

## MANDATORY PROVIDENT FUND SCHEMES ORDINANCE

## 強制性公積金計劃條例

## CONTENTS

## 目錄

Section	Page	條次	頁次
<b>PART I</b>		<b>第 I 部</b>	
<b>PRELIMINARY</b>		<b>導言</b>	
1. Short title and commencement .....	A2142	1. 簡稱及生效日期 .....	A2143
2. Interpretation .....	A2144	2. 釋義 .....	A2145
3. Application .....	A2148	3. 適用範圍 .....	A2149
4. Exemptions .....	A2148	4. 豁免 .....	A2149
5. Exemptions in respect of occupational retirement schemes .....	A2150	5. 關於職業退休計劃的豁免 .....	A2151
<b>PART II</b>		<b>第 II 部</b>	
<b>MANDATORY PROVIDENT FUND SCHEMES AUTHORITY</b>		<b>強制性公積金計劃監督</b>	
6. Establishment of Mandatory Provident Fund Schemes Authority .....	A2150	6. 強制性公積金計劃監督一職的設立 .....	A2151
<b>PART III</b>		<b>第 III 部</b>	
<b>CONTRIBUTIONS</b>		<b>供款</b>	
7. Establishment of a provident fund scheme and obligation to contribute .....	A2152	7. 公積金計劃的設立及供款責任 .....	A2153
8. Statutory minimum contribution .....	A2154	8. 法定最低供款 .....	A2155
9. Minimum level of income for contribution purposes .....	A2156	9. 就供款而言的最低入息水平 .....	A2157
10. Maximum level of income for contribution purposes .....	A2156	10. 就供款而言的最高入息水平 .....	A2157
11. Non-mandatory contributions .....	A2156	11. 非強制供款 .....	A2157
12. Vesting of contributions as accrued benefits .....	A2158	12. 供款作為累算權益的歸屬 .....	A2159
13. Preservation of accrued benefits derived from contributions .....	A2158	13. 供款所產生的累算權益的保存 .....	A2159
14. Portability or transferability of accrued benefits .....	A2160	14. 累算權益的可調動性或可轉移性 .....	A2161
15. Withdrawal of accrued benefits .....	A2160	15. 累算權益的提取 .....	A2161
16. Protection of accrued benefits .....	A2162	16. 累算權益的保障 .....	A2163
17. Compensation for losses in respect of accrued benefits .....	A2162	17. 在累算權益方面的損失的補償 .....	A2163
18. Default contributions .....	A2164	18. 拖欠供款 .....	A2165
19. Powers of Authority in relation to mandatory contributions .....	A2166	19. 監督可就強制性供款行使的權力 .....	A2167
<b>PART IV</b>		<b>第 IV 部</b>	
<b>MANDATORY PROVIDENT FUND SCHEMES</b>		<b>強制性公積金計劃</b>	
20. Approved trustees .....	A2168	20. 核准受託人 .....	A2169
21. Registered schemes .....	A2170	21. 註冊計劃 .....	A2171
22. Trustee to maintain standards .....	A2172	22. 受託人須保持標準 .....	A2173

Section	Page	條次	頁次
23. Residual Provident Fund Scheme .....	A2174	23. 補遺公積金計劃 .....	A2175
24. Trustee's covenants in respect of governing rules .....	A2176	24. 受託人在管限規則方面的契諾 .....	A2177
25. Duty of corporate trustees' directors .....	A2176	25. 公司受託人董事的職責 .....	A2177
26. Limit on indemnity .....	A2176	26. 彌償的限制 .....	A2177
27. Duties of approved trustees to comply with regulations .....	A2176	27. 核准受託人遵守規例的責任 .....	A2177
28. Authority may publish guidelines on forbidden investment practices in relation to registered schemes .....	A2178	28. 監督可就註冊計劃發表受禁制投資活動指引 .....	A2179
29. Restricted investments .....	A2180	29. 受限制投資項目 .....	A2181
30. Report of auditor .....	A2180	30. 核數師報告 .....	A2181
31. Information and documents .....	A2180	31. 資料及文件 .....	A2181
32. Investigation .....	A2182	32. 調查 .....	A2183
33. Suspension or removal of approved trustees .....	A2186	33. 核准受託人的暫時免任或免任 .....	A2187
34. Winding up .....	A2188	34. 清盤 .....	A2189
<b>PART V</b>		<b>第V部</b>	
<b>APPEALS</b>		<b>上訴</b>	
35. Appeal Board .....	A2188	35. 上訴委員會 .....	A2189
36. Constitution and powers of Appeal Board .....	A2190	36. 上訴委員會的組成及權力 .....	A2191
37. Appeal Board's decision is final .....	A2192	37. 上訴委員會決定是最終決定 .....	A2193
38. Supplementary provisions relating to appeals .....	A2192	38. 與上訴有關的補充條文 .....	A2193
39. Case may be stated for Court of Appeal .....	A2194	39. 向上訴法院呈述案件 .....	A2195
40. Offences relating to appeal .....	A2194	40. 與上訴有關的罪行 .....	A2195
<b>PART VI</b>		<b>第VI部</b>	
<b>MISCELLANEOUS</b>		<b>雜項條文</b>	
41. Preservation of secrecy .....	A2194	41. 保密 .....	A2195
42. Disclosure by Authority .....	A2196	42. 監督披露資料 .....	A2197
43. Offences .....	A2198	43. 罪行 .....	A2199
44. Liability of directors .....	A2198	44. 董事的法律責任 .....	A2199
45. Penalties .....	A2200	45. 罰則 .....	A2201
46. Regulations .....	A2200	46. 規例 .....	A2201
47. Rules .....	A2202	47. 規則 .....	A2203
48. Amendment of Schedules .....	A2206	48. 附表的修訂 .....	A2207
49. Consequential amendments .....	A2206	49. 相應修訂 .....	A2207
Schedule 1 Exempt persons .....	A2206	附表1 獲豁免人士 .....	A2207
Schedule 2 Maximum level of relevant income per month .....	A2208	附表2 最高每月有關入息水平 .....	A2209
Schedule 3 Minimum level of relevant income per month .....	A2208	附表3 最低每月有關入息水平 .....	A2209

Section	Page
Schedule 4 Percentage contributions .....	A2208
Schedule 5 Covenants to be implied in governing rules .....	A2210
Schedule 6 Decisions which may be the subject of an appeal .....	A2210
Schedule 7 Age specified for the purposes of section 15(2) .....	A2210
Schedule 8 Associates .....	A2210
Schedule 9 Consequential amendments .....	A2212

條次	頁次
附表4 供款百分比 .....	A2209
附表5 在管限規則中所隱含的契諾 .....	A2211
附表6 可作為上訴標的之決定 .....	A2211
附表7 為施行第15(2)條而指明的年齡 .....	A2211
附表8 有聯繫者 .....	A2211
附表9 相應修訂 .....	A2213

## HONG KONG

ORDINANCE NO. 80 OF 1995

L.S.

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.

## 香 港

1995年第80號條例

公印位置

本人批准。

陳方安生，  
 署理總督  
 1995年8月3日

本條例旨在就設立非由政府營辦的強制性公積金計劃以為退休利益提供資金而訂定條文；就向該等計劃作出供款訂定條文；就該等計劃的註冊訂定條文；就一個關於該等計劃的規管架構訂定條文；就設立強制性公積金計劃監督一職以監管註冊計劃的執行及管理訂定條文；豁免若干類人士使其無須向註冊計劃作出供款；就註冊計劃的不屬公職人員或法定法團的受託人的核准訂定條文；就核准受託人的管制及規管訂定條文；對其他條例包括與退休金有關的條例作相應修訂；並就有關連的目的訂定條文。

[ ]

由香港總督參照立法局意見並得該局同意而制定。

## 第 I 部

## 導言

## 1. 簡稱及生效日期

(1) 本條例可引稱為《強制性公積金計劃條例》。

(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” (僱主管辦計劃) 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;

(2) 本條例自總督以憲報公告指定的日期起實施，而總督可為不同的條文及不同的目的指定不同的實施日期。

## 2. 釋義

在本條例中，除文意另有所指外——

“上訴委員會”(Appeal Board)指根據第35條組成的強制性公積金計劃上訴委員會；

“公司受託人”(corporate trustee)就註冊計劃而言，指屬該註冊計劃的核准受託人或會成為該註冊計劃的核准受託人的公司；

“公積金計劃”(provident fund scheme)指受信託管限，並且——

(a) 其條款是由一份或一份以上的文書或協議所訂定的；及

(b) 提供須在計劃成員達到退休年齡時或在他在此之前死亡時或須按照根據第46條訂立的規例向該成員或他的遺產(視屬何情況而定)支付的以整筆付款的方式提供利益的，

計劃，並包括建議中的公積金計劃；

“自僱人士”(self-employed person)指非以僱員身分收取有關入息的人，而該等有關入息是源自該人在香港(全部或部分)生產貨品或提供服務，或源自在香港從事向香港或香港以外地方提供貨品或服務的營業；

“有聯繫者”(associate)就公司或其他法人團體而言，指附表8所指明的人士；

“有關入息”(relevant income)就——

(a) 有關僱員而言，指由或須由有關僱主作為該僱員在該合約下的僱用的代價而(直接或間接)支付予該僱員，並以金錢形式表示的任何工資、薪金、假期津貼、費用、佣金、花紅、獎金、合約酬金、賞錢或津貼(房屋津貼或其他房屋利益除外)，但不包括《僱傭條例》(第57章)下的遣散費或長期服務金；

(b) 自僱人士而言，指按照根據第46條訂立的規例訂明及計算的該人的入息；

“有關條例”(relevant Ordinance)指《職業退休計劃條例》(第426章)；

“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);

“有關僱員” (relevant employee) 指年滿 18 歲但未達到退休年齡的僱員；

“法定法團” (statutory corporation) 指不是公司的任何法人團體；

“法定最低供款” (statutory minimum contribution) 須按照第 8 條解釋；

“法院” (the court) 指《最高法院條例》(第 4 章)所指的高等法院；

“受託人” (trustee) 包括會成為受託人的人；

“訂明” (prescribed) 指在根據第 46 條訂立的規例中訂明或在根據第 47 條訂立的規則中 (視屬何情況而定)訂明；

“計劃” (scheme) 指公積金計劃；

“計劃成員” (scheme member) 就註冊計劃而言，指在該註冊計劃中有實益利益的人；

“退休年齡” (retirement age) 就有關僱員或自僱人士而言，指 65 歲或根據第 46 條訂立的規例所訂明的較低年齡；

“核准受託人” (approved trustee) 指獲監督根據第 20 條核准的受託人；

“核數師” (auditor) 的涵義與有關條例中該詞的涵義相同；

“累算權益” (accrued benefits) 就註冊計劃而言，指每一計劃成員於任何時間在該註冊計劃內的實益利益的款額，該款額為就該計劃成員作出的供款以及將該等供款作投資的收入或利潤 (但須將投資方面的損失計算在內)所產生者；

“註冊計劃” (registered scheme) 指根據第 21 條註冊的公積金計劃；

“最低有關入息水平” (minimum level of relevant income) 指附表 3 所指明的有關入息水平，在此水平之下，僱員或自僱人士可選擇不參加註冊計劃；

“集成信託計劃” (master trust scheme) 指可供以下人士加入成為成員的註冊計劃 (屬僱主營辦計劃的註冊計劃除外)——

- (a) 超過一名僱主的有關僱員；
- (b) 自僱人士；或
- (c) 在註冊計劃中有累算權益的其他人士；

“最高有關入息水平” (maximum level of relevant income) 指附表 2 所指明的有關入息水平，在此水平之上，無須對註冊計劃作出法定最低供款；

“僱主” (employer) 指訂立僱傭合約以僱用另一人作為其僱員的人；

“僱主營辦計劃” (employer sponsored scheme) 指——

- (a) 只可供單一僱主的有關僱員；及

(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.

(b) (如該僱主是公司或其他法人團體)可供其有聯繫者的有關僱員，

加入成為成員的註冊計劃(屬集成信託計劃的註冊計劃除外)；

“管限規則”(governing rules)就註冊計劃而言，指關於該註冊計劃的信託文書或其他文件所載的(或作一併理解的該信託文書及與其他文件所載的)，並管限該註冊計劃的設立及運作的規則條文；

“僱員”(employee)的涵義與《僱傭條例》(第57章)中該詞的涵義相同(但該條例根據該條例第4(2)條而對其不適用的人除外)，並包括學徒及前度僱員；

“監督”(Authority)指總督根據第6條委任的強制性公積金計劃監督；

“僱傭合約”(contract of employment)的涵義與《僱傭條例》(第57章)中該詞的涵義相同，而“僱用”、“受僱”(employment)均須據此解釋；

“學徒”(apprentice)的涵義與《學徒制度條例》(第47章)中該詞的涵義相同；

“獲豁免人士”(exempt person)指按照第4條解釋的人士或所指明的類別的人士。

### 3. 適用範圍

本條例對政府具約束力。

### 4. 豁免

(1) 附表1第I部所指明的人士在該部所描述的範圍內獲豁免而不受本條例的條文管限。

(2) 總督會同行政局可不時於附表1第II部指明獲豁免而不受本條例所有或部分條文(在指令中識辨及所載者)管限的人士或某些類別的人士，並可更改、修改或廢除該指令。

(3) 在不抵觸第(4)及(5)款的條文下，凡任何為受僱或自僱工作的目的進入香港的人——

(a) 只為在一段有限期間內受僱或自僱工作的目的進入香港；或

(b) 已是一個在香港以外地方的公積金計劃、退休金計劃、退休計劃或離職金計劃(不論如何描述)的成員，

該人獲豁免而不受本條例的條文管限。

(4) 監督可為本條的施行根據第47條訂立規則，該等規則可包括條文，指明在甚麼情況下第(3)款所提述的人的豁免須予適用。

(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

(5) 在本條中，“有限期間”(limited period)指按照第(4)款所提述的規則釐定的期間。

#### 5. 關於職業退休計劃的豁免

(1) 凡本款所適用的任何人是有關條例所指的職業退休計劃(不論該計劃是根據該條例的條文註冊為界定供款計劃或界定利益計劃,或是根據該條例第7(1)條發出的豁免證明書的標的)的成員,該人及其僱主按照第(2)款所提述的規例獲豁免而不受本條例全部或部分條文管限。

(2) 第(1)款適用於屬該款所提述的職業退休計劃的、並符合根據第46條為該目的訂立的規例的規定的成員,該等規例可包括條文,指明在甚麼情況下本條例的全部或部分條文須適用於或不得適用於(視屬何情況而定)該成員、屬如此指明的類別的成員的人或其僱主。

## 第II部

### 強制性公積金計劃監督

#### 6. 強制性公積金計劃監督一職的設立

(1) 在符合第(5)款的規定下,總督可為本條例的施行委任一名公職人員(財政司除外)或任何其他人士擔任強制性公積金計劃監督。

(2) 監督的職能為——

- (a) 負責確保本條例的條文獲遵守;
- (b) 將公積金計劃註冊為註冊計劃;
- (c) 對受託人予以核准;
- (d) 規管核准受託人及負責對核准受託人作嚴謹監督;
- (e) 就法定最低供款的支付,以及註冊計劃在該等供款的方面的執行、管理、維持及規管訂立規則;及



(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;

(f) 執行本條例或其他條例委予監督的職能。

(3) 監督可為對僱主、僱員、自僱人士、受託人及與註冊計劃有關的其他人提供指引而訂立指引並在憲報刊登或以其他方式發表，該等指引可包括關於監督建議或打算如何執行監督在本條例下的職能的指引。

(4) 總督可就一般情況或個別個案，就監督執行其職能發出指示，而監督須遵從該等指示。

(5) 如無根據第(1)款作出的委任，財政司須擔任監督，如財政司缺勤或喪失履行職務能力，則須由他的代表擔任監督。

### 第 III 部

#### 供款

#### 7. 公積金計劃的設立及供款責任

(1) 在符合第(2)款的規定下，每一僱主均須確保備有註冊計劃的核准受託人所作出的責任書，內容是受託人為該名僱主的所有有關僱員(已受該僱主僱用不少於60日者)的利益，收取就該等有關僱員作出的法定最低供款。

(2) 凡第(1)款所提述的僱主的有關僱員已受該僱主僱用60日或以上——

- (a) 該僱主須按照本條就該有關僱員的整段受僱期間(包括該項僱用的首60日)向該計劃作出供款；及
- (b) 該有關僱員的供款適用於他受僱的整段期間，但該項僱用的首30日不計算在內。

(3) 每一僱主須——

- (a) 在不抵觸第10條的條文下，自其本身的資源向該註冊計劃作出供款("僱主供款")，數額相等於就受他僱用的每一有關僱員的有關入息而於附表4第I部指明的供款百分比；

- (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—
- prescribing the methods of the calculation of the relevant income of a self-employed person;
  - prescribing what constitutes, and what does not constitute, relevant income for the purpose of those calculations;
  - prescribing when a self-employed person’s contributions in respect of relevant income of a self-employed person become due and payable;
  - 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

- (b) 在不抵觸第9及10條的條文下，自受他僱用的每一有關僱員的有關入息中，扣除一筆相等於就該有關入息而於附表4第II部指明的供款百分比的數額(“有關僱員供款”);
- (c) 在向受其僱用的有關僱員支付已減去(b)段所指的扣除的有關入息後的7個工作日內，將就所有該等有關僱員所作出的僱主供款和所有有關僱員供款的總數轉交該註冊計劃的受託人。
- (4) 在不抵觸第9及10條的條文下，每一自僱人士均須加入一項註冊計劃為成員，並須自其本身資源及為其本身利益，按照根據第46條訂立的規例向該註冊計劃作出供款(“自僱人士供款”)，數額相等於就其有關入息而於附表4第III部指明的供款百分比。
- (5) 在不損害在註冊計劃下的任何權利、利益或權益的原則下，有關僱員不得就其僱主已從該有關僱員的有關入息中扣除的有關僱員供款，而對該僱主提出申索。
- (6) 第(4)款所提述的規例可包括以下規定——
- 訂明自僱人士的有關入息的計算方法;
  - 訂明為上述計算的目的，甚麼項目構成有關入息及甚麼項目不構成有關入息;
  - 訂明就自僱人士的有關入息作出的自僱人士供款在甚麼時間到期須支付;
  - 就自僱人士的有關入息向監督提交報告。
- (7) 監督可根據第47條訂立規則，訂明須由僱主、有關僱員、自僱人士及註冊計劃的受託人為遵守第(1)、(2)、(3)及(4)款而須採取的步驟。

## 8. 法定最低供款

(1) 就有關僱員的有關入息而言，就註冊計劃而作出的法定最低供款為相等於附表4第I及II部所指明的僱主百分比供款及其有關僱員的百分比供款的總數。

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.

(2) 就自僱人士的有關入息而言，就註冊計劃而作出的法定最低供款為相等於附表4第III部所指明的百分比供款的數額。

### 9. 就供款而言的最低入息水平

有關僱員或自僱人士的有關入息如低於附表3所指明的最低有關入息水平，他無須就註冊計劃作出供款，但上述有關僱員可藉向其僱主給予書面通知，選擇作出供款。

### 10. 就供款而言的最高入息水平

(1) 有關僱員或自僱人士的有關入息如高於附表2所指明的最高有關入息水平，他無須就其有關入息超逾該水平的部分而就註冊計劃作出供款，但上述有關僱員可藉向其僱主給予書面通知，選擇就該部分作出供款。

(2) 凡第(1)款所提及的有關僱員選擇就其有關入息超逾附表2所指明的最高有關入息水平的部分而就註冊計劃作出供款，其僱主須按照第7條就該有關僱員作出扣除及款項轉交，並可就有關僱員的有關入息的該部分而就註冊計劃作出供款，但他沒有責任如此作出供款。

### 11. 非強制供款

(1) 凡僱員在達到退休年齡前是有關僱員("前度有關僱員")，則在他達到退休年齡但仍維持受僱用之後由他就註冊計劃作出的供款，或由他的僱主就他而就註冊計劃所作出的供款，均屬自願性質，並受該註冊計劃的管限規則的規限。

(2) 自僱人士在達到退休年齡但仍維持自僱工作之後就註冊計劃作出的供款，屬自願性質，並受該註冊計劃的管限規則的規限。

(3) 有關僱員可就其有關入息而就註冊計劃作出高於附表4第II部所指明的供款百分比的供款。

(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;

(4) 僱主可就其有關僱員的有關入息而就註冊計劃作出高於附表4第I部所指明的供款百分比的供款，但沒有責任如此作出超過該百分比的供款，即使其有關僱員按照第(3)款如此作出供款亦然。

(5) 除第(6)款另有規定外，根據本條或第10條而就註冊計劃作出的供款(“超額供款”)，須受本條例所有條文所規限。

(6) 凡僱主或計劃成員就超額供款向註冊計劃的受託人給予指明通知(按照由監督根據第47條訂立的規則而指明者)，則如監督已向該人授予對在供款作為累算權益的歸屬(第12條)、供款所產生的累算權益的保存(第13條)或累算權益的可調動性或可轉移性(第14條)方面的關於註冊計劃的規定的修改(或授予豁免使其不受該等規定管限)，或按照根據第46條訂立的規例就該等超額供款向該人授予上述修改或豁免，則第(5)款不適用。

## 12. 供款作為累算權益的歸屬

(1) 按照本條例就註冊計劃作出的而可歸因於計劃成員在註冊計劃的成員資格，並為該成員的帳戶而作出的供款，須隨即作為累算權益歸屬於該計劃成員。

(2) 由註冊計劃的受託人作出或代他作出的該等累算權益的投資就計劃成員而產生的收入或利潤(但須將投資方面的損失計算在內)，亦須作為累算權益歸屬於該計劃成員。

(3) 根據本條不時歸屬於計劃成員的累算權益的總額，須按照由監督根據第47條訂立的規則計算。

## 13. 供款所產生的累算權益的保存

為保存註冊計劃的累算權益的目的——

- (a) 除按照本條例條文外，註冊計劃的受託人不得以任何其他方式向計劃成員或任何其他人士支付或以其他形式處置該等累算權益的任何部分；

- (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

- (b) 除按照本條例條文外，有關僱員或自僱人士對該等累算權益沒有任何權益或權利。

#### 14. 累算權益的可調動性或可轉移性

(1) 凡有關人士轉職或終止受僱或自僱工作，則該名有關人士、其前度僱主(如適用的話)、其新僱主(如適用的話)及有關的註冊計劃的各受託人須為將累算權益向註冊計劃、自註冊計劃及在註冊計劃之間作轉移的目的，或為保留屬集成信託計劃的註冊計劃內的累算權益的目的，在盡可能迅速的情況下遵守根據第46條訂立的規例以達致該目的(視情況合適而定)。

(2) 第(1)款所提述的規例可包括關於以下事宜的規定——

- (a) 須由有關人士、前度僱主及新僱主就該有關人士的轉職或終止受僱或自僱工作而給予註冊計劃的受託人的通知；
- (b) 在甚麼情況下註冊計劃的受託人可將或須將有關人士的累算權益轉移予另一註冊計劃的受託人；及
- (c) 由該等註冊計劃的受託人作出、向該等註冊計劃的受託人作出及在該等註冊計劃的受託人之間作出的轉移的程序。

(3) 在本條中——

“有關人士”(relevant person)指——

- (a) 成為自僱人士的前度有關僱員；
- (b) 成為有關僱員的前度自僱人士；或
- (c) 有關僱員。

#### 15. 累算權益的提取

(1) 屬註冊計劃的計劃成員並已達到退休年齡的人，就該計劃而言，須有當然權利獲得由該註冊計劃的受託人以整筆款項形式支付予他的他在該註冊計劃的累算權益的全數。

(2) 屬註冊計劃的計劃成員而未達到退休年齡的人，如達到附表7所指明的年齡，並藉採用由監督在根據第47條訂立的規則中訂明的格式的法定聲明，向該註冊計劃的受託人證明他已永久性地終止他的受僱或自僱，或是以其他方式被包括於在根據第46

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—

條訂立的規例中為該目的而指明的某類別的人士之內，則他須有當然權利獲得由該註冊計劃的受託人以整筆款項形式支付予他的他在該註冊計劃的累算權益的全數。

(3) 第(2)款所提述的規例可指明在甚麼情況下可准許提早提取在註冊計劃的累算權益，該等情況可包括計劃成員永久性地離開香港或完全殘障或完全喪失行為能力，就累算權益中由現時僱主的供款(按照由監督根據第47條訂立的規則而量化者)所產生的部分而言，亦包括有關僱員有權為如《僱傭條例》(第57章)所訂明作抵銷的目的而根據該條例獲付遣散費或長期服務金。

(4) 凡註冊計劃的計劃成員死亡，該註冊計劃的受託人須以整筆款項形式將該成員的累算權益的全數付予該去世成員的遺產代理人(《遺囑認證及遺產管理條例》(第10章)所指者)，如該去世成員沒有遺產代理人或他們不願意擔任遺產代理人，則受託人須按照根據第46條訂立的規例以其他方式付款。

## 16. 累算權益的保障

註冊計劃中關於計劃成員的累算權益的任何部分均不得在執行判決債項時取去，亦不得作為由計劃成員作出或代表他作出的任何押記、質押、留置權、按揭、移轉、轉讓或讓與的標的，而任何在違反上述規定下作出的宣稱的上述處置，均屬無效及不具效力。

## 17. 在累算權益方面的損失的補償

(1) 除第(2)款另有規定外，監督可為對計劃成員在可歸因於他在註冊計劃的成員資格的累算權益方面的損失作出補償的目的，設立一補償基金，該等損失為該註冊計劃的受託人的失當行為或違法行為所引致或由其他人在該註冊計劃的執行、管理及維持方面的失當行為或違法行為所引致，並經法庭應監督申請而裁定的。

(2) 監督只可——

- (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 ("arrear") shall constitute a debt due and payable to the Authority.

- (a) 在他有合理理由相信在第(1)款所描述的情況下已有累算權益方面的損失出現的情況下；及
- (b) 按照首席大法官為此目的訂立的規則(該等規則可包括關於程序或其他方面的條文)，

根據第(1)款向法院提出申請。

(3) 為第(1)款所提述的補償基金及其行政費用的目的，監督可按根據第46條訂立的規例指明的徵費率，徵收須由註冊計劃的受託人按照該等規例從就該註冊計劃所作出的供款支付的該等規例指明的徵費，該等徵費須受該等規例所限制所規限。

(4) 第(3)款所提述的規例須將徵費率訂明為註冊計劃的資產的價值(以在該等規例所訂明的一個或一個以上的日期的價值為準)的一個百分比，該等規例並可指明徵費的付款形式是單一筆款項或是持續性的責任。

(5) 監督可為本條的施行而根據第47條訂立規則，該等規則可包括關乎補償基金的執行、管理及維持、擔任基金的執行人的人士的委任及就申索付款以彌補在累算權益方面的損失的條文。

(6) 財政司可自立法局為此目的而從政府一般收入撥出的款項，為補償基金的目的並按監督所指明的條款，提供資助或貸款予獲委擔任該基金執行人的的人。

(7) 任何人(包括註冊計劃的受託人)的作為或不作為如導致或已導致在計劃成員的累算權益方面的損失，而該等損失後來獲補償基金撥款補償，該人有法律責任付還法院命令付還的款項(不得超過損失款額)及其所衍生的利息，該等款項及利息在收回後須為對補償基金作出補還的目的而付予監督。

## 18. 拖欠供款

(1) 凡任何款額屬須由某人就註冊計劃(為此目的包括補遺公積金計劃)按照本條例支付的任何款額的法定最低供款，但該人沒有就該款額付款，則沒有繳付的款額("欠款")即構成拖欠監督並須支付予監督的債項。

(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.

(2) 監督可按照根據第46條訂立的規例追討該等欠款。

(3) 由監督追討所得的欠款，須由監督支付予關於有關的成員的註冊計劃的核准受託人，而如無拖欠欠款的話該等欠款原是已支付予該受託人的。

#### 19. 監督可就強制性供款行使的權力

(1) 獲監督為此目的而以書面授權的人(“獲授權人士”)，在出示有關的授權書後，可為確保本條例的條文獲遵守的目的而非為任何其他目的——

- (a) 在符合第(2)款的規定下，在日間或夜間任何合理時間，進入、視察及檢查他知道或合理地相信在其內有有關僱員受僱或有自僱人士經營業務的處所或地方；
- (b) 要求在該等處所或地方內發現的人或要求任何其他人出示根據本條例規定須備存或在其他情況下由該其他人所管有或控制的登記冊、紀錄、表格或其他文件及予以查閱、查驗及複印；
- (c) 作出為確定本條例適用於僱主、有關僱員及自僱人士的規定是否獲遵守而需要作出的查驗及查訊，並可檢取該獲授權人士覺得屬違反本條例的罪行的證據或含有該等證據的物品；
- (d) 行使根據第46條訂立的規例賦予獲授權人士的其他權力。

(2) 獲授權人士不得根據第(1)款進入正被用作私人住宅的處所或地方或該等住宅或地方的部分，但根據或憑藉裁判官在因經宣誓而作的告發而信納有合理理由懷疑有人已在、正在或行將在該等處所、地方或部分內犯違反本條例的罪行的情況下，或在因經宣誓而作的告發而信納在該等處所、地方或部分內有獲授權人士覺得屬上述罪行的證據或含有該等證據的情況下，為此目的而發出的手令而進入，則不在此限。



## PART IV

## 第IV部

## MANDATORY PROVIDENT FUND SCHEMES

## 強制性公積金計劃

**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

**20. 核准受託人**

(1) 除集成信託計劃外，每一註冊計劃須由一名屬核准受託人的受託人執行、管理及維持。

(2) 每一屬集成信託計劃的註冊計劃須由一名屬核准受託人的受託人執行、管理及維持，該名受託人必須是公司受託人。

(3) 受託人、公司受託人或其他人可向監督申請，核准其成為註冊計劃的核准受託人，但公職人員及法定法團不得提出該項申請。

(4) 該項核准的申請，須符合由監督根據第47條訂立的規則中所訂明的格式，並須載有該等規則所訂明的詳情。

(5) 監督在接獲根據本條提出的申請後，可要求申請人向他提交進一步資料或其他文件，而該等資料或文件是為使他能夠就該項申請作出決定而合理地需要的。

(6) 監督如信納申請人符合以下條件，他須批准申請人的申請（而只有當申請人符合以下條件，監督才可批准申請）——

- (a) 申請人相當可能以恰當方式履行註冊計劃核准受託人的職責；及
- (b) 申請人符合根據第46條訂立的規例所指明的規定，包括可如此指明的與資本充裕程度、財政資源及申請人作為核准受託人的特定資格有關的規定。

(7) 核准申請人成為核准受託人的核准，可受監督向有關申請人發出的核准通知所指明的條件所規限。

(8) 如監督有合理理由而信納——

- (a) 核准受託人違反規限核准的任何條件；
- (b) 核准受託人基於任何原因而不能以恰當方式履行註冊計劃核准受託人的職責；或

- (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.

(c) 核准受託人不能符合第(6)(b)款所提述的規例中指明的與資本充裕程度、財政資源或申請人作為核准受託人的特定資格有關的規定，則監督可在任何時間撤銷核准。

(9) 第(6)(b)款所提述的規例除可指明該款所提述的規定外，可包括關於以下事宜的規定——

- (a) 如公司受託人(“公司”)申請核准為核准受託人——
- (i) 該公司的成員組織；
  - (ii) 該公司在其組織章程大綱及組織章程細則中，或其他具相似效力的文書(不論如何描述)中所列的公司宗旨；
  - (iii) 在顧及聲譽、品格、知識、資格及經驗後，該公司的董事(不論職銜如何)是否合適人選；
  - (iv) (如該公司在香港以外地方成立)在顧及成立地方的有關法律，包括公司法及信託法後，該公司的成立地方；
- (b) 如核准申請是就並非公司受託人的受託人提出的，在顧及申請人的聲譽、品格、知識、資格及經驗後，申請人是否適合擔任核准受託人；
- (c) 核准受託人的資本充裕程度及財政穩健程度，就個人而言，並包括履行職能擔保；
- (d) 核准受託人就其業務或其他事務(如有的話)向監督匯報資料。

## 21. 註冊計劃

(1) 核准受託人或尋求核准為核准受託人的申請人可向監督申請，將任何公積金計劃註冊為註冊計劃。

(2) 該等註冊申請必須符合由監督根據第47條訂立的規則中所訂明的格式，並須載有該等規則所訂明的詳情。

(3) 監督在接獲根據本條提出的申請後，可要求申請人向他提交進一步資料及其他文件，而該等資料及文件是為使他能夠就該項申請作出決定而合理地需要的。

- (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.

- (4) 如(而只有在以下情況下)——
- (a) 管限該公積金計劃的信託指明香港法律是管限該信託的法律；及
  - (b) 該項公積金計劃符合為該目的而根據第46條訂立的規例，而該類規例可包括關乎指明標準的規定，
- 則監督須將該公積金計劃註冊。
- (5) 在第(4)款所提述的標準可包括關乎以下事宜的標準——
- (a) 累算權益歸屬計劃成員；
  - (b) 註冊計劃的核准受託人可接受的供款款額；
  - (c) 保存累算權益；
  - (d) 支付累算權益；
  - (e) 累算權益向註冊計劃、自註冊計劃或可在註冊計劃之間作調動或轉移的可調動性或可轉移性；
  - (f) 將註冊計劃的資產投資；
  - (g) 核准受託人的數目及(就屬公司受託人的核准受託人而言)該公司受託人的董事局成分及該董事局轄下的任何委員會的成分；
  - (h) 就註冊計劃備存紀錄；
  - (i) 就註冊計劃擬備財政報告；
  - (j) 向計劃成員披露關於註冊計劃的資料；
  - (k) 向監督披露關於註冊計劃的資料；
  - (l) 向獲監督授權的其他人提供關於註冊計劃的資料；
  - (m) 註冊計劃的財政上的可行性；
  - (n) 註冊計劃的款項提供及償付能力；及
  - (o) 註冊計劃的清盤。

## 22. 受託人須保持標準

核准受託人須確保第21(4)條所提述的規例所指明的標準，在任何時間均就該核准受託人執行、管理及維持的註冊計劃而獲符合。

### 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.

### 23. 補遺公積金計劃

(1) 監督須在第7條任何條文生效前採取所有必要的步驟，安排為第(2)款所提述的主要目的設立一項屬集成信託計劃並稱為“補遺公積金計劃”的註冊計劃，並須授權一公司受託人擔任該計劃的核准受託人。

(2) 根據第(1)款設立的補遺公積金計劃的主要目的，是(僅作為最後途徑)對符合以下條件的僱主的有關僱員或符合以下條件的自僱人士，提供該計劃的成員資格——

- (a) (i) (如屬僱主)該僱主以書面向監督聲明他不能夠透過自己的努力或其他方式遵守第7(1)條的規定；或
- (ii) (如屬自僱人士)該自僱人士以書面向監督聲明他不能夠透過自己的努力或其他方式按第7(4)條的規定成為註冊計劃的成員；
- (b) 該僱主或自僱人士(視屬何情況而定)授權監督協助他為遵守(a)段所提述的規定(視何者適用而定)的目的而獲得加入註冊計劃的途徑；
- (c) 該僱主或自僱人士(視屬何情況而定)向監督提供監督為該目的而合理地需要的所有資料及協助，

而監督是不能成功地就該僱主或自僱人士(視屬何情況而定)獲取會以其他方式令他能夠遵守(a)段所提述的規定的加入註冊計劃的途徑的。

(3) 如監督認為適宜如此，監督可批准補遺公積金計劃有以下其他目的——

- (a) 利便累算權益向註冊計劃，自註冊計劃或在註冊計劃之間作調動或轉移的可調動性或可轉移性；
- (b) 為任何無人申索的累算權益作出規定；及
- (c) 達到本條例的任何其他目的。

(4) 監督可為本條的施行而根據第47條為補遺公積金計劃的有效率及有效運作訂立規則。

(5) 在本條中，“僱主”(employer)包括會成為僱主的人，而“自僱人士”(self-employed person)包括會成為自僱人士的人。

## 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.

## 24. 受託人在管限規則方面的契諾

如註冊計劃的管限規則沒有明文載明核准受託人的契諾，而該契諾是具有與附表5所指明的與核准受託人就該註冊計劃履行受信責任、執行職能及行使權力有關的隱含契諾相同或大致相同的效力的，則該等管限規則在猶如已明文載明該附表中的隱含契諾的情況下適用，而該等管限規則中宣稱有其他效力的相反條文均屬無效及不具效力。

## 25. 公司受託人董事的職責

就屬公司受託人的核准受託人而言，註冊計劃的管限規則明示的或根據第24條隱含的核准受託人的契諾，須解釋為要求該公司受託人的每一名董事（不論職銜如何），運用合理程度的謹慎及努力，以確保核准受託人履行該契諾及符合第21(4)條所提述的規例所指明的標準，運用方式猶如該等董事個人受該等管限規則、契諾及標準所約束一樣。

## 26. 彌償的限制

如註冊計劃的管限規則的條文宣稱豁免核准受託人使其無須負以下法律責任，或宣稱就以下法律責任對核准受託人提供彌償，則在該範圍內，該等條文均屬無效及不具效力——

- (a) 核准受託人因以下情況而負上的違反信託的法律責任——
  - (i) 沒有在與註冊計劃有關的事宜上誠實地行事；或
  - (ii) 蓄意或罔顧後果地沒有就影響註冊計劃的事宜，運用一個受託人就信託行使權力（不論是明訂權力或隱含權力）須運用的某程度的謹慎及努力；或
- (b) 法律所施加的對罰款或刑罰的法律責任。

## 27. 核准受託人遵守規例的責任

(1) 核准受託人須就註冊計劃遵守根據第46條訂立的規例所施加的職責，而該等規例並可規定在沒有遵守職責的情況下判處財政上的處罰。

(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.

(2) 第(1)款所提述的規例所施加的職責可包括辦理以下事情的責任——

- (a) 收集或收取法定最低供款；
- (b) 對註冊計劃的累算權益的投資作充分及充足控制，包括控制及監督負責該等投資的人士；
- (c) 作出安排以接收及迅速處理成員就註冊計劃作出的查詢及投訴；
- (d) 就註冊計劃備存及保留關於計劃成員的紀錄；
- (e) 按監督規定向監督提交由核准受託人管有或控制的資料或文件；
- (f) 向監督報告與註冊計劃有關的重要事件；
- (g) 備存記錄及說明以某一日期為準的往來及財政狀況的會計紀錄；
- (h) 定期就註冊計劃擬備資產負債表及帳目報表。

(3) 核准受託人正在、曾經或通常會負的職責，均須解釋為經所需的變通或修改，以符合第(1)款所提述的規例。

#### **28. 監督可就註冊計劃發表受禁制投資活動指引**

(1) 為向註冊計劃的受託人提供指引，監督可在諮詢財政司意見後，訂立及在憲報刊登或以其他方式發表指引，指明註冊計劃的核准受託人不能從事哪些投資活動（“受禁制投資活動”），其理由為監督認為有關的投資活動可能或相當可能損害註冊計劃的財政方面的穩健性。

(2) 為第(1)款的施行，根據本款訂立的指引可述明其適用於所有註冊計劃，或只適用於其所指明的某類註冊計劃。

(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.

(3) 凡註冊計劃的受託人從事第(1)款提述的指引所指明的任何受禁制投資活動，監督可對該註冊計劃的受託人行使第33條賦予他的任何權力。

## 29. 受限制投資項目

(1) 註冊計劃的受託人須遵守根據第46條訂立的規例所指明的、關於將註冊計劃的資產投資於受限制投資項目的限制或禁制。

(2) 在本條中，“受限制投資項目”(restricted investments)指由以下項目組成的關於正僱用計劃成員的僱主(或僱主的有聯繫者)的投資項目——

- (a) 借予該僱主或有聯繫者(視屬何情況而定)的貸款，但以存於《銀行業條例》(第155章)所指的認可機構的存款形式作出的貸款則除外；
- (b) 該僱主或有聯繫者(視屬何情況而定)的股份或證券或其發行的股份或證券。

## 30. 核數師報告

(1) 如監督合理地相信有可損害任何註冊計劃中計劃成員的利益的情況存在或曾存在，監督可藉送達該註冊計劃的核准受託人的書面通知，要求該核准受託人安排由核數師(監督所核准的)就該等情況及該通知所指明的其他情況或事宜擬備報告，並在該通知所指明的期間內將所擬備的報告送交監督。

(2) 監督可發表該報告或將之送交第(1)款所提述的計劃成員。

(3) 核准受託人如無合理辯解而不遵從第(1)款所指明的書面通知，即屬犯罪，一經循簡易程序定罪，可處第2級罰款。

## 31. 資料及文件

(1) 監督可藉送達註冊計劃的核准受託人的書面通知，規定該核准受託人在通知所指明的期間內，向監督提交通知所指明並與該註冊計劃有關，並且是由他管有或控制的資料或文件。

(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;

(2) 任何核准受託人無合理辯解而不遵從第(1)款所提述的書面通知，即屬犯罪，一經循簡易程序定罪，可處第6級罰款。

### 32. 調查

- (1) 如監督合理地相信——
- (a) 有人已就註冊計劃違反本條例；
  - (b) 可能有某些情況存在，而該等情況可能對計劃成員的利益有損害；或
  - (c) 註冊計劃的受託人就或已就該註冊計劃違反其職責，

監督可藉送達該註冊計劃的核准受託人的書面通知，通知該受託人監督擬對屬該通知的標的之情況或其他事宜進行調查，並須隨即對該註冊計劃的事務進行調查。

(2) 監督可委任一名或一名以上的勝任人士作為查察人員，以按照根據第47條訂立的規則進行第(1)款所提述的調查。

(3) 為進行調查的目的，根據第(2)款獲委任的查察人員——

- (a) 在符合(d)段的規定下，如合理地相信必須進入可能與註冊計劃有關連的處所或地方或其部分，他可在任何合理時間進入該處所、地方或其部分，及查閱和複印在該處所、地方或部分內發現的、他合理地相信可能關乎該註冊計劃的財政事務或其他事務的文件或紀錄；
- (b) 可要求註冊計劃的受託人或他合理地相信保管關乎該註冊計劃的財政事務或其他事務的文件或紀錄的人，向該查察人員出示該等文件及紀錄；
- (c) 可要求註冊計劃的受託人或他合理地相信可能對該註冊計劃的財政事務或其他事務有認識或有關於該等事務的資料的人——
  - (i) 在與該項調查有關連的情況下向查察人員給予所有合理的協助；



- (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.

- (ii) 為研究與該註冊計劃的財政事務或其他事務有關的情況或其他事宜，而按查察人員以書面或其他方式指明的時間及地點到查察人員席前，及答覆查察人員向他提出的問題；
- (d) 在該處所或地方或其部分正被用作私人住所的情況下，可向裁判官申請手令，以對可能與註冊計劃有關連的、而查察人員合理地相信在其內有關乎該註冊計劃的財政事務或其他事務的文件或紀錄的處所、地方或其部分進行搜查，並可在此情況下取去該等文件或紀錄。
- (4) 如查察人員信納任何人沒有合理辯解而不遵從關於其調查的合理要求或不遵從根據本條例作出的關於其調查的要求，他可藉向法院作出申訴，證明該人不遵從該要求。
- (5) 在接獲根據第(4)款作出的證明後法院可對該個案進行查訊，並可在聽取屬有關申訴的標的之人所作出作為解釋的陳述後，接納該項解釋，或以猶如該人已被裁定藐視法庭一樣的相同方式懲罰該人。
- (6) 任何人不得以答案會導致其入罪為理由而獲免回答查察人員根據本條向其提出的問題，但如該人在回答該問題前聲稱該答案會導致他入罪，則由查察人員向其提出的問題及該人的有關答案均不得在刑事法律程序中被接納為對他不利的證據，但就該答案而檢控犯偽證罪的法律程序則不在此限。
- (7) 任何人不出示根據第(3)款被規定出示的文件或紀錄，而其意圖是妨礙、阻延或以其他方式擾亂本條下的調查的開展、進行或完成，即屬犯罪，一經循簡易程序定罪，可處第6級罰款及監禁1年。
- (8) 查察人員在完成本條例下的調查後，他須擬備報告，列出他關於他所調查的情況或其他事宜的調查所得，以及他合理地相信須列入該報告的、因為該項調查而產生的其他事宜，並將該報告呈交予監督。

(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.

(9) 凡有關調查是就某註冊計劃而進行的，監督在接獲第(8)款所提述的報告後，須向該註冊計劃的受託人提供該報告的副本，並可向計劃成員或他判定在該註冊計劃中有害關係的其他人提供報告的副本，並可發表該報告或其任何部分。

(10) 本條並不規定——

- (a) 律師向根據第(2)款委任的查察人員披露向以律師身分行事的該律師作出的受專業保密權涵蓋的通訊，但該律師的客戶的地址及姓名或名稱除外；或
- (b) 《銀行業條例》(第155章)所指的認可機構向根據第(2)款委任的查察人員披露關於該機構的客戶的事務的資料，但在以下情況下除外——
  - (i) 該查察人員有理由相信該客戶可能能夠提供與調查有關的資料；及
  - (ii) 監督信納該項披露對調查的目的是必要的並以書面證明如此。

### 33. 核准受託人的暫時免任或免任

(1) 如有以下情況，監督可按照根據第46條訂立的規例將任何註冊計劃的核准受託人暫時免任或免任——

- (a) 監督覺得就該註冊計劃而言，有關的核准受託人的行為對該註冊計劃的財政狀況有或已有或可能有不利影響；或
- (b) 監督已按照第20(8)條撤銷有關的核准受託人的核准。

(2) 監督可決定註冊計劃的核准受託人暫時免任的期間或各期間的長短，而在該或該等期間內批予該核准受託人的核准亦須暫時撤銷。

(3) 監督須向根據本條被暫時免任或被免任的任何註冊計劃核准受託人送達書面通知，藉以述明有關的決定及作出該決定所基於的理由。

(4) 在某註冊計劃的核准受託人(“原任核准受託人”)根據本條被暫時免任後或被免任後，監督須委任另一名核准受託人(“替任核准受託人”)以在該原任核准受託人被暫時免任的期間或在原任核准受託人被免任之後但在所產生的空缺得以填補之前的期間，取代其職位及擔任該註冊計劃的核准受託人。

(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.

(5) 即使本條例或有關的註冊計劃的管限規則有任何其他規定，監督可決定根據第(4)款委任的替任核准受託人擔任該職的委任條款及條件，包括向該名替任核准受託人支付任何費用。

(6) 監督可在任何時間終止根據第(4)款獲委擔任替任核准受託人的該等受託人的委任，但如有關的原任核准受託人是被暫時免任的而其暫時免任的期間尚未屆滿，或如該原任核准受託人已被免任，監督可根據第(4)款委任另一名替任核准受託人以代替已遭終止委任的替任核准受託人。

(7) 根據第(4)款獲委擔任替任核准受託人的任何該等受託人可在任何時間藉向監督親自送遞書面通知辭職，但如此提出的辭職的生效日期，不得早於向監督送遞通知之日後的7整日內的任何一日。

(8) 在根據第(4)款委任一名替任核准受託人擔任該職後，監督須作出命令將有關的註冊計劃的財產的法定權益歸屬該核准受託人。

(9) 在根據第(4)款獲委擔任替任核准受託人的該等受託人停任該職後，監督須作出命令將有關的註冊計劃的財產的法定權益歸屬其暫時免任期已結束的原任核准受託人，或將該權益歸屬監督所委任的另一名替任核准受託人。

#### 34. 清盤

監督可主動將任何註冊計劃按照根據第46條訂立的規例清盤或向法院申請頒發命令將該註冊計劃按照該等規例清盤。

### 第V部

#### 上訴

#### 35. 上訴委員會

(1) 任何人如因附表6內所指明的任何決定而感到受屈，可向名為“強制性公積金計劃上訴委員會”的上訴委員會上訴。

(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;

(2) 總督須委任一人擔任上訴委員會主席，並須另外委任其他人擔任上訴委員會副主席。副主席人數則按總督所認為適當的而定。

(3) 除第(7)款另有規定外，上訴委員會的主席或任何一名副主席的任期均不得超過2年，但可獲再度委任。

(4) 根據第(2)款委任的人，須是根據《執業律師條例》(第159章)認許的律師或大律師。

(5) 總督須委任並非公職人員但他認為適合根據第36條獲委任為上訴委員會成員的人，組成一個備選委員小組。

(6) 根據第(2)或(5)款作出的委任，須在憲報公布。

(7) 上訴委員會的主席及任何一名副主席或根據第(5)款委任的人，可隨時以書面通知向總督辭職。

(8) 上訴委員會的主席及任何一名副主席或根據第(5)款委任的人，均須獲付酬金，由立法局為此目的撥款支付，酬金的款額則由財政司決定。

### 36. 上訴委員會的組成及權力

(1) 上訴委員會由主席(或任何一名副主席)以及不少於2名其他成員組成，該等其他成員來自第35(5)條所指的備選委員小組，由主席為聆訊上訴的目的而委任為上訴委員會成員，人數由主席決定，而聆訊由主席或副主席主持。

(2) 在上訴聆訊中，有待上訴委員會決定的法律問題須由該委員會主席或(在適用情況下)副主席決定，其餘問題均須以聆訊上訴的成員的多數意見為取決；在投票出現票數相等的情況時，主席或副主席可投決定票。

(3) 上訴委員會聆訊上訴時，可——

- (a) 收取及考慮任何材料，不論是口述證據、書面陳述、文件或其他形式的材料，亦不論該等材料可否被法庭接納為證據；
- (b) 藉由上訴委員會主席簽署的書面通知，傳召任何人——
  - (i) 向該委員會出示由他保管或控制並與上訴有關的文件；或
  - (ii) 出席聆訊並提供與上訴有關的證據；
- (c) 監誓；
- (d) 規定作供須經宣誓；

(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.

(e) 就該宗上訴所涉及的訟費，判令任何一方獲償付就該宗上訴各方面情況而言屬於公正及公平的款額。

(4) 上訴委員會聆訊附表6內指明的任何決定後，可維持、更改或推翻該決定，並在需要時作出相應的命令。

### 37. 上訴委員會決定是最終決定

除第39條另有規定外，上訴委員會對一宗上訴所作的決定，及所作出有關訟費的命令，均屬最終決定。

### 38. 與上訴有關的補充條文

(1) 在符合本條例的規定下，上訴委員會的程序及實務，須由其主席決定。

(2) 如上訴委員會主席因生病、不在香港或其他因由不能履行其職能，總督可委任任何一名副主席暫任主席，並以該身分在獲委任期間履行主席的一切職能。

(3) 獲上訴委員會主席根據第36(1)條委任聆訊上訴的人如因生病、不在香港或其他因由不能履行其職能，主席可從第35(5)條所提述的備選委員小組中，委任其他人暫代。

(4) 在上訴的聆訊過程中，上訴人及監督均有權親自陳詞或由根據《執業律師條例》(第159章)認許的律師或大律師代表陳詞；如果上訴人是公司受託人，則有權由其任何董事或僱員代表陳詞；如上訴人是一個合夥，則有權由其任何合夥人代表陳詞；如獲上訴委員會批准，則有權由任何其他人士代表陳詞。

(5) 就任何向上訴委員會提出的上訴來說，上訴委員會成員、上訴人及任何出席委員會聆訊的證人、代表或其他人所享有的特權及豁免權，與假使該宗上訴是在法院進行的民事程序中他們所會享有的相同。

(6) 根據第36(3)(e)條判給監督的款額屬欠下及須支付予政府的債項，可在地方法院追討，而須由監督根據該判令支付的款額，則須從政府一般收入撥付。

**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).

**39. 向上訴法院呈述案件**

(1) 上訴委員會可用呈述案件的方式，將上訴中出現的法律問題交由上訴法院裁定。

(2) 上訴法院就案件呈述進行聆訊後，可修改案件呈述，或命令將其發還上訴委員會修改。

(3) 凡上訴委員會根據第(1)款呈述案件，則在上訴法院就有關的法律問題作出裁定前，上訴委員會不得就有關的上訴作出決定。

**40. 與上訴有關的罪行**

任何人無合理辯解而拒絕或沒有——

- (a) 應上訴委員會的要求，出席聆訊及作證；
- (b) 從實及詳盡答覆上訴委員會向他提出的問題；
- (c) 出示上訴委員會要求他出示的任何文件，

即屬犯罪，一經循簡易程序定罪，可處第4級罰款。

**第VI部****雜項條文****41. 保密**

(1) 除第30及42條及第(2)款另有規定外，任何人因執行或協助執行在本條例下的職能而獲悉任何資料(包括第7(6)(d)條所提述的報告所載的任何資料)，均須對該等資料保密，且在不損害上文的原則下，該人——

- (a) 不得向任何其他人士披露該等資料(但如因執行或協助執行上述職能而必須披露該等資料，則屬例外)；或
- (b) 不得容受或准許任何其他人士得以接觸該等資料(但如該人因執行或協助執行本條例下的職能而必須接觸該等資料，則屬例外)。

(2) 本條任何條文不得解釋為禁止依據任何法庭命令、法律規則或根據法律規則訂立的規定而披露該等資料。

(3) 第(2)款不適用於第7(6)(d)條所提述的報告所載的任何資料。

(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.

(4) 任何人違反第(1)款，即屬犯罪，一經循簡易程序定罪，可處第4級罰款。

#### 42. 監督披露資料

(1) 即使第41條已有規定，監督可在以下情況或按照以下規定披露資料——

- (a) 披露撮要形式的資料，而該等資料是以各人根據本條例提供的資料編成，而編纂手法使人無從確定關於該等人士的業務或身分的詳情；
- (b) 因準備在香港提起刑事程序或進行調查而披露資料，或為了在香港進行的刑事程序或調查而披露資料；
- (c) 在涉及民事程序的有關情況下披露資料，而在有關的民事程序中，監督是一方當事人；
- (d) 在符合第(2)款的規定下，如監督合理地認為就某註冊計劃而言，向總督、財政司、財經事務司或稅務局局長披露資料是符合該計劃的整體成員的利益的；
- (e) 在符合以下情況下(及只有在符合以下情況下)向監督在憲報刊登的公告內為本段的目的而指明的團體披露資料——
  - (i) 他信納這些資料只會用於該團體的成員的紀律處分程序上，或只會用以考慮提起該等程序；及
  - (ii) 他認為這樣披露資料是適宜或有利的。

(2) 監督除非信納稅務局局長所要求提供的資料是為了協助局長決定某項根據《稅務條例》(第112章)須由局長決定的問題或事宜所需的，否則不得根據第(1)(d)款向局長披露任何資料。

(3) 第(1)(d)及(e)款不適用於第7(6)(d)條所提述的報告所載的任何資料。

(4) 凡有任何資料根據第(1)(e)款披露予任何團體，則該團體、該團體的任何成員或直接或間接自該團體或其成員取得或接獲該等消息的任何人(視屬何情況而定)，在未經監督的書面同意下，均不得向任何其他人士披露該等資料。

(5) 任何人(包括任何團體或其成員)違反第(4)款，即屬犯罪，一經循簡易程序定罪，可處第4級罰款。

**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.

**43. 罪行**

- (1) 如僱主——
- (a) 無合理辯解而不遵守第7(1)條；
  - (b) 無合理辯解而不遵守第7(2)條；
  - (c) 無合理辯解而不遵守第7(3)(a)條；
  - (d) 無合理辯解而不遵守第7(3)(b)條；
  - (e) 無合理辯解而不遵守第7(3)(c)條；
  - (f) 在有關僱員就其受僱而收取低於最低有關入息水平的入息並選擇向註冊計劃作出供款的情況下，無合理辯解而沒有將須就該有關僱員支付的法定最低供款轉交予該註冊計劃的核准受託人；
  - (g) 在本條例將向有關計劃作出供款的選擇權賦予有關僱員的情況下，無合理辯解而對該有關僱員施加一項規定作為其受僱條件，規定他不得行使其選擇權選擇作出供款，

即屬犯罪。

- (2) 為第23條的目的而由某人向監督作出的聲明或陳述不得作為針對該人的證據。
- (3) 凡任何自僱人士無合理辯解而作出以下作為或有以下不作為，即屬犯罪——
- (a) 沒有按照第7(4)條成為一個註冊計劃的成員；
  - (b) 沒有向就該自僱人士的業務而設的註冊計劃的核准受託人支付法定最低供款，或所支付的款額少於法定最低供款。
- (4) 凡任何核准受託人向任何未達到附表7所指明的年齡的計劃成員支付累算權益，即屬犯罪，但如他是按照根據第46條訂立的准許計劃成員提早獲付累算權益的規例行事，則屬例外。
- (5) 核准受託人不遵守對將註冊計劃的資產投資於第29條所提述的受限制投資項目的限制或禁制，即屬犯罪。

**44. 董事的法律責任**

- (1) 凡公司犯本條例所訂罪行，並證明是經該公司的任何董事、經理、秘書或其他職位相近的高級人員或任何看來是以這些身分行事的人的同意或縱容，或可歸咎於上述任何人的疏忽，則該人及該公司同屬犯該罪行，並均可因而被檢控及處罰。



(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;

(2) 凡合夥的某合夥人犯本條例所訂罪行，並已證明是經該合夥的任何其他合夥人的同意或縱容，或可歸咎於任何其他合夥人的疏忽，則其他有關的合夥人亦屬犯該罪行，可據此而被檢控及處罰。

#### 45. 罰則

(1) 任何人被裁定犯第43條所訂罪行(該條的第(1)(d)或(f)款除外)，可處第6級罰款及監禁1年，而凡有關罪行涉及任何僱主沒有就任何有關僱員向某一註冊計劃的受託人繳付法定最低供款，則除罰款外，該僱主並須向該註冊計劃的受託人繳付他尚未繳付的法定最低供款的款額或法定最低供款中他尚未繳付的款額的部分，並須連同利息，以記入該名有關僱員的帳戶貸方，而該等利息須以年息15%的利率或以首席大法官不時為此目的藉憲報公告取代該利率的其他利率計算。

(2) 任何僱主被裁定犯第43(1)(d)或(f)條所訂罪行，可處第6級罰款及監禁3年，而除罰款外，他還須向註冊計劃的受託人繳付他尚未繳付的法定最低供款的款額或法定最低供款中他尚未繳付的款額的部分，並須連同利息，以記入該名有關僱員的帳戶貸方，而該等利息須以年息15%的利率或以首席大法官不時為此目的藉憲報公告取代該利率的其他利率計算。

#### 46. 規例

(1) 總督會同行政局可就註冊計劃為以下事宜訂立規例——

- (a) 界定退休年齡；
- (b) 訂明表格或格式，包括與有關僱員參加註冊計劃的選擇權有關的表格或格式；
- (c) 就從註冊計劃提取累算權益及向有關僱員支付上述權益訂定條文；
- (d) 就補償基金的營運訂定條文；
- (e) 就為補償基金的目的而收取徵費及從基金撥款支付申索及開支(包括為徵費率訂立規例)；
- (f) 就根據第33條將核准受託人免任或暫時免任訂定條文；

- (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;

- (g) 就受託人作為核准受託人的核准訂定條文；
  - (h) 就為施行本條例而向核准受託人送達書面通知或其他文件訂定條文；
  - (i) 就註冊計劃的清盤訂定條文；
  - (j) 第5、7、11、14、15、17、18、19、20、21、24、27、29、33、34及43條的施行；
  - (k) 就更佳地及更有效地實施本條例及貫徹本條例的宗旨訂定條文(包括各附帶條文、相應條文、證據條文、附屬條文及補充條文)。
- (2) 根據本條訂立的任何規例，可就違反該等規例訂明罪行，並可為此訂定不超過第5級的罰款及監禁不超過1年的刑罰。
- (3) 根據本條訂立的規例須經立法局批准。

#### 47. 規則

- (1) 監督可就註冊計劃訂立就以下事項訂定條文的規則——
  - (a) 註冊計劃及與其有關的信託的執行、管理、維持及規管；
  - (b) 核准受託人的角色、職責、責任及義務；
  - (c) 有關僱員向註冊計劃受託人供款的帳戶的維持，及關於帳戶的資料的披露予帳戶持有人；
  - (d) 就支付予註冊計劃受託人的供款所施加的令人滿意的歸屬規定；
  - (e) 就某註冊計劃的資產所施加的規定，包括——
    - (i) 關於將該註冊計劃的資產與其他由就該註冊計劃作出供款的僱主實益擁有的資產分開的規定；
    - (ii) 以上首述的資產只可運用於註冊計劃上的規定；
    - (iii) 除在有關情況下另有指明外或根據本條例另作批准外，以上首述的資產不得受任何押記、質押、按揭、留置權或其他產權負擔所規限的規定；

- (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
- (f) 為註冊計劃資產的維持而作的保管安排的實施；
  - (g) 妥善帳目簿冊及帳目紀錄的備存；
  - (h) 妥善會計制度的制訂，及就其作出的獨立審計；
  - (i) 為提供投資擔保而備有的足夠儲備的維持；
  - (j) 內部控制的施加；
  - (k) 向監督交代及呈交申報表的程序的施加；
  - (l) 為取得足夠的專業彌償保險而作的安排的制定，這些保險包括針對註冊計劃的核准受託人或任何其他人士就註冊計劃作出的失當行為或其他違法行為而購買的保險；
  - (m) 將計劃成員的累算權益的保留至某一指明事件發生為止，這些事件包括（但不限於）該等計劃成員退休、死亡、完全殘障、完全喪失行為能力或永久性地離開香港；
  - (n) 計劃成員的累算權益向註冊計劃、自註冊計劃或在註冊計劃之間作調動或轉移的可調動性或可轉移性，包括由有關僱員就此所需行使的任何選擇權；
  - (o) 計劃成員的累算權益的支付方法；
  - (p) 無人申索的累算權益向註冊計劃、自註冊計劃或在註冊計劃之間作轉移或提取；
  - (q) 法定最低供款的支付方法；
  - (r) 為第4條(豁免)的施行，及就此而言“獲豁免人士”的定義及身分識辨；及
  - (s) 為第7、11、12、15、17、20、21、23及32條的施行。
- (2) 根據第(1)款訂立的規則可——
- (a) 為不同情況訂立不同條文，亦可就某一個案或某一類個案訂定條文；
  - (b) 訂立為只在規則所指明的情況中適用；
  - (c) 為規則的施行而訂明表格或格式；
  - (d) 為規則的施行而訂明費用；及

(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.

(e) 概括地為更佳或更有效地執行本條例的條文及貫徹本條例的宗旨而訂立。

(3) 根據本條訂立的規則，可就違反規則訂明罪行，並可為此訂定不超過第4級的罰款及監禁不超過6個月的刑罰。

(4) 根據本條訂立的規則須經立法局批准。

#### 48. 附表的修訂

(1) 總督會同行政局可藉憲報公告修訂各附表。

(2) 根據本條對附表1至8作出的修訂須經立法局批准。

#### 49. 相應修訂

附表9指明的成文法則，以該附表列明的方式修訂。

附表1

[第4及48條]

獲豁免人士

第I部

項	說明
1.	身為《退休金條例》(第89章)所適用的人員的人。
2.	身為《退休金及有關利益條例》(第99章)所適用的人員的人。
3.	身為《退休金及有關利益(司法人員)條例》(第401章)所適用的人員的人。
4.	身為《補助學校公積金規則》(第279章, 附屬法例)所適用的教員的人。
5.	身為《津貼學校公積金規則》(第279章, 附屬法例)所適用的教員的人。
6.	在本附表開始實施當日已達64歲的有關僱員或自僱人士。
7.	根據僱傭合約受僱為期不足連續60日的有關僱員。
8.	第1至7項所指的人(自僱人士除外)的僱主。
9.	任何受僱於駐港歐洲聯盟屬下的歐洲委員會辦事處的人。

## 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).

SCHEDULE 2	[ss. 2, 10 & 48]
MAXIMUM LEVEL OF RELEVANT INCOME PER MONTH	
\$20,000	

SCHEDULE 3	[ss. 2, 9 & 48]
MINIMUM LEVEL OF RELEVANT INCOME PER MONTH	
\$4,000	

SCHEDULE 4	[ss. 7, 8, 11 & 48 & Sch. 1]
PERCENTAGE CONTRIBUTIONS	

## 附註：

- (1) 就第1至5項及第9項而言，各項所描述的人僅在有關的法例條文適用於源自屬該等條文的標的之僱用的有關入息的範圍內屬獲豁免人士，而不在該等條文適用於(如適用的話)源自可能在其他情況下受本條例條文規限的其他來源的其他入息(如有的話)的範圍內屬獲豁免人士，亦不在該等條文適用於(如有適用的話)以其作為僱主的身分在本條例下的責任的範圍內屬獲豁免人士。
- (2) 就第7項而言，該項所描述的有關僱員僅在其有關入息的範圍內屬獲豁免人士。
- (3) 就第8項而言，該項所描述的僱主僅在第1至7項所描述的人或有關僱員的有關入息的範圍內(而不在源自可能在其他情況下受本條例條文規限的其他來源的其他入息(如有的話)的範圍內)屬獲豁免人士。

## 第II部

項	說明
1.	就家務僱員僱傭合約屬家務僱員的人。
2.	屬小販的自僱人士。
3.	第1項所指明的人的僱主。

## 附註：

在本部中——

“小販”(hawker)的涵義與《公眾衛生及市政條例》(第132章)中該詞的涵義相同；

“家務僱員”(domestic employee)指其僱傭合約完全或主要是為在僱主的住宅處所中提供家務服務而訂立的僱員。

附表2	(第2、10及48條)
最高每月有關入息水平	
\$20,000	

附表3	(第2、9及48條)
最低每月有關入息水平	
\$4,000	

附表4	(第7、8、11及48條及附表1)
供款百分比	

PART I  
PERCENTAGE CONTRIBUTION OF EMPLOYER  
5%

第I部  
僱主的供款百分比  
5%

PART II  
PERCENTAGE CONTRIBUTION OF RELEVANT EMPLOYEE  
5%

第II部  
有關僱員的供款百分比  
5%

PART III  
PERCENTAGE CONTRIBUTION OF SELF-EMPLOYED PERSON  
5%

第III部  
自僱人士的供款百分比  
5%

SCHEDULE 5 [ss. 24 & 48]  
COVENANTS TO BE IMPLIED IN GOVERNING RULES

附表5 [第24及48條]  
在管限規則中所隱含的契諾

SCHEDULE 6 [ss. 35, 36 & 48]  
DECISIONS WHICH MAY BE THE SUBJECT OF AN APPEAL

附表6 [第35、36及48條]  
可作為上訴標的之決定

SCHEDULE 7 [ss. 15, 43 & 48]  
AGE SPECIFIED FOR THE PURPOSES OF SECTION 15(2)  
60 years of age

附表7 [第15、43及48條]  
為施行第15(2)條而指明的年齡  
60歲

SCHEDULE 8 [ss. 2 & 48]  
ASSOCIATES

附表8 [第2及48條]  
有聯繫者

Item

Description

項

說明

## SCHEDULE 9

[ss. 48 &amp; 49]

附表9

〔第48及49條〕

## CONSEQUENTIAL AMENDMENTS

相應修訂

**Bankruptcy Ordinance**

《破產條例》

## 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)”.

## 1. 債項的優先權

《破產條例》(第6章)第38條現予修訂——

(a) 在第(1)款中，加入——

“(ch) 在《強制性公積金計劃條例》(1995年第80號)下或按照該條例計算的款額，而該款額是破產人按照該條例的條文而在破產開始前應已支付的：

但如就某名僱員而須支付的該款額超過\$50,000，則佔超出額50%的款額不得根據本款優先於任何其他債項予以償付；

(ci) 破產人為向《強制性公積金計劃條例》(1995年第80號)所指的註冊計劃的核准受託人就該等有關僱員作出供款，而自其有關僱員的有關入息中扣除但又未曾撥付予該核准受託人的任何款額；

(cj) 根據《強制性公積金計劃條例》(1995年第80號)須支付予強制性公積金計劃監督的任何款項及其利息；”；

(b) 在第(3)款中，廢除“及(cg)”而代以“、(cg)、(ch)、(ci)及(cj)”。

## 《公司條例》

## 2. 優先付款

《公司條例》(第32章)第265條現予修訂——

(a) 在第(1)款中，加入——

“(ch) 在《強制性公積金計劃條例》(1995年第80號)下或按照該條例計算的款額，而該款額是正進行清盤的公司按照該條例的條文而在清盤開始前應已支付的：

但如就某名僱員而須支付的該款額超過\$50,000，則佔超出額50%的款額不得根據本款優先於任何其他債項予以償付；

(ci) 正進行清盤的公司為向《強制性公積金計劃條例》(1995年第80號)所指的註冊計劃的核准受託人就該等有關僱員作出供款，而自其有關僱員的有關入息中扣除但又未曾撥付予該核准受託人的任何款額；

(cj) 根據《強制性公積金計劃條例》(1995年第80號)須支付予強制性公積金計劃監督的任何款項及其利息；”；

(b) 在第(3)款中，廢除“及(cg)”而代以“、(cg)、(ch)、(ci)及(cj)”。