explanatory Memorandum

The principal object of this Bill is to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("the Ordinance") and its subsidiary legislation in order to make a number of technical amendments to its provisions which practical experience of the operation of the Ordinance and its subsidiary legislation has revealed are necessary or desirable.

2. Clause 3 amends section 7 to add a new section 7(1A) to require an employer of a relevant employee to, inter alia, take all practicable steps to ensure that, after the employee becomes a member of a registered scheme, the employee continues to be a member of a registered scheme throughout his employment. Clause 11 makes a consequential amendment to section 43B(3) to impose a daily penalty on an employer for a continuing failure to comply with the requirement after conviction for the

offence of failing to comply with the requirement.

3. Clause 4(a) repeals and replaces section 7A(7) to specify that the period during which an employer must not make a deduction under section 7A(2)(b) from the employee's relevant income will be determined by reference to the employee's wage period. Clause 4(b) consequentially amends the definition of "contribution period" in section 7A(10) and adds a definition of "wage period" to that section.

4. Clause 5 adds a new section 10A to require the Mandatory Provident Fund Schemes Authority ("the Authority") to, not less than once in every 4 years, conduct a review of the minimum level of relevant income and the maximum level of relevant income to ascertain whether or not there are grounds to amend Schedules 2 and 3 to the Ordinance.

5. Clause 6(b) amends section 12 to add new section 12(2A) and (2B). New section 12(2A) prohibits interest derived from the placing on deposit of certain contributions or benefits from vesting, pursuant to section 12(2), in the members of a registered scheme. However, new section 12(2B) requires the approved trustee of the scheme to retain that interest for the payment of any administrative expenses of the scheme, or as income of the scheme, for the benefit of scheme members.

6. Clause 7 amends section 12A to add new section 12A(6A) and (6B). New section 12A(6A) specifies the circumstances in which a new employer of an employee, who has assumed the liability of the previous employer for severance payment or long service payment in respect of the employee, may elect to have the employee's accrued benefits in a registered scheme in which the previous employer participated transferred to another registered scheme nominated by the new employer. New section 12A(6B) modifies the operation of section 7A in relation to such an election. Sections 3, 13(d) and 14(d) of the Schedule to the Bill make consequential amendments to sections 78, 145 and 146 respectively of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.) ("the General Regulation"). Section 16 of the Schedule to the Bill adds a new section 150A to the General Regulation to specify how the new employer may exercise his power to make the election.

7. Clause 9 amends section 34B to provide for the restructuring of a registered scheme or schemes by the merger or division of the scheme or schemes, as opposed to the present wording of section 34B which only provides for the merger of registered schemes. Clause 10 repeals section 34C, as that section is, in effect, incorporated into the amended section 34B. The consent of the Authority is still required to any proposed restructuring. Sections 24 and 26 of the Schedule to the Bill make consequential amendments to the Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485 sub. leg.) and the Mandatory Provident Fund Schemes Rules (Cap. 485 sub. leg.) respectively.

8. Clause 12 repeals and replaces Schedule 2 ("Minimum level of relevant income per

contribution period") and Schedule 3 ("Maximum level of relevant income per contribution period").

9. Clause 14 sets out the transitional provisions necessitated by the Bill.

10. The Schedule to the Bill amends the General Regulation to, inter alia---

- (a) repeal and replace section 62(1) to modify the reporting requirements imposed on an approved trustee of a registered scheme where the trustee becomes aware of the occurrence of an event of a significant nature in respect of the scheme (section 1);
- (b) repeal and replace section 71(1)(c) to modify the criteria which qualify certain entities to be delegates of a custodian of scheme assets (section 2);
- (c) amend the definition of "contribution day" in section 122(1) and repeal and replace section 122(3) to alter the basis for the calculation of the day on or before which an employer must pay an employee's mandatory contribution (section 6);
- (d) add a new section 164(5) and (6) to specify modified or new criteria which a member must meet in order to be paid accrued benefits where the member claims to be totally incapacitated, unemployed and not a self-employed person immediately before becoming totally incapacitated (section 17);
- (e) add a new section 172(11) and (12) to require the Authority to establish and maintain a register of scheme members of a registered scheme who have unclaimed benefits in the scheme (section 18(b));
- (f) specify the basis on which scheme funds may be invested in collective investment schemes (including index-tracking collective investment schemes) (section 20(a), (b), (c), (d) and (f)); and
- (g) specify the basis on which a constituent fund with a total market value of less than \$8,000,000 need not comply with section 11(3) of Schedule 1 to the General Regulation (section 20(h)).

11. Section 22(b) of the Schedule amends section 2 of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) by adding a new section 2(4) to specify the circumstances where an existing member of an ORSO exempted scheme or ORSO registered scheme who has been transferred to another scheme may be treated as an existing member of the other scheme.