

**Mandatory Provident Fund Schemes (Amendment)
Ordinance 2021**

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 40 OF 2021



Carrie LAM
Chief Executive
28 October 2021

An Ordinance to amend the Mandatory Provident Fund Schemes Ordinance (**MPFSO**) and its subsidiary legislation to provide for a common electronic system for administering and implementing registered provident fund schemes; to amend the provision of the MPFSO that provides for the appointment of the deputy chairperson of the Mandatory Provident Fund Schemes Authority; to make related amendments; and to provide for minor, miscellaneous or technical amendments to certain provisions of the MPFSO and its subsidiary legislation.

[29 October 2021]

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 2021.

- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) The following provisions come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette—
 - (a) sections 14, 15(2), 16, 17, 18, 20, 21, 23, 25, 40, 45, 48 (in so far as it relates to new Schedule 17), 52, 55, 57(1) and (2), 59, 60, 61, 63, 64, 65, 67, 68, 71, 72, 73, 74, 78, 79, 81, 84, 88(2), 89(2) and (3), 93, 95, 97, 101, 102(2), (3), (4), (6), (7), (9), (10), (11), (13), (14), (17) and (20) and 103; and
 - (b) sections 19 (in so far as it relates to new section 19S), 80, 85, 92, 94, 100 and 106.

2. Enactments amended

The enactments specified in Parts 2, 3 and 4 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)—

Repeal the definition of *service provider*

Substitute

“*service provider* (服務提供者), in relation to a provident fund scheme—

(a) means any of the following persons appointed or engaged by the trustee of the scheme to provide services for the purposes of the scheme—

(i) an investment manager;

(ii) a custodian of scheme assets;

(iii) any other person;

(b) includes a person to whom the provision of those services is delegated by a person mentioned in paragraph (a)(i), (ii) or (iii); and

(c) does not include—

(i) a person appointed or engaged as an auditor, solicitor, actuary or registered intermediary; or

(ii) the system operator of an electronic MPF system;”.

(2) Section 2(1), definition of *working day*, paragraph (b)—

Repeal

“within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1)”

Substitute

“as defined by section 71(2) of Cap. 1”.

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

Add

“**2021 Amendment Ordinance** (《2021年修訂條例》) means the Mandatory Provident Fund Schemes (Amendment) Ordinance 2021 (40 of 2021);”.

- (4) Section 2(1)—

Add in alphabetical order

“**Cap. 1** (《第 1 章》) means the Interpretation and General Clauses Ordinance (Cap. 1);

electronic MPF system (電子強積金系統) means an electronic system designated under section 19I(1);

offering document (要約文件) has the meaning given by section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A);

operating rules (運作守則) means the rules referred to in section 19K(2)(a);

pre-existing scheme (既有計劃) has the meaning given by section 19M(4);

scheme administration function (計劃管理職能)—

- (a) means a function of an approved trustee of a registered scheme with respect to the administration of the scheme; and

- (b) includes—

- (i) any such function that is conferred or imposed under this Ordinance; and

- (ii) any such function that is referred to or described in the guidelines;

scheme administration service (計劃管理服務) means any service or facility provided for the administration of a registered scheme;

Secretary (局長) means the Secretary for Financial Services and the Treasury;

section 19N notice (第19N條公告) means a notice published under section 19N;

specified entity (指明實體) means—

- (a) the eMPF Platform Company Limited; or
- (b) a wholly owned subsidiary established under section 6DA for the purpose mentioned in section 6DA(b) (whether or not it is also established for the purpose mentioned in section 6DA(a));

system operator (系統營運者)—see section 19I(2);”.

- (5) After section 2(3)—

Add

“(4) Subsection (5) applies if—

- (a) a provision of this Ordinance requires any document or information to be provided or given (however described) in a form specified or approved by the Authority, or in any other form provided by this Ordinance; and
- (b) because of Part 3B, the document or information is to be provided or given (however described) by means of an electronic MPF system.

- (5) The requirement referred to in subsection (4)(a) is complied with if the document or information is provided or given (however described) in the form specified by the system operator of the electronic MPF system for the purposes of Part 3B.”.

4. Section 6 amended (establishment of Mandatory Provident Fund Schemes Authority)

- (1) After section 6(2)(c)—

Add

“(ca) may, for the purpose of enabling a specified entity to perform any of its functions under section 6EA—

- (i) receive monies from or on behalf of a specified entity; and
- (ii) provide monies to, or hold or expend monies for, the entity; and”.

- (2) After section 6(3)—

Add

“(4) The receipts of the Authority, and those of its wholly owned subsidiaries, are not subject to taxation under the Inland Revenue Ordinance (Cap. 112).”.

5. Section 6C amended (chairperson and deputy chairperson of the Authority)

- (1) Section 6C—

Repeal subsection (2)

Substitute

“(2) The Chief Executive may appoint one of the directors to be the deputy chairperson of the Authority.”.

(2) Section 6C(3), after “chairperson”—

Add

“or deputy chairperson”.

6. Section 6DA amended (Authority may establish wholly owned subsidiary)

Section 6DA—

Repeal

everything after “subsidiary”

Substitute

“for any of the following purposes—

- (a) facilitating the performance of the Authority’s functions;
- (b) administering and operating an electronic system, and providing scheme administration services for approved trustees, for the purposes of Part 3B.”.

7. Section 6E amended (functions of Authority)

After section 6E(1)(eb)—

Add

- “(ec) to oversee the operation of an electronic MPF system, including—
- (i) approving rules as described in section 19K(2)(a);

- (ii) giving to the system operator and approved trustees directions or instructions the Authority considers appropriate for safeguarding the integrity and stability of the system; and
- (iii) monitoring the compliance with the operating rules and the directions and instructions mentioned in subparagraph (ii) by the system operator;
- (ed) to supervise the performance by a specified entity of any of the functions assigned, conferred or imposed under section 6EA(1)(d) and (2) to the entity;
- (ee) to enhance the understanding and knowledge of the members of the public of the features, objectives, operations and investments of registered schemes;”.

8. Section 6EA added

After section 6E—

Add

“6EA. Functions of specified entity

- (1) The functions of a specified entity are as follows—
 - (a) to assist the Authority in performing the Authority’s functions, including performing any functions of the Authority delegated to the specified entity under section 6F(2);
 - (b) if an electronic system administered and operated by the specified entity is designated under section 19I(1), to perform the functions of the system operator of the system;
 - (c) to perform any particular function assigned to the specified entity under subsection (2);

- (d) to perform any other functions conferred or imposed on the specified entity under this Ordinance or any other enactment.
- (2) The Financial Secretary may assign any particular function to a specified entity (whether or not as the system operator of an electronic MPF system) if the Financial Secretary is satisfied that it is appropriate and in the public interest for the specified entity to perform the function.
- (3) A specified entity may—
 - (a) for the purpose of performing any of its functions—
 - (i) employ or engage any person to assist the specified entity in performing the function;
 - (ii) establish and maintain any general or special reserve fund, carry to the credit of the fund any sums that the specified entity considers appropriate and make any disbursement that the entity considers appropriate from the fund;
 - (iii) borrow or otherwise raise money;
 - (iv) receive grants from the Government;
 - (b) establish an electronic system for the purposes of Part 3B;
 - (c) charge any fee for providing any service or facility under this Ordinance or any other enactment;
 - (d) seek reimbursement from persons who use the service or facility mentioned in paragraph (c);

- (e) invest, in the way approved by the Financial Secretary, any money of the specified entity that is not immediately required; and
- (f) do anything that is necessary for or expedient to the performance of any of the functions of the specified entity.”.

9. Section 6F substituted

Section 6F—

Repeal the section

Substitute

“6F. Authority may delegate functions and authorize subdelegation of functions

- (1) The Authority may in writing delegate any of its functions, other than a specified function, to—
 - (a) a committee established under section 6D;
 - (b) a wholly owned subsidiary that is not a specified entity; or
 - (c) a designated person.
- (2) The Authority may in writing delegate to a specified entity any of its functions, other than—
 - (a) a specified function; and
 - (b) a function under section 6E(1)(a), (b), (c), (da), (e), (ec), (ed) or (f).
- (3) When the Authority delegates a function under subsection (1) or (2), the Authority may authorize (with or without conditions) the delegate to subdelegate the function.

(4) Schedule 1B has effect in relation to a delegation or subdelegation under this section.

(5) In this section—

designated person (指定人士) means—

- (a) a director or employee of the Authority; or
- (b) a person of a class prescribed by the regulations;

specified function (指明職能) means—

- (a) the power of the Authority under this section; or
- (b) the power of the Authority under section 6DA.”.

10. Section 6G amended (power to appoint staff and consultants)

(1) Section 6G, heading—

Repeal

“appoint staff and consultants”

Substitute

“employ staff and engage consultants and agents, etc.”.

(2) Section 6G(4)—

Repeal

everything after “may”

Substitute

“__

- (a) engage consultants for the purpose of obtaining expert advice; and
- (b) engage consultants, advisers and agents to assist the Authority in performing the Authority’s functions.”.

11. Section 6KA amended (designation of electronic system by Authority)

Section 6KA(1), after “Ordinance”—

Add

“(other than Part 3B)”.

12. Section 6PA added

After section 6P—

Add

“6PA. Power of Director of Audit to examine Authority’s or wholly owned subsidiary’s documents etc.

- (1) The Director of Audit may, for any financial year of the Authority or a wholly owned subsidiary (*specified body*), conduct an examination into the economy, efficiency and effectiveness with which the specified body has used the body’s resources in performing the functions of the body.
- (2) For the purpose of conducting the examination, the Director of Audit may, at any reasonable time—
 - (a) have full and free access to any books, accounts, vouchers, records or documents in the custody or under the control of the specified body;
 - (b) make a copy of the whole or any part of those books, accounts, vouchers, records or documents; and
 - (c) require a person who holds or is accountable for those books, accounts, vouchers, records or documents to give any information or explanation that the Director of Audit considers necessary.

- (3) The Director of Audit may report to the President of the Legislative Council the results of the examination.
- (4) Subsection (1) does not empower the Director of Audit to question the merits of the policy objectives of the specified body.”.

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

- (1) Section 7AA—

Repeal subsection (12)

Substitute

- “(12) If the contribution day as determined under subsection (11) for the purposes of subsection (7) is a day specified in subsection (12A) (*excluded day*), the contribution day is to be the next following day that is not an excluded day.
- (12A) The day specified for subsection (12) is—
- (a) a Saturday;
 - (b) a public holiday;
 - (c) a gale warning day or black rainstorm warning day as defined by section 71(2) of Cap. 1; or
 - (d) subject to subsection (12B)—a day on which the electronic MPF system (or any part of it) is suspended under section 19J or 19L(1)(a) or (b).
- (12B) Subsection (12A)(d) does not apply to a contribution required to be made under this section unless the suspension affects the making of the contribution.”.

- (2) Section 7AA(14)(b)—

Repeal

“or”.

- (3) Section 7AA(14)(c)—

Repeal

“the Interpretation and General Clauses Ordinance (Cap. 1).”

Substitute

“Cap. 1; or”.

- (4) After section 7AA(14)(c)—

Add

“(d) a day on which the electronic MPF system (or any part of it) is suspended under section 19J or 19L(1)(a) or (b).”.

- (5) Section 7AA(14), Chinese text—

Repeal

“施行”.

14. Section 7AD substituted

Section 7AD—

Repeal the section

Substitute

“7AD. Approved trustee’s duties with regard to contributions received from Authority

- (1) This section applies if a contribution paid to the Authority in respect of a relevant employee under section 7AA is paid under section 7AC to the approved trustee of a registered scheme.

- (2) On receiving the contribution, the approved trustee of the registered scheme must take actions reasonably required by the Authority with regard to the contribution.”.

15. Section 18 amended (recovery of arrears and contribution surcharges)

- (1) Section 18(3)—

Repeal

everything after “to the Authority”

Substitute

“__

- (a) any arrears; and
(b) any contribution surcharge payable under subsection (2) in respect of the arrears.”.

- (2) Section 18(6)—

Repeal

everything after “under subsection (5),”

Substitute

“the approved trustee of the registered scheme must take actions reasonably required by the Authority with regard to the payment.”.

- (3) Section 18(6A)(a)—

Repeal

everything after “by them”

Substitute

“; or”.

16. Section 19B amended (Authority may pay special contributions into accounts of scheme members)

(1) Section 19B(2)(a)—

Repeal

“; and”

Substitute a full stop.

(2) Section 19B(2)—

Repeal paragraph (b).

(3) Section 19B(4)(a)—

Repeal

“; and”

Substitute a full stop.

(4) Section 19B(4)—

Repeal paragraph (b).

(5) Section 19B(5)(a)—

Repeal

“; and”

Substitute a full stop.

(6) Section 19B(5)—

Repeal paragraph (b).

17. Section 19C amended (Authority may require information or documents necessary for paying special contributions)

Section 19C(1)—

Repeal paragraph (a).

18. Section 19E amended (Authority may recover special contributions that should not have been paid)

(1) Section 19E(1)(a)—

Repeal

“; and”

Substitute a full stop.

(2) Section 19E(1)—

Repeal paragraph (b).

(3) Section 19E(2)(a)—

Repeal

“; and”

Substitute a full stop.

(4) Section 19E(2)—

Repeal paragraph (b).

(5) Section 19E(3)(a)—

Repeal

“; and”

Substitute a full stop.

(6) Section 19E(3)—

Repeal paragraph (b).

(7) Section 19E(4)(a)—

Repeal

“; and”

Substitute a full stop.

(8) Section 19E(4)—

Repeal paragraph (b).

19. Part 3B added

After Part 3A—

Add

“Part 3B

Electronic MPF System

Division 1—Designation of Electronic MPF System

19I. Designation of electronic MPF system by Secretary

- (1) The Secretary may, by notice published in the Gazette, designate an electronic system administered and operated by a specified entity—
 - (a) to provide any services and facilities to facilitate approved trustees of registered schemes in performing their scheme administration functions; and
 - (b) to perform any other functions specified in Schedule 12.
- (2) The specified entity that administers and operates an electronic system designated under subsection (1) is the system operator of the system.
- (3) An electronic system designated under subsection (1) is to be administered and operated subject to conditions the Secretary imposes with respect to the administration and operation of the system.
- (4) As soon as practicable after a notice is published under subsection (1), the Authority must publish information about the designation, including the

conditions imposed by the Secretary (if any), in the way the Authority considers appropriate.

Division 2—Suspension of Electronic MPF System on Authority’s Direction

19J. Suspension of electronic MPF system on direction of Authority

- (1) If the Authority reasonably considers it necessary to do so, the Authority may in writing direct the system operator of an electronic MPF system to suspend (in accordance with the direction) the system or any part of it from being operated or used for any purpose relating to the designation under section 19I(1).
- (2) The system operator must comply with the direction given under this section by the Authority.
- (3) A suspension under this section—
 - (a) may take effect in relation to a person who uses, or who is required under section 19M to use, the electronic MPF system;
 - (b) may take effect—
 - (i) for a period, or until the occurrence of an event, determined by the Authority; or
 - (ii) until further notice by the Authority; and
 - (c) may take effect subject to any condition the Authority considers appropriate.
- (4) Information about the suspension—
 - (a) must be published by the Authority or the system operator, or both, as soon as practicable after a direction is given under subsection (1) to the system operator; and

- (b) must be published in the way the Authority considers appropriate.

Division 3—System Operator

19K. General duties of system operator

- (1) The system operator of an electronic MPF system must—
 - (a) administer and operate the system in a proper manner; and
 - (b) provide scheme administration services to facilitate approved trustees of registered schemes in performing their scheme administration functions.
- (2) The system operator must ensure that—
 - (a) there are in place rules, made by the system operator and approved by the Authority, governing the administration and operation of the electronic MPF system and a suspension of the system under section 19L(1)(a) or (b) (*operating rules*);
 - (b) the electronic MPF system is administered and operated in a safe and efficient manner calculated to minimize the likelihood of any foreseeable disruption to the functioning of the system;
 - (c) there are in place adequate arrangements to monitor and ensure compliance with the operating rules, including arrangements regarding the resources available to the system operator; and

- (d) there are available to the electronic MPF system financial resources appropriate for the performance of the functions of the system.
- (3) For the purposes of subsection (2)(b), regard must be had in particular to the following matters or aspects in determining whether an electronic MPF system is administered and operated in a safe manner—
- (a) the reliability and robustness of the operation of the system;
 - (b) access control over the system;
 - (c) the integrity of, and access control over, the information held within the system;
 - (d) data protection and security;
 - (e) record keeping;
 - (f) the risk management and control procedures relating to the operation of the system;
 - (g) the soundness of the system;
 - (h) the services provided to the system by the infrastructure associated with the system;
 - (i) whether the system is administered and operated in accordance with the operating rules.
- (4) For the purposes of subsection (2)(b), regard must be had in particular to the following matters or aspects in determining whether an electronic MPF system is administered and operated in an efficient manner—
- (a) the speed and efficiency with which scheme administration services are provided by the system;
 - (b) the overall costs of the maintenance and operation of the system.

- (5) To avoid doubt, the operating rules are not subsidiary legislation.

19L. Powers of system operator

- (1) The system operator of an electronic MPF system may exercise one or more of the following powers—
- (a) suspend the operation or use of the electronic MPF system (or any part of it) for scheduled maintenance;
 - (b) suspend the operation or use of the electronic MPF system (or any part of it) because of unforeseen circumstances;
 - (c) employ or engage any person to assist the system operator in performing the operator's functions;
 - (d) charge any fee for providing any service or facility under this Ordinance or any other enactment in relation to the electronic MPF system, and seek reimbursement from any person who uses the service or facility;
 - (e) do anything that is necessary for or expedient to the performance of any of the functions of the system operator.
- (2) The power under subsection (1)(a) may not be exercised unless information about the suspension is published by the system operator in accordance with the operating rules before the suspension.
- (3) If a suspension is made under subsection (1)(b), the system operator must publish information about the suspension in accordance with the operating rules.

- (4) A suspension under subsection (1)(a) or (b) must be made in accordance with the operating rules.

Division 4—Mandatory Use of Electronic MPF System

19M. Mandatory use of electronic MPF system and scheme administration services provided by system operator

- (1) Subject to subsections (2) and (3), the approved trustee of a registered scheme must use the following system and services that are made available to the approved trustee to perform their scheme administration functions—
- (a) the electronic MPF system; and
 - (b) the scheme administration services provided by the system operator of the system.
- (2) For a pre-existing scheme, subsection (1)—
- (a) begins to apply on the material day to the approved trustee of the scheme with respect to a function of the trustee that is not a specific function; and
 - (b) begins to apply on the specified day to the approved trustee of the scheme with respect to a specific function of the trustee.
- (3) For a newly registered scheme, subsection (1) begins to apply on the specified day to the approved trustee of the scheme with respect to a specific function of the trustee.
- (4) In this section—

material day (關鍵日), in relation to a pre-existing scheme, means the day specified under section 19N(1) for the scheme;

newly registered scheme (新註冊計劃) means a scheme that is registered under section 21 or 21A on or after the date on which Schedule 17 takes effect;

pre-existing scheme (既有計劃) means a registered scheme that is not a newly registered scheme;

specific function (特定職能) means a function of the approved trustee of a registered scheme described in section 153 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) as in force immediately before the commencement of this section;

specified day (指明日) means the day on which section 80 of the 2021 Amendment Ordinance comes into operation.

19N. Secretary to specify day on which approved trustee of pre-existing scheme must begin to use electronic MPF system to perform scheme administration functions (other than specific function)

- (1) The Secretary may, by notice published in the Gazette, specify a day for a pre-existing scheme for the purposes of section 19M(2)(a).
- (2) Different days may be specified under subsection (1) for different pre-existing schemes.

19O. Authority's duty to publish relevant requirement

(1) As soon as practicable after a notice is published in the Gazette under section 19N(1) for a pre-existing scheme, the Authority must publish information about the relevant requirement for the scheme, including the day on which the requirement is to take effect, in the way the Authority considers appropriate.

(2) In this section—

relevant requirement (相關規定), in relation to a pre-existing scheme, means the requirement that the approved trustee of the scheme must comply with section 19M(1) with respect to the scheme administration functions (other than a specific function) of the approved trustee;

specific function (特定職能) has the meaning given by section 19M(4).

Division 5—Duties of Approved Trustees**19P. What approved trustees should do in relation to implementation of electronic MPF system etc.**

(1) An approved trustee of a registered scheme must have in place effective plans, procedures and systems for enabling or facilitating—

- (a) the proper and efficient implementation of an electronic MPF system; and
- (b) the effective and efficient provision of scheme administration services by the system operator of the system.

- (2) The Authority may, by written notice given to an approved trustee of a registered scheme—
 - (a) require the approved trustee to take any action the Authority considers necessary for any of the purposes mentioned in subsection (1);
 - (b) require the approved trustee to do either or both of the following—
 - (i) to take any action the Authority considers necessary for ensuring compliance by the approved trustee with section 19M;
 - (ii) to comply with section 19M; and
 - (c) if the system operator of an electronic MPF system has given the approved trustee a notice under section 19R(1), require the approved trustee to do either or both of the following—
 - (i) to take any action the Authority considers necessary for ensuring compliance by the approved trustee with section 19R(3);
 - (ii) to comply with section 19R(3).
- (3) An approved trustee of a registered scheme must—
 - (a) take—
 - (i) actions that are reasonably required for any of the purposes mentioned in subsection (1); and
 - (ii) other actions required by the Authority under subsection (2)(a);
 - (b) comply with the requirements imposed on the approved trustee under subsection (2)(b); and
 - (c) comply with the requirements imposed on the approved trustee under subsection (2)(c).

19Q. Notice to be given to certain persons in relation to section 19N notice

- (1) As soon as practicable after a section 19N notice is published in the Gazette, the approved trustee concerned must notify in writing each of the persons mentioned in subsection (2) of the following matters—
 - (a) the publication of the notice;
 - (b) the date from which the trustee must comply with the requirement under section 19M(1); and
 - (c) the matters and activities that are to be conducted by the electronic MPF system.
- (2) The persons are—
 - (a) a participating employer of the registered scheme; and
 - (b) a member of the scheme.

Division 6—Collection and Use of Certain Information

19R. Collection of certain information by system operator

- (1) Subject to subsection (2), the system operator of an electronic MPF system may, by written notice given to an approved trustee of a registered scheme, require the approved trustee to provide, in the way specified by the system operator, any information regarding the registered scheme—
 - (a) that is in the trustee's possession or under the trustee's control; and

- (b) that is reasonably required by the system operator for performing any of the system operator's functions under section 19K(1) or 19S.
- (2) The system operator must specify in the notice the information that is required to be provided by the approved trustee.
- (3) An approved trustee of a registered scheme must comply with a requirement set out in the notice given to the approved trustee under subsection (1) within the period specified in the notice.
- (4) The system operator may use the information obtained under this section only for performing the system operator's functions.

19S. Maintenance of register by system operator

- (1) The system operator of an electronic MPF system must maintain a register of members of registered schemes (*central register*) for the purpose of enabling a person who makes a request under this section to ascertain in accordance with this section any information mentioned in subsection (3).
- (2) The central register must be maintained in the form specified by the Authority.
- (3) The central register must contain the following information with respect to each member of a registered scheme—
 - (a) the member's name;
 - (b) the member's Hong Kong Identity Card number or travel document number;

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- (c) the name of each registered scheme that the member is under (*specified scheme*) and the particulars of each account established and maintained by the member under each specified scheme;
 - (d) the information contained in the most recent benefit statement for the member with respect to each specified scheme;
 - (e) the name of the approved trustee of each specified scheme;
 - (f) the amount of the accrued benefits held by the member in each account mentioned in paragraph (c);
 - (g) any other information of or relating to the member or the account mentioned in paragraph (c) that the Authority considers appropriate to be contained in the central register.
- (4) A person may request the system operator to provide any information contained in the central register.
 - (5) A request under subsection (4)—
 - (a) must be made in writing; and
 - (b) must be sent to the system operator in the form specified by the system operator.
 - (6) Subject to subsections (7) and (8), the system operator must, on receiving a request made by a person under subsection (4), provide to the person any information contained in the central register that relates to the person.

- (7) If the person who makes the request is an authorized representative of another person, the system operator must provide to the authorized representative any information contained in the central register that relates to that other person.
- (8) If the person who makes the request is—
- (a) a person entitled in priority to the administration of a deceased person's estate (*entitled person*); or
 - (b) the personal representative of a deceased person,
- the system operator must provide to the entitled person or the personal representative (as the case requires) any information contained in the central register that relates to the deceased person.
- (9) In this section—
- benefit statement*** (權益報表), in relation to a member of a registered scheme, means a benefit statement provided to the member under section 56(1) or (2) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A).

Division 7—Regulation of Fees relating to Scheme Administration

Subdivision 1—Preliminary

19T. Interpretation

- (1) In this Division and Schedules 13, 14, 15 and 16—
- corresponding period*** (相應期間), in relation to a constituent fund of a registered scheme, means the

financial period of the constituent fund that coincides (whether wholly or partly) with a financial period of the registered scheme;

FER means the fund expense ratio;

financial period (財政期), in relation to a registered scheme, has the same meaning as in section 79 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A);

inception date (成立日), in relation to a constituent fund of a registered scheme, means the first day on which the constituent fund is made available to members of the registered scheme for investment purpose;

new constituent fund (新成分基金) means a constituent fund of a registered scheme the inception date of which is on or after the date on which section 80 of the 2021 Amendment Ordinance comes into operation;

reference rate (參考行政費率)—see section 19X;

reference ratio (參考開支比率)—see section 19W;

relevant rate of administration fee (相關行政費率) means—

- (a) the relevant rate of administration fee determined under section 2 or 4 of Schedule 14 for a constituent fund of a registered scheme; or
- (b) the relevant rate of administration fee determined under section 19ZB for a constituent fund of a registered scheme;

second related financial period (第二相關財政期), in relation to a constituent fund of a registered scheme, means the financial period of the registered scheme that is immediately after the financial period covering the inception date of the constituent fund.

- (2) A constituent fund of a registered scheme begins to exist on the inception date.
- (3) If the units of a constituent fund of a registered scheme are divided into more than one class (*fund class*), this Division and Schedules 13, 14, 15 and 16 apply to a fund class of the constituent fund as if the fund class were a constituent fund of the registered scheme.

Subdivision 2—Approved Trustee Not to Charge More Than Amount Payable to System Operator

19U. Approved trustee may charge fee for use of electronic MPF system and certain other services but must not charge more than amount payable to system operator

- (1) The approved trustee of a registered scheme may charge to a constituent fund of a registered scheme any amount payable, in relation to the constituent fund, by the approved trustee to the system operator of an electronic MPF system for the use of the system (*use*) or the provision to the trustee of any scheme administration services (*provision*), or both.
- (2) However, the aggregate amount that may be charged under subsection (1) in relation to a constituent fund of a registered scheme for a prescribed period relating to the fund must not exceed the total amount payable, in relation to the fund, by the approved trustee to the system operator for the use and provision for that period.
- (3) For a constituent fund of a registered scheme, each of the following periods is a prescribed period relating to the fund—

- (a) the period that begins on the material day and ends on the last day of the financial period of the registered scheme that covers the material day;
 - (b) a financial period of the registered scheme that begins after the material day.
- (4) In this section—

material day (關鍵日), in relation to a constituent fund of a registered scheme—

- (a) if the constituent fund is not a new constituent fund, means the day appointed under section 19ZE(1)(a) for the constituent fund; and
- (b) if the constituent fund is a new constituent fund, means the inception date of the constituent fund.

Subdivision 3—Reference Ratio and Reference Rate

19V. **Approved trustee's duty to submit reference ratio and relevant rate of administration fee for constituent fund other than capital preservation fund**

- (1) This section applies to a constituent fund of a registered scheme that is not a capital preservation fund.
- (2) The approved trustee of the registered scheme must, before the end of the specified 12-month period—
 - (a) determine—
 - (i) the reference ratio for the constituent fund; and
 - (ii) the relevant rate of administration fee for the fund;

- (b) cause the reference ratio so determined to be audited by the auditor of the registered scheme; and
 - (c) submit to the Authority—
 - (i) the audited reference ratio; and
 - (ii) the relevant rate of administration fee.
- (3) The approved trustee of a registered scheme is not required to comply with subsection (2)(a)(ii) and (c)(ii) if the relevant rate of administration fee is determined under section 19ZB for the constituent fund.
- (4) In this section—
 - specified 12-month period*** (指明12個月期間)—
 - (a) in relation to a constituent fund of a registered scheme to which section 19W(2) applies, means the 12-month period that begins immediately after 31 December 2021; and
 - (b) in relation to a constituent fund of a registered scheme to which section 19W(3) applies—
 - (i) if the constituent fund is not a new constituent fund, means whichever of the following periods ends later—
 - (A) the 12-month period that begins immediately after 31 December 2021;
 - (B) the 12-month period that begins immediately after the second related financial period; and

- (ii) if the constituent fund is a new constituent fund, means the 12-month period that begins immediately after the second related financial period.

19W. How to determine reference ratio for constituent fund

- (1) This section applies for the purpose of determining the reference ratio for a constituent fund of a registered scheme under section 19V.
- (2) If—
 - (a) a financial period of a constituent fund of a registered scheme ends before 31 December 2020 (*specified date*); and
 - (b) the constituent fund is in existence on the specified date,the reference ratio for the constituent fund is the FER determined, in accordance with Schedule 13, for the corresponding period of the constituent fund that coincides with the financial period of the registered scheme covering the specified date.
- (3) In any other case, the reference ratio for the constituent fund is the FER determined, in accordance with Schedule 13, for the corresponding period of the constituent fund that coincides with the second related financial period.
- (4) For the purpose of determining the FER for the corresponding period mentioned in subsection (2) or (3) (*specified corresponding period*)—
 - (a) a reference in section 1 of Schedule 13 to a prescribed period is a reference to the financial period of the registered scheme to which the specified corresponding period relates; and

- (b) a reference in that Schedule to the relevant corresponding period is a reference to the specified corresponding period.

19X. How to determine reference rate for constituent fund

- (1) This section applies for the purpose of determining the reference rate for a constituent fund of a registered scheme.
- (2) For a constituent fund of a registered scheme to which section 19W(2) applies, the reference rate for the constituent fund is the relevant rate of administration fee determined under Part 1 of Schedule 14 for the fund.
- (3) For a constituent fund of a registered scheme to which section 19W(3) applies, the reference rate for the constituent fund is the relevant rate of administration fee determined under Part 2 of Schedule 14 for the fund.
- (4) Despite subsections (2) and (3), if the relevant rate of administration fee for a constituent fund of a registered scheme is determined under section 19ZB, the reference rate for the constituent fund is the rate determined under that section for the fund.

**Subdivision 4—Approved Trustee’s Duties in relation to
FER for Relevant Corresponding Period of Constituent
Fund**

**19Y. Approved trustee’s duty to determine FER for relevant
corresponding period of constituent fund**

- (1) This section applies to a constituent fund of a registered scheme.

- (2) The approved trustee of the registered scheme must, before the deadline for each prescribed period—
- (a) determine, in accordance with Schedule 13, the FER for the relevant corresponding period of the constituent fund;
 - (b) cause the FER so determined to be audited by the auditor of the registered scheme; and
 - (c) submit the audited FER to the Authority.
- (3) In this section—

deadline (最後期限), in relation to a prescribed period relating to a constituent fund, means the end of the 6-month period that begins immediately after the prescribed period;

material day (關鍵日)—

- (a) in relation to a constituent fund of a registered scheme that is not a new constituent fund, means the day appointed under section 19ZE(1)(b) for the constituent fund; and
- (b) in relation to a new constituent fund, means the day immediately after the second related financial period;

prescribed period (訂明期間), in relation to a constituent fund of a registered scheme, means each of the following periods during which the constituent fund of the registered scheme is in existence (whether at all times or any time)—

- (a) the period that begins on the material day and ends on the last day of the financial period of the registered scheme that covers the material day;

- (b) a financial period of the registered scheme that begins after the material day;

relevant corresponding period (相關相應期間), in relation to a prescribed period relating to a constituent fund of a registered scheme—

- (a) if the prescribed period is a financial period of the registered scheme, means the corresponding period, or the part of the corresponding period, of the constituent fund that coincides with the financial period of the registered scheme; and
- (b) in any other case, means the corresponding period, or the part of the corresponding period, of the constituent fund that coincides with the part of the scheme's financial period that is the prescribed period.

19Z. Approved trustee's duty to determine permitted percentage for constituent fund other than capital preservation fund

- (1) This section applies to a constituent fund of a registered scheme that is not a capital preservation fund.
- (2) The approved trustee of the registered scheme must, before the deadline for each prescribed period—
 - (a) determine, in accordance with Schedule 15, the percentage permitted for the relevant corresponding period of the constituent fund; and
 - (b) submit the percentage so determined to the Authority.
- (3) The submission under subsection (2)(b) must also specify—

- (a) whether the FER for the relevant corresponding period of the constituent fund (***relevant FER***) exceeds the permitted percentage; and
 - (b) (if the relevant FER exceeds the permitted percentage) the amount calculated in accordance with Schedule 16.
- (4) In this section—

deadline (最後期限), in relation to a constituent fund of a registered scheme and a prescribed period relating to the constituent fund, means the end of the 6-month period that begins immediately after the prescribed period;

material day (關鍵日)—

- (a) in relation to a constituent fund of a registered scheme that is not a new constituent fund, means the day appointed under section 19ZE(1)(c) for the constituent fund; and
- (b) in relation to a new constituent fund, means the day immediately after the second related financial period;

permitted percentage (獲准許百分比) means the percentage determined under subsection (2)(a);

prescribed period (訂明期間), in relation to a constituent fund of a registered scheme, means each of the following periods during which the constituent fund of the registered scheme is in existence (whether at all times or any time)—

- (a) the period that begins on the material day and ends on the last day of the financial period of the registered scheme that covers the material day;

- (b) a financial period of the registered scheme that begins after the material day;

relevant corresponding period (相關相應期間), in relation to a prescribed period relating to a constituent fund of a registered scheme—

- (a) if the prescribed period is a financial period of the registered scheme, means the corresponding period, or the part of the corresponding period, of the constituent fund that coincides with the financial period of the registered scheme; and
- (b) in any other case, means the corresponding period, or the part of the corresponding period, of the constituent fund that coincides with the part of the scheme's financial period that is the prescribed period.

19ZA. Approved trustee's duty to pay excess into relevant constituent fund

- (1) This section applies to a constituent fund of a registered scheme to which section 19Z applies if, in relation to a prescribed period to which the constituent fund relates, the FER for the relevant corresponding period of the constituent fund exceeds the permitted percentage (as defined by section 19Z(4)).
- (2) Within 10 specified working days after the deadline, the approved trustee of the registered scheme must pay the amount calculated in accordance with Schedule 16 (*determined amount*) into the constituent fund as income of the fund.
- (3) If the approval granted in respect of the constituent fund under section 21BB is cancelled before the

approved trustee of the registered scheme has discharged the duty under subsection (2) in relation to the fund, the approved trustee must pay the determined amount into the registered scheme as income of the scheme.

(4) In this section—

deadline (最後期限) has the meaning given by section 19Z(4);

prescribed period (訂明期間) has the meaning given by section 19Z(4);

relevant corresponding period (相關相應期間) has the meaning given by section 19Z(4);

specified working day (指明工作日) means a day other than any of the following days—

- (a) a Saturday;
- (b) a public holiday;
- (c) a gale warning day or black rainstorm warning day as defined by section 71(2) of Cap. 1.

**Subdivision 5—Powers of Authority to Determine
Relevant Rate of Administration Fee and Require
Approved Trustee to Determine FER for Specified Period
of Constituent Fund**

**19ZB. Power of Authority to determine relevant rate of
administration fee for constituent fund**

- (1) Subject to subsection (2), the Authority may determine, in the way the Authority considers appropriate, the relevant rate of administration fee for a constituent fund of a registered scheme.

- (2) The Authority may exercise the power mentioned in subsection (1) in relation to a constituent fund of a registered scheme, if the Authority is satisfied that—
 - (a) for the purpose of determining the relevant rate of administration fee under Schedule 14 for the constituent fund, the annual rate of the administration fee (or equivalent) of the constituent fund is not readily ascertainable by reference to the offering document of the registered scheme; and
 - (b) the exercise of the power is justified.
- (3) In determining the relevant rate of administration fee for a constituent fund of a registered scheme under this section, regard must be had to the guidelines.

19ZC. Power of Authority to require approved trustee to determine FER for specified period of constituent fund

- (1) This section applies to a constituent fund of a registered scheme in relation to a financial period of the registered scheme.
- (2) If the Authority reasonably considers it necessary to do so, the Authority may require, by written notice, the approved trustee of the registered scheme to determine the FER for the corresponding period, or the part of the corresponding period, of a constituent fund of the registered scheme that coincides with the financial period of the scheme.
- (3) The approved trustee of the registered scheme must, before the end of the 6-month period after the date of the notice given to the approved trustee under subsection (2)—

- (a) determine, in accordance with Schedule 13, the FER for the period specified in the notice (*specified period*);
 - (b) cause the FER so determined to be audited by the auditor of the registered scheme; and
 - (c) submit the audited FER to the Authority.
- (4) For the purposes of subsection (3)(a)—
- (a) a reference in section 1 of Schedule 13 to a prescribed period is a reference to the financial period of the registered scheme, or the part of the financial period of the scheme, as the case requires, to which the specified period relates; and
 - (b) a reference in that Schedule to the relevant corresponding period is a reference to the specified period.

Subdivision 6—Authority’s Duties to Publish Specified Information and Fee Level Charged by System Operator of Electronic MPF System

19ZD. Authority’s duties to publish specified information and general fee level charged by system operator

- (1) As soon as practicable after having received any specified information in relation to a constituent fund of a registered scheme from the approved trustee of the registered scheme, the Authority must publish, in the manner the Authority considers appropriate, the information.

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- (2) The Authority is not required to comply with subsection (1) in relation to the information described in paragraph (b) of the definition of *specified information* in subsection (5) if—
- (a) the information is received by the Authority after the Authority has determined the relevant rate of administration fee for the constituent fund; or
 - (b) after having received the information from the approved trustee of the registered scheme, the Authority decides to exercise the power under section 19ZB in relation to the constituent fund.
- (3) The Authority must also publish, in the manner the Authority considers appropriate—
- (a) the relevant rate of administration fee determined under section 19ZB for a constituent fund of a registered scheme; and
 - (b) the general fee level charged by the system operator of an electronic MPF system for the use of the system or the provision by the system operator of any scheme administration services, or both.
- (4) The Authority must publish the information mentioned in subsection (3) as soon as practicable after the information is available.
- (5) In this section—
- specified information* (指明資料) means—
- (a) the audited reference ratio mentioned in section 19V(2)(c)(i);
 - (b) the relevant rate of administration fee mentioned in section 19V(2)(c)(ii);

- (c) the audited FER mentioned in section 19Y(2)(c);
- (d) the percentage mentioned in section 19Z(2)(b);
or
- (e) the audited FER mentioned in section 19ZC(3)(c).

Subdivision 7—Powers of Secretary

19ZE. Power of Secretary to appoint days for purposes of sections 19U, 19Y and 19Z

- (1) The Secretary may, by notice published in the Gazette, appoint a day for the purposes of paragraph (a) of the definition of *material day* in any of the following provisions—
 - (a) section 19U(4);
 - (b) section 19Y(3);
 - (c) section 19Z(4).
- (2) Different days may be appointed under subsection (1)(a), (b) and (c)—
 - (a) for different constituent funds of a registered scheme; and
 - (b) for constituent funds of different registered schemes.

19ZF. Power of Secretary to amend Schedules

The Secretary may, by notice published in the Gazette, amend Schedules 12, 13, 14, 15 and 16.

Division 8—Miscellaneous Provisions

19ZG. System operator to provide administrative support to Authority

- (1) If the Authority so requires, the system operator of an electronic MPF system must provide administrative support to the Authority to assist the Authority in performing the Authority's functions.
- (2) The Authority may pay to the system operator an amount that, in the Authority's opinion, represents the expenditure or cost incurred, or likely to be incurred, by the system operator in providing the administrative support.
- (3) A payment under subsection (2) is to be paid from the MPFA Administration Account under section 6M.

19ZH. Mandatory use of electronic MPF system etc. does not prevent approved trustees from seeking remedies from system operator

The use by the approved trustee of a registered scheme of the electronic MPF system, or the scheme administration services provided by the system operator of the system, because of section 19M does not prevent the trustee from seeking any reasonable remedies from the system operator in respect of any liability of the trustee that is attributable to the system operator.”.

20. Section 20B amended (revocation of approval of approved trustee)

Section 20B(1)(d)—

Repeal subparagraph (iv).

21. Section 30 amended (report of auditor)

Section 30(1A)—

Repeal

“34DC(1),”.

22. Section 32 amended (investigation)

(1) Section 32(1)—

Repeal

“The Authority may, by written notice served on the approved trustee of a registered scheme, notify that trustee that the Authority intends to investigate the matters specified in the notice on the ground that”

Substitute

“This section applies if”.

(2) Section 32(1)(a)—

Repeal

“the scheme”

Substitute

“a registered scheme”.

(3) Section 32(1)(b)—

Repeal

“scheme members”

Substitute

“the scheme members of a registered scheme”.

(4) Section 32(1)(c)—

Repeal

“trustee”

Substitute

“approved trustee of a registered scheme”.

(5) Section 32—

Repeal subsection (1A).

23. Section 33 amended (suspension and termination of approved trustee’s administration of registered scheme)

(1) Section 33(1)(c)—

Repeal subparagraph (iii).

(2) Section 33(6)(c)—

Repeal subparagraph (iii).

24. Section 34DA amended (interpretation)

Section 34DA—

Repeal the definition of *out-of-pocket expenses*

Substitute

“*out-of-pocket expenses* (實付開支)—

(a) means any of the following charges, expenses and fees (however described)—

- (i) auditor’s fees for annual audit;
- (ii) printing expenses and postage;
- (iii) fund price publication expenses;
- (iv) bank charges;
- (v) governmental fees and charges (including stamp duties and licence fees);
- (vi) other charges, expenses or fees that are properly incurred and permitted under this Ordinance or the governing rules; and

- (b) does not include fees payable to the system operator of an electronic MPF system under section 19U;”.

25. Section 34DC amended (transfer of accrued benefits to an account within the same registered scheme)

Section 34DC(1)—

Repeal

“then the approved trustee of the scheme must ensure that the transferred benefits”

Substitute

“the transferred benefits are to”.

26. Section 34DD amended (control of payment for services relating to default investment strategy)

- (1) Section 34DD(5), definition of *specified service provider*, paragraph (a)(iii)—

Repeal

“; or”

Substitute a semicolon.

- (2) Section 34DD(5), definition of *specified service provider*, paragraph (b)—

Repeal the semicolon

Substitute

“; or”.

- (3) Section 34DD(5), definition of *specified service provider*, after paragraph (b)—

Add

“(c) the system operator of an electronic MPF system;”.

- (4) Section 34DD(5), definition of *underlying investment fund*—

Repeal paragraph (c)

Substitute

“(c) a specified CIS;”.

- (5) Section 34DD(5)—

Add in alphabetical order

“*specified CIS* (指明 CIS)—

- (a) means a collective investment scheme as defined by section 1(1) of Schedule 1 to the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A); and
- (b) does not include such a scheme that is a REIT;”.

- (6) After section 34DD(5)—

Add

“(6) For the purposes of the definition of *specified CIS* in subsection (5), a REIT is a real estate investment trust with all of the following characteristics—

- (a) does not engage in active trading of real estate;
- (b) invests predominantly in real estate for generating recurrent rental income;
- (c) the majority of its income derives from rentals of real estate;
- (d) distributes a significant portion of its income to holders in the form of regular dividends or other distributions (however described);
- (e) is listed on a stock exchange.”.

27. Section 34DE amended (amendment of Schedules 10 and 11)

Section 34DE(1)—

Repeal

“The Secretary for Financial Services and the Treasury”

Substitute

“The Secretary”.

28. Section 34ZN amended (annual fees)

After section 34ZN(5)—

Add

“(5A) Subsection (5B) applies if—

- (a) a person (***Party A***) is a subsidiary intermediary attached to another person who is a principal intermediary; and
- (b) the registration of Party A as such a subsidiary intermediary is revoked under subsection (5) (***subsection (5) revocation***).

(5B) The approval of the attachment of Party A to that other person is revoked at the time the subsection (5) revocation takes effect.”.

29. Section 34ZO amended (annual return)

After section 34ZO(5)—

Add

“(5A) Subsection (5B) applies if—

- (a) a person (***Party A***) is a subsidiary intermediary attached to another person who is a principal intermediary; and

(b) the registration of Party A as such a subsidiary intermediary is revoked under subsection (5) (*subsection (5) revocation*).

(5B) The approval of the attachment of Party A to that other person is revoked at the time the subsection (5) revocation takes effect.”.

30. Section 34ZP amended (continuing training)

After section 34ZP(4)—

Add

“(5) Subsection (6) applies if—

- (a) an individual is a subsidiary intermediary attached to another person who is a principal intermediary; and
- (b) the registration of the individual as such a subsidiary intermediary is revoked under subsection (4) (*subsection (4) revocation*).

(6) The approval of the attachment of the individual to that other person is revoked at the time the subsection (4) revocation takes effect.”.

31. Section 34ZW amended (Authority may make disciplinary order)

After section 34ZW(3)—

Add

“(3A) Subsection (3B) applies if—

- (a) a regulated person is a subsidiary intermediary attached to another person who is a principal intermediary; and

(b) the registration of the regulated person as such a subsidiary intermediary is revoked under subsection (3)(a)(i) (***subsection (3) revocation***).

(3B) The approval of the attachment of the regulated person to that other person is revoked at the time the subsection (3) revocation takes effect.”.

32. Section 34ZZJ amended (payment by Authority to industry regulator in relation to expenditure or cost for services)

Section 34ZZJ(1), Chinese text—

Repeal

“根據本部提供服務或執行職能而招致或相當可能”

Substitute

“為(或相當可能因為)根據本部提供服務或執行職能而”.

33. Section 41 amended (persons not to disclose certain information)

(1) Section 41(1)—

Repeal

“exercise or” (wherever appearing).

(2) After section 41(2)—

Add

“(2A) Subsection (1) does not prevent the disclosure of, or the provision of access to, the information by a relevant person (***Party A***) if—

(a) the disclosure or the provision is made to another relevant person (***Party B***); and

(b) the information is, in the opinion of Party A, necessary for Party B’s performance of functions under or for the purposes of this Ordinance.

(2B) Subsection (1) does not prevent the disclosure of, or the provision of access to, the information by a prescribed person (*Party C*) if—

- (a) the disclosure or the provision is made to another prescribed person (*Party D*); and
- (b) the disclosure or the provision is, in the opinion of Party C, necessary—
 - (i) to assist Party C's performance of functions under or for the purposes of this Ordinance; or
 - (ii) to facilitate Party D's performance of functions under or for the purposes of this Ordinance.”.

(3) After section 41(3)—

Add

“(4) In this section—

prescribed person (訂明人士) means—

- (a) a specified entity;
- (b) a person employed or engaged under section 6EA(3)(a)(i) by a specified entity;
- (c) a person to whom a function of a specified entity is delegated or subdelegated; or
- (d) the Authority;

relevant person (相關人士) means—

- (a) the system operator of an electronic MPF system; or
- (b) the approved trustee of a registered scheme.”.

34. Sections 41A and 41B added

After section 41—

Add

“41A. Supplementary provisions to section 41—disclosure by system operator to approved trustees

- (1) Subject to subsection (2), section 41(1) does not prevent the system operator of an electronic MPF system from—
 - (a) allowing the approved trustee of a registered scheme to have access to the information obtained by the system operator as described in that section; or
 - (b) otherwise disclosing the information to the approved trustee.
- (2) Subsection (1) applies only if—
 - (a) the information is to be disclosed by the approved trustee to a person located in a place outside Hong Kong;
 - (b) the person performs in that place functions that correspond to those of the Commissioner of Inland Revenue; and
 - (c) the disclosure by the trustee of the information to the person is for the purpose of complying with the trustee’s reporting obligation under the taxation law of that place.

41B. Supplementary provisions to section 41—disclosure by persons other than Authority

- (1) Section 41(1) does not prevent a person (other than the Authority) who obtains information as described in that section from—
 - (a) disclosing the information for the purpose of any criminal proceedings in Hong Kong or an investigation conducted with a view to bringing any such proceedings;
 - (b) disclosing the information in connection with any civil proceedings to which the person is a party or with a view to bringing any such proceedings;
 - (c) disclosing the information for the purposes of sections 50B and 50C of the Inland Revenue Ordinance (Cap. 112); or
 - (d) disclosing 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 41(1) does not prevent the system operator of an electronic MPF system from disclosing any information obtained by the system operator as described in that section as a summary compiled from information provided by persons in accordance with this Ordinance.
- (3) However, subsection (2) applies only if the summary is compiled so as to prevent the identities and businesses of those persons from being ascertained from the summary.

- (4) Section 41(1) does not prevent a wholly owned subsidiary from disclosing any information obtained by the subsidiary as described in that section if the disclosure is—
 - (a) for the purpose of, or otherwise in connection with, an audit conducted, by the auditor of the subsidiary, for the subsidiary; or
 - (b) for the purpose of enabling the Director of Audit to perform, in relation to the Authority or the subsidiary, a function under section 6PA.
- (5) Any information disclosed under subsection (1)(c) may be used or disclosed only for the purposes mentioned in that subsection.
- (6) A person who uses or discloses any information in contravention of subsection (5) commits an offence and is liable on conviction to a fine at level 4.”.

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

- (1) Section 42(1), Chinese text—

Repeal paragraphs (b), (c) and (caa)

Substitute

- “(b) 為了在香港進行的刑事法律程序，或為了以提起任何該等程序為出發點而進行的調查，而披露該等資料；
- (c) 在與管理局屬其中一方的民事法律程序相關的情況下，披露該等資料，或以提起任何該等程序為出發點而披露該等資料；
- (caa) 為以下目的而披露該等資料：向以專業身分行事或擬以專業身分行事的大律師、律師或其他專業顧

問，就根據本條例引起的任何事宜徵詢意見，或由該等大律師、律師或顧問就該等事宜提供意見；”。

- (2) Section 42(1)(g)(iii)—

Repeal the full stop

Substitute a semicolon.

- (3) After section 42(1)(g)—

Add

“(h) disclose the information for the purpose of, or otherwise in connection with, an audit as required by section 6P;

(i) disclose the information for the purpose of enabling the Director of Audit to perform, in relation to the Authority or a wholly owned subsidiary, a function under section 6PA.”。

- (4) Section 42(9), Chinese text—

Repeal paragraph (d)

Substitute

“(d) 為以下目的而披露該等資料：向以專業身分行事或擬以專業身分行事的大律師、律師或其他專業顧問，就根據本條例引起的任何事宜徵詢意見，或由該等大律師、律師或顧問就該等事宜提供意見；”。

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

- (1) Section 42AA, heading—

Repeal

“Specified entity”

Substitute

“Insurance Authority, Monetary Authority and Securities and Futures Commission”.

- (2) Section 42AA(3), Chinese text—

Repeal paragraphs (b), (c) and (ca)

Substitute

- “(b) 為了在香港進行的刑事法律程序，或為了以提起任何該等程序為出發點而進行的調查，而披露該等資料；
- (c) 在與該實體屬其中一方的民事法律程序相關的情況下，披露該等資料，或以提起任何該等程序為出發點而披露該等資料；
- (ca) 為以下目的而披露該等資料：向以專業身分行事或擬以專業身分行事的大律師、律師或其他專業顧問，就根據本條例引起的任何事宜徵詢意見，或由該等大律師、律師或顧問就該等事宜提供意見；”.
- (3) Section 42AA(7), Chinese text—

Repeal paragraph (c)

Substitute

- “(c) 為以下目的而披露該等資料：向以專業身分行事或擬以專業身分行事的大律師、律師或其他專業顧問，就根據本條例引起的任何事宜徵詢意見，或由該等大律師、律師或顧問就該等事宜提供意見；”.

37. Section 42AAB amended (administrator under Occupational Retirement Schemes Ordinance or approved trustee may disclose certain information despite section 41)

- (1) Section 42AAB, heading—

Repeal

“Administrator under Occupational Retirement Schemes Ordinance or approved trustee”

Substitute

“Specified persons”.

- (2) Section 42AAB(1)—

Repeal

“an administrator as defined by section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426), or an approved trustee of a registered scheme,”

Substitute

“a specified person”.

- (3) After section 42AAB(3)—

Add

“(4) In this section—

relevant employer (有關僱主) has the meaning given by section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426);

specified person (指明人士) means—

- (a) an administrator as defined by section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426);
- (b) an approved trustee of a registered scheme; or
- (c) a relevant employer of an occupational retirement scheme.”.

38. Section 42B amended (immunity)

- (1) Section 42B(1)—

Repeal

“, as the case may be,”

Substitute

“(as the case requires)”.

- (2) Section 42B(1), after “Ordinance”—

Add

“or any other enactment”.

- (3) Section 42B(1A)(a), after “subsidiary”—

Add

“(other than a specified entity)”.

- (4) Section 42B(1A)—

Repeal

“, as the case may be,”

Substitute

“(as the case requires)”.

- (5) Section 42B(1A)—

Repeal

“section 6F(1)(b)”

Substitute

“section 6F”.

- (6) Section 42B(2)—

Repeal

“, as the case may be,”

Substitute

“(as the case requires)”.

- (7) After section 42B(3)—

Add

“(4) No civil liability is incurred by—

- (a) a specified entity; or
 - (b) a director or employee of the specified entity, in respect of anything done, or omitted to be done, by the entity, director or employee (as the case requires) in good faith in the performance or purported performance of the functions mentioned in subsection (5).
- (5) The functions are—
- (a) to provide (in the capacity of the system operator of an electronic MPF system) administrative support to the Authority under section 19ZG;
 - (b) to perform a function delegated under section 6F(2) by the Authority; and
 - (c) to comply with a direction or instruction given by the Authority to the specified entity (as the system operator of an electronic MPF system).
- (6) In subsection (5)(c), a reference to a direction or instruction includes a direction or instruction under section 6E(1)(ec)(ii).”.

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

After section 43(2)—

Add

- “(2A) However, subsection (2) does not apply to the system operator of an electronic MPF system or a person engaged by the system operator for providing scheme administration services to approved trustees.”.

40. Section 43BA amended (court may make certain orders in proceedings for offences under section 43B)

(1) Section 43BA—

Repeal subsection (7)

Substitute

“(7) On receiving the contribution or surcharge paid to the approved trustee under subsection (6), the approved trustee must take actions reasonably required by the Authority with regard to the contribution or surcharge.”.

(2) Section 43BA—

Repeal subsection (8).

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

(1) Section 43E(1)—

Repeal

“the Authority, an approved trustee, a trustee of a relevant scheme or an auditor of an approved trustee or of a registered scheme”

Substitute

“a prescribed person”.

(2) Section 43E(3), Chinese text, definition of *有關計劃*—

Repeal the full stop

Substitute a semicolon.

(3) Section 43E(3)—

Add in alphabetic order

“*prescribed person* (訂明人士) means—

(a) the Authority;

- (b) a system operator of an electronic MPF system;
- (c) an approved trustee;
- (d) a trustee of a relevant scheme; or
- (e) an auditor of an approved trustee or of a registered scheme;”.

42. Section 44B added

After section 44A—

Add

“44B. Defence for offence under section 43A(1) or (3)

- (1) It is a defence for a person charged with an offence under section 43A(1)(a) to establish that the payment was made only because of the failure of the system operator of the electronic MPF system to discharge the system operator’s duties.
- (2) It is a defence for a person charged with an offence under section 43A(1)(b) to establish that the default was only because of the failure of the system operator of the electronic MPF system to discharge the system operator’s duties.
- (3) It is a defence for a person charged with an offence under section 43A(3) to establish that the non-compliance was only because of the failure of the system operator of the electronic MPF system to discharge the system operator’s duties.
- (4) A person charged with an offence under section 43A(1)(a) or (b) or (3) is taken to have established a matter that needs to be established for the purpose of the relevant defence if—

- (a) there is sufficient evidence to raise an issue with respect to that matter; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.

(5) In this section—

default (欠付權益), in relation to a person charged with an offence under section 43A(1)(b), means a failure of the person to pay accrued benefits of a scheme member in accordance with an entitlement conferred by or under this Ordinance;

non-compliance (違規), in relation to a person charged with an offence under section 43A(3), means a failure of the person to comply with a requirement of section 14(3);

relevant defence (相關免責辯護)—

- (a) in relation to an offence under section 43A(1)(a), means the defence under subsection (1);
- (b) in relation to an offence under section 43A(1)(b), means the defence under subsection (2); and
- (c) in relation to an offence under section 43A(3), means the defence under subsection (3).”.

43. Section 45B amended (Authority may serve notice requiring payment of financial penalty in certain cases)

After section 45B(1)—

Add

- “(1A) However, subsection (1) does not apply if the failure occurs only because the system operator of an electronic MPF system fails to discharge the system operator’s duties under this Ordinance.”.

44. Section 48 amended (amendment of Schedules)

(1) Section 48, heading—

Repeal

“Amendment of”

Substitute

“Power of Chief Executive in Council to amend”.

(2) Section 48(1)—

Repeal

“Schedules 1 to 8”

Substitute

“Schedules 1, 1B, 2, 3, 5, 5A, 6, 7, 8 and 17 (*specified schedules*)”.

(3) Section 48(2)—

Repeal

“Schedules 1 to 8 shall be”

Substitute

“the specified schedules are”.

45. Section 50 added

Before Schedule 1—

Add

“50. Transitional provisions for 2021 Amendment Ordinance

The transitional provisions specified in Schedule 17 have effect.”.

46. Schedule 1A amended (provisions relating to Authority)

Schedule 1A—

Repeal

“[s. 6A”

Substitute

“[ss. 2 & 6A”.

47. Schedule 11 amended (percentage specified for purposes of section 34DD(4))

(1) Schedule 11, section 2—

Repeal

“The”

Substitute

“Subject to section 3, the”.

(2) Schedule 11, after section 2—

Add

“3. For a year that begins on or after the material day, the percentage for the purposes of section 34DD(4)(b) is 0.1%.

4. In this Schedule—

DIS constituent fund (預設投資策略成分基金) has the meaning given by section 34DA;

inception date (成立日) has the meaning given by section 19T(1);

material day (關鍵日)—

- (a) for a DIS constituent fund that is not a new constituent fund, means the day appointed under section 19ZE(1)(a) for the fund; and
- (b) for a DIS constituent fund that is a new constituent fund, means the inception date of the fund;

new constituent fund (新成分基金) has the meaning given by section 19T(1).”.

48. Schedules 12 to 17 added

After Schedule 11—

Add

“Schedule 12

[ss. 19I & 19ZF]

**Supplementary Functions of Electronic MPF
System**

Schedule 13

[ss. 19T, 19W, 19Y,
19ZC & 19ZF &
Sch. 16]

Fund Expense Ratio (FER) for Relevant Corresponding Period of Constituent Fund

1. Application

This Schedule applies to a constituent fund of a registered scheme and a prescribed period (as defined by section 19Y(3)) relating to the constituent fund.

2. Interpretation

In this Schedule—

APIF means—

- (a) an approved pooled investment fund as defined by section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) (***approved fund***) the units of which are not divided into classes; or
- (b) if the units of an approved fund are divided into more than one class (***fund class***), a fund class of the fund;

CIS means a specified CIS (as defined by section 34DD(5)) that is not an APIF;

relevant corresponding period (相關相應期間) has the meaning given by section 19Y(3).

3. Determination of FER for relevant corresponding period

- (1) The FER for the relevant corresponding period of the constituent fund is to be—
- (a) determined by applying the formula specified in subsection (2); and
 - (b) expressed as a percentage rounded off to 5 decimal places.
- (2) The formula is—

$$\frac{(DE + UFC - RF) \times CF}{D}$$

where—

- DE = the direct expense ratio of the constituent fund (expressed as a percentage);
- UFC = the underlying fund cost ratio of the constituent fund (expressed as a percentage);
- RF = the reimbursement ratio of the constituent fund (expressed as a percentage);
- CF = the conversion factor;
- D = the total number of days in the relevant corresponding period.

- (3) In this section—

conversion factor (換算因數)—

- (a) if the financial period of the registered scheme relating to the relevant corresponding period covers 29 February, means 366; and
- (b) in any other case, means 365;

reimbursement ratio (補還比率) means the ratio arrived at by dividing the aggregate of the reimbursement of the fees and expenses to the constituent fund by the average NAV (as defined by section 4(2) of this Schedule).

4. Meaning of *direct expense ratio* in section 3(2) of this Schedule

(1) For the purposes of section 3(2) of this Schedule—

direct expense ratio (直接開支比率) means the ratio arrived at by dividing the specified expenses by the average NAV.

(2) For the purposes of the definition of **direct expense ratio** in subsection (1)—

average NAV (平均淨資產值) means the sum of the net asset value of the constituent fund at each applicable pricing point divided by the total number of those points;

specified expenses (指明開支) means the amount arrived at by—

- (a) deducting the amount of the excluded expenses that is attributable to the constituent fund for the relevant corresponding period from the amount of the expenses set out in the relevant financial statements of the registered scheme that is attributable to the constituent fund for that period; and
- (b) adding the amount of the adjusted unit expenses (if any) that is attributable to the constituent fund for the relevant corresponding period.

- (3) For the purposes of the definition of *specified expenses* in subsection (2)—

adjusted unit expenses (經調整單位開支) means an amount equal to the aggregate of the total value of the units of the constituent fund that are deducted from the accounts of each scheme member for the corresponding period concerned for payment of—

- (a) annual fees; or
- (b) fees or charges that would have been treated as expenses if they were directly deducted from the constituent fund;

excluded expenses (豁除開支) means the sum of any amount that is set out in the relevant financial statements of the registered scheme as an expense for the corresponding period concerned and that relates to—

- (a) any transaction costs;
- (b) any foreign exchange losses;
- (c) any withholding taxes;
- (d) any adjustments made for different basis when ascertaining the net asset value of the constituent fund; or
- (e) any distributions made by the constituent fund.

5. Meaning of *underlying fund cost ratio* in section 3(2) of this Schedule

- (1) For the purposes of section 3(2) of this Schedule—

underlying fund cost ratio (基礎基金成本比率) means the aggregate of the following—

- (a) the sum of the product of C and E for each APIF in which any assets of the constituent fund are invested during the relevant corresponding period; and
 - (b) the sum of the product of C and E for each CIS in which any assets of the constituent fund are invested during the relevant corresponding period.
- (2) For the purposes of the definition of *underlying fund cost ratio* in subsection (1)—

C—

- (a) in relation to an APIF, means the average percentage of the constituent fund's investments in the APIF over the relevant corresponding period; and
- (b) in relation to a CIS, means the average percentage of the constituent fund's investments in the CIS over the relevant corresponding period;

E—

- (a) in relation to an APIF, means the FER for the most recent financial period of the APIF that ends not later than the last day of the relevant corresponding period; and
 - (b) in relation to a CIS, means—
 - (i) the expense ratio of the CIS that is most recently available; or
 - (ii) if subparagraph (i) is not applicable—a reasonable estimate of the expense ratio of the CIS.
- (3) For the purposes of subsection (2)—

- (a) the average percentage of a constituent fund's investment in an APIF is the percentage obtained by dividing the sum of each specified percentage by the total number of the applicable pricing points; and
- (b) the average percentage of a constituent fund's investment in a CIS is the percentage obtained by dividing the sum of each specified percentage by the total number of the applicable pricing points.

(4) In subsection (3)—

specified percentage (指明百分比)—

- (a) in relation to an APIF, means the percentage obtained by dividing the value of the investments of the constituent fund in the APIF as at an applicable pricing point by the net asset value of the constituent fund as at that pricing point; and
- (b) in relation to a CIS, means the percentage obtained by dividing the value of the investments of the constituent fund in the CIS as at an applicable pricing point by the net asset value of the constituent fund as at that pricing point.

6. Meaning of *applicable pricing point* in sections 4(2) and 5(3) and (4) of this Schedule

For the purposes of sections 4(2) and 5(3) and (4) of this Schedule—

- (a) a pricing point is a point in time at which the net asset value of the constituent fund is determined; and

- (b) applicable pricing points are pricing points—
 - (i) that are adopted by the approved trustees for the purpose of determining the FER for the relevant corresponding period; and
 - (ii) that are evenly distributed throughout the period at intervals of not more than one month.

7. Determination of FER for financial period of APIF

- (1) For the purposes of paragraph (a) of the definition of *E* in section 5(2) of this Schedule, the FER for the most recent financial period of an APIF that ends not later than the last day of the relevant corresponding period is to be determined in accordance with sections 3, 4, 5 and 6 of this Schedule (*relevant provisions*).
- (2) In applying the relevant provisions for the purposes mentioned in subsection (1)—
 - (a) subject to paragraph (b), a reference in a relevant provision to a constituent fund is a reference to the APIF (*Fund A*);
 - (b) subject to paragraphs (c)(i) and (h), a reference in a relevant provision to the corresponding period concerned, the relevant corresponding period, or the relevant corresponding period of the constituent fund, is a reference to the most recent financial period of Fund A that ends not later than the last day of the relevant corresponding period;
 - (c) the expression *conversion factor* in section 3 of this Schedule—

- (i) if the most recent financial period of Fund A that ends not later than the last day of the relevant corresponding period covers 29 February, means 366; and
 - (ii) in any other case, means 365;
- (d) a reference in the definition of *specified expenses* in section 4(2) of this Schedule to the relevant financial statements of the registered scheme is a reference to the relevant financial statements;
- (e) a reference in the definition of *adjusted unit expenses* in section 4(3) of this Schedule to each scheme member is a reference to the constituent fund the assets of which are invested in Fund A;
- (f) a reference in the definition of *excluded expenses* in section 4(3) of this Schedule to the relevant financial statements of the registered scheme is a reference to the relevant financial statements;
- (g) subject to paragraph (h), a reference in section 5 of this Schedule to an APIF is a reference to another APIF (*invested APIF*);
- (h) a reference in section 5(2) of this Schedule to the most recent financial period of the APIF that ends not later than the last day of the relevant corresponding period is a reference to the most recent financial period of the invested APIF that ends not later than the last day of the most recent financial period of Fund A; and
- (i) a reference in section 6(b) of this Schedule to the approved trustee is to be construed as—
 - (i) if Fund A is an insurance policy—the insurer of the insurance policy;

- (ii) if Fund A is a mutual fund—the management company of the mutual fund; and
 - (iii) if Fund A is a unit trust—the trustee of the unit trust.
- (3) Subsections (4) and (5) apply to an APIF (*Fund B*) in which any assets of another APIF (*investing APIF*) are invested.
- (4) For the purpose of determining the FER for the most recent financial period of Fund B that ends not later than the last day of the most recent financial period of the investing APIF, subsection (2)(a), (b), (c), (d), (e), (f), (g), (h) and (i) (***modification provisions***) and the relevant provisions apply as if Fund B were Fund A.
- (5) In applying the modification provisions for the purpose mentioned in subsection (4)—
 - (a) a reference in subsection (2)(b) to the most recent financial period of Fund A that ends not later than the last day of the relevant corresponding period is a reference to the most recent financial period of Fund B that ends not later than the last day of the most recent financial period of the investing APIF;
 - (b) a reference in subsection (2)(c)(i) to the most recent financial period of Fund A that ends not later than the last day of the relevant corresponding period is a reference to the most recent financial period of Fund B that ends not later than the last day of the most recent financial period of the investing APIF; and

- (c) a reference in subsection (2)(e) to the constituent fund the assets of which are invested in Fund A is a reference to the investing APIF the assets of which are invested in Fund B.

Schedule 14

[ss. 19T, 19X, 19ZB
& 19ZF]

Reference Rate for Constituent Fund

Part 1

Constituent Fund to which Section 19W(2) Applies

1. Application of Part 1 of this Schedule

This Part applies for the purposes of section 19X(2).

2. Relevant rate of administration fee

- (1) Subject to subsection (2), the relevant rate of administration fee for a constituent fund of a registered scheme to which section 19W(2) applies is the annual rate of the administration fee (or equivalent) of the constituent fund (*annual rate*)—
- (a) that is stated, and expressed as a percentage of the net asset value of the constituent fund, in the offering document of the registered scheme; and

- (b) that is applicable to the fund as at 31 December 2020.
- (2) If, in relation to a constituent fund of a registered scheme, the annual rate is expressed in the form of a range of percentage of the net asset value of the constituent fund, the relevant rate of administration fee for the constituent fund is to be the highest rate in the range.
- (3) The relevant rate of administration fee for a constituent fund of a registered scheme is to be rounded off to 5 decimal places.

Part 2

Constituent Fund to which Section 19W(3) Applies

3. Application of Part 2 of this Schedule

This Part applies for the purposes of section 19X(3).

4. Relevant rate of administration fee

- (1) Subject to subsection (2), the relevant rate of administration fee for a constituent fund of a registered scheme to which section 19W(3) applies is the rate calculated in accordance with the following formula—

$$\frac{\Sigma(E)}{D}$$

where—

$\Sigma(E)$ = the sum of the prevailing rate of administration fee for each day in the relevant period;

D = the total number of days in the relevant period.

- (2) If, in relation to a constituent fund of a registered scheme, the prevailing rate of administration fee is expressed in the form of a range of percentage of the net asset value of the constituent fund, the relevant rate of administration fee for the constituent fund is to be the highest rate in the range.
- (3) The relevant rate of administration fee for a constituent fund of a registered scheme is to be rounded off to 5 decimal places.
- (4) In this section—

prevailing rate of administration fee (現時行政費率), in relation to a constituent fund of a registered scheme, means the annual rate of the administration fee (or equivalent) of the constituent fund—

- (a) that is stated, and expressed as a percentage of the net asset value of the constituent fund, in the offering document of the registered scheme; and
- (b) that is applicable to the fund on a particular day;

relevant period (相關期間), in relation to a constituent fund of a registered scheme to which section 19W(3) applies, means the corresponding period of the constituent fund mentioned in that section.

Schedule 15

[ss. 19T, 19Z & 19ZF]

Permitted Percentage

1. This Schedule applies for the purposes of section 19Z.
2. Subject to sections 3 and 4 of this Schedule, the percentage permitted for the relevant corresponding period is the ratio calculated in accordance with Formula 1—

Formula 1

$$A - (B - C)$$

where—

- A = the reference ratio for the constituent fund;
- B = the reference rate for the constituent fund;
- C = the average level of the fee payable by the approved trustee of the registered scheme to the system operator of the electronic MPF system for the relevant corresponding period, which is calculated in accordance with Formula 2 and expressed as a percentage rounded off to 5 decimal places—

Formula 2

$$\frac{\Sigma(E)}{D}$$

where—

$\Sigma(E)$ = the sum of each E;

E = the annual rate of the fee (expressed as a percentage of the net asset value of the constituent fund) charged by the system operator of the electronic MPF system, in relation to the use of the electronic MPF system and provision of scheme administration services, that is applicable to the constituent fund on a particular day in the relevant corresponding period of the fund;

D = the total number of days in the relevant corresponding period of the constituent fund.

3. The ratio calculated under section 2 of this Schedule is to be expressed as a percentage rounded off to 5 decimal places.
4. If, in relation to a constituent fund of a registered scheme, B is less than or equal to C, the percentage permitted for the relevant corresponding period is A.
5. In this Schedule—
relevant corresponding period (相關相應期間) has the meaning given by section 19Z(4).

Schedule 16

[ss. 19T, 19Z, 19ZA
& 19ZF]

Calculation of Amount for Purposes of Section 19ZA(2)

1. For the purposes of section 19ZA(2), the amount is to be calculated in accordance with the following formula—

$$(X - Y) \times Z \times \frac{D}{A}$$

where—

- X = the FER for the relevant corresponding period;
- Y = the permitted percentage (as defined by section 19Z(4)) for the relevant corresponding period;
- Z = the average NAV (as defined by section 4(2) of Schedule 13) for the relevant corresponding period;
- D = the total number of days in the relevant corresponding period;
- A = (a) if the financial period of the registered scheme relating to the relevant corresponding period covers 29 February—366; and
(b) in any other case—365.

2. In this Schedule—
relevant corresponding period (相關相應期間) has the meaning given by section 19Z(4).

Schedule 17

[ss. 19M, 48 & 50]

Transitional Provisions for 2021 Amendment Ordinance

1. Interpretation

In this Schedule—

effective day (規定生效日), in relation to a pre-existing scheme, means the day specified under section 19N(1) for the scheme;

General Regulation (《一般規例》) means the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A);

relevant requirement (相關規定) has the meaning given by section 19O(2).

2. Transitional arrangements relating to approved trustee's duties with regard to contributions received from Authority—section 7AD

- (1) Despite the commencement of section 14 of the 2021 Amendment Ordinance (*amendment provision*), section 7AD as in force immediately before the commencement date (*pre-amended section 7AD*)

applies to the approved trustee of a pre-existing scheme in relation to a contribution paid under section 7AC to the trustee if—

- (a) there is no section 19N notice in respect of the scheme; or
 - (b) there is a section 19N notice in respect of the scheme, and the contribution was paid before the effective day.
- (2) Despite the commencement of section 102(2) of the 2021 Amendment Ordinance, items 1C and 1D of Schedule 4 to the General Regulation as in force immediately before the commencement date apply to the approved trustee of the pre-existing scheme, to the extent that the pre-amended section 7AD applies to the approved trustee because of subsection (1).
- (3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

3. **Transitional arrangement relating to recovery of arrears and contribution surcharges—section 18**

- (1) Despite the commencement of section 15(2) of the 2021 Amendment Ordinance (***amendment provision***), section 18(6) as in force immediately before the commencement date applies to the approved trustee of a pre-existing scheme in relation to a payment made under section 18(5) to the trustee if—
- (a) there is no section 19N notice in respect of the scheme; or
 - (b) there is a section 19N notice in respect of the scheme, and the payment was made before the effective day.

(2) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

4. Transitional arrangements relating to Authority's power to pay special contributions into accounts of scheme members—section 19B

(1) Despite the commencement of section 16 of the 2021 Amendment Ordinance (***amendment provision***), section 19B as in force immediately before the commencement date (***pre-amended section 19B***) applies to the payment of a special contribution by the Authority to the approved trustee of a pre-existing scheme if—

- (a) there is no section 19N notice in respect of the scheme; or
- (b) there is a section 19N notice in respect of the scheme, and the payment was made by the Authority before the effective day.

(2) Despite the commencement of section 102(4) of the 2021 Amendment Ordinance, item 2C of Schedule 4 to the General Regulation as in force immediately before the commencement date applies to the approved trustee of the pre-existing scheme, to the extent that the pre-amended section 19B applies to the approved trustee because of subsection (1).

(3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

5. Transitional arrangement relating to Authority's power to require information or documents necessary for paying special contributions—section 19C

- (1) Despite the commencement of section 17 of the 2021 Amendment Ordinance (*amendment provision*), section 19C as in force immediately before the commencement date (*pre-amended section 19C*) applies to a pre-existing scheme in relation to the payment of a contribution (referred to as a *special contribution* in Part 3A) by the Authority if—
- (a) there is no section 19N notice in respect of the scheme; or
 - (b) there is a section 19N notice in respect of the scheme and—
 - (i) the relevant requirement has not taken effect; or
 - (ii) the requirement under subsection (1)(a) of the pre-amended section 19C was made, in relation to the scheme, before the effective day.

- (2) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

6. Transitional arrangements relating to Authority's power to recover special contributions that should not have been paid—section 19E

- (1) Despite the commencement of section 18 of the 2021 Amendment Ordinance (*amendment provision*), section 19E as in force immediately before the commencement date (*pre-amended section 19E*) applies to a pre-existing scheme in relation to a

contribution (referred to as a *special contribution* in Part 3A) if—

- (a) there is no section 19N notice in respect of the scheme; or
 - (b) there is a section 19N notice in respect of the scheme, and the special contribution has been paid into the account of a member of the scheme before the effective day.
- (2) Despite the commencement of section 102(4) of the 2021 Amendment Ordinance, item 2G of Schedule 4 to the General Regulation as in force immediately before the commencement date applies to the approved trustee of the pre-existing scheme, to the extent that the pre-amended section 19E applies to the approved trustee because of subsection (1).
- (3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

7. Transitional arrangements relating to transfer of accrued benefits to account within same registered scheme—section 34DC

- (1) Despite the commencement of section 25 of the 2021 Amendment Ordinance (*amendment provision*), section 34DC as in force immediately before the commencement date (*pre-amended section 34DC*) applies to the approved trustee of a pre-existing scheme unless—
- (a) there is a section 19N notice in respect of the scheme; and
 - (b) the relevant requirement has taken effect.

- (2) Despite the commencement of section 102(6) of the 2021 Amendment Ordinance, item 4G of Schedule 4 to the General Regulation as in force immediately before the commencement date applies to the approved trustee of the pre-existing scheme, to the extent that the pre-amended section 34DC applies to the approved trustee because of subsection (1).
- (3) Because of subsection (1), sections 20B, 30 and 33 as in force immediately before the commencement date applies to the pre-existing scheme, in so far as they relate to the pre-amended section 34DC.
- (4) In this section—
commencement date (生效日期) means the date on which the amendment provision comes into operation.

8. Transitional arrangement relating to payment from Authority under section 43BA(6)

- (1) Despite the commencement of section 40 of the 2021 Amendment Ordinance (*amendment provision*), section 43BA(7) and (8) as in force immediately before the commencement date applies to the approved trustee of a pre-existing scheme in relation to a contribution or surcharge paid under section 43BA(6) if—
 - (a) there is no section 19N notice in respect of the scheme; or
 - (b) there is a section 19N notice in respect of the scheme, and the contribution or surcharge was paid before the effective day.

(2) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.”.

Part 3

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

49. Section 2 amended (interpretation)

Section 2, definition of *specified working day*, paragraph (c)—

Repeal

“within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1)”

Substitute

“as defined by section 71(2) of Cap. 1”.

50. Section 31 amended (non-refusal of scheme applicants and notice of participation)

Section 31(7), Chinese text—

Repeal

“依據第 12 部正在或經已”

Substitute

“正在或經已依據第 12 部”.

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

(1) Section 34—

Renumber the section as section 34(1).

(2) After section 34(1)—

Add

“(2) Subsection (1) applies subject to section 35.”.

52. Section 39 amended (control objectives and internal control procedures to be maintained for each registered scheme)

Section 39(2)(ca)—

Repeal subparagraph (iii).

53. Section 54 amended (approved trustee to provide information to scheme members)

Section 54—

Repeal subsection (3).

54. Section 56 amended (approved trustee to provide scheme members with annual benefit statements)

(1) Section 56(1)—

Repeal

“trustee of the scheme”

Substitute

“trustee of a registered scheme”.

(2) Section 56(1)(a)—

Repeal

“a registered scheme, each of the scheme members”

Substitute

“the scheme, each scheme member”.

(3) Section 56(1)(b)—

Repeal

“subsequent audit adjustments made to the benefit statements affecting the members’ balances, members are”

Substitute

“any subsequent audit adjustments made to a benefit statement affecting the member’s balance, the member is”.

- (4) Section 56(2)—

Repeal

everything after “must”

Substitute

“also ensure that within 3 months after the end of the first 12 months of the financial period, each scheme member is provided with a benefit statement setting out the member’s position with respect to the scheme as at the end of that first 12-month period (*first 12-month period*).”.

- (5) Section 56(3)(b), (c), (d), (e) and (f)—

Repeal

“financial”

Substitute

“prescribed”.

- (6) After section 56(3)(f)—

Add

“(faa) give an estimate of the return on the member’s investments in each account in the scheme over the prescribed period; and

(faab) give an estimate of the cumulative return on the member’s investments in each account in the scheme over the period that begins on the account opening date and ends on the last day of the prescribed period (*entire period*); and

(faac) give an estimate of the annualized return on the member's investments in each account in the scheme over the entire period; and”.

(7) Section 56(3)(fa), English text—

Repeal

“such information as may be”

Substitute

“the information”.

(8) After section 56(3)—

Add

“(3AA) Without affecting subsection (3), a benefit statement required to be provided under subsection (1)(a) to a member of a registered scheme for a financial period of the scheme must also—

- (a) specify the applicable FER for the relevant corresponding period of each relevant fund in which the member invested at any time during the financial period; and
- (b) give an estimate of the fees charged in respect of each account in the scheme during the financial period, including an estimate of the fee charged under each type of fee specified by the Authority.

(3AAB) An estimate required to be given under subsection (3)(faa) or (faab) or (3AA)(b) is to be—

- (a) determined in the manner specified by the Authority; and
- (b) expressed both in Hong Kong dollars and as a percentage.

(3AAC) An estimate required to be given under subsection (3)(faac) is to be—

(a) determined in the manner specified by the Authority; and

(b) expressed as a percentage.”.

(9) Section 56(5)—

Repeal

“(b) to (fa)”

Substitute

“(b), (c), (d), (e), (f) and (fa)”.

(10) Section 56—

Repeal subsection (6).

(11) Section 56(7)—

Repeal

“this section in relation to a person who has ceased to be a scheme member during the period of 3 months after the end of a financial period of the scheme”

Substitute

“subsection (1) or (2) in relation to a person who has ceased to be a scheme member during the period specified in subsection (8)”.

(12) After section 56(7)—

Add

“(8) The period specified for subsection (7) is—

(a) in relation to the compliance with subsection (1)—the period of 3 months after a financial period of the registered scheme; and

- (b) in relation to the compliance with subsection (2)—the period of 3 months after the end of the first 12 months of a financial period of the registered scheme.
- (9) Subsection (3)(faa), (faab) and (faac) only applies to a benefit statement that sets out a scheme member's position as at the end of a financial period, or the first 12 months of a financial period, of the registered scheme that begins on or after the commencement of section 19S of the Ordinance.
- (10) Subsection (3AA) only applies to a benefit statement that sets out a scheme member's position as at the end of a financial period of the registered scheme that begins on or after the commencement mentioned in subsection (9).
- (11) For a scheme member's benefit statement that relates to a financial period mentioned in subsection (10)—
 - (a) subsection (3AA)(a) does not apply to a relevant fund in which the member invested at any time during the financial period if the relevant corresponding period of the relevant fund begins on the inception date of that fund; and
 - (b) any fees incurred in the investment of the member in a relevant fund to which paragraph (a) applies are not to be taken into account when determining an estimate under subsection (3AA)(b) for the benefit statement.
- (12) In this section—
applicable FER (適用FER), in relation to a relevant corresponding period of a relevant fund in which a member of a registered scheme has invested, means—

- (a) the audited fund expense ratio submitted to the Authority under section 19Y of the Ordinance (*audited FER*) for the relevant corresponding period of the relevant fund; or
- (b) (if at the time of preparing the benefit statement, the audited FER for the relevant corresponding period of the relevant fund is not available) the most recently available fund expense ratio determined by the approved trustee of the scheme in accordance with Schedule 13 to the Ordinance for the relevant corresponding period;

corresponding period (相應期間) has the meaning given by section 19T(1) of the Ordinance;

fees (費用) include charges;

inception date (成立日) has the meaning given by section 19T(1) of the Ordinance;

prescribed period (訂明期間)—

- (a) for the purposes of a benefit statement mentioned in subsection (1)(a), means the financial period to which the benefit statement relates; and
- (b) for the purposes of a benefit statement mentioned in subsection (2), means the first 12-month period to which the benefit statement relates;

relevant corresponding period (相關相應期間), in relation to a relevant fund in which a member of a registered scheme has invested, means the corresponding period, or the part of the corresponding period, of the relevant fund that coincides with a financial period of the scheme;

relevant fund (相關基金), in relation to a member of a registered scheme, means a constituent fund of the scheme in which the member has invested.”.

- 55. Section 56A repealed (approved trustee to provide scheme members with tax deductible voluntary contributions summaries with respect to TVC accounts)**

Section 56A—

Repeal the section.

- 56. Section 58 amended (approved trustee to inform scheme members etc. of changes of business particulars)**

Section 58—

Repeal subsection (2).

- 57. Section 59 amended (approved trustee to inform scheme members etc. of requirements relating to voluntary contributions)**

(1) Section 59—

Repeal

“59. Approved trustee to inform scheme members etc. of requirements relating to voluntary contributions”.

(2) Section 59—

Repeal subsection (1).

(3) Section 59—

Repeal subsection (2).

58. Section 66 amended (approved trustee permitted to deduct from scheme members' accounts amount in respect of administrative expenses)

(1) Section 66—

Renumber the section as section 66(1).

(2) After section 66(1)—

Add

“(2) Subsection (1) applies subject to sections 19U and 19Z of the Ordinance.”.

59. Section 75 amended (service providers to report certain matters to Authority)

(1) Section 75, heading—

Repeal

“Service providers”

Substitute

“Service suppliers”.

(2) Section 75(1)—

Repeal

“a service provider”

Substitute

“a service supplier”.

(3) Section 75(1)(aa)—

Repeal subparagraph (iii).

(4) Section 75(1)(b)—

Repeal

“service provider’s”

Substitute

“service supplier’s”.

- (5) Section 75(1)(c)—

Repeal

“identifies any payment from the funds of the scheme that, in the service provider’s”

Substitute

“(if the service supplier is a service provider) identifies any payment from the funds of the scheme that, in the service supplier’s”.

- (6) Section 75(1)(e)—

Repeal

“identifies any matter that causes the service provider”

Substitute

“(if the service supplier is a service provider) identifies any matter that causes the service supplier”.

- (7) Section 75(1)(e), English text—

Repeal

“and with”

Substitute

“and”.

- (8) Section 75(1)(e)—

Repeal

“; or”

Substitute a comma.

- (9) Section 75(1)—

Repeal paragraph (f).

- (10) Section 75(1)—

Repeal

“of the service provider”

Substitute

“of the service supplier”.

(11) Section 75(2)—

Repeal

“The service provider”

Substitute

“A service provider”.

(12) Section 75(4)—

Repeal

“service provider may”

Substitute

“service supplier may”.

(13) Section 75(4)(b)—

Repeal

“service provider”

Substitute

“service supplier”.

(14) Section 75(4)(c)—

Repeal

“service provider”

Substitute

“service supplier”.

(15) Section 75(4)—

Repeal

“The service provider”

Substitute

“The service supplier”.

(16) Section 75(5)—

Repeal

“service provider”

Substitute

“service supplier”.

(17) Section 75(5)(a)—

Repeal

“service provider’s”

Substitute

“service supplier’s”.

(18) After section 75(5)—

Add

“(6) In this section—

service supplier (服務供應者), in relation to a registered scheme, means—

- (a) a service provider; or
- (b) the system operator of an electronic MPF system.”.

60. Section 102 amended (auditor to report on financial statements etc.)

Section 102(2)(e)—

Repeal

“34DC(1),”.

61. Section 103 amended (auditor to report certain matters to Authority)

(1) Section 103(1)(ab)—

Repeal subparagraph (ii).

(2) Section 103(1)(d), Chinese text—

Repeal

everything before “或是”

Substitute

“(d) 發現該計劃的資金被用作付款，而按該核數師的意見，該項付款對計劃成員的利益構成重大損害，”.

(3) Section 103(1)(f)—

Repeal

“; or”

Substitute a comma.

(4) Section 103(1)(f), Chinese text—

Repeal

“促使該核數師”

Substitute

“導致該核數師得出意見，”.

(5) Section 103(1)—

Repeal paragraph (g).

62. Section 105 amended (access of auditor to scheme records)

(1) Section 105(a)—

Repeal

everything after “in relation to the scheme”

Substitute

“by—

- (i) the trustee;
- (ii) the system operator of an electronic MPF system; or
- (iii) a service provider appointed or engaged by the trustee for the purposes of the scheme;”.

(2) Section 105(c), after “the trustee”—

Add

“, the system operator”.

63. Section 110 amended (requirements in section 22A of the Ordinance)

(1) Section 110(2)(c), after “whether or not”—

Add

“, in so far as it is within the knowledge of the trustee,”.

(2) Section 110(2)(c)—

Repeal

“, if”

Substitute

“, if within the knowledge of the trustee,”.

64. Section 117 amended (approved trustee to lodge monthly return with Authority)

Section 117—

Repeal paragraph (a).

65. Section 119 amended (definitions)

Section 119—

Repeal the definition of *defaulter*.

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

Section 122—

Repeal subsection (4)

Substitute

“(4) If the contribution day as determined under subsection (1) for the purposes of subsection (3)(a) or (b) is a day specified in subsection (5) (*excluded day*), the contribution day is to be the next following day that is not an excluded day.

(5) The day specified for subsection (4) is—

- (a) a Saturday;
- (b) a public holiday;
- (c) a gale warning day or black rainstorm warning day as defined by section 71(2) of Cap. 1; or
- (d) subject to subsection (6)—a day on which the electronic MPF system (or any part of it) is suspended under section 19J or 19L(1)(a) or (b) of the Ordinance.

- (6) Subsection (5)(d) does not apply to the payment of a mandatory contribution to the approved trustee of a registered scheme unless the suspension affects the payment.”.

67. Section 125 amended (ascertaining and reporting of relevant income and basis of contribution of self-employed person)

- (1) Section 125, heading—

Repeal

“Ascertaining and reporting”

Substitute

“Reporting”.

- (2) Section 125—

Repeal subsection (1)

Substitute

“(1) This section applies to a self-employed person who is a member of a registered scheme.”.

- (3) Section 125(2)—

Repeal

“A self-employed person”

Substitute

“The self-employed person”.

- (4) Section 125—

Repeal subsection (3).

68. Section 128 amended (relevant income of self-employed person who does not produce evidence of that income)

Section 128(2) and (3)—

Repeal

“or ascertained”.

69. Section 130 amended (net loss sustained in respect of self-employed person’s business)

Section 130—

Repeal subsection (1)

Substitute

“(1) This section applies to a self-employed person who is a member of a registered scheme if the business or businesses carried on by the person have sustained a net loss in relation to a financial period of the registered scheme.

(1A) The self-employed person may—

- (a) make a written statement to the approved trustee of the registered scheme declaring that the business or businesses carried on by the person have sustained a net loss in relation to the financial period of the registered scheme; and
- (b) discontinue payment of mandatory contributions until the relevant income in respect of the person’s business or businesses exceeds the minimum level of relevant income.”.

70. Section 131 amended (contribution period and contribution day in respect of self-employed person)

Section 131—

Repeal subsection (5)

Substitute

“(5) The day specified for subsection (4) is—

- (a) a Saturday;
- (b) a public holiday;
- (c) a gale warning day or black rainstorm warning day as defined by section 71(2) of Cap. 1; or
- (d) subject to subsection (6)—a day on which the electronic MPF system (or any part of it) is suspended under section 19J or 19L(1)(a) or (b) of the Ordinance.

(6) Subsection (5)(d) does not apply to a contribution required to be paid by a self-employed person under section 7C of the Ordinance unless the suspension affects the payment.”.

71. Section 132 repealed (approved trustee to check calculations of mandatory contributions)

Section 132—

Repeal the section.

72. Section 135 repealed (approved trustee to inform Authority of failure to pay mandatory contribution)

Section 135—

Repeal the section.

73. Section 136 amended (Authority to give notice to defaulter and approved trustee to inform Authority of non-payment)

- (1) Section 136, heading—

Repeal

“and approved trustee to inform Authority of non-payment”.

- (2) Section 136(1)—

Repeal

“Except in the circumstances specified in subsection (1A), the Authority must, as soon as practicable after receiving a notice given under section 135 by an approved trustee, serve on the defaulter”

Substitute

“If the Authority reasonably believes that a person has failed to pay a mandatory contribution (or any part of it) or any amount of a contribution surcharge liable to be paid by the employer or person under section 18(2) of the Ordinance (*outstanding sum*), the Authority must as soon as practicable serve on the person (*defaulter*)”.

- (3) Section 136(1)(a)—

Repeal

“arrears and the contribution surcharge payable on the arrears”

Substitute

“outstanding sum”.

- (4) Section 136(1)—

Repeal paragraph (b)

Substitute

“(b) (regardless of whether the outstanding sum relates only to a contribution surcharge liable to be paid by the defaulter) to give to the Authority an explanation with respect to the failure to pay the arrears;”.

(5) Section 136(1)(d)—

Repeal

everything after “paying”

Substitute

“the outstanding sum, a remittance statement.”.

(6) After section 136(1)—

Add

“(1AA) Subsection (1) does not apply if there is any of the circumstances specified in subsection (1A).”.

(7) Section 136(1A)—

Repeal

“in subsection (1) are”

Substitute

“in subsection (1AA) are as follows”.

(8) Section 136(1A)(a) and (b), Chinese text—

Repeal

“拖欠供”

Substitute

“欠”.

(9) Section 136(1A)—

Repeal paragraphs (c), (d) and (e).

(10) Section 136—

Repeal subsection (2).

(11) Section 136(3)—

Repeal

“is in default”

Substitute

“has failed to pay the arrears”.

(12) Section 136—

Repeal subsections (4), (5), (6) and (9).

(13) Section 136(10), Chinese text—

Repeal

“拖欠供款人必須遵守根據本條向他”

Substitute

“欠款人須遵守根據本條向其”.

74. Sections 137 and 138 repealed

Sections 137 and 138—

Repeal the sections.

75. Section 142 amended (self-employed person to notify trustee of change of particulars)

Section 142, after “business address,”—

Add

“electronic mail address (if any),”.

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

(1) Section 143(2)(a), after “business address,”—

Add

“electronic mail address (if any),”.

(2) Section 143(2)(b), after “residential address,”—

Add

“electronic mail address (if any),”.

77. Section 143A added

Part 11, after section 143—

Add

“143A. Participating employer to give certain document or information to employee

(1) This section applies if—

(a) an approved trustee of a registered scheme—

(i) is required under the Ordinance (including its subsidiary legislation) to give (however described) a member of the scheme any document or information; or

(ii) is required under the Ordinance (including its subsidiary legislation) to ensure that the member is given (however described) any document or information;

(b) the member concerned is an employee of a participating employer; and

- (c) the trustee, with the consent of the participating employer, gives (however described) the employer, or arranges to give (however described) to the employer, the document or information.
- (2) The participating employer must ensure that the document or information is given to the employee within 7 working days after the employer has received the document or information from the trustee.”.

78. Section 145A added

After section 145—

Add

“145A. Disposal of unclaimed benefits in employer sponsored scheme

- (1) Subsection (2) applies in relation to accrued benefits in an employer sponsored scheme.
- (2) If, after having taken the reasonable steps specified in the operating rules, the approved trustee of the scheme is unable to locate the person who is entitled to the accrued benefits, the trustee must, within the period specified in subsection (3), transfer the benefits to a master trust scheme nominated by the employer concerned or in accordance with the governing rules.
- (3) The period is the period of 6 months beginning on the date immediately after the date of completion of the reasonable steps mentioned in subsection (2).”.

79. Section 152 repealed (approved trustee to notify scheme member of member's options of transfer)

Section 152—

Repeal the section.

80. Section 153 amended (duty of approved trustee on being notified of election)

(1) Section 153—

Repeal subsections (1), (1A), (1B), (1C) and (1D).

(2) Section 153(2)—

Repeal

“as referred to in subsection (1)”

Substitute

“made under this Part”.

(3) Section 153(5)(a)—

Repeal

“sections 156 and 157”

Substitute

“section 157”.

81. Sections 154 and 155 repealed

Sections 154 and 155—

Repeal the sections.

82. Section 156 repealed (accrued benefits not to be transferred if contributions or contribution surcharges outstanding)

Section 156—

Repeal the section.

83. Section 157 amended (accrued benefits, etc. not to be transferred if scheme accounts are being audited or if scheme is being investigated)

- (1) Section 157, heading—

Repeal

“Accrued benefits, etc. not to be transferred if scheme accounts are being audited or if scheme is being investigated”

Substitute

“Approved trustee to comply with Authority’s requirement not to give effect to election etc.”.

- (2) Section 157(1)—

Repeal

“If”

Substitute

“This section applies if”.

- (3) Section 157(1)—

Repeal

everything after “section 32 of the Ordinance”

Substitute a full stop.

- (4) After section 157(1)—

Add

“(1A) The Authority may, by written notice given to the transferor trustee, require the trustee not to give effect to the election.

(1B) On receiving the notice given under subsection (1A), the transferor trustee must not give effect to the election until the Authority—

- (a) has given its written consent for the trustee to do so; or
- (b) has notified the trustee of the results of the valuation of the scheme assets carried out in relation to the investigation or the report.”.

84. Section 157A repealed (transfer of outstanding sums received by transferor trustees)

Section 157A—

Repeal the section.

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

Section 157B—

Repeal the section.

86. Section 159 amended (claim for payment on attaining retirement age)

Section 159, Chinese text—

Repeal subsection (2)

Substitute

- “(2) 上述申索須附有令有關受託人滿意的證據，證明有關成員已達到退休年齡。”.

87. Section 160 amended (claim for payment on attaining early retirement age)

Section 160(2), Chinese text—

Repeal everything before paragraph (b)

Substitute

“(2) 上述申索須附有——

- (a) 令有關受託人滿意的證據，證明有關成員已達到本條例附表 7 所指明的提早退休年齡；及”。

88. Section 161 amended (claim for payment on death)

- (1) Section 161(2), Chinese text—

Repeal

everything after “申索，”

Substitute

“須附有令有關受託人滿意的證據，證明該人的遺產代理人身分。”。

- (2) Section 161—

Repeal subsection (3).

89. Section 163 amended (claim for payment on ground of permanent departure from Hong Kong)

- (1) Section 163, Chinese text—

Repeal subsection (2)

Substitute

“(2) 上述申索須附有——

- (a) 申索人作出的法定聲明，表明申索人已經或將會在某指明日期，永久性地離開香港；及
- (b) 令有關計劃的核准受託人滿意的證據，證明申索人已獲准在香港以外某地方居住。”。

- (2) Section 163—

Repeal subsections (4), (5) and (5A).

- (3) Section 163(7)—

Repeal

“to (5A)”

Substitute

“and (3)”.

90. Section 167 amended (accrued benefits, etc. not to be paid if scheme accounts are being audited or if scheme is being investigated)

(1) Section 167, heading—

Repeal

“Accrued benefits, etc. not to be paid if scheme accounts are being audited or if scheme is being investigated”

Substitute

“Approved trustee to comply with Authority’s requirement not to make payment etc.”.

(2) Section 167(1)—

Repeal

“If”

Substitute

“This section applies if”.

(3) Section 167(1)—

Repeal

everything after “section 32 of the Ordinance”

Substitute a full stop.

(4) After section 167(1)—

Add

“(1A) The Authority may, by written notice given to the approved trustee, require the trustee not to make the payment.

(1B) On receiving the notice given under subsection (1A), the approved trustee must not make the payment until the Authority—

(a) has given its written consent for the trustee to do so; or

(b) has notified the trustee of the results of the valuation of the scheme assets carried out in relation to the investigation or the report.”.

(5) Section 167(2)—

Repeal

“referred to in subsection (1)”.

91. Section 169A added

Part 13, Division 1, after section 169—

Add

“169A. Treatment of accrued benefits that are unclaimed or that have not been paid

(1) This section applies in relation to any accrued benefits of a scheme member in a registered scheme that have not been claimed or paid in accordance with the Ordinance or the governing rules (*specified benefits*).

(2) For a registered scheme that is not an employer sponsored scheme, the approved trustee of the scheme must continue to retain the specified benefits in the scheme.

- (3) Subject to section 12A of the Ordinance and the governing rules, the specified benefits retained in a registered scheme continue to vest in the scheme member concerned.”.

92. Part 13, Division 2 heading repealed (unclaimed benefits)

Part 13, Division 2, heading—

Repeal the heading.

93. Sections repealed

Sections 170, 171, 172, 172A and 172B—

Repeal the sections.

94. Section 172C repealed (register of scheme members who have unclaimed benefits to be kept)

Section 172C—

Repeal the section.

95. Section 173 repealed (disposal of unclaimed benefits in employer sponsored scheme)

Section 173—

Repeal the section.

96. Section 174 repealed (treatment of unclaimed benefits in master trust scheme or industry scheme)

Section 174—

Repeal the section.

97. Section 175 amended (offences)

Section 175—

Repeal

“163(4),”.

98. Section 203A added

After section 203—

Add

“203A. Defence for offence relating to section 78, 164(2) or (4), 164A(3), 165(3), 167 or 169

- (1) It is a defence for a person charged with an offence under section 94, for failing to perform a duty imposed under section 78 (*non-performance*), to establish that the non-performance was only because of the failure of the system operator of the electronic MPF system to discharge the system operator’s duties.
- (2) It is a defence for a person charged with an offence under section 175, for failing to comply with a relevant provision (*non-compliance*), to establish that the non-compliance was only because of the failure of the system operator of the electronic MPF system to discharge the system operator’s duties.
- (3) A person charged with an offence mentioned in subsection (1) or (2) is taken to have established a matter that needs to be established for the purpose of the relevant defence if—
 - (a) there is sufficient evidence to raise an issue with respect to the matter; and
 - (b) the contrary is not proved by the prosecution beyond reasonable doubt.
- (4) In this section—

relevant defence (相關免責辯護)—

- (a) in relation to an offence mentioned in subsection (1), means the defence under that subsection; and
- (b) in relation to an offence mentioned in subsection (2), means the defence under that subsection;

relevant provision (相關條文) means section 164(2) or (4), 164A(3), 165(3), 167 or 169.”.

99. Section 206 amended (how notices etc. are to be given for purposes of the Ordinance)

- (1) Section 206, heading—

Repeal

“notices etc.”

Substitute

“notices or other documents”.

- (2) Section 206(1)—

Repeal

“Unless otherwise expressly provided”

Substitute

“Unless a contrary intention appears from the context of the Ordinance”.

- (3) Section 206(2)—

Repeal

“A”

Substitute

“Unless a contrary intention appears from the context of the Ordinance, a”.

(4) Section 206(2)—

Repeal paragraph (b)

Substitute

- “(b) it is made available to the recipient on a website, and the recipient is notified of its availability by the operation of paragraph (a) or subsection (1)(a), (b) or (c);
- (ba) it is made available to the recipient by any other electronic means (other than the means mentioned in paragraph (c)), and the recipient is notified of its availability by the operation of paragraph (a) or subsection (1)(a), (b) or (c); or”.

(5) Section 206(2A)—

Repeal

“(2)(a) and (b)”

Substitute

“(2)(a), (b) and (ba)”.

(6) Section 206(2B)—

Repeal

everything after “(2A), if”

Substitute

“__

- (a) the notice or document is made available to the recipient other than by an electronic MPF system; and
- (b) 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.”.

100. Section 206A repealed (how documents are to be served for purposes of section 153(1) or 154(2A)(b))

Section 206A—

Repeal the section.

101. Section 208 added

After section 207—

Add

“208. Transitional provisions for 2021 Amendment Ordinance

The transitional provisions specified in Schedule 5 have effect.”.

102. Schedule 4 amended (financial penalties)

(1) Schedule 4—

Repeal

“[s. 205”

Substitute

“[s. 205 & Sch. 5”.

(2) Schedule 4—

Repeal items 1C and 1D.

(3) Schedule 4, before item 2—

Add

“1E 7AD(2) Approved trustee to take actions reasonably required by Authority with regard to contribution 10,000 20,000 50,000”.

(4) Schedule 4—

Repeal items 2C and 2G.

(5) Schedule 4, before item 3—

Add

“2H 19P(3)(a) Approved trustee to take actions under section 19P(3)(a) of the Ordinance If approved trustee fails to comply with section 19P(3)(a) of the Ordinance—
(a) for the first occasion on which the trustee fails to do so—a daily penalty of \$10,000 for each day on which the failure continues;
(b) for the second occasion on which the trustee fails to do so—a daily penalty of \$20,000 for each day on which the failure continues; and

- | | | | |
|----|-----------|---|--|
| | | | (c) for the third or subsequent occasion on which the trustee fails to do so—a daily penalty of \$50,000 for each day on which the failure continues |
| 2I | 19P(3)(b) | Approved trustee to comply with requirements imposed under section 19P(2)(b) of the Ordinance | <p>If approved trustee fails to comply with section 19P(3)(b) of the Ordinance—</p> <p>(a) for the first occasion on which the trustee fails to do so—a daily penalty of \$10,000 for each day on which the failure continues;</p> <p>(b) for the second occasion on which the trustee fails to do so—a daily penalty of \$20,000 for each day on which the failure continues; and</p> <p>(c) for the third or subsequent occasion on which the trustee fails to do so—a daily penalty of \$50,000 for each day on which the failure continues</p> |

2J	19P(3)(c)	Approved trustee to comply with requirements imposed under section 19P(2)(c) of the Ordinance	<p>If approved trustee fails to comply with section 19P(3)(c) of the Ordinance—</p> <p>(a) for the first occasion on which the trustee fails to do so—a daily penalty of \$10,000 for each day on which the failure continues;</p> <p>(b) for the second occasion on which the trustee fails to do so—a daily penalty of \$20,000 for each day on which the failure continues; and</p> <p>(c) for the third or subsequent occasion on which the trustee fails to do so—a daily penalty of \$50,000 for each day on which the failure continues</p>
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2K	19U(2)	Approved trustee must not charge more than total amount payable to system operator of electronic MPF system	\$5,000 or 10% of the exceeded amount, whichever is the greater		
2L	19V(2)(c)(i)	Approved trustee to submit audited reference ratio to Authority	10,000	20,000	50,000
2M	19V(2)(c)(ii)	Approved trustee to submit relevant rate of administration fee to Authority	10,000	20,000	50,000
2N	19Y(2)	Approved trustee to determine FER for relevant corresponding period of constituent fund (<i>determined FER</i>), cause determined FER to be	10,000	20,000	50,000

		audited and submit audited FER to Authority			
2O	19Z(2)	Approved trustee to determine permitted percentage for constituent fund and submit permitted percentage to Authority	10,000	20,000	50,000
2P	19Z(3)	Approved trustee to specify in submission to Authority— (a) whether FER for relevant corresponding period of constituent fund exceeds permitted percentage; and	10,000	20,000	50,000

		(b) amount determined in accordance with Schedule 16 to the Ordinance	
2Q	19ZA(2)	Approved trustee to pay determined amount into constituent fund	\$5,000 or 10% of the determined amount, whichever is the greater
2R	19ZA(3)	Approved trustee to pay determined amount into registered scheme	\$5,000 or 10% of the determined amount, whichever is the greater
2S	19ZC	Approved trustee to determine under section 19ZC(3) of the Ordinance FER for corresponding period of constituent fund, cause determined	10,000 20,000 50,000”.

FER to be
audited and
submit audited
FER to
Authority

(6) Schedule 4—

Repeal item 4G.

(7) Schedule 4, Part 1, after item 4S—

Add

“4T	43BA(7)	Approved trustee to take actions reasonably required by Authority	10,000	20,000	50,000”.
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(8) Schedule 4—

Repeal item 7

Substitute

“7	31(1)	Non-refusal of application for membership of registered scheme made by or on behalf of relevant employee of participating employer, or by a self-employed person	10,000	20,000	50,000
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Mandatory Provident Fund Schemes (Amendment) Ordinance 2021

Part 3
Section 102

Ord. No. 40 of 2021
A4317

7A	31(1A)	Non-refusal of application made for participation in registered scheme	10,000	20,000	50,000
7B	31(1B)	Non-refusal of application for membership of registered scheme made only for purpose of maintaining personal account within scheme	10,000	20,000	50,000
7C	31(2) and (3)	Disclosure of information	10,000	20,000	50,000
7D	31(4)	Requirement regarding giving notice of participation	10,000	20,000	50,000
7E	31(5)	Requirement with respect to termination of membership of scheme member	10,000	20,000	50,000
7F	31(6)	Requirement with respect to termination of participation of employer	10,000	20,000	50,000

7G	31(7)	Requirement not to charge fees, impose financial penalties or apply certain other restrictions or requirements if accrued benefits of scheme member are being or have been transferred pursuant to Part 12	10,000	20,000	50,000”.
(9)	Schedule 4— Repeal item 16A.				
(10)	Schedule 4— Repeal item 19.				
(11)	Schedule 4— Repeal items 48, 49, 52, 53 and 55.				
(12)	Schedule 4, after item 59— Add				
“59A	143A	Participating employer to give document or information to employee	5,000	10,000	20,000”.

(13) Schedule 4, after item 60—

Add

“60A 145A Approved 10,000 20,000 50,000”.
 trustee to
 transfer accrued
 benefits to
 master trust
 scheme

(14) Schedule 4—

Repeal items 62, 64, 64A and 65.

(15) Schedule 4—

Repeal item 66.

(16) Schedule 4, item 67—

Repeal

“Approved trustee not to transfer accrued benefits if
scheme accounts are being audited or if scheme is being
investigated”

Substitute

“Approved trustee to comply with Authority’s requirement
not to give effect to election”.

(17) Schedule 4—

Repeal item 68.

(18) Schedule 4, item 70A—

Repeal

“Approved trustee not to pay accrued benefits if scheme
accounts are being audited or if scheme is being
investigated”

Substitute

“Approved trustee to comply with Authority’s requirement not to make payment”.

(19) Schedule 4, after item 71—

Add

“71A 169A	Requirements with respect to treatment of unclaimed accrued benefits or accrued benefits that have not been paid	10,000	20,000	50,000”.
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(20) Schedule 4—

Repeal items 72, 73, 74, 74A, 74B and 75.

(21) Schedule 4—

Repeal item 76.

103. Schedule 5 added

After Schedule 4—

Add

“Schedule 5

[s. 208]

Transitional Provisions for 2021 Amendment Ordinance

1. Interpretation

In this Schedule—

effective day (規定生效日), in relation to a pre-existing scheme, means the day specified under section 19N(1) of the Ordinance for the scheme;

relevant requirement (相關規定) has the meaning given by section 19O(2) of the Ordinance.

2. Transitional arrangement relating to control objectives to be maintained for each pre-existing scheme—section 39

(1) Despite the commencement of section 52 of the 2021 Amendment Ordinance (***amendment provision***), section 39 as in force immediately before the commencement date applies to control objectives of a pre-existing scheme, to the extent that section 34DC(1) applies to the approved trustee of the scheme.

(2) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation;

section 34DC(1) (第 34DC(1) 條)—

- (a) means section 34DC(1) of the Ordinance as in force immediately before the commencement date; and
- (b) includes section 34DC(1) of the Ordinance that applies because of section 7 of Schedule 17 to the Ordinance.

3. Transitional arrangements relating to provision of tax deductible voluntary contributions summaries with respect to TVC accounts to scheme members—section 56A

- (1) Despite the commencement of section 55 of the 2021 Amendment Ordinance (***amendment provision***), section 56A as in force immediately before the commencement date (***pre-amended section 56A***) applies to a pre-existing scheme in relation to a contribution summary for a financial year of the scheme unless—
 - (a) there is a section 19N notice in respect of the scheme; and
 - (b) the relevant requirement takes effect on—
 - (i) a day either before the beginning of the financial year or in the financial year; or
 - (ii) a day falling within the specified period mentioned in the pre-amended section 56A.
- (2) Despite the commencement of section 102(9) of the 2021 Amendment Ordinance, item 16A of Schedule 4 as in force immediately before the commencement date applies to the approved trustee of the pre-existing scheme, to the extent that the pre-

amended section 56A applies to the approved trustee because of subsection (1).

(3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

4. Transitional arrangements relating to notification to scheme members—section 59(1)

(1) Despite the commencement of section 57(2) of the 2021 Amendment Ordinance (**amendment provision**), section 59(1) as in force immediately before the commencement date (**pre-amended section 59(1)**) applies to a pre-existing scheme if—

- (a) there is no section 19N notice in respect of the scheme; or
- (b) there is a section 19N notice in respect of the scheme, and the inquiry or request concerned was received by the approved trustee of the scheme before the effective day.

(2) Despite the commencement of section 102(10) of the 2021 Amendment Ordinance, item 19 of Schedule 4 as in force immediately before the commencement date applies to the approved trustee of the pre-existing scheme, to the extent that the pre-amended section 59(1) applies to the approved trustee because of subsection (1).

(3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

5. Transitional arrangements relating to service provider's duty to report certain matters to Authority—section 75(1)(aa)(iii)

- (1) Despite the commencement of section 59 of the 2021 Amendment Ordinance (*amendment provision*), section 75 (to the extent that it relates to subsection (1)(aa)(iii)) as in force immediately before the commencement date (*pre-amended section 75*) applies to a service provider in relation to a pre-existing scheme if, on or after the commencement date, the service provider, in the course of performing the service provider's obligations relating to the scheme, becomes aware that the approved trustee of the scheme—
 - (a) was not complying with section 34DC(1) of the Ordinance (*section 34DC(1)*) before the commencement date; or
 - (b) is not complying with section 34DC(1) that applies to the approved trustee because of section 7 of Schedule 17 to the Ordinance.
- (2) Because of subsection (1), the reference to section 75 in section 76 includes the pre-amended section 75.
- (3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

6. Transitional arrangements relating to service provider's duty to report certain matters to Authority—section 75(1)(f)

- (1) Despite the commencement of section 59 of the 2021 Amendment Ordinance (*amendment provision*), section 75 (to the extent that it relates to subsection (1)(f)) as in force immediately before the

commencement date (*pre-amended section 75*) applies to a service provider in relation to a pre-existing scheme if, on or after the commencement date, the service provider, in the course of performing the service provider's obligations relating to the scheme, becomes aware that the approved trustee of the scheme—

- (a) had not complied with section 135 before the commencement date; or
 - (b) has not complied with section 135 that applies to the approved trustee because of section 15 of this Schedule.
- (2) Because of subsection (1), the reference to section 75 in section 76 includes the pre-amended section 75.
- (3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

7. Transitional arrangement relating to auditor's duty to report on financial statements etc.—section 102

- (1) Despite the commencement of section 60 of the 2021 Amendment Ordinance (*amendment provision*), section 102 as in force immediately before the commencement date (*pre-amended section 102*) applies in relation to a financial period of a pre-existing scheme if—
- (a) as at the time specified in subsection (2)(e)(i) of the pre-amended section 102; or
 - (b) as at any of the dates specified in subsection (2)(e)(ii) of the pre-amended section 102,

the approved trustee of the scheme is required to comply with section 34DC(1) of the Ordinance (whether or not because of section 7 of Schedule 17 to the Ordinance).

(2) Because of subsection (1), the reference to section 102 in section 106 includes the pre-amended section 102.

(3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

8. Transitional arrangements relating to auditor's duty to report certain matters to Authority—section 103(1)(ab)(ii)

(1) Despite the commencement of section 61 of the 2021 Amendment Ordinance (***amendment provision***), section 103 (to the extent that it relates to subsection (1)(ab)(ii)) as in force immediately before the commencement date (***pre-amended section 103***) applies to an auditor of a pre-existing scheme if, on or after the commencement date, the auditor, in the course of performing the auditor's duties under Part 8, becomes aware that the approved trustee of the scheme—

(a) was not complying with section 34DC(1) of the Ordinance (***section 34DC(1)***) before the commencement date; or

(b) is not complying with section 34DC(1) that applies to the approved trustee because of section 7 of Schedule 17 to the Ordinance.

(2) Because of subsection (1), the references to section 103 in sections 104 and 106 include the pre-amended section 103.

(3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

9. Transitional arrangements relating to auditor's duty to report certain matters to Authority—section 103(1)(g)

(1) Despite the commencement of section 61 of the 2021 Amendment Ordinance (***amendment provision***), section 103 (to the extent that it relates to subsection (1)(g)) as in force immediately before the commencement date (***pre-amended section 103***) applies to an auditor of a pre-existing scheme if, on or after the commencement date, the auditor, in the course of performing the auditor's duties under Part 8, becomes aware that the approved trustee of the scheme—

- (a) had not complied with section 135 before the commencement date; or
- (b) has not complied with section 135 that applies to the approved trustee because of section 15 of this Schedule.

(2) Because of subsection (1), the references to section 103 in sections 104 and 106 include the pre-amended section 103.

(3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

10. Transitional arrangements relating to annual statements required to be lodged under section 22A of Ordinance—section 110

- (1) Despite the commencement of section 63 of the 2021 Amendment Ordinance (*amendment provision*), section 110 as in force immediately before the commencement date (*pre-amended section 110*) applies to a pre-existing scheme in relation to a financial period of the scheme unless—
 - (a) there is a section 19N notice in respect of the scheme; and
 - (b) the financial period ends on—
 - (i) the effective day; or
 - (ii) a day after the effective day.
- (2) Because of subsection (1), the reference to section 110 in section 102 includes the pre-amended section 110.
- (3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

11. Transitional arrangement relating to approved trustee's duty to lodge monthly return with Authority—section 117

- (1) Despite the commencement of section 64 of the 2021 Amendment Ordinance (*amendment provision*), section 117 as in force immediately before the commencement date (*pre-amended section 117*) applies to the approved trustee of a pre-existing scheme in relation to a monthly return for a calendar month unless—

- (a) there is a section 19N notice in respect of the scheme; and
 - (b) the relevant requirement takes effect on—
 - (i) a day either before the beginning of the calendar month or in the calendar month; or
 - (ii) a day falling within the period mentioned in the pre-amended section 117.
- (2) In this section—
commencement date (生效日期) means the date on which the amendment provision comes into operation.

12. Transitional arrangements relating to approved trustee's duty to ascertain certain particulars—section 125

- (1) Despite the commencement of section 67 of the 2021 Amendment Ordinance (***amendment provision***), section 125(1) as in force immediately before the commencement date (***pre-amended section 125(1)***) applies to the approved trustee of a pre-existing scheme unless—
- (a) there is a section 19N notice in respect of the scheme; and
 - (b) the relevant requirement has taken effect.
- (2) Despite the commencement of the amendment provision, section 125(3) as in force immediately before the commencement date (***pre-amended section 125(3)***) applies to the approved trustee of the pre-existing scheme in relation to a self-employed person and a financial period of the scheme unless—
- (a) there is a section 19N notice in respect of the scheme; and

- (b) the relevant requirement takes effect—
 - (i) on the first day of the financial period (*relevant day*);
 - (ii) before the relevant day; or
 - (iii) on a day falling within the last 30 days of the financial period.
- (3) Despite the commencement of section 102(11) of the 2021 Amendment Ordinance—
 - (a) item 48 of Schedule 4 as in force immediately before the commencement date applies to the approved trustee to which subsection (1) applies, to the extent that the pre-amended section 125(1) applies to the approved trustee because of that subsection; and
 - (b) that item applies to the approved trustee to which subsection (2) applies, to the extent that the pre-amended section 125(3) applies to the approved trustee because of that subsection.
- (4) In this section—
commencement date (生效日期) means the date on which the amendment provision comes into operation.

13. Transitional arrangement relating to relevant income of self-employed person who does not produce evidence of that income—section 128

- (1) This section applies to a self-employed person relating to a pre-existing scheme, and a financial period of the scheme, if section 125(1) or (3) as in force immediately before the date of commencement of section 67 of the 2021 Amendment Ordinance (*commencement date*) applies to the person in relation

to the financial period because of section 12 of this Schedule.

- (2) Despite the commencement of section 68 of the 2021 Amendment Ordinance, section 128 as in force immediately before the commencement date applies to the person in relation to the financial period.

14. Transitional arrangements relating to approved trustee's duty to check calculations of mandatory contributions—section 132

- (1) Despite the commencement of section 71 of the 2021 Amendment Ordinance (*amendment provision*), section 132 as in force immediately before the commencement date (*pre-amended section 132*) applies to the approved trustee of a pre-existing scheme in relation to a mandatory contribution payable by a participating employer if—
 - (a) there is no section 19N notice in respect of the scheme; or
 - (b) there is a section 19N notice in respect of the scheme, and the contribution was received before the effective day.
- (2) Despite the commencement of section 102(11) of the 2021 Amendment Ordinance, item 49 of Schedule 4 as in force immediately before the commencement date applies to the approved trustee of the pre-existing scheme, to the extent that the pre-amended section 132 applies to the approved trustee because of subsection (1).
- (3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

15. Transitional arrangements relating to approved trustee's duty to inform Authority of failure to pay mandatory contribution—section 135

- (1) Despite the commencement of section 72 of the 2021 Amendment Ordinance (*amendment provision*), section 135 as in force immediately before the commencement date (*pre-amended section 135*) applies to the approved trustee of a pre-existing scheme in relation to a mandatory contribution payable by a participating employer or self-employed person if—
 - (a) there is no section 19N notice in respect of the scheme; or
 - (b) there is a section 19N notice in respect of the scheme, and the contribution day falls on a day before the effective day.
- (2) Despite the commencement of section 102(11) of the 2021 Amendment Ordinance, item 52 of Schedule 4 as in force immediately before the commencement date applies to the approved trustee of the pre-existing scheme, to the extent that the pre-amended section 135 applies to the approved trustee because of subsection (1).
- (3) In this section—
commencement date (生效日期) means the date on which the amendment provision comes into operation.

16. Transitional arrangements relating to Authority's notice to defaulter and approved trustee's duty to inform Authority of non-payment—section 136

- (1) Despite the commencement of sections 65 and 73 of the 2021 Amendment Ordinance (*amendment*

provisions), sections 119 and 136 as in force immediately before the commencement date apply to or in relation to a pre-existing scheme if a notice is given by the approved trustee of the scheme to the Authority under the pre-amended section 135.

- (2) If the approved trustee of the pre-existing scheme has not received all arrears and contribution surcharges within the payment period as described in section 136(5) as in force immediately before the commencement date (*pre-amended section 136(5)*), the approved trustee must inform the Authority of the fact in accordance with the pre-amended section 136(5) unless—
- (a) there is a section 19N notice in respect of the scheme; and
 - (b) the last day of the payment period falls on—
 - (i) the effective day; or
 - (ii) a day after the effective day.
- (3) Despite the commencement of section 102(11) of the 2021 Amendment Ordinance, item 53 of Schedule 4 as in force immediately before the commencement date applies to the approved trustee of the pre-existing scheme, to the extent that the pre-amended section 136(5) applies to the approved trustee because of this section.
- (4) In this section—
- commencement date** (生效日期) means the date on which the amendment provisions come into operation;
- pre-amended section 135** (原有第135條) means—
- (a) section 135 as in force immediately before the commencement date; or

- (b) section 135 as it applies to the approved trustee of the pre-existing scheme because of section 15 of this Schedule.

17. Transitional arrangements relating to approved trustee's duty to check calculations of arrears and contribution surcharge—section 137

- (1) Despite the commencement of sections 65 and 74 of the 2021 Amendment Ordinance (*amendment provisions*), sections 119 and 137 as in force immediately before the commencement date (*pre-amended provisions*) apply to the approved trustee of a pre-existing scheme in relation to an amount received by the approved trustee as arrears or contribution surcharge if—
 - (a) there is no section 19N notice in respect of the scheme; or
 - (b) there is a section 19N notice in respect of the scheme, and the amount was received before the effective day.
- (2) Despite the commencement of section 102(11) of the 2021 Amendment Ordinance, item 55 of Schedule 4 as in force immediately before the commencement date applies to the approved trustee of the pre-existing scheme, to the extent that the pre-amended provisions apply to the approved trustee because of subsection (1).
- (3) In this section—
commencement date (生效日期) means the date on which the amendment provisions come into operation.

18. Transitional arrangement relating to crediting of payments—section 138

- (1) Despite the commencement of section 74 of the 2021 Amendment Ordinance (*amendment provision*), section 138 as in force immediately before the commencement date (*pre-amended section*) applies to the approved trustee of a pre-existing scheme in relation to a payment described in subsection (1) of the pre-amended section if—
- (a) there is no section 19N notice in respect of the scheme; or
 - (b) there is a section 19N notice in respect of the scheme, and the payment was made to the approved trustee before the effective day.
- (2) In this section—
commencement date (生效日期) means the date on which the amendment provision comes into operation.

19. Transitional arrangements relating to approved trustee's duty to notify scheme member of member's options of transfer—section 152

- (1) Despite the commencement of section 79 of the 2021 Amendment Ordinance (*amendment provision*), section 152 as in force immediately before the commencement date (*pre-amended section 152*) applies to the approved trustee of a pre-existing scheme in relation to a scheme member who has ceased to be employed by a participating employer or ceased to be self-employed if—
- (a) there is no section 19N notice in respect of the scheme; or

- (b) there is a section 19N notice in respect of the scheme, and—
 - (i) the approved trustee has been notified, before the effective day, that the member has ceased to be employed by a participating employer or ceased to be self-employed; and
 - (ii) the 30-day period mentioned in the pre-amended section 152 ends before the effective day.
- (2) Despite the commencement of section 102(14) of the 2021 Amendment Ordinance, item 62 of Schedule 4 as in force immediately before the commencement date applies to the approved trustee of the pre-existing scheme, to the extent that the pre-amended section 152 applies to the approved trustee because of subsection (1).
- (3) In this section—
commencement date (生效日期) means the date on which the amendment provision comes into operation.

20. Transitional arrangements relating to approved trustee's duty to give transfer statement to scheme member—section 154

- (1) Despite the commencement of section 81 of the 2021 Amendment Ordinance (***amendment provision***), section 154 as in force immediately before the commencement date (***pre-amended section 154***) applies to a pre-existing scheme in relation to a transfer of the accrued benefits of a member of the scheme if—

- (a) there is no section 19N notice in respect of the scheme; or
 - (b) there is a section 19N notice in respect of the scheme, and the transfer was completed before the effective day.
- (2) Despite the commencement of section 102(14) of the 2021 Amendment Ordinance, items 64 and 64A of Schedule 4 as in force immediately before the commencement date apply to the approved trustee of the pre-existing scheme, to the extent that the pre-amended section 154 applies to the approved trustee because of subsection (1).
- (3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

21. Transitional arrangements relating to confirmation of transfer to new scheme—section 155

- (1) Despite the commencement of section 81 of the 2021 Amendment Ordinance (***amendment provision***), section 155 as in force immediately before the commencement date (***pre-amended section 155***) applies to a pre-existing scheme (***relevant scheme***) in relation to a transfer of the accrued benefits of a member of another registered scheme to the relevant scheme if—
- (a) there is no section 19N notice in respect of the relevant scheme; or
 - (b) there is a section 19N notice in respect of the relevant scheme, and the transfer was completed before the effective day.

(2) Despite the commencement of section 102(14) of the 2021 Amendment Ordinance, item 65 of Schedule 4 as in force immediately before the commencement date applies to the approved trustee of the relevant scheme, to the extent that the pre-amended section 155 applies to the approved trustee because of subsection (1).

(3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

22. Transitional arrangement relating to transfer of outstanding sums received by transferor trustees—section 157A

(1) Despite the commencement of section 84 of the 2021 Amendment Ordinance (**amendment provision**), section 157A as in force immediately before the commencement date applies to the approved trustee of a pre-existing scheme unless—

- (a) there is a section 19N notice in respect of the scheme; and
- (b) the relevant requirement has taken effect.

(2) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

23. Transitional arrangement relating to claim for payment on death—section 161(3)

(1) Despite the commencement of section 88(2) of the 2021 Amendment Ordinance (**amendment provision**), section 161(3) as in force immediately before the commencement date applies to the approved trustee of a pre-existing scheme unless—

- (a) there is a section 19N notice in respect of the scheme; and
 - (b) the relevant requirement has taken effect.
- (2) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

24. Transitional arrangements relating to claim for payment on ground of permanent departure from Hong Kong—sections 163 and 175

- (1) Despite the commencement of section 89(2) and (3) of the 2021 Amendment Ordinance (***amendment provision***), section 163 as in force immediately before the commencement date (***pre-amended section 163***) applies to the approved trustee of a pre-existing scheme in relation to the payment of accrued benefits of a member of the scheme if—
- (a) there is no section 19N notice in respect of the scheme; or
 - (b) there is a section 19N notice in respect of the scheme, and—
 - (i) a claim for payment of the benefits has been lodged by the member of the scheme, in compliance with section 163(2); and
 - (ii) the claim was lodged with the approved trustee before the effective day.
- (2) Despite the commencement of sections 97 and 102(17) of the 2021 Amendment Ordinance, section 175 as in force immediately before the commencement date and item 68 of Schedule 4 as in force immediately before that date apply to the

approved trustee of the pre-existing scheme, to the extent that the pre-amended section 163 applies to the approved trustee because of subsection (1).

(3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

25. Transitional arrangements relating to approved trustee's duty if scheme member cannot be located—section 170

(1) Despite the commencement of section 93 of the 2021 Amendment Ordinance (**amendment provision**), section 170 as in force immediately before the commencement date (**pre-amended section 170**) applies in relation to the accrued benefits of a member of a pre-existing scheme unless—

(a) there is a section 19N notice in respect of the scheme; and

(b) the relevant requirement has taken effect.

(2) Despite the commencement of section 102(20) of the 2021 Amendment Ordinance, item 72 of Schedule 4 as in force immediately before the commencement date applies to the approved trustee of the pre-existing scheme, to the extent that the pre-amended section 170 applies to the approved trustee because of subsection (1).

(3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

26. Transitional arrangements relating to approved trustee's duty if claimant cannot subsequently be located—section 171

- (1) Despite the commencement of section 93 of the 2021 Amendment Ordinance (*amendment provision*), section 171 as in force immediately before the commencement date (*pre-amended section 171*) applies to or in relation to the accrued benefits of a member of a pre-existing scheme unless—
 - (a) there is a section 19N notice in respect of the scheme; and
 - (b) the relevant requirement has taken effect.
- (2) Despite the commencement of section 102(20) of the 2021 Amendment Ordinance, item 73 of Schedule 4 as in force immediately before the commencement date applies to the approved trustee of the pre-existing scheme, to the extent that the pre-amended section 171 applies to the approved trustee because of subsection (1).
- (3) In this section—
commencement date (生效日期) means the date on which the amendment provision comes into operation.

27. Transitional arrangements relating to approved trustee's duty to notify scheme member who has reached retirement age of their entitlement—section 172

- (1) Despite the commencement of section 93 of the 2021 Amendment Ordinance (*amendment provision*), section 172 as in force immediately before the commencement date (*pre-amended section 172*) applies to or in relation to the accrued benefits of a member of a pre-existing scheme unless—

- (a) there is a section 19N notice in respect of the scheme; and
 - (b) the relevant requirement has taken effect.
- (2) Despite the commencement of section 102(20) of the 2021 Amendment Ordinance, item 74 of Schedule 4 as in force immediately before the commencement date applies to the approved trustee of the pre-existing scheme, to the extent that the pre-amended section 172 applies to the approved trustee because of subsection (1).
- (3) In this section—
- commencement date*** (生效日期) means the date on which the amendment provision comes into operation.

28. Transitional arrangements relating to approved trustee's duty when scheme member whose accrued benefits are retained in scheme cannot be located—section 172A

- (1) Despite the commencement of section 93 of the 2021 Amendment Ordinance (***amendment provision***), section 172A as in force immediately before the commencement date (***pre-amended section 172A***) applies to or in relation to accrued benefits of a member of a pre-existing scheme unless—
- (a) there is a section 19N notice in respect of the scheme; and
 - (b) the relevant requirement has taken effect.
- (2) Despite the commencement of section 102(20) of the 2021 Amendment Ordinance, item 74A of Schedule 4 as in force immediately before the commencement date applies to the approved trustee of the pre-existing scheme, to the extent that the pre-amended

section 172A applies to the approved trustee because of subsection (1).

(3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

29. Transitional arrangements relating to approved trustee's duty to submit to Authority particulars of scheme members who have unclaimed benefits—section 172B

- (1) Despite the commencement of section 93 of the 2021 Amendment Ordinance (***amendment provision***), section 172B as in force immediately before the commencement date (***pre-amended section 172B***) applies to the approved trustee of a pre-existing scheme if—
- (a) there is no section 19N notice in respect of the scheme; or
 - (b) there is a section 19N notice in respect of the scheme and, but for the commencement of the amendment provision—
 - (i) the approved trustee would have been required to submit a quarterly report under the pre-amended section 172B within the period specified in the guidelines; and
 - (ii) the end day of the specified period would have fallen on a day before the effective day.
- (2) Despite the commencement of section 102(20) of the 2021 Amendment Ordinance, item 74B of Schedule 4 as in force immediately before the commencement date applies to the approved trustee of the pre-existing scheme, to the extent that the pre-amended

section 172B applies to the approved trustee because of subsection (1).

(3) In this section—

commencement date (生效日期) means the date on which the amendment provision comes into operation.

30. Transitional arrangements relating to disposal of unclaimed benefits in employer sponsored scheme—section 173

- (1) Despite the commencement of sections 78 and 95 of the 2021 Amendment Ordinance (***amendment provisions***), section 173 as in force immediately before the commencement date (***pre-amended section 173***) applies to a pre-existing scheme in relation to accrued benefits of a member of the scheme that were treated as unclaimed benefits under the relevant provision if—
 - (a) there is no section 19N notice in respect of the scheme; or
 - (b) there is a section 19N notice in respect of the scheme, and the 6-month period mentioned in section 173(1) as in force immediately before the commencement date begins before the effective day.
- (2) Despite the commencement of section 102(20) of the 2021 Amendment Ordinance, item 75 of Schedule 4 as in force immediately before the commencement date applies to the approved trustee of the pre-existing scheme, to the extent that the pre-amended section 173 applies to the approved trustee because of subsection (1).

(3) In this section—

commencement date (生效日期) means the date on which the amendment provisions come into operation;

relevant provision (相關條文)—

- (a) means section 170, 171, 172 or 172A as in force immediately before the commencement date (***pre-amended section***); and
 - (b) includes a pre-amended section that applies because of section 25, 26, 27 or 28 of this Schedule.”.
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Part 4

Related Amendments to Occupational Retirement Schemes Ordinance and other Subsidiary Legislation of Mandatory Provident Fund Schemes Ordinance

Division 1—Occupational Retirement Schemes Ordinance (Cap. 426)

104. Section 77 amended (preservation of secrecy)

Section 77(1)—

Repeal

“78 and 78A”

Substitute

“78, 78A and 78B”.

105. Section 78B added

After section 78A—

Add

“78B. Disclosure for purposes of section 50B or 50C of Inland Revenue Ordinance

- (1) Section 77 does not prevent a person from disclosing any information acquired as described under section 77(1) if the disclosure is for the purposes of section 50B or 50C of the Inland Revenue Ordinance (Cap. 112).
- (2) Any information disclosed under subsection (1) may be used or disclosed only for the purposes mentioned in that subsection.

- (3) A person who uses or discloses any information in contravention of subsection (2) commits an offence and is liable on conviction to a fine at level 4.”.

Division 2—Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485 sub. leg. C)

106. **Schedule 2 amended (fees prescribed for the purposes of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A))**

Schedule 2—

Repeal item 3.

Division 3—Mandatory Provident Fund Schemes (Specification of Permitted Periods) Notice (Cap. 485 sub. leg. F)

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

Section 1—

Repeal subsection (3)

Substitute

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

- (a) a Saturday;
- (b) a public holiday;
- (c) a gale warning day or black rainstorm warning day as defined by section 71(2) of Cap. 1; or
- (d) subject to subsection (4)—a day on which the electronic MPF system (or any part of it) is

suspended under section 19J or 19L(1)(a) or (b) of the Ordinance.

- (4) Subsection (3)(d) does not apply to an employer of a relevant employee in relation to a duty of the employer under section 7(1) or (2) of the Ordinance unless the suspension affects the performance of the duty by the employer.”.

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

Section 2—

Repeal subsection (3)

Substitute

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

- (a) a Saturday;
- (b) a public holiday;
- (c) a gale warning day or black rainstorm warning day as defined by section 71(2) of Cap. 1; or
- (d) subject to subsection (4)—a day on which the electronic MPF system (or any part of it) is suspended under section 19J or 19L(1)(a) or (b) of the Ordinance.

- (4) Subsection (3)(d) does not apply to a self-employed person in relation to a duty of the person under section 7C(1)(a) of the Ordinance unless the suspension affects the performance of the duty by the person.”.

**Division 4—Mandatory Provident Fund Schemes
(Compensation Claims) Rules (Cap. 485 sub. leg. H)**

109. Rule 4 amended (requirements as to making of section 17B applications)

Rule 4(2)(b)—

Repeal

“in section 6F(2)”

Substitute

“by section 6F(5)”.

Division 5—Mandatory Provident Fund Schemes (Winding Up) Rules (Cap. 485 sub. leg. I)

110. Rule 4 amended (requirements as to making of winding up applications)

Rule 4(2)(a)—

Repeal

“in section 6F(2)”

Substitute

“by section 6F(5)”.