

LEGISLATIVE COUNCIL BRIEF

OCCUPATIONAL RETIREMENT SCHEMES ORDINANCE (CHAPTER 426)

Occupational Retirement Schemes (Notices of Changes) Rules

Occupational Retirement Schemes (Fees) (Amendment) Rules 1998

Occupational Retirement Schemes (Authentication and Certification of Documents) (Amendment) Rules 1998

INTRODUCTION

Section 73(1)(da) of the Occupational Retirement Schemes Ordinance (“the Ordinance”) empowers the Registrar of Occupational Retirement Schemes (“the Registrar”) to make rules for details to be supplied on notice of changes to registered or exempted occupational retirement schemes (“registered or exempted schemes”). Section 73A of the Ordinance provides that a person who notifies the Registrar of a change of the particulars of a registered scheme or an exempted scheme shall pay the prescribed fee for giving the notice. In this connection, the Registrar has made the following rules:-

- (a) Occupational Retirement Schemes (Notices of Changes) Rules (Annex A);
- (b) Occupational Retirement Schemes (Fees) (Amendment) Rules 1998 (Annex B); and

- (c) Occupational Retirement Schemes (Authentication and Certification of Documents) (Amendment) Rules 1998 (Annex C).

BACKGROUND AND ARGUMENT

Occupational Retirement Schemes (Notices of Changes) Rules

2. The Ordinance requires certain changes to registered or exempted schemes to be notified to the Registrar in the manner prescribed in rules made by the Registrar. The scope of such notification includes:-

- (i) the name of a registered or exempted scheme;
- (ii) the relevant employer of a registered or exempted scheme;
- (iii) the name or address of the relevant employer of a registered or exempted scheme;
- (iv) the administrator of a registered scheme;
- (v) the name or address of the administrator or designated person of a registered scheme;
- (vi) the representative employer of a group scheme; and
- (vii) the name or address of the representative employer of a group scheme.

3. Under existing practice, the parties who give notifications of the above changes should furnish the Registrar with the particulars of the changes for updating the statutory register kept under section 6 of the Ordinance. They should also provide other details or documents evidencing the changes or for the purposes of indicating to the Registrar that other particulars of the schemes remain unchanged.

4. The above practice has been adopted by most relevant employers and scheme administrators. However, there are at present no statutory rules to prescribe the details that need to be submitted to the Registrar on the making of notification of change of scheme particulars. There have been occasions where the relevant employers or administrators of occupational retirement schemes do not follow the practice and cause delay in updating the necessary records by the Registrar. To ensure uniformity of practice in this regard, it is considered necessary to prescribe by rules the requirements for notices of changes. This will also enable the Registrar to specify standard forms for the purpose of facilitating the submission of the relevant information about these changes.

Occupational Retirement Schemes (Fees) (Amendment) Rules 1998

5. Section 73A of the Ordinance provides that a person who notifies the Registrar of a change of the particulars of a registered scheme or an exempted scheme shall pay the prescribed fee for giving the notice. We are not going to prescribe fees on such notification.

6. Our original intention is that the cost of processing notification of changes of retirement schemes particulars should be recovered through new

fees to be introduced, instead of through the annual fees payable by employers of retirement schemes. Having reviewed the operational experience in processing all types of notification of changes of retirement schemes particulars, the Registrar considers that the workload and the cost involved is actually not significant. Besides, in the course of public consultation, the retirement schemes industry has opined that fees should not be introduced for notification of relatively minor changes of particulars. Hence, we propose that fees should not be charged separately for notification of changes of particulars and that the cost for such work be recovered through the annual fees. The Occupational Retirement Schemes (Fees) (Amendment) Rules 1998 prescribe fees for all types of notification of changes of particulars as “Nil”.

Occupational Retirement Schemes (Authentication and Certification of Documents) (Amendment) Rules 1998

7. Section 67(1B) of the Ordinance requires that, in respect of a group scheme, the relevant employers from within the grouping of companies must by power of attorney nominate a representative employer for the purposes of the scheme. Such power of attorney or its copy must be authenticated or certified as appropriate under section 2(4) or 3 of the Occupational Retirement Schemes (Authentication and Certification of Documents) Rules and submitted to the Registrar under section 7(2)(c)(ii) or 15(d) of the Ordinance upon the application for exemption certificate or registration of the group scheme. Likewise, it is also required under the aforesaid Occupational Retirement Schemes (Notices of Changes) Rules that, in respect of a group scheme, upon the addition of relevant employers or change of representative employer, a copy of the relevant power of attorney is also required to be submitted to the Registrar. To require such copies of powers of attorney to be certified as

appropriate in the above manner, the Occupational Retirement Schemes (Authentication and Certification of Documents) (Amendment) Rules 1998 are therefore made.

8. In addition to the above, under the Occupational Retirement Schemes (Amendment) Ordinance 1995, the provision for execution of powers of attorney has been renumbered from 67(1) to 67(1B). However, consequential amendments to the Occupational Retirement Schemes (Authentication and Certification of Documents) Rules have not been made. The Occupational Retirement Schemes (Authentication and Certification of Documents) (Amendment) Rules 1998 have also provided for these minor amendments.

THE RULES

(A) Occupational Retirement Schemes (Notices of Changes) Rules

9. The Occupational Retirement Schemes (Notices of Changes) Rules provide for the details and matters to be supplied in notices to the Registrar under the Ordinance in respect of the changes referred to in paragraph 2(i) to (vii) above.

(B) Occupational Retirement Schemes (Fees) (Amendment) Rules 1998

10. The Occupational Retirement Schemes (Fees) (Amendment) Rules 1998 amend the Occupational Retirement Schemes (Fees) Rules to prescribe fees payable for various notices of changes to occupational retirement schemes under the Ordinance.

11. The prescribed level of fees is “Nil”.

(C) Occupational Retirement Schemes (Authentication and Certification of Documents) (Amendment) Rules 1998

12. The Occupational Retirement Schemes (Authentication and Certification of Documents) (Amendment) Rules 1998 amend the Occupational Retirement Schemes (Authentication and Certification of Documents) Rules for the purpose of requiring certification of, in accordance with section 3 thereof, powers of attorney required to be submitted under the Occupational Retirement Schemes (Notices of Changes) Rules. The Amendment Rules also effect a couple of minor amendments in the Occupational Retirement Schemes (Authentication and Certification of Documents) Rules relating to the section number [section 67(1)] of the Ordinance.

PUBLIC CONSULTATION

13. The Hong Kong Trustees’ Association, the Life Insurance Council and the Hong Kong Retirement Scheme Association have been consulted and have indicated support for the proposed rules.

HUMAN RIGHTS IMPLICATIONS

14. There are no human rights implications.

FINANCIAL AND STAFFING IMPLICATIONS

15. There are no financial or staffing implications.

ECONOMIC IMPLICATIONS

16. The rules are intended to give statutory effect to the existing practices on the provision of details in the making of notification of changes of scheme particulars to the Registrar. They should therefore not have any significant effect on the operation of relevant employers and scheme administrators. The standardization of details to be provided is expected to enhance the effectiveness and efficiency of the Registrar in processing the notification of changes of scheme particulars.

PUBLICITY

17. The rules will be published in the Gazette on 27 November 1998. The Registrar will inform relevant employers and scheme administrators the requirements and the commencement date of these rules.

ENQUIRY

18. For any enquiries on this brief, please contact Mr. Vincent Fung, Assistant Secretary for Financial Services (Retirement Schemes and Insurance) at telephone number 2527 1893.

Financial Services Bureau

November 1998

(File ref.: C13/4/2C (98) VIII)

OCCUPATIONAL RETIREMENT SCHEMES (NOTICES OF CHANGES) RULES

(Made under section 73(1)(da) of the Occupational Retirement Schemes Ordinance (Cap. 426))

1. Commencement

These Rules shall come into operation on a day to be appointed by the Registrar of Occupational Retirement Schemes by notice in the Gazette.

2. Notice of change to name of a registered or exempted scheme

- (1) Any notice of change required under -
 - (a) section 10(1)(d) of the Ordinance in the case of an exempted scheme (including, in the case of an exempted scheme that is a group scheme, that section as applied by section 67(2)(g) of the Ordinance); or
 - (b) section 21A(2) of the Ordinance in the case of a registered scheme (including, in the case of a registered scheme that is a group scheme, that section as applied by section 67(2)(gd) of the Ordinance),

shall be given in accordance with this section.

- (2) A notice referred to in subsection (1) shall -
 - (a) be in writing and in such form as may be specified by the Registrar;
 - (b) be accompanied by the prescribed fee;
 - (c) be signed by the person giving the notice;

- (d) contain the full particulars of and reasons (if any) for the change; and
- (e) be accompanied by a copy of the resolution (if any) approving the change to the name of the scheme.

3. Notice of change of relevant employer of a registered or exempted scheme by way of replacement

(1) Where in a change of the relevant employer of a scheme the previous relevant employer (“the original relevant employer”) is replaced by another relevant employer, including, in the case of a group scheme, another existing relevant employer of the scheme, (“the succeeding relevant employer”) who undertakes, with effect from the date of the change, the obligations of the original relevant employer in relation to the scheme, notice of change required under section 10(1)(e) of the Ordinance in the case of an exempted scheme or under section 21A(1) of the Ordinance in the case of a registered scheme shall be given in accordance with this section.

(2) A notice referred to in subsection (1) shall -

- (a) be in writing and in such form as may be specified by the Registrar;
- (b) be accompanied by the prescribed fee;
- (c) be signed by the person giving the notice;
- (d) contain the full particulars of the change, and the circumstances of and reasons for the change;
- (e) be accompanied by a copy of any document evidencing the change;

- (f) in the case of any new relevant employer joining a group scheme, be accompanied by a copy of a power of attorney executed under section 67 of the Ordinance;
- (g) in the case of a registered scheme that is a defined benefit scheme, state whether the succeeding relevant employer has given a written undertaking to the administrator to contribute to the scheme's funds in accordance with recommendations contained in the most recent actuarial certificate supplied as regards the scheme to the Registrar in accordance with the Ordinance; and
- (h) in the case of a registered scheme that is governed by a trust, state the total number of trustees and the number of non-employer trustees.

4. Notice of change of relevant employer of a scheme not involving replacement

(1) Any notice of the change required under section 10(1)(e) of the Ordinance in the case of an exempted scheme or under section 21A(1) of the Ordinance in the case of a registered scheme shall, except where section 3 applies, be given in accordance with this section.

- (2) A notice referred to in subsection (1) shall -
 - (a) be in writing and in such form as may be specified by the Registrar;
 - (b) be accompanied by the prescribed fee;
 - (c) be signed by the person giving the notice;

- (d) contain the full particulars of the change, and the circumstances of and reasons for the change;
- (e) in the case of a relevant employer joining a scheme, be accompanied by a copy of a power of attorney executed under section 67 of the Ordinance;
- (f) in the case of a relevant employer withdrawing from a group scheme, contain details of the arrangements for -
 - (i) the transfer of the rights of members under his employ and corresponding assets of the scheme to another registered or exempted scheme or, where the affected members are employed outside Hong Kong, to a scheme outside Hong Kong; or
 - (ii) the orderly winding up of that part of the scheme that applies to the withdrawing relevant employer; and
- (g) in the case of a registered scheme that is governed by a trust, state the total number of trustees and the number of non-employer trustees.

5. Notice of change of name or address of the relevant employer of a registered or exempted scheme

- (1) Any notice of change required under -
 - (a) section 10(1)(f) of the Ordinance in the case of an exempted scheme (including, in the case of an exempted scheme that is a group scheme, that section as applied by section 67(2)(g) of the Ordinance); or

(b) section 22(1)(a) of the Ordinance in the case of a registered scheme, shall be given in accordance with this section.

(2) A notice referred to in subsection (1) shall -

- (a) be in writing and in such form as may be specified by the Registrar;
- (b) be accompanied by the prescribed fee;
- (c) be signed by the person giving the notice;
- (d) contain the full particulars of the change; and
- (e) where the notice is in respect of a change of name, be accompanied by a copy of any certificate or document evidencing the change of name.

6. Notice of change of administrator of a registered scheme

(1) Any notice of change required under section 22(1)(b) of the Ordinance (including, in the case of a registered scheme that is a group scheme, that section as applied by section 67(2)(ge) of the Ordinance) shall be given in accordance with this section.

(2) A notice referred to in subsection (1) shall -

- (a) be in writing and in such form as may be specified by the Registrar;
- (b) be accompanied by the prescribed fee;
- (c) be signed by the person giving the notice;
- (d) contain the following particulars of the scheme after the change -

- (i) a statement as to whether the scheme is a participating scheme of a pooling agreement;
- (ii) for a scheme that is a participating scheme of a pooling agreement -
 - (A) a statement as to whether the scheme is governed by a trust or is the subject of or regulated by an insurance arrangement;
 - (B) the name of the pooling agreement; and
 - (C) in the case of a scheme governed by a trust, the name of the registered trust company managing the pooling agreement;
- (iii) for a scheme that is not a participating scheme of a pooling agreement, a statement as to whether the scheme -
 - (A) is governed by a trust;
 - (B) is the subject of or regulated by an insurance arrangement; or
 - (C) is neither governed by a trust nor the subject of or regulated by an insurance arrangement;
- (iv) a statement as to whether there is a change of the domicile of the scheme; and
- (v) in the case of a scheme governed by a trust, the total number of trustees and the number of non-employer trustees;

- (e) contain particulars of the incoming or outgoing administrator and the date on which he becomes or ceases to be an administrator, as the case may be;
- (f) in the case of a registered scheme that is an offshore scheme, state whether a submission described in paragraph 3 of Part 3 of Schedule 1 to the Ordinance has been made by or on behalf of the incoming administrator;
- (g) in the case of a registered scheme that is a defined benefit scheme, state whether the relevant employer has given a written undertaking to the incoming administrator to contribute to the scheme's funds in accordance with recommendations contained in the most recent actuarial certificate supplied as regards the scheme to the Registrar in accordance with the Ordinance; and
- (h) in the case of a registered scheme that is governed by a trust, state whether the terms of the relevant trust instrument require appointment of a trustee to replace the outgoing administrator as trustee.

7. Notice of change of name or address of the administrator or designated person of a registered scheme

(1) Any notice of change required under section 22(2) of the Ordinance shall be given in accordance with this section.

(2) A notice referred to in subsection (1) shall -

- (a) be in writing and in such form as may be specified by the Registrar;

- (b) be accompanied by the prescribed fee;
- (c) be signed by the person giving the notice;
- (d) contain the full particulars of the change; and
- (e) where the notice is in respect of a change of name, be accompanied by a copy of any certificate or document evidencing the change of name.

8. Notice of change of the representative employer of a group scheme

(1) Any notice of change required under section 67(2)(gb) of the Ordinance shall be given in accordance with this section.

(2) A notice referred to in subsection (1) shall -

- (a) be in writing and in such form as may be specified by the Registrar;
- (b) be accompanied by the prescribed fee;
- (c) be signed by the person giving the notice;
- (d) contain the full particulars of the change, and the circumstances of and reasons for the change; and
- (e) be accompanied by a copy of a power of attorney executed under section 67 of the Ordinance.

9. Notice of change to name or address of the representative employer of a group scheme

(1) Any notice of change required under section 67(2)(gc) of the Ordinance shall be given in accordance with this section.

(2) A notice referred to in subsection (1) shall -

- (a) be in writing and in such form as may be specified by the Registrar;
- (b) be accompanied by the prescribed fee;
- (c) be signed by the person giving the notice;
- (d) contain the full particulars of the change; and
- (e) where the notice is in respect of a change to the name, be accompanied by a copy of any certificate or document evidencing the change to the name.

Alan WONG,
Registrar of Occupational
Retirement Schemes

19 November 1998

Explanatory Note

These Rules provide for the details and matters to be supplied in notices to the Registrar of Occupational Retirement Schemes required under the Occupational Retirement Schemes Ordinance (Cap. 426) in respect of changes of the following particulars -

- (a) name of a registered or exempted scheme;
- (b) relevant employer of a registered or exempted scheme;
- (c) name or address of the relevant employer of a registered or exempted scheme;
- (d) administrator of a registered scheme;

- (e) name or address of the administrator or designated person of a registered scheme;
- (f) representative employer of a group scheme; and
- (g) name or address of the representative employer of a group scheme.

OCCUPATIONAL RETIREMENT SCHEMES (FEES) (AMENDMENT) RULES 1998

(Made under section 73 of the Occupational Retirement Schemes Ordinance (Cap. 426))

1. Commencement

These Rules shall come into operation on a day to be appointed by the Registrar of Occupational Retirement Schemes by notice in the Gazette.

2. Fees

The Schedule to the Occupational Retirement Schemes (Fees) Rules (Cap. 426 sub. leg.) is amended by adding -

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|-----|---|-----|
| “7. | Fee payable on a notice of change to the name of a registered or exempted scheme under section 10(1)(d), 21A(2) or 67(2)(g) or (gd) of the Ordinance | Nil |
| 8. | Fee payable on a notice of change of the relevant employer of a registered or exempted scheme under section 10(1)(e) or 21A(1) of the Ordinance | Nil |
| 9. | Fee payable on a notice of change of name or address of the relevant employer under section 10(1)(f), 22(1)(a) or 67(2)(g) of the Ordinance given in respect of a registered or exempted scheme or 2 or more registered or exempted schemes having the same relevant employer | Nil |

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|-----|---|-------|
| 10. | Fee payable on a notice of change of the administrator of a registered scheme under section 22(1)(b) or 67(2)(ge) of the Ordinance | Nil |
| 11. | Fee payable on a notice of change of name or address of the administrator or designated person under section 22(2) of the Ordinance given in respect of a registered scheme or 2 or more registered schemes having the same administrator or designated person (as the case may be) | Nil |
| 12. | Fee payable on a notice of change of domicile of a registered scheme under section 37 of the Ordinance | Nil |
| 13. | Fee payable on a notice of change of the representative employer of a group scheme under section 67(2)(gb) of the Ordinance | Nil |
| 14. | Fee payable on a notice of change to the name or address of the representative employer under section 67(2)(gc) of the Ordinance given in respect of a group scheme or 2 or more group schemes having the same representative employer | Nil”. |

Alan WONG,
Registrar of Occupational
Retirement Schemes

19 November 1998

Explanatory Note

These Rules amend the Occupational Retirement Schemes (Fees) Rules (Cap. 426 sub. leg.) to prescribe fees payable on various notices of changes to occupational retirement schemes under the Occupational Retirement Schemes Ordinance (Cap. 426) as “nil”.

CCUPATIONAL RETIREMENT SCHEMES (AUTHENTICATION AND CERTIFICATION OF DOCUMENTS) (AMENDMENT) RULES 1998

(Made under section 73 of the Occupational Retirement Schemes Ordinance (Cap. 426))

1. Commencement

These Rules shall come into operation on a day to be appointed by the Registrar of Occupational Retirement Schemes by notice in the Gazette.

2. Authentication of documents

Section 2(4) and (5) of the Occupational Retirement Schemes (Authentication and Certification of Documents) Rules (Cap. 426 sub. leg.) is amended by repealing “67(1)” and substituting “67(1B)”.

3. Documents to be certified

Schedule 2 is amended -

- (a) in item 1, by repealing “67(1)” and substituting “67(1B)”;
- (b) by adding -

“7. Copies of powers of attorney required to be submitted to the Registrar under section 3(2)(f), 4(2)(e) or 8 (2)(e) of the Occupational Retirement Schemes (Notices of Changes) Rules (L.N. of 1998).”.

Alan WONG,
Registrar of Occupational
Retirement Schemes

19 November 1998

Explanatory Note

These Rules amend the Occupational Retirement Schemes (Authentication and Certification of Documents) Rules (Cap. 426 sub. leg.) to require to be certified in accordance with section 3 thereof certain documents required to be submitted under the Occupational Retirement Schemes (Notices of Changes) Rules (L.N. of 1998). These Rules also effect a few minor amendments.