

**MANDATORY PROVIDENT FUND SCHEMES  
(AMENDMENT) BILL 2008**

**CONTENTS**

Clause	Page
1. Short title .....	C561
2. MPFA Administration Account.....	C561
3. Part heading amended .....	C561
4. Part IIIA added	

**PART IIIA**

**SPECIAL CONTRIBUTIONS**

19B. Authority may pay special contributions into accounts of scheme members.....	C563
19C. Authority may require information or documents necessary for paying special contributions.....	C563
19D. Authority may require approved trustees to take actions necessary for paying special contributions	C567
19E. Authority may recover special contributions that should not have been paid .....	C567
19F. Vesting of special contributions.....	C569
19G. Liability to pay other contributions .....	C571
19H. Part IIIA prevails over any instruments applicable to registered schemes.....	C571
5. Regulations with respect to registered schemes .....	C571
6. Application and interpretation of sections 45B and 45C.....	C573

**Mandatory Provident Fund Schemes  
(General) Regulation**

7. Interpretation.....	C573
8. Separate accounts for each scheme member .....	C575
9. Financial Penalties.....	C575

# A BILL

## To

Amend the Mandatory Provident Fund Schemes Ordinance to enable the Mandatory Provident Fund Schemes Authority to pay a special contribution into an account of a member of a provident fund scheme registered under the Ordinance (without specifying the amount of the special contribution or the criteria of eligibility for the payment of the special contribution), and to provide for matters ancillary to that purpose.

Enacted by the Legislative Council.

### **1. Short title**

This Ordinance may be cited as the Mandatory Provident Fund Schemes (Amendment) Ordinance 2008.

### **2. MPFA Administration Account**

Section 6M(2) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended by adding “paid to or” before “recovered”.

### **3. Part heading amended**

The heading of Part III is amended by adding “MANDATORY CONTRIBUTIONS AND VOLUNTARY” before “CONTRIBUTIONS”.

### **4. Part IIIA added**

The following is added—

“PART IIIA

SPECIAL CONTRIBUTIONS

**19B. Authority may pay special contributions  
into accounts of scheme members**

(1) The Authority may pay a contribution (referred to in this Part as a “special contribution”) into an account of a member of a registered scheme.

(2) To effect the payment under subsection (1), the Authority may pay the special contribution to an approved trustee of the scheme, and by a notice in writing direct the approved trustee to—

- (a) pay the special contribution into a sub-account of the member’s contribution account or preserved account specified in the notice; and
- (b) notify the member of the payment.

(3) Only a sub-account referred to in section 78(6)(c), (7)(b) or (8)(a) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) may be specified in the notice.

(4) The Authority may specify in the notice—

- (a) a period that is reasonable in the circumstances within which the approved trustee must pay the special contribution into the specified sub-account; and
- (b) a period that is reasonable in the circumstances within which the approved trustee must notify the member of the payment.

(5) The approved trustee must—

- (a) after receiving the special contribution and the Authority’s notice, pay the special contribution into the specified sub-account within the period specified under subsection (4)(a); and
- (b) after paying the special contribution into the specified sub-account, by a notice in writing notify the member of the payment within the period specified under subsection (4)(b).

**19C. Authority may require information  
or documents necessary for paying  
special contributions**

(1) The Authority may, for the purpose of paying special contributions, by a notice in writing—

- (a) require an approved trustee of a registered scheme to give to the Authority any information or document specified in the notice relating to the members of the scheme;
- (b) require a trustee of a relevant scheme to give to the Authority any information or document specified in the notice relating to the members of the scheme;
- (c) require an employer of a member of a registered scheme or relevant scheme to give to the Authority any information or document specified in the notice relating to the member; and
- (d) require any other person whom the Authority reasonably believes to have in his possession, or under his control, any information or document relating to a member of a registered scheme or relevant scheme to give to the Authority any information or document specified in the notice relating to the member.

(2) Only information or documents that the Authority reasonably considers to be necessary for the purpose of paying special contributions may be specified in the notice and they may include (but are not limited to) the following particulars of a member of a registered scheme or relevant scheme—

- (a) the member's name;
- (b) the member's date of birth;
- (c) the member's Hong Kong Identity Card number or travel document number;
- (d) the member's income; and
- (e) the member's correspondence address, telephone number and electronic mail address.

(3) The Authority may specify in the notice—

- (a) a manner in which the specified information or document must be given to the Authority; and
- (b) a period that is reasonable in the circumstances within which the specified information or document must be given to the Authority.

(4) Where—

- (a) a person is given a notice in writing under subsection (1); and
- (b) the information or document specified in the notice is in the possession, or under the control, of that person,

that person must give the specified information or document to the Authority in the specified manner within the specified period.

(5) In this section—

“member” (成員), in relation to a registered scheme or relevant scheme, includes a former member of the scheme;  
“relevant scheme” (有關計劃) has the same meaning as in Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B).

**19D. Authority may require approved trustees to take actions necessary for paying special contributions**

(1) The Authority may by a notice in writing require an approved trustee of a registered scheme to take any action, specified in the notice, that the Authority reasonably considers to be necessary for the purpose of paying special contributions.

(2) The Authority may specify in the notice—

(a) a manner in which the approved trustee must take the specified action; and

(b) a period that is reasonable in the circumstances within which the approved trustee must take the specified action.

(3) The action specified in the notice may include (but is not limited to) registering a person specified in the notice as a member of the scheme and opening a preserved account for that person.

(4) The approved trustee must, after receiving the Authority’s notice, take the specified action in the specified manner within the specified period.

(5) Where—

(a) the action specified in a notice in writing given to an approved trustee of a registered scheme under subsection (1) is to register a person specified in the notice as a member of the scheme and to open a preserved account for that person; and

(b) the approved trustee takes the specified action in compliance with the requirements under subsection (4),

that person is deemed to have agreed in writing to comply with the governing rules of the scheme.

**19E. Authority may recover special contributions that should not have been paid**

(1) If the Authority reasonably believes that a special contribution should not have been paid into an account of a member of a registered scheme, the Authority may by a notice in writing specify that account and direct an approved trustee of the scheme to—

- (a) withdraw from the specified account a sum equal to the special contribution or the accrued benefits derived from the special contribution, whichever is the less, and pay it to the Authority, in the manner specified in the notice; and
  - (b) notify the member of the withdrawal.
- (2) If the accrued benefits derived from the special contribution have been transferred to another account in the scheme or to an account in another registered scheme, the Authority may by a notice in writing specify that account and direct an approved trustee of the scheme or that other scheme to—
  - (a) withdraw from the specified account a sum equal to the special contribution or the accrued benefits, whichever is the less, and pay it to the Authority, in the manner specified in the notice; and
  - (b) notify the member of the withdrawal.
- (3) The Authority may specify in the notice—
  - (a) a period that is reasonable in the circumstances within which the approved trustee must withdraw the sum from the specified account and pay it to the Authority; and
  - (b) a period that is reasonable in the circumstances within which the approved trustee must notify the member of the withdrawal.
- (4) The approved trustee must—
  - (a) after receiving the Authority's notice, withdraw the sum from the specified account, and pay it to the Authority, in the specified manner within the period specified under subsection (3)(a); and
  - (b) after withdrawing the sum from the specified account, by a notice in writing notify the member of the withdrawal within the period specified under subsection (3)(b).
- (5) A direction under subsection (1) or (2) may only be given in respect of a special contribution within 6 months after the special contribution is paid into an account of a member of a registered scheme.

## **19F. Vesting of special contributions**

Subject to section 19E—

- (a) a special contribution paid by the Authority in respect of a member of a registered scheme vests in the member as accrued benefits as soon as it is paid to an approved trustee of the scheme; and

- (b) the provisions of this Ordinance apply to accrued benefits derived from a special contribution in the same way they apply to accrued benefits derived from a mandatory contribution paid under section 7A(1)(b) or (2)(b) or 7C.

### **19G. Liability to pay other contributions**

(1) A special contribution paid under this Part does not extinguish or reduce the liability of any person to pay any other contributions under—

- (a) this Ordinance;
- (b) the governing rules of a registered scheme; or
- (c) the instrument (however described) that governs a relevant scheme.

(2) In this section—  
“relevant scheme” (有關計劃) has the same meaning as in Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B).

### **19H. Part IIIA prevails over any instruments applicable to registered schemes**

(1) If there is any conflict or inconsistency between the provisions of this Part and the provisions of a specified instrument applicable to a registered scheme, the provisions of this Part prevail over the provisions of the instrument to the extent of the conflict or inconsistency.

(2) In this section—  
“specified instrument” (指明文書) means—

- (a) any governing rules;
- (b) any participation agreement within the meaning of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A); or
- (c) any articles, or memorandum, within the meaning of the Companies Ordinance (Cap. 32).”

## **5. Regulations with respect to registered schemes**

Section 21C(2)(b) is amended by repealing “and voluntary contributions” and substituting “, voluntary contributions and special contributions under Part IIIA”.



**6. Application and interpretation of sections 45B and 45C**

- (1) Section 45(1)(b) is amended by repealing “and”.
- (2) Section 45(1)(c) is amended by repealing the full stop and substituting “; and”.
- (3) Section 45(1) is amended by adding—
  - “(d) persons required to give information or documents under section 19C.”.

**Mandatory Provident Fund Schemes  
(General) Regulation**

**7. Interpretation**

(1) Section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended by repealing the definition of “contribution account” and substituting—

““contribution account” (供款帳戶), in relation to a member of a registered scheme, means an account with the scheme into which—

- (a) mandatory contributions and voluntary contributions (if any) are paid in respect of any current employment or current self-employment of the member; and
- (b) special contributions (if any) are paid in respect of the member;”.

(2) Section 2 is amended by repealing the definition of “preserved account” and substituting—

““preserved account” (保留帳戶), in relation to a member of a master trust scheme or an industry scheme, means an account with the scheme (other than a contribution account)—

- (a) into which special contributions (if any) are paid in respect of the member;
- (b) in which the accrued benefits (if any) in respect of any former employment or former self-employment of the member are held; and
- (c) in which the member’s benefits (if any) transferred to the scheme from an ORSO exempted scheme or an ORSO registered scheme are held,

and includes a former contribution account (if any) of the member in which accrued benefits retained under section 147(6) are held;”.



- (3) Section 2 is amended by adding—  
 ““special contribution” (特別供款) means a contribution paid by the Authority under Part IIIA of the Ordinance;”.

**8. Separate accounts for each scheme member**

- (1) Section 78(6)(c) is amended by adding—  
 “(iv) the special contributions (if any) paid in respect of the member and the income or profits arising from any investments of those contributions, but taking into account any losses in respect thereof;”.
- (2) Section 78(7)(b) is amended by adding—  
 “(iv) the special contributions (if any) paid in respect of the member and the income or profits arising from any investments of those contributions, but taking into account any losses in respect thereof;”.
- (3) Section 78(8)(a) is amended by adding—  
 “(iv) the special contributions (if any) paid in respect of the member and the income or profits arising from any investments of those contributions, but taking into account any losses in respect thereof;”.

**9. Financial Penalties**

Schedule 4 is amended, in Part I, by adding—

“2B	19B(5)(a)	Approved trustee to pay special contributions into specified sub-accounts	10,000	10,000	10,000
2C	19B(5)(b)	Approved trustee to notify scheme members of payment of special contributions	10,000	10,000	10,000
2D	19C(4)	Requirements with respect to giving of information or documents to Authority	10,000	10,000	10,000
2E	19D(4)	Approved trustee to take actions required by Authority	10,000	10,000	10,000
2F	19E(4)(a)	Approved trustee to withdraw sums from specified accounts and pay them to Authority	10,000	10,000	10,000

2G 19E(4)(b) Approved trustee to notify 10,000 10,000 10,000”.  
scheme members of  
withdrawal of sums from  
their accounts

### **Explanatory Memorandum**

This Bill amends the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“the Ordinance”) for the limited purpose of enabling the Mandatory Provident Fund Schemes Authority (“the Authority”) to pay a special contribution into an account of a member of a provident fund scheme registered under the Ordinance (“a registered scheme”), without specifying the amount of the special contribution or the criteria of eligibility for the payment of the special contribution.

2. The Bill also contains ancillary provisions such as the power of the Authority to require information and documents for the payment of the special contribution, the power of the Authority to require an approved trustee of a registered scheme to take any action necessary for the payment of the special contribution, the power of the Authority to recover any special contribution that should not have been paid, and the vesting of the special contribution.

3. Clause 1 sets out the short title to the Bill when enacted.

4. Clause 2 amends section 6M(2) of the Ordinance to clarify that any money received by the Authority for the purpose of the payment of special contributions is not to be deposited into the MPFA Administration Account.

5. Clause 3 amends the heading of Part III of the Ordinance to make it clear that that Part relates to mandatory contributions and voluntary contributions.

6. Clause 4 adds the new Part IIIA (new sections 19B to 19H) of the Ordinance. In particular—

- (a) the new section 19B enables the Authority to pay a special contribution into a specified account of a member of a registered scheme;
- (b) the new section 19C enables the Authority to require and to be given information and documents necessary for the payment of the special contribution;

- (c) the new section 19D enables the Authority to require an approved trustee of a registered scheme to take any action that the Authority considers necessary for the payment of the special contribution (including registering a person as a member of the scheme and opening a preserved account for the person);
- (d) the new section 19E enables the Authority to recover any special contribution that should not have been paid;
- (e) the new section 19F provides for the vesting of the special contribution;
- (f) the new section 19G provides that the special contribution does not extinguish or reduce the liability of any person to pay any other contributions under the Ordinance, under any registered scheme, or under any occupational retirement scheme exempted under the Ordinance; and
- (g) the new section 19H provides that the new Part IIIA prevails over any conflicting or inconsistent provisions in any instrument applicable to a registered scheme.

7. Clause 5 amends section 21C(2)(b) of the Ordinance to make the regulations made under the Ordinance applicable to special contributions.

8. Clause 6 amends section 45(1) of the Ordinance to make sections 45B and 45C of the Ordinance (on payment and recovery of financial penalties) applicable to persons who are required to give information or documents under the new section 19C of the Ordinance.

9. Clause 7 amends section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) (“the Regulation”) to provide new definitions of “contribution account”, “preserved account” and “special contribution”.

10. Clause 8 amends section 78(6)(c), (7)(b) and (8)(a) of the Regulation to provide that the Authority’s special contributions are to be paid into the sub-accounts referred to in that section.

11. Clause 9 amends Schedule 4 to the Regulation to provide for certain financial penalties that may be imposed for failure to perform or comply with certain duties or requirements under the new Part IIIA of the Ordinance.