

Mandatory Provident Fund Schemes (Amendment) Bill 2014

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A BILL

To

Amend the Mandatory Provident Fund Schemes Ordinance and its subsidiary legislation to provide for benefits withdrawal on terminal illness and by instalments from mandatory provident fund schemes, and on terminal illness from certain schemes under the Mandatory Provident Fund Schemes (Exemption) Regulation; to provide for time calculation, documentation, fees and penalties, and electronic communication, for administration of mandatory provident fund schemes; to provide for constituent fund approval, information disclosure and enforcement in respect of those schemes; to amend the Occupational Retirement Schemes Ordinance to provide for information disclosure in respect of certain schemes; and to make technical, related and consequential amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Mandatory Provident Fund Schemes (Amendment) Ordinance 2014.

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- (2) Subject to subsection (3), this Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.
- (3) This section and sections 2, 3, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21(2), 23, 24, 26, 28, 29, 34, 35, 36, 48, 49(4) and (5), 50, 54 and 55 come into operation on the day on which this Ordinance is published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 to 7 are amended as set out in those Parts.

Part 2

Amendments to Mandatory Provident Fund Schemes Ordinance (Cap. 485)

3. Section 2 amended (interpretation)

- (1) Section 2(1), definition of *accrued benefits*—

Repeal

“investments thereof, but taking into account any losses in respect thereof”

Substitute

“investments of the contributions, but taking into account any losses in respect of the investments and any amounts paid in respect of the scheme member”.

- (2) Section 2(1)—

Add in alphabetical order

“*constituent fund* (成分基金), in relation to a registered scheme, means the fund that constitutes the scheme, or a fund that forms part of the scheme;”.

4. Section 7AA amended (employer required to pay contributions to Authority where relevant employee not member of registered scheme)

- (1) Section 7AA(11)—

Repeal the definition of *permitted period*

Substitute

“*permitted period* (特准限期) means, subject to subsection (13)—

- (a) for a relevant employee who is not a casual employee, 60 days; or

(b) for a casual employee, 10 days;”.

(2) After section 7AA(12)—

Add

“(13) In computing a period of time for the definition of *permitted period* in subsection (11), even if the last day of the period is a day specified in subsection (14), the period ends on that day.

(14) The day specified for subsection (13) is—

(a) a Saturday;

(b) a public holiday; or

(c) a gale warning day or black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).”.

5. Section 10 amended (maximum level of income for contribution purposes)

(1) Section 10—

Repeal subsection (2)

Substitute

“(2) An employer who receives a notice under subsection (1) must give effect to the election by making deductions and paying contributions in respect of the employee in accordance with section 7A.”.

(2) After section 10(3)—

Add

“(3A) An employer of a relevant employee whose relevant income is more than the maximum level of relevant income may contribute to a registered scheme in respect of the excess relevant income, but is not obliged to do so.”.

- (3) Section 10(4)—

Repeal

“is not required to contribute to a registered scheme in respect of the excess relevant income”

Substitute

“may contribute to a registered scheme in respect of the excess relevant income, but is not required to do so”.

6. Section 15 amended (withdrawal of accrued benefits)

- (1) Section 15(1)—

Repeal

“in a lump sum.”

Substitute

“—

- (a) in a lump sum; or
- (b) by instalments.”.

- (2) Section 15(2)—

Repeal

“in a lump sum”.

- (3) After section 15(2)—

Add

“(2A) Subject to subsection (2B), a scheme member referred to in subsection (2) is entitled to be paid the entirety of the accrued benefits—

- (a) in a lump sum; or
- (b) by instalments.

(2B) Subsection (2A)(b) does not apply to a scheme member whose entitlement is exercised in the circumstances specified under subsection (3) in the regulations.”.

(4) Section 15(3)(a)—

Repeal

“and”.

(5) Section 15(3)(b)—

Repeal

“incapacity.”

Substitute

“incapacity; and”.

(6) After section 15(3)(b)—

Add

“(c) the scheme member’s terminal illness.”.

(7) Section 15(4)—

Repeal

“the approved trustee of the scheme must pay the whole of the member’s accrued”

Substitute

“and any of the member’s accrued benefits are held in the scheme, the approved trustee of the scheme must pay those”.

(8) After section 15(6)—

Add

“(7) For the purposes of this section, a scheme member has permanently ceased employment or self-employment if the member—

- (a) has ceased all employment with no intention of becoming employed or self-employed again; and
- (b) has ceased all self-employment with no intention of becoming self-employed or employed again.”.

7. Sections 21BA and 21BB added

After section 21B—

Add

“21BA. Constituent funds of registered schemes to be approved

- (1) An approved trustee of a registered scheme must, before making a constituent fund available in the scheme for investment by scheme members, ensure that the fund has been approved by the Authority.
- (2) An approved trustee who, without reasonable excuse, fails to comply with subsection (1) commits an offence and is liable—
 - (a) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for each day on which the offence is continued; or
 - (b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for each day on which the offence is continued.

21BB. Application for approval and cancellation of approval of constituent funds of registered schemes

- (1) The Authority may on application made by an approved trustee of a registered scheme—
 - (a) approve a constituent fund of the scheme; or

-
- (b) cancel the approval granted in respect of a constituent fund of the scheme.
- (2) An application for approval or cancellation must—
 - (a) be in a form specified or approved by the Authority; and
 - (b) contain the information, and be accompanied by the documents, specified for the purposes of this section in the guidelines.
 - (3) An application for approval must include a statement of investment policy that sets out—
 - (a) the investment objectives of the fund;
 - (b) the policy as to the kinds of securities and other assets in which the fund may be invested;
 - (c) the policy as to the balance between different kinds of securities and other assets of the fund;
 - (d) the policy regarding the acquisition, holding and disposal of financial futures contracts, and of financial option contracts, for the purposes of the fund; and
 - (e) the risks inherent in implementing the policies referred to in paragraphs (b), (c) and (d), and the return expected to result from giving effect to those policies.
 - (4) The Authority may, by written notice, require an applicant for approval or cancellation to provide additional information and documents that are reasonably necessary to enable it to determine the application.
 - (5) If the requirement referred to in subsection (4) is not complied with within a reasonable time specified in the notice, the Authority may reject the application.

- (6) Without limiting any other ground on which the Authority may refuse to approve any constituent fund under subsection (1), the Authority may refuse to approve a constituent fund if it is not satisfied that the fund is in the scheme members' interests.
- (7) The Authority must not reject an application for approval or cancellation without giving the applicant an opportunity to make representations (either orally or in writing or both) as to why the application should not be rejected.
- (8) If the Authority rejects an application for approval or cancellation, it must—
 - (a) give written notice of the rejection to the applicant; and
 - (b) include in the notice a statement setting out the reasons for the rejection.
- (9) The approval granted in respect of each constituent fund of a registered scheme is taken to be cancelled on the cancellation of the registration of the scheme.”.

8. Section 23 amended (Residual Provident Fund Scheme)

Section 23(2), (3) and (4), Chinese text—

Repeal

“監督” (wherever appearing)

Substitute

“管理局”.

9. Section 42 amended (Authority may disclose certain information despite section 41)

(1) After section 42(1)(c)—

Add

“(caa) disclose the information for seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with a matter arising under this Ordinance;”.

(2) Section 42(1)—

Repeal paragraph (d)

Substitute

“(d) subject to subsections (1A) and (2), disclose the information to—

- (i) the Chief Executive;
- (ii) the Financial Secretary;
- (iii) the Secretary for Justice;
- (iv) the Registrar of Occupational Retirement Schemes;
- (v) the Insurance Authority;
- (vi) the Monetary Authority;
- (vii) the Securities and Futures Commission;
- (viii) the Commissioner of Inland Revenue;
- (ix) the Privacy Commissioner for Personal Data;
- (x) the Ombudsman;
- (xi) the Registrar of Companies;
- (xii) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (Cap. 588);
- (xiii) the Official Receiver appointed under the Bankruptcy Ordinance (Cap. 6);
- (xiv) a liquidator appointed under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or

(xv) a person authorized by a person or body specified in subparagraph (i), (ii), (iii), (iv), (v), (vi) or (vii).”.

(3) After section 42(1)—

Add

“(1A) The Authority may only disclose information under subsection (1)(d) if it is satisfied that—

- (a) the disclosure is in the interests of the scheme members concerned;
- (b) the disclosure is in the public interest; or
- (c) the disclosure enables the exercise or performance of a function imposed or conferred by law.”.

(4) Section 42—

Repeal subsection (5).

(5) After section 42(7)—

Add

“(8) Subject to subsection (9), if information is disclosed by the operation of subsection (1) (other than paragraph (a), (ca) or (f) of that subsection), any of the following persons must not disclose the information (or any part of it) to any other person—

- (a) the person to whom the information is so disclosed;
- (b) another person obtaining or receiving the information, whether directly or indirectly, from that person.

(9) Subsection (8) does not prevent a person from disclosing information to any other person if—

- (a) the Authority consents to the disclosure;
- (b) the disclosure—

-
- (i) is made by a person or body specified in subsection (1)(d)(v), (vi) or (vii), or a person authorized by any of them; and
 - (ii) in the opinion of the person or body, enables or assists the person or body to perform their functions under Part 4A;
 - (c) the information (or the part of it) has already been made available to the public;
 - (d) the disclosure is for seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with a matter arising under this Ordinance;
 - (e) the disclosure is in connection with any judicial or other proceedings to which the person or that other person referred to in subsection (8)(a) or (b) is a party; or
 - (f) the disclosure is in accordance with a court order, a law or a requirement made under a law.
- (10) Section 41 does not prevent the Authority from giving consent under subsection (9)(a) if it is satisfied that the disclosure—
- (a) is in the interests of the scheme members concerned;
 - (b) is in the public interest; or
 - (c) enables the exercise or performance of a function imposed or conferred by law.
- (11) The Authority may, in disclosing information under this section or in giving consent under subsection (9)(a), impose conditions that it considers appropriate.
- (12) A person who contravenes subsection (8) commits an offence and is liable on conviction to a fine at level 4.”.

10. Section 42AA amended (Authority or specified entity may disclose information obtained under Part 4A despite section 41)

- (1) Section 42AA, heading—

Repeal

“Authority or specified”

Substitute

“Specified”.

- (2) Section 42AA(1)—

Repeal

“the Authority or” (wherever appearing).

- (3) After section 42AA(3)(c)—

Add

“(ca) disclose the information for seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with a matter arising under this Ordinance;”.

- (4) Section 42AA(3)—

Repeal paragraph (e)

Substitute

“(e) subject to subsections (3A) and (4), disclose the information to—

- (i) the Chief Executive;
- (ii) the Financial Secretary;
- (iii) the Secretary for Justice;
- (iv) the Registrar of Occupational Retirement Schemes;
- (v) the Commissioner of Inland Revenue;
- (vi) the Privacy Commissioner for Personal Data;

- (vii) the Ombudsman;
- (viii) the Registrar of Companies;
- (ix) the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (Cap. 588);
- (x) the Official Receiver appointed under the Bankruptcy Ordinance (Cap. 6);
- (xi) a liquidator appointed under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32); or
- (xii) a person authorized by a person or body specified in subparagraph (i), (ii), (iii) or (iv).”.

(5) After section 42AA(3)—

Add

“(3A) An entity specified in subsection (5) may only disclose information under subsection (3)(e) if, in its opinion, the disclosure—

- (a) is in the interests of the scheme members concerned;
- (b) is in the public interest; or
- (c) enables the exercise or performance of a function imposed or conferred by law.”.

(6) Section 42AA(4)—

Repeal

“subsection (1)”

Substitute

“subsection (3)”.

(7) After section 42AA(5)—

Add

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- “(6) Subject to subsection (7), if information is disclosed by the operation of subsection (3) (other than paragraph (a), (d) or (f) of that subsection), any of the following persons (not being the Authority or an entity specified in subsection (5)) must not disclose the information (or any part of it) to any other person—
- (a) the person to whom the information is so disclosed;
 - (b) another person obtaining or receiving the information, whether directly or indirectly, from that person.
- (7) Subsection (6) does not prevent a person from disclosing information to any other person if—
- (a) the entity disclosing the information consents to the disclosure;
 - (b) the information (or the part of it) has already been made available to the public;
 - (c) the disclosure is for seeking advice from, or giving advice by, counsel or a solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with a matter arising under this Ordinance;
 - (d) the disclosure is in connection with any judicial or other proceedings to which the person or that other person referred to in subsection (6)(a) or (b) is a party; or
 - (e) the disclosure is in accordance with a court order, a law or a requirement made under a law.
- (8) Section 41 does not prevent the entity disclosing the information from giving consent under subsection (7)(a) if, in its opinion, the disclosure—
- (a) is in the interests of the scheme members concerned;

- (b) is in the public interest; or
 - (c) enables the exercise or performance of a function imposed or conferred by law.
- (9) The entity disclosing the information may, in disclosing information under this section or in giving consent under subsection (7)(a), impose conditions that it considers appropriate.
- (10) A person who contravenes subsection (6) commits an offence and is liable on conviction to a fine at level 4.”.

11. Section 42AAB added

After section 42AA—

Add

“42AAB. Administrator under Occupational Retirement Schemes Ordinance or approved trustee may disclose certain information despite section 41

- (1) Section 41 does not prevent an administrator as defined by section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426), or an approved trustee of a registered scheme, from disclosing information if—
- (a) the Authority has given written consent; and
 - (b) any of the following applies—
 - (i) the person to whom the information relates has given written consent;
 - (ii) the information is disclosed in a manner that prevents particulars relating to the identity of the person to whom the information relates from being ascertained from the information.
- (2) The Authority may, in giving consent, impose conditions that it considers appropriate.”.

12. Section 43 amended (offence for unapproved person to carry on business as approved trustee, etc.)

Section 43(3)—

Repeal paragraphs (a) and (b)

Substitute

- “(a) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for each day on which the offence is continued; or
- (b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for each day on which the offence is continued.”.

13. Section 43C amended (offences by self-employed persons)

Section 43C—

Repeal subsection (3).

14. Section 43E amended (offence to make false or misleading statement)

Section 43E—

Repeal subsection (2).

15. Section 43F amended (offence relating to pay-record)

Section 43F—

Repeal subsection (2).

16. Section 46 amended (regulations)

Section 46(1A)(f), after “total incapacity”—

Add

“, terminal illness”.

17. Section 47D added

After section 47C—

Add

“47D. Time limit for prosecution

- (1) Despite section 26 of the Magistrates Ordinance (Cap. 227), proceedings in respect of an offence (other than an indictable offence) under this Ordinance or any subsidiary legislation under this Ordinance may be brought within 3 years after the commission of the offence unless otherwise specified.
- (2) Subsection (1) does not apply in relation to proceedings in respect of an offence that was committed before the commencement date of section 17 of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2014 (of 2014).”.

18. Schedule 1 amended (exempt persons)

Schedule 1, Chinese text, Part 1, items 2 and 3—

Repeal

“及有關”.

19. Schedule 6 amended (decisions which may be the subject of an appeal)

Schedule 6, after item 6—

Add

- “6AA. A decision of the Authority to reject an application for—
- (a) the approval of a constituent fund of a registered scheme; or
 - (b) the cancellation of approval granted in respect of a constituent fund of a registered scheme.”.

20. Schedule 7 amended (age specified for the purposes of section 15(2))

Schedule 7—

Repeal

“[ss. 15, 43 & 48]”

Substitute

“[ss. 15 & 48]”.

Part 3

Amendments to Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A)

21. Section 2 amended (interpretation)

(1) Section 2—

Repeal the definition of *contribution day*

Substitute

“*contribution day* (供款日)—

(a) in relation to a self-employed person—see section 131(3) and (4); and

(b) in relation to a participating employer—see section 122(1);”.

(2) Section 2—

Repeal the definition of *constituent fund*.

22. Section 31 amended (non-refusal of scheme applicants)

(1) Section 31, heading, after “**applicants**”—

Add

“**and notice of participation**”.

(2) Section 31—

Repeal subsection (4)

Substitute

“(4) An applicant for membership of or participation in a registered scheme must be given a notice of participation that complies with subsection (4A) within 30 days beginning on whichever is the later of the following dates—

- (a) the date on which all the information required for the application is submitted;
 - (b) the date on which the applicant agrees to comply with the governing rules of the scheme.”.
- (3) After section 31(4)—

Add

“(4A) A notice of participation must specify—

- (a) the name of the scheme;
- (b) the name of the approved trustee of the scheme;
- (c) either—
 - (i) if the trustee is a natural person who does not have a place of business in Hong Kong, the trustee’s residential address; or
 - (ii) in any other case, the address of the trustee’s principal place of business in Hong Kong;
- (d) the name of the scheme member or the participating employer (as the case may be); and
- (e) the date of issue of the notice.”.

23. Section 34 amended (no fees etc. for transfer of accrued benefits other than necessary transaction costs)

Section 34—

Repeal

“No fees may be charged, and no financial penalties may be imposed,”

Substitute

“No fees or financial penalties may be charged to or imposed on a scheme member, or deducted from the member’s account,”.

24. Section 35 amended (no fees etc. for transfer of accrued benefits in certain circumstances)

(1) Section 35(1)—

Repeal

“If, after contributions have ceased to be paid to a registered scheme by or on behalf of a scheme member, no fees may be charged, and no financial penalties may be imposed,”

Substitute

“If contributions have ceased to be paid to a registered scheme by or on behalf of a scheme member, no fees or financial penalties (other than the amount described in subsection (1A)) may be charged to or imposed on the member, or deducted from the member’s account,”.

(2) After section 35(1)—

Add

“(1A) The amount is an amount representing the necessary transaction costs that—

- (a) are incurred, or reasonably likely to be incurred, by the approved trustee in selling or purchasing investments in order to give effect to the transfer; and
- (b) are payable to a party other than that approved trustee.”.

25. Sections 35A and 35B added

After section 35—

Add

“35A. No fees etc. for payment of accrued benefits in lump sum other than necessary transaction costs

- (1) No fees or financial penalties (other than the amount described in subsection (2)) may be charged to or imposed on a scheme member, or deducted from the member’s account, for the payment of the member’s accrued benefits in a lump sum.
- (2) The amount is an amount representing the necessary transaction costs that—
 - (a) are incurred, or reasonably likely to be incurred, by the approved trustee in selling or purchasing investments in order to give effect to the payment; and
 - (b) are payable to a party other than that approved trustee.

35B. Payment of accrued benefits by instalments

- (1) This section applies if a scheme member is entitled to be paid the accrued benefits by instalments.
- (2) The approved trustee of the scheme must act according to any written instructions regarding the time, frequency or amount of payment of the member’s accrued benefits by instalments that the member may give under the governing rules of the scheme if 30 days have passed since the member gave those instructions to the approved trustee.
- (3) No fees or financial penalties (other than the amount described in subsection (4)) may be charged to or imposed on the member, or deducted from the member’s account, for the payment of the member’s accrued benefits by instalments in any year for the first 12 instalments of that year.
- (4) The amount is an amount representing the necessary transaction costs that—

- (a) are incurred, or reasonably likely to be incurred, by the approved trustee in selling or purchasing investments in order to give effect to the payment; and
- (b) are payable to a party other than that approved trustee.”.

26. Section 36 amended (scheme may consist of a single constituent fund or of separate constituent funds)

Section 36—

Repeal subsections (2), (3), (4), (5), (6) and (7).

27. Section 55 repealed (approved trustee to give membership certificates to relevant employees)

Section 55—

Repeal the section.

28. Section 78 amended (separate accounts for each scheme member)

Section 78(6), (7) and (8)—

Repeal

“any losses in respect thereof” (wherever appearing)

Substitute

“any losses in respect of the investments and any amounts paid in respect of the member”.

29. Section 109 amended (approved trustee to lodge trustee’s return with Authority)

Section 109(7)(b)—

Repeal

“in accordance with Part XI of the Companies Ordinance (Cap. 32)”

Substitute

“in a form and language, and must contain the particulars, as required by the Authority by written notice to the trustee”.

30. Section 122 amended (participating employer to calculate relevant income and pay mandatory contributions)

Section 122(1)—

Repeal the definition of *permitted period*

Substitute

“*permitted period* (特准限期) has the meaning given by section 7AA(11) of the Ordinance.”.

31. Section 124 repealed (Authority to give participation certificates to participating employers)

Section 124—

Repeal the section.

32. Section 131 amended (contribution period in respect of self-employed person)

(1) Section 131, heading, after “**Contribution period**”—

Add

“**and contribution day**”.

(2) After section 131(2)—

Add

“(3) The last day of the period prescribed in this section in relation to a self-employed person is the contribution day for the self-employed person.

- (4) However, if that last day is a day specified in subsection (5), the next following day that is not a day so specified is the contribution day for the self-employed person.
- (5) The day specified for subsection (4) is—
 - (a) a Saturday;
 - (b) a public holiday; or
 - (c) a gale warning day or black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).”.

33. Section 143 amended (participating employer to notify trustee of certain information)

Section 143(2)(c)—

Repeal

“as shown in the participation certificate issued under section 124 to the employer”.

34. Section 154 amended (approved trustee to give transfer statement to scheme member)

(1) Section 154(1)(c)—

Repeal

“amount (expressed in money)”

Substitute

“monetary amount”.

(2) After section 154(2)—

Add

- “(2A) However, if, by the operation of section 153(1A), the transferee trustee has served on the transferor trustee the completed election form in the form of an electronic record to an electronic system, the transferor trustee—
- (a) is not required to comply with subsection (2); and
 - (b) must give the transferee trustee in the form of an electronic record to the electronic system—
 - (i) the registration number issued by the Authority on registration of the scheme and the account number of the account from which the transfer was made;
 - (ii) the name of the member;
 - (iii) the monetary amount of the accrued benefits transferred from the account and the respective amounts specified in each sub-account of the account immediately before the transfer;
 - (iv) the registration number of the scheme to which the accrued benefits have been transferred;
 - (v) the date of the transfer; and
 - (vi) any other information specified by the Authority in the guidelines.
- (2B) Subsection (2A) does not apply if—
- (a) the electronic system is suspended under section 6KA(5) of the Ordinance from being used for the purposes of subsection (2A); and
 - (b) the suspension takes effect in relation to the transferee trustee or the transferor trustee.”.

(3) Section 154(3)(c)—

Repeal

“amount (expressed in money)”

Substitute

“monetary amount”.

35. Section 155 amended (confirmation of transfer to new scheme)

Section 155—

Repeal

“amount (expressed in money)”

Substitute

“monetary amount”.

36. Section 157B amended (register of members of registered schemes who have established and maintained personal accounts within master trust schemes or industry schemes)

(1) Section 157B(4)(b)—

Repeal

“or”.

(2) After section 157B(4)(b)—

Add

“(ba) a person entitled in priority to the administration of the estate of a deceased person; or”.

37. Section 158 amended (definition)

(1) Section 158—

Renumber the section as section 158(1).

(2) Section 158(1), definition of *claim*—

Repeal

“Ordinance.”

Substitute

“Ordinance;”.

- (3) Section 158(1)—

Add in alphabetical order

“*registered Chinese medicine practitioner* (註冊中醫) has the meaning given by section 2(1) of the Chinese Medicine Ordinance (Cap. 549).”.

- (4) After section 158(1)—

Add

“(2) For the purposes of this Part, a member departs from Hong Kong permanently if the member departs from Hong Kong to reside elsewhere with no intention of returning for employment or to resettle in Hong Kong as a permanent resident.

(3) A member who has an illness that is likely to reduce the life expectancy of the member to 12 months or less has a terminal illness for the purposes of this Part.”.

38. Section 162 amended (additional classes of persons entitled to be paid accrued benefits)

After section 162(1)(b)—

Add

“(ba) has a terminal illness; or”.

39. Section 164 amended (claim for payment on ground of total incapacity)

- (1) Section 164(2)(a), Chinese text—

Repeal

“醫生證明書”

Substitute

“醫學證明書”。

- (2) Section 164(2)(c)—

Repeal

everything after “the trustee with”

Substitute

“a declaration by the member, in a form specified or approved by the Authority, stating that that contract of employment for that particular kind of work has been terminated.”.

- (3) Section 164—

Repeal subsection (3).

- (4) Section 164(4)(a), Chinese text—

Repeal

“醫生證明書”

Substitute

“醫學證明書”。

- (5) Section 164(5)(a), Chinese text—

Repeal

“醫生證明書”

Substitute

“醫學證明書”。

- (6) Section 164(5)(c)—

Repeal

everything after “the trustee with”

Substitute

“a declaration by the member, in a form specified or approved by the Authority, stating that that contract of employment for that particular kind of work has been terminated.”.

- (7) Section 164(6)(a), Chinese text—

Repeal

“醫生證明書”

Substitute

“醫學證明書”.

- (8) Section 164(7), Chinese text—

Repeal

“醫生證明書” (wherever appearing)

Substitute

“醫學證明書”.

- (9) Section 164—

Repeal subsection (8).

40. Section 164A added

After section 164—

Add

“164A. Claim for payment on ground of terminal illness

- (1) A member of a registered scheme who, before reaching the retirement age, wishes to be paid the member's accrued benefits on the ground of terminal illness must lodge with the approved trustee of the scheme a claim for payment of the member's accrued benefits in accordance with this section.
- (2) The claim must be in a form specified or approved by the Authority.

- (3) If a claim is made by a scheme member of a registered scheme who has a terminal illness, the approved trustee of the scheme may only pay the member's accrued benefits to that member if the member can provide a medical certificate, in a form specified or approved by the Authority, that—
- (a) is issued by a registered medical practitioner or registered Chinese medicine practitioner;
 - (b) states that, in the practitioner's opinion, the member falls within section 158(3); and
 - (c) is dated not earlier than 12 months before the date on which the claim is lodged.”.

41. Section 165 amended (claim for payment of small balance)

Section 165(2)(a)—

Repeal

“within the foreseeable future”.

42. Section 165A added

After section 165—

Add

“165A. Claim for payment by committee of estate appointed under Mental Health Ordinance

- (1) This section applies if a committee of the estate is appointed in relation to the property and affairs of a member of a registered scheme.
- (2) The committee of the estate may, as if it were the member—
 - (a) lodge with the approved trustee of the registered scheme a claim for payment of the accrued benefits of the member; or

(b) continue with a claim initiated by the member.

(3) This section does not apply in relation to a claim made under section 161.

(4) In this section—

committee of the estate (產業受託監管人) means a committee of the estate appointed under section 11 of the Mental Health Ordinance (Cap. 136).”.

43. Section 166 amended (approved trustee to ensure payment of accrued benefits within certain periods)

(1) Section 166(1)—

Repeal

“If”

Substitute

“Subsections (1A) and (1B) apply if”.

(2) Section 166(1)—

Repeal

everything after “entitled to be paid those benefits”

Substitute a full stop.

(3) After section 166(1)—

Add

“(1A) If the benefits are paid in a lump sum, the trustee must ensure that the benefits are paid to the claimant not later than whichever is the later of the following—

(a) 30 days after the date on which the claim is lodged;

(b) 30 days after the contribution day in respect of the last contribution period that ends before the claim is lodged.

(1B) If the benefits are paid by instalments, the trustee must, unless otherwise agreed between the trustee and the claimant, ensure that each instalment is paid to the claimant no later than 30 days after the date on which the claimant instructs the trustee to pay that instalment.”.

(4) Section 166—

Repeal subsection (2).

44. Section 168 amended (approved trustee to ensure claimant provided with final benefit statement)

(1) Section 168, heading—

Repeal

“final benefit statement”

Substitute

“benefit payment statement”.

(2) Section 168—

Repeal

“final benefit statement”

Substitute

“benefit payment statement”.

(3) Section 168(e)(iii)—

Repeal the full stop

Substitute

“; and”.

(4) After section 168(e)—

Add

“(f) any other information as may be specified for the purposes of this section by guidelines.”.

45. Section 172 amended (duty of approved trustee to notify scheme member who has reached retirement age of his entitlement)

(1) Section 172(1)(a), after “benefits”—

Add

“in a lump sum or by instalments”.

(2) Section 172(1)(b)—

Repeal

everything after “as to”

Substitute

“—

- (i) whether or not the member elects to retain the member’s accrued benefits with the scheme; and
- (ii) for a member who elects to be paid, whether the member elects to be paid in a lump sum or by instalments.”.

46. Section 175 amended (offences)

Section 175, after “or (4),”—

Add

“164A(3).”.

47. Section 206 amended (how notices etc. are to be served, etc. for purposes of the Ordinance)

(1) Section 206, heading—

Repeal

“served, etc.”

Substitute

“given”.

- (2) Section 206(1)—

Repeal

“, served or lodged” (wherever appearing).

- (3) Section 206(1)(b)(i), English text—

Repeal

“giving”

Substitute

“handing”.

- (4) Section 206(1)(c)(i), English text—

Repeal

“giving”

Substitute

“handing”.

- (5) After section 206(1)—

Add

“(1A) A notice or other document to be given for the purposes of the Ordinance is, in the absence of evidence to the contrary, taken to have been given if it is sent by post to the last known place of business or residence of the person to whom the notice or document is required to be given.”.

- (6) Section 206—

Repeal subsection (2)

Substitute

- “(2) A notice or other document is also taken to have been given for the purposes of the Ordinance if—
- (a) it is sent to the recipient by facsimile transmission or electronic mail at the recipient’s facsimile number or electronic mail address last known to the sender, or by other means specified by the recipient, and a record generated by the means of transmission establishes that the notice or document was so sent;
 - (b) it is made available to the recipient by means of a website or by other electronic means, and the recipient is notified of its availability by the operation of paragraph (a) or subsection (1)(a), (b) or (c); or
 - (c) it is made available to the recipient by means of an electronic system designated by the Authority under section 6KA(1) of the Ordinance for use for the purposes of this subsection.
- (2A) Subsection (2)(a) and (b) does not apply unless the recipient has given consent to being given the notice or document by the means described in that subsection.
- (2B) For the purposes of subsection (2A), if the recipient is a participating employer or a member (or a prospective participating employer or a prospective member) of a registered scheme, prior consent must be given in the terms specified by the Authority.”.
- (7) Section 206—
- Repeal subsections (3) and (4).**
- (8) After section 206(5)—
- Add**
- “(6) In this section—

give (給予), in relation to a notice or document, includes serve, lodge, send, deliver, provide or otherwise make available.”.

48. Section 206A amended (how documents are to be served for purposes of section 153(1))

(1) Section 206A, heading—

Repeal

“153(1)”

Substitute

“153(1) or 154(2A)(b)”.

(2) Section 206A(1)—

Repeal

“153(1)” (wherever appearing)

Substitute

“153(1) or 154(2A)(b)”.

49. Schedule 4 amended (financial penalties)

(1) Schedule 4, item 7, after “applicants”—

Add

“and notice of participation”.

(2) Schedule 4, after item 11—

Add

“11A	35A(1)	Requirements with respect to charging of fees etc. for payment of accrued benefits in lump sum	10,000	20,000	50,000
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11B	35B(1)	Requirements on payment of accrued benefits by instalments	10,000	20,000	50,000”.
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(3) Schedule 4—

Repeal items 15, 46 and 47.

(4) Schedule 4, item 64—

Repeal

“154”

Substitute

“154(1) and (3)”.

(5) Schedule 4, after item 64—

Add

“64A	154(2) and (2A)	Transferor trustee to give information to transferee trustee	10,000	20,000	50,000”.
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(6) Schedule 4—

Repeal item 69.

(7) Schedule 4, item 71—

Repeal

“final benefit statement”

Substitute

“benefit payment statement”.

Part 4

Amendments to Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B)

50. Section 26 amended (offences)

Section 26—

Repeal subsection (2).

51. Schedule 2 amended (mandatory conditions)

(1) Schedule 2, after section 6(9)—

Add

“(9A) A new member of a relevant scheme is eligible to withdraw the member’s minimum MPF benefits on the ground of terminal illness if the member lodges with the trustee of the scheme—

(a) a claim in a form provided or approved by the Authority; and

(b) a certificate that is—

(i) signed by a registered medical practitioner or registered Chinese medicine practitioner certifying that, in the practitioner’s opinion, the member falls within subsection (12G); and

(ii) dated not earlier than 12 months before the date on which the claim is lodged.”.

(2) Schedule 2, after section 6(12)—

Add

“(12A) Subsection (12B) applies if a committee of the estate is appointed in relation to the property and affairs of a new member of a relevant scheme.

- (12B) The committee of the estate may, as if it were the member—
- (a) lodge with the trustee of the scheme a claim for payment of the minimum MPF benefits of the member; or
 - (b) continue with a claim initiated by the member.
- (12C) Subsection (12B) does not apply in relation to a claim made under subsection (10).
- (12D) In this section—
- committee of the estate* (產業受託監管人) means a committee of the estate appointed under section 11 of the Mental Health Ordinance (Cap. 136);
- registered Chinese medicine practitioner* (註冊中醫) has the meaning given by section 2(1) of the Chinese Medicine Ordinance (Cap. 549).
- (12E) For the purposes of this section, a new member has permanently ceased employment or self-employment if the member—
- (a) has ceased all employment with no intention of becoming employed or self-employed again; and
 - (b) has ceased all self-employment with no intention of becoming self-employed or employed again.
- (12F) For the purposes of this section, a new member departs from Hong Kong permanently if the member departs from Hong Kong to reside elsewhere with no intention of returning for employment or to resettle in Hong Kong as a permanent resident.
- (12G) A new member who has an illness that is likely to reduce the life expectancy of the member to 12 months or less has a terminal illness for the purposes of this section.”.

- (3) Schedule 2, section 6(13)—

Repeal

“subsection (9)(a)”

Substitute

“subsections (9)(a) and (9A)”.

- (4) Schedule 2, section 6(13)—

Repeal paragraph (a).

Part 5

Amendments to Mandatory Provident Fund Schemes (Specification of Permitted Periods) Notice (Cap. 485 sub. leg. F)

52. Section 1 amended (permitted period specified for purposes of section 7 of Ordinance)

(1) Section 1—

Re-number the section as section 1(1).

(2) After section 1(1)—

Add

“(2) However, if the period would, but for this subsection, end on a day specified in subsection (3), the period is extended to end on the next following day that is not a day so specified.

(3) The day specified for subsection (2) is—

(a) a Saturday;

(b) a public holiday; or

(c) a gale warning day or black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).”.

53. Section 2 amended (permitted period specified for purposes of section 7C of Ordinance)

(1) Section 2—

Re-number the section as section 2(1).

(2) After section 2(1)—

Add

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- “(2) However, if the period would, but for this subsection, end on a day specified in subsection (3), the period is extended to end on the next following day that is not a day so specified.
- (3) The day specified for subsection (2) is—
- (a) a Saturday;
 - (b) a public holiday; or
 - (c) a gale warning day or black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).”.
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Part 6

Amendments to Occupational Retirement Schemes Ordinance (Cap. 426)

54. Section 77 amended (preservation of secrecy)

Section 77(1)—

Repeal

“and 78”

Substitute

“, 78 and 78A”.

55. Section 78A added

After section 78—

Add

“78A. Disclosure by administrator or relevant employer

- (1) Despite section 77, an administrator or the relevant employer of an occupational retirement scheme may disclose information if—
 - (a) the Registrar has given written consent; and
 - (b) any of the following applies—
 - (i) the person to whom the information relates has given written consent;
 - (ii) the information is disclosed in a manner that prevents particulars relating to the identity of the person to whom the information relates from being ascertained from the information.
- (2) The Registrar may, in giving consent, impose conditions that it considers appropriate.

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- (3) The Registrar may issue guidelines on the criteria or circumstances for giving consent.”.
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Part 7

Related and Consequential Amendments to Inland Revenue Ordinance (Cap. 112)

56. Section 8 amended (charge of salaries tax)

- (1) Section 8(2)(c)(i), after “incapacity”—

Add

“, terminal illness”.

- (2) Section 8(2)(cb)—

Repeal

“on a person’s retirement from employment, death or incapacity”

Substitute

“, whether in a lump sum or (if applicable) as an instalment, on the ground of a person’s retirement from employment, death, incapacity, terminal illness”.

- (3) Section 8(2)(cc)(i), after “incapacity”—

Add

“, terminal illness”.

- (4) Section 8(2)(cc)(ii)—

Repeal

“on retirement, death, incapacity”

Substitute

“, whether in a lump sum or (if applicable) as an instalment, on the ground of retirement, death, incapacity, terminal illness”.

- (5) Section 8(3), definition of *termination of service*—

Repeal

“or incapacity”

Substitute

“, incapacity or terminal illness”.

- (6) Section 8(3), Chinese text, definition of 退休, paragraph (c)—

Repeal

“準。”

Substitute

“準；”。

- (7) Section 8(3)—

Add in alphabetical order

“*incapacity* (無行為能力) means permanent unfitness to perform the kind of work that a person was last performing before becoming incapacitated;

terminal illness (罹患末期疾病) means a terminal illness within the meaning of section 158(3) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A);”.

57. Section 9 amended (definition of income from employment)

- (1) Section 9(1)(ab)(i), after “incapacity”—

Add

“, terminal illness”.

- (2) Section 9(1)(ad)—

Repeal

“(otherwise than on retirement, death, incapacity or termination of service)”

Substitute

“(otherwise than on the ground of retirement, death, incapacity, terminal illness or termination of service, whether in a lump sum or (if applicable) as an instalment)”.

- (3) Section 9(6), English text, definition of *retirement* and *termination of service*—

Repeal

“section 8(3).”

Substitute

“section 8(3);”.

- (4) Section 9(6), Chinese text, definition of *僱員的子女*—

Repeal

“女。”

Substitute

“女；”.

- (5) Section 9(6)—

Add in alphabetical order

“*incapacity* (無行為能力) has the meaning given by section 8(3);

terminal illness (罹患末期疾病) means a terminal illness within the meaning of section 158(3) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A).”.

Explanatory Memorandum

The object of this Bill is to amend the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (*Ordinance*) for the purposes set out in the long title.

2. Clause 1 sets out the short title and provides for commencement.

Withdrawal of accrued benefits

3. Clause 6(1), (2) and (3) amends section 15 of the Ordinance by providing for the withdrawal of accrued benefits in mandatory provident fund schemes by instalments.
4. Clause 6(6) amends section 15 of the Ordinance, clause 38 amends section 162 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) (*General Regulation*) and clause 40 adds a new section 164A to the General Regulation, to provide for the claiming of accrued benefits on the ground of terminal illness.
5. Clause 6(8) adds a new section 15(7) to the Ordinance to clarify the meaning of permanently ceasing employment or self-employment.
6. Clause 37(4) adds a new section 158(2) to the General Regulation to clarify the meaning of departing from Hong Kong permanently.
7. Clause 39 amends section 164 of the General Regulation so that a scheme member is not required to provide a letter from the member's last employer certifying termination of the member's contract of employment for claiming accrued benefits on the ground of total incapacity.

8. Clause 42 adds a new section 165A to the General Regulation so that a committee of the estate appointed under the Mental Health Ordinance (Cap. 136) may claim for accrued benefits as if it were a mentally incapacitated scheme member.
9. Clause 43 amends section 166 of the General Regulation to provide for new requirements on the payment of accrued benefits within certain periods.
10. Clause 51 amends Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B) (*Exemption Regulation*) so that certain Occupational Retirement Schemes Ordinance scheme members are subject to similar arrangements mentioned in paragraphs 4, 5, 6 and 8.
11. Clauses 56 and 57 amend sections 8 and 9 of the Inland Revenue Ordinance (Cap. 112) so that accrued benefits withdrawn by instalments or on the ground of terminal illness are excluded from income for the purposes of salaries tax.

Administration of mandatory provident fund schemes

12. Clause 4 amends the definition of *permitted period* in section 7AA(11) of the Ordinance so that even if the last day of the period is a Saturday, public holiday, gale warning day or black rainstorm warning day, the period ends on that day. Clause 30 amends the definition of *permitted period* in section 122 of the General Regulation so that it has the meaning given by section 7AA(11) of the Ordinance.
13. Clause 22 amends section 31 of the General Regulation so that a scheme applicant is to be given a notice of participation instead of a notice of acceptance.
14. Clauses 23 and 24 amend sections 34 and 35 of the General Regulation so that no fees or financial penalties may be charged, imposed or deducted for certain transfers of accrued benefits other than the necessary transaction costs.

15. Clause 25 adds a new section 35A to the General Regulation so that approved trustees must not charge any fee, impose any penalty or make any deduction for the payment of accrued benefits in a lump sum other than necessary transaction costs. It also adds a new section 35B to the General Regulation to provide for the requirements on the payment of accrued benefits by instalments.
16. Clause 27 repeals section 55 of the General Regulation so that approved trustees are not required to give membership certificates to member employees.
17. Clause 29 amends section 109(7)(b) of the General Regulation to provide for the requirements on the documents that must be attached to the return to be lodged with the Mandatory Provident Fund Schemes Authority (*Authority*) by an approved trustee that is a non-Hong Kong company.
18. Clause 31 repeals section 124 of the General Regulation so that the Authority is not required to give participation certificates to participating employers.
19. Clause 32 amends section 131 of the General Regulation, and clauses 52 and 53 amend the Mandatory Provident Fund Schemes (Specification of Permitted Periods) Notice (Cap. 485 sub. leg. F), to clarify the determination of the contribution day and permitted period for the purposes of sections 7 and 7C of the Ordinance.
20. Clause 34 amends section 154, and clause 47 amends section 206, of the General Regulation to provide for electronic communication.
21. Clause 44 amends section 168 of the General Regulation so that approved trustees are to ensure claimants are provided with benefit payment statements instead of final benefit statements.

Other amendments

22. Clause 7 adds new sections 21BA and 21BB to the Ordinance to provide for the approval and cancellation of approval of constituent funds of registered schemes. The Authority may refuse to approve a constituent fund if it is not satisfied that the fund is in the scheme members' interests.
23. Clause 19 adds a new item 6AA to Schedule 6 to the Ordinance so that a decision of the Authority to reject an application for approval or cancellation of approval of constituent funds is subject to appeal to the Mandatory Provident Fund Schemes Appeal Board.
24. Clauses 9 and 10 amend sections 42 and 42AA of the Ordinance so that the Authority and certain entities may disclose certain information for professional advice, or to additional persons. Provisions for prohibiting further disclosure and exceptions are included.
25. Clause 11 adds a new section 42AAB to the Ordinance so that administrators under the Occupational Retirement Schemes Ordinance (Cap. 426) (*ORSO*) and approved trustees may disclose certain information.
26. Clause 36 amends section 157B of the General Regulation so that the Authority must provide information in the register about any personal account of a deceased person on request by a person entitled in priority to the administration of the estate of the deceased.
27. Clause 55 adds a new section 78A to the *ORSO* so that administrators or employers may disclose certain information.
28. Clause 12 amends section 43 of the Ordinance to revise the penalties for carrying on business as an approved trustee etc. by unapproved persons.

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29. Clause 17 adds a new section 47D to the Ordinance to extend the time limit for instituting proceedings in respect of certain offences under the Ordinance and its subsidiary legislation to 3 years after any of the offences was committed. Clauses 13, 14, 15 and 50 make related amendments to the Ordinance and the Exemption Regulation.
 30. Clause 49 amends Schedule 4 to the General Regulation to provide for financial penalties in relation to sections 35A(1), 35B(1) and 154(2) and (2A) of the General Regulation, and to make consequential amendments.
 31. Clauses 3, 5, 8, 16, 18, 20, 21, 26, 28, 33, 35, 41, 45, 46, 48 and 54 make technical, related and consequential amendments.