

LEGISLATIVE COUNCIL BRIEF

Occupational Retirement Schemes Ordinance
(Chapter 426)

OCCUPATIONAL RETIREMENT SCHEMES (AMENDMENT) BILL 1999

INTRODUCTION

At the meeting of the Executive Council on 1 June 1999, the Council ADVISED and the Chief Executive ORDERED that the Occupational Retirement Schemes (Amendment) Bill 1999 (at the Annex) should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

General Background

2. In implementing the Mandatory Provident Fund (MPF) System, it is our policy intention to allow existing schemes registered under the Occupational Retirement Scheme Ordinance (ORSO) which are under insurance arrangements⁽¹⁾ to be converted into schemes governed by trust⁽²⁾ so that they may qualify for exemption under the MPF Schemes Ordinance (MPFSO). In fact, as far as MPF exemption is concerned, any changes not prohibited by the ORSO should be allowed.

3. Section 16 of the MPF Schemes (Exemption) Regulation (“the Exemption Regulation”) provides that a “relevant ORSO registered

Note (1): An insurance arrangement means an agreement entered between an employer and an authorized insurer (normally, an insurance policy) under which the insurer is responsible for the administration of the scheme.

(2): A retirement scheme governed by trust is a scheme set up by a trust deed under which the trustee is responsible for the administration of the scheme.

scheme” may be exempted from the MPFSO. A “relevant ORSO registered scheme” is defined under section 2 of the Exemption Regulation to mean an ORSO registered scheme -

- (a) which is governed by a trust;
- (b) which provides benefits payable on termination of service, death, disability, retirement or winding up of the scheme;
- (c) established before or on 15 October 1995; and
- (d) in respect of which an application under section 7 or 15 of the ORSO (for exemption or registration) was received by the Registrar of the Occupational Retirement Schemes not later than 15 January 1996.

Present Position

4. Under section 23(5) of ORSO, if an ORSO registered scheme which is originally a participating scheme of a pooling agreement⁽³⁾ has ceased to be a participating scheme of that pooling agreement as a result of change of pool administrator, change of pooling agreement and so on, its registration will cease to have effect upon the cessation of the application of the pooling agreement. It needs to apply for registration again under the ORSO upon its joining of another pooling agreement or becoming a segregated scheme⁽⁴⁾. For the purpose of seeking MPF exemption, the Law Society of Hong Kong has raised doubts on whether the definition of “relevant ORSO registered scheme” in the Exemption Regulation would still apply to such re-registered schemes or other schemes which have undergone changes.

Note (3) : A pooling agreement means an arrangement under which two or more schemes of different employers are collectively administered by the same administrator to simplify administrative procedures and to achieve greater financial flexibility and cost savings.

Note (4): A segregated scheme is an individually administered scheme that does not participate in a pooling agreement.

The Proposal

5. We propose to add three clauses in section 2 of the ORSO to clarify that the eligibility of an ORSO scheme to apply for exemption under MPFSO is not affected even though certain subsequent changes in accordance with or not prohibited by ORSO have taken place since its registration.

THE BILL

6. The main provisions are –

- (a) **Section 2 Clause 8** of ORSO clarifies that the qualification of a “relevant ORSO registered scheme” under the Exemption Regulation for exemption shall not be affected by any changes to the scheme that are not prohibited by the ORSO; and
- (b) **Section 2 Clauses 9 and 10** of ORSO set out, for the avoidance of doubt, certain examples of changes and scheme terminations⁽⁵⁾ that are accepted or not accepted for the purpose of seeking exemption from the MPFSO.

PUBLIC CONSULTATION

7. The Law Society of Hong Kong and members of the Guidelines Committee of the Mandatory Provident Fund Schemes Authority (which includes representatives of the Hong Kong Investment Funds Association, the Hong Kong Trustees Association and the Hong Kong Federation of Insurers) have been consulted. All of them have indicated support to the proposal.

Note (5): When a scheme is terminated, benefits may be paid out to its scheme members. This is a real termination. However, in other cases, the assets of the original scheme may be transferred to another ORSO scheme. This is not a real termination. We propose that MPF exemption will only continue to apply in the latter case.

BASIC LAW IMPLICATIONS

8. The Department of Justice advises that the Bill is consistent with the Basic Law.

HUMAN RIGHTS IMPLICATIONS

9. The Department of Justice advises that the Bill has no human rights implications.

FINANCIAL AND STAFFING IMPLICATIONS

10. The Bill has no financial or staffing implications for the Government.

ECONOMIC IMPLICATIONS

11. The Bill is not expected to carry any economic implications.

LEGISLATIVE TIMETABLE

12. The legislative timetable will be -

Publication in the Gazette	4 June 1999
First Reading and commencement of Second Reading debate	16 June 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

PUBLICITY

13 A press release will be issued on 2 June 1999. A spokesman will be available for answering media enquiries.

ENQUIRIES

14. Enquiries on this Brief may be directed to Ms Wendy Cheung, Principal Assistant Secretary for Financial Services, at 2528 9016.

Financial Services Bureau
C13/4/11/1C(99)

A BILL

To

Amend the Occupational Retirement Schemes Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Occupational Retirement Schemes (Amendment) Ordinance 1999.

2. Interpretation

Section 2 of the Occupational Retirement Schemes Ordinance (Cap. 426) is amended by adding -

"(8) For the purposes of an application for an exemption certificate under section 16 of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) ("the Regulation"), where -

- (a) an occupational retirement scheme was established; and
- (b) an application for its registration under section 15 or its exemption under section 7, as the case may be, was made,

within the times required to qualify as a "relevant ORSO registered scheme" within the meaning of section 2 of the Regulation, if subsequently -

- (i) as a result of a provision of this Ordinance, an application to register the scheme again

was required; or

- (ii) any other change to the scheme took place that is not prohibited by this Ordinance but might create doubt that it continued to qualify as such a scheme,

such an application or other change shall not affect the continuity of the scheme nor its qualification as a "relevant ORSO registered scheme" within the meaning of section 2 of the Regulation.

(9) Without limiting subsection (8), the following shall not affect the continuity of a scheme nor its qualification as a "relevant ORSO registered scheme" within the meaning of section 2 of the Regulation -

- (a) application for subsequent registration of a scheme where the scheme has ceased to be registered under section 23(5);
- (b) conversion of a scheme from being the subject of, or regulated by, an insurance arrangement into a scheme governed by a trust.

(10) Notwithstanding subsection (8), where -

- (a) an occupational retirement scheme referred to in that subsection is terminated; and
- (b) the benefits payable to each member of the scheme have been paid out to such member,

for the purposes of the Regulation, such a scheme shall cease to qualify as a "relevant ORSO registered scheme" under section 2 of the Regulation, and no application shall be made

for an exemption certificate under section 16 of the Regulation in respect of it."

Explanatory Memorandum

The purpose of this Bill is to clarify that an Occupational Retirement Scheme that qualifies for exemption under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) because of its date of application for registration or exemption under the Occupational Retirement Schemes Ordinance (Cap. 426) shall not be disqualified from receiving a certificate of exemption by reason only that certain subsequent changes (e.g. conversion from an insurance scheme into a trust scheme) have taken place in accordance with, or that are not prohibited by, the Occupational Retirement Schemes Ordinance (Cap. 426).