

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

IV.13 Guidelines on Compensation Fund

INTRODUCTION

Section 17(1) of the Mandatory Provident Fund Schemes Ordinance (“the Ordinance”) provides for the establishment of a compensation fund for the purpose of compensating members of registered schemes and other persons who have beneficial interests in those schemes for losses of accrued benefits that are attributable to misfeasance or illegal conduct committed by the approved trustees of those schemes or by other persons concerned with the administration of those schemes.

2. Section 17(3) of the Ordinance stipulates that the Mandatory Provident Fund Schemes Authority (“the Authority”) may impose levies for the purpose of the compensation fund. The levies are to be payable by the trustee of a registered scheme out of contributions in relation to the scheme.

3. Section 188 of the Mandatory Provident Fund Schemes (General) Regulation (“the Regulation”) specifies that the prescribed rate of the levy payable by the approved trustee of a registered scheme is 0.03% of the net asset value of the scheme assets. In this connection, net asset value is defined in section 176(1) of the Regulation to mean the amount by which the total assets of the scheme exceed its total liabilities as shown in the balance sheet, made out in accordance with section 81 of the Regulation, in respect of the immediately preceding financial period of the scheme.

4. Section 189 of the Regulation provides that, subject to section 191A of the Regulation, the approved trustee of a registered scheme must, before the deadline for each financial period of the scheme, pay to the administrator of the compensation fund the amount of levy for the immediately preceding financial period. Section 2 of the Regulation defines “deadline” to mean, in relation to the financial period of a registered scheme, the end of the day that falls 6 months after the end of that period. Section 176(1) of the Regulation defines “administrator” to mean a person or persons appointed in accordance with Part XIV of the Regulation to act as an administrator of the compensation fund or, if no such person is appointed, the Authority.

5. Section 191(1) of the Regulation specifies that the Authority must publish in the Gazette or in some other publications a notice specifying-

- (a) the rate of levy prescribed under section 188; and
- (b) the period within which the approved trustee of a registered scheme must pay the levy in accordance with section 189.

The Authority considers it more effective to publish the notice in the form of guidelines. Section 191(2) allows the Authority to include in the notice any other information relating to the compensation fund that it thinks appropriate.

6. Section 6H of the Ordinance provides that the Authority may issue guidelines for the guidance of approved trustees, service providers, participating employers and their employees, self-employed persons, regulated persons and other persons concerned with the Ordinance.

7. The Authority hereby issues guidelines for the purposes of section 191 of the Regulation concerning the payment of the compensation fund levy.

COMPENSATION FUND LEVY

Ascertainment of Compensation Fund Levy

8. The prescribed rate of the compensation fund levy is 0.03% of the net asset value of the scheme assets as at the end of each financial period of a registered scheme. The net asset value shall be ascertained based on the audited balance sheet relating to that period.

9. The financial period of a registered scheme may, in circumstances prescribed under section 79 of the Regulation, be more than or less than 12 months. In such circumstances, the compensation fund levy should be pro-rated on a daily basis (i.e. according to the number of days from the beginning to the end of the relevant financial period).

Payment of Compensation Fund Levy

10. The approved trustee of the scheme must pay the compensation fund levy to the Authority before the deadline (i.e. the end of the day that falls 6 months after the end of each financial period) if the approved trustee is required to pay the levy in accordance with section 189 of the Regulation.

11. The payment of the compensation fund levy should be made by a cheque payable to:

- (a) Mandatory Provident Fund Schemes Compensation Fund; or
- (b) 強制性公積金計劃補償基金.

Exemption from Payment of Compensation Fund Levy

12. Section 191A(1) of the Regulation provides that if the net asset value of the compensation fund exceeds \$1.4 billion as at the end of a financial year, the Authority must by notice published in the Gazette exempt the

approved trustee of a registered scheme from paying the levy in accordance with section 189 for –

- (a) the financial period of the registered scheme beginning on or after a date specified in the exemption notice; and
- (b) each subsequent financial period of the registered scheme.

13. Section 191A(3) of the Regulation further provides that the Authority is not required to grant the above exemption if the Authority has reason to believe that the net asset value of the compensation fund would likely fall below \$1 billion as at or before the end of the next financial year of the fund and has consulted the Financial Secretary on its intention of not granting the exemption.

14. Section 191B(1) of the Regulation provides that if the net asset value of the compensation fund is below \$1 billion as at the end of a financial year, the Authority must by notice published in the Gazette revoke the exemption granted under section 191A(1). If the exemption is revoked under section 191B(1), the approved trustee of a registered scheme must pay the levy in accordance with section 189 for –

- (a) the financial period of the registered scheme beginning on or after a date specified in the revocation notice; and
- (b) each subsequent financial period of the registered scheme.

15. Section 191B(3) of the Regulation further provides that the Authority is not required to revoke the above exemption if the Authority has reason to believe that the net asset value of the compensation fund would likely exceed \$1.4 billion as at or before the end of the next financial year of the fund and has consulted the Financial Secretary on its intention of not revoking the exemption.

16. As the compensation fund has accumulated to over \$1.6 billion as at 31 March 2012, and the Authority has no reason to believe the relevant matters set out in section 191A(3), the Authority has, in accordance with section 191A(1) of the Regulation, published a notice in the Gazette on 27 July 2012 and exempted the approved trustee of a registered scheme from paying the compensation fund levy in accordance with section 189 of the Regulation, for –

- (a) the financial period of the registered scheme beginning on or after 1 September 2012; and
- (b) each subsequent financial period of the registered scheme.

DEFINITIONS OF TERMS

17. Where a term used in the Guidelines is defined in the Ordinance or the subsidiary legislation then, except where specified in the Guidelines, that term carries the meaning as defined in the Ordinance or the subsidiary legislation.