

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

V.2 Guidelines on MPF Exempted ORSO Schemes - Application for Exemption of ORSO Registered Schemes

INTRODUCTION

Section 5(1) of the Mandatory Provident Fund Schemes Ordinance (“the Ordinance”) provides for the exemption of the members of occupational retirement schemes and their employers from the operation of all, or any specified, provisions of the Ordinance.

2. Section 16 of the Mandatory Provident Fund Schemes (Exemption) Regulation (“the Exemption Regulation”) sets out the detailed requirements with respect to the application for exemption of relevant ORSO registered schemes.

3. The Mandatory Provident Fund Schemes Authority (“the Authority”) hereby issues guidelines relating to the application for exemption of relevant ORSO registered schemes under the Ordinance and the Exemption Regulation.

APPLICATION FOR APPROVAL

Eligibility

4. Pursuant to section 16 of the Exemption Regulation, an application may be made in respect of a “relevant ORSO registered scheme” for exemption from MPF requirements.

5. According to section 2 of the Exemption Regulation, a relevant ORSO registered scheme is defined as an ORSO registered scheme -

- (a) which is governed by a trust;
- (b) which provides benefits payable on termination of service, death, disability, retirement or winding up of the scheme;
- (c) established before or on 15 October 1995; and
- (d) in respect of which an application under section 7 or 15 of the Occupational Retirement Schemes Ordinance was received by the Registrar of Occupational Retirement Schemes not later than 15 January 1996.

6. For ORSO schemes which were originally the subject of or regulated by an insurance arrangement but subsequently converted into a scheme governed by trust, as long as they fulfil the criteria set out in (b) to (d) above, they will be, for exemption purposes, treated as continuation of the original schemes, thus eligible to apply for MPF exemption.

7. For ORSO schemes that are re-registered with the Registrar of Occupational Retirement Schemes as a result of a change of administrator or change of pooling agreement, they will also be treated as continuation of the original schemes for exemption purposes.

8. Furthermore, section 14 of the Exemption Regulation provides that ORSO registered schemes that are established after 15 October 1995 as a result of scheme restructuring or bona fide business transactions, such as company amalgamation, restructuring and joint ventures, may be eligible to apply for MPF exemption provided that all or a class of the members of the scheme and the assets of the scheme have been transferred or will, before or as soon as practicable after the issue of an exemption certificate in respect of the scheme under section 16 of the Exemption Regulation, be transferred to the scheme from one or more relevant ORSO registered schemes. These “new schemes”

shall be deemed to be relevant ORSO registered schemes by virtue of section 2(2) of the Exemption Regulation.

9. The Authority has the discretionary power to determine whether a new ORSO scheme is to be treated as a relevant ORSO registered scheme. Applications made with respect to new schemes will need to submit the following additional information and documents -

- (a) evidencing the bona fide business transaction, if applicable, e.g. sale and purchase agreement, minutes of board meeting, correspondence, solicitor statement, etc.;
- (b) evidencing the scheme restructuring, if applicable, e.g. trust deeds of the original and the new schemes, employee communication booklets or leaflets, etc.;
- (c) evidencing the transfer of scheme assets (if applicable), e.g. correspondence between the former and the current administrators;
- (d) comparing the terms and conditions of the original scheme and the new scheme with respect to overall benefit design, benefit level, etc.; and
- (e) the percentage of members of the new scheme who are or will be members of the original scheme.

Governing Rules

10. In order to be qualified for MPF exemption, the terms of relevant ORSO registered schemes will most likely need to be amended in the following aspects:

- (a) For schemes which close membership to new employees -
 - (i) definition of “minimum MPF benefits” (including “relevant income”, “final average monthly relevant income” and “years of post-MPF service”), “commencement date of MPF”, etc.;

- (ii) eligibility provision for joining the scheme, i.e. no new employee can join (except for membership transfer, if applicable);
 - (iii) treatment of accrued benefits of members who join an MPF scheme upon retirement, termination of service, death, disability, etc.;
 - (iv) restrictions on withholding an existing member's minimum MPF benefits upon dismissal for cause;
 - (v) option to existing members to join an MPF scheme upon the commencement date of MPF and upon reduction of future benefits;
 - (vi) restrictions on the use of derivatives and borrowing;
- (b) For schemes which open membership to new employees -
- (i) definitions of “commencement date of MPF”, “existing member”, “new eligible employee”, “new member”, “minimum MPF benefits” (including “relevant income”, “final average monthly relevant income” and “years of post-MPF service”), etc.;
 - (ii) eligibility provision for joining the scheme - the eligibility period will need to be shorter than 60 days since an employer is obliged to enrol a new employee into an MPF scheme after being employed for 60 days unless the employee is either exempt by virtue of section 4 of the Ordinance or is a member of an MPF exempted ORSO scheme;
 - (iii) treatment of accrued benefits of members who join an MPF scheme upon retirement, termination of service, death, disability, etc.;

- (iv) grandfathering provisions of existing members except for restrictions on withholding an existing member's minimum MPF benefits upon dismissal for cause;
- (v) option to existing members to join an MPF scheme upon the commencement date of MPF;
- (vi) option to all members to join an MPF scheme upon reduction of future benefits;
- (vii) preservation, portability and withdrawal of minimum MPF benefits requirements with respect to new members;
- (viii) treatment of minimum MPF benefits upon inter-group transfer and scheme transfers;
- (ix) restrictions on the use of derivatives and borrowing.

Prescribed Forms

11. In making an application to the Authority for exemption of a relevant ORSO registered scheme, the applicant must:

- (a) make the application in the prescribed format (Form ER) as set out in the Annex;
- (b) submit a copy of the latest governing rules of the scheme;
- (c) submit such other documents as prescribed in the application form;
- (d) accompanied by the application fee; and
- (e) make the application on or before the specified date, i.e. a date specified by the Authority by notice in the Gazette. For an application made with respect to a new scheme to which section 14 of the Exemption Regulation applies and is established after the commencement date of the Exemption Regulation, the application should be made within 60 days of the date of establishment of the scheme; or on or before the specified date, whichever is later; or such later date as the Authority may specify in writing. However,

employers are reminded that if there are new employees eligible to join the new scheme, employers are required to give an option to these employees to join the new scheme or an MPF scheme in accordance with section 15 of the Exemption Regulation. In addition, after commencement of sections 7, 7A and 7B of the Ordinance, new employees will be compelled by law to make mandatory contributions after 60 days of employment if they are not an exempt person or a member of an MPF exempted ORSO scheme. Thus, where new employees are eligible to join the new scheme, applications should be made as soon as possible if employers foresee such a new scheme being established.

12. The prescribed format of the form in the Annex can be downloaded from the Authority's website at:

<http://www.mpfa.org.hk>

Definition of Terms

13. 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.

The Applicant

14. The applicant making an application for exemption of a relevant ORSO registered scheme must be the trustee of the scheme. In case the scheme is a group scheme under section 67 of the Occupational Retirement Schemes Ordinance, the application shall be deemed to be made by each relevant employer of the scheme under section 25(a) of the Exemption Regulation.

Signing Requirements

15. The application for exemption of a relevant ORSO registered scheme must be signed:

- (a) if all the trustees are natural persons, by at least 2 trustees and one of whom must be the non-employer trustee; in the case where there is only one trustee, by that trustee;
- (b) if the trustee or one of the trustees is a company, by at least 2 of the directors of the trustee that is a company or their authorised persons.

Submission of Application

16. Completed application form and the relevant documents, if any, should be submitted in hard copies and sent, together with the application fee, to:

Mandatory Provident Fund Schemes Authority
Level 8, Tower 1, Kowloon Commerce Centre
51 Kwai Cheong Road, Kwai Chung
Hong Kong

Warning

17. If there is any change to the application information or documents after an application is submitted to the Authority, the applicant should inform the Authority as soon as reasonably practicable. It is an offence under section 43E of the Ordinance if a person, in any document given to the Authority, makes a statement that he knows to be false or misleading in a material respect, or recklessly makes a statement which is false or misleading in a material respect.

FORMER

**MANDATORY PROVIDENT FUND SCHEMES ORDINANCE (CAP. 485)
("the Ordinance")**

APPLICATION FOR EXEMPTION OF ORSO REGISTERED SCHEME

NOTES:

- (1) *The applicant making an application for exemption of ORSO registered schemes should read the "Guidelines on MPF Exempted ORSO Schemes - Application for Exemption of ORSO Registered Schemes" before submitting the application.*
 - (2) *Please read the Notes on Personal Information Collection before completing this Form.*
 - (3) *All questions must be answered. If any question is not applicable, please write "N.A."*
 - (4) *Please provide any other information which may assist the Mandatory Provident Fund Schemes Authority ("the Authority") in reaching a decision on the application if necessary.*
 - (5) *If boxes are provided, please tick whichever is appropriate.*
 - (6) ** means delete whichever is inappropriate.*
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FOR OFFICIAL USE ONLY

| | |
|---|---|
| Application no.: _____ | Date application received: _____ |
| Fee receipt no.: _____ | Subject officer: _____ |
| Date of fee receipt: _____ | Input officer: _____ |
| Date of letter of acknowledgement: _____ | Verification officer: _____ |

SECTION III - PARTICULARS OF THE INVESTMENT MANAGER

(1) Particulars of the investment manager [use supplementary sheet if necessary]:-

(a) Name (in English): _____
(Insert surname first for individual)

(b) *Registered office in Hong Kong/Principal place of business in Hong Kong/Business address/Residential address (in English):

| | | | |
|--------------------------------|-------|-----------------------|------------------|
| Flat/Room | Floor | Block | Name of building |
| Street no. | | Name of street | |
| Name of district/city/province | | Area code/Postal code | |
| <i>Hong Kong*/</i> | | | |
| Name of country | | | |

(c) Telephone no.: (____)_____ Fax no.: (____)_____

(d) Business registration no. in Hong Kong, if any: _____

(e) SFC no., if any: _____

(2) Particulars of the authority under which the investment manager is supervised in its place of incorporation (if applicable):-

(a) Place of incorporation: _____

(b) Name of the authority: _____

(c) Address of the authority:

| | | | |
|--------------------------------|-------|-----------------------|------------------|
| Flat/Room | Floor | Block | Name of building |
| Street no. | | Name of street | |
| Name of district/city/province | | Area code/Postal code | |
| <i>Hong Kong*/</i> | | | |
| Name of country | | | |

Telephone no.: (____)_____ Fax no.: (____)_____

- (d) Registration number with the authority: _____
- (e) Type of licence, registration, authorization or permit issued by the authority: _____
- (f) Date of issue: _____
- (g) Registration number under Part XI of the predecessor Ordinance (as defined in the Companies Ordinance (Cap. 622)) or Part 16 of the Companies Ordinance (Cap. 622): _____

SECTION IV - DOCUMENTS TO BE ATTACHED

- (1) Please provide a copy of the governing rules and indicate below the relevant clause no. of the governing rules of the Scheme which provide for the following items (for applications in respect of schemes participating in a pooling agreement, please indicate separately the relevant clauses in the master governing rules and the Deed of Adherence/Variation):

| Items | Clause no. in the governing rules |
|---|-----------------------------------|
| (a) Date of establishment of the Scheme | |
| (b) Definition of terms including “new member”, “existing member”, “new eligible employee”, “commencement date of MPF”, “minimum MPF benefits”, “years of post-MPF service”, etc. | |
| (c) Eligibility of employees to join the Scheme | |
| (d) Right of employees to choose between an ORSO scheme and an MPF scheme upon prescribed circumstances | |
| (e) Treatment of “minimum MPF benefits” upon inter-group transfer and scheme transfer | |
| (f) Preservation of minimum MPF benefits | |
| (g) Treatment of benefits upon dismissal for cause | |
| (h) Portability or transferability of minimum MPF benefits | |
| (i) Withdrawal of minimum MPF benefits | |
| (j) Treatment of accrued rights of existing members of the Scheme who opt to join an MPF scheme | |
| (k) Investment restrictions on the use of derivatives or borrowing | |

- (2) **FOR SCHEME TO WHICH SECTION 14 OF THE EXEMPTION REGULATION APPLIES** - In addition to those required in (1) above, the following documents are required to be submitted together with this application:
- (a) A statement setting out -
 - (i) the reason for establishing the new scheme; and
 - (ii) the eligibility requirements for members of the original scheme(s) to be transferred to the new scheme.
 - (b) If the new scheme is established before the relevant date, a copy of the governing rules of each of the original scheme(s).
 - (c) The documents providing for the transfer, if any, of assets from the original scheme(s) to the new scheme.
 - (d) The documents evidencing the bona fide business transaction, if applicable.
 - (e) The documents evidencing the scheme restructuring, if applicable.
 - (f) A comparison of the terms and conditions of the original scheme(s) and the new scheme with respect to overall design, benefit level, etc.
 - (g) The percentage of members of the new scheme who are or will be members of the original scheme(s).
 - (h) Any other documents or information which may assist the Authority in reaching a decision on the application.

SECTION V - DECLARATION

* (For a trustee who is a natural person) I certify that I have read the Notes on Personal Information Collection and understand my rights and obligations in relation to the supply of personal data to the Authority and the manner in which the Authority may use or deal with the data.

I/we* declare that to the best of my/our* knowledge and belief the information given in this application form is correct and complete. ✦

I/we* certify that the documents annexed to this application, if any, are true and correct copies.

I/we* undertake to notify the Authority of any matter which affects the validity of any information given in support of our application.

After the application is approved, I/we* undertake to notify the Authority of any material changes to, or affecting the completeness or accuracy of, the information provided in this Form as soon as possible.

Name of trustee: _____

Signature and company chop
(to be signed by two directors or
authorised persons of the trustee if it is
a company): _____

Name of person(s) signing: _____

Title or position of person(s) signing: _____

Date: _____

✦ **Warning:** Section 43E of the Ordinance makes it an offence punishable with a maximum of 1 year's imprisonment for the first occasion and 2 years' imprisonment on each subsequent occasion for a person who makes a false or misleading statement in a material aspect.

Name and telephone no. of the contact person for the Authority's enquiries in connection with this application –

Name: _____

Telephone no.: _____

SECTION II - DOCUMENTS TO BE ATTACHED

- (1) Please provide a copy of the deed of adherence/deed of variation in respect of the Scheme and indicate below the relevant clause no. of deed of adherence/deed of variation of the Scheme which provide for the following items (only those not contained in the master trust deed):

| Items | Clause no. in the governing rules |
|---|-----------------------------------|
| (a) Date of establishment of the Scheme | |
| (b) Definition of terms including “new member”, “existing member”, “new eligible employee”, “commencement date of MPF”, “minimum MPF benefits”, “years of post-MPF service”, etc. | |
| (c) Eligibility of employees to join the Scheme | |
| (d) Right of employees to choose between an ORSO scheme and an MPF scheme upon prescribed circumstances | |
| (e) Treatment of “minimum MPF benefits” upon inter-group transfer and scheme transfer | |
| (f) Preservation of minimum MPF benefits | |
| (g) Treatment of benefits upon dismissal for cause | |
| (h) Portability or transferability of minimum MPF benefits | |
| (i) Withdrawal of minimum MPF benefits | |
| (j) Treatment of accrued rights of existing members of the Scheme who opt to join an MPF scheme | |
| (k) Investment restrictions on the use of derivatives or borrowing | |

- (2) ***FOR SCHEME TO WHICH SECTION 14 OF THE EXEMPTION REGULATION APPLIES*** - In addition to those required in (1) above, the following documents are required to be submitted together with this application:

- (a) A statement setting out -
 - (i) the reason for establishing the new scheme; and
 - (ii) the eligibility requirements for members of the original scheme(s) to be transferred to the new scheme.
- (b) If the new scheme is established before the relevant date, a copy of the governing rules of each of the original scheme(s).
- (c) The documents providing for the transfer, if any, of assets from the original scheme(s) to the new scheme.
- (d) The documents evidencing the bona fide business transaction, if applicable.
- (e) The documents evidencing the scheme restructuring, if applicable.
- (f) A comparison of the terms and conditions of the original scheme(s) and the new scheme with respect to overall design, benefit level, etc.
- (g) The percentage of members of the new scheme who are or will be members of the original scheme(s).
- (h) Any other documents or information which may assist the Authority in reaching a decision on the application.

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

NOTES ON PERSONAL INFORMATION COLLECTION

The Personal Data (Privacy) Ordinance came into force on 20 December 1996. These Notes are prepared to assist you in understanding your rights and obligations in relation to the supply of personal data by you to the Mandatory Provident Fund Schemes Authority (“the Authority”) (which data may relate to yourself or other persons) and the manner in which the Authority may use or deal with such data (in connection with application and other matters). You are strongly advised to read these Notes carefully.

1. The provision of personal data is required pursuant to various provisions of the Mandatory Provident Fund Schemes Ordinance (“the Ordinance”) and of the regulations and rules made under the Ordinance, including the following:
 - (a) Section 20 of the Ordinance, Part II of the Mandatory Provident Fund Schemes (General) Regulation (“the General Regulation”), and sections 42A, 42B, 42C and 42D of the General Regulation in relation to the application for approval as trustees and the application for approval as controllers of approved trustees;
 - (b) Section 21 of the Ordinance and Part III of the General Regulation in relation to the application for registration of schemes;
 - (c) Section 36 of the General Regulation in relation to the approval of constituent funds;
 - (d) Section 6 of the General Regulation in relation to the approval of pooled investment funds;
 - (e) Section 7AB of the Ordinance in relation to submission of statements;
 - (f) Section 5 of the Ordinance, and sections 5, 14 and 16 of the Mandatory Provident Fund Schemes (Exemption) Regulation (“the Exemption Regulation”) in relation to the application for exemption from MPF requirements;
 - (g) Section 7(3) of Schedule 3 to the Exemption Regulation in relation to the application for appointment of trustees/directors of trustees for MPF exempted ORSO registered schemes;
 - (h) Section 8 of the Exemption Regulation in relation to the application for withdrawal of exemption certificates of ORSO exempted schemes; and
 - (i) Section 19 of the Exemption Regulation in relation to the application for withdrawal of exemption certificates of ORSO registered schemes.

Provision of such personal data is necessary for the exercise or performance of the functions of the Authority conferred or imposed by or under the Ordinance (including the regulations and rules made thereunder). Failure to supply the requested personal data may result in delay or refusal of the application if it affects the Authority’s ability to assess the applicant’s compliance with the applicable criteria.

2. The personal data supplied by you shall be used by the Authority for the purposes of exercising or performing its functions conferred or imposed by or under the Ordinance (including the regulations and rules made thereunder), including whatever surveillance, investigation, inspection or enforcement action necessary to the discharge of such functions.
3. In the course of exercising or performing its functions, the Authority may, as permitted by law, match, compare, transfer or exchange the data provided by you with data held, or hereafter obtained, for these or any other purposes by the Authority, government bodies, other regulatory authorities, corporations, organizations or individuals in Hong Kong or overseas for the purposes of the Ordinance.
4. Specified data relating to approved trustees, registered schemes and MPF exempted ORSO registered/exempted schemes are kept open for public inspection pursuant to sections 20C, 21B and 5A of the Ordinance respectively.
5. You may be entitled under the Personal Data (Privacy) Ordinance to request access to or to request the correction of any data supplied by you, in the manner and subject to the limitations prescribed therein. All enquiries should be directed to:

Personal Data Privacy Officer
Mandatory Provident Fund Schemes Authority
Level 8, Tower 1, Kowloon Commerce Centre
51 Kwai Cheong Road, Kwai Chung
Hong Kong