

## **OCCUPATIONAL RETIREMENT SCHEMES ORDINANCE**

### **GUIDANCE NOTES ON APPLICATION FOR AN EXEMPTION CERTIFICATE**

#### **DEFINITION**

1. Terms used in both the application form and the guidance notes are defined under the Occupational Retirement Schemes Ordinance (hereinafter called “the Ordinance”) as follows :-

“Country” includes any state, province or any territorial entity or part which partly comprises the country.

“Defined benefit scheme” means an occupational retirement scheme which is not a defined contribution scheme.

“Defined contribution scheme” means an occupational retirement scheme which provides that the amount of a benefit under the scheme is to be an amount determined solely by reference to -

- (a) the contributions to the scheme’s funds by or in respect of the member concerned and any declared return in respect of such contributions (where such return may be subject to a minimum guaranteed rate but is otherwise unascertainable before it is declared); and
- (b) where appropriate, the qualifying service and age of the employee.

“Domicile” means, in relation to an occupational retirement scheme or trust, the country or territory by whose system of law the scheme or trust is governed.

“Group scheme” means an occupational retirement scheme formed by a grouping of companies in accordance with section 67.

“Hong Kong domiciled scheme” means an occupational retirement scheme the domicile of which is Hong Kong.

“Hong Kong permanent identity card holder” means a person holding a permanent identity card within the meaning of the Registration of Persons Ordinance (Cap.177).

“Insurance arrangement” means an agreement or arrangement -

- (a) made in respect of an occupational retirement scheme with an authorized insurer under which the insurer is responsible for managing the scheme; and
- (b) which is of a class or description specified in rules made by the Registrar.

[“authorized insurer” means a person who is an insurer within the meaning of the Insurance Companies Ordinance (Cap. 41) and who is authorized under section 8 of that Ordinance, or is deemed under section 61(1) or (2) of that Ordinance to be so authorized, to carry on insurance business]

“Member” includes, in relation to an occupational retirement scheme, an individual who is entitled or prospectively entitled to benefits under the scheme by virtue of -

- (a) his employment by the relevant employer (whether past or present) of the scheme; or
- (b) an agreement made between the relevant employer of the first-mentioned scheme and the relevant employer of another occupational retirement scheme of which such individual was formerly a member, whether or not such individual is a party to the agreement,

and where appropriate, “member” also includes the estate of a deceased member.

“Occupational retirement scheme” means subject to section 2(6) of the Ordinance any scheme, not being a contract of insurance under which benefits are payable only upon the death or disability of the insured, which -

- (a) is comprised in one or more instruments or agreements; and
- (b) has or is capable of having effect in relation to one or more descriptions or categories of employment so as to provide benefits, in the form of pensions, allowances, gratuities or other payments, payable on termination of service, death or retirement, to or in respect of persons gainfully employed (whether in Hong Kong or elsewhere) under a contract of service in any employment,

and includes, where the context admits, a proposed such scheme.

[Section 2(6) of the Ordinance provides that -

- (a) a contract of employment shall not be regarded as an occupational retirement scheme by reason solely that under the contract the employer concerned agrees to pay a gratuity to the employee concerned on the termination of the contract and the period of employment to which the contract relates does not exceed 4 years;
- (b) where -
  - (i) a contract described in paragraph (a) terminates;
  - (ii) the employee concerned is subsequently employed, whether with or without a break in service, by the same employer under another contract; and

- (iii) the gratuity payable under the terminated contract is not paid in full within 6 months of such termination, or though such gratuity is so paid the whole or a substantial part of it is repaid by the employee to the employer,

that other contract shall be regarded as an occupational retirement scheme.]

“Offshore scheme” means an occupational retirement scheme the domicile of which is a country or territory outside Hong Kong.

“Relevant employer” means, in relation to an occupational retirement scheme, the employer who provides the employment which entitles or enables the employee to be a member of the scheme.

## **EXEMPTION**

2. Section 7(4) of the Ordinance provides that the Registrar may allow an application for an exemption certificate if he receives a written statement by the relevant employer that such employer has complied with section 7(3) of the Ordinance regarding notification of the application to scheme members and is satisfied -
  - (a) (where the occupational retirement scheme to which the application relates is an offshore scheme) that the scheme is registered or approved by an authority in a country or territory outside Hong Kong and that the authority performs in that country or territory functions which are generally analogous to the functions conferred on the Registrar by the Ordinance; or
  - (b) (in the case of an existing scheme) that on the date of the application not more than either 10% or 50 of that scheme’s members, whichever is less, are Hong Kong permanent identity card holders; or
  - (c) (in the case of a proposed scheme) that on the establishment of the scheme not more than either 10% or 50 of that scheme’s members, whichever is less, will be Hong Kong permanent identity card holders.

## **THE APPLICATION**

3. An application for an exemption certificate in respect of an occupational retirement scheme shall be made by the relevant employer of the scheme. Except for a group occupational retirement scheme that covers 2 or more relevant employers from within the grouping of companies as stipulated in section 67 of the Ordinance, an occupational retirement scheme must only cover 1 relevant employer. Section 67 of the Ordinance provides that the relevant employers from within a grouping of companies may operate, contribute to or participate in, group occupational retirement scheme that covers 2 or more companies from within the grouping of companies.

In this connection -

- (a) “grouping of companies” means companies that are associated companies or are within a group of companies and includes associated companies of a member of a group of companies;
- (b) “group of companies” means a holding company and its subsidiaries;
- (c) companies are regarded as being associated companies if -
  - (i) one of the companies holds, or is entitled to control the exercise of, 20% or more of the voting power in the other company’s general meetings;
  - (ii) one of the companies is a subsidiary of an associated company; or
  - (iii) they are partners under a written partnership agreement.

These relevant employers must jointly or severally by power of attorney nominate one of themselves, or the holding company of a group of companies within the grouping of companies, as the representative employer for the purposes of the scheme. Under such circumstances, an application for registration of the scheme shall be made by the representative employer. A copy of the power of attorney (duly certified or authenticated as required by the Occupational Retirement Schemes (Authentication and Certification of Documents) Rules) nominating the representative employer by all the relevant employers should be submitted together with the application.

- 4. The name of the scheme should be stated in Section I. This name should be identical to the name in which the scheme is registered or approved by the overseas authority if it has such overseas registration. However, if the scheme does not bear such a name, the relevant employer of the scheme should give a name to the scheme for identification purpose. In this regard, it is suggested that the name of the scheme may be related to the name of the relevant employer (e.g. the occupational retirement scheme operated by ABC Company may be named as “ABC Company Occupational Retirement Scheme”). Where there is more than one scheme operated by the same relevant employer for different types or classes of employees, different names distinguishing one scheme from another should be given to the respective schemes.

#### **APPLICATION FEE**

- 5. An application fee of HK\$600 is payable for each application. Payment should be made by a crossed cheque or bank draft and made payable to “MPFA Administration Account” and submitted together with the application form.

#### **GENERAL NOTES FOR COMPLETION OF APPLICATION FORM ORS-3**

- 6. Names should be given IN FULL and IN BLOCK LETTERS.
- 7. The application shall be signed by the relevant employer (or the representative employer as appropriate) of the scheme. If the employer is a partnership or a limited company, the official chop of the firm/company should be stamped above the signature of its authorized signatory in the space provided in Section VII of the application form.

8. The address of the relevant employer or the representative employer to be given in this application form should be :-
- (i) in case the employer is a company which is incorporated in Hong Kong, the company's registered office in Hong Kong;
  - (ii) in case the employer is an oversea company to which Part XI of the Companies Ordinance (Cap.32) applies, the principal place of business of the company in Hong Kong;
  - (iii) in case the employer is a body corporate other than a company (whether incorporated or otherwise established in Hong Kong or elsewhere), or an unincorporated body of persons, the address at which the body carries on business; or
  - (iv) in case the employer is an individual, his residential or business address.
9. "None", "Nil" or "Not Applicable" should be entered where appropriate. Blank spaces, dashes or "to be advised" are to be avoided. Ticks should be used in the selection of alternative boxes.
10. Every care must be taken to ensure that the correct information is provided in the application. It is an offence under the Ordinance for any person to provide information which is false in a material particular and which he knows to be false or he has no reasonable ground to believe to be true in such particular.
11. The Registrar should be informed immediately in writing of any change of the information given in the application form if such change takes place between the date of the application and the date of issue of the exemption certificate.

These notes are issued for the guidance of the relevant employers applying for exemption from registration of their employees' occupational retirement schemes under the Occupational Retirement Schemes Ordinance. Whilst every care has been taken in their preparation, they have no legal effect and do not spell out exhaustively the statutory obligations imposed on the relevant employer. These notes are not the authoritative interpretation of the Ordinance and should be read in conjunction with the provisions thereof. Reference should be made to the Ordinance wherever there is any doubt as regards these notes and professional advice should be sought. Under no circumstances will the Registrar be responsible or liable for any error, omission or inadvertent mistakes contained in these notes.

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