

**MANDATORY PROVIDENT FUND SCHEMES  
(AMENDMENT) BILL 2009**

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# A BILL

## To

Amend the Mandatory Provident Fund Schemes Ordinance and the subsidiary legislation made under it to provide for an election by an employee to transfer accrued benefits derived from any mandatory contributions made by the employee in respect of any current employment or, in respect of any former employment or former self-employment, by the employee or any employer to another account within a registered provident fund scheme, to rename preserved accounts and expand their scope, to provide for the establishment of a register, to remove certain restrictions on the transfer of accrued benefits of an employee or self-employed person, to clarify provisions relating to the charging of costs in respect of the transfer of accrued benefits, to amend the requirements under which trustees must transfer accrued benefits in accordance with elections, to provide for matters relating to the transfer of outstanding sums by trustees, to correct minor clerical errors, and for connected purposes.

Enacted by the Legislative Council.

### PART 1

#### PRELIMINARY

##### **1. Short title**

This Ordinance may be cited as the Mandatory Provident Fund Schemes (Amendment) Ordinance 2009.

##### **2. Commencement**

This Ordinance comes 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

AMENDMENTS TO MANDATORY PROVIDENT FUND  
SCHEMES ORDINANCE

**3. Interpretation**

(1) Section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended by repealing the definition of “preserved account”.

(2) Section 2(1) is amended by adding—

“ “personal account” (個人帳戶) has the same meaning as in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A);”.

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

Section 19B(2)(a) is amended by repealing “preserved account” and substituting “personal account”.

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

(1) Section 19D(3) is amended by repealing “preserved account” and substituting “personal account”.

(2) Section 19D(5)(a) is amended by repealing “preserved account” and substituting “personal account”.

**6. Approval of trustees**

Section 20(6)(b)(iii) is amended by repealing “preserved account” and substituting “personal account”.

**7. Revocation of approval of approved trustee**

Section 20B(4)(b)(ii) is amended, in the Chinese text, by repealing “自己” and substituting “自己”.

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

Section 21(8)(b)(iii) is amended by repealing “preserved account” and substituting “personal account”.

**9. Applications for registration of schemes as industry schemes**

(1) Section 21A is amended by adding—

“(2A) Despite subsection (2), any person may also apply for the membership of such a scheme only for the purpose of maintaining a personal account within the scheme.”.

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

“(c) an application for membership of the scheme made by a person only for the purpose of maintaining a personal account within the scheme.”.

**10. Regulations**

Section 46(1A) is amended by adding—

“(da) providing for the keeping of records (including the establishment and maintenance of registers), and the provision of information in those records on request;”.

**PART 3**

**AMENDMENTS TO MANDATORY PROVIDENT FUND  
SCHEMES (GENERAL) REGULATION**

**11. Interpretation**

(1) Section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) is amended, in the definition of “participation agreement”, in paragraph (c), by repealing “preserved account” and substituting “personal account”.

(2) Section 2 is amended by repealing the definition of “preserved account”.

(3) Section 2 is amended by adding—

“ “personal account” (個人帳戶), in relation to a member of a master trust scheme or an industry scheme, means an account (other than a contribution account) within the scheme—

- (a) into which special contributions (if any) are paid in respect of the member;
  - (b) in which the member's accrued benefits (if any) in respect of any former employment or former self-employment of the member are held;
  - (c) in which the member's accrued benefits (if any) in respect of any current employment of the member are held; and
  - (d) 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;”.

## 12. Non-refusal of scheme applicants

(1) Section 31(1B) is amended by repealing “preserved account” and substituting “personal account”.

(2) Section 31(7) is amended by adding “and, subject to section 34” after “charged”.

## 13. No fees etc. for transfer of accrued benefits other than actual expenses

(1) Section 34 is amended, in the heading, by repealing “**actual expenses**” and substituting “**necessary transaction costs**”.

(2) Section 34 is amended by repealing everything after “may be imposed,” and substituting—

“for transferring accrued benefits—

- (a) from a registered scheme to another registered scheme;
- (b) from an account within a registered scheme to another account within the same registered scheme; or
- (c) in the same account within a registered scheme, from a constituent fund to another constituent fund,

other than an amount representing the necessary transaction costs that are incurred, or reasonably likely to be incurred, by the approved trustee in selling or purchasing investments in order to give effect to the transfer and are payable to a party other than that approved trustee.”.

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

(1) Section 78(8) is amended by repealing “preserved account” wherever it appears and substituting “personal account”.

(2) Section 78(8)(a)(i) is amended by adding “current employments or” before “former employments”.

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

Section 145(8)(a) is amended by repealing “preserved account” and substituting “personal account”.

**16. 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(10)(a) is amended by repealing “preserved account” and substituting “personal account”.

**17. Sections added**

The following are added—

**“148A. Transfer of accrued benefits derived from mandatory contributions in respect of current employment to personal accounts**

(1) This section does not apply to a case in which an employee has ceased to be employed as referred to in section 145, 146 or 147.

(2) If accrued benefits of an employee are held in one or more than one sub-account referred to in section 78(6)(b) within a master trust scheme or an industry scheme, the employee may, at any time, subject to subsection (4), elect to have all accrued benefits in the sub-account, or in any one or more than one of those sub-accounts, transferred to—

- (a) a personal account of the employee within the same registered scheme nominated by the employee; or
- (b) a personal account of the employee within another registered scheme, which is a master trust scheme or an industry scheme, nominated by the employee.



(3) If accrued benefits of an employee are held in one or more than one sub-account referred to in section 78(6)(b) within an employer sponsored scheme, the employee may, at any time, subject to subsection (4), elect to have all accrued benefits in the sub-account, or in any one or more than one of those sub-accounts, transferred to a personal account of the employee within a master trust scheme or an industry scheme, nominated by the employee.

(4) An employee may make an election under subsection (2) or (3) in respect of the employee's sub-account within a registered scheme (or if accrued benefits of the employee are held in more than one such sub-account, whether or not within the same registered scheme, in respect of each of those sub-accounts)—

- (a) only once in every calendar year; or
- (b) more than once in every calendar year in accordance with the governing rules of the registered scheme from which, or within which, the accrued benefits are transferred if those governing rules so provide.

(5) An election under subsection (2) or (3) is effective—

- (a) in relation to a personal account within a registered scheme referred to in subsection (2)(a), when written notice of the election is given to the transferor trustee; and
- (b) in relation to a personal account within a registered scheme referred to in subsection (2)(b) or (3), when written notice of the election is given to the transferee trustee.

**148B. Transfer of accrued benefits derived from mandatory contributions in respect of former employment or former self-employment to contribution accounts or personal accounts**

(1) This section does not apply to a case in which an employee has ceased to be employed as referred to in section 145, 146 or 147.

(2) If accrued benefits of an employee are held in one or more than one sub-account referred to in section 78(6)(c) within a master trust scheme or an industry scheme, the employee may, at any time, elect to have all accrued benefits in the sub-account, or in any one or more than one of those sub-accounts, transferred to—

- (a) another contribution account of the employee within the same registered scheme nominated by the employee;
- (b) a contribution account of the employee within another registered scheme, nominated by the employee;

- (c) a personal account of the employee within the same registered scheme nominated by the employee; or
  - (d) a personal account of the employee within another registered scheme, which is a master trust scheme or an industry scheme, nominated by the employee.
- (3) If accrued benefits of an employee are held in one or more than one sub-account referred to in section 78(6)(c) within an employer sponsored scheme, the employee may, at any time, elect to have all accrued benefits in the sub-account, or in any one or more than one of those sub-accounts, transferred to—
- (a) another contribution account of the employee within the same registered scheme nominated by the employee;
  - (b) a contribution account of the employee within another registered scheme, nominated by the employee; or
  - (c) a personal account of the employee within a master trust scheme or an industry scheme, nominated by the employee.
- (4) An election under subsection (2) or (3) is effective—
- (a) in relation to a contribution account within a registered scheme referred to in subsection (2)(a) or (3)(a), when written notice of the election is given to the transferor trustee;
  - (b) in relation to a contribution account within a registered scheme referred to in subsection (2)(b) or (3)(b), when written notice of the election is given to the transferee trustee;
  - (c) in relation to a personal account within a registered scheme referred to in subsection (2)(c), when written notice of the election is given to the transferor trustee; and
  - (d) in relation to a personal account within a registered scheme referred to in subsection (2)(d) or (3)(c), when written notice of the election is given to the transferee trustee.”.

## 18. Section substituted

Section 149 is repealed and the following substituted—

### “149. **Transfer of accrued benefits in personal accounts to contribution accounts or other personal accounts**

(1) If accrued benefits of a member of a master trust scheme or an industry scheme are held in one or more than one personal account of the member within the scheme, the member may, at any time, elect to have all

accrued benefits in the account, or in any one or more than one of those accounts, transferred to—

- (a) a contribution account of the member within the same registered scheme nominated by the member;
  - (b) a contribution account of the member within another registered scheme, nominated by the member;
  - (c) another personal account of the member within the same registered scheme nominated by the member; or
  - (d) a personal account of the member within another registered scheme, which is a master trust scheme or an industry scheme, nominated by the member.
- (2) An election under subsection (1) is effective—
- (a) in relation to a contribution account within a registered scheme referred to in paragraph (a) of that subsection, when written notice of the election is given to the transferor trustee;
  - (b) in relation to a contribution account within a registered scheme referred to in paragraph (b) of that subsection, when written notice of the election is given to the transferee trustee;
  - (c) in relation to a personal account within a registered scheme referred to in paragraph (c) of that subsection, when written notice of the election is given to the transferor trustee; and
  - (d) in relation to a personal account within a registered scheme referred to in paragraph (d) of that subsection, when written notice of the election is given to the transferee trustee.”.

#### **19. Duty of approved trustee on being notified of election**

(1) Section 153(2) is amended by adding “or if an election is made by an employee who ceases to be employed by the participating employer concerned in a registered scheme, within 30 days after the last contribution day in respect of the employment that has ceased, whichever is the later,” after “subsection (1),”.

(2) Section 153(3) is amended by adding “or if an election is made by an employee who ceases to be employed by the participating employer concerned in a registered scheme, within 30 days after the last contribution day in respect of the employment that has ceased, whichever is the later,” after “so notified,”.

**20. Approved trustee to give transfer statement to scheme member**

- (1) Section 154(1)(*f*) is repealed and the following substituted—  
“(*f*) whether or not there are any contributions or any contribution surcharges outstanding (whether or not recoverable) in relation to the account and, if so, the amount of each of the outstanding contributions or contribution surcharges (whether or not recoverable) if known to the transferor trustee;”.
- (2) Section 154(1) is amended by adding—  
“(*g*) such other information as may be specified by the Authority in the guidelines.”.
- (3) Section 154(2) is repealed and the following substituted—  
“(2) As soon as practicable after giving a transfer statement in accordance with subsection (1), the transferor trustee must give a copy of the statement to the transferee trustee.”.
- (4) Section 154(3)(*e*) is repealed and the following substituted—  
“(*e*) whether or not there are any contributions or any contribution surcharges outstanding (whether or not recoverable) in relation to the account and, if so, the amount of each of the outstanding contributions or contribution surcharges (whether or not recoverable) if known to the transferor trustee;”.
- (5) Section 154(3) is amended by adding—  
“(*f*) such other information as may be specified by the Authority in the guidelines.”.

**21. Accrued benefits not to be transferred if contributions or contribution surcharges outstanding**

Section 156(1) is amended by repealing “this Part” and substituting “section 150 or 150A”.

**22. Sections added**

The following are added immediately after section 157—

**“157A. Transfer of outstanding sums received by transferor trustees**

If a transferor trustee—

- (a) has been notified of an election made under section 145, 146, 147, 148, 150 or 150A and, at the time of the notification, contributions or contribution surcharges or both (“outstanding sums”) are due for payment to the Authority under section 7AE or 18 of the Ordinance in relation to the scheme member’s account concerned; and
- (b) has subsequently received any amount of the outstanding sums,

the transferor trustee must, within 30 days after receiving the amount, take all reasonably practicable steps to ensure that the amount is transferred in accordance with the election.

**157B. Register of members of registered schemes who have established and maintained personal accounts within master trust schemes or industry schemes**

(1) The Authority must establish and maintain, for the purposes of subsection (4), a register of members of registered schemes who have established and maintained personal accounts within master trust schemes or industry schemes.

(2) The register may be in the form determined by the Authority.

(3) The register must, in relation to each member of a registered scheme who has established and maintained a personal account, specify—

- (a) the member’s name;
- (b) the member’s Hong Kong Identity Card number or travel document number;
- (c) the name and business address of the approved trustee of the master trust scheme or industry scheme within which the personal account is established and maintained; and
- (d) the name and telephone number of the contact person designated by the approved trustee for the purpose of providing information relating to the personal account.

(4) If requested by—

- (a) any person (“the relevant person”);
- (b) the authorized representative of a person; or
- (c) the personal representative of a deceased person,

the Authority must, as soon as reasonably practicable, provide, without charge, to the person who made the request any information contained in the register for the purpose of enabling the person who made the request to ascertain whether the relevant person, the person who authorized the representative to make the request or the deceased person has established and maintained any personal account within any master trust scheme or industry scheme.”.

PART 4

AMENDMENT TO MANDATORY PROVIDENT FUND SCHEMES RULES

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

Section 4(1)(d)(iv) of the Mandatory Provident Fund Schemes Rules (Cap. 485 sub. leg. G) is amended by repealing “preserved accounts” and substituting “personal accounts”.

PART 5

TRANSITIONAL AND SAVINGS

**24. Transitional and savings**

(1) Any special contributions, accrued benefits and other benefits held in a preserved account of a person within a registered scheme immediately before the commencement of this Ordinance are, on that commencement, to be treated as being held in a personal account of that person within that registered scheme.

(2) Any reference to a preserved account of a person within a registered scheme in any deed, notice or other document that is in force immediately before the commencement of this Ordinance is, on that commencement, to be construed as a reference to a personal account of that person within that registered scheme.

(3) If, before the commencement of this Ordinance, any application for membership of a registered scheme has been made only for the purpose of maintaining a preserved account within that registered scheme but such application has not yet been dealt with, that application is, on that commencement, to be processed as if it were an application for membership of that registered scheme made only for the purpose of maintaining a personal account within that registered scheme.

(4) In this section—

“personal account” (個人帳戶) has the same meaning as in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) as amended by section 11(3);

“preserved account” (保留帳戶) has the same meaning as in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) as in force immediately before the commencement of this Ordinance;

“registered scheme” (註冊計劃) means a master trust scheme or an industry scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

### **Explanatory Memorandum**

This Bill amends the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“the Ordinance”) and its subsidiary legislation and its main objects are—

- (a) to enable an employee to transfer accrued benefits derived from any mandatory contributions made by the employee in respect of any current employment or, in respect of any former employment or former self-employment, by the employee or any employer to another account within a registered provident fund scheme;
- (b) to rename a preserved account as a personal account, and to expand the scope of the account for holding accrued benefits derived from the mandatory contributions made by an employee under a registered scheme in respect of any current employment of the employee;
- (c) to amend the requirements under which a trustee must transfer accrued benefits in an account within a registered scheme in accordance with an election;
- (d) to remove certain restrictions on the transfer of accrued benefits in an account within a registered scheme, in accordance with an election by an employee or a self-employed person, if there are outstanding contributions or contribution surcharges in relation to the account;
- (e) to provide that a trustee must transfer, in accordance with an election, the outstanding contributions or contribution surcharges in relation to an account within a registered scheme that are received by the trustee after being notified of the election;
- (f) to clarify that only the necessary transaction costs in respect of the selling or purchasing of investments that gives effect to the transfer of accrued benefits may be chargeable; and
- (g) to provide for the establishment and maintenance of a register of members of registered schemes who have established and maintained personal accounts within certain registered schemes.

### Part 1 of the Bill

2. Part 1 of the Bill is on preliminary matters. Clauses 1 and 2 provide for the short title and the commencement of the Bill when enacted respectively.

### Part 2 of the Bill

3. Part 2 of the Bill amends the Ordinance.

4. In particular, clause 3 replaces the definition of “preserved account” in section 2(1) of the Ordinance with a new definition of “personal account”.

5. Clauses 4, 5, 6 and 8 substitute all references to “preserved account” in the Ordinance with references to “personal account”.

6. Clause 9 adds a new section 21A(2A) to the Ordinance and amends section 21A(8)(c) of the Ordinance to provide that an industry scheme may accept the application by any person for joining the scheme only for the purpose of maintaining a personal account within the scheme.

### Part 3 of the Bill

7. Part 3 of the Bill amends the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) (“the Regulation”).

8. In particular, clause 11 replaces the definition of “preserved account” in section 2 of the Regulation with a new definition of “personal account”. That new definition expands the scope of the existing “preserved account” by providing that accrued benefits derived from the mandatory contributions made by an employee under a registered scheme in respect of any current employment of the employee may be held in the account which is now renamed as “personal account”.

9. Clauses 12(1), 14(1), 15 and 16 substitute all references to “preserved account” in the Regulation with references to “personal account”.

10. Clause 13 amends section 34 of the Regulation to clarify that only the necessary transaction costs in respect of the selling or purchasing of investments that gives effect to a transfer of accrued benefits are chargeable.

11. The proposed section 148A of the Regulation in clause 17 provides that an employee may elect to transfer the accrued benefits derived from the mandatory contributions made by the employee under a registered scheme, in respect of any current employment of the employee, from a contribution account of the employee within the registered scheme to a personal account of the employee within the same registered scheme (if it is a master trust scheme or an industry scheme) or another personal account of the employee within another registered scheme which is a master trust scheme or an industry scheme nominated by the employee.



12. The proposed section 148B of the Regulation in clause 17 provides that an employee may elect to transfer the accrued benefits derived from the mandatory contributions made by the employee or any employer of the employee, in respect of any former employment or former self-employment of the employee, from a contribution account of the employee within the registered scheme to another contribution account of the employee within the same registered scheme or another registered scheme nominated by the employee, or to a personal account of the employee within the same registered scheme (if it is a master trustee scheme or an industry scheme) or another personal account of the employee within another registered scheme which is a master trust scheme or an industry scheme nominated by the employee.

13. The proposed section 149 of the Regulation in clause 18 provides that a member of a master trust scheme or an industry scheme may elect to have all accrued benefits held in a personal account of the member within the scheme transferred to a contribution account or another personal account of the member within the same registered scheme nominated by the member, or to another personal account of the member within another master trust scheme or industry scheme nominated by the member, or to a contribution account of the member within another registered scheme nominated by the member.

14. Clause 19 amends section 153(2) and (3) of the Regulation by providing that an approved trustee must transfer accrued benefits within 30 days after being notified of an election or, if the election is made by an employee whose employment has ceased, within 30 days after the last contribution day in respect of the employment that has ceased, whichever is the later, in accordance with the election.

15. Clause 20 amends section 154 of the Regulation by requiring an approved trustee to state in a transfer statement whether or not there are any outstanding contributions or any contribution surcharges (whether or not recoverable) in relation to accounts from which accrued benefits are to be transferred and, if so, the amount of each of the outstanding contributions or contribution surcharges (whether or not recoverable) if known to the transferor trustee (defined in section 144(1) of the Regulation) and any other information as may be specified by the Mandatory Provident Fund Schemes Authority (the “Authority”).

16. Clause 21 amends section 156(1) of the Regulation so that accrued benefits may be transferred in accordance with an election made otherwise by an employer without the consent of or notice from the Authority even if there are outstanding contributions or contribution surcharges.

17. The proposed section 157A of the Regulation in clause 22 provides that a trustee must transfer, in accordance with an election, the outstanding contributions or contribution surcharges in relation to an account within a registered scheme that have been received by the trustee after being notified of the election.

18. The proposed section 157B of the Regulation in clause 22 provides for the establishment and maintenance by the Authority of a register of members of registered schemes who have established and maintained personal accounts within master trust schemes or industry schemes, for the purpose of providing information to people who want to ascertain whether a member has established and maintained any personal account within any master trust scheme or industry scheme.

#### Part 4 of the Bill

19. Part 4 of the Bill amends the Mandatory Provident Fund Schemes Rules (Cap. 485 sub. leg. G) (“the Rules”).

20. Clause 23 substitutes the reference to “preserved accounts” in the Rules with the reference to “personal accounts”.

#### Part 5 of the Bill

21. Part 5 of the Bill contains transitional and savings provisions.

22. Clause 24 deals with the transitional arrangements in relation to the change of the name of “preserved account” to “personal account”.