

**MANDATORY PROVIDENT FUND SCHEMES ORDINANCE****CONTENTS**

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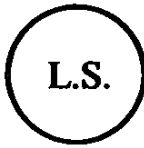
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**HONG KONG**

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ORDINANCE NO. 80 OF 1995



I assent.

Mrs. Anson CHAN,  
*Acting Governor.*  
*3 August 1995*

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, and to make consequential amendments to other Ordinances including pension related Ordinances, and for connected purposes.

[ ]

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

**PART I**

**PRELIMINARY**

**1. Short title and commencement**

(1) This Ordinance may be cited as the Mandatory Provident Fund Schemes Ordinance.

(2) This Ordinance shall come into operation on a day to be appointed by the Governor by notice in the Gazette, and different days may be so appointed for different provisions and for different purposes.

## 2. Interpretation

In this Ordinance, unless the context otherwise requires—

- “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, derived from the contributions made by or in respect of that scheme member, together with the income or profits arising from any investments thereof, but taking into account any losses in respect thereof;
- “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 trustee approved by the Authority under section 20;
- “associate” (有聯繫者), in relation to a company or other body corporate, means a person specified in Schedule 8;
- “auditor” (核數師) has the same meaning as in the relevant Ordinance;
- “Authority” (監督) means the Mandatory Provident Fund Schemes Authority appointed by the Governor under section 6;
- “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;
- “corporate trustee” (公司受託人), in relation to a registered scheme, means a company that is an approved trustee or prospective approved trustee of the registered scheme;
- “the court” (法院) means the High Court within the meaning of the Supreme Court Ordinance (Cap. 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 (other than a registered scheme which is a master trust scheme) which is open to membership—
- (a) to the relevant employees of a single employer only; and
  - (b) where that employer is a company or other body corporate, to the relevant employees of its associates;

- “exempt person” (獲豁免人士) means a person or class of persons construed in accordance with section 4;
- “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;
- “master trust scheme” (集成信託計劃) means a registered scheme (other than a registered scheme which is an employer sponsored scheme) which is open to membership—
- (a) to the relevant employees of more than one employer;
  - (b) to self-employed persons; or
  - (c) to other persons with accrued benefits in a registered scheme;
- “maximum level of relevant income” (最高有關入息水平) means the level of relevant income specified in Schedule 2 above which level a statutory minimum contribution to a registered scheme is not required;
- “minimum level of relevant income” (最低有關入息水平) means the level of relevant income specified in Schedule 3 below which level an employee or self-employed person has the option of not participating in a registered scheme;
- “prescribed” (訂明) means prescribed in regulations made under section 46 or rules made under section 47, as the case may be;
- “provident fund scheme” (公積金計劃) means a scheme governed by a trust—
- (a) the terms of which are comprised in one or more instruments or agreements; and
  - (b) which provides benefits, in the form of a lump sum payment payable to the scheme member, or to the estate of a scheme member, as the case may be, on that scheme member attaining retirement age or in the event of his earlier death or otherwise in accordance with regulations made under section 46,
- and includes a proposed provident fund scheme;
- “registered scheme” (註冊計劃) means a provident fund scheme registered under section 21;
- “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 (other than a housing allowance or other housing benefit), 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);

- (b) in the case of a self-employed person, income of that person prescribed and calculated in accordance with regulations made under section 46;
- “relevant Ordinance” (有關條例) means the Occupational Retirement Schemes Ordinance (Cap. 426);
- “retirement age” (退休年齡), in relation to a relevant employee or self-employed person, means 65 years of age or such earlier age as may be prescribed in regulations made under section 46;
- “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;
- “statutory corporation” (法定法團) means any body corporate not being a company;
- “statutory minimum contribution” (法定最低供款) shall be construed in accordance with section 8;
- “trustee” (受託人) includes a prospective trustee.

### 3. Application

This Ordinance binds the Government.

### 4. Exemptions

(1) The persons specified in Part I of Schedule 1 are exempt from the provisions of this Ordinance to the extent described therein.

(2) The Governor in Council may, from time to time, specify in Part II 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.

(3) Subject to subsections (4) and (5), any person entering Hong Kong for the purpose of being employed or self-employed—

(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 this Ordinance.

(4) The Authority may make rules under section 47 for the purpose of this section and those rules may include provisions specifying the circumstances in which the exemption of a person referred to in subsection (3) shall apply.

(5) In this section, “limited period” (有限期間) means a period determined in accordance with the rules referred to in subsection (4).

#### **5. Exemptions in respect of occupational retirement schemes**

(1) Any person to whom this subsection applies who is a member of an occupational retirement scheme within the meaning of the relevant Ordinance (and whether that scheme is a defined contribution scheme or a defined benefit scheme registered under the provisions of that Ordinance or is the subject of an exemption certificate issued under section 7(1) thereof), and the employer of such a person, shall be exempt from all or part of the provisions of this Ordinance in accordance with regulations referred to in subsection (2).

(2) Subsection (1) shall apply to a member of an occupational retirement scheme referred to in that subsection who satisfies the requirement of any regulations made for that purpose under section 46 and those regulations may include provisions specifying the circumstances in which all or part of the provisions of this Ordinance shall apply or not apply, as the case may be, to that member, or any person within a class of members so specified, or to his employer.

## **PART II**

### **MANDATORY PROVIDENT FUND SCHEMES AUTHORITY**

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

(1) Subject to subsection (5), the Governor may appoint a public officer other than the Financial Secretary, or any other person, as the Mandatory Provident Fund Schemes Authority for the purposes of this Ordinance.

(2) The functions of the Authority are—

- (a) to be responsible for ensuring compliance with the provisions of this Ordinance;
- (b) to register provident fund schemes as registered schemes;
- (c) to approve trustees;
- (d) to regulate, and to be responsible for the prudential supervision of, approved trustees;
- (e) to make rules in relation to the payment of statutory minimum contributions and the administration, management, maintenance and regulation of registered schemes in respect of such contributions; and



(f) to perform such other functions as are imposed on the Authority under this or any other Ordinance.

(3) The Authority may make and publish in the Gazette or otherwise guidelines, for the guidance of employers, employees, self-employed persons, trustees and other persons concerned with registered schemes, which guidelines may include guidance as to how the Authority proposes or intends to exercise the Authority's functions under this Ordinance.

(4) The Governor may give directions generally or in any particular case with respect to the exercise by the Authority of the Authority's functions and the Authority shall comply with such directions.

(5) In the absence of any appointment under subsection (1), the Financial Secretary, or in his absence or incapacity, his representative shall be the Authority.

### PART III

#### CONTRIBUTIONS

#### **7. Establishment of a provident fund scheme and obligation to contribute**

(1) Subject to subsection (2), every employer shall secure in writing the obligation of the approved trustee of a registered scheme to receive for the benefit of all the relevant employees of the employer concerned the statutory minimum contributions in respect of those relevant employees (who have been in his employ for a period of not less than 60 days).

(2) Where the relevant employee of an employer referred to in subsection (1) has been in the employ of that employer for a period of 60 days or more—

(a) the employer shall contribute to the registered scheme in accordance with this section for the whole period of the employment of that relevant employee, including the first 60 days of that employment; and

(b) the relevant employee's contribution shall apply to the whole period of the employment of that relevant employee, excluding the first 30 days of that employment.

(3) Every employer shall—

(a) subject to section 10, contribute to the registered scheme from his own resources a sum ("employer's contribution") equivalent to the percentage contribution specified in Part I of Schedule 4 in respect of the relevant income of each relevant employee in his employ;

- (b) subject to sections 9 and 10, deduct from the relevant income of each relevant employee in his employ a sum (“relevant employee’s contribution”) equivalent to the percentage contribution specified in Part II of Schedule 4 in respect of that relevant income;
- (c) no later than 7 working days following the payment by the employer of relevant income (less the deductions under paragraph (b)) to the relevant employees in his employ, remit to the trustee of the registered scheme the aggregate of the employer’s contributions in respect of all of those relevant employees, together with all the relevant employees’ contributions.

(4) Subject to sections 9 and 10, every self-employed person shall become a member of a registered scheme and shall contribute to the registered scheme from his own resources and for his own benefit a sum (“self-employed person’s contribution”) equivalent to the percentage contribution specified in Part III of Schedule 4 in respect of his relevant income in accordance with regulations made under section 46.

(5) Without prejudice to any right, benefit or entitlement under a registered scheme, no relevant employee shall have any claim against his employer in relation to any relevant employee’s contributions that his employer has deducted from that relevant employee’s relevant income.

(6) The regulations referred to in subsection (4) may include the following requirements, namely—

- (a) prescribing the methods of the calculation of the relevant income of a self-employed person;
- (b) prescribing what constitutes, and what does not constitute, relevant income for the purpose of those calculations;
- (c) prescribing when a self-employed person’s contributions in respect of relevant income of a self-employed person become due and payable;
- (d) the making of reports to the Authority in respect of the relevant income of self-employed persons.

(7) The Authority may make rules under section 47 to prescribe measures to be taken by employers, relevant employees, self-employed persons and trustees of registered schemes for the purpose of compliance with subsections (1), (2), (3) and (4).

## **8. Statutory minimum contribution**

(1) The statutory minimum contribution in relation to a registered scheme shall, in respect of the relevant income of relevant employees, be the aggregate of sums equivalent to the percentage contributions by the employer

and his relevant employees as specified in Parts I and II respectively of Schedule 4.

(2) The statutory minimum contribution in relation to a registered scheme shall, in respect of the relevant income of self-employed persons, be a sum equivalent to the percentage contribution specified in Part III of Schedule 4.

#### **9. Minimum level of income for contribution purposes**

A relevant employee or self-employed person whose relevant income is less than the minimum level of relevant income specified in Schedule 3 shall not be required to contribute in relation to a registered scheme but, in the case of a relevant employee, may by notice in writing to his employer elect to do so.

#### **10. Maximum level of income for contribution purposes**

(1) A relevant employee or self-employed person whose relevant income is more than the maximum level of relevant income specified in Schedule 2 shall not be required to contribute in relation to a registered scheme in respect of the excess relevant income but, in the case of a relevant employee, may by notice in writing to his employer elect to do so.

(2) Where a relevant employee referred to in subsection (1) elects to contribute in relation to a registered scheme in respect of his excess relevant income, his employer shall make deductions and remittances in accordance with section 7 in respect of that relevant employee and may contribute in relation to the registered scheme in respect of his relevant employee's excess relevant income but is under no obligation to so contribute.

#### **11. Non-mandatory contributions**

(1) Any contributions in relation to a registered scheme by an employee who before his attainment of retirement age was a relevant employee ("former relevant employee") after he attains retirement age but remains in employment, or any contributions in relation to a registered scheme by his employer in respect of that former relevant employee, shall be voluntary and subject to the governing rules of the registered scheme.

(2) Any contributions in relation to a registered scheme by a self-employed person after he attains retirement age but remains in business shall be voluntary and subject to the governing rules of the registered scheme.

(3) A relevant employee may contribute in relation to a registered scheme more than the percentage contribution specified in Part II of Schedule 4 in respect of his relevant income.

(4) An employer may contribute in relation to a registered scheme more than the percentage contribution specified in Part I of Schedule 4 in respect of the relevant income of his relevant employees but is under no obligation to so contribute in excess of that percentage contribution even where his relevant employee does so contribute in accordance with subsection (3).

(5) Subject to subsection (6), any accrued benefits arising from contributions made in relation to a registered scheme under this section or under section 10 (“excess contributions”) shall be subject to all the provisions of this Ordinance.

(6) Subsection (5) shall not apply where a specified notice (specified in accordance with rules made by the Authority under section 47) is given by an employer or a scheme member to the trustee of a registered scheme in respect of excess contributions if the Authority has granted to that person an exemption from, or modifications to, the requirements in respect of registered schemes as to the vesting of contributions as accrued benefits (section 12), the preservation of accrued benefits derived from contributions (section 13), the portability or transferability of accrued benefits (section 14) or in accordance with regulations made under section 46 in respect of those excess contributions.

## **12. Vesting of contributions as accrued benefits**

(1) Every contribution in respect of a registered scheme made in accordance with this Ordinance and attributable to membership in the registered scheme of a scheme member and for the account of that scheme member shall forthwith vest in the scheme member as accrued benefits.

(2) Any income or profits arising from the investment of those accrued benefits in respect of a scheme member made by or on behalf of the trustee of the registered scheme (but taking into account any loss arising in respect of any such investment) shall also vest in the scheme member as accrued benefits.

(3) The total amount of accrued benefits vested from time to time in scheme members under this section shall be calculated in accordance with rules made by the Authority under section 47.

## **13. Preservation of accrued benefits derived from contributions**

For the purpose of preserving accrued benefits in registered schemes—

- (a) no trustee of a registered scheme shall pay or otherwise dispose of any part of those accrued benefits to any scheme member or any other person otherwise than in accordance with the provisions of this Ordinance;

- (b) no relevant employee or self-employed person shall have any right or entitlement to those accrued benefits otherwise than in accordance with the provisions of this Ordinance.

#### **14. Portability or transferability of accrued benefits**

(1) Where a relevant person changes or ceases employment, then the relevant person, his former employer (if applicable), his new employer (if applicable) and the trustees of the registered schemes concerned shall, for the purpose of transferring accrued benefits to, from and between registered schemes or, alternatively, for the purpose of retaining accrued benefits within registered schemes which are master trust schemes, comply with regulations made under section 46 to achieve that purpose (as appropriate) as expeditiously as possible.

(2) The regulations referred to in subsection (1) may include requirements as to—

- (a) the notifications to be made to the trustees of registered schemes by relevant persons, former employers and new employers in respect of changes or cessation of employment of relevant persons;
- (b) the circumstances under which the trustee of a registered scheme may or shall transfer the relevant person's accrued benefits to the trustees of another registered scheme; and
- (c) the procedures for transfers by, to and between the trustees of such registered schemes.

(3) In this section—

“employment” includes self-employment;

“relevant person” (有關人士) means—

- (a) a former relevant employee who becomes a self-employed person;
- (b) a former self-employed person who becomes a relevant employee;
- or
- (c) a relevant employee.

#### **15. Withdrawal of accrued benefits**

(1) A scheme member who has attained retirement age shall, in relation to the registered scheme of which he is a scheme member, be entitled as of right to have paid to him by the trustee of that registered scheme the entirety of his accrued benefits in the registered scheme in a lump sum.

(2) A scheme member who has not attained retirement age but has attained the age specified in Schedule 7 and certifies to the trustee of the registered scheme of which he is a scheme member by statutory declaration in the form prescribed by the Authority in rules made under section 47 that he has

permanently ceased his employment or self-employment, or is otherwise included in a class of persons specified for that purpose in regulations made under section 46, shall be entitled as of right to have paid to him by the trustee of that registered scheme the entirety of his accrued benefits in the registered scheme in a lump sum.

(3) The regulations referred to in subsection (2) may specify the circumstances in which the early withdrawal of accrued benefits in a registered scheme may be permitted and such circumstances may include the permanent departure from Hong Kong of the scheme member or the total disability or incapacity of the scheme member, or, in respect of that part of accrued benefits which are derived from a current employer's contributions (quantified in accordance with rules made by the Authority under section 47), at such time as a relevant employee becomes entitled to severance payments or long service payments under the Employment Ordinance (Cap. 57) for the purpose of set-off as prescribed in that Ordinance.

(4) Upon the death of a scheme member the trustee of the registered scheme in respect of that scheme member shall pay to the personal representatives (within the meaning of the Probate and Administration Ordinance (Cap. 10)) of the deceased scheme member the entirety of his accrued benefits in a lump sum, or, if there are no personal representatives of the deceased scheme member or they are not willing to act as such, otherwise make such payment in accordance with regulations made under section 46.

## **16. Protection of accrued benefits**

No part of any accrued benefits in a registered scheme in respect of a scheme member shall be taken in execution of a judgment debt or be the subject of any charge, pledge, lien, mortgage, transfer, assignment or alienation by or on behalf of the scheme member and any purported disposition to the contrary shall be void and of no effect.

## **17. Compensation for losses in respect of accrued benefits**

(1) Subject to subsection (2), the Authority may establish a compensation fund for the purpose of compensating any scheme member for any losses in respect of accrued benefits attributable to his membership of a registered scheme caused by misfeasance or illegal conduct determined by the court on the application of the Authority by the trustee of the registered scheme or by any other person in respect of the administration, management and maintenance of the registered scheme.

(2) An application under subsection (1) shall only be made to the court by the Authority—

- (a) where the Authority has reasonable grounds for believing that a loss in respect of accrued benefits has occurred in the circumstances described in that subsection; and
- (b) in accordance with rules made by the Chief Justice for that purpose and those rules may include provisions as to procedure or otherwise.

(3) For the purpose of the compensation fund referred to in subsection (1) and the cost of the administration thereof, the Authority may impose such levies, and at such rates in respect thereof, to be payable by the trustee of a registered scheme out of contributions in relation to the registered scheme in accordance with, and subject to such limits as may be specified in regulations made under section 46.

(4) The regulations referred to in subsection (3) shall prescribe the rate of levy as a percentage of the value (as determined at a date or dates as may be prescribed in those regulations) of the assets of a registered scheme and may specify whether the payment of the levy is by way of a one off payment or by way of a continuing obligation.

(5) The Authority may make rules under section 47 for the purpose of this section and those rules may include provisions relating to the administration, management and maintenance of the compensation fund, the appointment of persons to act as administrators thereof, and for the payment of claims to make good losses in respect of accrued benefits.

(6) The Financial Secretary may provide grants or loans out of moneys from the general revenue that may be provided by the Legislative Council for that purpose to the persons appointed to act as administrators of the compensation fund for the purposes of that fund and on such terms as may be specified by the Authority.

(7) Any person (including the trustee of a registered scheme) whose act or omission causes, or has caused, any loss in respect of the accrued benefits of a scheme member and which loss is subsequently compensated from the compensation fund shall be liable to repay such sum (not exceeding the amount of the loss) and interest thereon as the court may order and that sum and interest (once recovered) shall be paid to the Authority for the purpose of reimbursing the compensation fund.

## **18. Default contributions**

(1) Where the amount of any statutory minimum contribution is payable by any person in respect of a registered scheme (including for this purpose a Residual Provident Fund Scheme) in accordance with this Ordinance, but in respect of which no payment has been made by that person in default, then the amount of that non-payment (“arrears”) shall constitute a debt due and payable to the Authority.

(2) The Authority may recover those arrears in accordance with regulations made under section 46.

(3) Any arrears recovered by the Authority shall be paid by the Authority to the approved trustee of the registered scheme in respect of the scheme members concerned in relation to that registered scheme and to which approved trustee those arrears would otherwise have been paid had no default occurred.

### **19. Powers of Authority in relation to mandatory contributions**

(1) Any person authorized by the Authority in writing (“authorized person”) for the purpose, and on production of that authority, may for the purpose of ensuring compliance with the provisions of this Ordinance and for no other purpose—

- (a) subject to subsection (2), enter, inspect and examine at any reasonable time, by day or night, any premises or place, in which he knows or reasonably believes relevant employees or self-employed persons are employed or carrying on business;
- (b) require any person found in those premises or place or any other person to produce any register, record, form or other document required to be kept under this Ordinance or otherwise in that other person’s possession or under his control and inspect, examine and copy the same;
- (c) make such examination and inquiry as may be necessary to ascertain whether the requirements of this Ordinance applicable to employers, relevant employees and self-employed persons are being complied with, and may seize anything which may appear to the authorized person to be or contain evidence of an offence against this Ordinance;
- (d) exercise any other powers which may be conferred on the authorized person by any regulations made under section 46.

(2) No premises or place or part thereof which is or are being used for the purposes of a private dwelling shall be entered by an authorized person under subsection (1), except under or by virtue of a warrant issued by a magistrate for that purpose, if the magistrate is satisfied by information on oath that there is reasonable grounds for suspecting that an offence against this Ordinance has been, is being, or is about to be committed in those premises or that place or part thereof, or that there is in those premises or that place or part thereof anything which may appear to the authorized person to be or contain evidence of that offence.



## PART IV

## MANDATORY PROVIDENT FUND SCHEMES

**20. Approved trustees**

(1) Every registered scheme, other than a master trust scheme, shall be administered, managed and maintained by a trustee who is an approved trustee.

(2) Every registered scheme which is a master trust scheme shall be administered, managed and maintained by a trustee, being a corporate trustee, who is an approved trustee.

(3) A trustee, corporate trustee or other person may apply to the Authority to be approved as an approved trustee of a registered scheme but no person, being a public officer or statutory corporation, may so apply.

(4) An application for such approval shall be in such form and contain such particulars as may be prescribed in rules made by the Authority under section 47.

(5) Upon receipt of an application made under this section the Authority may require the applicant to furnish such additional information and other documents as the Authority may reasonably require for the purpose of determining the application.

(6) The Authority shall approve an application for approval if, and only if, the Authority is satisfied that the applicant—

- (a) is likely to be able to perform, in the proper manner, the duties of an approved trustee of a registered scheme; and
- (b) meets such requirements as may be specified in regulations made under section 46, including requirements as may be so specified as to capital adequacy, financial resources and the particular qualifications of applicants as approved trustees.

(7) The approval of an applicant as an approved trustee may be made subject to such conditions as may be specified in the notice of approval of the Authority to the applicant concerned.

(8) The approval may be revoked at any time by the Authority if the Authority is satisfied on reasonable grounds that—

- (a) the approved trustee has contravened a condition to which the approval is subject;
- (b) the approved trustee is unable to perform, in the proper manner and for whatever reason, the duties of an approved trustee of a registered scheme; or

- (c) where regulations specify the requirements referred to in subsection (6)(b) as to capital adequacy, financial resources or the particular qualifications of an applicant as an approved trustee, the approved trustee is, or has become, unable to meet those requirements.

(9) The regulations referred to in subsection (6)(b) may, in addition to the requirements referred to in that subsection, include requirements relating to the following, namely—

- (a) in the case of an application for the approval of a corporate trustee (“company”) as an approved trustee—
  - (i) the membership of the company;
  - (ii) the objects of the company as set out in its memorandum and articles of association or other instruments (however described) to the like effect;
  - (iii) the suitability of the company’s directors (however described), regard being paid to their reputation, character, knowledge, qualifications and experience;
  - (iv) if the place of incorporation of that company is other than Hong Kong, that place of incorporation, regard being paid to the relevant laws of that place of incorporation, including any laws governing companies and trusts;
- (b) in the case of an application for approval in respect of a trustee, other than a corporate trustee, the suitability of the applicant to be an approved trustee, regard being paid to his reputation, character, knowledge, qualifications and experience;
- (c) the capital adequacy and financial soundness of the approved trustee including, in the case of individuals, performance guarantees;
- (d) the reporting of information to the Authority in respect of the business and other affairs (if any) of the approved trustee.

## **21. Registered schemes**

(1) An application may be made by an approved trustee or by an applicant seeking approval as such to the Authority for the registration of a provident fund scheme as a registered scheme.

(2) An application for such registration shall be in such form and contain such particulars as may be prescribed in rules made by the Authority under section 47.

(3) Upon receipt of an application under this section the Authority may require the applicant to furnish such additional information and other documents as the Authority may reasonably require for the purpose of determining the application.

- (4) The Authority shall register the provident fund scheme if, and only if—
- (a) the trust governing the provident fund scheme specifies that the governing law in respect of that trust is the law of Hong Kong; and
  - (b) the provident fund scheme complies with regulations made under section 46 for that purpose and which regulations may include requirements relating to the specification of standards.
- (5) The standards referred to in subsection (4) may include standards relating to the following, namely—
- (a) the vesting in scheme members of accrued benefits;
  - (b) the amount of contributions that the approved trustees of a registered scheme may accept;
  - (c) the preservation of accrued benefits;
  - (d) the payment of accrued benefits;
  - (e) the portability or transferability of accrued benefits to, from and between registered schemes;
  - (f) the investment of the assets of a registered scheme;
  - (g) the number of approved trustees, and in the case of an approved trustee, being a corporate trustee, the composition of the board of that corporate trustee and the composition of any committees of that board;
  - (h) the keeping of records in relation to a registered scheme;
  - (i) the financial reports to be prepared in relation to a registered scheme;
  - (j) the disclosure of information to scheme members in relation to a registered scheme;
  - (k) the disclosure of information to the Authority in relation to a registered scheme;
  - (l) the disclosure of information to other persons authorized by the Authority in relation to a registered scheme;
  - (m) the financial viability of a registered scheme;
  - (n) the funding and solvency of a registered scheme; and
  - (o) the winding up of a registered scheme.

## **22. Trustee to maintain standards**

An approved trustee shall ensure that the standards that may be specified in regulations referred to in section 21(4) are complied with at all times in relation to the registered scheme administered, managed and maintained by that approved trustee.

### 23. Residual Provident Fund Scheme

(1) The Authority shall, prior to the commencement of any of the provisions of section 7, take all necessary steps to cause to be established a registered scheme (being a master trust scheme), to be known as the “Residual Provident Fund Scheme”, for the principal purpose referred to in subsection (2) and shall authorize a corporate trustee to be the approved trustee thereof.

(2) The principal purpose of the Residual Provident Fund Scheme established under subsection (1) is to provide, as a last resort only, membership of that Scheme to a relevant employee of an employer, or to a self-employed person where that employer or self-employed person, as the case may be—

- (a) (i) in the case of the employer, declares in writing to the Authority that he has not, through his own efforts or otherwise, been able to comply with the requirements of section 7(1); or
- (ii) in the case of the self-employed person, declares in writing to the Authority that he has not, through his own efforts or otherwise, been able to become a member of a registered scheme as required under section 7(4);
- (b) authorizes the Authority to assist him in obtaining access to a registered scheme for the purpose of compliance with the requirements referred to in paragraph (a), as applicable;
- (c) provides to the Authority all information and assistance as may reasonably be required by the Authority for that purpose, and

in respect of that employer or self-employed person, as the case may be, the Authority has not succeeded in obtaining access to a registered scheme which would otherwise enable compliance with the requirements referred to in paragraph (a).

(3) If, in the opinion of the Authority, it is desirable to do so, the Authority may authorize the Residual Provident Fund Scheme to have the following additional purposes—

- (a) to facilitate portability or transferability of accrued benefits to, from or between registered schemes;
- (b) to provide for any unclaimed accrued benefits; and
- (c) to achieve any other purposes of this Ordinance.

(4) The Authority may make rules under section 47 for the purpose of this section for the efficient and effectual operation of the Residual Provident Fund Scheme.

(5) In this section “employer” (僱主) includes a prospective employer, and “self-employed person” (自僱人士) includes a prospective self-employed person.

**24. Trustee's covenants in respect of governing rules**

Where the governing rules of a registered scheme do not expressly contain covenants by the approved trustee of the registered scheme to the same, or substantially the same, effect as the implied covenants specified in Schedule 5 as to the discharge of the fiduciary duties of approved trustees, the performance of their functions and the exercise of their powers in relation to registered schemes, those governing rules shall apply as if the implied covenants in that Schedule were expressly contained therein and any contrary provision in those governing rules purporting otherwise shall be void and of no effect.

**25. Duty of corporate trustees' directors**

The covenants by an approved trustee whether expressed in the governing rules of a registered scheme or implied under section 24 shall, in the case of an approved trustee, being a corporate trustee, be construed to require each of the directors (however described) of that corporate trustee to exercise a reasonable degree of care and diligence to ensure that the approved trustee carries out those covenants and complies with any standards that may be specified in the regulations referred to in section 21(4) in the same manner as if those directors were bound personally by those governing rules, covenants and standards.

**26. Limit on indemnity**

A provision in the governing rules of a registered scheme is void and of no effect in so far as it purports to exempt an approved trustee from, or purports to indemnify that approved trustee against—

- (a) liability for breach of trust where the approved trustee—
  - (i) fails to act honestly in a matter concerning the registered scheme; or
  - (ii) intentionally or recklessly fails to exercise, in relation to a matter affecting that registered scheme, the degree of care and diligence required of a trustee in exercising powers (whether express or implied) in relation to a trust; or
- (b) liability for a fine or penalty imposed by law.

**27. Duties of approved trustees to comply with regulations**

(1) An approved trustee shall comply with such duties in relation to a registered scheme as may be imposed in regulations made under section 46 and those regulations may provide for the imposition of financial penalties in the event of non-compliance.

(2) The duties imposed by the regulations referred to in subsection (1) may include the following, namely—

- (a) the duty to collect or receive statutory minimum contributions;
- (b) the duty to exercise sufficient and adequate control over the investment of accrued benefits in relation to a registered scheme, including the control and supervision of persons responsible for such investment;
- (c) the duty to make arrangements for receiving and dealing expeditiously with inquiries and complaints by scheme members in relation to a registered scheme;
- (d) the duty to keep and retain records in respect of scheme members in relation to a registered scheme;
- (e) the duty to give to the Authority any information or document in the approved trustee's possession or under his control as may be required by the Authority;
- (f) the duty to report events of a significant nature to the Authority in relation to a registered scheme;
- (g) the duty to keep accounting records which record and explain the transactions and financial position of a registered scheme at a current date;
- (h) the duty to prepare at regular intervals a balance sheet and statement of account in relation to a registered scheme.

(3) Any duty to which an approved trustee is, was or would normally be subject shall be construed as modified or adapted in so far as is necessary to accord with the regulations referred to in subsection (1).

**28. Authority may publish guidelines on forbidden investment practices in relation to registered schemes**

(1) The Authority may, after consultation with the Financial Secretary, make and publish in the Gazette or otherwise guidelines, for the guidance of the trustees of registered schemes, specifying which investment practices ("forbidden investment practices") shall not be undertaken by approved trustees of registered schemes because, in the opinion of the Authority, the forbidden investment practices may or are likely to prejudice the financial soundness of those registered schemes.

(2) For the purposes of subsection (1), the guidelines made under that subsection may be expressed to apply to all registered schemes or to a class of registered schemes specified therein.

(3) Where a trustee of a registered scheme undertakes any forbidden investment practice as may be specified in guidelines made under subsection (1), the Authority may exercise any of the Authority's powers under section 33 in respect of the trustee of the registered scheme.

## **29. Restricted investments**

(1) Trustees of registered schemes shall comply with such limitations or prohibitions in respect of the investment of the assets of registered schemes in any restricted investments as may be specified in regulations made under section 46.

(2) In this section "restricted investments" (受限制投資項目) means any investments in respect of an employer (or an associate of an employer) who is employing scheme members comprising—

- (a) loans to that employer or associate, as the case may be, other than loans made by way of deposits with authorized institutions within the meaning of the Banking Ordinance (Cap. 155);
- (b) shares or other securities of, or issued by, that employer or associate, as the case may be.

## **30. Report of auditor**

(1) If the Authority reasonably believes that circumstances exist or have existed which may prejudice the interest of any scheme member in relation to a registered scheme, the Authority may by notice in writing served on the approved trustee of that registered scheme require the approved trustee to cause to be prepared by an auditor (approved by the Authority) a report into those circumstances and such other circumstances or matters as may be specified in the notice and to supply the Authority with the report when prepared within such period as may be specified in the notice.

(2) The Authority may publish the report or supply the report to the scheme member referred to in subsection (1).

(3) Any approved trustee who without reasonable excuse fails to comply with a notice in writing referred to in subsection (1) commits an offence and is liable on summary conviction to a fine at level 2.

## **31. Information and documents**

(1) The Authority may by notice in writing served on an approved trustee of a registered scheme require the approved trustee to give to the Authority within such period as may be specified in the notice any information or document in the approved trustee's possession or under his control as may be specified in the notice and which relates to the registered scheme.

(2) Any approved trustee who without reasonable excuse fails to comply with a notice in writing referred to in subsection (1) commits an offence and is liable on summary conviction to a fine at level 6.

### **32. Investigation**

(1) If the Authority reasonably believes that—

- (a) a contravention of this Ordinance by any person has occurred in relation to a registered scheme;
- (b) circumstances may exist which may be prejudicial to the interests of scheme members; or
- (c) the trustee of a registered scheme is or has been in breach of his duties in relation to that registered scheme,

the Authority may by notice in writing served on the approved trustee of the registered scheme notify him that the Authority intends to conduct an investigation into the circumstances or other matters the subject of the notice, and forthwith shall conduct an investigation into the affairs of the registered scheme.

(2) The Authority may appoint one or more competent persons to be inspectors to carry out the investigation referred to in subsection (1) in accordance with rules made by the Authority under section 47.

(3) For the purpose of conducting an investigation, an inspector appointed under subsection (2) may—

- (a) subject to paragraph (d), if he reasonably believes that it is necessary to enter any premises or place or part thereof which may have some connection with a registered scheme he may, at any reasonable time, enter those premises or that place or part thereof and inspect and make copies of any documents or records found on those premises or in that place or part thereof and which he reasonably believes may relate to the financial or other affairs of the registered scheme;
- (b) require any trustee of a registered scheme or any other person who he reasonably believes has custody of any documents or records relating to the financial or other affairs of the registered scheme to produce to the inspector those documents and records;
- (c) require any trustee of a registered scheme or any other person who he reasonably believes may have knowledge of or information concerning the financial or other affairs of the registered scheme to—
  - (i) give all reasonable assistance to the inspector in connection with the investigation;



- (ii) appear before the inspector at a time and place the inspector may specify in writing or otherwise for an examination of circumstances or other matters relevant to the financial or other affairs of the registered scheme and answer any questions that the inspector may put to him;
- (d) in the case where the premises are, or the place or part thereof is, being used for the purpose of a private dwelling, apply to a magistrate for a warrant for the purpose of conducting a search of those premises or that place or part thereof which may have some connection with a registered scheme and on or in which the inspector reasonably believes documents or records relating to the financial or other affairs of the registered scheme to be located, and in such a case he may take possession of those documents or records.

(4) If an inspector is satisfied that any person has, without reasonable excuse, failed to comply with any reasonable request in respect of his investigation or any requirement made under this Ordinance in respect of that investigation he may by complaint to the court certify the failure of that person to so comply.

(5) On the receipt of a certificate made under subsection (4), the court may inquire into the case and, after hearing any statement that may be offered by way of an explanation by the person the subject of the complaint, may accept that explanation or alternatively punish that person in like manner as if he had been found guilty of a contempt of court.

(6) A person is not excused from answering a question that may be put to him by an inspector under this section on the ground that the answer may tend to incriminate him but, where such person claims, before answering the question, that the answer may tend to so incriminate him, neither the question put to him by the inspector nor the answer of the person concerned shall be admissible in evidence against that person in criminal proceedings other than in such proceedings in relation to a charge of perjury in respect of the answer.

(7) Any person who fails to produce any document or record required to be produced under subsection (3) with the intention of obstructing, delaying or otherwise frustrating the commencement, progress or completion of an investigation under this section commits an offence and is liable on summary conviction to a fine at level 6 and to imprisonment for 1 year.

(8) On the completion of an investigation by an inspector under this section, the inspector shall prepare a report setting out his findings concerning the circumstances or other matters investigated by him and any other relevant matters arising out of the investigation that the inspector reasonably believes should be included in the report and shall submit that report to the Authority.

(9) The Authority shall, on receipt of the report referred to in subsection (8), provide a copy of that report to the trustee of the registered scheme in relation to which the investigation was conducted, may provide a copy of that report to any scheme member or to any other person that the Authority may determine to have an interest in that registered scheme, and may publish the report or any part of it.

(10) Nothing in this section shall require disclosure to an inspector appointed under subsection (2)—

- (a) by a solicitor of any privileged communication made to him in that capacity, except as respects the name and address of his client; or
- (b) by an authorized institution within the meaning of the Banking Ordinance (Cap. 155) relating to the affairs of a customer unless—
  - (i) that customer is a person who the inspector has reason to believe may be able to give information relevant to the investigation; and
  - (ii) the Authority is satisfied that the disclosure is necessary for the purposes of the investigation and certifies in writing that this is the case.

### **33. Suspension or removal of approved trustees**

(1) The Authority may suspend or remove an approved trustee of a registered scheme in accordance with regulations made under section 46 if—

- (a) it appears to the Authority that the conduct of the approved trustee in relation to that registered scheme has, had or may have an adverse effect on the financial position of the registered scheme; or
- (b) the Authority has revoked the approval of the approved trustee in accordance with section 20(8).

(2) The suspension of an approved trustee of a registered scheme may be for such period or periods as the Authority may determine, and in such a case approval in respect of that approved trustee shall also be suspended.

(3) The Authority shall by notice in writing served on the approved trustee of a registered scheme who is suspended or removed under this section state the decision and the reasons for that decision.

(4) Upon the suspension or removal of an approved trustee of a registered scheme (“original approved trustee”) under this section the Authority shall appoint another approved trustee to take his place and act as the approved trustee of the registered scheme (“replacement approved trustee”) during the period of the suspension of the original approved trustee or until the vacancy created by the removal of that original approved trustee is filled.

(5) Notwithstanding any other provision in this Ordinance or in the governing rules of the registered scheme, the Authority may determine the terms and conditions of appointment of a replacement approved trustee appointed to act as such under subsection (4), including the payment of any fees to that replacement approved trustee.

(6) The Authority may terminate at any time the appointment of a replacement approved trustee appointed to act as such under subsection (4) but, if the original approved trustee has been suspended and the period of his suspension has not expired, or the original approved trustee has been removed, the Authority may appoint another replacement approved trustee under subsection (4) in the place of the replacement approved trustee whose appointment has been terminated.

(7) A replacement approved trustee appointed to act as such under subsection (4) may resign at any time by notice in writing delivered personally to the Authority but such resignation shall not take effect earlier than a day which is not less than 7 clear days after the date of delivery of the notice to the Authority.

(8) Upon the appointment of a replacement approved trustee appointed to act as such under subsection (4) the Authority shall make an order vesting the legal interest in the property of the registered scheme in that replacement approved trustee.

(9) Upon the replacement approved trustee appointed to act as such under subsection (4) ceasing to hold office as a replacement approved trustee the Authority shall make an order vesting the legal interest in the property of the registered scheme in the original approved trustee whose suspension has ceased or alternatively in another replacement approved trustee as the Authority may appoint.

### **34. Winding up**

The Authority may initiate the winding up of a registered scheme in accordance with regulations made under section 46 or apply to the court for an order for the winding up of that registered scheme in accordance with those regulations.

## **PART V**

### **APPEALS**

### **35. Appeal Board**

(1) Any person aggrieved by any decision specified in Schedule 6 may appeal to an Appeal Board to be known as the Mandatory Provident Fund Schemes Appeal Board.

(2) The Governor shall appoint a person to be the Chairman of the Appeal Board and such other person or such number of other persons as he thinks fit to be the Deputy Chairman or Deputy Chairmen of the Appeal Board.

(3) Subject to subsection (7), the Chairman or any Deputy Chairman shall be appointed for a term of not more than 2 years but may be reappointed.

(4) A person appointed under subsection (2) shall be a solicitor or barrister admitted under the Legal Practitioners Ordinance (Cap. 159).

(5) The Governor shall appoint a panel of persons not being public officers whom he considers suitable for appointment under section 36 as members of the Appeal Board.

(6) An appointment under subsection (2) or (5) shall be notified in the Gazette.

(7) The Chairman and any Deputy Chairman or person appointed under subsection (5) may at any time resign by notice in writing to the Governor.

(8) The Chairman and any Deputy Chairman or person appointed under subsection (5) shall be remunerated out of money provided by the Legislative Council for that purpose at a rate that the Financial Secretary may determine.

### **36. Constitution and powers of Appeal Board**

(1) The Appeal Board shall consist of the Chairman or any Deputy Chairman who shall preside at the hearing and such number of persons, not being fewer than 2, from the panel referred to in section 35(5) as the Chairman may appoint to be members of the Appeal Board to hear any appeal.

(2) In relation to the hearing of appeals every question before the Appeal Board shall be determined by the opinion of the majority of the members hearing the appeal except a question of law which shall be determined by the Chairman or (where appropriate) the Deputy Chairman and in the case of an equality of votes the Chairman or Deputy Chairman shall have a casting vote.

(3) In hearing an appeal the Appeal Board may—

(a) receive and consider any material, whether by way of oral evidence, written statements, documents or otherwise, and whether or not it would be admissible in a court of law;

(b) by notice in writing signed by the Chairman, summon any person—

(i) to produce to it any document that is relevant to the appeal and is in his custody or under his control; or

(ii) to appear before it and to give evidence relevant to the appeal;

(c) administer oaths and affirmations;

(d) require evidence to be given on oath or affirmation;

(e) make an award of such sum, if any, in respect of the costs involved in the appeal as is just and equitable in all the circumstances of the case.

(4) After hearing an appeal made in respect of any decision specified in Schedule 6 the Appeal Board may uphold, vary or quash that decision and make such consequential orders as may be necessary.

### **37. Appeal Board's decision is final**

Subject to section 39, the determination of an appeal by the Appeal Board or any order as to costs made by the Appeal Board shall be final.

### **38. Supplementary provisions relating to appeals**

(1) The procedure and practice of the Appeal Board shall, subject to this Ordinance, be determined by the Chairman.

(2) If the Chairman is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, the Governor may appoint any Deputy Chairman to act as Chairman and as such to exercise all the functions of the Chairman during the period of his appointment.

(3) If a person appointed by the Chairman under section 36(1) to hear an appeal is precluded by illness, absence from Hong Kong or any other cause from exercising his functions, the Chairman may appoint any other person from the panel referred to in section 35(5) to act in his place.

(4) In the hearing of an appeal, the appellant and the Authority shall be entitled to be heard either in person or through a solicitor or barrister admitted under the Legal Practitioners Ordinance (Cap. 159) and if the appellant is a corporate trustee, through any of that corporate trustee's directors or employees or if a partnership, through any of the partners or, with the leave of the Appeal Board, through any other person.

(5) In relation to any appeal to the Appeal Board, the members of the Appeal Board, the appellant, and any witness, representative or other person appearing before the Appeal Board shall have the same privileges and immunities as they would have if the proceedings were civil proceedings before a court.

(6) Any sum awarded to the Authority under section 36(3)(e) shall constitute a debt due and payable to the Government and be recoverable in the District Court and any sum payable by the Authority under such an award shall be charged on the general revenue.

**39. Case may be stated for Court of Appeal**

(1) The Appeal Board may refer any question of law arising in an appeal to the Court of Appeal for determination by way of case stated.

(2) On the hearing of the case, the Court of Appeal may amend the case or order it to be sent back to the Appeal Board for amendment.

(3) Where a case is stated under subsection (1), the Appeal Board shall not determine the relevant appeal before the Court of Appeal determines the relevant point of law.

**40. Offences relating to appeal**

Any person who without reasonable excuse refuses or fails—

(a) to attend and give evidence when required to do so by the Appeal Board;

(b) to answer truthfully, and completely questions put to him by the Appeal Board;

(c) to produce any document which he is required by the Appeal Board to produce,

commits an offence and is liable on summary conviction to a fine at level 4.

**PART VI****MISCELLANEOUS****41. Preservation of secrecy**

(1) Subject to sections 30 and 42 and subsection (2), any person who acquires any information (including any information contained in any report referred to in section 7(6)(d)) by virtue of his performance or assistance in the performance of functions under this Ordinance shall preserve secrecy with regard to such information, and without prejudice to the foregoing shall not—

(a) disclose such information to any other person except where such disclosure is necessary to such performance or assistance; or

(b) suffer or permit any other person to have access to such information except where such access is necessary for that other person to perform or assist in the performance of functions under this Ordinance.

(2) Nothing in this section shall be construed as prohibiting disclosure of such information in pursuance of a court order, a rule of law or a requirement made under a rule of law.

(3) Subsection (2) shall not apply to any information contained in any report referred to in section 7(6)(d).

(4) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine at level 4.

#### **42. Disclosure by Authority**

(1) Notwithstanding section 41, the Authority may disclose information—

- (a) in the form of a summary compiled from information provided by persons under this Ordinance if the summary is so compiled as to prevent particulars relating to the business or identity of any such person being ascertained from it;
- (b) with a view to the institution of, or otherwise for the purposes of, any criminal proceedings or any investigation in Hong Kong;
- (c) in connection with any civil proceedings to which the Authority is a party;
- (d) subject to subsection (2), to the Governor, the Financial Secretary, the Secretary for Financial Services or the Commissioner of Inland Revenue, if the Authority reasonably considers that such disclosure is, in relation to a registered scheme, in the interests of the scheme members as a whole;
- (e) to such bodies as may have been specified for the purpose of this paragraph by the Authority in a notice published in the Gazette if, and only if, the Authority—
  - (i) is satisfied that the information is to be used only for the purposes of disciplinary proceedings regarding a member of that body or for the purpose of considering the institution of such proceedings; and
  - (ii) is of the opinion that such disclosure is desirable or expedient.

(2) The Authority shall not disclose any information to the Commissioner of Inland Revenue under subsection (1)(d) unless the Authority is satisfied that the information is required by the Commissioner for the purpose of assisting him to determine a question or matter which under the Inland Revenue Ordinance (Cap. 112) is for the Commissioner to determine.

(3) Subsection (1)(d) and (e) shall not apply to any information contained in any report referred to in section 7(6)(d).

(4) Where information is disclosed to any body under subsection (1)(e) neither that body, a member of that body nor any person obtaining or receiving the information, whether directly or indirectly, from that body or member, as the case may be, shall disclose the information to any other person without the consent in writing of the Authority.

(5) Any person (including a body or member of that body) who contravenes subsection (4) commits an offence and is liable on summary conviction to a fine at level 4.

### 43. Offences

(1) It shall be an offence for an employer without reasonable excuse—

- (a) to fail to comply with section 7(1);
- (b) to fail to comply with section 7(2);
- (c) to fail to comply with section 7(3)(a);
- (d) to fail to comply with section 7(3)(b);
- (e) to fail to comply with section 7(3)(c);
- (f) in the case where a relevant employee receives less than the minimum level of income in respect of his employment and elects to contribute to a registered scheme, to fail to remit to the approved trustee of that registered scheme the statutory minimum contribution payable in respect of that relevant employee;
- (g) in the case where this Ordinance confers upon a relevant employee an option to contribute to a relevant scheme, to impose upon that relevant employee, as a condition of his employment, a requirement that he shall not exercise his option to contribute.

(2) Any declaration or statement made to the Authority for the purposes of section 23 shall not be evidence against the person making that declaration or statement.

(3) It shall be an offence for a self-employed person without reasonable excuse—

- (a) not to have become a member of a registered scheme in accordance with section 7(4);
- (b) to fail to pay the statutory minimum contribution, or to pay less than the statutory minimum contribution, to the approved trustee of the registered scheme in respect of the business of that self-employed person.

(4) It shall be an offence for an approved trustee to pay accrued benefits to any scheme member who has not attained the age specified in Schedule 7 other than in accordance with regulations made under section 46 permitting the earlier payment of accrued benefits to scheme members.

(5) It shall be an offence for an approved trustee to fail to comply with any limitations or prohibitions on the investment of the assets of registered schemes in any restricted investments referred to in section 29.

### 44. Liability of directors

(1) Where an offence under this Ordinance is committed by a company and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary, or other similar officer of the company, or any person who was purporting to act in any such capacity, he as well as the company, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.



(2) Where an offence under this Ordinance committed by a partner is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any other partner of the partnership, that other partner shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

#### **45. Penalties**

(1) Any person convicted of an offence under section 43, other than subsection (1)(*d*) or (*f*) of that section, is liable to a fine at level 6 and to imprisonment for 1 year and, where the offence involves the failure on the part of an employer to pay a statutory minimum contribution in respect of a relevant employee to the trustee of a registered scheme, shall, in addition to the fine, pay to the trustee of the registered scheme, for the credit of the relevant employee's account, the amount, or that part of the amount of the statutory minimum contribution not previously paid, together with interest thereon at the rate of 15% per annum or at such other rate as may be substituted from time to time by the Chief Justice by notice published in the Gazette for that purpose.

(2) Any employer convicted of an offence under section 43(1)(*d*) or (*f*) is liable to a fine at level 6 and to imprisonment for 3 years and shall, in addition to the fine, pay to the trustee of a registered scheme, for the credit of the relevant employee's account, the amount, or that part of the amount, of the statutory minimum contribution not previously paid, together with interest thereon at the rate of 15% per annum or such other rate as may be substituted from time to time by the Chief Justice by notice published in the Gazette for that purpose.

#### **46. Regulations**

(1) The Governor in Council may, in relation to a registered scheme, make regulations—

- (*a*) for the purposes of the definition of retirement age;
- (*b*) prescribing forms, including those relating to the right of election of a relevant employee to participate in a registered scheme;
- (*c*) providing for the withdrawal of accrued benefits from a registered scheme and the payment thereof to a relevant employee;
- (*d*) providing for the operation of a compensation fund;
- (*e*) for the purposes of the compensation fund, of a levy (including the rate of levy) in respect thereof and meeting claims and expenses therefrom;
- (*f*) providing for the suspension or removal of an approved trustee under section 33;

- (g) providing for the approval of a trustee as an approved trustee;
- (h) providing for the service of notices in writing or other documents on approved trustees for the purposes of this Ordinance;
- (i) providing for the winding up of a registered scheme;
- (j) for the purposes of sections 5, 7, 11, 14, 15, 17, 18, 19, 20, 21, 24, 27, 29, 33, 34 and 43;
- (k) providing for the better or more effectual carrying out of the provisions and objects of this Ordinance, including incidental, consequential, evidential, ancillary and supplemental provisions.

(2) Any regulations made under this section may prescribe offences in respect of contraventions of the regulations, and may provide for the imposition of a fine not exceeding level 5 and of imprisonment for a period not exceeding 1 year.

(3) Regulations made under this section shall be subject to the approval of the Legislative Council.

#### **47. Rules**

- (1) The Authority may, in relation to a registered scheme, make rules—
  - (a) providing for the administration, management, maintenance and regulation of a registered scheme and the trust in relation thereto;
  - (b) providing for the role, duties, responsibilities and obligations of approved trustees;
  - (c) providing for the maintenance of relevant employees' accounts in respect of contributions to the trustee of a registered scheme, and the disclosure of information in respect thereof to the account holders;
  - (d) providing for the imposition of satisfactory vesting requirements in respect of contributions to the trustees of a registered scheme;
  - (e) providing for the imposition of requirements in respect of the assets of a registered scheme, including—
    - (i) requirements relating to the separation of those assets in respect of that registered scheme from other assets in the beneficial ownership of employers who are making contributions in respect of that registered scheme;
    - (ii) requirements that the first-mentioned assets shall only be applied for the purposes of a registered scheme;
    - (iii) requirements that the first-mentioned assets shall not be subject to any charge, pledge, lien, mortgage or other encumbrance, other than in such circumstances as may be specified therein or otherwise authorized under this Ordinance;

- (f) providing for the imposition of custodial arrangements for the maintenance of the assets of a registered scheme;
  - (g) providing for the maintenance of proper books and records of account;
  - (h) providing for the formulation of proper accounting systems and independent auditing in respect thereof;
  - (i) providing for the maintenance of adequate reserves for the purpose of providing investment guarantees;
  - (j) providing for the imposition of internal controls;
  - (k) providing for the imposition of procedures for the purpose of accounting to, and filing returns with, the Authority;
  - (l) providing for the formulation of arrangements for obtaining adequate professional indemnity insurance, including insurance against misfeasance or other illegal conduct by the approved trustee of a registered scheme or any other persons in respect thereof;
  - (m) providing for the preservation of accrued benefits of scheme members until the occurrence of a specified event such as, but not limited to, the retirement, death, total disability or incapacity or permanent departure from Hong Kong of those scheme members;
  - (n) providing for the portability or transferability of accrued benefits of scheme members to, from and between registered schemes, including the exercise of any options that may be necessary by relevant employees in respect thereof;
  - (o) providing for the methods of payment of accrued benefits of scheme members;
  - (p) providing for the transfer or withdrawal of unclaimed accrued benefits to, from and between registered schemes;
  - (q) providing for the methods of payment of statutory minimum contributions;
  - (r) for the purposes of section 4 (Exemptions), the definition of an “exempt person” and the identification of such a person in relation thereto; and
  - (s) for the purposes of sections 7, 11, 12, 15, 17, 20, 21, 23 and 32.
- (2) Any rules made under subsection (1) may—
- (a) make different provisions for different circumstances and provide for a particular case or class of cases;
  - (b) be made so as to apply only in such circumstances as may be specified in the rules;
  - (c) prescribe forms for the purposes of the rules;
  - (d) prescribe fees for the purposes of the rules; and

(e) be made generally for the better or more effectual carrying out of the provisions and objects of this Ordinance.

(3) Any rules made under this section may prescribe offences in respect of contraventions of the rules, and may provide for the imposition of a fine not exceeding level 4 and of imprisonment for a period not exceeding 6 months.

(4) Rules made under this section shall be subject to the approval of the Legislative Council.

#### **48. Amendment of Schedules**

(1) The Governor in Council may, by notice published in the Gazette, amend the Schedules.

(2) Amendments made under this section to Schedules 1 to 8 shall be subject to the approval of the Legislative Council.

#### **49. Consequential amendments**

The enactments specified in Schedule 9 are amended as set out in that Schedule.

### SCHEDULE 1

[ss. 4 & 48]

#### EXEMPT PERSONS

#### PART I

Item	Description
1.	Any person who is an officer to which the Pensions Ordinance (Cap. 89) applies.
2.	Any person who is an officer to which the Pension Benefits Ordinance (Cap. 99) applies.
3.	Any person who is an officer to which the Pension Benefits (Judicial Officers) Ordinance (Cap. 401) applies.
4.	Any person who is a teacher to which the Grant Schools Provident Fund Rules (Cap. 279 sub. leg.) apply.
5.	Any person who is a teacher to which the Subsidized Schools Provident Fund Rules (Cap. 279 sub. leg.) apply.
6.	Any relevant employee or self-employed person who, at the date of the coming into operation of this Schedule, has attained 64 years of age.
7.	Any relevant employee who has been employed under a contract of employment for a continuous period of less than 60 days.
8.	Any employer of any person (other than a self-employed person) specified in items 1 to 7.
9.	Any person employed in the European Union Office of the European Commission in Hong Kong.

**Notes:**

- (1) In respect of items 1 to 5 and 9, the person described in those items is an exempt person only to the extent that the relevant statutory provisions apply to his relevant income derived from employment the subject of those provisions, and not to other income (if any) derived from other sources which may be otherwise subject to the provisions of this Ordinance or to any obligation under this Ordinance in his capacity as an employer, if applicable.
- (2) In respect of item 7, the relevant employee described in that item is an exempt person only to the extent of his relevant income.
- (3) In respect of item 8, the employer described in that item is an exempt person only to the extent of the relevant income of persons or relevant employees described in items 1 to 7 and not to other income (if any) derived from other sources which may be otherwise subject to the provisions of this Ordinance.

**PART II**

Item	Description
1.	Any person who is a domestic employee in respect of a contract of employment as such.
2.	Any self-employed person who is a hawker.
3.	Any employer of a person specified in item 1.

**Notes:**

In this Part—

“domestic employee” (家務僱員) means an employee whose contract of employment is wholly or substantially for the provision of domestic services in the residential premises of the employer;

“hawker” (小販) has the same meaning as in the Public Health and Municipal Services Ordinance (Cap. 132).

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**SCHEDULE 2**

[ss. 2, 10 &amp; 48]

**MAXIMUM LEVEL OF RELEVANT INCOME PER MONTH****\$20,000**


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**SCHEDULE 3**

[ss. 2, 9 &amp; 48]

**MINIMUM LEVEL OF RELEVANT INCOME PER MONTH****\$4,000**


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**SCHEDULE 4**

[ss. 7, 8, 11 &amp; 48 &amp; Sch. 1]

**PERCENTAGE CONTRIBUTIONS**

PART I

PERCENTAGE CONTRIBUTION OF EMPLOYER

5%

PART II

PERCENTAGE CONTRIBUTION OF RELEVANT EMPLOYEE

5%

PART III

PERCENTAGE CONTRIBUTION OF SELF-EMPLOYED PERSON

5%

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SCHEDULE 5

[ss. 24 & 48]

COVENANTS TO BE IMPLIED IN GOVERNING RULES

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SCHEDULE 6

[ss. 35, 36 & 48]

DECISIONS WHICH MAY BE THE SUBJECT OF AN APPEAL

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SCHEDULE 7

[ss. 15, 43 & 48]

AGE SPECIFIED FOR THE PURPOSES OF SECTION 15(2)

60 years of age

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SCHEDULE 8

[ss. 2 & 48]

ASSOCIATES

Item

Description

## SCHEDULE 9

[ss. 48 &amp; 49]

## CONSEQUENTIAL AMENDMENTS

**Bankruptcy Ordinance****1. Priority of debts**

Section 38 of the Bankruptcy Ordinance (Cap. 6) is amended—

(a) in subsection (1) by adding—

“(ch) any amount of unpaid contribution under, or any amount of unpaid contribution calculated in accordance with, the Mandatory Provident Fund Schemes Ordinance (80 of 1995) which should have been paid by the bankrupt in accordance with the provisions of that Ordinance before the commencement of the bankruptcy:

Provided that where such amount exceeds \$50,000 in respect of an employee, 50% of such part of the amount that exceeds \$50,000 shall not be paid in priority to all other debts under this subsection;

(ci) any amount deducted by the bankrupt from the relevant income of his relevant employees for the purpose of making contributions in respect of such relevant employees to the approved trustee of a registered scheme within the meaning of the Mandatory Provident Fund Schemes Ordinance (80 of 1995) which have not been paid to that approved trustee;

(cj) any sum and interest thereon payable to the Mandatory Provident Fund Schemes Authority under section 17(7) of the Mandatory Provident Fund Schemes Ordinance (80 of 1995);”;

(b) in subsection (3) by repealing “and (cg)” and substituting “, (cg), (ch), (ci) and (cj)”.

**Companies Ordinance****2. Preferential payments**

Section 265 of the Companies Ordinance (Cap. 32) is amended—

(a) in subsection (1) by adding—

“(ch) any amount of unpaid contribution under, or any amount of unpaid contribution calculated in accordance with, the Mandatory Provident Fund Schemes Ordinance (80 of 1995) which should have been paid by the company being wound up in accordance with the provisions of that Ordinance before the commencement of the winding up:

Provided that where such amount exceeds \$50,000 in respect of an employee, 50% of such part of the amount that exceeds \$50,000 shall not be paid in priority to all other debts under this subsection;

(ci) any amount deducted by the company being wound up from the relevant income of its relevant employees for the purpose of making contributions in respect of such relevant employees to the approved trustee of a registered scheme within the meaning of the Mandatory Provident Fund Schemes Ordinance (80 of 1995) which have not been paid to that approved trustee;

(cj) any sum and interest thereon payable to the Mandatory Provident Fund Schemes Authority under section 17(7) of the Mandatory Provident Fund Schemes Ordinance (80 of 1995);”;

(b) in subsection (3) by repealing “and (cg)” and substituting “, (cg), (ch), (ci) and (cj)”.