

## **MANDATORY PROVIDENT FUND SCHEMES AUTHORITY**

### **IV.26 Guidelines on Giving of Notices or Documents by Electronic Means**

#### **INTRODUCTION**

Section 206 of the Mandatory Provident Fund Schemes (General) Regulation (“the Regulation”) stipulates how a notice or other document is to be given for the purposes of the Mandatory Provident Fund Schemes Ordinance (“the Ordinance”).

2. Section 206(2) of the Regulation provides that in addition to delivery or service by post allowed under section 206(1) of the Regulation, a notice or other document is also taken to have been given for the purposes of the Ordinance if:

- (a) it is sent to the recipient by facsimile transmission or electronic mail at the recipient’s facsimile number or electronic mail address last known to the sender, or by other means specified by the recipient, and a record generated by the means of transmission establishes that the notice or document was so sent;
- (b) it is made available to the recipient by means of a website or by other electronic means, and the recipient is notified of its availability by the operation of section 206(2)(a) or section 206(1)(a), (b) or (c) of the Regulation; or
- (c) it is made available to the recipient by means of an electronic system designated by the Mandatory Provident Fund Schemes Authority (“the Authority”) under section 6KA(1) of the Ordinance for use for the purposes of section 206(2)(c) of the Regulation.

3. Section 206(2A) of the Regulation provides that section 206(2)(a) and (b) of the Regulation does not apply unless the recipient has given consent to being given the notice or document by the means described in section 206(2)(a) and (b) of the Regulation.

4. Section 206(2B) of the Regulation provides that for the purposes of section 206(2A) of the Regulation, if the recipient is a participating employer or a member (or a prospective participating employer or a prospective member) of a registered scheme, prior consent must be given in the terms specified by the Authority.

5. 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.

6. The Authority hereby issues guidelines to set out:

- (a) the terms of prior consent specified by the Authority pursuant to section 206(2B) of the Regulation and guidance on obtaining such consent; and
- (b) the general principles and guidance on operational measures for an approved trustee when giving notices or other documents by the means described in section 206(2)(a) or (b) of the Regulation.

### **EFFECTIVE DATE**

7. These Guidelines (Version 1 – December 2015) shall become effective on 2 December 2015.

## **SPECIFICATION OF TERMS OF PRIOR CONSENT**

8. The terms of prior consent specified by the Authority pursuant to section 206(2B) of the Regulation and guidance on obtaining such consent are set out in Annex A.

## **GENERAL PRINCIPLES AND GUIDANCE ON OPERATIONAL MEASURES**

9. The general principles and guidance on operational measures for giving notices or other documents by the means described in section 206(2)(a) or (b) of the Regulation are set out in Annex B. They only apply to a sender who is an approved trustee.

## **DEFINITION OF TERMS**

10. 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.

Note 1

## Terms of Prior Consent

The following are the terms of prior consent specified by the Mandatory Provident Fund Schemes Authority pursuant to section 206(2B) of the Mandatory Provident Fund Schemes (General) Regulation (“the Regulation”):

I. Where the sender of notices or other documents is an approved trustee:

- (a) **In Writing:** The consent must be given in writing <sup>Note 2</sup> .
- (b) **Duration of the consent:** The consent remains valid until it is
- (i) revoked by the recipient; or
  - (ii) deemed to be revoked by the recipient when the sender becomes aware that the notices, documents or the notification of availability of notices or documents cannot be successfully received by the recipient through the means to which the consent applies; or
  - (iii) deemed to be revoked by the recipient where the sender has notice of the death or mental incapacitation of the recipient,
- whichever is the earlier.
- (c) **Duration of availability of the notices or other documents on a website:** Any notices or documents made available by means of a website or by other electronic means in accordance with the consent will be available on that website or by that other electronic means for a minimum of 12 months after the recipient has been notified of its availability. However, in respect of notices or documents which are required to be given annually, such notices or documents made available by means of a website or by other electronic means in accordance with the consent will be available on that website or by that other electronic means for a minimum of 24 months after the recipient has been notified of their availability.

These terms about the retention period will cease to apply if the recipient ceases to be a member / a participating employer of *[the sender to insert the name of*

*the registered scheme*]. The sender will, upon request, send the notices or documents (which should otherwise be retained on that website or by that electronic means) to the recipient by other means permitted by law at no additional cost to the recipient.

- (d) **Alternative method of giving notices or other documents:** If the recipient fails to receive a notice or other document or any part of it by the consented means, the sender will, upon request, send the notice or document to the recipient by other means permitted by law at no additional cost to the recipient.
- (e) **Revocation:** The consent may be revoked<sup>Note 2</sup> by the recipient at any time by giving not less than 14 days' prior notice to the sender by delivery, post or other additional means specified by the sender (e.g. through the sender's website or call centre), and the revocation will take effect upon the expiry of the notice period. The consent is also deemed to be revoked by the recipient
- (i) when the sender becomes aware that the notices, documents or the notification of availability of the notices or documents cannot be successfully received by the recipient through the means to which the consent applies; or
  - (ii) where the sender has notice of the death or mental incapacitation of the recipient.

Upon the revocation or deemed revocation of the consent, the sender shall give notices or other documents to the recipient by other means permitted by law at no additional cost to the recipient.

- (f) **Sender's contact details:** The consent should include the contact details of the sender in so far as they are necessary for the purposes of giving notices or other documents under the consent, handling matters arising from or related to the consent, and other directly related purposes.
- (g) **Recipient's contact details:** The consent should include the contact details of the recipient in so far as they are necessary for the purposes of giving notices or

other documents by the permitted means specified in paragraph I(j)(vi) under the consent, handling matters arising from or related to the consent, and other directly related purposes.

- (h) **Changes:** The recipient may update his/her/its contact details <sup>Note 2</sup> at any time by giving not less than 14 days' prior notice to the sender by delivery, post or other additional means specified by the sender (e.g. through the sender's website or call centre).
- (i) **Confirmation of changes:** The sender will give a confirmation notice by means permitted by law to the recipient within 14 days after the recipient has given or revoked consent or has changed his/her/its contact details.
- (j) **Other terms:** The consent should include the following information:
- (i) the name of the sender;
  - (ii) the name of the recipient;
  - (iii) whether the recipient is a participating employer or a scheme member (or a prospective participating employer or a prospective member) of a registered scheme;
  - (iv) the name of the registered scheme of which the recipient is a scheme member or a participating employer;
  - (v) the notices and documents to which the consent applies <sup>Note 3</sup> ;
  - (vi) the permitted means of giving notices or other documents under section 206(2)(a) and (b) of the Regulation to which the consent applies <sup>Note 4</sup> ; and
  - (vii) the date of the consent given by the recipient.

II. Where the sender of the notices or other documents is a person other than an approved trustee:

- (a) The consent may be revoked by the recipient at any time.
- (b) The sender must provide a hard copy of the notice or document on the request of the recipient.

## Notes

These notes do not form part of the specified terms of prior consent but are guidance issued under section 6H of the Mandatory Provident Fund Schemes Ordinance.

1. The sender may provide to the recipient appropriate information for administration purposes and should take appropriate steps to ensure compliance with other relevant legal requirements (e.g. providing a Personal Information Collection Statement (PICS) for compliance with the Personal Data (Privacy) Ordinance (Cap.486)).
2. The consent, the revocation and the change of contact details should be obtained from the recipient in a manner that assures their authenticity and a record should be retained and provided to the recipient upon request.
3. The sender should indicate the notices or documents to which the consent applies. If the sender indicates that the consent applies to all notices and documents (as determined by the sender), the sender should clearly communicate to the recipient from time to time the notices or documents that will be given to the recipient under section 206(2)(a) or (b) of the Regulation.
4. The sender may offer one or more of the means permitted under section 206(2)(a) or (b) of the Regulation. If more than one is offered, the sender may allow the recipient to choose.

**General Principles when Giving Notices or Other Documents by the Means described in Section 206(2)(a) or (b) of the Mandatory Provident Fund Schemes (General) Regulation (“the Regulation”)**

Approved trustees should have regard to the following general principles when giving notices or other documents to participating employers or scheme members (or prospective participating employers or prospective members) (“the Recipients”) by the means described in section 206(2)(a) or (b) of the Regulation:

- (a) whilst giving of notices or other documents in a particular manner may comply with section 206 of the Regulation, trustee should also have regard to whether the objective of effectively communicating with the Recipients is achieved by the manner used;
- (b) trustees should ensure that the giving of notices or other documents be made in a secure environment, and take all practicable steps to protect the Recipients’ information against leakage, unauthorized access, use or disclosure. Trustees should also put in place security policies and measures that keep up with the advancement in internet security technologies;
- (c) trustees should ensure sufficient resources in all operational areas to support electronic communication. In addition, adequate training should be provided to all staff so that they are able to handle enquiries relating to the giving of notices or other documents under section 206(2) of the Regulation;
- (d) trustees should put in place risk monitoring and quality assurance measures that are capable of detecting deficiencies in their process of giving notices or other documents to the Recipients under section 206(2) of the Regulation;



- (e) trustees should have contingency measures to remedy any failures to give notices or other documents to the Recipients under section 206(2) of the Regulation due to system failure or any other reasons; and
- (f) if trustees rely on a third party (e.g. a group company of trustees or an outside service provider) to support the giving of notices or other documents under section 206(2) of the Regulation, trustees are still responsible for ensuring that the above-mentioned principles set out in (a) to (e) are complied with.

### **Guidance on Trustees' Operational Measures when Giving Notices or Other Documents by the Means described in Section 206(2)(a) or (b) of the Regulation**

2. Trustees should establish their operational measures for giving notices or other documents for the purposes of the Mandatory Provident Fund Schemes Ordinance under section 206(2) of the Regulation to adhere to the above-mentioned general principles. To facilitate trustees in developing their operational measures for giving notices or other documents by the means described in section 206(2)(a) or (b) of the Regulation, the following examples are provided to illustrate a range of controls that may be deployed. These examples are not intended to be exhaustive or treated as compliance checklists.

#### **Express Consent**

- (a) Section 206(2A) of the Regulation provides that the Recipients have to give consent in order for the sender to give notices or other documents to the Recipients by the means described in section 206(2)(a) or (b) of the Regulation. Where the description of the consent is prepared by trustees issuing the notices or documents to the Recipients, trustees have to ensure that the consent should be in terms

specified by the Mandatory Provident Fund Schemes Authority (“the Authority”) and in plain language. Furthermore, if the consent is incorporated in the notices or documents, it should be placed in a prominent manner in such notices or documents.

- (b) The consent should not be bundled with consent for other purposes and no condition should be attached to the Recipients not giving the consent.

### Communication

- (c) Trustees should clearly communicate to the Recipients at the time of giving consent and regularly remind them through various channels that the Recipients should inform the trustees as soon as practicable upon change of their designated contact details (e.g. email address). The trustees should update the Recipients’ contact details as soon as practicable upon receipt of notification.
- (d) Trustees should regularly remind the Recipients through various channels that the Recipients should regularly check for due receipt of notices or documents by the means described in section 206(2)(a) or (b) of the Regulation. For example, trustees may remind the Recipients to check their designated electronic mail box, including their junk mail box.

### Unattended Notices or Documents

- (e) The notices or documents or notifications of their availability sent to the contact details provided by the Recipients may become unattended. For example, a Recipient may have multiple email accounts at any point in time. The email account provided by the Recipient may become unattended over time. As a result, the Recipient may not be

aware of the availability of the notices or documents. Trustees should put in place measures to effectively address such concerns.

*System Capability and Security*

- (f) Mechanisms should be in place to maintain the integrity of data stored in the system hardware, whilst in transit and as displayed on the website. In addition, appropriate backup procedures for the data base and application software should be implemented.
- (g) Where the Recipients need to register on trustees' website to open an online account with trustees to view the notice or document, the registration process should be completed through a secure environment.

*Contents of Electronic Notices or Documents*

- (h) The contents of electronic notices or documents shall be identical to those given in hard copy.
- (i) If the notices or documents are made available through trustees' website, the website should clearly specify the areas that contain the electronic notices or documents. The incorporation of a search facility or prompts to assist the Recipients to navigate to or find the electronic notices or documents is encouraged if this would enhance the comprehensibility, readability and legibility of the notices or documents.

### Retention

- (j) The Recipients should be allowed, free of charge, to retain the notices or documents by printing or downloading them or have ongoing access during the period of availability to such notices or documents.

### Record Keeping

- (k) Trustees should ensure that all records relating to electronic communications (e.g. giving of consent, revocation, change of contact details, date and time of giving notices or documents or notifying the availability of the notices or documents) are properly kept. Such records should be readily accessible by the Authority for supervisory and inspection purposes.

### Oversight of Outsourced Third Party Administration

- (l) Trustees should regularly monitor and evaluate the security, reliability and capacity of the systems operated by the third party.