

LEGISLATIVE COUNCIL BRIEF

Mandatory Provident Fund Schemes Ordinance
(Chapter 485)

MANDATORY PROVIDENT FUND SCHEMES (FEES) (AMENDMENT) REGULATION 2017

Occupational Retirement Schemes Ordinance
(Chapter 426)

OCCUPATIONAL RETIREMENT SCHEMES (FEES) (AMENDMENT) RULES 2017

INTRODUCTION

At the meeting of the Executive Council on 14 March 2017, the Council ADVISED and the acting Chief Executive ORDERED that the Legislative Council (“LegCo”)’s approval of the Mandatory Provident Fund Schemes (Fees) (Amendment) Regulation 2017 (“the Amendment Regulation”) at **Annex A** should be sought to –

A

- (a) set the levels of registration, approval and annual fees payable by Mandatory Provident Fund (“MPF”) intermediaries (“MPF-i fees”);
- (b) raise four fees payable by employers of MPF exempted occupational retirement schemes (“MPF exempted ORSO registered schemes”)¹; and
- (c) specify that the proposed fees will take effect from 1 January 2018.

¹ This refers to occupational retirement schemes (“ORSO schemes”) registered under the Occupational Retirement Schemes Ordinance (Cap 426) (“ORSO”) (“ORSO registered schemes”) which are exempted from the statutory requirements under the Mandatory Provident Fund Schemes Ordinance (Cap 485) (“MPFSO”). Members of these schemes are exempted from joining an MPF scheme because this type of ORSO schemes is akin to an MPF scheme in nature.

2. In addition, the Mandatory Provident Fund Schemes Authority (“MPFA”) has made the Occupational Retirement Schemes (Fees) (Amendment) Rules 2017 (“the Amendment Rules”) at **Annex B** to raise eight fees relating to other types of ORSO schemes² with effect from 1 January 2018.

JUSTIFICATIONS

3. The MPFA implemented the statutory regulatory regime for MPF intermediaries following the enactment of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012 (“Amendment Ordinance”) in November 2012. The Amendment Ordinance empowers the MPFA to charge the MPF-i fees to recover the regulatory costs but the MPFA proposed not to do so in the initial years of implementing the new regulatory regime. During the scrutiny of the Amendment Ordinance, LegCo supported the proposal of charging the MPF-i fees in general although some LegCo Members doubted if a fee holiday was necessary. The regulatory regime for MPF intermediaries has been implemented smoothly and MPF intermediaries have already enjoyed a fee holiday for four years. The MPFA considers it appropriate to start charging the MPF-i fees.

4. Separately, eight fees relating to the supervision of ORSO registered schemes and ORSO exempted schemes have remained unchanged since October 1993, while four fees relating to the supervision of MPF exempted ORSO registered schemes have not been updated since August 1999. The existing levels of these fees cannot reflect the current costs borne by the MPFA in processing the relevant applications and annual returns as well as in conducting the relevant supervisory work.

5. The proposed fee levels at **Annex C** are based on the cost-recovery principle. There are two kinds of MPF intermediaries, namely, Principal Intermediaries (“PIs”) which are companies and Subsidiary Intermediaries (“SIs”) who are individuals or insurance agency companies. Furthermore, PIs have to appoint a Responsible Officer (“RO”) who has to be registered with the MPFA. Noting that many PIs are

² These include ORSO registered schemes and ORSO schemes exempted under the ORSO (“ORSO exempted schemes”). ORSO registered schemes are registered under the ORSO and are retirement schemes set up voluntarily by employers prior to the launch of the MPF System to provide retirement benefits for their employees. ORSO exempted schemes are retirement schemes set up voluntarily by employers and are exempted from the majority of the statutory requirements under the ORSO either because they are offshore schemes registered or approved by an overseas authority, or that not more than 10% or 50 of the schemes’ members are Hong Kong permanent identity card holders.

small and medium-sized companies, we propose to set the MPF-i fees initially at 60% of the relevant costs to reduce the cost burden on these small and medium-sized enterprises (“SMEs”). The MPFA plans to review the MPF-i fee levels in five years’ time with a view to bringing them progressively to the full-cost recovery levels. The MPFA will also regularly review the costs of the supervisory activities relating to the various types of ORSO schemes and submit fee revision proposals as and when necessary.

OTHER OPTIONS

6. The current levels of fees are specified in the Mandatory Provident Fund Schemes (Fees) Regulation (Cap 485C) (“Fees Regulation”) and the Occupational Retirement Schemes (Fees) Rules (Cap 426D) (“Fees Rules”). There is no alternative option other than legislative amendments to effect the proposal.

THE AMENDMENT REGULATION

7. The Amendment Regulation seeks to set the MPF-i fees by amending Schedule 1 to the Fees Regulation to specify the following –

- (a) application fee of \$2,340 for registration as a PI;
- (b) application fee of \$290 for registration as an SI;
- (c) application fee of \$130 for a PI applying for approval of attachment of an SI to the PI;
- (d) application fee of \$660 for a PI applying for approval of an RO; and
- (e) annual fee of \$1,430 and \$180 payable by a PI and an SI respectively.

8. In addition, the Amendment Regulation seeks to raise the following four fees relating to MPF exempted ORSO registered schemes by amending Schedule 3 to the Fees Regulation –

- (a) application fee, from \$1,200 to \$1,800, for an MPF exemption certificate in respect of an ORSO registered scheme which participates in a pooling agreement;

- (b) application fee, from \$2,400 to \$3,700, for an MPF exemption certificate in respect of an ORSO registered scheme which does not participate in a pooling agreement;
- (c) application fee, from \$11,250 to \$11,800, for approval of the appointment of a company as the trustee of a scheme where the company is incorporated outside Hong Kong and is comparable to a registered trust company and has a significant presence and control in Hong Kong; and
- (d) application fee, from \$4,900 to \$5,100, for approval of the appointment of a natural person as the trustee of a scheme, or for approval of the appointment of a director of a trustee of a scheme where –
 - the trustee is incorporated in Hong Kong but is not a registered trust company; or
 - the trustee is incorporated outside Hong Kong but is not comparable to a registered trust company and/or has no significant presence or control in Hong Kong.

9. The Amendment Regulation will specify that both the MPF-i fees and the four fees relating to MPF exempted ORSO registered schemes are to be effective from 1 January 2018.

THE AMENDMENT RULES

10. The Amendment Rules seeks to raise the following eight fees relating to ORSO registered schemes and ORSO exempted schemes by amending the Schedule to the Fees Rules –

- (a) fee for each inspection of a record of an ORSO scheme in the public register from \$10 to \$20;
- (b) fee for a certified copy of a record of an ORSO scheme in the public register from \$110 to \$160;
- (c) application fee for an exemption certificate of an ORSO scheme from \$600 to \$940;
- (d) annual fee for an exemption certificate of an ORSO exempted scheme from \$600 to \$940;

- (e) registration fee of an ORSO scheme which participates in a pooling agreement from \$1,200 to \$1,800;
- (f) registration fee of an ORSO scheme which does not participate in a pooling agreement from \$2,400 to \$3,700;
- (g) annual fee of an ORSO registered scheme which participates in a pooling agreement from \$1,200 to \$1,800; and
- (h) annual fee of an ORSO registered scheme which does not participate in a pooling agreement from \$2,400 to \$3,700.

11. The Amendment Rules will specify that the eight revised fees above are to be effective from 1 January 2018.

LEGISLATIVE TIMETABLE

12. The proposed MPF-i fees and fees relating to MPF exempted ORSO registered schemes require the approval of LegCo by way of resolution under section 46 of the MPFSO. The Secretary for Financial Services and the Treasury will move a motion at the LegCo meeting of 26 April 2017 for approval of the resolution by positive vetting.

13. To give effect to the eight revised fees relating to ORSO registered schemes and ORSO exempted schemes, the MPFA will publish the Amendment Rules made under section 73 of the ORSO in the Gazette on 24 March 2017. The Amendment Rules will then be tabled before LegCo on 29 March 2017 for scrutiny under the negative vetting procedure.

ECONOMIC IMPLICATIONS

14. The fee proposal would marginally increase the operating costs of MPF intermediaries and ORSO schemes, yet the additional cost burden should be very small in comparison to the total operating costs. It is not expected to have any significant impact on the trade. While some MPF intermediaries (e.g. some smaller PIs) that have not been active in conducting MPF business³ may leave the industry because of the MPF-i

³ According to the annual returns submitted by PIs in 2015, about one-third of all PIs did not conduct any MPF regulated activities.

fees, this should have minimal impact on MPF scheme members having regard to the appreciable number of PIs and SIs in the market⁴.

FINANCIAL IMPLICATIONS

15. Based on the average number of applications received annually by the MPFA in the last three financial years, the current fee proposal is expected to bring an estimated additional annual revenue of \$11.17 million to the MPFA starting from January 2018 to recover part of its regulatory and supervisory cost in relation to MPF intermediaries and ORSO schemes.

OTHER IMPLICATIONS

16. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. The Amendment Regulation and the Amendment Rules will not affect the current binding effect of the MPFSO and the ORSO. The proposal has no civil service, productivity, environmental, sustainability, family and gender implications.

PUBLIC CONSULTATION

17. The MPFA consulted industry bodies on the proposed fees from October 2016 to January 2017. In general, the industry suggested that the fees should be set at a reasonable level, taking into account that many PIs are SMEs. As explained in paragraph 5 above, we have taken into consideration the industry's views when finalising the fee proposal.

18. Separately, employers providing ORSO schemes did not have any adverse comments on the proposed fee increase.

19. At its meeting on 6 February 2017, the LegCo Panel on Financial Affairs supported the proposal.

PUBLICITY

20. A Government spokesperson will be available to respond to media and public inquiries.

⁴ There were on average 392 PIs and 32 387 SIs in the past three financial years, i.e. 2013/14 to 2015/16.

INQUIRIES

21. Inquiries concerning this LegCo Brief can be directed to Miss Wendy CHUNG, Principal Assistant Secretary for Financial Services and the Treasury (Financial Services) 3, at 2810 2061.

Financial Services and the Treasury Bureau
22 March 2017

Mandatory Provident Fund Schemes (Fees) (Amendment) Regulation 2017

(Made by the Chief Executive in Council under section 46 of the
Mandatory Provident Fund Schemes Ordinance (Cap. 485) subject to the
approval of the Legislative Council)

1. **Commencement**
This Regulation comes into operation on 1 January 2018.
2. **Mandatory Provident Fund Schemes (Fees) Regulation amended**
The Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485 sub. leg. C) is amended as set out in sections 3, 4 and 5.
3. **Section 3 added**
After section 2—
Add

“3. **Application of item 12 of Schedule 1 as amended**
Item 12 of Schedule 1 as amended by section 4(6) of the Mandatory Provident Fund Schemes (Fees) (Amendment) Regulation 2017 applies to a chargeable period that begins on or after 1 January 2018.”.
4. **Schedule 1 amended (fees prescribed for the purposes of the Mandatory Provident Fund Schemes Ordinance (Cap. 485))**
 - (1) Schedule 1—
Repeal
“[s. 2]”

- Substitute**
“[ss. 2 & 3]”.
- (2) Schedule 1, item 8—
Repeal
“Nil”
Substitute
“\$2,340”.
- (3) Schedule 1, item 9—
Repeal
“Nil”
Substitute
“\$290”.
- (4) Schedule 1, item 10—
Repeal
“Nil”
Substitute
“\$130”.
- (5) Schedule 1, item 11—
Repeal
“Nil”
Substitute
“\$660”.
- (6) Schedule 1—
Repeal item 12
Substitute

- “12. 34ZN (a) Annual fee payable by a registered intermediary who is a principal intermediary \$1,430
- (b) Annual fee payable by a registered intermediary who is a subsidiary intermediary \$180”.

5. Schedule 3 amended (fees prescribed for the purposes of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B))

(1) Schedule 3, item 2(a)—

Repeal

“\$1,200”

Substitute

“\$1,800”.

(2) Schedule 3, item 2(b)—

Repeal

“\$2,400”

Substitute

“\$3,700”.

(3) Schedule 3, item 4(b)—

Repeal

“\$11,250”

Substitute

“\$11,800”.

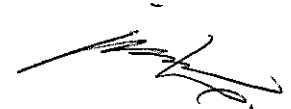
(4) Schedule 3, item 4(c)—

Repeal

“\$4,900”

Substitute

“\$5,100”.



Clerk to the Executive Council

COUNCIL CHAMBER

14th March, 2017

Explanatory Note

This Regulation amends the Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485 sub. leg. C) (*principal Regulation*) to apply a particular annual fee to chargeable periods from 1 January 2018.

2. This Regulation also amends Schedule 1 to the principal Regulation to prescribe the following fees payable under section 34T, 34U, 34V, 34W or 34ZN of the Mandatory Provident Fund Schemes Ordinance (Cap. 485)—
 - (a) the application fee for registration as a principal intermediary;
 - (b) the application fee for registration as a subsidiary intermediary;
 - (c) the application fee for approval of attachment of a subsidiary intermediary to a principal intermediary;
 - (d) the application fee for approval of a responsible officer;
 - (e) the annual fee payable by a principal intermediary;
 - (f) the annual fee payable by a subsidiary intermediary.
3. This Regulation also amends Schedule 3 to the principal Regulation to increase the following fees payable under section 16 of, or section 7 of Schedule 3 to, the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B)—
 - (a) the application fee for an exemption certificate in respect of a registered occupational retirement scheme which is a participating scheme of a pooling agreement;
 - (b) the application fee for an exemption certificate in respect of a registered occupational retirement scheme which is not a participating scheme of a pooling agreement;

- (c) the application fee for approval to the appointment of a trustee of a scheme which is a company incorporated outside Hong Kong;
- (d) the application fee for approval to the appointment of a director of an applicable trustee of a scheme, or a trustee of a scheme who is a natural person.

Occupational Retirement Schemes (Fees) (Amendment) Rules 2017

(Made by the Mandatory Provident Fund Schemes Authority under section 73 of the Occupational Retirement Schemes Ordinance (Cap. 426))

1. Commencement

These Rules come into operation on 1 January 2018.

2. Occupational Retirement Schemes (Fees) Rules amended

The Occupational Retirement Schemes (Fees) Rules (Cap. 426 sub. leg. D) are amended as set out in sections 3 and 4.

3. Section 3 added

After section 2—

Add

“3. Application of items 2, 4 and 6 of Schedule as amended

- (1) Item 2 of the Schedule as amended by section 4(3) of the amending Rules applies to an application made on or after 1 January 2018 for a correct copy of an entry in the register.
- (2) Item 4 of the Schedule as amended by section 4(5) of the amending Rules applies to—
 - (a) a specified period that begins on or after 1 January 2018; or
 - (b) a part of a specified period that begins on or after 1 January 2018.
- (3) Item 6(a) and (b) of the Schedule as amended by section 4(8) and (9) of the amending Rules applies to—

- (a) a specified period that begins on or after 1 January 2018; or
- (b) a part of a specified period that begins on or after 1 January 2018.

(4) In this section—

amending Rules (《修訂規則》) means the Occupational Retirement Schemes (Fees) (Amendment) Rules 2017;

specified period (指明期間)—

- (a) for subsection (2)—means the period of 12 months described in section 9(1)(a) of the Ordinance; and
- (b) for subsection (3)—means the period of 12 months described in section 28(1)(a) of the Ordinance.”.

4. Schedule amended (fees)

(1) The Schedule—

Repeal

“[s. 2]”

Substitute

“[ss. 2 & 3]”.

(2) The Schedule, item 1—

Repeal

“10”

Substitute

“20”.

(3) The Schedule, item 2—


Repeal

“110”

Substitute

- “160”.
- (4) The Schedule, item 3—
Repeal
 “600”
Substitute
 “940”.
- (5) The Schedule, item 4—
Repeal
 “600”
Substitute
 “940”.
- (6) The Schedule, item 5(a)—
Repeal
 “1,200”
Substitute
 “1,800”.
- (7) The Schedule, item 5(b)—
Repeal
 “2,400”
Substitute
 “3,700”.
- (8) The Schedule, item 6(a)—
Repeal
 “1,200”
Substitute
 “1,800”.

- (9) The Schedule, item 6(b)—
Repeal
 “2,400”
Substitute
 “3,700”.



Chief Corporate Affairs Officer and
 Executive Director,
 Mandatory Provident Fund Schemes
 Authority

D MAR 2017

Explanatory Note

These Rules amend the Occupational Retirement Schemes (Fees) Rules (Cap. 426 sub. leg. D) (*principal Rules*) to apply—

- (a) a particular fee to applications made from 1 January 2018; and
 - (b) certain periodic fees to relevant periods from 1 January 2018.
2. These Rules also amend the Schedule to the principal Rules to increase the following fees payable under section 6(4), 6(5), 7, 9(1), 15 or 28(1) of the Occupational Retirement Schemes Ordinance (Cap. 426)—
- (a) the fee for inspection of the register of occupational retirement schemes;
 - (b) the fee for a correct copy of an entry in the register of occupational retirement schemes;
 - (c) the application fee for an exemption certificate in respect of an occupational retirement scheme;
 - (d) the periodic fee in respect of an exempted occupational retirement scheme;
 - (e) the application fee for registration of an occupational retirement scheme that is a participating scheme of a pooling agreement;
 - (f) the application fee for registration of an occupational retirement scheme that is not a participating scheme of a pooling agreement;
 - (g) the periodic fee in respect of a registered scheme that is a participating scheme of a pooling agreement;
 - (h) the periodic fee in respect of a registered scheme that is not a participating scheme of a pooling agreement.

PROPOSED MPF-I FEES AND REVISED FEES RELATING TO ORSO SCHEMES

(I) Proposed MPF-i Fees under Schedule 1 to the Fees Regulation

- The following are the proposed fees and their respective levels –

Relevant Section of Cap 485	Fee Description	Relevant Cost	Proposed Fee¹	Estimated No. of Applications Received²	Estimated Annual Income
(i) Application Fees					
34T	Registration of PI	\$3,894	\$2,340	21	\$49,140
34U	Registration of SI	\$483	\$290	4 905	\$1,422,450
34V	Approval of Attachment by SI to PI	\$203	\$130	1 632	\$212,160
34W	Approval of RO	\$1,093	\$660	79	\$52,140

¹ The “proposed fee” represents 60% of the “relevant cost”, rounded up to the nearest \$10.

² Average number of applications received annually by the MPFA and average number of registered MPF intermediaries in the past three financial years, i.e. 2013/14 to 2015/16.

(ii) Annual Fee					
34ZN	PI	\$2,381	\$1,430	392	\$560,560
34ZN	SI	\$295	\$180	32 387	\$5,829,660
				Total	\$8,126,110

(II) Proposed Fees relating to MPF Exempted ORSO Registered Schemes under Schedule 3 to the Fees Regulation

Relevant Section of Cap 485B	Fee Description	Existing Fee	Proposed Fee	Proposed Increase	No. of Applications Received³	Estimated Additional Annual Income
16	Application for an MPF exemption certificate in respect of an ORSO registered scheme which participates in a pooling agreement	\$1,200	\$1,800	\$600	10	\$6,000
16	Application for an MPF exemption certificate in respect of an ORSO registered scheme which does not participate in a pooling agreement	\$2,400	\$3,700	\$1,300	2	\$2,600
7 of Schedule 3	Application for approval to the appointment of a company as the trustee of a scheme where the company is incorporated outside Hong Kong and is comparable to a registered trust company and has a significant presence and control in Hong Kong	\$11,250	\$11,800	\$550	2	\$1,100

³ Average number of applications received annually by the MPFA in the past three financial years, i.e. 2013/14 to 2015/16.

Relevant Section of Cap 485B	Fee Description	Existing Fee	Proposed Fee	Proposed Increase	No. of Applications Received³	Estimated Additional Annual Income
7 of Schedule 3	<p>Application for approval to the appointment of a natural person as the trustee of a scheme; or for approval to the appointment of a director of a trustee of a scheme where –</p> <p>(i) the trustee is incorporated in Hong Kong but is not a registered trust company; or</p> <p>(ii) the trustee is incorporated outside Hong Kong but is not comparable to a registered trust company and/or has no significant presence or control in Hong Kong</p>	\$4,900	\$5,100	\$200	29	\$5,800
Total						\$15,500

(III) Proposed Fees relating to ORSO Registered Schemes and ORSO Exempted Schemes under the Schedule to the Fees Rules

Relevant Section of Cap 426	Fee Description	Existing Fee	Proposed Fee	Proposed Increase	No. of Applications Received⁴	Estimated Additional Annual Income
6(4)	Inspection of a record of an ORSO scheme in the public register	\$10	\$20	\$10	5	\$50
6(5)	A certified copy of a record of an ORSO scheme in the public register	\$110	\$160	\$50	4	\$200
7 [^]	Application for an exemption certificate of an ORSO scheme	\$600	\$940	\$340	20	\$6,800
9(1) [^]	Annual fee for an exemption certificate of an ORSO exempted scheme	\$600	\$940	\$340	761	\$258,740
15*	Registration of an ORSO scheme which participates in a pooling agreement	\$1,200	\$1,800	\$600	23	\$13,800

⁴ Average number of applications received annually by the MPFA and average number of ORSO schemes in the past three financial years, i.e. 2013/14 to 2015/16.

Relevant Section of Cap 426	Fee Description	Existing Fee	Proposed Fee	Proposed Increase	No. of Applications Received⁴	Estimated Additional Annual Income
15*	Registration of an ORSO scheme which does not participate in a pooling agreement	\$2,400	\$3,700	\$1,300	16	\$20,800
28(1)*	Annual fee of an ORSO registered scheme which participates in a pooling agreement	\$1,200	\$1,800	\$600	3 686	\$2,211,600
28(1)*	Annual fee of an ORSO registered scheme which does not participate in a pooling agreement	\$2,400	\$3,700	\$1,300	395	\$513,500
Total						\$3,025,490

- Fees marked with an asterisk (*) are only applicable to ORSO registered schemes, while those marked with a caret (^) are only applicable to ORSO exempted schemes.