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Legislative Council Brief

Mandatory Provident Fund Schemes Ordinance
(Chapter 485)

MANDATORY PROVIDENT FUND SCHEMES RULES

INTRODUCTION

Annex

The Mandatory Provident Fund Schemes Authority (MPFA) has made the Mandatory Provident Fund Schemes Rules (the Rules) at Annex under section 47 of the Mandatory Provident Fund Schemes Ordinance (MPFSO) to provide for the calculation of the total amount of accrued benefits vested in a scheme member and to prescribe the information and documents that should accompany applications for merger or division of registered schemes. The Rules are subject to the approval of the Legislative Council.

BACKGROUND AND ARGUMENT

General Background

2. Section 47 of the MPFSO empowers the MPFA to make rules, not inconsistent with the MPFSO or the regulations, providing for matters relating to the administration of registered schemes and prescribing measures to facilitate the compliance with the MPF legislative requirements. Rules made under the section shall be subject to the approval of the Legislative Council.

Rules made by the MPFA

3. It is considered that for the purposes of sections 12(3), 34B and 34C, rules should be made by the MPFA under section 47 to provide

for the calculation of the total accrued benefits vested in a scheme member from time to time, and to prescribe the documents and information to be accompanied with the applications for merger/division of registered schemes.

A. Calculation of total amount of accrued benefits

4. Sections 12(1) and (2) of the MPFSO provides, inter alia, that contributions and income or profits derived from the investment of accrued benefits in respect of a scheme member are to be vested in that member as accrued benefits.

5. Section 12(3) of the MPFSO further provides that the total amount of accrued benefits vested in a scheme member from time to time is to be calculated as provided by **the rules** made under section 47. It is therefore necessary for the MPFA to make rules to provide for the purpose of section 12(3).

6. Apart from sections 12(1) and (2) which set out the principles in respect of the vesting of accrued benefits, section 78 of the Mandatory Provident Fund Schemes (General) Regulation (the General Regulation) further specifies the items to be included in calculating the accrued benefits in a separate account for each scheme member.

7. For consistency, it is important that the proposed rules should fully reflect the items specified in section 78.

B. Applications for merger/division of registered schemes

8. In accordance with sections 34B and 34C of the MPFSO, applications for merger/division of registered schemes can be made under certain circumstances as set out in those sections.

9. The sections also specify that the relevant applications must -

- (a) be in a form approved by the MPFA;

- (b) contain such information, and be accompanied by such documents, as are prescribed by **the rules** made under section 47; and
- (c) be accompanied by an application fee of such amount as is so prescribed.

It is therefore necessary for the MPFA to make rules for the purposes of sections 34B and 34C.

10. The MPFA is required under the MPFSO to consider the applications made under sections 34B and 34C as soon as practicable after receiving the applications. Besides, the MPFA may consent to the applications only if it is satisfied -

- a) that the interests of the relevant scheme members will be adequately protected and that their accrued benefits will be transferred to the new schemes;
- b) that the new schemes will be governed by the law of Hong Kong; and
- c) that the new schemes will comply with such requirements and standards as are required for registered schemes under the MPFSO.

11. The information and documents as set out in the proposed rules are considered necessary to enable and facilitate the MPFA to consider the applications in respect of the conditions mentioned above, and should be contained in or accompanied with the applications made under sections 34B and 34C.

THE RULES

12. **Section 3** of the rules provides for the calculation of the total amount of accrued benefits vested in a member of a registered scheme from time to time for the purposes of section 12(3) of the MPFSO. The provisions are consistent with those accrued benefits relating to the

calculating of section 78 of the General Regulation. A trustee who fails to ensure that the accrued benefits of a scheme member are calculated in accordance with section 3 commits an offence [section 3(4)].

13 **Sections 4 and 5** set out the information and documents required to be submitted to the MPFA on application for its consent to the merger and division of registered schemes under sections 34B and 34C of the MPFSO respectively.

LEGISLATIVE TIMETABLE

14. Section 47 of the MPFSO provides that rules made by the MPFA under that section shall be subject to the approval of the Legislative Council. A notice has been given to the Legislative Council to move a motion for the passage of the Rules on 24 May 2000.

15. This brief sets out additional background for Members' information.

PUBLICITY

16. The MPFA will publicize the proposed rules through its homepage.

ENQUIRIES

17. Enquiries on this Brief may be directed to Miss Maureen To, Principal Assistant Secretary for Financial Services (Retirement Schemes and Insurance), at 2528 9016.

Financial Services Bureau
9 May 2000

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

Explanatory Note

These Rules supplement the provisions of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("the principal Ordinance") for the purposes of supporting its full operation when the whole Ordinance comes into force later this year.

2. Section 3 provides for the calculation of the total amount of accrued benefits vested in a member of a registered scheme from time to time for the purposes of section 12(3) of the principal Ordinance. It also creates an offence for an approved trustee who fails to ensure that the accrued benefits of a scheme member are calculated in accordance with that section.

3. Sections 4 and 5 set out the information and documents required to be submitted to the Mandatory Provident Fund Schemes Authority on an application for its consent to the merger and division of registered schemes under sections 34B and 34C of the principal Ordinance respectively.