

C026e

A BILL

To

Amend the Mandatory Provident Fund Schemes Ordinance.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Mandatory Provident Fund Schemes (Amendment) Ordinance 2001.

2. Interpretation

Section 2 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) is amended---

(a) in subsection (1)---

(i) in the definition of "accrued benefits", by adding "including sums" after "time,";

(ii) by repealing the definition of "company" and substituting---
""company" (公司)---

(a) means---

(i) a company within the meaning of the Companies Ordinance (Cap. 32); or

(ii) an oversea company;

(b) includes a corporation in the case of---

(i) the definitions of "associated company", "chief executive officer", "controller", "officer", "oversea company", "share" and "voting share"; and

(ii) the provisions of section 44(1), section 7(2) of Part 2 of Schedule 1A and Schedule 8;"

(iii) in the definition of "employer sponsored scheme", in paragraphs (a) and (b), by repealing "relevant";

(iv) by repealing the definition of "governing rules" and substituting---
""governing rules" (管限規則), in relation to a registered scheme---

(a) subject to paragraph (b), means those rules and provisions---

(i) contained in---

(A) a trust instrument or other document, including any offering document or participation agreement, relating thereto; or

(B) that instrument and that document taken together; and

(ii) governing---

(A) the establishment of the scheme; or

(B) the administration of the scheme;

(b) does not include rules or provisions declared in a notice under subsection (3)

to be rules or provisions to which this definition does not apply;"

(v) by repealing the definition of "mandatory contribution" and substituting---
"mandatory contribution" (強制性供款) means---

(a) an amount that is paid or payable as a contribution to a registered scheme under section 7A or 7C; or

(b) minimum MPF benefits, to which section 5(1)(b) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) applies, that have been transferred to a registered scheme;"

(vi) in the definition of "master trust scheme"---

(A) in paragraph (a), by repealing "relevant";

(B) in paragraph (c), by repealing "first-mentioned scheme," and substituting "first-mentioned scheme; and";

(C) by adding---

"(d) persons who, having benefits in an ORSO exempted scheme, or an ORSO registered scheme, within the meaning of section 2(1) of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.), wish to have those benefits transferred to the first-mentioned scheme,"

(vii) in the definition of "oversea company", by repealing "company" where it secondly appears and substituting "body corporate";

(viii) in the definition of "participating employer", by repealing "relevant";

(ix) in the definition of "retirement age", by repealing "a relevant" and substituting "an";

(x) by adding---

"corporation" (法團) means a body corporate which is incorporated in a place outside Hong Kong and is not an oversea company;

"minimum MPF benefits" (最低強制性公積金利益) has the same meaning as in section 1(1) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.);

"offering document" (要約文件), in relation to a registered scheme, means a document---

(a) containing information on the scheme; and

(b) inviting participation in the scheme by prospective participating employers and prospective members of the scheme;

"participation agreement" (參與協議), in relation to a registered scheme, means an agreement---

(a) between a participating employer and the approved trustee of the scheme for the employer and his employees to participate in the scheme;

(b) between a self-employed person and the approved trustee of the scheme for the

self-employed person to participate in the scheme;

(c) between a person intending to maintain a preserved account in the scheme and the approved trustee of the scheme;

"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.);

"working day" (工作日) means any day other than---

(a) a public holiday;

(b) a gale warning day or black rainstorm warning day within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).";

(b) by adding---

"(3) The Authority may, by notice published in the Gazette, and subject to such conditions, if any, as are specified in the notice, declare rules or provisions specified in the notice to be rules or provisions to which the definition of "governing rules" does not apply.

(4) For the avoidance of doubt, it is hereby declared that a notice published under subsection (3) is subsidiary legislation."

3. Functions of Authority

Section 6E(1) is amended by adding---

"(ea) to consider and propose reforms of the law relating to occupational retirement schemes or provident fund schemes;

(eb) to promote and encourage the development of the retirement scheme industry in Hong Kong, including the adoption of a high standard of conduct and sound prudent business practices by trustees and other service providers;"

4. Section added

The following is added after section 6Q---

"6QA. Authority may borrow money

The Authority may, with the approval of the Financial Secretary, borrow money on such security or other conditions as it considers expedient."

5. Employer to arrange for employees to become scheme members

Section 7(3)(b)(ii) is amended by adding "the beginning of" before "the date".

6. Employer and relevant employees required to contribute to registered scheme

Section 7A is amended---

(a) in subsection (7), by repealing "income" and substituting "relevant income earned";

(b) in subsection (10), in the definition of "contribution period", in paragraphs (a), (b) and (c), by adding "or should pay" after "pays".

7. Duty of self-employed person to become scheme member

Section 7C is amended---

- (a) in subsection (1)(b), by adding "subject to the provisions of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.)," after "must,";
- (b) in subsection (2), in the definition of "the relevant time", in paragraph (b), by repealing "the date on which the person becomes self-employed" and substituting "the beginning of the date on which the person becomes self-employed";
- (c) by adding---

"(6) This section does not apply to a self-employed person who is---

- (a) less than 18 years of age; or
- (b) of or more than retirement age."

8. Voluntary contributions

Section 11 is amended---

- (a) by repealing subsections (1) and (2) and substituting---

"(1) The employer of a person may arrange for the person to join and pay contributions to a registered scheme notwithstanding that the person is less than 18 years of age or is of or more than retirement age. The employer may pay contributions to the scheme in respect of the person, but is not obliged to do so, whether or not the person pays contributions to the scheme whilst being of that age.

(2) A self-employed person may join and pay contributions to a registered scheme notwithstanding that the person is less than 18 years of age or is of or more than retirement age.";

- (b) by repealing subsection (7) and substituting---

"(7) Any contributions---

- (a) paid to a registered scheme as provided by this section; or
- (b) consisting of any benefits, other than minimum MPF benefits to which section 5(1)(b) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) applies, of a member of an ORSO exempted scheme, or an ORSO registered scheme, within the meaning of section 2(1) of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.), transferred to a registered scheme, are voluntary, but are subject to the governing rules of the scheme."

9. Approval of trustees

Section 20 is amended by adding---

"(12) Where the Authority---

- (a) has decided that it is appropriate to---

(i) amend any conditions imposed under subsection (8) or this subsection with

respect to the conduct of an approved trustee's business; or

(ii) impose conditions with respect to the conduct of an approved trustee's business; and

(b) has given to the approved trustee---

(i) not less than 7 working days' advance notice of its decision, specifying its grounds; and

(ii) an opportunity to make written representations as to why the conditions should not be amended or imposed,
then the Authority may---

(i) by written notice served on the approved trustee---

(A) amend any conditions imposed under subsection (8) or this subsection with respect to the conduct of the approved trustee's business; or

(B) impose conditions with respect to the conduct of the approved trustee's business; and

(ii) if the notice is accompanied by a certificate of approval issued by the Authority specifying the conditions imposed under this section with respect to the conduct of the approved trustee's business as those conditions are in force after the service of the notice, require the approved trustee to surrender to the Authority the last certificate of approval issued under this section to the approved trustee not later than 7 working days after the service of the notice.

(13) The Authority may waive a person's compliance with a condition imposed under subsection (8) or (12)---

(a) in a particular case; and

(b) where the person satisfies the Authority that such compliance is not, or has not been, reasonably practicable in all the circumstances of that case."

10. Application for registration as employer sponsored scheme or master trust scheme

Section 21 is amended---

(a) in subsection (8)(b), by repealing "on behalf of any relevant employee or self-employed person." and substituting---

"on behalf of---

(i) any relevant employee; or

(ii) any self-employed person who is 18 years of age or over and below retirement age.";

(b) by adding---

"(8A) Without prejudice to the operation of subsection (8), on registering a provident fund scheme, the Authority may impose such conditions with respect to the administration or marketing of the scheme as it considers appropriate.";

(c) in subsection (11), by adding "and, if the Authority has imposed conditions under

subsection (8A) with respect to the administration or marketing of the scheme, must specify those conditions in the certificate or in a document accompanying the certificate" after "registration";

(d) by adding---

"(12) Where the Authority---

(a) has decided that it is appropriate to---

(i) amend any conditions imposed under subsection (8A) or this subsection with respect to the administration or marketing of a registered scheme; or

(ii) impose conditions with respect to the administration or marketing of a registered scheme; and

(b) has given to the approved trustee---

(i) not less than 7 working days' advance notice of its decision, specifying its grounds; and

(ii) an opportunity to make written representations as to why the conditions should not be amended or imposed,

then the Authority may---

(i) by written notice served on the approved trustee---

(A) amend any conditions imposed under subsection (8A) or this subsection with respect to the administration or marketing of the scheme; or

(B) impose conditions with respect to the administration or marketing of the scheme; and

(ii) if the notice is accompanied by a certificate of registration issued by the Authority specifying the conditions imposed under this section with respect to the administration or marketing of the scheme as those conditions are in force after the service of the notice, require the approved trustee to surrender

to the Authority the last certificate of registration issued under this section to the approved trustee not later than 7 working days after the service of the notice.

(13) The Authority may waive a person's compliance with a condition imposed under subsection (8A) or (12)---

(a) in a particular case; and

(b) where the person satisfies the Authority

that such compliance is not, or has not

been, reasonably practicable in all the circumstances of that case."

11. Applications for registration of schemes
as industry schemes

Section 21A is amended---

(a) in subsection (8), by repealing "or self-employed person who is employed or

engaged" and substituting "who is employed, or any self-employed person who is 18 years of age or over and below retirement age and engaged,";

(b) by adding---

"(8A) Without prejudice to the operation of subsection (8), on registering a provident fund scheme as an industry scheme, the Authority may impose such conditions with respect to the administration or marketing of the scheme as it considers appropriate.";

(c) in subsection (11)(b), by adding "and, if the Authority has imposed conditions under subsection (8A) with respect to the administration or marketing of the scheme, must specify those conditions in the certificate or in a document accompanying the certificate" after "registration";

(d) by adding---

"(12) Where the Authority---

(a) has decided that it is appropriate to---

(i) amend any conditions imposed under subsection (8A) or this subsection with respect to the administration or marketing of a registered scheme; or

(ii) impose conditions with respect to the administration or marketing of a registered scheme; and

(b) has given to the approved trustee---

(i) not less than 7 working days' advance notice of its decision, specifying its grounds; and

(ii) an opportunity to make written representations as to why the conditions should not be amended or imposed,
then the Authority may---

(i) by written notice served on the approved trustee---

(A) amend any conditions imposed under subsection (8A) or this subsection with respect to the administration or marketing of the scheme; or

(B) impose conditions with respect to the administration or marketing of the scheme;
and

(ii) if the notice is accompanied by a certificate of registration issued by the Authority specifying the conditions imposed under this section with respect to the administration or marketing of the scheme as those conditions are in force after the service of the notice, require the approved trustee to surrender to the Authority the last certificate of registration issued under this section to the approved trustee not later than 7 working days after the service of the notice.

(13) The Authority may waive a person's compliance with a condition imposed under subsection (8A) or (12)---

(a) in a particular case; and
(b) where the person satisfies the Authority that such compliance is not, or has not been, reasonably practicable in all the circumstances of that case."

12. Winding up of registered schemes otherwise than in accordance with section 34 or 34D

Section 34A(1) is amended by adding "or 34D" after "section 34".

13. Section added

The following is added after section 34C---

"34D. Cancellation of registration of registered scheme which has no scheme members, etc.

(1) On being satisfied on the application of the approved trustee of a registered scheme that the scheme has no scheme members, no scheme assets and no liabilities (including obligations to participating employers and scheme members), the Authority must cancel the registration of the scheme.

(2) An application must---

(a) be in a form approved by the Authority; and

(b) contain such information, and be accompanied by such documents, as are specified in the form.

(3) The Authority may, by written notice, require an applicant to provide such additional information and documents as are reasonably necessary to enable it to determine the application. If such a requirement is not complied with within a reasonable time specified in the notice, the Authority may reject the application."

14. Section added

The following is added---

"42B. Immunity

No civil liability shall be incurred by the Authority, a director of the Authority or an employee of the Authority in respect of anything done, or omitted to be done, by the Authority, director or employee, as the case may be, in good faith in the performance or purported performance of any function under this Ordinance."

15. Offences by approved trustees

Section 43A(3) is amended by adding ", 20(12)(ii), 21(12)(ii) or 21A(12)(ii)" after "section 14(3)".

16. Offences by self-employed persons

Section 43C(1) is amended by adding "who is 18 years of age or over and below retirement age" after "self-employed person".

17. Application and interpretation of sections 45B and 45C

Section 45(1) is repealed and the following substituted---

"(1) Sections 45B and 45C apply to---

- (a) approved trustees;
- (b) participating employers; and
- (c) self-employed persons who are 18 years of age or over and below retirement age."

18. Regulations

Section 46(1A) is amended---

- (a) in paragraph (r), by repealing "擔保" and substituting "保證";
- (b) by adding---

"(wa) requiring the guarantor of an approved pooled investment fund, within the meaning of section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.), to maintain adequate reserves so as to provide investment guarantees;"

19. Exempt persons

Schedule 1 is amended, in Part I, in item 7(2), in the definition of "relevant time", in paragraph (b), by adding "the beginning of" before "the date".

20. Decisions which may be the subject of an appeal

Schedule 6 is amended---

- (a) by adding after section 2---

"2A. A decision of the Authority amending conditions imposed on an approved trustee.

2B. A decision of the Authority imposing conditions on an approved trustee subsequent to the trustee's approval.";

- (b) by adding after section 6---

"6A. A decision of the Authority amending conditions imposed on the administration or marketing of a registered scheme.

6B. A decision of the Authority imposing conditions on the administration or marketing of a registered scheme subsequent to the scheme's registration."

21. Consequential and other amendments to

Mandatory Provident Fund Schemes
(General) Regulation

The provisions of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.) are amended as specified in the Schedule.

SCHEDULE [s. 21]

Consequential and Other Amendments to Mandatory
Provident Fund Schemes (General) Regulation

1. Interpretation

Section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485

sub. leg.) is amended---

(a) by repealing the definition of "corporation";

(b) in the definition of "preserved account", by repealing everything after and including "includes" and substituting---

"includes---

(a) a former contribution account of the member retained in the scheme under section 147(6);

(b) the member's benefits, if any, transferred to the scheme from an ORSO exempted scheme or an ORSO registered scheme;";

(c) by repealing the definition of "working day";

(d) by adding---

"\"ORSO exempted scheme\" (職業退休豁免計劃) has the same meaning as in section 2(1) of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.); \"ORSO registered scheme\" (職業退休註冊計劃) has the same meaning as in section 2(1) of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.);\".

2. What is an approved pooled investment fund for the purposes of this Regulation?

Section 6 is amended---

(a) in subsection (2), by repealing the second sentence;

(b) by adding---

"(3) Where the Authority---

(a) has decided that it is appropriate to---

(i) amend any conditions imposed under subsection (2) or this subsection on an approved pooled investment fund; or

(ii) impose conditions on an approved pooled investment fund; and

(b) has given to the investment manager, insurer or trustee concerned---

(i) not less than 7 working days' advance notice of its decision, specifying its grounds; and

(ii) an opportunity to make written representations as to why the conditions should not be amended or imposed,

then the Authority may, by written notice served on the investment manager, insurer or trustee---

(i) amend any conditions imposed under subsection (2) or this subsection on the investment fund; or

(ii) impose conditions on the investment fund.

(4) The Authority may waive a person's compliance with a condition imposed under subsection (2) or (3)---

- (a) in a particular case; and
- (b) where the person satisfies the Authority that such compliance is not, or has not been, reasonably practicable in all the circumstances of that case."

3. Non-refusal of scheme applicants

Section 31 is amended---

(a) in subsection (1), by repealing "or by a self-employed person" and substituting ", or by a self-employed person who is 18 years of age or over and below retirement age,";

(b) in subsection (5)(b), by adding "and who is 18 years of age or over and below retirement age," after "former self-employed person,".

4. Requirements with respect to voluntary contributions

Section 33(3) is repealed and the following substituted---

"(3) If a member of the scheme so requests, accrued benefits derived from voluntary contributions made by or in respect of the member must be paid to the member as provided by the governing rules of the scheme. Where any of those voluntary contributions are required to be made by the scheme member's employer, then the governing rules of the scheme must, not later than 6 months after the commencement of this subsection, provide for the payment of any accrued benefits derived from voluntary contributions if the employer has failed to make such a required voluntary contribution to the scheme within 6 months after---

(a) if the amount of the voluntary contributions required to be made by the employer is determined by reference to the income derived from the employee's employment with the employer, the end of the period covered by the payment of such income;

(b) if the amount of the relevant contributions required to be made by the employer is determined by reference to a period of employment of the employee with the employer, the end of such period."

5. Amendments to governing rules of registered scheme

not to take effect without Authority's approval

Section 63 is amended---

(a) in subsections (1) and (2), by repealing "An" and substituting "Subject to subsection (2A), an";

(b) by adding---

"(2A) Subsections (1) and (2) shall not apply to an amendment proposed to be made or made to the governing rules in respect of or by a participation agreement of a registered scheme if the amendment is in a form approved by the Authority for the purposes of this section."

6. Eligibility of delegate of custodian

Section 71 is amended---

(a) by renumbering it as section 71(1);

(b) by adding---

"(2) The approved trustee of a registered scheme must ensure that---

(a) if the custodian of scheme assets is appointed under section 50(1), the contract for the appointment prohibits the custodian from delegating the custodian's function as a custodian to a person who is not eligible under subsection (1) to be a delegate of the custodian;

(b) if the trustee is the custodian of the scheme assets in accordance with section 50(2), the trustee does not delegate the trustee's function as a custodian to a person who is not eligible under subsection (1) to be a delegate of the custodian.

(3) The approved trustee of a registered scheme who, without reasonable excuse, fails to comply with a requirement imposed on the trustee by subsection (2) commits an offence and is liable on conviction to a fine at level 5."

7. Subcustodial agreement

Section 72 is amended---

(a) by renumbering it as section 72(1);

(b) by adding---

"(2) The approved trustee of a registered scheme must ensure that---

(a) if the custodian of scheme assets is appointed under section 50(1), the contract for the appointment prohibits the custodian from entering into an agreement with a person providing for any of the custodian's functions to be delegated to that person unless the agreement complies with subsection (1);

(b) if the trustee is the custodian of the scheme assets in accordance with section 50(2), the trustee does not enter into an agreement with a person providing for any of the custodian's functions to be delegated to that person unless the agreement complies with subsection (1).

(3) The approved trustee of a registered scheme who, without reasonable excuse, fails to comply with a requirement imposed on the trustee by subsection (2) commits an offence and is liable on conviction to a fine at level 5."

8. Separate account for each scheme member

Section 78 is amended---

(a) by repealing subsection (6)(a), (b), (c), (d), (e) and (f) and substituting--

"(a) a sub-account specifying---

(i) the contributions paid under section 7A(1)(a) or (2)(a) of the Ordinance in respect of the member by the member's current employer as mandatory contributions;

(ii) any contribution surcharges paid by the member's employer on arrears if

the relevant income of the employee is less than the minimum level of relevant income per month and there is not a sub-account as referred to in paragraph (b);

(iii) the member's minimum MPF benefits (if any), to which section 5(1)(b) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) applies, transferred to the scheme which are attributable to the current employer's contributions;

(iv) the income or profits arising from any investments of the contributions, surcharges and benefits mentioned in any of subparagraphs (i), (ii) and (iii), but taking into account any losses in respect thereof;

(b) a sub-account specifying---

(i) the member's contributions paid under section 7A(1)(b) or (2)(b) of the Ordinance by the member's current employer on behalf of the member as mandatory contributions;

(ii) any contribution surcharges paid by the member's employer on arrears if---

(A) the relevant income of the employee is not less than the minimum level of relevant income per month;

(B) the contributions have been made under subparagraph (i) in respect of the member; or

(C) the minimum MPF benefits have been transferred under subparagraph (iii) in respect of the member;

(iii) the member's minimum MPF benefits (if any), to which section 5(1)(b) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) applies, transferred to the scheme which are attributable to the employee's contributions of the current employment;

(iv) the income or profits arising from any investments of the contributions, surcharges and benefits mentioned in any of subparagraphs (i), (ii) and (iii), but taking into account any losses in respect thereof;

(c) a sub-account specifying---

(i) all mandatory contributions paid by or in respect of the member while employed by a former employer or while self-employed and transferred to the member's contribution account in accordance with Part XII, any contribution surcharges in respect of mandatory contributions paid by the member's employer while the member is employed by a former employer, and any contribution surcharges paid in respect of mandatory contributions paid by the member while self-employed;

(ii) the member's minimum MPF benefits (if any), to which section 5(1)(b) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) applies, transferred to the scheme which are attributable to his former

employments;

(iii) the income or profits arising from any investments of the contributions, surcharges and benefits mentioned in any of subparagraphs (i) and (ii), but taking into account any losses in respect thereof;

(d) a sub-account specifying---

(i) the voluntary contributions (if any) paid in respect of the member by the member's current employer;

(ii) the amount (other than minimum MPF benefits to which section 5(1)(b) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) applies), if any, transferred to the scheme in respect of the member from an ORSO exempted scheme or an ORSO registered scheme which are attributable to the current employer's contributions;

(iii) the income or profits arising from any investments of the contributions and amount mentioned in any of subparagraphs (i) and (ii), but taking into account any losses in respect thereof;

(e) a sub-account specifying---

(i) the voluntary contributions (if any) paid by the member while employed by the member's current employer;

(ii) the amount (other than minimum MPF benefits to which section 5(1)(b) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) applies), if any, transferred to the scheme in respect of the member from an ORSO exempted scheme or an ORSO registered scheme which are attributable to the employee's contributions of the current employment;

(iii) the income or profits arising from any investments of the contributions and amount mentioned in any of subparagraphs (i) and (ii), but taking into account any losses in respect thereof;

(f) a sub-account specifying---

(i) all voluntary contributions paid by or in respect of the member while employed by a former employer or while self-employed and transferred to the member's contribution account;

(ii) the amount (other than minimum MPF benefits to which section 5(1)(b) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) applies), if any, transferred to the scheme in respect of the member from an ORSO exempted scheme or an ORSO registered scheme which are attributable to the member's former employments;

(iii) the income or profits arising from any investments of the contributions and amount mentioned in any of subparagraphs (i) and (ii), but taking into account any losses in respect thereof.";

(b) by repealing subsection (7)(a), (b), (c) and (d) and substituting---

"(a) a sub-account specifying the member's mandatory contributions paid by the member while self-employed, any contribution surcharges paid by the member on arrears, and the income or profits arising from any investments of those contributions and surcharges, but taking into account any losses in respect thereof;

(b) a sub-account specifying---

(i) all mandatory contributions paid by or in respect of the member and transferred to the member's contribution account in accordance with Part XII, any contribution surcharges in respect of mandatory contributions paid by the member's employer while the member is employed by a former employer, and any contribution surcharges paid in respect of mandatory contributions paid by the member while self-employed;

(ii) the member's minimum MPF benefits (if any), to which section 5(1)(b) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) applies, transferred to the scheme;

(iii) the income or profits arising from any investments of the contributions, surcharges and benefits mentioned in any of subparagraphs (i) and (ii), but taking into account any losses in respect thereof;

(c) a sub-account specifying the voluntary contributions (if any) paid by the member while self-employed and the income or profits arising from any investments of those contributions, but taking into account any losses in respect thereof;

(d) a sub-account specifying---

(i) all voluntary contributions paid by or in respect of the member and transferred to the member's contribution account;

(ii) the amount (other than minimum MPF benefits to which section 5(1)(b) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) applies), if any, transferred to the scheme in respect of the member from an ORSO exempted scheme or an ORSO registered scheme;

(iii) the member's income or profits arising from any investments of the contributions and amount mentioned in any of subparagraphs (i) and (ii), but taking into account any losses in respect thereof.";

(c) by repealing subsection (8)(a) and (b) and substituting---

"(a) a sub-account specifying---

(i) all mandatory contributions paid by or in respect of the member and transferred to the member's preserved account in accordance with Part XII, any contribution surcharges in respect of mandatory contributions paid by the member's employer while the member is employed by a former employer, and any contribution surcharges paid in respect of mandatory contributions paid by the member while

self-employed;

(ii) the member's minimum MPF benefits (if any), to which section 5(1)(b) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) applies, transferred to the scheme;

(iii) the income or profits arising from any investments of the contributions, surcharges and benefits mentioned in any of subparagraphs (i) and (ii), but taking into account any losses in respect thereof;

(b) a sub-account specifying---

(i) all voluntary contributions paid by or in respect of the member and transferred to the member's preserved account;

(ii) the amount (other than minimum MPF benefits to which section 5(1)(b) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) applies), if any, transferred to the scheme in respect of the member from an ORSO exempted scheme or an ORSO registered scheme;

(iii) the member's income or profits arising from any investments of the contributions and amount mentioned in any of subparagraphs (i) and (ii), but taking into account any losses in respect thereof."

9. Definitions

Section 119 is amended---

(a) by repealing the definition of "second payment-period";

(b) by adding---

"subsequent payment-period" (其後付款期) means the period specified in a notice under section 136(6)."

10. Participating employer to calculate relevant income and pay mandatory contributions

Section 122(1) is amended, in the definition of "contribution day", by repealing paragraph (b)(i) and (ii) and substituting---

(i) the 10th day after the last day of the relevant contribution period; or

(ii) the next working day (other than a Saturday) immediately subsequent to the payment of relevant income for the relevant contribution period;".

11. Participating employer to provide remittance statement to approved trustee

Section 123(3) is amended by repealing "day on which the relevant income for the relevant contribution period is paid to the employee" and substituting "working day mentioned in paragraph (b)(ii) of the definition of "contribution day" in section 122(1)".

12. Approved trustee to notify defaulters of failure to pay contributions

Section 133(2) is amended by repealing "day on which the relevant income for the relevant contribution period is paid to the employee" and substituting "working day mentioned in paragraph (b)(ii) of the definition of "contribution day" in section 122(1)".

13. Contribution surcharge for, and report on, failure to pay contributions

Section 134 is amended---

(a) in subsection (3), by repealing "day on which the relevant income for the relevant contribution period is paid to the employee" and substituting "working day mentioned in paragraph (b)(ii) of the definition of "contribution day" in section 122(1)";
(b) in subsection (4)(b), by repealing "second" and substituting "relevant subsequent".

14. Authority to give notice to defaulter and approved trustee to inform Authority of non-payment

Section 136 is amended---

(a) in subsection (5), by adding "or any subsequent payment-period" after "payment-period";
(b) in subsection (6), by repealing "must serve a second" and substituting "may serve another";
(c) by repealing subsection (8).

15. Approved trustee to check calculations of arrears and contribution surcharge

Section 137(2) is amended by repealing "second" and substituting "relevant subsequent".

16. Participating employer to give monthly pay-records to scheme members

Section 139(4) is amended by repealing "day on which the relevant income for the relevant contribution period is paid to the employee" and substituting "working day mentioned in paragraph (b)(ii) of the definition of "contribution day" in section 122(1)".

17. Circumstances in which persons are exempted from operation of the Ordinance

Section 203(1)(b) is amended by repealing "12" and substituting "13".

18. Financial Penalties

Schedule 4 is amended, in Part II---

(a) in item 53, in column 2, by repealing "and (8)";

(b) by adding after item 70---

"70A 167 Approved trustee not to 10,000 20,000 50,000".

pay accrued benefits if
scheme accounts are being
audited or if scheme is being
investigated

Explanatory Memorandum

The principal object of this Bill is to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("the Ordinance") in order to make a number of technical amendments to its provisions which practical experience of the operation of the Ordinance has revealed are necessary or desirable.

2. Clause 2(a)(ii) repeals and replaces the definition of "company". The new definition of "company" is expanded to include a corporation in the case of the provisions of the Ordinance mentioned in paragraph (b) of the new definition. The definition of "corporation" is added by clause 2(a)(x).

3. Clause 2(a)(iv) repeals and replaces the definition of "governing rules". The new definition of "governing rules", as read with new section 2(3) at clause 2(b), provides a means to exclude certain rules and provisions from the definition.

4. Clause 2(a)(v) repeals and replaces the definition of "mandatory contribution". The new definition of "mandatory contribution" is expanded to cover certain minimum MPF benefits that have been transferred to a registered scheme. The definition of "minimum MPF benefits" is added by clause 2(a)(x).

5. Clause 2(a)(vi) amends the definition of "master trust scheme" by requiring a master trust scheme to also be open to membership by persons having benefits in an ORSO exempted scheme, or an ORSO registered scheme, within the meaning of section 2(1) of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.), and who wish to have those benefits transferred to the master trust scheme.

6. Clause 3 amends section 6E to more clearly set out the full range of the functions of the Mandatory Provident Fund Schemes Authority ("the Authority").

7. Clause 4 adds a new section 6QA to empower the Authority to borrow money with the approval of the Financial Secretary.

8. Clause 7(c) amends section 7C in order to disapply the section to self-employed persons who are less than 18 years of age or who have reached retirement age. Similar amendments are made by clauses 16 and 17 to sections 43C and 45 respectively.

9. Clause 8(a) amends section 11 to, inter alia, provide that a person's employer may arrange for the person to join and pay voluntary contributions to a registered scheme notwithstanding that the person is less than 18 years of age or is of or more than retirement age. The employer may also pay contributions to the scheme, but is not required to do so.

10. Clause 9 amends section 20 to empower the Authority to impose conditions from

time to time on an approved trustee, including empowering the Authority to amend those conditions from time to time or to waive compliance with such conditions in particular cases. Similar amendments are made by clauses 10 and 11 to sections 21 and 21A. Consequential amendments are made by clause 15 to section 43A (offences by approved trustees) and by clause 20 to Schedule 6 (decisions which may be the subject of an appeal).

11. Clause 13 adds a new section 34D to require the Authority to cancel the registration of a scheme on being satisfied that the scheme has no scheme members and no scheme assets.

12. Clause 14 adds a new section 42B to provide immunity from civil liability for the Authority and its director and employees acting in good faith in the performance or purported performance of any function under the Ordinance.

13. Clause 18 amends section 46 to expand the regulation-making power of the Chief Executive in Council.

14. Clause 21 and the Schedule make consequential and other technical amendments to the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.). In particular, sections 6 and 7 of the Schedule amend sections 71 and 72 respectively of the Regulation to require approved trustees to ensure that sections 71(1) and 72(1) are complied with.