

**MANDATORY PROVIDENT FUND SCHEMES
(AMENDMENT) ORDINANCE 2002**

CONTENTS

Section	Page
1. Short title	A51
2. Interpretation	A51
3. Exemptions	A55
4. Functions of Authority	A55
5. Section added	
6QA. Authority may borrow money	A55
6. Employer to arrange for employees to become scheme members	A57
7. Employer and relevant employees required to contribute to registered scheme	A57
8. Duty of self-employed person to become scheme member	A57
9. Voluntary contributions	A57
10. Approval of trustees	A59
11. Application for registration as employer sponsored scheme or master trust scheme	A61
12. Applications for registration of schemes as industry schemes	A63
13. Winding up of registered schemes otherwise than in accordance with section 34 or 34D	A67
14. Section added	
34D. Cancellation of registration of registered scheme which has no scheme members, etc.	A67
15. Section added	
42B. Immunity	A67
16. Offences by self-employed persons	A69
17. Application and interpretation of sections 45B and 45C	A69
18. Regulations	A69
19. Exempt persons	A69
20. Decisions which may be the subject of an appeal	A69
21. Consequential and other amendments to Mandatory Provident Fund Schemes (General) Regulation	A71
Schedule Consequential and other amendments to Mandatory Provident Fund Schemes (General) Regulation	A71

HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 2 OF 2002

L.S.

TUNG Chee-hwa
Chief Executive
11 February 2002

An Ordinance to amend the Mandatory Provident Fund Schemes Ordinance.

[15 February 2002]

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Mandatory Provident Fund Schemes (Amendment) Ordinance 2002.

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”, “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 “mandatory contribution” and substituting—
 - ““mandatory contribution” (強制性供款) means—
 - (a) an amount that is required to be paid as a contribution to a registered scheme under section 7A or 7C; or
 - (b) minimum MPF benefits, to which section 5(1) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg.) applies, that have been transferred to a registered scheme;”;
- (v) 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;”;
- (vi) in the definition of “participating employer”, by repealing “relevant”;
- (vii) in the definition of “retirement age”, by repealing “a relevant” and substituting “an”;
- (viii) by adding—
 - ““conditions” (條件) means reasonable conditions;
 - “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.);

“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) For the avoidance of doubt, it is hereby declared that an amount that is paid as a contribution to a registered scheme contingently on the basis that the amount will later constitute a mandatory contribution to the scheme shall for all purposes be treated as a mandatory contribution to the scheme (and the provisions of this Ordinance shall apply accordingly) unless and until it is certain that the amount will not constitute a mandatory contribution to the scheme.”.

3. Exemptions

Section 4(3) is amended by adding “and section 11(1) and (2)” after “(5)”.

4. 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;”.

5. 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 temporarily, on such security or other conditions as it considers expedient, for the purposes of—

- (a) the settlement of transactions in securities;
- (b) acquiring an overdraft banking facility;
- (c) dealing with an emergency; or
- (d) dealing with any other circumstances which could not have been foreseen.”.

6. Employer to arrange for employees to become scheme members

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

7. 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”.

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

Section 7C is amended—

- (a) in subsection (1)(b), by adding “in accordance with 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.”.

9. 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 or is exempted under section 4(3). 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 or is exempted under section 4(3).

(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 or is exempted under section 4(3).”;

(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) 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.”.

10. 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 30 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 approved trustee—
 - (c) amend any conditions imposed under subsection (8) or this subsection with respect to the conduct of the approved trustee's business; or
 - (d) impose conditions with respect to the conduct of the approved trustee's business.
- (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.”.

11. 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 30 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 approved trustee—
 - (c) amend any conditions imposed under subsection (8A) or this subsection with respect to the administration or marketing of the scheme; or
 - (d) impose conditions with respect to the administration or marketing of the scheme.
- (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.
- (14) The Authority shall not impose under this section any conditions with respect to the marketing of a registered scheme, or amend any conditions imposed under this section with respect to the marketing of the scheme, unless the imposition or amendment, as the case may be, falls within the ambit of the guidelines.”.

12. 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 30 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 approved trustee—

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

(d) impose conditions with respect to the administration or marketing of the scheme.

(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.

(14) The Authority shall not impose under this section any conditions with respect to the marketing of a registered scheme, or amend any conditions imposed under this section with respect to the marketing of the scheme, unless the imposition or amendment, as the case may be, falls within the ambit of the guidelines.”.

13. 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”.

14. 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.”.

15. 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.”.

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—

““offering document” (要約文件), in relation to a registered scheme, means a document—

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

(b) containing information relating to the establishment or administration of the scheme;

“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.);

“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; or
- (c) between a person intending to maintain a preserved account in the scheme and the approved trustee of the scheme;”.

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 30 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) In respect of an amendment proposed to be made or made to the governing rules in respect of or by a participation agreement of a registered scheme—

(a) subject to paragraph (b), subsections (1) and (2) shall not apply unless the amendment relates to mandatory contributions or voluntary contributions;

(b) subsections (1) and (2) shall not apply if the amendment is in a form approved by the Authority for the purposes of this section.”.

6. Section added

The following is added—

“63A. Amendments to offering documents require Authority’s approval

(1) An approved trustee of a registered scheme must notify the Authority in writing of any amendment proposed to be made to the offering document of the scheme and lodge with the Authority a copy of the proposed amendment.

(2) Any amendment to the offering document of the scheme shall not be made available to scheme members, prospective scheme members, participating employers or prospective participating employers until the Authority has given written notice to the trustee that the Authority has approved it.

(3) In this section, a reference to an amendment to the offering document of a registered scheme includes a reference to addition of new provisions, or substitution or omission of existing provisions, of the document.”.

7. 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.”.

8. 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.”.

9. 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) 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) 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) 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) 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) 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) 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) 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) 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) 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) 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.”;
- (d) by adding—
 - “(10) For the avoidance of doubt, it is hereby declared that this section does not operate to require the trustee to divide a member's sub-account into any further sub-accounts.”.

10. 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).”.

11. 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;”.

12. 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)”.

13. 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)”.

14. 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”.

15. 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).

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

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

17. 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)”.

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

Section 203(1)(b) and (2) are amended by repealing “12” wherever it appears and substituting “13”.

19. Financial Penalties

Schedule 4 is amended, in Part II—

- (a) by adding after item 23—

“23A	63A	Amendments to offering documents require Authority’s approval	10,000	20,000	50,000”;
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- (b) in item 53, in column 2, by repealing “and (8)”;
- (c) by adding after item 70—

“70A	167	Approved trustee not to pay accrued benefits if scheme accounts are being audited or if scheme is being investigated	10,000	20,000	50,000”.
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