

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

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**HONG KONG SPECIAL ADMINISTRATIVE REGION**

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ORDINANCE No. 1 OF 2008



Donald TSANG  
Chief Executive  
17 January 2008

An Ordinance to amend the Mandatory Provident Fund Schemes Ordinance and the subsidiary legislation made under it.

[18 January 2008]

Enacted by the Legislative Council.

**PART 1**

**PRELIMINARY**

**1. Short title**

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

**2. Commencement**

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

(2) Sections 31, 32, 33, 34, 56, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68 and 69 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.

PART 2

FORM OF CERTAIN UNDERTAKINGS

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

**3. What is continuous financial support for the purposes of this Regulation?**

Section 12 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended by repealing “gives the Authority a written undertaking by deed or like form,” and substituting “gives an undertaking to the Authority by deed, or by a document of like effect”.

**4. Eligibility requirements for company incorporated outside Hong Kong**

Section 17(12) is amended by repealing “enter into a written undertaking with the Authority” and substituting “give an undertaking to the Authority by deed, or by a document of like effect acceptable to the Authority,”.

**5. Undertaking to comply with requirements and standards**

Section 22 is amended by repealing “a written undertaking to the Authority” and substituting “an undertaking to the Authority by deed, or by a document of like effect acceptable to the Authority,”.

**6. Independence of investment manager**

Section 46(3)(c) is amended by repealing “a written undertaking to the Authority” and substituting “an undertaking to the Authority by deed, or by a document of like effect acceptable to the Authority,”.

**7. Investment management contract**

(1) Section 47(3)(a) is amended by repealing “a written undertaking” and substituting “an undertaking by deed, or by a document of like effect,”.

(2) Section 47(3)(b) is amended by repealing “a written undertaking” and substituting “an undertaking by deed, or by a document of like effect,”.

**8. Eligibility for appointment as custodian**

Section 68(5) is amended by repealing “gives the Authority a written undertaking by deed or like form,” and substituting “gives an undertaking to the Authority by deed, or by a document of like effect”.

**9. Custodial agreement**

Section 69(2) is amended by repealing “, by deed, give an undertaking to the Authority” and substituting “give an undertaking to the Authority by deed, or by a document of like effect acceptable to the Authority”.

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

**10. Minimum standards applicable to trustees, etc. of schemes**

Schedule 3 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B) is amended, in section 7, by adding—

“(3A) An undertaking given to the Authority pursuant to a requirement made under subsection (3)(f) must be by deed, or by a document of like effect acceptable to the Authority.”.

**PART 3**

**CREATION OF ENCUMBRANCES BY TEMPORARY CUSTODIANS**

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

**11. Approved trustee to ensure that scheme assets are not improperly encumbered**

Section 65(2)(c) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended by repealing “of payment” and substituting “for payment of fees”.

**12. Temporary custodian**

(1) Section 70(4)(c) is amended by repealing “the circumstances set out in subsection (5) or (6)” and substituting “any of the circumstances set out in subsection (5)”.

(2) Section 70(5) is repealed and the following substituted—

“(5) The circumstances referred to in subsection (4)(c) are as follows—

- (a) where the encumbrance is created for the purpose of securing an amount borrowed to enable accrued benefits to be paid to or in respect of scheme members, but only if—
  - (i) the amount borrowed (together with any other borrowings made for the same purpose) does not exceed 10 per cent of the market value of the scheme assets at the time of the borrowing; and
  - (ii) the borrowing is not part of a series of borrowings; and
  - (iii) at the time the borrowing was made, it was unlikely that the period of borrowing would exceed 90 days;
- (b) where the encumbrance is created for the purpose of securing an amount borrowed to settle a transaction relating to the acquisition of scheme assets, but only if—
  - (i) the amount borrowed (together with any other borrowings made for the same purpose) does not exceed 10 per cent of the market value of the scheme assets at the time of the borrowing; and
  - (ii) the borrowing is not part of a series of borrowings; and
  - (iii) at the time the borrowing was made, it was unlikely that the period of borrowing would exceed 7 working days; and
  - (iv) at the time the decision to enter into the transaction was made, it was unlikely that the borrowing would be necessary;
- (c) where the encumbrance is created for the purpose of securing a claim for payment of fees for the safe custody or administration of the scheme assets by a central securities depository or a delegate of a custodian;
- (d) where the encumbrance is created for the purpose of acquiring a financial futures contract pursuant to section 14 of Schedule 1 or a currency forward contract pursuant to section 15 of Schedule 1;

(e) where the encumbrance is created by operation of law (whether the law of Hong Kong or of a place outside Hong Kong).”.

(3) Section 70(6) is repealed.

### **13. Investment of Scheme Funds**

Schedule 1 is amended, within the square brackets at the beginning, by repealing “65 & 118” and substituting “65, 70 & 118”.

### **14. Contents of custodial agreements**

Section 3(c) of Schedule 3 is amended by repealing “of payment” and substituting “for payment of fees”.

## **PART 4**

### **UNDERTAKINGS NOT TO REFUSE APPLICATIONS BY RELEVANT EMPLOYEES AND EMPLOYERS**

#### **Mandatory Provident Fund Schemes Ordinance**

### **15. Approval of trustees**

Section 20(6)(b) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is repealed and the following substituted—

“(b) has given an undertaking to the Authority by deed, or by a document of like effect acceptable to the Authority, that the applicant will not, in relation to a registered scheme of which the applicant becomes the approved trustee, refuse—

(i) an application for membership of the scheme made by or on behalf of a relevant employee of a participating employer, or by or on behalf of a self-employed person who is 18 years of age or over and below retirement age, who—

(A) is not precluded by a provision of this Ordinance from being a member of the scheme; and

(B) is required by this Ordinance to be a member of a registered scheme;

(ii) an application for participation in the scheme made by or on behalf of an employer whose employee—

- (A) is not precluded by a provision of this Ordinance from being a member of the scheme; and
- (B) is required by this Ordinance to be a member of a registered scheme; or
- (iii) an application for membership of the scheme made only for the purpose of maintaining a preserved account within the scheme by a person who—
  - (A) is not precluded by a provision of this Ordinance from being a member of the scheme; and
  - (B) is required by this Ordinance to be a member of a registered scheme; and”.

**16. Application for registration as employer sponsored scheme or master trust scheme**

Section 21(8) is repealed and the following substituted—

“(8) The Authority may, as a condition of registering a provident fund scheme under this section, require the applicant to give to the Authority an undertaking with respect to the administration of the scheme by deed, or by a document of like effect acceptable to the Authority, including—

- (a) in the case of an application to register a scheme as an employer sponsored scheme, an undertaking not to refuse—
  - (i) an application for membership of the scheme made by or on behalf of a relevant employee of the participating employer; or
  - (ii) an application for participation in the scheme made by or on behalf of an employer; and
- (b) in the case of an application to register a scheme as a master trust scheme, an undertaking not to refuse—
  - (i) an application for membership of the scheme made by or on behalf of—
    - (A) any relevant employee; or
    - (B) any self-employed person who is 18 years of age or over and below retirement age; or
  - (ii) an application for participation in the scheme made by or on behalf of an employer; or
  - (iii) an application for membership of the scheme made by a person only for the purpose of maintaining a preserved account within the scheme.”.



## 17. Applications for registration of schemes as industry schemes

Section 21A(8) is repealed and the following substituted—

“(8) The Authority may, as a condition of registering a provident fund scheme as an industry scheme, require the applicant to give to the Authority an undertaking with respect to the administration of the scheme by deed, or by a document of like effect acceptable to the Authority, including an undertaking not to refuse—

- (a) an application for membership of the scheme made by or on behalf of—
  - (i) any relevant employee who is employed in the industry concerned; or
  - (ii) any self-employed person who is 18 years of age or over and below retirement age and engaged in the industry concerned; or
- (b) an application for participation in the scheme made by or on behalf of an employer engaged in the industry concerned; or
- (c) an application for membership of the scheme made only for the purpose of maintaining a preserved account within the scheme by a person who was previously engaged in the industry concerned.”.

## PART 5

### IMPROVEMENT OF CHINESE TEXT

#### Mandatory Provident Fund Schemes (Exemption) Regulation

## 18. Mandatory conditions

Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B) is amended, in section 1(1)—

- (a) in the definition of “years of post-MPF service”, by repealing “(參加強制性公積金計劃後的服務年期)” and substituting “(強制性公積金實施後的服務年期)”;
- (b) in the Chinese text, in the definition of “最低強制性公積金利益”, in paragraph (b), by repealing “參加強制性公積金計劃後的服務年期” and substituting “強制性公積金實施後的服務年期”.

PART 6

REQUIREMENTS TO BE SATISFIED BEFORE ORSO REGISTERED SCHEME  
TREATED AS RELEVANT ORSO REGISTERED SCHEME

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

**19. Certain ORSO registered schemes which are not relevant ORSO registered schemes may be treated as relevant ORSO registered schemes**

(1) Section 14(1) of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B) is amended by adding “the Authority is satisfied that” after “but only if”.

(2) Section 14(1)(c) is amended by adding “or will, before or as soon as practicable after the issue of an exemption certificate in respect of the scheme under section 16, be transferred” after “transferred”.

(3) Section 14(2)(d) is amended by adding “or will comprise” after “comprise”.

(4) Section 14 is amended by adding—

“(3) Where the Authority receives an application under this section, the Authority may require the applicant to supply to the Authority such information or documents (including a legal opinion on a matter specified by the Authority) as the Authority may specify and which is or are reasonably required to enable it to determine the application.”.

PART 7

TIME FROM WHICH MANDATORY PROVIDENT FUND SCHEMES  
ORDINANCE APPLIES TO EXEMPT PERSONS ETC.

**Mandatory Provident Fund Schemes Ordinance**

**20. Section added**

The Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended by adding—

**“7D. Application of Ordinance to certain employees  
and self-employed persons**

(1) If—

- (a) an employer enters into a contract of employment with an employee who is less than 18 years of age; and
- (b) the employee reaches 18 years of age on or after the date of commencement of this section; and
- (c) the employer continues to employ the employee after he reaches 18 years of age,

then this Ordinance applies to the employer and the employee as if they had entered into the contract of employment on the day on which the employee reaches 18 years of age and the employment had begun or commenced on that day.

(2) If—

- (a) a person is self-employed before he is 18 years of age; and
- (b) he reaches 18 years of age on or after the date of commencement of this section; and
- (c) he continues to be self-employed after reaching 18 years of age,

then this Ordinance applies to him as if he had become a self-employed person on the day on which he reaches 18 years of age.”.

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

**21. Division heading amended**

The heading of Division 1 of Part XI of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended by adding “*or (b) or 5*” after “*(a)*”.

**22. When sections 7, 7A and 7B of the Ordinance  
apply to exempted employee**

(1) The heading of section 120 is amended by repealing “**sections 7, 7A and 7B of the Ordinance apply**” and substituting “**the Ordinance applies**”.

(2) Section 120 is amended by renumbering it as section 120(1).

(3) Section 120(1) is amended by repealing “after that period, sections 7, 7A and 7B of the Ordinance apply to the employee” and substituting “by the same employer after that period, the Ordinance applies to the employee and his employer”.

(4) Section 120 is amended by adding—

“(2) If a relevant employee who, having been exempted from the Ordinance because of the operation of section 4(3)(b) of the Ordinance, continues to be employed by the same employer after ceasing to be a member of a provident, pension, retirement or superannuation scheme (however described) of a place outside Hong Kong, the Ordinance applies to the employee and his employer as if the employment had begun on the day on which the employee ceased to be such a member.

(3) If a relevant employee who, having been exempted from the operation of all or any of the provisions of the Ordinance by virtue of an exemption granted under section 5 of the Ordinance, continues to be employed by the same employer after ceasing to be so exempted, the Ordinance applies to the employee and his employer as if the employment had begun on the day on which the employee ceased to be so exempted.”.

**23. When section 7C of the Ordinance applies to exempted self-employed person**

- (1) The heading of section 121 is amended by repealing “**section 7C of**”.
- (2) Section 121 is amended by renumbering it as section 121(1).
- (3) Section 121(1) is amended by repealing “section 7C of”.
- (4) Section 121 is amended by adding—

“(2) If a self-employed person who, having been exempted from the Ordinance because of the operation of section 4(3)(b) of the Ordinance, continues to be self-employed after ceasing to be a member of a provident, pension, retirement or superannuation scheme (however described) of a place outside Hong Kong, the Ordinance applies to the person as if the self-employment had begun on the day on which he ceased to be such a member.”.

**PART 8**

**NOTICE OF CESSATION OF EMPLOYMENT BY EMPLOYEES TO  
APPROVED TRUSTEES**

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

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

- (1) Section 145 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended by adding—

“(7B) If—

- (a) subsection (6) or (7A) is not complied with; and
- (b) the approved trustee of the employer sponsored scheme concerned is satisfied that the former employer cannot be located or refuses to comply with subsection (6) or (7A),

the approved trustee may accept a written notice given by the employee concerned as evidence of the employee’s cessation of employment and the date of cessation.

(7C) The notice referred to in subsection (7B) must be given by way of a statutory declaration in a form approved by the Authority.”.

(2) Section 145(8) is amended by adding “, by the employee’s former employer or by the employee,” after “has been notified”.

## **25. 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)**

(1) Section 146 is amended by adding—

“(9B) If—

- (a) subsection (8) or (9A) is not complied with; and
- (b) the approved trustee of the registered scheme concerned is satisfied that the former employer cannot be located or refuses to comply with subsection (8) or (9A),

the approved trustee may accept a written notice given by the employee concerned as evidence of the employee’s cessation of employment and the date of cessation.

(9C) The notice referred to in subsection (9B) must be given by way of a statutory declaration in a form approved by the Authority.”.

(2) Section 146(10) is amended by adding “, by the employee’s former employer or by the employee,” after “has been notified”.

## **26. Financial Penalties**

Schedule 4 is amended, in Part II, in item 60—

- (a) in column 2, by repealing “145(5) and (6), 146(7) and (8)” and substituting “145(5), (6) and (7A), 146(7), (8) and (9A)”;
- (b) in column 3, by repealing “145(5) and (6), 146(7) and (8)” and substituting “145(5), (6) and (7A), 146(7), (8) and (9A)”.

PART 9

CLAIM FOR PAYMENT OF SMALL BALANCE

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

**27. Additional classes of persons entitled to be paid accrued benefits**

(1) Section 162(2)(a) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended by adding “as at the date of the claim for payment of those benefits made by him under section 165” after “scheme”.

(2) Section 162(2)(b) is repealed and the following substituted—

“(b) as at the date of the claim, at least 12 months have elapsed since the contribution day in respect of the latest contribution period for which a mandatory contribution is required to be made to that scheme or to any other registered scheme by or in respect of the member; and”.

**28. Claim for payment of small balance**

(1) Section 165(2)(b) is repealed and the following substituted—

“(b) as at the date of the claim, at least 12 months have elapsed since the contribution day in respect of the latest contribution period for which a mandatory contribution is required to be made to that scheme or to any other registered scheme by or in respect of the member; and”.

(2) Section 165(3)(a) is amended by adding “as at the date of the claim” after “scheme”.

(3) Section 165(3)(b) is repealed and the following substituted—

“(b) as at the date of the claim, at least 12 months have elapsed since the contribution day in respect of the latest contribution period for which a mandatory contribution is required to be made to that scheme or to any other registered scheme by or in respect of the member; and”.

PART 10

CANCELLATION OF APPROVAL OF POOLED INVESTMENT  
FUND OR CONSTITUENT FUND

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

**29. What is an approved pooled investment fund  
for the purposes of this Regulation?**

Section 6 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended by adding—

“(5) The Authority may on application made by a person specified in the guidelines cancel the approval of a pooled investment fund.

(6) An application under subsection (5) must—

(a) be in a form approved by the Authority; and

(b) contain such information, and be accompanied by such documents, as may be specified for the purposes of this section in the guidelines.

(7) The Authority may, by written notice, require an applicant to provide such additional information and documents as are reasonably necessary to enable it to determine the application. If such a requirement is not complied with within a reasonable time specified in the notice, the Authority may reject the application.”.

**30. Scheme may consist of a single constituent  
fund or of separate constituent funds**

Section 36 is amended by adding—

“(4) The Authority may on application made by an approved trustee of a registered scheme cancel the approval of a constituent fund of the scheme.

(5) An application under subsection (4) must—

(a) be in a form approved by the Authority; and

(b) contain such information, and be accompanied by such documents, as may be specified for the purposes of this section in the guidelines.

(6) The Authority may, by written notice, require an applicant to provide such additional information and documents as are reasonably necessary to enable it to determine the application. If such a requirement is not complied with within a reasonable time specified in the notice, the Authority may reject the application.



(7) The approval granted in respect of each constituent fund of a registered scheme is taken to be cancelled upon the cancellation of the registration of the scheme.”.

## PART 11

### CIRCUMSTANCES WHEN ACCRUED BENEFITS BECOME UNCLAIMED BENEFITS

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

#### **31. Sections substituted**

Sections 170 and 171 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) are repealed and the following substituted—

#### **“170. Duty of approved trustee if scheme member cannot be located**

(1) Subject to subsection (3), if—

- (a) a member of a registered scheme or some other person has become entitled to be paid the member’s accrued benefits but no claim has been lodged with the approved trustee of the scheme for payment of the member’s benefits under this Part; and
- (b) the trustee becomes aware that the member or other person cannot be located,

the trustee must, as soon as practicable after becoming so aware, take such steps as are specified in the guidelines.

(2) If the trustee cannot locate the member or other person within 6 months after taking the specified steps, the accrued benefits become unclaimed benefits at the end of that period.

(3) This section does not apply in a case where a scheme member of a registered scheme who has reached the retirement age has not lodged a claim with the approved trustee of the scheme for payment of the member’s accrued benefits under this Part.



**171. Duty of approved trustee if claimant cannot subsequently be located**

(1) This section applies where a member of a registered scheme or some other person has lodged a claim with the approved trustee of the scheme for the payment of the member's accrued benefits and the trustee is satisfied that the member or other person is entitled to be paid the accrued benefits.

(2) If the trustee becomes aware that the claimant cannot be located before payment of the scheme member's accrued benefits, the trustee must, as soon as practicable after becoming so aware, take such steps as are specified in the guidelines.

(3) If the trustee cannot locate the claimant within 6 months after taking the specified steps, the accrued benefits become unclaimed benefits at the end of that period.

(4) If—

(a) a cheque has been sent by the trustee to the claimant in payment of the scheme member's accrued benefits but the cheque is not presented for payment within the period specified in the guidelines; and

(b) the trustee is unable to locate the claimant during the period of 6 months after the expiry of the period specified in the guidelines,

the accrued benefits become unclaimed benefits at the end of the 6-month period.”.

**32. Approved trustee to notify scheme member of entitlement**

(1) The heading of section 172 is repealed and the following substituted—

**“Duty of approved trustee to notify scheme member who has reached retirement age of his entitlement”.**

(2) Section 172(2) is repealed.

(3) Section 172(3)(a) is amended by repealing “further notice given under subsection (2)” and substituting “notice given under subsection (1)”.

(4) Section 172(4) is repealed and the following substituted—

“(4) If the trustee—

(a) receives a reply to a request contained in a notice given under subsection (1) indicating that the member elects to retain the member's accrued benefits within the scheme; or

- (b) does not receive a reply to the request but is able to locate the member,  
the trustee must serve on the member a benefit statement in accordance with section 56.”.
- (5) Section 172(5) is repealed and the following substituted—  
“(5) The benefit statement must—  
(a) include only those particulars listed in section 56(3) that are applicable to the member; and  
(b) be accompanied by a notice informing the member that—  
(i) the member’s accrued benefits are being retained in the scheme; and  
(ii) the member may at any time lodge with the approved trustee of the scheme a claim for payment of the member’s accrued benefits in accordance with section 159.”.
- (6) Section 172(6) and (7) is repealed.
- (7) Section 172(8) is amended by repealing “or (2), or in a benefit statement or a copy of a benefit statement served on the member under this section,”.
- (8) Section 172(9), (10), (11) and (12) is repealed.

### 33. Sections added

The following are added—

**“172A. Duty of approved trustee when scheme member whose accrued benefits are retained in a scheme cannot be located**

(1) If the approved trustee of a registered scheme becomes aware that a scheme member on whom a benefit statement has been served under section 172(4) cannot be located while the member’s accrued benefits are being retained in the scheme, the trustee must, as soon as practicable after becoming so aware, take such steps as are specified in the guidelines.

(2) If the trustee cannot locate the member within 6 months after taking the specified steps, the accrued benefits become unclaimed benefits at the end of that period.

**172B. Approved trustee to submit to Authority  
particulars of scheme members  
who have unclaimed benefits**

- (1) The approved trustee of a registered scheme must submit to the Authority a quarterly report containing—
  - (a) particulars of scheme members—
    - (i) who have unclaimed benefits in the scheme as at the end of the quarter to which the report relates; and
    - (ii) whose particulars have not previously been provided to the Authority in accordance with this section;
  - (b) particulars of scheme members whose unclaimed benefits have been claimed in the quarter to which the report relates; and
  - (c) such information relating to the unclaimed benefits as may be specified in the guidelines.
- (2) The quarterly report must be submitted within the period, and in the manner, specified in the guidelines.

**172C. Register of scheme members who have  
unclaimed benefits to be kept**

- (1) The Authority must establish and maintain a register of scheme members of a registered scheme who have unclaimed benefits in the scheme.
- (2) The register may be in such form, and contain such information, as the Authority may determine.
- (3) The register is to be kept at the head office of the Authority in Hong Kong.
- (4) The register is to be made available for inspection to enable a person who may be entitled to benefits in a registered scheme to ascertain whether he has any unclaimed benefits in the scheme.
- (5) Any member of the public is entitled, without charge, to inspect the register during ordinary business hours of the Authority.”.

**34. Financial Penalties**

Schedule 4 is amended, in Part II, by repealing item 74 and substituting—

“74	172	Duty of approved trustee to notify scheme member who has reached retirement age of his entitlement	10,000	20,000	50,000
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74A	172A	Duty of approved trustee when scheme member whose accrued benefits are retained in a scheme cannot be located	10,000	20,000	50,000
74B	172B	Approved trustee to submit to Authority particulars of scheme members who have unclaimed benefits	10,000	20,000	50,000”.

## PART 12

### APPOINTMENT OF INVESTMENT MANAGER

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

#### **35. Approved trustee to appoint investment manager**

(1) Section 44(2) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is repealed and the following substituted—

“(2) The trustee does not have to comply with subsection (1) in relation to a constituent fund of the scheme if—

- (a) the accrued benefits of the constituent fund are invested only in a single approved pooled investment fund, or in a single approved index-tracking collective investment scheme, that is specified in the offering document; or
- (b) the trustee has obtained the prior approval of the Authority that compliance with subsection (1) is not required in relation to the fund.”.

(2) Section 44 is amended by adding—

“(6) In subsection (2), “approved index-tracking collective investment scheme” (核准緊貼指數集體投資計劃) means an index-tracking collective investment scheme within the meaning of section 1 of Schedule 1 that is approved by the Authority for the purposes of section 6A of that Schedule.”.

#### **36. Investment of Scheme Funds**

Schedule 1 is amended, within the square brackets at the beginning, by adding “44,” after “40,”.

PART 13

DISCLOSURE OF INFORMATION

**Mandatory Provident Fund Schemes Ordinance**

**37. Authority may disclose certain information despite section 41**

(1) Section 42(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended by adding—

“(ca) disclose the information in such form as the Authority considers appropriate but only if the information has been made available to members of the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by section 41;”.

(2) Section 42(1)(d) is amended by repealing “or the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (Cap. 588)” and substituting “the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (Cap. 588), the Official Receiver appointed under the Bankruptcy Ordinance (Cap. 6) or a liquidator appointed under the Companies Ordinance (Cap. 32)”.

(3) Section 42(1)(e)(ii) is amended by repealing the full stop and substituting a semicolon.

(4) Section 42(1) is amended by adding—

“(f) disclose the information with the consent of the person from whom the information was obtained or received and, if the information relates to a different person, with the consent also of the person to whom the information relates;

(g) disclose the information relating to provident fund schemes or constituent funds or approved pooled investment funds, but only if the Authority considers that it could—

(i) promote understanding by the public of the retirement scheme industry in Hong Kong and of the benefits, risks and liabilities associated with investing in provident fund schemes or occupational retirement schemes;

(ii) promote understanding by the public of the importance of making informed decisions relating to provident fund schemes or occupational retirement schemes, including, in particular, the importance of making informed decisions when choosing registered schemes or investing contributions or accrued benefits; or

- (iii) secure an appropriate degree of protection for the public by ensuring that they have sufficient information to help them make informed decisions relating to provident fund schemes or occupational retirement schemes, including, in particular, sufficient information to help them make informed decisions when choosing registered schemes or investing contributions or accrued benefits.”.
- (5) Section 42 is amended by adding—
- “(5A) The information that may be disclosed under subsection (1)(g) includes (but is not limited to) information relating to—
    - (a) the investment portfolios and investment policies of provident fund schemes, constituent funds or approved pooled investment funds;
    - (b) the investment performances of provident fund schemes, constituent funds or approved pooled investment funds;
    - (c) the risks associated with investing in provident fund schemes, constituent funds or approved pooled investment funds;
    - (d) the fees and charges payable under provident fund schemes, constituent funds or approved pooled investment funds; and
    - (e) the types of services available to members of provident fund schemes.”.

## PART 14

### CLAIM FOR PAYMENT OF ACCRUED BENEFITS ON GROUND OF PERMANENT DEPARTURE

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

#### **38. Claim for payment on ground of permanent departure from Hong Kong**

(1) Section 163(2)(a) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is repealed and the following substituted—

- “(a) a statutory declaration by the claimant that the claimant departed, or will depart, from Hong Kong permanently on a specified date; and”.

(2) Section 163(5) is amended by repealing “and the amount paid” and substituting “, the amount paid and such information as may be specified by the Authority”.

(3) Section 163 is amended by adding—

“(5A) For the avoidance of doubt, subsection (4) or (5) does not apply in relation to the payment of an outstanding contribution or contribution surcharge under section 169.”.

(4) Section 163(7) is amended by repealing “(5)” and substituting “(5A)”.

## PART 15

### MEMBERSHIP CERTIFICATES AND PARTICIPATION CERTIFICATES

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

#### **39. How notices etc. are to be served, etc. for purposes of the Ordinance**

Section 206(3) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is repealed and the following substituted—

“(3) Subsection (2) does not apply in relation to a document given under section 55 or 124.”.

## PART 16

### MEANING OF “PERSONAL REPRESENTATIVE”

#### **Mandatory Provident Fund Schemes Ordinance**

#### **40. Interpretation**

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

““personal representative” (遺產代理人) means—

- (a) a personal representative within the meaning of section 2 of the Probate and Administration Ordinance (Cap. 10); or
- (b) where the Official Administrator gets in and administers an estate in a summary manner under section 15 of that Ordinance, the Official Administrator;”.



**41. Withdrawal of accrued benefits**

Section 15(5) is repealed.

PART 17

EXTENSION OF PROSECUTION TIME LIMIT

**Mandatory Provident Fund Schemes Ordinance**

**42. Offences by employers**

Section 43B(4) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended, in the English text, by repealing “instigated” and substituting “instituted”.

**43. Offences by self-employed persons**

Section 43C is amended by adding—

“(3) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), proceedings may be instituted for an offence against this section—

- (a) within 6 months after the offence is discovered by, or comes to the notice of, the Authority; or
- (b) within 3 years of the commission of the offence,

whichever period expires first.”.

**44. Offence to make false or misleading statement**

(1) Section 43E is amended by renumbering it as section 43E(1).

(2) Section 43E is amended by adding—

“(2) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), proceedings may be instituted for an offence against this section—

- (a) within 6 months after the offence is discovered by, or comes to the notice of, the Authority; or
- (b) within 3 years of the commission of the offence,

whichever period expires first.”.



## Mandatory Provident Fund Schemes (Exemption) Regulation

### 45. Offences

(1) Section 26 of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B) is amended by renumbering it as section 26(1).

(2) Section 26 is amended by adding—

“(2) Notwithstanding section 26 of the Magistrates Ordinance (Cap. 227), proceedings may be instituted for an offence against subsection (1)(a) consisting of a failure to comply with section 4(1) or 15(1)—

(a) within 6 months after the offence is discovered by, or comes to the notice of, the Authority; or

(b) within 3 years of the commission of the offence, whichever period expires first.”.

## PART 18

### RESTRUCTURING OF REGISTERED SCHEMES

#### Mandatory Provident Fund Schemes Ordinance

### 46. Power to restructure registered schemes

(1) The heading of section 34B of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is repealed and the following substituted—

**“Authority may consent to restructuring of registered schemes”.**

(2) Section 34B(1) is amended by repealing everything after “scheme or schemes, as the case may be” and substituting a full stop.

(3) Section 34B is amended by adding—

“(9) The restructuring of a registered scheme or registered schemes that is carried out with the consent of the Authority under this section is, notwithstanding any provision of this Ordinance or the governing rules of the scheme or schemes, binding on the approved trustee or trustees of the scheme or schemes, all participating employers and scheme members in the scheme or schemes and all other parties bound by the governing rules of the scheme or schemes.

(10) The Authority's consent to the restructuring of a registered scheme or registered schemes does not affect the right of a participating employer or scheme member in the scheme or any of the schemes to elect to have the accrued benefits of the member transferred under Part XII of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A).

(11) In this section, a reference to a restructuring of a registered scheme or registered schemes is a reference to any arrangement under which the members of the scheme or schemes, or the accrued benefits of the members of the scheme or schemes, are transferred to another registered scheme or other registered schemes.”.

## PART 19

### SERVICE OF SUMMONS

#### **Mandatory Provident Fund Schemes Ordinance**

##### **47. Section added**

The Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended by adding—

##### **“47C. Service of summons**

Notwithstanding section 8 of the Magistrates Ordinance (Cap. 227) and without limiting the generality of section 338 or 356 of the Companies Ordinance (Cap. 32), a summons relating to an offence against this Ordinance that is alleged to have been committed by any employer may be served on the employer by leaving it at, or sending it by post to, any place at which the employer carries on business.”.

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

##### **48. How notices etc. are to be served, etc. for purposes of the Ordinance**

Section 206 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended by adding—

“(5) This section does not apply to summonses.”.

PART 20

INVESTMENT OF CAPITAL PRESERVATION FUND

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

**49. Provisions relating to capital preservation fund**

Section 37(2)(a)(iii) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended by repealing “short term”.

PART 21

PARTICULARS IN SCHEME MEMBER’S BENEFIT STATEMENT

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

**50. Approved trustee to provide scheme members with annual benefit statements**

(1) Section 56(3) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended by adding—

“(fa) contain such information as may be specified by the Authority; and”.

(2) Section 56(5) is amended by repealing “(f)” and substituting “(fa)”.

PART 22

PERSONS ELIGIBLE TO BE DELEGATE OF CUSTODIAN

**Mandatory Provident Fund Schemes Ordinance**

**51. Interpretation**

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

““subsidiary” (附屬公司) has the meaning assigned to it by section 2(4), (5) and (6) of the Companies Ordinance (Cap. 32);”.

## **52. Associates and related companies**

(1) The heading of Schedule 8 is amended by repealing “RELATED” and substituting “ASSOCIATED”.

(2) The heading of Part 3 of Schedule 8 is amended by repealing “RELATED” and substituting “ASSOCIATED”.

(3) Part 3 of Schedule 8 is amended by repealing section 19.

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

### **53. Eligibility of delegate of custodian**

(1) Section 71(1)(c) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is repealed and the following substituted—

“(c) is an overseas bank or overseas trust company that is a subsidiary or related company of an entity described in subsection (1A).”.

(2) Section 71 is amended by adding—

“(1A) The entity referred to in subsection (1)(c) is an approved overseas bank, an approved overseas trust company, an authorized financial institution or a registered trust company incorporated in Hong Kong, that—

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

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

(3) Section 71 is amended by adding—

“(4) For the purposes of subsection (1)(c), a company is a related company of another company if both are subsidiaries of a third company.”.

### **54. Qualifications for auditor**

Section 98(9) is amended by repealing “a related company” and substituting “an associated company”.

PART 23

NO TRANSFER OF ACCRUED BENEFITS IF CONTRIBUTIONS OR  
CONTRIBUTION SURCHARGES OUTSTANDING

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

**55. Accrued benefits not to be transferred if  
contributions outstanding**

(1) The heading of section 156 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended by adding “**or contribution surcharges**” after “**contributions**”.

(2) Section 156(1) is amended by repealing “are due” and substituting “or contribution surcharges or both (“outstanding sums”) are due for payment”.

(3) Section 156(1)(a) is amended by repealing “given its written consent” and substituting “, by written notice, given its consent”.

(4) Section 156(1)(b) is amended by repealing “outstanding contributions and contribution surcharges” and substituting “outstanding sums”.

(5) Section 156(1)(c) is amended by repealing “outstanding contributions and contribution surcharges” and substituting “outstanding sums”.

(6) Section 156(1)(d) is amended—

(a) by repealing “outstanding contributions and contribution surcharges” and substituting “outstanding sums”;

(b) by repealing “outstanding contributions and surcharges” and substituting “outstanding sums”.

(7) Section 156(2) is amended—

(a) by repealing “outstanding contributions and contribution surcharges” and substituting “outstanding sums as”;

(b) by repealing “outstanding contributions and contribution surcharge” and substituting “outstanding sums”.

PART 24

DEFINITION OF RELEVANT INCOME

**Mandatory Provident Fund Schemes Ordinance**

**56. Interpretation**

Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended, in paragraph (a) of the definition of “relevant income”, by repealing “(other than a housing allowance or other housing benefit)”.

**57. Application of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2008**

The Mandatory Provident Fund Schemes Ordinance (Cap. 485) as amended by section 56 of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2008 (1 of 2008) applies in relation to a contribution period that begins on or after the date of commencement of that section.

PART 25

POWER OF AUTHORITY TO REQUIRE PRODUCTION  
OF RECORDS

**Mandatory Provident Fund Schemes Ordinance**

**58. Section added**

The Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended by adding immediately after section 19—

**“19A. Power of Authority to require  
production of records**

(1) The Authority may, for the purpose of ensuring compliance with the provisions of this Ordinance but for no other purpose, by notice in writing served on an employer, a self-employed person or any other person, require him to produce for inspection within such period as may be specified in the notice any record that is required to be kept under this Ordinance or is otherwise in his possession or under his control.

(2) The Authority may make copies of all or any part of the records produced by a person pursuant to a notice served under subsection (1).”.

PART 26

RECOVERY OF ARREARS

**Mandatory Provident Fund Schemes Ordinance**

**59. Interpretation**

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

““arrears” (欠款) means a mandatory contribution that is due for payment to the Authority under section 18;”.

**60. Recovery of mandatory contributions that are in arrears**

(1) The heading of section 18 is repealed and the following substituted—  
**“Recovery of arrears and contribution surcharges”**.

(2) Section 18(1) is repealed and the following substituted—

“(1) If a mandatory contribution is not paid by the contribution day as defined in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A), it becomes due for payment to the Authority on the expiry of that day.”.

(3) Section 18(2) is amended by repealing “is in arrears” and substituting “becomes due for payment to the Authority”.

(4) Section 18(3) is amended by repealing “a mandatory contribution that is in arrears” and substituting “any arrears”.

(5) Section 18(4) is amended by repealing “a mandatory contribution that is in arrears” and substituting “the arrears”.

(6) Section 18(5) is repealed and the following substituted—

“(5) The Authority must pay any arrears or contribution surcharge paid to or recovered by the Authority—

(a) in the case of an employee who is still employed by the employer concerned at the time the Authority makes payment—

(i) to the approved trustee of the registered scheme nominated by the employer for this purpose; or

(ii) if the employer has not nominated a registered scheme, to the approved trustee of the registered scheme nominated by the employee for this purpose; or



- (iii) if neither the employer nor the employee has nominated a registered scheme, to the approved trustee of a registered scheme that the Authority considers appropriate; or
  - (b) in the case of an employee who has ceased to be employed by the employer concerned at the time the Authority makes payment—
    - (i) to the approved trustee of the registered scheme nominated by the employee for this purpose; or
    - (ii) if the employee has not nominated a registered scheme, to the approved trustee of a registered scheme that the Authority considers appropriate; or
  - (c) in the case of a self-employed person—
    - (i) to the approved trustee of the registered scheme nominated by the self-employed person for this purpose; or
    - (ii) if the self-employed person has not nominated a registered scheme, to the approved trustee of a registered scheme that the Authority considers appropriate.”.
- (7) Section 18 is amended by adding—
  - “(6A) For the purposes of this section, the regulations may—
    - (a) prescribe the duties of approved trustees in relation to mandatory contributions, arrears and contribution surcharges received by them, including the duty to verify the calculation of any of these sums and the duty to credit these sums to specified accounts; or
    - (b) prescribe the requirements to be complied with in relation to the recovery of arrears and contribution surcharges.
  - (6B) For the avoidance of doubt—
    - (a) a person’s liability to pay a contribution surcharge under subsection (2); or
    - (b) the exercise by the Authority of its power to recover any arrears or contribution surcharge under subsection (3),is not dependent on the compliance by the approved trustee or any other person with any regulation made for the purposes of this section.”.



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

### **61. Interpretation**

Section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended by repealing the definition of “arrears”.

### **62. Definitions**

(1) Section 119 is amended, in the definition of “defaulter”, by repealing “is in arrears with the payment of a mandatory contribution or part of such a contribution” and substituting “fails to pay a mandatory contribution or part of a mandatory contribution by the contribution day”.

(2) Section 119 is amended, in the English text, in the definition of “self-employed person”, by repealing the semicolon and substituting a full stop.

(3) Section 119 is amended by repealing the definition of “settlement period”.

### **63. Approved trustee to check calculations of mandatory contributions**

Section 132(3) is repealed.

### **64. Approved trustee to notify defaulters of failure to pay contributions**

Section 133 is repealed.

### **65. Contribution surcharge for, and report on, failure to pay contributions**

(1) The heading of section 134 is repealed and the following substituted—

**“Rate of contribution surcharge”.**

(2) Section 134(1), (2) and (3) is repealed.

**66. Approved trustee to inform Authority of non-payment or discrepancy of mandatory contribution**

(1) The heading of section 135 is amended by repealing “**non-payment or discrepancy of**” and substituting “**failure to pay**”.

(2) Section 135(1) is repealed and the following substituted—

“(1) If a participating employer or self-employed person fails to pay a mandatory contribution in full to the approved trustee of the registered scheme concerned by the contribution day, the trustee must, by written notice given within 10 days after the contribution day, inform the Authority.”.

(3) Section 135(2)(e) is amended by repealing the full stop and substituting a semicolon.

(4) Section 135(2) is amended by adding—

“(f) such other information as may be specified by the Authority.”.

(5) Section 135 is amended by adding—

“(3) The approved trustee of an industry scheme is not required to comply with this section in relation to a casual employee who is a member of the scheme if the employee’s employer and the trustee have agreed that the contribution day in relation to the mandatory contribution payable by the employer in respect of the employee is the working day mentioned in paragraph (b)(ii) of the definition of “contribution day” in section 122(1).”.

**67. Section added**

The following is added—

**“135A. Approved trustee to take actions required by Authority**

An approved trustee of a registered scheme must take such action as may be reasonably required by the Authority in connection with the recovery of arrears or a contribution surcharge.”.

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

(1) Section 136(1) is amended by repealing everything before “serve on” and substituting—

- “(1) Except in the circumstances specified in subsection (1A), the Authority must, as soon as practicable after receiving a notice given under section 135 by an approved trustee,”.
- (2) Section 136(1)(a) is repealed and the following substituted—  
“(a) to pay the arrears and the contribution surcharge payable on the arrears to the approved trustee of the registered scheme concerned within the period specified in the notice;”.
- (3) Section 136 is amended by adding—  
“(1A) The circumstances referred to in subsection (1) are—  
(a) the Authority is reasonably satisfied that the defaulter cannot be located;  
(b) the Authority is reasonably satisfied that the defaulter has paid all of the arrears and contribution surcharges payable on the arrears to the approved trustee;  
(c) the Authority is reasonably satisfied that the defaulter has paid part of the arrears and contribution surcharges to the approved trustee and that the outstanding arrears and contribution surcharges are irrecoverable;  
(d) the Authority is reasonably satisfied that all of the arrears and contribution surcharges are irrecoverable;  
(e) the Authority is reasonably satisfied that there has not actually been a default; or  
(f) service of a notice under subsection (1) is not reasonably practicable in all the circumstances of the case.”.

## 69. Financial Penalties

- (1) Schedule 4 is amended, in Part I, by adding—  
“2A 18(2) Requirement to pay contribution surcharge \$5,000 or 10 per cent of the amount to be paid, whichever is the greater”.
- (2) Schedule 4 is amended, in Part II, by repealing items 50 and 51.
- (3) Schedule 4 is amended, in Part II, in item 52, in column 3, by repealing “non-payment or discrepancy of” and substituting “failure to pay”.
- (4) Schedule 4 is amended, in Part II, by adding—  
“52A 135A Approved trustee to take actions required by Authority 10,000 20,000 50,000”.