

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

V.11 Guidelines on MPF Exempted ORSO Schemes – Withdrawal of Minimum MPF Benefits

INTRODUCTION

In accordance with section 6 of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (“the Exemption Regulation”), the minimum MPF benefits of a new member may be withdrawn from an MPF exempted ORSO registered scheme under the circumstances and requirements prescribed therein.

2. Section 6H of the Mandatory Provident Fund Schemes Ordinance (“the Ordinance”) provides that the Mandatory Provident Fund Schemes Authority (“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.

3. Section 47A of the Ordinance empowers the Authority to specify or approve the form and contents of documents required for the purposes of the Ordinance.

4. The Authority hereby issues guidelines to:

- (a) set out the forms approved by the Authority for the purposes of Section 6 of Schedule 2 to the Exemption Regulation;
- (b) provide guidance in relation to the processing of withdrawal of minimum MPF benefits; and

- (c) illustrate how to calculate the amount of benefits that can be paid to a member on the ground of terminal illness.

EFFECTIVE DATE

5. These revised Guidelines (Version 8 – 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 The previous version of these Guidelines (Version 7 – June 2015) shall be superseded on that day.

CLAIM FORM

6. For the purposes of section 6 of Schedule 2 to the Exemption Regulation, the Authority has approved:

- (a) at Annex A, the Claim Form for Withdrawal of Minimum MPF Benefits (“the Claim Form”) (Form MMB-W) from an MPF exempted ORSO registered scheme;
- (b) at Annex B, the medical certificate for payment of minimum MPF benefits on total incapacity ground (Form MMB-W(M));
- (c) at Annexes C to E, the statutory declaration forms (Form MMB-W(SD1), Form MMB-W(SD2) and Form MMB-W(SD3)) to be used for the circumstances specified in the Exemption Regulation; and
- (d) at Annex F, the medical certificate for payment of minimum MPF benefits on terminal illness ground (Form MMB-W(T)).

7. Lodgement of a claim for withdrawal of minimum MPF benefits from an MPF exempted ORSO registered scheme should be made in these approved forms. Those forms requiring a signature of the claimant must be signed by either the relevant member of an MPF exempted ORSO registered

scheme, the personal representative of a deceased scheme member, or the committee of the estate of a mentally incapacitated person appointed under the Mental Health Ordinance (Cap. 136) (“the committee of the estate”) who lodges a claim on behalf of a mentally incapacitated member. Additional relevant information may be requested by the trustee to be attached to the approved forms if the trustee finds it necessary for the processing of the claim. For those minimum MPF benefits which have been transferred to an MPF scheme, Guidelines IV.4 issued by the Authority will be applicable.

8. The medical certificate for the purpose of certifying a terminal illness of a scheme member (i.e. Form MMB - W(T)) can be used for claiming benefits from both an MPF scheme and an MPF exempted ORSO registered scheme. If a scheme member has benefits held in an account in an MPF scheme and an account in an MPF exempted ORSO registered scheme, the member only needs to ask a registered medical practitioner or a registered Chinese medicine practitioner to fill in and sign one medical certificate.

EVIDENCE FOR CLAIMS

9. Under section 6 of Schedule 2 to the Exemption Regulation, a claim for withdrawal of minimum MPF benefits must be accompanied by evidence satisfactory to the trustee that the claimant is eligible for the claim, or a relevant statutory declaration.

10. To facilitate trustees in processing claims for withdrawal, Section III of the Claim Form sets out the documents that a claimant is required to submit in lodging the claim and providing evidence satisfactory to the trustee. In vetting those documents, trustees should take note of the following:

- (a) *Date of birth in Hong Kong Identity (HKID) Card*: If the HKID card of a scheme member does not contain the month and/or day of

birth of the scheme member, the scheme member may provide satisfactory evidence as to the month and/or day by using one of the following methods:

- (i) using the birth date as shown on an official document (e.g. a travel document or a statutory declaration of the member's date of birth) provided by the member; or
- (ii) using the day and month of the issue date of the HKID card of the member.

If the member has not used either of the two methods above to provide evidence as to the month and day, then in the absence of any other evidence, the trustee should, where the HKID card shows only the year and month of birth (and not the day of birth), use the last day of the month, and where the HKID card shows only the year of birth (and neither the month nor day of birth), use the last day of the year as shown on the HKID card as the birth date of the scheme member.

- (b) *Documents to show the status of a personal representative of a deceased scheme member:* In cases where a Letter of Probate or Letters of Administration is issued by the Probate Registry, the name of the personal representative of a deceased person is printed on that document. The trustee of the MPF exempted ORSO registered scheme can verify the status of a personal representative by requesting a copy of the Letter of Probate or Letters of Administration from the personal representative. In cases where the Official Administrator gets in and administers an estate of a deceased scheme member in a summary manner without a grant or other legal formality under section 15 of the Probate and Administration Ordinance (Cap. 10), the Official Administrator is a personal representative.

- (c) Medical certificate certifying total incapacity: If the claimant also claims long service payment on the ground of permanent unfitness for his present job under the Employment Ordinance (Cap. 57), he may use the form “Certificate of an employee’s permanent unfitness for a particular type of work” used for the purpose for his claim under the Employment Ordinance (Cap. 57) to substitute for the approved form for medical certificate, MMB-W(M), at Annex B to claim for withdrawal of minimum MPF benefits on the ground of total incapacity.
- (d) Documents to show the status of a committee of the estate: The trustees may verify the status of a committee of the estate by requesting a copy of the evidence of the appointment, i.e. the Court Order issued pursuant to the Mental Health Ordinance (Cap. 136).
- (e) Forms of statutory declarations: To facilitate compliance by new members, claimants and trustees, forms are approved for making a statutory declaration by claimants under different circumstances in claiming for withdrawal of minimum MPF benefits (Annexes C to E). The statutory declaration must be a valid statutory declaration in the place where it is made (e.g. in Hong Kong, the statutory declaration should be made before and signed by a Commissioner for Oaths (e.g. at a Public Enquiry Service Centre of the Home Affairs Department) or a Notary Public or a Justice of the Peace). A statutory declaration made in a place other than Hong Kong is also acceptable provided that it is made before and signed by a Notary Public or a person authorized under the law of that place to administer an oath or take a statutory declaration.

11. In some special circumstances, where the above requirements do not seem appropriate, the trustees may, where permitted by law, alter the

requirements to satisfy themselves that the claimant is eligible for the claim.

12. Where minimum MPF benefits are withdrawn on the ground of permanent departure from Hong Kong, the trustee shall report the case to the Authority for record purpose.

AVAILABILITY OF THE FORMS

13. The Claim Form, the medical certificates and the statutory declaration forms can be downloaded from the Authority's website at www.mpfa.org.hk. Hard copies of the forms are also available at the office of the Authority. Trustees may consider allowing any user to download the forms from their websites by putting the forms online or providing hard copies of the forms upon request. To facilitate smooth processing of the claim for payment of minimum MPF benefits, trustees may provide supplementary notes in addition to those in the explanatory notes of the Claim Form.

PAYMENT ON GROUND OF TERMINAL ILLNESS

14. Section 6(9A) of Schedule 2 to the Exemption Regulation provides that a new member is eligible to withdraw the member's minimum MPF benefits on the ground of terminal illness provided that the conditions specified therein are satisfied.

15. "Minimum MPF benefits", in relation to a member of a relevant scheme¹, is defined in section 1(1) of Schedule 2 to the Exemption Regulation to mean the lesser of-

- (a) the member's benefits accrued and held under the scheme during the period when the exemption certificate applied to the scheme (which for this purpose means the years of post-MPF service); and

¹ A relevant scheme is an MPF exempted ORSO registered scheme.

- (b) 1.2 x final average monthly relevant income x years of post-MPF service.

16. For the purpose of withdrawal of minimum MPF benefits on the ground of terminal illness, “final average monthly relevant income”, in relation to a member of a relevant scheme, means the member’s relevant income per month averaged over whichever of the following is applicable -

- (a) if the member has been a member of the scheme for not less than 12 months after 1 December 2000, the period of 12 complete months (excluding any unpaid leave or maternity leave taken by the member pursuant to any enactment or contract) immediately preceding the date on which the trustee of the scheme receives the latest claim lodged by the member on the ground of terminal illness for which benefits have not been paid;
- (b) in any other case, the period (excluding any unpaid leave or maternity leave taken by the member pursuant to any enactment or contract) since the date the member joined the scheme or 1 December 2000, whichever is the later, to the date on which the trustee of the scheme receives the latest claim lodged by the member on the ground of terminal illness for which benefits have not been paid.

17. For the purpose of withdrawal of minimum MPF benefits on the ground of terminal illness, “years of post-MPF service”, in relation to a member of a relevant scheme, means the member's continuous years of service (including complete months of a year) from the date the member joined the scheme, 1 December 2000 or (if the member was previously paid any benefits on the ground of terminal illness) the date on which the trustee of the scheme received the claim lodged by the member for which benefits were last paid on

the ground of terminal illness, whichever is the latest, to the date on which the trustee of the scheme receives the latest claim lodged by the member on the ground of terminal illness for which benefits have not been paid.

18. Based on the above, where the claim made by a member to withdraw the minimum MPF benefits on the ground of terminal illness is a first claim made by him, the “years of post-MPF service” shall mean the member’s continuous years of service from the date the member joined the scheme or 1 December 2000, whichever is later, to the date on which the trustee of the scheme receives the terminal illness claim. The “final average monthly relevant income” shall be calculated by reference to the period of 12 complete months (if the member has been a member of the scheme for not less than 12 months) immediately preceding the date on which the trustee of the scheme receives the terminal illness claim.

19. In case the member makes a second claim on the same ground under the same employment and contributions in respect of the member have continued to be made under the scheme, the “years of post-MPF service” shall mean the member’s continuous years of service from the date on which the trustee of the scheme received the first claim (for which benefits were last paid on the ground of terminal illness) to the date on which the trustee of the scheme receives the second terminal illness claim (for which benefits have not been paid). The “final average monthly relevant income” shall be calculated by reference to the period of 12 complete months (if the member has been a member of the scheme for not less than 12 months) immediately preceding the date on which the trustee of the scheme receives the second terminal illness claim.

20. Illustrations 1 & 2 demonstrate how to calculate the minimum MPF benefits for first and second terminal illness claims.

Illustration 1 (1st claim on terminal illness under employment):

Date of joining the scheme : 1 December 2011
Date of claim received by trustee : 30 September 2015
Years of post-MPF service : 3 years and 10 months
(from 1 December 2011 to 30 September 2015)
Current Balance in Employer contribution account: \$62,000
Current Balance in Employee contribution account: \$62,000
Final average monthly relevant income: \$30,000
(from 1 October 2014 to 30 September 2015)
Vesting scale applicable : 30%

Benefits entitled by the member due to post-MPF service (after vesting):

$$= (\$62,000 \times 30\%) + \$62,000 = \$80,600$$

Minimum MPF benefits:

- lesser* of (i) \$80,600;
(ii) $1.2 \times \$30,000 \times 3 \frac{10}{12} = \$138,000$

i.e. \$80,600

That means the whole sum of the benefits which the member is entitled can be withdrawn by the member. After the payment is made, the balance under the employer contribution account will become \$43,400 (\$62,000 - \$18,600 (being \$62,000 x 30%)) and that under employee contribution account will become \$0.

Illustration 2 (2nd claim on terminal illness under the same employment):

Date of joining the scheme : 1 December 2011

Date of 1st claim received by trustee : 30 September 2015

Date of 2nd claim received by trustee : 31 December 2015

Years of post-MPF service : 3 months

(from 30 September 2015 to 31 December 2015)

Current Balance in Employer contribution account: \$47,900

(being \$43,400 remaining account balance after
1st claim plus \$4,500 new contributions and
investment return)

Current Balance in Employee contribution account: \$4,500

(new contributions and investment return)

Final average monthly relevant income: \$30,000

(from 1 January 2015 to 31 December 2015)

Vesting scale applicable : 40%

Benefits entitled by the member under employer contribution account due to post-MPF service (after vesting) as if the member has not been paid any benefits before:

$$= (\text{current balance} + \text{amount previously paid out}) \times \text{vesting}$$

$$= (\$47,900 + \$18,600) \times 40\% = \$26,600$$

As the member has withdrawn \$18,600 ($\$62,000 \times 30\%$) from the employer contribution account on the 1st claim, the member's benefits accrued and held under the employer contribution account will be \$8,000 ($\$26,600 - \$18,600$). The total amount of member's benefits accrued and held under the scheme is therefore \$12,500 ($\$8,000 + \$4,500$).

Minimum MPF benefits:

- lesser* of
- (i) \$12,500;
 - (ii) $1.2 \times \$30,000 \times 3/12 = \$9,000$

i.e. \$9,000

The member can only withdraw \$9,000. The balance under the employer contribution account will become \$43,400 (\$47,900 - \$4,500) and employee contribution account will become \$0 (\$4,500 - \$4,500). The deduction from both the employer and employee contribution accounts of \$4,500 each is based on the assumption that both employer and employee contributions are the same.

DEFINITION OF TERMS

21. 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.