

# MANDATORY PROVIDENT FUND SCHEMES (EXEMPTION) REGULATION

(Cap. 485 sub. leg. B)

## Contents

Section		Page
<b>PART I PRELIMINARY</b>		
1.	<i>(Omitted as spent)</i>	1-2
2.	Interpretation	1-2
3.	Application	1-10
<b>PART II EXEMPTION OF ORSO EXEMPTED SCHEMES</b>		
4.	Existing members and new eligible employees to elect between ORSO exempted scheme and MPF scheme	2-2
5.	Exemption	2-6
6.	Effect of exemption certificate	2-8
7.	Action to be taken by relevant employer to whom exemption certificate has been issued	2-10
8.	Withdrawal of exemption certificate on application by relevant employer	2-10

<b>Section</b>		<b>Page</b>
9.	Action to be taken by relevant employer where exemption certificate has been withdrawn under section 8	2-12
10.	Deemed withdrawal of exemption certificate where an ORSO exempted scheme is to cease to be such a scheme	2-12
11.	Proposal to withdraw exemption certificate	2-14
12.	Withdrawal of exemption certificate	2-16
13.	Coming into effect of Authority's withdrawal	2-18
<b>PART III</b>		
<b>EXEMPTION OF ORSO REGISTERED SCHEMES</b>		
14.	Certain ORSO registered schemes which are not relevant ORSO registered schemes may be treated as relevant ORSO registered schemes	3-2
15.	Existing members and new eligible employees to elect between relevant ORSO registered scheme and MPF scheme	3-4
16.	Exemption	3-10
17.	Effect of exemption certificate and mandatory conditions	3-14
18.	Action to be taken by relevant employer to whom exemption certificate has been issued	3-16
19.	Withdrawal of exemption certificate on application by relevant employer	3-16

<b>Section</b>	<b>Page</b>
20. Action to be taken by relevant employer where exemption certificate has been withdrawn under section 19	3-18
21. Deemed withdrawal of exemption certificate where relevant ORSO registered scheme is to cease to be such a scheme	3-20
22. Proposal to withdraw exemption certificate	3-20
23. Withdrawal of exemption certificate	3-22
24. Coming into effect of Authority's withdrawal	3-24

**PART IV  
MISCELLANEOUS**

25. Application of provisions of this Regulation in the case of a scheme which is a group scheme under section 67 of the relevant Ordinance	4-2
26. Offences	4-4
27. Fees	4-4
28. Amendment of Schedules	4-6
SCHEDULE 1 INFORMATION TO BE PROVIDED TO EXISTING MEMBERS AND NEW ELIGIBLE EMPLOYEES	S1-2
Schedule 2 Mandatory Conditions	S2-2
SCHEDULE 3 MINIMUM STANDARDS APPLICABLE TO TRUSTEES, ETC. OF SCHEMES	S3-2

# MANDATORY PROVIDENT FUND SCHEMES (EXEMPTION) REGULATION

(Cap. 485, sections 5 and 46)

[3 January 2000] *L.N. 68 of 1999*

## PART I

### PRELIMINARY

1. *(Omitted as spent)*

2. **Interpretation**

(1) In this Regulation, unless the context otherwise requires—

“exemption certificate” (豁免證明書)—

(a) in relation to Part II, means an exemption certificate issued under section 5(1);

(b) in relation to Part III, means an exemption certificate issued under section 16(1);

“existing member” (現有成員), in relation to an ORSO exempted scheme or ORSO registered scheme, means a relevant employee who became a member of the scheme before or on the relevant date;

“mandatory condition” (強制性條件) means a condition referred to in section 17(1)(b);

“MPF scheme” (強制性公積金計劃) means a registered scheme;

“new eligible employee” (新的有資格僱員), in relation to an ORSO exempted scheme or ORSO registered scheme, means

a relevant employee who is, or will become, eligible to be a member of the scheme;

“new member” (新成員), in relation to an ORSO exempted scheme or ORSO registered scheme, means a new eligible employee who became a member of the scheme after the relevant date;

“original schemes” (原來的計劃), in relation to an ORSO registered scheme, means 1 or more relevant ORSO registered schemes referred to in section 14(1);

“ORSO exempted scheme” (職業退休豁免計劃) means—

(a) an exempted scheme within the meaning of section 2 of the relevant Ordinance; or

(b) an occupational retirement scheme within the meaning of the relevant Ordinance where the employer of the scheme is the government of a place outside Hong Kong or an agency or undertaking of or by such a government which is not operated for the purpose of gain;

“ORSO registered scheme” (職業退休註冊計劃) means a registered scheme within the meaning of section 2 of the relevant Ordinance;

“past service liability” (過去服務負債) has the same meaning as in section 2 of the relevant Ordinance; (*29 of 2002 s. 14*)

“relevant date” (有關日期) means the date on which section 7 of the Ordinance comes into operation;

“relevant employer” (有關僱主), in relation to an ORSO exempted scheme or ORSO registered scheme—

(a) means the employer who provides the employment which entitles or enables the relevant employee to be a member of the scheme; and

(b) in the case of an ORSO exempted scheme or ORSO registered scheme which is a group scheme under

section 67 of the relevant Ordinance, includes the representative employer of the scheme;

“relevant Ordinance” (有關條例) means the Occupational Retirement Schemes Ordinance (Cap. 426);

“relevant ORSO registered scheme” (有關職業退休註冊計劃) means an ORSO registered scheme—

- (a) which is governed by a trust;
- (b) which provides benefits payable on termination of service, death, disability, retirement or winding up of the scheme;
- (c) established before or on 15 October 1995; and
- (d) in respect of which an application under section 7 or 15 of the relevant Ordinance was received by the Registrar within the meaning of that Ordinance not later than 15 January 1996.

“vested benefit” (既有利益) has the same meaning as in section 2 of the relevant Ordinance. *(29 of 2002 s. 14)*

- (2) An ORSO registered scheme to which a certificate issued under section 14(1) relates shall be deemed to be a relevant ORSO registered scheme, and the provisions of the Ordinance and the other provisions of this Regulation shall apply accordingly.
- (3) For the avoidance of doubt, it is hereby declared that the provisions of this Regulation shall apply to and in relation to an ORSO registered scheme where there is no contract of employment between a member of the scheme and a person who makes contributions to the scheme on behalf of the member in the same way as the provisions of this Regulation apply to and in relation to an ORSO registered scheme where there is a contract of employment between a member of the scheme and the person who makes contributions to the scheme on behalf of the member.

- (4) Where an existing member of an ORSO exempted scheme, or of an ORSO registered scheme, (“original scheme”) the subject of an exemption certificate is transferred to another scheme (“new scheme”) where—
- (a) the new scheme is—
    - (i) an ORSO registered scheme the subject of an exemption certificate; and
    - (ii) the subject of a certificate referred to in section 14(1);
  - (b) the new scheme is—
    - (i) operated by the same employer; and
    - (ii) an ORSO exempted scheme, or an ORSO registered scheme, the subject of an exemption certificate;
  - (c) the new scheme is—
    - (i) operated by a different employer in the circumstances specified in section 70A(6)(a) of the relevant Ordinance; and
    - (ii) an ORSO exempted scheme, or an ORSO registered scheme, the subject of an exemption certificate; or
  - (d) the new scheme is—
    - (i) operated by an associated company in the circumstances specified in section 70A(6)(b) of the relevant Ordinance; and
    - (ii) an ORSO exempted scheme, or an ORSO registered scheme, the subject of an exemption certificate,

then the member shall be treated as an existing member of the new scheme if—

- (e) no benefits have been or are to be paid under the original scheme to the existing member as a result of the transfer;
- (f) an amount not less than the past service liability of the existing member has been or is to be transferred from the original scheme to the new scheme as a result of the transfer;
- (g) the value of vested benefit and the value of past service liability in respect of benefit entitlement conferred by or to be conferred by the new scheme to the existing member at the time immediately after the transfer will not, as a result of the transfer, be less than the value of vested benefit and the value of past service liability respectively of the member under the original scheme immediately before the transfer;
- (h) the period of employment of the existing member during which he is a member of the original scheme is recognized under the new scheme; and
- (i) in any case where section 70A(6)(a) or (b) of the relevant Ordinance is applicable to the transfer, that section has been complied with and no benefits held in an occupational retirement scheme in respect of the person have been paid in accordance with section 70A(6) of the relevant Ordinance to the person or the previous owner or the company concerned. *(29 of 2002 s. 14)*

### 3. Application

This Regulation shall not apply to or in relation to—

- (a) any employment which does not entitle or enable a relevant employee to be a member of an ORSO exempted scheme or relevant ORSO registered scheme;



# MANDATORY PROVIDENT FUND SCHEMES (EXEMPTION) REGULATION

PART I

1-12

Section 3

Cap. 485B

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(b) any relevant income derived from such employment.

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## PART II

### EXEMPTION OF ORSO EXEMPTED SCHEMES

#### 4. Existing members and new eligible employees to elect between ORSO exempted scheme and MPF scheme

- (1) Subject to subsections (5) and (6), the relevant employer of an ORSO exempted scheme shall, as soon as practicable after making an application under section 5—
  - (a) in the case of an existing member, not later than—
    - (i) 50 days before the relevant date; or
    - (ii) 10 days after he became a relevant employee, whichever is the later;
  - (b) in the case of a new eligible employee, not later than 10 days after the employee became such an employee, provide the member or employee, as the case may be, with, subject to subsection (8), the information specified in Part 1 of Schedule 1 in relation to—
    - (i) the ORSO exempted scheme; and
    - (ii) the MPF scheme which the member or employee, as the case may be, is entitled or enabled to become a member thereof by virtue of his employment,in the Chinese and English languages.
- (2) Subject to subsection (5), an existing member shall give notice in writing to the relevant employer—
  - (a) not later than 30 days—
    - (i) before the relevant date; or
    - (ii) after he became a relevant employee,

- whichever is the later; and
- (b) advising the employer that the member elects—
    - (i) to remain as a member of the ORSO exempted scheme; or
    - (ii) to become a member of the MPF scheme.
- (3) Subject to subsection (6), a new eligible employee shall give notice in writing to the relevant employer—
- (a) not later than 30 days after the employee became such an employee; and
  - (b) advising the employer that the employee elects to become a member of—
    - (i) the ORSO exempted scheme; or
    - (ii) the MPF scheme.
- (4) Subject to subsection (7), an existing member or new eligible employee who fails to make an election under subsection (2) or (3), as the case may be, within the period prescribed under that subsection shall be deemed to have elected to become a member of the MPF scheme and, in any such case, the provisions of the Ordinance and the other provisions of this Regulation shall apply accordingly.
- (5) Subsections (1) and (2) shall not apply in the case of an existing member of the ORSO exempted scheme who is required by an enactment of a place outside Hong Kong to—
- (a) remain as a member of the scheme; and
  - (b) make contributions to the scheme in relation to his employment by the relevant employer of the scheme.
- (6) Subsections (1) and (3) shall not apply in the case of a new eligible employee who is required by an enactment of a place outside Hong Kong to—
- (a) become a member of the ORSO exempted scheme; and

- (b) make contributions to the scheme in relation to his employment by the relevant employer of the scheme.
- (7) Subsection (4) shall not apply in the case of an existing member or new eligible employee to which subsection (2) or (3), as the case may be, does not apply by virtue of subsection (5) or (6) respectively.
- (8) The Authority may, subject to such conditions as the Authority thinks fit, by notice in writing (published in such manner as the Authority thinks fit) waive or modify any of the provisions of Part 1 of Schedule 1 in the case of—
  - (a) a particular ORSO exempted scheme specified in the notice;
  - (b) an ORSO exempted scheme belonging to a class of ORSO exempted schemes specified in the notice;
  - (c) a particular relevant employer specified in the notice; or
  - (d) a relevant employer belonging to a class of relevant employers specified in the notice.

## **5. Exemption**

- (1) The Authority may on an application in writing issue an exemption certificate to the relevant employer in respect of an ORSO exempted scheme if the Authority is satisfied that the application and the scheme comply with the requirements of or under this Regulation which are applicable to the application or scheme, as the case may be.
- (2) An application under this section shall be—
  - (a) made by the relevant employer of the ORSO exempted scheme;
  - (b) made in such form as may be specified by the Authority;
  - (c) accompanied by—

- (i) the prescribed fee; and
  - (ii) such information or documents (including statutory declarations) as may be specified by the Authority; and
- (d) made before the specified date.
- (3) Where the Authority receives an application under this section, the Authority may require the applicant to supply to the Authority such information or documents (including a legal opinion on a matter specified by the Authority) as the Authority shall specify which is reasonably required to enable him to determine the application.
- (4) Where the Authority refuses an application for an exemption certificate, he shall give notice in writing of the refusal to the applicant and the notice shall state the reason for the refusal.
- (5) An appeal under section 35 of the Ordinance against a decision of the Authority to refuse an application for an exemption certificate may be made by the applicant within 2 months after the date on which the notice concerned under subsection (4) is given.
- \*(6) In this section, “specified date” (指明日期) means a date specified by the Authority—
  - (a) by notice in the Gazette; and
  - (b) for the purposes of this section.

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Editorial Note:

\* 4 May 2000 was the day specified under this section - see Cap. 485 sub. leg. D.

## **6. Effect of exemption certificate**

Without prejudice to the operation of section 3, the effect of an exemption certificate is that the existing members and new members of the ORSO exempted scheme to which the certificate

relates, and the relevant employer of the scheme, are each exempt from Part 3 of the Ordinance.

*(E.R. 1 of 2013)*

**7. Action to be taken by relevant employer to whom exemption certificate has been issued**

The relevant employer to whom an exemption certificate has been issued shall, as soon as is practicable—

- (a) cause the certificate to be exhibited at all times in a conspicuous position at—
  - (i) his principal office in Hong Kong;
  - (ii) if there is no such office, each premises where a member of the ORSO exempted scheme to which the certificate relates is employed; and
- (b) provide each member of the scheme with a copy of the certificate.

**8. Withdrawal of exemption certificate on application by relevant employer**

- (1) The Authority may on an application in writing withdraw an exemption certificate where the Authority is satisfied that—
  - (a) the grounds for withdrawal warrant the withdrawal; and
  - (b) if the certificate is withdrawn, the relevant employer of the ORSO exempted scheme to which the certificate relates will not thereby be in breach of the provisions of the Ordinance.
- (2) An application under this section shall—
  - (a) be made by the relevant employer;
  - (b) state the grounds for making the application;

- (c) be made in such form as may be specified by the Authority; and
  - (d) be accompanied by such information or documents (including statutory declarations) as may be specified by the Authority.
- (3) Where the Authority receives an application under this section, the Authority may require the applicant to supply to the Authority such information or documents (including a legal opinion on a matter specified by the Authority) as the Authority shall specify which is reasonably required to determine the application.
- (4) Where the Authority refuses an application to withdraw an exemption certificate, he shall give notice in writing of the refusal to the applicant and the notice shall state the reason for the refusal.
- (5) An appeal under section 35 of the Ordinance against a decision of the Authority to refuse an application to withdraw an exemption certificate may be made by the applicant within 2 months after the date on which the notice concerned under subsection (4) is given.

**9. Action to be taken by relevant employer where exemption certificate has been withdrawn under section 8**

The relevant employer whose exemption certificate has been withdrawn under section 8 shall, as soon as is practicable, provide each member of the ORSO exempted scheme to which the certificate relates with a notice in writing stating—

- (a) that the certificate has been withdrawn; and
- (b) the date on which the withdrawal has taken or will take effect.

**10. Deemed withdrawal of exemption certificate where an ORSO**

**exempted scheme is to cease to be such a scheme**

An exemption certificate shall be deemed to be withdrawn on the date on which a withdrawal—

- (a) under section 12 of the relevant Ordinance; and
- (b) of the exemption certificate, within the meaning of section 2 of the relevant Ordinance, issued in respect of the ORSO exempted scheme to which the first-mentioned certificate relates,

comes into effect in accordance with section 14 of the relevant Ordinance.

**11. Proposal to withdraw exemption certificate**

- (1) The Authority may issue a proposal to withdraw an exemption certificate where it appears to the Authority that any of the requirements of or under this Regulation applicable to or in relation to the ORSO exempted scheme to which the certificate relates are not, or are no longer, being complied with.
- (2) Where the Authority issues a proposal under subsection (1), the Authority shall give a notice in writing of the proposal to the relevant employer of the ORSO exempted scheme to which the proposal relates requiring the employer to—
  - (a) cause a copy of the notice to be sent to each member of the scheme who is a relevant employee; or
  - (b) display an appropriate notice of the Authority's notice and make the latter available for inspection by such member.
- (3) A notice given by the Authority under subsection (2) shall—
  - (a) state the reason for issuing the proposal; and
  - (b) state that representations or objections as regards the proposed withdrawal may be made to the Authority



within such period (being a period of not less than 1 month beginning on the date on which the notice is given) as shall be specified in the notice.

- (4) The Authority may on an application in writing—
  - (a) withdraw a proposal issued under subsection (1); or
  - (b) extend the period referred to in subsection (3).

## **12. Withdrawal of exemption certificate**

- (1) The Authority may withdraw an exemption certificate if, after considering representations or objections made during the period set out in a notice given under section 11(2), the Authority is satisfied that any of the requirements of or under this Regulation applicable to or in relation to the ORSO exempted scheme to which the certificate relates are not, or are no longer, being complied with.
- (2) Where the Authority withdraws an exemption certificate, the Authority shall give a notice in writing of the withdrawal to the relevant employer of the ORSO exempted scheme to which the withdrawal relates requiring the employer to—
  - (a) cause a copy of the notice to be sent to each member of the scheme who is a relevant employee; or
  - (b) display an appropriate notice of the Authority's notice and make the latter available for inspection by such member.
- (3) A notice given by the Authority under subsection (2) shall—
  - (a) state the decision of the Authority;
  - (b) state that appeal against the withdrawal may be made to the Appeal Board within 2 months after the date on which the notice is given; and
  - (c) state the date on which the withdrawal will come into effect.

- (4) An appeal under section 35 of the Ordinance against a withdrawal of an exemption certificate may be made by the relevant employer of the ORSO exempted scheme to which the certificate relates within 2 months after the date on which the notice concerned under subsection (2) is given.

### **13. Coming into effect of Authority's withdrawal**

- (1) A withdrawal under section 12 shall not come into effect—
- (a) where no appeal is made in relation to it under section 35 of the Ordinance, until the period during which such appeal may be made has expired; or
  - (b) where such an appeal is made, pending determination of the appeal or, in case such appeal is withdrawn, before such withdrawal.
- (2) Where the Authority withdraws an exemption certificate, in order to afford an opportunity to enable—
- (a) the requirement of or under this Regulation which caused the Authority to withdraw the certificate to be complied with; or
  - (b) the ORSO exempted scheme to which the certificate relates to be registered under section 18(1) of the relevant Ordinance,
- the Authority may defer the coming into effect of the withdrawal and, if so, shall give a notice in writing of the deferment of the withdrawal to the relevant employer of the scheme.
- (3) The Authority shall give a notice in writing of the coming into effect of the withdrawal to the relevant employer of the ORSO exempted scheme to which the withdrawal relates requiring the employer to—

# MANDATORY PROVIDENT FUND SCHEMES (EXEMPTION) REGULATION

PART II

2-20

Section 13

Cap. 485B

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- (a) cause a copy of the notice to be sent to each member of the scheme who is a relevant employee; or
  - (b) display an appropriate notice of the Authority's notice and make the latter available for inspection by such member.
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## PART III

### EXEMPTION OF ORSO REGISTERED SCHEMES

**14. Certain ORSO registered schemes which are not relevant ORSO registered schemes may be treated as relevant ORSO registered schemes**

- (1) The Authority may on an application in writing issue a certificate stating that an ORSO registered scheme (not being a relevant ORSO registered scheme) specified in the certificate shall be treated as a relevant ORSO registered scheme if, but only if the Authority is satisfied that— (*1 of 2008 s. 19*)
- (a) the scheme is governed by a trust;
  - (b) the scheme provides benefits payable on termination of service, death, disability, retirement or winding up; and
  - (c) all or a class of—
    - (i) the members of the scheme; and
    - (ii) the assets of the scheme,have been transferred or will, before or as soon as practicable after the issue of an exemption certificate in respect of the scheme under section 16, be transferred to the scheme from 1 or more relevant ORSO registered schemes.
- (2) Without prejudice to the generality of the Authority's power under subsection (1) to issue (or not to issue) a certificate referred to in that subsection, the Authority shall, in exercising his power under that subsection in relation to an ORSO registered scheme, have regard to such of the following as are applicable—

- (a) whether the scheme is a new scheme established as a result of scheme restructuring or bona fide business transactions (including company amalgamation, restructuring and joint ventures);
  - (b) if the scheme was established after the relevant date, whether the members of the original schemes were exempt from all or part of the provisions of the Ordinance by virtue of section 5 of the Ordinance;
  - (c) whether the terms and conditions of the scheme are generally as favourable as the original schemes; and
  - (d) whether a substantial portion of the members of the scheme comprise or will comprise members of the original schemes.
- (3) Where the Authority receives an application under this section, the Authority may require the applicant to supply to the Authority such information or documents (including a legal opinion on a matter specified by the Authority) as the Authority may specify and which is or are reasonably required to enable it to determine the application. *(1 of 2008 s. 19)*

*(1 of 2008 s. 19)*

**15. Existing members and new eligible employees to elect between relevant ORSO registered scheme and MPF scheme**

- (1) Subject to subsections (5) and (6), the relevant employer of a relevant ORSO registered scheme shall, as soon as practicable after an application has been made under section 16—
- (a) in the case of any existing member, not later than—
    - (i) 50 days before the relevant date; or
    - (ii) 10 days after he became a relevant employee, whichever is the later;

- 
- (b) in the case of a new eligible employee, not later than 10 days after the employee became such an employee, provide the member or employee, as the case may be, with, subject to subsection (8), the information specified in Part 2 of Schedule 1 in relation to—
- (i) the relevant ORSO registered scheme; and
  - (ii) the MPF scheme which the member or employee, as the case may be, is entitled or enabled to become a member thereof by virtue of his employment,
- in the Chinese and English languages.
- (2) Subject to subsection (5), an existing member shall give notice in writing to the relevant employer—
- (a) not later than 30 days—
    - (i) before the relevant date; or
    - (ii) after he became a relevant employee,whichever is the later; and
  - (b) advising the employer that the member elects—
    - (i) to remain as a member of the relevant ORSO registered scheme; or
    - (ii) to become a member of the MPF scheme.
- (3) Subject to subsection (6), a new eligible employee shall give notice in writing to the relevant employer—
- (a) not later than 30 days after the employee became such an employee; and
  - (b) advising the employer that the employee elects to become a member of—
    - (i) the relevant ORSO registered scheme; or
    - (ii) the MPF scheme.

- (4) Subject to subsection (7), an existing member or new eligible employee who fails to make an election under subsection (2) or (3), as the case may be, within the period prescribed under that subsection shall be deemed to have elected to become a member of the MPF scheme and, in any such case, the provisions of the Ordinance and the other provisions of this Regulation shall apply accordingly.
- (5) Subsections (1) and (2) shall not apply in the case of an existing member of the relevant ORSO registered scheme who is required by an enactment of a place outside Hong Kong to—
- (a) remain as a member of the scheme; and
  - (b) make contributions to the scheme in relation to his employment by the relevant employer of the scheme.
- (6) Subsections (1) and (3) shall not apply in the case of a new eligible employee who is required by an enactment of a place outside Hong Kong to—
- (a) become a member of the relevant ORSO registered scheme; and
  - (b) make contributions to the scheme in relation to his employment by the relevant employer of the scheme.
- (7) Subsection (4) shall not apply in the case of an existing member or new eligible employee to which subsection (2) or (3), as the case may be, does not apply by virtue of subsection (5) or (6) respectively.
- (8) The Authority may, subject to such conditions as the Authority thinks fit, by notice in writing (published in such manner as the Authority thinks fit) waive or modify any of the provisions of Part 2 of Schedule 1 in the case of—
- (a) a particular relevant ORSO registered scheme specified in the notice;

- (b) a relevant ORSO registered scheme belonging to a class of ORSO registered schemes specified in the notice;
- (c) a particular relevant employer specified in the notice; or
- (d) a relevant employer belonging to a class of relevant employers specified in the notice.

## **16. Exemption**

- (1) The Authority may on an application in writing issue an exemption certificate to the relevant employer in respect of a relevant ORSO registered scheme if the Authority is satisfied that the application and the scheme comply with the requirements of or under this Regulation which are applicable to the application or scheme, as the case may be.
- (2) An application under this section shall be—
  - (a) made by the trustee of the relevant ORSO registered scheme;
  - (b) made in such form as may be specified by the Authority;
  - (c) accompanied by—
    - (i) the prescribed fee;
    - (ii) a copy of the latest governing rules of the scheme; and
    - (iii) such other documents (including statutory declarations, and documents proving the date of establishment of the scheme) as may be specified by the Authority; and
  - (d) made before the specified date or such later date as the Authority may specify in writing, either generally or in a particular case or class of cases.
- (3) Without prejudice to the generality of subsection (2), where a relevant ORSO registered scheme (“new scheme”) is such



a scheme by virtue of sections 2(2) and 14, an application under this section shall also be accompanied by—

- (a) a statement setting out—
    - (i) the reason for establishing the new scheme; and
    - (ii) the eligibility requirements for members of the original schemes to be transferred to the new scheme;
  - (b) if the new scheme is established before the relevant date, a copy of the governing rules of each of the original schemes as those rules were immediately before the respective members of those schemes were transferred to the new scheme; and
  - (c) the documents providing for the transfer, if any, of assets from the original schemes to the new scheme.
- (4) Where the Authority receives an application under this section, the Authority may require the applicant to supply to the Authority such information or documents (including a legal opinion on a matter specified by the Authority) as the Authority shall specify which is reasonably required to enable him to determine the application.
- (5) Where the Authority refuses an application for an exemption certificate, the Authority shall give a notice in writing of the refusal to the applicant and the notice shall state the reason for the refusal.
- (6) An appeal under section 35 of the Ordinance against a decision of the Authority to refuse an application for an exemption certificate may be made by the applicant within 2 months after the date on which the notice concerned under subsection (5) is given.
- \*(7) In this section, “specified date” (指明日期) means a date specified by the Authority—

- (a) by notice in the Gazette; and
- (b) for the purposes of this section.

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Editorial Note:

\* 4 May 2000 was the day specified under this section—see Cap. 485 sub. leg. D.

**17. Effect of exemption certificate and mandatory conditions**

- (1) Without prejudice to the operation of section 3, the effect of an exemption certificate is that—
  - (a) the existing members and new members of the relevant ORSO registered scheme to which the certificate relates, and the relevant employer of the scheme, are each exempt from Part 3 of the Ordinance;
  - (b) the scheme, the existing members and new members of the scheme, the relevant employer and the administrator (within the meaning of the relevant Ordinance) of the scheme are each subject to the conditions specified in Schedule 2 which are applicable thereto; and
  - (c) the provisions of Schedule 3 shall apply to and in relation to the trustee, the directors, if any, of the trustee, the assets of the scheme and the person appointed by the trustee to manage the investment of the assets.
- (2) The provisions of any specified document applicable to any of the scheme, members and relevant employer referred to in subsection (1) shall not apply to that scheme, those members or that relevant employer, as the case may be, to the extent that any of those provisions are inconsistent with any of the provisions of the mandatory conditions to which that scheme, those members, that relevant employer, as the case may be, are respectively subject.
- (3) In this section, “specified document” (指明文件) means—

- (a) the governing rules of a relevant ORSO registered scheme;
- (b) any enactment other than the Ordinance;
- (c) any articles of association; or (*28 of 2012 ss. 912 & 920*)
- (d) any constitution or rules.

*(E.R. 1 of 2013)*

**18. Action to be taken by relevant employer to whom exemption certificate has been issued**

The relevant employer to whom an exemption certificate has been issued shall, as soon as is practicable—

- (a) cause the certificate to be exhibited at all times in a conspicuous position at—
  - (i) his principal office in Hong Kong;
  - (ii) if there is no such office, each premises where a member of the relevant ORSO registered scheme to which the certificate relates is employed; and
- (b) provide each member of the scheme with a copy of the certificate.

**19. Withdrawal of exemption certificate on application by relevant employer**

- (1) The Authority may on an application in writing withdraw an exemption certificate where the Authority is satisfied that—
  - (a) the grounds for withdrawal warrant the withdrawal; and
  - (b) if the certificate is withdrawn, the relevant employer of the ORSO registered scheme to which the certificate relates will not thereby be in breach of the provisions of the Ordinance.

- (2) An application under this section shall—
  - (a) be made by the relevant employer;
  - (b) state the grounds for making the application;
  - (c) be made in such form as may be specified by the Authority; and
  - (d) be accompanied by such information or documents (including statutory declarations) as may be specified by the Authority.
- (3) Where the Authority receives an application under this section, the Authority may require the applicant to supply to the Authority such information or documents (including a legal opinion on a matter specified by the Authority) as the Authority shall specify which is reasonably required to determine the application.
- (4) Where the Authority refuses an application to withdraw an exemption certificate, he shall give notice in writing of the refusal to the applicant and the notice shall state the reason for the refusal.
- (5) An appeal under section 35 of the Ordinance against a decision of the Authority to refuse an application to withdraw an exemption certificate may be made by the applicant within 2 months after the date on which the notice concerned under subsection (4) is given.

**20. Action to be taken by relevant employer where exemption certificate has been withdrawn under section 19**

The relevant employer whose exemption certificate has been withdrawn under section 19 shall, as soon as is practicable, provide each member of the relevant ORSO registered scheme to which the certificate relates with a notice in writing stating—

- (a) that the certificate has been withdrawn; and

- (b) the date on which the withdrawal has taken or will take effect.

**21. Deemed withdrawal of exemption certificate where relevant ORSO registered scheme is to cease to be such a scheme**

An exemption certificate shall be deemed to be withdrawn on the date on which a cancellation—

- (a) under section 45 of the relevant Ordinance; and
- (b) of the registration under section 18 of the relevant Ordinance of the relevant ORSO registered scheme to which the certificate relates,

comes into effect in accordance with section 47 of the relevant Ordinance.

**22. Proposal to withdraw exemption certificate**

- (1) The Authority may issue a proposal to withdraw an exemption certificate where it appears to the Authority that any of the requirements of or under this Regulation applicable to and in relation to the relevant ORSO registered scheme to which the certificate relates (including any conditions specified in the certificate) are not, or are no longer, being complied with.
- (2) Where the Authority issues a proposal under subsection (1), the Authority shall give a notice in writing of the proposal to the relevant employer of the relevant ORSO registered scheme to which the proposal relates requiring the employer to—
  - (a) cause a copy of the notice to be sent to each member of the scheme who is a relevant employee; or
  - (b) display an appropriate notice of the Authority's notice and make the latter available for inspection by such member.

- (3) A notice given by the Authority under subsection (2) shall—
  - (a) state the reason for issuing the proposal; and
  - (b) state that representations or objections as regards the proposed withdrawal may be made to the Authority within such period (being a period of not less than 1 month beginning on the date on which the notice is given) as shall be specified in the notice.
- (4) The Authority may on an application in writing—
  - (a) withdraw a proposal issued under subsection (1); or
  - (b) extend the period referred to in subsection (3).

### **23. Withdrawal of exemption certificate**

- (1) The Authority may withdraw an exemption certificate if, after considering representations or objections made during the period set out in a notice given under section 22(2), the Authority is satisfied that any of the requirements of or under this Regulation applicable to or in relation to the relevant ORSO registered scheme to which the certificate relates (including any mandatory conditions) are not, or are no longer, being complied with.
- (2) Where the Authority withdraws an exemption certificate, the Authority shall give a notice in writing of the withdrawal to the relevant employer of the relevant ORSO registered scheme to which the withdrawal relates requiring the employer to—
  - (a) cause a copy of the notice to be sent to each member of the scheme who is a relevant employee; or
  - (b) display an appropriate notice of the Authority's notice and make the latter available for inspection by such member.
- (3) A notice given by the Authority under subsection (2) shall—

- (a) state the decision of the Authority;
  - (b) state that appeal against the withdrawal may be made to the Appeal Board within 2 months after the date on which the notice is given; and
  - (c) state the date on which the withdrawal will come into effect.
- (4) An appeal under section 35 of the Ordinance against a withdrawal of an exemption certificate may be made by the relevant employer of the relevant ORSO registered scheme to which the certificate relates within 2 months after the date on which the notice concerned under subsection (2) is given.

#### **24. Coming into effect of Authority's withdrawal**

- (1) A withdrawal under section 23 shall not come into effect—
- (a) where no appeal is made in relation to it under section 35 of the Ordinance, until the period during which such appeal may be made has expired; or
  - (b) where such an appeal is made, pending determination of the appeal or, in case such appeal is withdrawn, before such withdrawal.
- (2) Where the Authority withdraws an exemption certificate, in order to afford an opportunity to enable the requirement of or under this Regulation which caused the Authority to withdraw the certificate to be complied with (including any mandatory conditions), the Authority may defer the coming into effect of the withdrawal and, if so, shall give a notice in writing of the deferment of the withdrawal to the relevant employer of the scheme.
- (3) The Authority shall give a notice in writing of the withdrawal to the relevant employer of the relevant ORSO registered scheme to which the certificate relates requiring the employer to—

# MANDATORY PROVIDENT FUND SCHEMES (EXEMPTION) REGULATION

PART III

3-26

Section 24

Cap. 485B

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- (a) cause a copy of the notice to be sent to each member of the scheme who is a relevant employee; or
  - (b) display an appropriate notice of the Authority's notice and make the latter available for inspection by such member.
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## PART IV

### MISCELLANEOUS

**25. Application of provisions of this Regulation in the case of a scheme which is a group scheme under section 67 of the relevant Ordinance**

Where an application under section 5 or 16 is made in the case of an ORSO exempted scheme or relevant ORSO registered scheme, as the case may be, which is a group scheme under section 67 of the relevant Ordinance, then the provisions of this Regulation, with all necessary modifications, shall apply as follows—

- (a) the application shall be deemed to be made by each relevant employer of the scheme;
- (b) an application under section 8 or 19 by the representative employer shall be deemed to be made by each relevant employer of the scheme;
- (c) a duty under section 9, 11(2), 12(2), 13(3), 20, 22(2), 23(2) or 24(3) which is required to be discharged in relation to a member of the scheme shall be discharged by the relevant employer of the member;
- (d) a notice given under section 4(8), 5(4), 8(4), 11(2), 12(2), 13(2) or (3), 15(8), 19(4), 22(2), 23(2) or 24(2) or (3) to the representative employer shall be deemed to have been given to each relevant employer of the scheme;
- (e) as if in each of sections 7 and 18 all words after and including “The relevant” were omitted and the following substituted—

“The representative employer to whom an exemption certificate has been issued shall

provide a copy of the certificate to each relevant employer of the scheme to which the certificate relates and—

- (a) each relevant employer shall then, as soon as is practicable, cause the copy to be exhibited at all times in a conspicuous position at—
  - (i) his principal office in Hong Kong;
  - (ii) if there is no such office, each premises where a member of the scheme is employed by the relevant employer; and
- (b) also provide each member of the scheme with such a copy.”.

## 26. Offences

- (1) A relevant employer who without reasonable excuse fails to comply with— (*1 of 2008 s. 45*)
  - (a) section 4(1), 7, 9, 11(2), 12(2), 13(3), 15(1), 18, 20, 22(2), 23(2) or 24(3); or
  - (b) any mandatory conditions to which the employer is subject,commits an offence and is liable on conviction to a fine at level 3.
- (2) (*Repealed 1 of 2015 s. 52*)

## 27. Fees

- (1) The prescribed fees payable under this Regulation are specified in the Fees Regulation.

- (2) In this section, “Fees Regulation” (《費用規例》) means the regulation, if any, made under section 46 of the Ordinance prescribing fees for the purposes of this Regulation.

**28. Amendment of Schedules**

- (1) The Authority may, by notice in the Gazette, amend Schedule 1.
- (2) The Chief Executive in Council may, by notice in the Gazette, amend Schedule 2 or 3.
- (3) Amendments made under this section shall be subject to the approval of the Legislative Council.
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## **SCHEDULE 1**

[ss. 4, 15 & 28 & Sch. 2]

### **INFORMATION TO BE PROVIDED TO EXISTING MEMBERS AND NEW ELIGIBLE EMPLOYEES**

#### **PART 1**

#### **ORSO EXEMPTED SCHEME AND MPF SCHEME**

1. A statement—
  - (a) to the effect that the existing member or new eligible employee has a once only choice to remain or become a member of the ORSO exempted scheme or to become a member of the MPF scheme; and
  - (b) advising the existing member or new eligible employee—
    - (i) of the date before which that choice must be made; and
    - (ii) that if that date passes without the relevant employer having been notified of that choice, the existing member or new eligible employee will be deemed to have chosen the MPF scheme.
  
2. The following in relation to both the ORSO exempted scheme and the MPF scheme—
  - (a) subject to paragraph (b), whether the scheme is—
    - (i) governed by a trust; or

- 
- (ii) the subject of or regulated by an insurance arrangement within the meaning of section 2 of the relevant Ordinance;
  - (b) if neither paragraph (a)(i) or (ii) is applicable, the system which takes the place of a trust or such an insurance arrangement for the scheme;
  - (c) whether the law of Hong Kong governs the scheme;
  - (d) if the law of Hong Kong does not govern the scheme, the name of the place outside Hong Kong the law of which governs the scheme;
  - (e) particulars of the benefit structure of the scheme, including—
    - (i) in the case of a defined benefit scheme within the meaning of section 2 of the relevant Ordinance—
      - (A) the formula for calculating the amount of a benefit under the scheme;
      - (B) the income to which that formula applies; and
      - (C) the required level of contributions, if any, of a member of the scheme;
    - (ii) in the case of a defined contribution scheme within the meaning of section 2 of the relevant Ordinance, the required level of contributions to the scheme's funds to be made—
      - (A) by a member of the scheme; and
      - (B) in respect of a member of the scheme;
    - (iii) particulars clearly identifying the income—
      - (A) from which a member of the scheme is required to make contributions;
      - (B) from which contributions in respect of the member are required to be made; and

# MANDATORY PROVIDENT FUND SCHEMES (EXEMPTION) REGULATION

SCHEDULE 1—PART 2

S1-6

Section 1

Cap. 485B

---

- (iv) the portability and preservation of benefits, or the vesting rights, under the scheme.
3. The name of the administrator, within the meaning of section 2 of the relevant Ordinance, of the ORSO exempted scheme.
4. The name of the trustee of the MPF scheme.
5. The rights that an existing member would have under the ORSO exempted scheme if he elects to become a member of the MPF scheme.
6. A statement advising the existing member of the relevant date referred to in section 4(2)(a) of this Regulation.
7. The address and telephone and facsimile numbers of a person who can, on behalf of the relevant employer, respond to any questions the existing member or new eligible employee may have concerning the ORSO exempted scheme and MPF scheme.

## PART 2

### RELEVANT ORSO REGISTERED SCHEME AND MPF SCHEME

1. A statement—

- (a) to the effect that the existing member or new eligible employee has a once only choice to remain or become a member of the relevant ORSO registered scheme or to become a member of the MPF scheme; and
  - (b) advising the existing member or new eligible employee—
    - (i) of the date before which that choice must be made; and
    - (ii) that if that date passes without the relevant employer having been notified of that choice, the existing member or new eligible employee will be deemed to have chosen the MPF scheme.
  
- 2. The following in relation to both the relevant ORSO registered scheme and the MPF scheme—
  - (a) whether the law of Hong Kong governs the scheme;
  - (b) if the law of Hong Kong does not govern the scheme, the name of the place outside Hong Kong the law of which governs the scheme;
  - (c) particulars of the benefit structure of the scheme, including—
    - (i) in the case of a defined benefit scheme within the meaning of section 2 of the relevant Ordinance—
      - (A) the formula for calculating the amount of a benefit under the scheme;
      - (B) the income to which that formula applies; and
      - (C) the required level of contributions, if any, of a member of the scheme;

# MANDATORY PROVIDENT FUND SCHEMES (EXEMPTION) REGULATION

SCHEDULE 1—PART 2

S1-10

Section 3

Cap. 485B

---

- (ii) in the case of a defined contribution scheme within the meaning of section 2 of the relevant Ordinance, the required level of contributions to the scheme's funds to be made—
      - (A) by a member of the scheme; and
      - (B) in respect of a member of the scheme;
    - (iii) particulars clearly identifying the income—
      - (A) from which a member of the scheme is required to make contributions;
      - (B) from which contributions in respect of the member are required to be made; and
    - (iv) the portability and preservation of benefits, or the vesting rights, under the scheme;
  - (d) if applicable, the investment choices available to members of the scheme;
  - (e) the person who bears the investment risk under the scheme;
  - (f) the name of the trustee of the scheme;
  - (g) particulars of the scheme's administrative costs and the bearer of those costs.
3. The compensation fund coverage for the MPF scheme.
4. The rights that an existing member would have under the relevant ORSO registered scheme if he elects to become a member of the MPF scheme.



MANDATORY PROVIDENT FUND SCHEMES (EXEMPTION) REGULATION

SCHEDULE 1—PART 2

S1-12

Section 5

Cap. 485B

---

5. Illustrative examples to demonstrate the differences in benefits between the relevant ORSO registered scheme and the MPF scheme.
6. The treatment of the accrued rights (as defined in section 2 of the relevant Ordinance) of an existing member of the relevant ORSO registered scheme who elects to become a member of the MPF scheme.
7. Subject to the governing rules of the relevant ORSO registered scheme, the relevant employer's rights under the scheme to—
  - (a) reduce benefits or contributions levels for future services;
  - (b) close membership of the scheme to new employees;
  - (c) withhold benefits under the scheme from a member who has been lawfully dismissed from employment;
  - (d) wind up the scheme.
8. A statement advising the existing member of the relevant date referred to in section 15(2)(a) of this Regulation.
9. The address and telephone and facsimile numbers of a person who can, on behalf of the relevant employer, respond to any questions the existing member or new eligible employee may have concerning the relevant ORSO registered scheme and MPF scheme.

## Schedule 2

[ss. 17 & 28]

### Mandatory Conditions

#### 1. Interpretation

(1) In this Schedule, unless the context otherwise requires—  
*accrued rights* (累算權利) has the same meaning as in section 2 of the relevant Ordinance;

*defined benefit scheme* (界定利益計劃) has the same meaning as in section 2 of the relevant Ordinance;

*defined contribution scheme* (界定供款計劃) has the same meaning as in section 2 of the relevant Ordinance;

*final average monthly relevant income* (最終每月平均有關入息), in relation to a member of a relevant scheme, means the member's relevant income per month averaged over whichever of the following is applicable—

(a) if the member has been a member of the scheme for not less than 12 months after the relevant date, the period of 12 months (excluding any unpaid leave or maternity leave taken by the member pursuant to any enactment or contract) immediately preceding the earliest of the following— (*1 of 2015 s. 53*)

- (i) the date of termination of his employment;
- (ii) in the case of the winding up of the scheme, the date on which the member ceases to be a member of the scheme;
- (iii) in the case of the withdrawal (including deemed withdrawal) under this Regulation of the exemption certificate which applies to the scheme, the date of

- the coming into effect of the withdrawal; or (*1 of 2015 s. 53*)
- (iv) the date on which the trustee of the scheme receives the latest claim lodged by the member under section 6(9A) for which benefits have not been paid; (*1 of 2015 s. 53*)
- (b) in any other case, the period (excluding any unpaid leave or maternity leave taken by the member pursuant to any enactment or contract) since the date the member joined the scheme or the relevant date, whichever is the later, to the earliest of the following— (*1 of 2015 s. 53*)
- (i) the date of the termination of his employment;
  - (ii) in the case of the winding up of the scheme, the date on which the member ceases to be a member of the scheme;
  - (iii) in the case of the withdrawal (including deemed withdrawal) under this Regulation of the exemption certificate which applies to the scheme, the date of the coming into effect of the withdrawal; or (*1 of 2015 s. 53*)
  - (iv) the date on which the trustee of the scheme receives the latest claim lodged by the member under section 6(9A) for which benefits have not been paid; (*1 of 2015 s. 53*)

***minimum MPF benefits*** (最低強制性公積金利益), in relation to a member of a relevant scheme, means the lesser of—

- (a) the member's benefits accrued and held under the scheme during the period when the exemption certificate applied to the scheme; (*1 of 2015 s. 53*)
- (b)  $1.2 \times$  final average monthly relevant income  $\times$  years of post-MPF service;

**relevant income** (有關入息), in relation to a member of a relevant scheme, means so much of any relevant income of the member per month which is not more than the maximum level of relevant income per month specified in Schedule 3 to the Ordinance;

**relevant scheme** (有關計劃) means a relevant ORSO registered scheme to which an exemption certificate issued under section 16(1) of this Regulation applies;

**vested benefit** (既有利益) has the same meaning as in section 2 of the relevant Ordinance;

**years of post-MPF service** (強制性公積金實施後的服務年期), in relation to a member of a relevant scheme, means the member's continuous years of service (including part thereof) from the date he joined the scheme, the relevant date or (if the member was previously paid any benefits under section 6(9A)) the date on which the trustee of the scheme received the claim lodged by the member for which benefits were last paid under that section, whichever is the latest, to the earliest of the following— (*1 of 2008 s. 18; 1 of 2015 s. 53*)

- (a) the date of termination of his employment;
- (b) in the case of the winding up of the scheme, the date on which the member ceases to be a member of the scheme;
- (c) in the case of the withdrawal (including deemed withdrawal) under this Regulation of the exemption certificate which applies to the scheme, the date of the coming into effect of the withdrawal; or (*1 of 2015 s. 53*)
- (d) the date on which the trustee of the scheme receives the latest claim lodged by the member under section 6(9A) for which benefits have not been paid. (*1 of 2015 s. 53*)

(2) Where—

- (a) section 3 applies in the case of a member of a relevant scheme;
- (b) the member had benefits transferred from another relevant scheme to the scheme referred to in paragraph (a); and
- (c) the benefits referred to in paragraph (b) include the member's minimum MPF benefits,

then, for the purposes of the definition of *minimum MPF benefits* (最低強制性公積金利益), the member's benefits accrued and held under the scheme referred to in paragraph (a) during the period when the exemption certificate applied to that scheme shall be deemed to include the minimum MPF benefits referred to in paragraph (c). (*1 of 2015 s. 53*)

## 2. Application

- (1) Subject to section 3, this section shall apply to and in relation to a relevant scheme immediately upon—
  - (a) the retirement, death or termination of the employment of a member of the scheme or the occurrence of an event specified in the governing rules of the scheme as an event which shall cause this section to apply;
  - (b) the winding up of the scheme; or
  - (c) the coming into effect of the withdrawal (including deemed withdrawal) under this Regulation of the exemption certificate which applies to the scheme.
- (2) Where—
  - (a) this section applies to a relevant scheme; and
  - (b) subject to subsection (3), a new member of the scheme (or his beneficiary) is entitled to receive benefits under the scheme (whether immediately or prospectively),then such of those benefits—

- (i) as were accrued and held during the period when the exemption certificate applied to the schemes; and (*1 of 2015 s. 53*)
- (ii) as do not exceed the minimum MPF benefits, shall be subject to the provisions of sections 4, 5 and 6.
- (3) Section 4(e) shall apply to and in relation to an existing member's minimum MPF benefits in a relevant scheme as it applies to and in relation to a new member's minimum MPF benefits in the scheme.

### **3. Inter-group transfers and scheme transfers**

Sections 4, 5 and 6 shall not apply to the minimum MPF benefits of a new member of a relevant scheme (*existing scheme*) upon termination of his employment, or his ceasing to be a member of the existing scheme, where—

- (a) he is—
  - (i) being transferred from one company to another company within the same grouping of companies (within the meaning of section 67 of the relevant Ordinance) and his membership of the existing scheme is transferred to the new employer's relevant scheme or registered scheme; or
  - (ii) transferred from the existing scheme to a relevant scheme or registered scheme and the relevant employer of the existing scheme is also the employer of the scheme to which he is so transferred;
- (b) he did not receive any benefits from the existing scheme; and

- (c) his minimum MPF benefits under the existing scheme will be recognized under the scheme to which he is so transferred.

**4. Preservation of minimum MPF benefits**

For the purpose of preserving minimum MPF benefits in a relevant scheme—

- (a) no trustee of the scheme shall pay out or otherwise dispose of any part of the minimum MPF benefits to any new member of the scheme otherwise than in accordance with the provisions of this Regulation;
- (b) no new member of the scheme shall have any right or entitlement to the minimum MPF benefits otherwise than in accordance with the provisions of this Regulation;
- (c) if this section does not apply to the minimum MPF benefits of a new member of the scheme by virtue of section 3, no trustee of the scheme shall transfer or dispose of any part of those benefits except to a relevant scheme or registered scheme referred to in that section;
- (d) the governing rules of the scheme shall not enable any person to reduce any new member's minimum MPF benefits except that the portion of that member's accrued rights or vested benefits in excess of the minimum MPF benefits may be reduced in accordance with the provisions of the relevant Ordinance;
- (e) no trustee of a scheme shall forfeit a new member's minimum MPF benefits upon the member's dismissal from employment (and whether or not dismissal is on the ground of misconduct, fraud, dishonesty or any other ground); and
- (f) the minimum MPF benefits of any new member of the scheme shall not—

- (i) be liable for and stand charged with the settlement of any losses suffered by the relevant employer caused by the new member; and
- (ii) stand charged with any debts owing to the relevant employer or any other person by the new member (and whether or not such debts are acknowledged in writing by the member).

## **5. Portability or transferability of minimum MPF benefits**

- (1) Subject to section 6, where a new member of a relevant scheme is entitled to receive benefits (whether immediately or prospectively) under the scheme, the trustee of the scheme shall transfer, in accordance with the governing rules of the scheme, the minimum MPF benefits of the member as soon as reasonably practicable—
  - (a) to a registered scheme in which the member's new employer is a participating employer; or
  - (b) to a master trust scheme or an industry scheme, nominated by the member, that accepts transfers of minimum MPF benefits. *(29 of 2002 s. 14)*
- (2) In the event of—
  - (a) the withdrawal (including deemed withdrawal) under this Regulation of the exemption certificate which applies to a relevant scheme; or
  - (b) the winding up of a relevant scheme,  
the minimum MPF benefits of new members of the scheme shall be—
    - (i) calculated as at the date of that event; and
    - (ii) transferred in accordance with the governing rules of the scheme to a registered scheme.



- (3) The minimum MPF benefits transferred to a registered scheme pursuant to this section shall be treated as accrued benefits under the scheme and subject to all of the provisions of the Ordinance.

**6. Withdrawal of minimum MPF benefits**

- (1) The minimum MPF benefits in a relevant scheme shall not be withdrawn except in accordance with the provisions of this section.
- (2) A new member of a relevant scheme who has attained retirement age shall be entitled as of right to have paid to him by the trustee of the scheme the entirety of his minimum MPF benefits in the scheme in a lump sum.
- (3) For the purposes of subsection (2), a new member of a relevant scheme shall provide evidence satisfactory to the trustee of the scheme that he has attained retirement age.
- (4) A new member of a relevant scheme who has not attained retirement age but has attained the age specified in Schedule 7 to the Ordinance shall be entitled as of right to have paid to him by the trustee of the scheme the entirety of his minimum MPF benefits in that scheme in a lump sum.
- (5) For the purposes of subsection (4), the new member of a relevant scheme shall provide, in a form provided or approved by the Authority—
  - (a) evidence satisfactory to the trustee that the member has attained the retirement age specified in Schedule 7 to the Ordinance; and
  - (b) a statutory declaration, in the form referred to in section 15(2) of the Ordinance, that he has permanently ceased his employment or self-employment.
- (6) Subject to subsections (7) and (8), a new member of a relevant scheme is eligible to withdraw his minimum MPF

benefits if he has departed, or is about to depart, from Hong Kong permanently.

- (7) A new member of a relevant scheme who has been paid accrued benefits from a registered scheme or minimum MPF benefits from a relevant scheme on the ground that, on a specified date, the member departed, or was about to depart, from Hong Kong permanently is not entitled to be paid the member's accrued benefits from another registered scheme or minimum MPF benefits from another relevant scheme on the ground that, on a later date, the person purports to have departed, or to be about to depart, from Hong Kong permanently.
- (8) For the purposes of subsection (6), a new member of a relevant scheme shall provide, in a form provided or approved by the Authority—
- (a) evidence satisfactory to the trustee of the scheme that the new member is permitted to reside in a place other than Hong Kong; and
  - (b) a statutory declaration made by the new member to the trustee that—
    - (i) he departed, or will depart, from Hong Kong permanently on a specified date; and
    - (ii) he has never before withdrawn minimum MPF benefits from any other relevant scheme or accrued benefits from a registered scheme on the ground of permanent departure from Hong Kong.
- (9) A new member of a relevant scheme is eligible to withdraw his minimum MPF benefits on the ground of total incapacity if he lodges with the trustee of the scheme a claim in a form provided or approved by the Authority together with—
- (a) a certificate signed by a registered medical practitioner or registered Chinese medicine practitioner certifying

- that the member is permanently unfit to perform the kind of work that the member was performing for the employer; and *(16 of 2006 s. 34)*
- (b) a letter from the member's employer certifying that the contract of employment for that kind of work has been or will be terminated.
- (9A) A new member of a relevant scheme is eligible to withdraw the member's minimum MPF benefits on the ground of terminal illness if the member lodges with the trustee of the scheme—
- (a) a claim in a form provided or approved by the Authority; and
- (b) a certificate that is—
- (i) signed by a registered medical practitioner or registered Chinese medicine practitioner certifying that, in the practitioner's opinion, the member falls within subsection (12G); and
- (ii) dated not earlier than 12 months before the date on which the claim is lodged. *(1 of 2015 s. 53)*
- (10) If a new member of a relevant scheme dies before attaining retirement age, a personal representative of the member, or any other person specified in the governing rules of the scheme for the purposes of this section, may lodge with the trustee of the scheme a claim for payment of the deceased member's minimum MPF benefits in accordance with those governing rules.
- (11) A claim referred to in subsection (10) shall be accompanied by evidence satisfactory to the trustee of the relevant scheme that the claimant is a personal representative of the deceased new member concerned of the scheme or any other person specified in the governing rules of the scheme for the purposes of this section.

MANDATORY PROVIDENT FUND SCHEMES (EXEMPTION) REGULATION

Schedule 2

S2-22

Section 6

Cap. 485B

---

- (12) When a new member of a relevant scheme is eligible for severance payment or long service payment under the Employment Ordinance (Cap. 57) upon termination of employment with his employer, the employer may make use of the part of the new member's minimum MPF benefits derived from the employer's contributions, including the employer's portion transferred from another relevant scheme, if any, to offset any such payment.
- (12A) Subsection (12B) applies if a committee of the estate is appointed in relation to the property and affairs of a new member of a relevant scheme. *(1 of 2015 s. 53)*
- (12B) The committee of the estate may, as if it were the member—
- (a) lodge with the trustee of the scheme a claim for payment of the minimum MPF benefits of the member; or
  - (b) continue with a claim initiated by the member. *(1 of 2015 s. 53)*
- (12C) Subsection (12B) does not apply in relation to a claim made under subsection (10). *(1 of 2015 s. 53)*
- (12D) In this section—
- committee of the estate* (產業受託監管人) means a committee of the estate appointed under section 11 of the Mental Health Ordinance (Cap. 136);
- registered Chinese medicine practitioner* (註冊中醫) has the meaning given by section 2(1) of the Chinese Medicine Ordinance (Cap. 549). *(1 of 2015 s. 53)*
- (12E) For the purposes of this section, a new member has permanently ceased employment or self-employment if the member—
- (a) has ceased all employment with no intention of becoming employed or self-employed again; and

- (b) has ceased all self-employment with no intention of becoming self-employed or employed again. (*1 of 2015 s. 53*)
- (12F) For the purposes of this section, a new member departs from Hong Kong permanently if the member departs from Hong Kong to reside elsewhere with no intention of returning for employment or to resettle in Hong Kong as a permanent resident. (*1 of 2015 s. 53*)
- (12G) A new member who has an illness that is likely to reduce the life expectancy of the member to 12 months or less has a terminal illness for the purposes of this section. (*1 of 2015 s. 53*)
- (13) For the purposes of subsection (9)(a) and (9A)— (*1 of 2015 s. 53*)
- (a) (Repealed 1 of 2015 s. 53)
- (b) a reference to a certificate signed by a registered Chinese medicine practitioner does not include a certificate so signed before the commencement of section 34 of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (16 of 2006). (*16 of 2006 s. 34*)

**7. Treatment of accrued rights of members who join registered scheme**

- (1) Subject to subsection (3), the governing rules of a relevant scheme shall provide for the treatment of the accrued rights under the relevant scheme in respect of an existing member who has become a member of a registered scheme as follows—
- (a) for a defined contribution scheme—
- (i) the accrued rights of the member shall be retained in the relevant scheme and continue to be credited

- with investment income until he is entitled to receive any benefits from the relevant scheme upon the occurrence of an event specified in the governing rules of the relevant scheme which causes such benefits to be paid; and
- (ii) if the relevant scheme provides benefits upon termination of service which relate to a member of the relevant scheme's period of service or age, or any combination thereof, when the member is entitled to receive any benefits from the relevant scheme due to termination of service—
    - (A) and period of service only is applicable, both his period of service under the relevant scheme as an existing member and his period of service after he became a member of the registered scheme shall be used in determining his benefit entitlements;
    - (B) and age only is applicable, his age at the time of such termination shall be used in determining his benefit entitlements;
    - (C) and a combination of period of service and age are applicable, sub-subparagraphs (A) and (B) shall apply as appropriate in determining his benefit entitlements;
  - (b) for a defined benefit scheme—
    - (i) the accrued rights of the member shall be retained in the scheme until he is entitled to receive any benefits from the scheme upon the occurrence of an event specified in the governing rules of the scheme which causes such benefits to be paid;
    - (ii) if the accrued rights of the member are partly determined by reference to the contributions to

- the scheme's fund by or in respect of the member concerned and any declared return in respect of such contributions, the provisions of paragraph (a)(i) shall apply in respect of such accrued rights;
- (iii) if the scheme provides benefits upon termination of service which relates to a member's period of service, income or age, or any combination thereof, when the member is entitled to receive any benefits from the scheme due to termination of service—
- (A) and period of service only is applicable, both his period of service under the relevant scheme as an existing member and his period of service after he became a member of the registered scheme shall be used, on a pro rata basis or any other basis approved in writing by the Authority, in determining his benefit entitlements;
- (B) and income only is applicable, both his income when he was an existing member of the relevant scheme and his income after he became a member of the registered scheme shall be used in determining his benefit entitlements;
- (C) and age only is applicable, his age at the time of such termination shall be used in determining his benefit entitlements;
- (D) and a combination of any 2 or 3 of period of service, income and age is applicable, sub-subparagraphs (A), (B) and (C) shall apply as appropriate in determining his benefit entitlements.

- (2) Where a relevant scheme provides death, disability or any other benefits in addition to any benefits referred to in subsection (1), those first-mentioned benefits of an existing member who becomes a member of a registered scheme shall be determined no less favourably than those second-mentioned benefits which are determined in accordance with the provisions of subsection (1).
- (3) The accrued rights of an existing member of a relevant scheme who becomes a member of a registered scheme may be treated otherwise than in accordance with the provisions of this section if the member's consent has been obtained and it is allowed under the governing rules of the relevant scheme.

## **8. Employee's right upon reduction of future benefits**

- (1) The governing rules of a relevant scheme shall provide for the situation that, where the relevant employer decides to reduce any member's future benefits or rights under the scheme, the member is given an opportunity to become a member of a registered scheme.
- (2) An opportunity referred to in subsection (1) shall be taken or rejected by a member of the relevant scheme—
  - (a) not less than 30 days before the date on which the reduction of the members benefits or rights occurs; and
  - (b) in writing to the relevant employer.
- (3) For the purpose of an opportunity referred to in subsection (1), the relevant employer of a relevant scheme shall provide all relevant members of the scheme with the information specified in Part 2 of Schedule 1 to this Regulation—
  - (a) in relation to that scheme and the registered scheme to which the opportunity relates; and



- (b) not later than 50 days before the date on which the reduction of the members' benefits or rights occurs.
- (4) The accrued rights of a member of a relevant scheme who becomes a member of a registered scheme shall be treated in the same way as prescribed under section 7.

### **9. Reporting of membership upon implementation**

Within 3 months after the relevant date, the relevant employer of a relevant scheme shall submit the following information to the Authority—

- (a) the total number of his employees;
- (b) the number of employees who are not members of the scheme but who are exempted (either in whole or in part) from the provisions of the Ordinance by virtue of section 4 of the Ordinance;
- (c) the number of employees who are not members of the scheme but are members of a registered scheme;
- (d) the number of existing members who have become members of a registered scheme; and
- (e) the number of existing members who have decided not to become members of a registered scheme.

### **10. Filing of annual report**

The trustee of a relevant scheme shall within 6 months after the end of each financial year of the scheme (or within such longer period as the Authority may approve in writing in any particular case) give to the Authority an annual return for that financial year as regards the scheme—

- (a) in such form and containing such information as may be specified by the Authority; and
- (b) accompanied by the prescribed fee.

**11. Reporting of changes to governing rules of scheme**

The trustee of a relevant scheme shall give notice in writing to the Authority of any amendments to the governing rules of the scheme upon submission of any return under section 10 and shall attach a copy of the amendments to the notice.

*(Format changes—E.R. 3 of 2015)*

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## SCHEDULE 3

[ss. 17 & 28]

### MINIMUM STANDARDS APPLICABLE TO TRUSTEES, ETC. OF SCHEMES

#### 1. Interpretation

- (1) In this Schedule, unless the context otherwise requires—
- “actuary” (精算師) has the meaning given by section 2 of Part 1 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A);
- “associate” (有聯繫者) has the meaning given by Schedule 8 to the Ordinance;
- “derivative” (衍生工具) has the same meaning as in Schedule 2 to the Trustee Ordinance (Cap. 29);
- “effective exposure” (有效風險) means—
- (a) in relation to a derivative contract, the nominal value of the investment multiplied by delta;
  - (b) in relation to other kinds of securities and investments, the market value;
- “employer trustee” (僱主受託人) has the same meaning as in section 25 of the relevant Ordinance;
- “investment manager” (投資經理), in relation to a scheme, means a person appointed by a trustee of the scheme to manage the investment of the assets of the scheme;
- “market value” (市值) has the meaning given by section 2 of Part 1 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A);

- “non-employer trustee” (非僱主受託人) has the same meaning as in section 25 of the relevant Ordinance;
- “qualified director” (合資格董事), in relation to a company which is a trustee of a scheme, means a director of the company who satisfies the Authority that he has the skill, knowledge, experience and qualifications that are, in the opinion of the Authority, necessary for the successful operation of the scheme;
- “registered trust company” (註冊信託公司) has the meaning given by section 2 of Part 1 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A);
- “scheme” (計劃) means a relevant ORSO registered scheme to which an exemption certificate issued under section 16(1) of this Regulation relates.
- (2) For the purposes of the definition of “effective exposure” (有效風險) in subsection (1), delta is the expected increase or decrease in the market value of the derivative contract given a 1 unit change in the value of the underlying investment.

*(E.R. 1 of 2013; E.R. 2 of 2014)*

**2. Trustees and investment manager to exercise appropriate care, skill, diligence and prudence with respect to the administration of a scheme**

The trustees and investment manager of a scheme shall perform the following duties with respect to the administration of the scheme—

- (a) the duty to exercise a level of care, skill, diligence and prudence that may reasonably be expected of a prudent person who is acting in similar capacity and who is familiar with—
  - (i) in the case of a trustee, the administration, management and maintenance of an ORSO registered scheme;
  - (ii) in the case of an investment manager, managing the investment of the assets of an ORSO registered scheme;
- (b) in the case of a trustee, the duty to use all relevant knowledge and skill, in the administration, management and maintenance of the scheme, that the trustee may reasonably be expected to have in consequence of his business or occupation;
- (c) in the case of an investment manager, the duty to use all relevant knowledge and skill, in managing the investment of the assets of the scheme, that the manager may reasonably be expected to have in consequence of his business or occupation;
- (d) the duty to ensure that the assets of the scheme are invested in different investments so as to minimize the risk of losses of those assets, unless in particular circumstances it is prudent not to do so;
- (e) the duty to act in the interest of the scheme members and not in the trustee's or investment manager's, as the case may be, own interest;
- (f) the duty to act in accordance with the governing rules of the scheme.

### 3. **Appointment of investment managers**

- (1) On and after the relevant date, no person shall be appointed to be the investment manager of a scheme except an investment management company that—
  - (a) is a corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in asset management under Part V of the Securities and Futures Ordinance (Cap. 571); or (*5 of 2002 s. 407*)
  - (b) is a company authorized by an authority recognized by the Authority to carry on under the law of a place outside Hong Kong the business referred to in paragraph (a). (*5 of 2002 s. 407*)
- (2) Subsection (1) shall not of itself prejudice the efficacy of the appointment of the investment manager of a scheme made before the commencement of this section.

#### 4. **Investment standards**

- (1) On and after the relevant date, the trustees and investment manager of a scheme shall ensure that—
  - (a) derivatives are not used in such a way as to result in the assets of the scheme becoming leveraged thereby;
  - (b) money is not borrowed for any of the purposes of a scheme except for the purpose of—
    - (i) paying accrued benefits to or in respect of scheme members, and then only if—
      - (A) the amount borrowed is not more than 10 per cent of the market value of the assets at the relevant time;

- (B) the borrowing is not part of a series of borrowing; and
    - (C) the period for which the money is borrowed is not more than 90 days; or
  - (ii) settling transactions involving the acquisition or disposal of securities or other investments relating to the scheme, and then only if—
    - (A) the period for which the money is borrowed is not more than 7 days; and
    - (B) at the time the decision to enter into those transactions was made, it was unlikely that the borrowing would be necessary.
- (2) For the purposes of this section, the assets of a scheme are leveraged if the effective exposure of the assets exceeds the market value of the assets.

## 5. **Trustee standards**

- (1) Any trustee of a scheme appointed on or after the relevant date (and whether or not the trustee is described as an alternate trustee, emergency trustee or co-trustee in the governing rules of the scheme) shall—
- (a) in the case of a trustee which is a company incorporated in Hong Kong, be a registered trust company;
  - (b) in the case of a trustee which is a company incorporated outside Hong Kong, satisfy the Authority that—
    - (i) it is comparable to a registered trust company;

- (ii) it has a significant presence and control in Hong Kong;
- (c) in the case of a non-employer trustee who is an individual, satisfy the Authority that—
  - (i) he is a person of good reputation and character and, in particular, has not been found guilty, whether in Hong Kong or elsewhere, of an offence involving fraud or dishonesty;
  - (ii) he has the skill, knowledge, experience and qualifications that are, in the opinion of the Authority, necessary for the successful operation of the scheme;
  - (iii) he has no past or present association (financial or otherwise) with—
    - (A) the employer of the scheme otherwise than as—
      - (I) if the employer is a company, a director of the company; or
      - (II) a professional adviser;
    - (B) any associate of the employer;
    - (C) any controller of the employer;
    - (D) any associate of any such controller, that could affect the impartiality of the trustee's independent judgment;
  - (iv) he is not the auditor, investment manager or actuary of the scheme; and
  - (v) he is ordinarily resident in Hong Kong;
- (d) in the case of an employer trustee who is an individual, satisfy the Authority that he is a person



of good reputation and character and, in particular, has not been found guilty, whether in Hong Kong or elsewhere, of an offence involving fraud or dishonesty.

- (2) Any director (and whether or not the director is described as a replacement director of qualified director) of a company which is a trustee of a scheme, other than a trustee to which subsection (1)(a) or (b) applies, appointed on or after the relevant date shall satisfy the Authority—
- (a) that he is a person of good reputation and character and, in particular, has not been found guilty, whether in Hong Kong or elsewhere, of an offence involving fraud or dishonesty;
  - (b) that he, or another director of the company, has the skill, knowledge, experience and qualifications that are, in the opinion of the Authority, necessary for the successful operation of the scheme.
- (3) Where on or after the relevant date, the trustees of a scheme are all individuals, then, upon any retirement of an existing trustee or appointment of a new trustee, there must be not less than 2 trustees of whom not less than 1 must be a non-employer trustee who complies with the requirements of subsection (1)(c).
- (4) For the purposes of subsection (1)(b)(i), the company referred to in that subsection is required to be able to comply with section 77(2)(a), (b) and (c) of the Trustee Ordinance (Cap. 29) as if—
- (a) the company were making an application under section 77(1) of that Ordinance; and
  - (b) each reference to an amount of Hong Kong dollars in section 77(2)(b) and (c) of that Ordinance were

followed by the words “or an equivalent amount in any other currency freely convertible into Hong Kong dollars”.

- (5) For the purposes of subsection (1)(b)(ii), the company referred to in that subsection—
- (a) must be a non-Hong Kong company; (*30 of 2004 s. 3*)
  - (b) must maintain an office in Hong Kong wherein there is an employee—
    - (i) of the company;
    - (ii) designated by the company as its Hong Kong chief executive officer;
    - (iii) who ordinarily resides in Hong Kong; and
    - (iv) who, either alone or with others, is immediately responsible to the directors of the company for the conduct of the whole of the business carried on by the company in Hong Kong;
  - (c) must have its day to day business activities relating to its business in Hong Kong—
    - (i) conducted wholly in Hong Kong (including the keeping of its records relating to those activities); or
    - (ii) if conducted elsewhere, under the supervision and control of the employee referred to in paragraph (b) of the company together with sufficient records relating to those activities kept in Hong Kong to enable any audit required under the relevant Ordinance to be carried out; and

- (d) must have sufficient expertise and management resources in Hong Kong to conduct its business in Hong Kong effectively.

**6. Reporting of appointment of investment manager**

Where the trustee of a scheme appoints an investment manager on or after the relevant date, the trustee shall, upon submission of the next annual return thereafter, give notice in writing to the Authority—

- (a) of the appointment; and
- (b) of the matters relied upon by the trustee to be satisfied that the investment manager complies with section 3(1)(a) or (b).

**7. Reporting of changes in trustees, etc.**

- (1) The person who has the duty or power to retire or appoint the trustee of a scheme shall obtain the Authority's approval in writing before retiring or appointing, as the case may be, the trustee.
- (2) The trustee of a scheme which—
  - (a) is a company; but
  - (b) is not a trustee to which section 5(1)(a) or (b) applies,shall obtain the Authority's approval in writing before retiring or appointing, as the case may be, a director of the company.

- (3) The Authority's approval under subsection (1) or (2) to the appointment of a trustee or director shall be sought by way of an application in writing—
- (a) made to the Authority;
  - (b) in a manner and form specified by the Authority, either generally or in any particular case;
  - (c) by the appointee unless the Authority specifies another person in lieu of the appointee;
  - (d) accompanied by the prescribed fee;
  - (e) accompanied by a statutory declaration as to the character and suitability of—
    - (i) the trustee where section 5(1)(c) or (d) applies;
    - (ii) the directors of the trustee where section 5(2) applies;
  - (f) accompanied by such additional particulars and undertakings as may be required by the Authority.
- (3A) An undertaking given to the Authority pursuant to a requirement made under subsection (3)(f) must be by deed, or by a document of like effect acceptable to the Authority. *(1 of 2008 s. 10)*
- (4) The Authority may, by notice in writing, exempt—
- (a) a person from the requirement of subsection (1)—
    - (i) in the case of a trustee belonging to a class of trustees specified in the notice; and
    - (ii) if, and only if, the conditions specified in the notice are complied with;
  - (b) a trustee from the requirement of subsection (2)—

# MANDATORY PROVIDENT FUND SCHEMES (EXEMPTION) REGULATION

SCHEDULE 3

S3-22

Section 7

Cap. 485B

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- (i) in the case of a director of a company belonging to a class of directors specified in the notice; and
  - (ii) if, and only if, the conditions specified in the notice are complied with.
- (5) Without prejudice to the generality of conditions which may be specified in a notice under subsection (4), such conditions may provide that the retirement or appointment of a trustee, or of a director of a company, shall become void and of no effect unless and until the Authority approves the retirement or appointment in writing before the expiration of a period specified in the notice. *(46 of 2000 s. 40)*