

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

IV.24 Guidelines on Transfer Process under Sections 148A and 148B of the Mandatory Provident Fund Schemes (General) Regulation

INTRODUCTION

Section 148A of the Mandatory Provident Fund Schemes (General) Regulation (“the Regulation”) allows an employee to elect to transfer the accrued benefits held in the sub-account of a contribution account referred to in section 78(6)(b) of the Regulation to a personal account of the employee in a registered scheme nominated by the employee. Section 148A(4) of the Regulation provides that an employee may make an election in respect of such sub-account within a registered scheme once every calendar year, or more if the governing rules of the scheme so provide.

2. Section 148B of the Regulation allows an employee to elect to transfer the accrued benefits held in the sub-account of a contribution account referred to in section 78(6)(c) of the Regulation to another contribution account or a personal account in a registered scheme nominated by the employee. The transfers permitted under sections 148A and 148B of the Regulation are referred to as “Employee Choice Arrangement” or “ECA” transfers under these Guidelines.

3. Section 43 of the Regulation stipulates various duties that the approved trustee of a registered scheme must perform. Among those duties, section 43(a) of the Regulation provides that the trustee must exercise a level of care, skill, diligence and prudence that may reasonably be expected of a prudent

person who is acting in a similar capacity and who is familiar with the operation of registered schemes. Section 43(d) of the Regulation provides that the trustee must act in the interest of the scheme members and not in the trustee's own interest.

4. Section 62(1) of the Regulation stipulates various duties to be performed by the approved trustee if it becomes aware of the occurrence of an event of significant nature. Among those duties, section 62(1)(a) of the Regulation provides that the trustee must, not later than the third specified working day after becoming aware of the event, give written notice to the Mandatory Provident Fund Schemes Authority (“the Authority”) setting out particulars of the event (except an event specified in the guidelines as an event to which section 62(1)(a) shall not apply). Section 62(1)(b) of the Regulation provides further that the trustee must keep a record of particulars of the event.

5. Section 6H of the Mandatory Provident Fund Schemes Ordinance (“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.

6. The Authority hereby issues guidelines to:

- (a) set out the guidance to approved trustees in handling ECA transfers;
- (b) provide guidance about the steps to be taken by approved trustees in transferring the accrued benefits of an employee during employment from the time when the transferee trustee receives the transfer election form from the employee;

- (c) provide guidance about the time limit within which approved trustees should complete certain steps under normal circumstances;
- (d) provide guidance about the reporting and record keeping requirements in the event an approved trustee fails to comply with a time limit specified in these guidelines (and whether also specified in the Regulation or not); and
- (e) specify an event (that is, the failure to comply with non-statutory time limit in exceptional circumstances) to which section 62(1)(a) of the Regulation does not apply.

EFFECTIVE DATE

7. These revised Guidelines (Version 3 – March 2017) shall become effective on the date of commencement of operation of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2016, i.e. 1 April 2017. The previous version of these Guidelines (Version 2 – March 2015) shall be superseded on that day.

GUIDANCE TO APPROVED TRUSTEES IN HANDLING ECA TRANSFERS

8. The following paragraphs serve as general guidance for approved trustees to protect the benefit of scheme members and deliver better outcome for scheme members in processing ECA transfers:

- (a) The transferor and transferee trustees should liaise and cooperate closely with each other to ensure that the transfer of accrued benefits can be processed smoothly.
- (b) The transferor and transferee trustees should ascertain the transfer instructions contained in the election form and, as far as reasonably practicable, give all necessary services and assistance to the scheme members to effect the transfer.

- (c) The transferor and transferee trustees should ensure that the transfer of accrued benefits can be effected efficiently.
- (d) The transferor and transferee trustees should ensure that there are sufficient resources in handling ECA transfers including, without limitation, providing assistance to scheme members in understanding and resolving the problems encountered during the process of transfer and making available adequate facilities (e.g. call centres and customer service centres) to scheme members to help resolve these problems.
- (e) The transferor and transferee trustees should consider all practicable means to authenticate the identity of the scheme member applying for an ECA transfer that could balance the need to facilitate smooth transfer and contain fraudulent risks.
- (f) The transferor and transferee trustees should provide clear, accurate, and timely communication to scheme members about the results of the transfer.

STEPS TO BE TAKEN BY APPROVED TRUSTEES FOR TRANSFER OF ACCRUED BENEFITS

A. Transfer to an account in another registered scheme

9. A scheme member who wishes to make an election to transfer parts of accrued benefits in a contribution account during employment to a nominated account in another registered scheme shall complete the Employee Choice Arrangement (“ECA”) - Transfer Election Form (Form MPF(S) – P(P)) (“election form”) and submit it to the transferee trustee. The election form can be found in Annex B to the Guidelines on Election Forms for Transfer of Accrued Benefits (Guidelines IV.3).

10. The steps that should be taken by the transferee trustee after receiving the election form from the scheme member are as follows:

- (a) The transferee trustee should check that the information on the election form is sufficient for effecting the transfer of accrued benefits. The information is considered sufficient if the transferee trustee can:
 - (i) ascertain the identity of the scheme member;
 - (ii) identify the scheme member account in the new scheme; and
 - (iii) identify the sub-account(s) in the transferor scheme from which the accrued benefits are to be transferred.
- (b) According to section 153(1) of the Regulation, the transferee trustee shall serve a copy of the election form on the transferor trustee as soon as practicable after being notified of the transfer election. In this respect, if the transferee trustee considers that the information on the election form is sufficient based on (a) above, it should serve a copy of the election form on the transferor trustee as soon as practicable within 5 specified working days after receipt of the election form.
- (c) If the transferee trustee considers that the information on the election form is insufficient based on (a) above, subject to the scenario in paragraph 11 below, it should, to the extent practicable, contact the scheme member to obtain clarification and assist him to rectify the problems so that it can serve a copy of the election form on the transferor trustee within the above timeline. If the copy of election form is not served on the transferor trustee within 5 specified working days because the transferee trustee considers that the information on the election form is insufficient based on (a) above, subject to the scenario in paragraph 11 below, the transferee trustee should give a written notice of rejection in respect of the

election to the scheme member with clear reason(s) for rejection as soon as practicable within 7 specified working days after receipt of the election form. The transferee trustee should provide necessary assistance to the scheme member (e.g. providing designated hotline and address of customer service centres in the notice for scheme member's enquiry, making follow-up call to the scheme member) to resolve the problems. The transferee trustee should also inform the scheme member in the same notice that if the scheme member subsequently wishes to provide the outstanding information to the transferee trustee, the scheme member can do so by submitting to the transferee trustee a revised or new election form. Any such revised or new election form received by the transferee trustee should be treated as a new election and the transferee trustee should go through the steps set out in (a) to (c) in this paragraph 10 again.

- (d) In a case of transfer of accrued benefits derived from employee mandatory contributions under section 148A of the Regulation, the transferee trustee should, at the same time of serving a copy of the election form on the transferor trustee, notify the transferor trustee of the date it received the election form (or the revised or new election form if the former one had been rejected by the transferee trustee under paragraph 10(c), 11(b) or 11(c), or by the transferor trustee under paragraph 12(c)) from the scheme member. This date should be adopted for counting the number of elections in a calendar year under section 148A(4) of the Regulation.

11. There may be occasions where the transferee trustee has not received the enrolment form for a person or the transferee trustee considers that the information on the enrolment form received is insufficient for enrolling a person in the new scheme when it receives the transfer election form for that

person (“enrolment issues”). As a result, the transferee trustee cannot set up a scheme member account for that person in the new scheme. Apart from the enrolment issues, the information on the election form may also be insufficient as there may be other issues that need to be resolved for effecting a transfer of accrued benefits before the requirements provided under paragraph 10(a) above may be satisfied. In such situation, to the extent practicable, the transferee trustee should as soon as practicable and in any event within 7 specified working days after receipt of the election form resolve the relevant enrolment issues first with that person, and immediately thereafter, the transferee trustee should,

- (a) in the case where the relevant enrolment issues have been resolved and the transferee trustee considers that the information on the election form is sufficient based on paragraph 10(a) above for effecting a transfer of accrued benefits, serve a copy of the election form on the transferor trustee as soon as practicable within 5 specified working days after the resolution of the relevant enrolment issues; or
- (b) in the case where the relevant enrolment issues have been resolved but the transferee trustee considers that the information on the election form is insufficient based on paragraph 10(a) above for effecting a transfer of accrued benefits, to the extent practicable, contact the person to obtain clarification and assist him to rectify these other problems so that it can serve a copy of the election form on the transferor trustee within 5 specified working days after the resolution of the relevant enrolment issues. If the copy of election form is subsequently not served on the transferor trustee within the above timeline because the transferee trustee considers that the information on the election form is still insufficient based on paragraph 10(a) above for effecting a transfer of accrued benefits, it

should give a written notice of rejection with clear reason(s) to the person as soon as possible within 7 specified working days after the resolution of the relevant enrolment issues; or

- (c) in the case where the relevant enrolment issues have not been resolved within 7 specified working days after receipt of the election form (whether or not the other issues, if any, have been resolved), give a written notice of rejection in respect of the election with clear reason(s) to the person as soon as practicable within 7 specified working days after the expiry of the aforesaid 7-specified-working-day period allowed for resolving the enrolment issues.

For any such election rejected by the transferee trustee under paragraph 11(b) or 11(c), the transferee trustee should provide necessary assistance to the person (e.g. providing designated hotline and address of customer service centres in the notice for the person's enquiry, making follow-up call to the person) to resolve the problems. The transferee trustee should also inform the person in the same notice that if he subsequently wishes to provide the outstanding information to the transferee trustee, he can do so by submitting to the transferee trustee a revised or new election form and if applicable, an enrolment form. Any such revised or new election form received by the transferee trustee should be treated as a new election and the transferee trustee should go through the steps set out in (a) to (c) in paragraph 10 again.

12. The steps that should be taken by the transferor trustee after receiving the election form from the transferee trustee are as follows:

- (a) The transferor trustee should check that the information on the election form is sufficient for effecting the transfer of accrued benefits. The information is considered sufficient if the transferor

trustee can:

- (i) ascertain the identity of the scheme member;
 - (ii) identify the scheme member account in the transferor scheme; and
 - (iii) identify the sub-account(s) in the transferor scheme from which the accrued benefits are to be transferred.
- (b) According to section 153(2) of the Regulation, the transferor trustee must take all practicable steps to ensure that all the accrued benefits concerned are transferred in accordance with the election form within 30 days after receipt of the election form from the transferee trustee. In this respect, if the transferor trustee considers that the information on the election form is sufficient based on (a) above, the transferor trustee should transfer the accrued benefits concerned in accordance with the election form as soon as practicable within that 30-day period.
- (c) If the transferor trustee considers that the information on the election form is insufficient based on (a) above, it should, to the extent practicable, contact the scheme member to obtain clarification and assist him to rectify the problems so that the accrued benefits concerned can be transferred in accordance with the election form within 30 days after receipt of the election form from the transferee trustee. If the accrued benefits concerned subsequently cannot be transferred within the 30-day period, the transferor trustee should notify the transferee trustee of the rejection in respect of the election with clear reason(s) as soon as practicable within that 30-day period. The transferee trustee should, within 5 specified working days after being notified of the above by the transferor trustee, notify the scheme member of the rejection with clear reason(s) in writing accordingly. The

transferee trustee should provide necessary assistance to the scheme member (e.g. providing designated hotline and address of customer service centres in the notice for scheme member's enquiry, making follow-up call to the scheme member) to resolve the problems. The transferee trustee should also inform the scheme member in the same notice that if the scheme member subsequently wishes to provide the outstanding information to the transferee trustee, the scheme member can do so by submitting to the transferee trustee a revised or new election form. Any such revised or new election form received by the transferee trustee should be treated as a new election and the transferee trustee should go through the steps set out in (a) to (c) in paragraph 10 again.

- (d) In a case of transfer of accrued benefits derived from employee mandatory contributions under section 148A of the Regulation, the transferor trustee should keep a record of such date as provided by the transferee trustee on which the transferee trustee received the election form (or the revised or new election form if the former one had been rejected by the transferee trustee under paragraph 10(c), 11(b) or 11(c), or by the transferor trustee under paragraph 12(c)) from the scheme member. That date should be adopted for counting the number of elections in a calendar year under section 148A(4) of the Regulation.
- (e) If the scheme member makes an election to transfer accrued benefits under section 148A of the Regulation and the balance of the sub-account referred to in section 78(6)(b) of the Regulation is zero at the time redemption of the account balance would normally occur had there been a balance in that sub-account, the transferor trustee should, within 30 days after receipt of the election form

from the transferee trustee, notify the transferee trustee that no balance is available in the sub-account referred to in section 78(6)(b) of the Regulation for transfer to the transferee trustee and reject the transfer. The transferee trustee should, within 5 specified working days after being notified of the above by the transferor trustee, notify the scheme member of the rejection with clear reason(s) in writing accordingly. However, the transferee trustee may, if paragraph 13(b) applies, notify the scheme member of the above by means of the transfer confirmation issued under paragraph 13(b) even if such notification is not made within the aforementioned 5-specified-working-day time limit.

- (f) If the scheme member makes an election to transfer accrued benefits under section 148A of the Regulation in excess of the number of elections allowed under section 148A(4) of the Regulation, the transferor trustee should notify the transferee trustee of the rejection in respect of such transfer with clear reason(s) as soon as practicable within 30 days after receipt of the election form from the transferee trustee. The transferee trustee should, within 5 specified working days after being notified of the above by the transferor trustee, notify the scheme member of the rejection with clear reason(s) in writing accordingly. However, the transferee trustee may, if paragraph 13(b) applies, notify the scheme member of the above by means of the transfer confirmation issued under paragraph 13(b) even if such notification is not made within the aforementioned 5-specified-working-day time limit.
- (g) According to section 154(1) of the Regulation, the transferor trustee must give a transfer statement to the scheme member as soon as practicable after the transfer of accrued benefits. In this respect, the transferor trustee should provide the transfer statement

to the scheme member as soon as practicable within 3 specified working days after transferring the accrued benefits.

13. The steps that should be taken by the transferee trustee after receiving the accrued benefits from the transferor trustee are as follows:

- (a) The transferee trustee should subscribe the transferred-in benefits into the constituent funds chosen by the scheme member as soon as practicable within 2 specified working days after receiving the accrued benefits.
- (b) According to section 155 of the Regulation, the transferee trustee must give a written notice to the scheme member confirming the transfer of the accrued benefits as soon as practicable after the transferee trustee has received the transferred-in benefits. In this respect, the transferee trustee should provide the transfer confirmation to the scheme member as soon as practicable within 5 specified working days after the subscription of the transferred-in benefits into the constituent funds chosen by the scheme member.

B. Transfer to an account in same registered scheme

14. A scheme member who wishes to make an election to transfer parts of accrued benefits in a contribution account during employment to a nominated account within the same registered scheme shall complete the election form and submit it to the trustee of the scheme.

15. The steps that should be taken by the trustee after receiving the election form from the scheme member are as follows:

- (a) The trustee should check that the information on the election form is sufficient for effecting the transfer of accrued benefits. The information is considered sufficient if the trustee can:

- (i) ascertain the identity of the scheme member;
 - (ii) identify the scheme member accounts in the scheme from and to which the accrued benefits are to be transferred; and
 - (iii) identify the sub-account(s) in the scheme from which the accrued benefits are to be transferred.
- (b) According to section 153(3) of the Regulation, the trustee must arrange for the accrued benefits concerned to be transferred in accordance with the election form within 30 days after receipt of the election form from the scheme member. In this respect, if the trustee considers that the information on the election form is sufficient based on (a) above, it should transfer the accrued benefits concerned in accordance with the election form as soon as practicable within that 30-day period.
- (c) If the trustee considers that the information on the election form is insufficient based on (a) above, it should, to the extent practicable, contact the scheme member to obtain clarification and assist him to rectify the problems so that the accrued benefits concerned can be transferred in accordance with the election form within 30 days after receipt of the election form from the scheme member. If the accrued benefits subsequently cannot be transferred within the 30-day period, the trustee should give a written notice of rejection in respect of the election to the scheme member with clear reason(s) for rejection as soon as practicable within that 30-day period. The trustee should provide necessary assistance to the scheme member (e.g. providing designated hotline and address of customer service centres in the notice for scheme member's enquiry, making follow-up call to the scheme member) to resolve the problems so that the scheme member can submit the election form to the trustee again. The trustee should also inform the scheme member in the

same notice that if the scheme member subsequently wishes to provide the outstanding information to the trustee, the scheme member can do so by submitting to the trustee a revised or new election form. Any such revised or new election form received by the trustee should be treated as a new election and the trustee should go through the steps set out in (a) to (c) in this paragraph 15 again.

- (d) In a case of transfer of accrued benefits derived from employee mandatory contributions under section 148A of the Regulation, the date the trustee received the election form (or the revised or new election form if the former one had been rejected by the trustee under paragraph 15(c)) from the scheme member should be adopted for counting the number of elections in a calendar year under section 148A(4) of the Regulation.
- (e) If the scheme member makes an election to transfer accrued benefits under section 148A of the Regulation and the balance of the sub-account referred to in section 78(6)(b) of the Regulation is zero at the time redemption of account balance would normally occur had there been a balance in that sub-account, the trustee should, within 30 days after receipt of the election form, notify the scheme member that no balance is available in the sub-account referred to in section 78(6)(b) of the Regulation for transfer to his nominated account and reject the transfer. However, the trustee may, if paragraph 15(g) or paragraph 15(h) applies, notify the scheme member of the above by means of the transfer statement issued under paragraph 15(g) or the transfer confirmation issued under paragraph 15(h) (as the case may be) even if such notification is not made within the aforementioned 30-day time limit.

- (f) If the scheme member makes an election to transfer accrued benefits under section 148A of the Regulation in excess of the number of elections allowed under section 148A(4) of the Regulation, the trustee should give a written notice of rejection in respect of such transfer with clear reason(s) to the scheme member as soon as practicable within 30 days after receipt of the election form. However, the trustee may, if paragraph 15(g) or paragraph 15(h) applies, notify the scheme member of the above by means of the transfer statement issued under paragraph 15(g) or the transfer confirmation issued under paragraph 15(h) (as the case may be) even if such notification is not made within the aforementioned 30-day time limit.
- (g) According to section 154(3) of the Regulation, the trustee must give a transfer statement to the scheme member as soon as practicable after the transfer of accrued benefits. In this respect, the trustee, in the capacity of the trustee of the scheme from which benefits are transferred, should provide the transfer statement to the scheme member as soon as practicable within 3 specified working days after transferring the accrued benefits.
- (h) The trustee, in the capacity of the trustee of the scheme to which benefits are transferred, should subscribe the transferred-in benefits into the constituent funds chosen by the scheme member as soon as practicable within 2 specified working days from the funds are ready and should provide a transfer confirmation to the scheme member as soon as practicable within 5 specified working days after the subscription of the transferred-in benefits into the constituent funds chosen by the scheme member. If the transfer of accrued benefits is by means of unit transfer (i.e. no fund subscription of benefits involved), the trustee should provide a

transfer confirmation to the scheme member as soon as practicable within 5 specified working days after such transfer.

COMPUTATION OF TIME

16. In computing Non-statutory Time Limit (as defined in paragraph 17 below) for the purposes of these Guidelines, a period of days from happening of any event or the doing of any act or thing shall be exclusive of the day on which the event happens or the act or thing is done.

REPORTING AND RECORD KEEPING

17. The following paragraphs set out the reporting and record keeping requirements in respect of any failure to comply with a time limit referred to in these guidelines, which may be one of the following two types:

- (a) a time limit not specified in the Regulation (“Non-statutory Time Limit”); and
- (b) a time limit also specified in the Regulation (for example, the “within 30 days” requirements under sections 153(2) and (3) of the Regulation) (“Statutory Time Limit”).

Failure to comply with a Non-statutory Time Limit

18. With respect to a Non-statutory Time Limit, the guidance about the time limits are those which approved trustees should follow under normal circumstances (i.e. circumstances that could not be said to be unanticipated or beyond the control of the trustees). There may however be occasions when a trustee cannot meet the suggested time limits because of circumstances that are unanticipated and beyond its control (for example, where there is a surge in transfer applications beyond the number that could be reasonably expected). In such a case, failure to meet any Non-statutory Time Limit shall not be considered a breach of these guidelines and section 62(1)(a) of the Regulation

does not apply. Nevertheless, the trustee should, in such a case, keep a record of particulars of the event of not meeting the time limit and the circumstances causing such event. The Authority may, at its discretion, require reporting about such event.

19. If a trustee fails to meet any Non-statutory Time Limit under normal circumstances, it will be considered a breach of these guidelines and the trustee is required to perform all duties under section 62(1) of the Regulation including giving written notice to the Authority of the event under section 62(1)(a) of the Regulation and keeping a record of particulars of the event under section 62(1)(b) of the Regulation.

Failure to comply with a Statutory Time Limit or other event of significant nature

20. For the avoidance of doubt, paragraphs 18 and 19 do not cover the failure of a trustee to meet any Statutory Time Limit. In those events, the trustee shall perform all its duties under section 62(1) of the Regulation including the duty to give written notice to the Authority under section 62(1)(a) of the Regulation and the record keeping duty under section 62(1)(b) of the Regulation.

21. Further, nothing in this part of these guidelines is intended to modify any obligations to comply with section 62 of the Regulation in relation to an event that may have caused a trustee to fail to comply with a Statutory Time Limit or a Non-statutory Time Limit if such event is, of itself, an event of significant nature.

22. The Annex provides a summary of the reporting and record keeping requirements under the various scenarios described above.

DEFINITION OF TERMS

23. 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.