

**立法會**  
*Legislative Council*

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**Bills Committee on Occupational Retirement Schemes  
(Amendment) Bill 2019**

**Background brief**

**Purpose**

This paper provides background information on the Occupational Retirement Schemes (Amendment) Bill 2019 ("the Bill"). It also summarizes the views and concerns expressed by members when the Panel on Financial Affairs ("FA Panel") was consulted on the legislative proposals.

**Background**

2. The Occupational Retirement Schemes Ordinance (Cap. 426) ("ORSO"), which came into force on 15 October 1993, provides for a registration system for Occupational Retirement Schemes<sup>1</sup> ("OR Schemes") voluntarily set up by employers under ORSO. The purposes of ORSO are to ensure that such schemes are properly regulated and provide greater certainty that the benefits promised to employees will be paid when they fall due.

3. There are two types of OR Schemes regulated under ORSO, namely, registered schemes and exempted schemes. Employers who operate OR Schemes are required to apply to the Registrar of OR Schemes ("Registrar") for registration of their schemes (i.e. "registered schemes") unless they are eligible

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<sup>1</sup> Under section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426), an Occupational Retirement Scheme ("OR Scheme") refers to a scheme, not being a contract of insurance under which benefits are payable only upon the death or disability of the insured, that has or is capable of having effect in relation to employment so as to provide benefits, in the form of pensions, allowances, gratuities or other payments, payable on termination of service, death or retirement, to or in respect of persons gainfully employed (whether in Hong Kong or elsewhere) under a contract of service in any employment.

for the following exemption criteria (i.e. "exempted schemes"), in which case exemption certificates will be issued –

- (a) being an offshore scheme registered or approved by an overseas authority performing functions which are generally analogous to those of the Registrar; or
- (b) being a scheme which has not more than 10% or 50 of the scheme's members, whichever is less, who are Hong Kong Permanent Identity Card holders.

4. Under ORSO, registered schemes are subject to various funding, audit and disclosure of information requirements, whereas exempted schemes are only required to comply with the requirements in relation to providing information to the Registrar and notifying him/her of certain changes of the schemes.

5. With the launch of the Mandatory Provident Fund ("MPF") System on 1 December 2000, OR Schemes may also be classified into two types according to their MPF exemption status, i.e. those schemes with MPF exemption granted by the Mandatory Provident Fund Schemes Authority ("MPFA")<sup>2</sup> pursuant to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485B) (commonly known as "MPF-exempted OR Schemes") and those without (commonly known as "non-MPF exempted OR Schemes"). Contributions by employers<sup>3</sup> and employees<sup>4</sup> to OR Schemes are generally tax deductible.

6. The Registrar has recently noted that some OR Schemes might have been misused as a collective investment scheme with open participation, and this is contrary to the original policy intent of ORSO (i.e. OR Schemes should be employment-based). There is a concern that as these OR Schemes are outside the regulatory ambit of the Securities and Futures Ordinance (Cap. 571), such misuses of OR Schemes may compromise the integrity of the regulation of

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<sup>2</sup> After the establishment of the Mandatory Provident Fund ("MPF") System in Hong Kong, the Mandatory Provident Fund Schemes Authority has become the Registrar of OR Schemes.

<sup>3</sup> The deduction is limited to 15% of the total emoluments of the employee for the period to which the payments relate.

<sup>4</sup> Employees' contributions to MPF-exempted OR Schemes are eligible to tax deduction subject to the maximum deduction limit of \$18,000 annually.

investment products in Hong Kong.<sup>5</sup> In order to address the issue, the Administration considers it necessary to amend ORSO to ensure that only bona fide OR Schemes are registered or exempted under ORSO.

### **The Occupational Retirement Schemes (Amendment) Bill 2019**

7. The Bill was gazetted on 4 April 2019 and received its First Reading at the Legislative Council ("LegCo") meeting of 17 April 2019. The Bill seeks to amend ORSO to: (a) ensure that OR Schemes are genuinely based on employment, (b) enhance the enforcement powers of the Registrar, and (c) provide for related or technical amendments.

8. Details of the major provisions of the Bill are set out in paragraph 14 of the LegCo Brief (File Ref: RTS/2/1C dated 3 April 2019), and paragraphs 5 to 13 of the Legal Service Division Report on the Bill (LC Paper No. LS67/18-19).

9. The Bill, if passed, would come into operation on the day on which the enacted Ordinance is published in the Gazette.

### **Major views and concerns expressed by Members**

10. FA Panel was briefed by the Administration and MPFA on the key legislative proposals to update ORSO at the meeting on 4 June 2018. The major views and concerns expressed by members at the meeting are summarized in the ensuing paragraphs.

11. Panel members sought details of the misuses of registered or exempted OR schemes for non-retirement purpose including the estimated number of scheme members involved and the estimated amount of tax revenue foregone. Members also sought clarification on whether scheme members who were not employees of a relevant employer would need to withdraw their accrued benefits from an OR Scheme after the proposed amendments came into effect; and whether an employee, after termination of employment, could retain his/her accrued benefits in an OR Scheme.

12. MPFA responded that less than 10 OR Schemes were suspected for involving in non-retirement purpose covering around 700 scheme members (likely including both employees of the relevant employers of the schemes and

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<sup>5</sup> OR Schemes are carved out from the definition of "securities" in the Securities and Futures Ordinance (Cap. 571) and are therefore not subject to the regulation of the Securities and Futures Commission.

non-employees). In general, employers operating OR Schemes could claim tax deductions for the contributions made for their employees to the extent that they did not exceed 15% of the employees' total emoluments, and no tax concession was offered to contributions made by non-employee scheme members to their OR Schemes and hence there should be no Hong Kong tax revenue foregone. As regards the preservation of accrued benefits, MPFA advised that in general an employee who joined an OR Scheme with MPF exemption after the launch of the MPF System would need to preserve the minimum MPF benefits upon cessation of employment by transferring the minimum MPF benefits from an OR Scheme to an MPF scheme of his/her own choice. After the proposed amendments came into effect, employers who wished to continue operating the OR Schemes would need to terminate the membership of those scheme members who were not their employees. Employers might also decide to terminate the OR Schemes concerned and enrol the relevant employees into MPF schemes.

13. In response to members' enquiries about the purpose of empowering the Registrar to enter non-domestic premises for inspection and whether MPFA had exercised the said power in regulating MPF schemes, the Administration advised that the proposed amendments would enable the Registrar to conduct investigation or inspection in employment establishments or business premises for ascertaining compliance with the statutory requirements under ORSO. Similar powers were available to MPFA for regulating MPF schemes under the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

14. A Panel member pointed out that when a company entered into liquidation, if the liquidator concerned did not provide the necessary documents to the OR Scheme administrator certifying the termination of the employment of the employees concerned, the employees were unable to withdraw their accrued benefits from the OR Scheme. The member sought information on the procedure and documents required for certifying the employee's cessation of employment, in particular whether an employee could submit a notice of termination of employment to the OR Scheme administrator when the employer became insolvent, and whether the proposed amendments would help address the problem.

15. The Administration advised that the primary objective of the proposed amendments was to ensure that OR Schemes were employment-based. Specifically, apart from employees (whether past or present) of the relevant employer of an OR Scheme, it was proposed that the membership of an OR Scheme might also include individuals who were transferred from one OR Scheme to another OR Scheme upon bona fide business transactions between the relevant employers of two OR Schemes, and the beneficiaries of

deceased members. Upon termination of the employment of employees, it would normally be the employer who provided relevant information to the OR Scheme administrator and trustee to certify the termination of employment. In some special cases, the liquidator might be required to provide relevant documents certifying that the employment relationship between the employer and the employees concerned had been terminated.

### **Council questions**

16. At the LegCo meeting of 20 June 2018, Hon HO Kai-ming raised an oral question relating to the regulation of OR Schemes including whether a liquidator was required to furnish account information of an insolvent company's OR Scheme to the trustee of the scheme within a prescribed period. The question and the Government's response are provided in the hyperlink in the **Appendix**.

### **Latest development**

17. At the House Committee meeting on 26 April 2019, Members agreed to form a Bills Committee to scrutinize the Bill.

### **Relevant papers**

18. A list of relevant papers is in the **Appendix**.

Council Business Division 1  
Legislative Council Secretariat  
16 May 2019

## List of relevant papers

Date	Event	Paper
4 June 2018	Meeting of the FA Panel	<a href="#">Administration's paper</a> (LC Paper No. CB(1)1027/17-18(04))  <a href="#">Minutes</a> (paragraphs 26-34) (LC Paper No. CB(1)1371/17-18)
20 June 2018	Oral question raised by Hon HO Kai-ming on "Regulation of Occupational Retirement Schemes"	<a href="#">Hansard</a> (pages 12738-12747)
17 April 2019	The Occupational Retirement Schemes (Amendment) Bill 2019 was introduced into the Legislative Council	<a href="#">The Bill</a>  <a href="#">Legislative Council Brief</a> (File Ref: RTS/2/1C)  <a href="#">Legal Service Division Report</a> (LC Paper No. LS67/18-19)