

立法會
Legislative Council

LC Paper No. CB(1)1718/99-00

Ref : CB1/SS/3/99

**Paper for the House Committee meeting
on 2 June 2000**

**Second report of the Subcommittee on subsidiary legislation
relating to Mandatory Provident Fund Schemes**

Purpose

This is the second report of the Subcommittee on subsidiary legislation relating to Mandatory Provident Fund Schemes, which summarizes the Subcommittee's deliberations on the following five pieces of subsidiary legislation:

- (a) Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 1) Notice 2000 (the Amendment of Schedule 1 Notice);
- (b) Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2000 (the Amendment Regulation);
- (c) Mandatory Provident Fund Schemes Rules (the Rules);
- (d) Mandatory Provident Fund Schemes (Specification of Permitted Periods) Notice (the Specification of Permitted Periods Notice); and
- (e) Mandatory Provident Fund Schemes (Contributions for Casual Employees) Order (the Order).

The Subcommittee

2. The House Committee agreed at its meeting on 31 March 2000 to form a Subcommittee to study the Amendment of Schedule 1 Notice and the Amendment Regulation. The House Committee further agreed on 12 May and 26 May 2000 to refer the Rules, and the Specification of Permitted Periods Notice and the Order to the Subcommittee respectively.

3. The Hon Ronald ARCULLI was elected Chairman of the Subcommittee. The membership list of the Subcommittee is in **Appendix I**. The Subcommittee held a total of five meetings to study the five pieces of subsidiary legislation. It has received written submissions on the Amendment Regulation from two legal firms, on behalf of a group of 11 trustees/custodians operating in Hong Kong and a group of nine global custodians in the United States respectively. Representatives of the first group attended three meetings of the Subcommittee. The list of the trustees/custodians/legal firms is in **Appendix II**.

Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 1) Notice 2000

Employees exempted from Mandatory Provident Fund Schemes Ordinance

4. The Amendment of Schedule 1 Notice seeks to amend Schedule 1 of the Mandatory Provident Fund Schemes Ordinance (MPFSO)(Cap. 485) to put it beyond doubt that only relevant employees (other than casual employees) who have been employed for a period of less than 60 days would be exempted from MPFSO, and that relevant employees who have been employed for not less than 60 days under a continuous contract would not be exempted.

5. Some members of the Subcommittee are concerned that the proposed amendment may not achieve its purpose, and that the contribution requirement could still be circumvented, for example, in a situation where a relevant employee is employed by a company for 59 days and then by its subsidiary company for another 59 days. They note the Administration's advice that under section 31K(4) of the Employment Ordinance (EO)(Cap. 57), where an employee of a company is taken into the employment of another company which, at the time when he is taken into its employment, is an associated company of the first-mentioned company, his period of employment at that time shall count as a period of employment with the associated company, and the change of employer shall not break the continuity of the period of employment. Under section 31K(5) of EO, two companies shall be taken to be associated companies if one is a subsidiary of the other, or both are subsidiaries of a third company. In the circumstances, the employee in the scenario mentioned above will be covered by the proposed amendment.

6. Some members of the Subcommittee are also concerned that the relevant employers and employees may break up the contracts so as to avoid being caught by the definition of "continuous contract" provided under EO, which means a contract of employment under which an employee has been employed for 4 weeks or more and worked for 18 hours or more in each week. The Subcommittee notes the Administration's view that the employees concerned will then bear the risk of foregoing the benefits for employees employed under a continuous contract, such as paid holidays and annual leave, maternity leave, severance and long service payments etc. In accordance with EO, in any dispute as to whether a contract of employment is

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a continuous contract, the onus of proving that it is not a continuous contract shall be on the employer.

Review of the operation of the MPF system

7. Referring to the close relationship between MPFSO and EO, some members of the Subcommittee point out that EO was enacted more than 30 years ago and its legislative intent and provisions, such as the definition of "continuous contract", are not meant to cover the various employment issues that may arise from the implementation of the MPF system. They therefore call for a review of EO to address these issues. The Administration does not see the need to do so, but agrees to review the operation of the MPF system after its full implementation in December 2000. At the request of the Subcommittee, the Financial Services Bureau and the Education and Manpower Bureau undertake to monitor closely the implementation of the system.

Proposed amendment

8. To address the concern of the Subcommittee about the appropriateness of the term "is terminated" in the proposed amendment, the Administration will introduce a technical amendment to replace the term by "ceases". The draft resolution on the Amendment of Schedule 1 Notice with the technical amendment is in **Appendix III**.

Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2000

9. The MPF Schemes (General) Regulation (the General Regulation) provides, inter alia, a framework for the regulation of service providers operating MPF schemes. The amendments proposed in the Amendment Regulation have aimed at addressing the concern of members of the MPF industry, in particular the trustees and custodians, over some of the provisions of the General Regulation which may give rise to operational problems. The Subcommittee however notes that the Amendment Regulation has not fully addressed the concern of trustees/custodians as explained in paragraphs 10 to 17 below.

Permitted encumbrance of scheme assets

(Section 65, and section 3 of Schedule 3 of the General Regulation)

10. The Subcommittee notes the Administration's policy intent that the assets of MPF schemes should not be subject to unnecessary risks and therefore, borrowing by a MPF scheme should be strictly limited. This policy intent is reflected in section 65 of the General Regulation which imposes a duty on the approved trustee of a registered scheme to ensure that, subject to the prescribed exceptions, the scheme assets are not subject to any encumbrance. The prescribed exceptions seek to limit borrowing to circumstances where it is needed temporarily to enable accrued benefits to be paid or to complete the acquisition of scheme assets. The periods of borrowing

for these two purposes are limited to 90 days and 7 working days respectively. The same provisions are provided in section 3 of Schedule 3 of the General Regulation which applies to custodial agreements and subcustodial agreements.

11. The Subcommittee shares the concern of the trustees/custodians that the periods of permitted borrowing are too restrictive and that flexibility should be provided to cater for situations beyond the control of the custodians/subcustodians. Whilst the Administration points out that the borrowing periods can be extended for reasons beyond the control of the custodians or subcustodians, this policy intent is not reflected in section 65. To address the concern of the Subcommittee and the trustees/custodians, the Administration agrees to amend section 65 to clarify that the prescribed exceptions refer to situations where at the time the encumbrances were created, it was unlikely that the period of the borrowing would exceed 90 days or 7 working days (as the case may be). The same amendments will also be made to section 3 of Schedule 3.

Reasonable rate of interest for scheme assets placed on deposit

(Proposed new section 66A and proposed amendment to section 67 of the General Regulation)

12. The Subcommittee notes that under the proposed new section 66A, the approved trustee is required to ensure that a reasonable rate of interest is received for scheme assets placed on deposit. Some members of the Subcommittee consider that whether an interest rate is "reasonable" may be subject to debates, as different banks offer different interest rates to different customers. They note the Administration's advice that the test of reasonableness is used in some other existing legislation. In determining whether someone has failed to act reasonably, a court would normally examine all the relevant circumstances.

13. Whilst the Subcommittee accepts the Administration's view that the proposed new section 66A is necessary to safeguard the interest of scheme members, it does not consider it justified to make it a criminal offence for failure to comply with the requirement under the proposed new section. To address the concern of the Subcommittee, the Administration agrees to abdicate the proposal to amend section 67 in this respect.

Requirements in respect of custodial and subcustodial agreements

(Schedule 3 of the General Regulation)

14. Schedule 3 of the General Regulation sets out the requirements for a custodial agreement between a trustee and a custodian, and by virtue of section 72, the requirements also apply to a subcustodial agreement between a custodian and a subcustodian. The trustees/custodians consider that this application would not add any material benefit to scheme members, but would result in a difficult, time-consuming and costly process to renegotiate new subcustodial agreements with each of their subcustodians for compliance with Schedule 3. They request the disapplication

of Schedule 3 to subcustodial agreements. The Administration maintains the view that there is a need to ensure that subcustodial agreements also comply with the principles in respect of the safeguarding of scheme assets.

Treatment of scheme assets as trust property (Section 1 of Schedule 3)

15. In examining the relevant provisions which give rise to concern, the Subcommittee notes that section 1(b) of Schedule 3 requires scheme assets to be administered and dealt with as trust property of the scheme, or if those assets are located in a place where no law of trusts is in force, to be administered and dealt with as if such a law were in force in that place. The trustees/custodians consider that the stipulation of such a provision in an agreement would likely lead to uncertainty and disputes concerning how a law that does not exist could be construed as to be in existence. They point out that in a number of countries, such as those in continental Europe, no trust law is in force. To address their concern, the Administration agrees to amend section 1(b) to reflect the policy intent that scheme assets are to be entrusted to custodians (or subcustodians) for safe keeping, and that they should be properly held, registered and segregated from the assets of custodians and its subcustodians.

Indemnity for indirect losses (Section 5 of Schedule 3)

16. The Subcommittee notes that under section 5 of Schedule 3, a custodian (or subcustodian) is required to indemnify the scheme for any losses incurred directly or indirectly by scheme members that are attributable to fraudulent, dishonest or negligent acts or omissions committed by the custodian (or subcustodian) or their employees. The trustees/custodians are concerned that the coverage of indirect losses would subject the custodians and subcustodians to unlimited liability. The Subcommittee shares their view that it is unjustified to impose such a requirement, having regard to the fact that there is no reference to "indirect losses" in the principal ordinance and that the requirement is contrary to prevailing practices in the major overseas financial markets. To address the concern of the Subcommittee and the trustees/custodians, the Administration agrees to introduce an amendment to remove the reference to indirect losses.

Reports to be provided by subcustodians (Sections 6 and 7 of Schedule 3)

17. The Subcommittee notes that subcustodians are required under sections 6(1)(a), 6(2) and 7(a) of Schedule 3 to report to their custodians any material changes affecting their eligibility to be subcustodians of the scheme assets, whether or not any material events have occurred, and whether or not each of their delegates satisfy the eligibility requirements as those applicable to subcustodians. The Subcommittee shares the view of the trustees/custodians that subcustodians who are merely safe-keepers may have difficulties in complying with these requirements. The Administration agrees to introduce amendments to give the Mandatory Provident Fund Schemes Authority (MPFA) the discretion to waive these requirements in respect of subcustodial agreements if they cause undue hardship.

Proposed amendments

18. The draft resolution on the Amendment Regulation with the Administration's proposed amendments is in **Appendix IV**. The Subcommittee notes that the trustees/custodians are in support of the proposed amendments.

Mandatory Provident Fund Schemes Rules

19. The Subcommittee notes that the Rules are made by MPFA to provide for the calculation of the total amount of accrued benefits vested in a scheme member from time to time and to prescribe the information and documents that should be contained in or accompanied with applications to MPFA for merger or division of registered schemes.

20. On the calculation of the total amount of accrued benefits, the Subcommittee notes that section 3 of the Rules which provides for the formula of calculation is modelled on and consistent with section 78 of the General Regulation which specifies the items to be included in calculating the accrued benefits in a separate account for each scheme member. Section 3 also provides that an approved trustee who fails to ensure that the accrued benefits of a scheme member are calculated in accordance with the Rules commits an offence and is liable on conviction to a fine at level 4.

21. As regards applications to MPFA for merger or division of registered schemes, the Subcommittee notes that under sections 34B and 34C of MPFSO, such applications must contain such information, and be accompanied by such documents, as are prescribed by the rules made by MPFA. Sections 4 and 5 of the Rules prescribe the required information and documents.

22. The Subcommittee supports the Rules in **Appendix V**.

Mandatory Provident Fund Schemes (Specification of Permitted Periods) Notice

23. The Specification of Permitted Periods Notice specifies the permitted period within which an employer must arrange for a relevant employee to become a member of a registered scheme under MPFSO. The permitted period is 60 days in the case of a relevant employee who is not a casual employee, and 10 days in the case of a casual employee. The Notice also specifies 60 days as the permitted period within which a self-employed person must become a member of a registered scheme under MPFSO.

24. The Subcommittee notes that the permitted period of 60 days for a relevant employee who is not a casual employee is in line with section 7B of MPFSO, and that the permitted period of 10 days for a casual employee is in line with the period within which an employer should make the relevant contribution in respect of a casual employee proposed in the Amendment Regulation. The Subcommittee supports these permitted periods and the permitted period of 60 days for a self-employed person.

Mandatory Provident Fund Schemes (Contributions for Casual Employees) Order

25. The Order prescribes the scales of amounts of contributions that an employer must make in respect of a casual employee who is a member of an industry scheme. It also prescribes the scales of amounts of contributions that the employer must deduct from the relevant income of the employee as a contribution by that employee to the scheme.

26. The Subcommittee notes that by virtue of sections 9, 10, Schedules 2 and 3 of MPFSO, a casual employee who is a member of an industry scheme whose relevant income is less than \$130 per day is not required to contribute to a registered scheme, and that for a casual employee whose relevant income is more than \$650 per day, both the employer and employee are not required to contribute in respect of the excess relevant income. Such minimum and maximum levels of relevant income form the basis of calculating the amount to be contributed and deducted.

27. The Subcommittee also notes that MPFA has consulted the catering and construction industries the representatives of which have accepted the proposed scales of amounts of contributions. The Subcommittee also supports the proposed scales of amounts of contributions.

28. The Subcommittee however foresees that the relevant employees, in particular the casual employees who may take up different jobs at different times, may have joined a number of schemes upon their retirement. To avoid confusion, the Subcommittee considers it necessary for MPFA to maintain a centralized information system to record the MPF schemes joined by individual relevant employees over the years. The relevant employees will be allowed access to their own record as and when necessary. As MPFA advises that its information system is designed for the storage of the information in respect of employers and self-employed persons only, the Subcommittee urges MPFA to review the need to expand the system to cover the relevant employees. MPFA agrees to conduct the review and report its findings to the Legislative Council Panel on Financial Affairs by the end of 2000.

Recommendation

29. The Subcommittee supports the Administration's proposal to move three motions for the passage of the Amendment of Schedule 1 Notice with amendments (**Appendix III**), the Amendment Regulation with amendments (**Appendix IV**) and the Rules (**Appendix V**) at the Council meeting on 21 June 2000.

30. The Subcommittee also supports the Specification of Permitted Periods Notice (**Appendix VI**) and the Order (**Appendix VII**). The scrutiny period of these two pieces of subsidiary legislation will expire on 21 June 2000.

Advice sought

31. Members are requested to support the recommendations of the Subcommittee in paragraphs 29 and 30 above.

Council Business Division 1
Legislative Council Secretariat
29 May 2000

與強制性公積金計劃有關的附屬法例
小組委員會
Subcommittee on subsidiary legislation
relating to Mandatory Provident Fund Schemes

委員名單
Membership list

夏佳理議員(主席)	Hon Ronald ARCULLI, JP (Chairman)
何世柱議員	Hon HO Sai-chu, SBS, JP
李卓人議員	Hon LEE Cheuk-yan
吳亮星議員	Hon NG Leung-sing
陳婉嫻議員	Hon CHAN Yuen-han
陳智思議員	Hon Bernard CHAN
陳鑑林議員	Hon CHAN Kam-lam
單仲偕議員	Hon SIN Chung-kai
劉漢銓議員	Hon Ambrose LAU Hon-chuen, JP
鄭家富議員	Hon Andrew CHENG Kar-foo
馮志堅議員	Hon FUNG Chi-kin

合共：11 位議員
Total: 11 Members

日期：2000 年 4 月 12 日
Date: 12 April 2000

**Subcommittee on subsidiary legislation
relating to Mandatory Provident Fund Schemes**

**List of trustees/custodians/legal firms submitted views on the
Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2000**

☆Clifford Chance on behalf of:

- ☆(1) The Bank of Bermuda Limited & Bermuda Trust (Far East) Limited
- ☆(2) The Chase Manhattan Bank
- ☆(3) Brown Brothers Harriman (Hong Kong) Limited
- ☆(4) Butterfield Trust (Hong Kong) Limited
- ☆(5) Citibank N.A.
- ☆(6) Deutsche Bank
- ☆(7) HSBC International Trustee Limited
- ☆(8) State Street Bank and Trust Company
- ☆(9) The Northern Trust Company of Hong Kong Limited
- ☆(10) Standard Chartered Bank
- ☆(11) The Bank of New York

Baker & Mckenzie on behalf of the Association of Global Custodians, an
informal coalition of nine US banks:

- (1) The Bank of New York
- (2) Boston Safe Deposit and Trust Company
- (3) Brown Brothers Harriman & Co.
- (4) The Chase Manhattan Bank
- (5) Citibank, N.A.
- (6) Deutsche Bank/Bankers Trust Company
- (7) Investors Bank & Trust Company
- (8) The Northern Trust Company
- (9) State Street Bank and Trust Company

Remark:

“☆” denotes those trustees/custodians/legal firms the representatives of which have attended meetings of the Subcommittee.

MANDATORY PROVIDENT FUND SCHEMES ORDINANCE
AND
INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 48 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and section 35 of the Interpretation and General Clauses Ordinance (Cap. 1))

MANDATORY PROVIDENT FUND SCHEMES ORDINANCE
(AMENDMENT OF SCHEDULE 1) NOTICE 2000

RESOLVED that the Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 1) Notice 2000, made by the Chief Executive in Council on 21 March 2000, be approved, subject to the following amendment – in section 1(a), in the proposed item 7(1), by deleting "is terminated" and substituting "ceases".

MANDATORY PROVIDENT FUND SCHEMES ORDINANCE
AND
INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 46 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and section 35 of the Interpretation and General Clauses Ordinance (Cap. 1))

MANDATORY PROVIDENT FUND SCHEMES (GENERAL)
(AMENDMENT) REGULATION 2000

RESOLVED that the Mandatory Provident Fund Schemes (General)(Amendment) Regulation 2000, made by the Chief Executive in Council on 21 March 2000, be approved, subject to the following amendments -

(a) in section 2 -

(i) by deleting paragraph (b)(ii);

(ii) in paragraph (c), in the proposed section 7(2), by adding "in the determination of net assets as referred to" after "liabilities";

(b) by deleting section 12 and substituting -

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

Section 65 is amended -

(a) in subsection (2) –

(i) by repealing paragraph (a)(iii) and substituting –

"(iii) at the time the borrowing was made, it was unlikely that the period of the borrowing would exceed 90 days; or";

(ii) in paragraph (b) –

(A) by repealing subparagraph (iii) and substituting –

"(iii) at the time the borrowing was made, it was unlikely that the period of the borrowing would exceed 7 working days; and";

(B) in subparagraph (iv), by repealing the full-stop and substituting "; or";

(iii) by adding –

"(c) is created for the purpose of securing a claim of payment for the safe custody or administration of the scheme assets by a central securities depository or a delegate of a custodian; or

(d) 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; or

- (e) is created by the operation of law in Hong Kong or in a place outside Hong Kong.";

- (b) by adding -

"(4) For the avoidance of doubt, it is hereby declared that any encumbrance created over the scheme assets of a registered scheme that is, at the time of creation, consistent with the exception under subsection (2) shall remain valid throughout the period for which the borrowing concerned remains outstanding."."

- (c) by deleting section 14;

- (d) in section 23 -

- (i) by deleting paragraph (a) and substituting -

"(a) by repealing section 1(b) and substituting -

"(b) to be entrusted to the custodian for safe keeping; and

(c) entrusted to the custodian -

- (i) where the scheme assets are in registered form, to be -

(A) registered in the name of the custodian or its

delegate; or

(B) administered and dealt with by the custodian or its delegate in such manner as may be customary and prudent in the relevant market;

(ii) where the scheme assets are in bearer form, to be held in the physical possession of the custodian or its delegate; and

(d) to be segregated from the custodian's and its delegates' assets." ; "

(ii) in paragraph (c) -

(A) by deleting subparagraph (i) and substituting -

"(i) by repealing paragraphs (a) and (b) and substituting -

"(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, and then 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; or

(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, and then 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; or";";

(B) by deleting subparagraph (ii) in the Chinese text and substituting -

"(ii) 加入—

"(c) 為了作為中央證券寄存處或保管人的獲轉授人妥善保管或管理計劃資產的費用申索的保證而設定的產權負擔；或

(d) 為了依據附表 1 第 14 條取得財務期貨合約或依據附表 1 第 15 條取

得貨幣遠期合約而設定的產權負

擔；或

(e) 藉香港法律或香港以外地方的法

律的施行而設定的產權負

擔。";";

(iii) by deleting paragraphs (d), (e) and (f) and substituting -

"(d) in section 5 -

(i) by repealing "The" and substituting "Subject to section 11 of this Schedule, the";

(ii) in paragraph (a), by repealing "losses incurred (directly or indirectly)" and substituting "direct losses incurred";

(e) in section 6(1) and (2), by repealing "The" and substituting "Subject to section 11 of this Schedule, the";

(f) in section 7 -

(i) by repealing "The" and substituting "Subject to section 11 of this Schedule, the";

(ii) by repealing "60 days" and substituting "4 months";

(g) by adding -

"11. The Authority may, subject to such conditions as the Authority thinks fit, by notice in writing (published in such manner as the Authority thinks fit) waive or modify the provisions of section 2 of this Schedule, and, in the case of a delegate of a custodian, section 2, 5, 6(1)(a) or (2) or 7(a) of this Schedule, where the Authority is of the opinion that the provisions -

- (a) cause undue hardship;
- (b) are incapable of or precluded from being complied with by virtue of a law in a place outside Hong Kong; or
- (c) are not in the interests of relevant scheme members.

12. For the avoidance of doubt, it is hereby declared that -

- (a) scheme assets -
 - (i) comprising cash held by a custodian

which is an authorized financial institution, an eligible overseas bank or an approved overseas bank may be held by any such custodian in its capacity as a bank; and

(ii) may be deposited by the custodian and its delegates with, and held in, any central securities

depository
on such
terms as
such central
securities
depository
customarily
operate; and

(b) any encumbrance
created over the scheme
assets of a registered
scheme that is, at the
time of creation,
consistent with the
exception under
section 3 of this
Schedule shall remain
valid throughout the
period for which the
borrowing concerned
remains
outstanding."."

MANDATORY PROVIDENT FUND SCHEMES RULES

(Made by the Mandatory Provident Fund Schemes Authority
under section 47 of the Mandatory Provident Fund
Schemes Ordinance (Cap. 485) subject to the
approval of the Legislative Council)

1. Commencement

These Rules shall come into operation on 1 December 2000.

2. Interpretation

(1) In these Rules, "General Regulation" (《一般規例》) means the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.).

(2) If an expression defined in section 2 of the General Regulation is used in these Rules, its meaning in these Rules is the same as in that section.

**3. Calculation of accrued benefits
for purposes of section 12(3)
of the Ordinance**

(1) For the purposes of section 12(3) of the Ordinance, the total amount of accrued benefits vested in a member of a registered scheme from time to time is the difference between -

(a) the aggregate amount of all the items listed in subsection (2); and

(b) the aggregate amount of all the items listed in subsection (3).

(2) The items referred to in subsection (1)(a) are -

(a) in the case of a scheme member who is a relevant employee,

all contributions paid by the member's employer to the scheme in respect of the member;

- (b) all contributions paid to the scheme by the member;
- (c) any amount transferred to the member's account in the scheme in accordance with Part XII of the General Regulation;
- (d) any investment income of the scheme that is attributable to the member's accrued benefits;
- (e) any amount by which the value of the scheme investments attributable to the member's accrued benefits has appreciated; and
- (f) any other sums payable to the member's account in the scheme under the Ordinance.

(3) The items referred to in subsection (1)(b) are -

- (a) accrued benefits that have been paid to or in respect of the member;
- (b) fees for administrative expenses deducted or deductible by the approved trustee of the scheme from the member's account in the scheme under the General Regulation unless those expenses are waived by the trustee;
- (c) any amount transferred from that account in accordance with Part XII of the General Regulation;
- (d) any other amounts payable under the Ordinance from that account; and
- (e) any amount by which the value of the scheme investments attributable to the member's accrued benefits has depreciated.

(4) An approved trustee of a registered scheme who fails to ensure that subsection (1) is complied with in respect of the accrued

benefits vested in a member of the scheme commits an offence and is liable on conviction to a fine at level 4.

4. Application for Authority's consent to merger of registered schemes under section 34B of Ordinance

(1) For the purposes of section 34B(3)(b) of the Ordinance, an application for the consent of the Authority to the merger of registered schemes must contain the following information -

- (a) the name and registration number of each of the registered schemes proposed to be merged;
- (b) the name, correspondence address and telephone number of the contact person in relation to the proposed merger;
- (c) reasons for the proposed merger;
- (d) the number of the following persons in each of the registered schemes proposed to be merged -
 - (i) participating employers;
 - (ii) members who are relevant employees;
 - (iii) members who are self-employed persons;
 - (iv) members holding preserved accounts;
- (e) a statement as to whether or not consent of the participating employers or scheme members to the merger must be obtained under the governing rules of those schemes and, if so, a statement specifying when and how the consent must be obtained under those rules;
- (f) a statement as to whether or not the cost of the merger is required to be borne (whether wholly or partly) by the participating employers or scheme members under the governing rules of those schemes and, if so, a statement

specifying how that cost is to be paid under those rules;
and

(g) a merger proposal that complies with subsection (2).

(2) The merger proposal must -

(a) specify the proposed effective date of the merger;

(b) specify the proposed date on which notice of the merger is to be given to the participating employers and scheme members;

(c) include a detailed plan on how to carry out the merger;

(d) include a chart showing how the registered schemes concerned and the constituent funds of those schemes are to be merged;

(e) specify the arrangement for transferring the accrued benefits of scheme members to the new scheme;

(f) specify the arrangement for compensating scheme members for any potential loss of accrued benefits due to the merger, and the mechanism (if any) for handling the grievances of scheme members arising from the merger;

(g) include an estimation of the cost of the merger; and

(h) specify by whom that cost is proposed to be borne and, if borne (whether wholly or partly) by the participating employers or scheme members, the amount they have to bear and how it is to be paid.

(3) For the purposes of section 34B(3)(b) of the Ordinance, the application must also be accompanied by the following documents -

(a) the drafts of all documents necessary for effecting the merger and for establishing the new scheme;

(b) the draft notice to the participating employers and scheme members seeking their consent to the merger, if applicable;

and

- (c) the draft notice to the participating employers and scheme members informing them of the merger, their rights, the actions that they need to take and all related arrangements.

5. Application for Authority's consent to division of registered scheme under section 34C of Ordinance

(1) For the purposes of section 34C(2)(b) of the Ordinance, an application for the consent of the Authority to the division of a registered scheme must contain the following information -

- (a) the name and registration number of the registered scheme proposed to be divided;
- (b) the name, correspondence address and telephone number of the contact person in relation to the proposed division;
- (c) reasons for the proposed division;
- (d) the number of the following persons in the registered scheme proposed to be divided -
 - (i) participating employers;
 - (ii) members who are relevant employees;
 - (iii) members who are self-employed persons;
 - (iv) members holding preserved accounts;
- (e) a statement as to whether or not consent of the participating employers or scheme members to the division must be obtained under the governing rules of that scheme and, if so, a statement specifying when and how the consent must be obtained under those rules;
- (f) a statement as to whether or not the cost of the division is required to be borne (whether wholly or partly) by the

participating employers or scheme members under the governing rules of that scheme and, if so, a statement specifying how that cost is to be paid under those rules; and

(g) a division proposal that complies with subsection (2).

(2) The division proposal must -

(a) specify the proposed effective date of the division;

(b) specify the proposed date on which notice of the division is to be given to the participating employers and scheme members;

(c) include a detailed plan on how to carry out the division;

(d) include a chart showing how the registered scheme concerned and the constituent funds of that scheme are to be divided;

(e) specify the arrangement for transferring the accrued benefits of scheme members to the new schemes;

(f) specify the arrangement for compensating scheme members for any potential loss of accrued benefits due to the division, and the mechanism (if any) for handling the grievances of scheme members arising from the division;

(g) include an estimation of the cost of the division; and

(h) specify by whom that cost is proposed to be borne and, if borne (whether wholly or partly) by the participating employers or scheme members, the amount they have to bear and how it is to be paid.

(3) For the purposes of section 34C(2)(b) of the Ordinance, the application must also be accompanied by the following documents -

(a) the drafts of all documents necessary for effecting the division and for establishing the new schemes;

- (b) the draft notice to the participating employers and scheme members seeking their consent to the division, if applicable; and
- (c) the draft notice to the participating employers and scheme members informing them of the division, their rights, the actions that they need to take and all related arrangements.

Managing Director,
Mandatory Provident Fund Schemes Authority

8 May 2000

**MANDATORY PROVIDENT FUND SCHEMES (SPECIFICATION
OF PERMITTED PERIODS) NOTICE**

(Made by the Mandatory Provident Fund Schemes Authority under sections 7(3) and 7C(2) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485))

**1. Permitted period specified for purposes
of section 7 of Ordinance**

For the purposes of section 7 of the Ordinance, the permitted period is -

- (a) 60 days in the case of a relevant employee who is not a casual employee; and
- (b) 10 days in the case of a casual employee.

**2. Permitted period specified for purposes
of section 7C of Ordinance**

For the purposes of section 7C of the Ordinance, the permitted period is 60 days.

Managing Director,
Mandatory Provident Fund Schemes Authority

17 May 2000

**MANDATORY PROVIDENT FUND SCHEMES (CONTRIBUTIONS
FOR CASUAL EMPLOYEES) ORDER**

(Made by the Mandatory Provident Fund Schemes Authority
under section 7A(6) of the Mandatory Provident
Fund Schemes Ordinance (Cap. 485))

1. Interpretation

In this Order, "casual employee" (臨時僱員) means a casual employee who is a member of an industry scheme.

**2. Amounts of contributions to be made
by employers in respect of casual
employees**

For the purposes of section 7A(3)(b) of the Ordinance, the amount to be contributed by an employer for a contribution period is -

- (a) in the case of a casual employee to whom the employer pays the relevant income more than once a day, an amount determined by reference to the scale set out in columns 1 and 2 of Part I of the Schedule;
- (b) in the case of a casual employee to whom the employer pays the relevant income at least, but not more than, once a day, an amount determined by reference to the scale set out in columns 1 and 2 of Part II of the Schedule ; and

- (c) in the case of a casual employee to whom the employer pays the relevant income less frequently than once a day, an amount determined by reference to the scale set out in columns 1 and 2 of Part III of the Schedule.

**3. Amounts of contributions to be deducted
by employers from relevant income of
casual employees**

For the purposes of section 7A(4)(b) of the Ordinance, the amount that an employer is required to deduct from the relevant income of a casual employee for a contribution period is -

- (a) in the case of a casual employee to whom the employer pays the relevant income more than once a day, an amount determined by reference to the scale set out in columns 1 and 3 of Part I of the Schedule;
- (b) in the case of a casual employee to whom the employer pays the relevant income at least, but not more than, once a day, an amount determined by reference to the scale set out in columns 1 and 3 of Part II of the Schedule; and
- (c) in the case of a casual employee to whom the employer pays the relevant income less frequently than once a day, an amount determined by reference to the scale set out in columns 1 and 3 of Part III of the Schedule.

SCHEDULE

[ss. 2 & 3]

SCALES OF AMOUNTS OF CONTRIBUTIONS TO BE MADE
IN RESPECT OF CASUAL EMPLOYEES

PART I

Scale of amounts of contributions to be made in the case of
a casual employee to whom the employer pays the

relevant income more than once a day

Total amount of relevant income paid by an employer to a casual employee in a day	Total amount to be contributed by the employer for that day	Total amount to be deducted by the employer from the employee's relevant income for that day
Less than \$130.00	\$7.50	Nil
\$130.00 or more but less than \$260.00	\$7.50	\$7.50
\$260.00 or more but less than \$390.00	\$15.00	\$15.00
\$390.00 or more but less than \$520.00	\$22.50	\$22.50
\$520.00 or more but not more than \$650.00	\$30.00	\$30.00
More than \$650.00	\$30.00	\$30.00

PART II

Scale of amounts of contributions to be made in the case of a casual employee to whom the employer pays the relevant income at least, but not more than, once a day

Amount of relevant income paid by an employer to a casual employee in a day	Amount to be contributed by the employer for that day	Amount to be deducted by the employer from the employee's relevant income for that day
Less than \$130.00	\$7.50	Nil
\$130.00 or more but less than \$260.00	\$7.50	\$7.50
\$260.00 or more but less than \$390.00	\$15.00	\$15.00
\$390.00 or more but less than \$520.00	\$22.50	\$22.50
\$520.00 or more but not more than \$650.00	\$30.00	\$30.00
More than \$650.00	\$30.00	\$30.00

PART III

Scale of amounts of contributions to be made in the case of a casual employee to whom the employer pays the relevant income less frequently than once a day

Average amount of relevant income paid by an employer to a casual employee per day in a contribution period	Amount to be contributed by the employer for that contribution period	Amount to be deducted by the employer from the employee's relevant income for that contribution period
Less than \$130.00	5% of the relevant income paid by the employer to the employee for that contribution period	Nil
\$130.00 or more but not more than \$650.00	5% of the relevant income paid by the employer to the employee for that contribution period	5% of the relevant income paid by the employer to the employee for that contribution period
More than \$650.00	\$32.50 per day in that contribution period	\$32.50 per day in that contribution period

Managing Director,
Mandatory Provident Fund Schemes Authority

17 May 2000