

01/02/2016

(For the transitional and savings provisions made by the Mandatory Provident Fund Schemes (Amendment) Ordinance 2009 (11 of 2009), please see s. 24 of that Ordinance.)

An Ordinance to provide for the establishment of non-governmental mandatory provident fund schemes for the purpose of funding benefits on retirement, to provide for contributions to such schemes, to provide for the registration of such schemes, to provide for a regulatory regime in respect thereof, to provide for the creation of a Mandatory Provident Fund Schemes Authority to oversee the administration and management of registered schemes, to exempt certain classes of persons from contributing to registered schemes, to provide for the approval of persons (other than public officers or statutory corporations) as trustees of registered schemes, to provide for the control and regulation of approved trustees, to regulate sales and marketing activities, and the giving of advice, in relation to registered schemes, and to make consequential amendments to other Ordinances including pension related Ordinances, and for connected purposes.

*(Amended 16 of 2012 s. 3)*

Note: This Ordinance was originally enacted as Ord. No. 80 of 1995 and had been amended, before its commencement, by Ord. No. 4 of 1998 and other legislation. The commencement dates of all provisions contained in the consolidated version of the original Ordinance as amended by Ord. No. 4 of 1998 are as follows —

[24 July 1998]

*(Enacting provision omitted—E.R. 1 of 2013)*

## Part 1

### Preliminary

*(Format changes—E.R. 1 of 2013)*

#### 1. Short title

- (1) This Ordinance may be cited as the Mandatory Provident Fund Schemes Ordinance.
- (2) *(Omitted as spent—E.R. 1 of 2013)*

#### 2. Interpretation

- (1) In this Ordinance, unless the context otherwise requires —  
— *(Amended 4 of 1998 s. 2)*

**accrued benefits** (累算權益), in relation to a registered scheme,

means the amount of each scheme member's beneficial interest in the registered scheme at any time, including sums derived from the contributions made by or in respect of that scheme member, together with the income or profits arising from any investments of the contributions, but taking into account any losses in respect of the investments and any amounts paid in respect of the scheme member; (*Amended 2 of 2002 s. 2; 1 of 2015 s. 3*)

**administer** (管理) includes manage and maintain; (*Added 4 of 1998 s. 2*)

**Advisory Committee** (諮詢委員會) means the Mandatory Provident Fund Schemes Advisory Committee established by section 6R; (*Added 4 of 1998 s. 2*)

**Appeal Board** (上訴委員會) means the Mandatory Provident Fund Schemes Appeal Board constituted under section 35;

**apprentice** (學徒) has the same meaning as in the Apprenticeship Ordinance (Cap. 47);

**approved trustee** (核准受託人) means a company or a natural person approved by the Authority as a trustee in accordance with section 20 and, when used in relation to a registered scheme that is administered by 2 or more approved trustees, means (except in sections 33 to 33B) the trustees jointly and severally; (*Replaced 4 of 1998 s. 2*)

**arrears** (欠款) means a mandatory contribution that is due for payment to the Authority under section 7AE or 18; (*Added 1 of 2008 s. 59. Amended 18 of 2008 s. 4*)

**associate** (有聯繫者), in relation to a natural person referred to in paragraph (d) of the definition of "controller" or a company or other body corporate, means a person specified in Schedule 8; (*Amended 18 of 2008 s. 26*)

**associated company** (有聯繫公司) has, except in section 12A, the meaning given by Part 3 of Schedule 8; (*Added 4 of 1998 s. 2*)

**Authority** (管理局) means the Mandatory Provident Fund Schemes Authority established by section 6; (*Replaced 4 of 1998 s. 2*)

**authorized financial institution** (認可財務機構) means an authorized institution as defined by section 2(1) of the Banking Ordinance (Cap. 155); (*Added 16 of 2012 s. 4*)

**authorized person** (獲授權人) means a person appointed or authorized by the Authority in writing to exercise or perform functions, or specified functions, under or for the purposes of this Ordinance; (*Added 4 of 1998 s. 2*)

**casual employee** (臨時僱員) means a relevant employee who is declared by an order made under subsection (2) to be a casual employee for the purposes of this Ordinance; (*Added 4 of 1998 s. 2*)

**chief executive officer** (行政總裁), in relation to a company, means the person who, either alone or with others, is immediately responsible to the directors of the company for the conduct of the whole business of the company, and includes a person holding office as managing director of the company; (*Added 4 of 1998 s. 2*)

**close relative** (近親), in relation to a natural person, means—

- (a) a spouse, former spouse, parent, step-parent, child, step-child, grand parent, grand child, brother, half-brother, sister or half-sister of the person; or
- (b) a parent, step-parent, child, step-child, grand parent, grand child, brother, half-brother, sister or half-sister of the spouse or a former spouse of the person; (*Added 4 of 1998 s. 2*)

**company** (公司)—

- (a) means—
  - (i) a company within the meaning of the Companies Ordinance (Cap. 622); or (*Amended 28 of 2012 ss. 912 & 920*)
  - (ii) a non-Hong Kong company; (*Amended 30 of 2004 s. 3*)
- (b) includes a corporation in the case of—
  - (i) the definitions of *associated company*, *chief executive officer*, *controller*, *officer*, *share* and *voting share*; and
  - (ii) the provisions of section 44(1), section 7(2) of Part 2 of Schedule 1A and Schedule 8; (*Replaced 2 of 2002 s. 2*)

**compensation fund** (補償基金) means the compensation fund established in accordance with section 17; (*Added 4 of 1998 s. 2*)

**conditions** (條件) means reasonable conditions; (*Added 2 of 2002 s. 2*)

**constituent fund** (成分基金), in relation to a registered scheme, means the fund that constitutes the scheme, or a fund that forms part of the scheme; (*Added 1 of 2015 s. 3*)

**contract of employment** (僱傭合約) has the same meaning as in the Employment Ordinance (Cap. 57), and “employment” (僱用、受僱) shall be construed accordingly;

**contribution account** (供款帳戶) has the same meaning as in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A); (*Added 29 of 2002 s. 2*)

**controller** (控權人), in relation to a company, means any of the following persons—

- (a) the directors of the company;
- (b) a person in accordance with whose instructions those directors are accustomed to act;
- (c) the chief executive officer of the company;
- (d) a natural person who, alone or together with an associate, a close relative or an employee of the person, or a company of which the person is a director, or through a nominee, controls at least 15 per cent of the voting shares of the company; (*Amended 18 of 2008 s. 26*)

- (e) another company that, alone or with any associate, or any employee of an associate, of that other company, or through a nominee, controls at least 15 per cent of the voting shares of the first-mentioned company; (*Added 4 of 1998 s. 2*)

**corporation** (法團) means a body corporate which is incorporated in a place outside Hong Kong and is not a non-Hong Kong company; (*Added 2 of 2002 s. 2. Amended 30 of 2004 s. 3*)

**Court** means the Court of First Instance; (*Added 4 of 1998 s. 2*)

**electronic system** (電子系統) means an information system as defined by section 2(1) of the Electronic Transactions Ordinance (Cap. 553); (*Added 16 of 2012 s. 4*)

**employee** (僱員) has the same meaning as in the Employment Ordinance (Cap. 57), other than a person excluded by section 4(2) of that Ordinance, and includes an apprentice and a former employee;

**employer** (僱主) means any person who has entered into a contract of employment to employ another person as his employee;

**employer sponsored scheme** (僱主營辦計劃) means a registered scheme membership of which is—

- (a) in the case of an employer who is not a company, open only to the employees of that employer; or
- (b) in the case of an employer that is a company, open only to the employees of that company or an associated company; (*Replaced 4 of 1998 s. 2. Amended 2 of 2002 s. 2*)

**exempt person** (獲豁免人士) means a person or class of persons construed in accordance with section 4;

**functions** (職能) includes powers, authorities and duties; (*Added 4 of 1998 s. 2*)

**governing rules** (管限規則), in relation to a registered scheme, means those rules and provisions contained in a trust instrument or other document relating thereto or that trust instrument and that other document taken together, and governing the establishment and operation of the registered scheme;

**the guidelines** (指引) means guidelines issued under section 6H; (*Added 4 of 1998 s. 2*)

**industry** (行業) includes a trade, profession, occupation or calling; (*Added 4 of 1998 s. 2*)

**industry scheme** (行業計劃) means a provident fund scheme registered under section 21A; (*Added 4 of 1998 s. 2*)

**Industry Schemes Committee** (行業計劃委員會) means the MPF Industry Schemes Committee established by section 6U; (*Added 4 of 1998 s. 2*)

**Managing Director** (行政總監), in relation to the Authority, means the Managing Director appointed under section 6B, and includes any person appointed to act as Managing Director—

- (a) when that director is absent from Hong Kong or absent through illness or any other reason; or
- (b) when the office of Managing Director is vacant; (*Added 4 of 1998 s. 2*)

**mandatory contribution** (強制性供款) means—

- (a) an amount that is required to be paid as a contribution to a registered scheme under section 7A or 7C; (*Amended 18 of 2008 s. 4*)
- (aa) an amount that is required to be paid as a contribution to the Authority under section 7AA; (*Added 18 of 2008 s. 4*)
- (ab) an amount that is payable to the Authority under section 7AE; or (*Added 18 of 2008 s. 4*)
- (b) minimum MPF benefits, to which section 5(1) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B) applies, that have been transferred to a registered scheme; (*Replaced 2 of 2002 s. 2*)

**master trust scheme** (集成信託計劃) means a registered scheme membership of which is open to—

- (a) the employees of more than one employer; and
- (b) self-employed persons and former self-employed persons; and (*Amended 18 of 2008 s. 4*)
- (c) (*Repealed 18 of 2008 s. 4*)
- (d) persons who, having benefits in an ORSO exempted scheme, or an ORSO registered scheme, within the meaning of section 2(1) of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B), wish to have those benefits transferred to the first-mentioned scheme, (*Added 2 of 2002 s. 2*)

but does not include an industry scheme; (*Replaced 4 of 1998 s. 2. Amended 2 of 2002 s. 2*)

**maximum level of relevant income** (最高有關入息水平) means the level of relevant income specified in Schedule 3; (*Replaced 4 of 1998 s. 2. Amended 18 of 2008 s. 4*)

**minimum level of relevant income** (最低有關入息水平) means the level of relevant income specified in Schedule 2; (*Amended 4 of 1998 s. 2; 18 of 2008 s. 4*)

**minimum MPF benefits** (最低強制性公積金利益) has the same meaning as in section 1(1) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B); (*Added 2 of 2002 s. 2*)

**non-Hong Kong company** (非香港公司) means a non-Hong Kong company as defined by section 2(1) of the Companies Ordinance (Cap. 622); (*Added 4 of 1998 s. 2. Amended 30 of 2004 s. 3; 28 of 2012 ss. 912 & 920*)

**occupational retirement scheme** (職業退休計劃) has the same meaning as in the Occupational Retirement Schemes Ordinance (Cap. 426); (*Added 4 of 1998 s. 2*)

**officer** (高級人員), in relation to a company, means—

- (a) a director of the company; or
- (b) the chief executive officer of the company; (*Added 4 of 1998 s. 2*)

**participating employer** (參與僱主) means the employer of employees who are members or prospective members of a

registered scheme; (*Added 4 of 1998 s. 2. Amended 2 of 2002 s. 2*)

**personal account** (個人帳戶) has the same meaning as in section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A); (*Added 11 of 2009 s. 3*)

**personal representative** (遺產代理人) means—

- (a) a personal representative within the meaning of section 2 of the Probate and Administration Ordinance (Cap. 10); or
- (b) where the Official Administrator gets in and administers an estate in a summary manner under section 15 of that Ordinance, the Official Administrator; (*Added 1 of 2008 s. 40*)

**practicable** (切實可行) means reasonably practicable; (*Added 29 of 2002 s. 2*)

**premises** (處所) includes any place and a part of premises or a place; (*Added 4 of 1998 s. 2*)

**provident fund scheme** (公積金計劃) means a scheme governed by a trust—

- (a) the terms of which are set out in one or more documents; and (*Replaced 4 of 1998 s. 2*)
- (b) that—
  - (i) provides for the payment of pecuniary benefits to the members of the scheme when they reach the retirement age, or any other prescribed event occurs in relation to them; or
  - (ii) in the case of members who die before reaching that age or before the occurrence of such an event, provides for the payment of those benefits to the personal representatives or beneficiaries of the estates of those members, (*Replaced 4 of 1998 s. 2*)

and includes a proposed provident fund scheme;

**record** (紀錄) means any record of information, however compiled, recorded or stored, and includes—

- (a) any book, a register and any other document containing information; and
- (b) any disc, tape or other article from which information is capable of being produced; (*Added 4 of 1998 s. 2*)

**registered intermediary** (註冊中介人) means—

- (a) a principal intermediary as defined by section 34G; or
- (b) a subsidiary intermediary as defined by section 34H; (*Added 16 of 2012 s. 4*)

**registered scheme** (註冊計劃) means a provident fund scheme registered under section 21 as an employer sponsored scheme or a master trust scheme or registered under section 21A as an industry scheme; (*Replaced 4 of 1998 s. 2*)

**the regulations** (《規例》) means regulations made under section 46 and in force; (*Added 4 of 1998 s. 2*)

**regulated person** (受規管者) means—

- (a) a registered intermediary; or

(b) a responsible officer of a principal intermediary, as defined by section 34I; (*Added 16 of 2012 s. 4*)

**relevant employee** (有關僱員) means an employee of 18 years of age or over and below retirement age;

**relevant income** (有關入息) means—

\*(a) in the case of a relevant employee, any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite or allowance, expressed in monetary terms, paid or payable by an employer (directly or indirectly) to that relevant employee in consideration of his employment under that contract, but does not include severance payments or long service payments under the Employment Ordinance (Cap. 57); (*Amended 1 of 2008 s. 56*)

(b) in the case of a self-employed person, income of that person as ascertained in accordance with the regulations; (*Amended 4 of 1998 s. 2*)

**remuneration** (酬金) includes travel and subsistence allowances; (*Added 4 of 1998 s. 2*)

**retirement age** (退休年齡), in relation to an employee or self-employed person, means 65 years of age or, if the regulations prescribe an earlier age, that earlier age; (*Amended 4 of 1998 s. 2; 2 of 2002 s. 2*)

**the rules** (《規則》) means rules made under section 47 and in force; (*Added 4 of 1998 s. 2*)

**scheme** (計劃) means a provident fund scheme;

**scheme member** (計劃成員), in relation to a registered scheme, means a person who has a beneficial interest in the registered scheme;

**self-employed person** (自僱人士) means a person whose relevant income (otherwise than in the capacity as an employee) derives from his production (in whole or in part) of goods or services in Hong Kong, or his trade in goods or services in or from Hong Kong;

**service provider** (服務提供者), in relation to a provident fund scheme, means an investment manager, custodian of scheme assets or other person appointed or engaged by the trustee of the scheme to provide services for the purposes of the scheme, and includes a person to whom the provision of those services is delegated by such a manager, custodian or other person, but does not include a person appointed or so engaged as an auditor, solicitor, actuary or registered intermediary; (*Added 4 of 1998 s. 2. Amended 16 of 2012 s. 4*)

**share** (股份) means a share in the capital of a company, and includes the stock or any part of the stock of the company; (*Added 4 of 1998 s. 2*)

**spouse** (配偶), in relation to a person, includes a person of the opposite sex with whom the person is cohabiting in a bona fide domestic relationship as man and wife; (*Added 4 of 1998 s. 2*)

**subsidiary** (附屬公司) has the meaning given by section 15 of the Companies Ordinance (Cap. 622) for the purposes of that Ordinance; (*Added 1 of 2008 s. 51. Amended 28 of 2012 ss. 912 & 920*)

**total incapacity** (完全喪失行為能力), in relation to a scheme member, means permanent unfitness to perform the kind of work that the member was last performing before becoming incapacitated; (*Added 4 of 1998 s. 2. Amended 29 of 2002 s. 2*)

**trustee** (受託人) includes a prospective trustee;

**voluntary contribution** (自願性供款) means a contribution paid to a registered scheme in accordance with section 11; (*Added 4 of 1998 s. 2*)

**voting share** (有表決權股份), in relation to a company, means an issued share in the company that confers a right to vote, not being a right to vote that is exercisable only in one or more of the following circumstances—

- (a) during a period during which a dividend (or part of a dividend) in respect of the share is in arrears;
- (b) on a proposal by the company to redeem or purchase its own shares;
- (c) on a proposal by the company to reduce its share capital;
- (d) on a proposal that affects rights attached to the share;
- (e) on a proposal to wind up the company;
- (f) on a proposal for the disposal of the whole of the company's property, business and undertaking;
- (g) during the winding up of the company. (*Added 4 of 1998 s. 2*)

**working day** (工作日) means any day other than—

- (a) a public holiday;
- (b) a gale warning day or black rainstorm warning day within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1). (*Added 2 of 2002 s. 2*)

*(Amended 4 of 1998 s. 2; 11 of 2009 s. 3)*

(2) If relevant employees—

- (a) are engaged in an industry for which a provident fund scheme is registered as an industry scheme; and
- (b) employed in that industry by an employer on a day to day basis or for a fixed period of less than 60 days,

the Authority may, by order published in the Gazette, declare those employees to be casual employees for the purposes of this Ordinance. (*Added 4 of 1998 s. 2*)

(3) For the avoidance of doubt, it is hereby declared that an amount that is paid as a contribution to a registered scheme contingently on the basis that the amount will later constitute a mandatory contribution to the scheme shall for all purposes be treated as a mandatory contribution to the scheme (and the provisions of this Ordinance shall apply accordingly) unless and until it is certain that the amount will not constitute a mandatory contribution to the scheme. (*Added 2 of 2002 s. 2*)

Editorial Note:

\* This paragraph was amended by section 56 of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2008 (1 of 2008). The application provision contained in section 57 of that Amendment Ordinance reads as follows—



**“57. Application of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2008**

The Mandatory Provident Fund Schemes Ordinance (Cap. 485) as amended by section 56 of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2008 (1 of 2008) applies in relation to a contribution period that begins on or after the date of commencement<sup>#</sup> of that section.”.

<sup>#</sup> Commencement date: 1 November 2008.

**3. Application**

This Ordinance binds the Government.

**4. Exemptions**

- (1) The persons specified in Part 1 of Schedule 1 are exempt from the provisions of this Ordinance to the extent described therein.
- (2) The Chief Executive in Council may, from time to time, specify in Part 2 of Schedule 1 the persons or classes of persons who shall be exempt from all or part of the provisions of this Ordinance (as identified or contained in the specification), and may vary, alter or repeal that specification.  
*(Amended 4 of 1998 s. 2)*
- (3) Subject to subsections (4) and (5) and section 11(1) and (2), any person entering Hong Kong for the purpose of being employed or self-employed— *(Amended 2 of 2002 s. 3)*
  - (a) for a limited period only; or
  - (b) who is a member of a provident, pension, retirement or superannuation scheme (however described) of a place outside Hong Kong,shall be exempt from the provisions of Part 3. *(Amended 16 of 2012 s. 5)*
- (4) The regulations may make provision for the purposes of this section and may, in particular, specify the circumstances in which the exemption of a person referred to in subsection (3) is to apply. *(Replaced 4 of 1998 s. 2)*
- (5) In this section, **limited period** (有限期間) means a period determined for the purposes of this section in accordance with the regulations. *(Replaced 4 of 1998 s. 2)*

*(Amended E.R. 1 of 2012; E.R. 1 of 2013)*

**5. Members of certain occupational retirement schemes to be exempted from this Ordinance**

(Consolidated version as amended by 4 of 1998.)

- (1) The Authority may, by certificate in writing, exempt the members, or a class of members, of an occupational retirement scheme and their employer from the operation of all, or any specified, provisions of this Ordinance and, in so doing, may specify circumstances in which the exemption is or is not to apply.
- (2) The Authority may grant an exemption—

- (a) either on its own initiative or on the application of the trustee of the occupational retirement scheme concerned or the employer whose employees are members of the scheme; and
  - (b) subject to such conditions as the Authority considers appropriate.
- (3) If an exemption is granted in respect of an occupational retirement scheme, the provisions of this Ordinance, or the provisions of this Ordinance specified in the exemption certificate, do not apply to the members or relevant class of members of the scheme or to the employer of those members in relation to the scheme.
- (4) An exemption may be granted in respect of an occupational retirement scheme under this section whether the scheme is a defined contribution scheme or a defined benefit scheme.
- (5) The regulations may—
- (a) prescribe the circumstances in which an exemption under this section may be granted; and
  - (b) prescribe requirements that are to be complied with as a condition for the granting of such an exemption; and
  - (c) empower the Authority to revoke such an exemption for failure to comply with any requirements imposed as a condition of granting the exemption.

*(Replaced 4 of 1998 s. 2)*

**5A. Register of exempt schemes to be kept**

(Consolidated version as amended by 4 of 1998.)

- (1) The Authority must establish and maintain a register of occupational retirement schemes in respect of which an exemption has been granted under section 5. The register may be in such form, and contain such information, as the Authority may determine.
- (2) The register is to be kept at the head office of the Authority in Hong Kong.
- (3) Members of the public are entitled, without charge, to inspect the register during the ordinary business hours of the Authority.

*(Added 4 of 1998 s. 2)*

## **Part 2**

### **Mandatory Provident Fund Schemes Authority**

*(Format changes—E.R. 1 of 2013)*

**6. Establishment of Mandatory Provident Fund Schemes Authority**

- (1) There is established by this section a corporation with the corporate name of “Mandatory Provident Fund Schemes Authority”.
- (2) The Authority—

- (a) has perpetual succession; and
  - (b) may take legal proceedings and be proceeded against in its corporate name; and
  - (c) may, for the purpose of enabling it to exercise or perform its functions—
    - (i) acquire, hold and dispose of real and personal property; and
    - (ii) enter into and carry out, any agreement with the Government for the management and control by the Authority of any property held, or managed and controlled, by the Government; and
    - (iii) enter into and carry out, any agreement with the Government for the employment by, or the secondment to, the Authority of any specified public officers or specified class of public officers; and
    - (iv) enter into, carry out, assign or accept the assignment of, vary or rescind, any contract, agreement or other obligation; and
  - (d) may do, and be subject to, all other things that bodies corporate may do and be subject to and that are necessary for, or are incidental to, the exercise of its functions.
- (3) The Authority is required to have a seal.

*(Replaced 4 of 1998 s. 2)*

**6A. Membership of Authority**

- (1) The Authority is to consist of not fewer than 10 directors appointed by the Chief Executive.
- (2) Of the directors—
  - (a) not fewer than 4 are to be executive directors; and
  - (b) the remainder are to be non-executive directors.
- (3) Of the non-executive directors—
  - (a) at least 1 but no more than 2 are to be persons who, in the opinion of the Chief Executive, represent the interests of participating employers; and
  - (b) at least 1 but no more than 2 are to be persons who, in the opinion of the Chief Executive, represent the interests of relevant employees.
- (4) In appointing the directors, the Chief Executive must ensure that—
  - (a) a majority of the directors are non-executive directors; and
  - (b) the number of persons appointed to represent the interests of relevant employees is equal to the number of persons appointed to represent the interests of participating employers.
- (5) A director must exercise a reasonable degree of care and diligence so as to ensure that the Authority exercises and performs its functions properly.

- (6) The Authority may exercise or perform any of its functions despite a vacancy in its membership.
- (7) Schedule 1A has effect with respect to the directors and procedure of the Authority.

*(Added 4 of 1998 s. 2)*

**6B. Managing Director of Authority**

- (1) The Chief Executive is to appoint one of the executive directors as the Managing Director of the Authority.
- (2) The Managing Director—
  - (a) is the administrative head of the Authority and is responsible, subject to the direction of the Authority, for administering the affairs of the Authority; and
  - (b) has, subject to that direction, such other responsibilities as may be assigned by the Authority.

*(Added 4 of 1998 s. 2)*