

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 (ORSO schemes) and their employers from the operation of all, or any specified, provisions of the Ordinance.

2. With regard to an application for exemption of a relevant ORSO registered scheme, section 16 of the Mandatory Provident Fund Schemes (Exemption) Regulation (the Exemption Regulation) requires that the application shall be:

- (a) made by the trustee of the relevant ORSO registered scheme;
- (b) made in such form as may be specified by the Mandatory Provident Fund Schemes Authority (the Authority);
- (c) accompanied by:
 - (i) the prescribed fee;
 - (ii) a copy of the latest governing rules of the scheme; and
 - (iii) such other documents (including statutory declarations, and documents proving the date of establishment of the scheme) as may be specified by the Authority; and
- (d) made before the specified date or such later date as the Authority may specify in writing, either generally or in a particular case or class of cases.

3. 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.

4. Section 47A of the Ordinance provides that the Authority may specify or approve the form and contents of documents required for the purposes of the Ordinance.

5. The Authority hereby issues guidelines to set out the form prescribed by the Authority for application for exemption of relevant ORSO registered schemes under the Ordinance and the Exemption Regulation and prescribe the information and documents to be submitted together with the application form.

EFFECTIVE DATE

6. These revised Guidelines (Version 8 – June 2024) shall become effective on 13 June 2024. The previous version of these Guidelines (Version 7 – April 2023) shall be superseded on that day.

APPLICATION FOR EXEMPTION OF ORSO REGISTERED SCHEMES

Eligibility

7. 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.

8. 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.

9. 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 paragraph 8(b) to (d) above, they will be, for exemption purposes, treated as continuation of the original schemes, thus eligible to apply for MPF exemption.

10. 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.

11. 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.

12. 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's statement;
- (b) evidencing the scheme restructuring, if applicable, e.g. trust deeds of the original and the new schemes, employee communication booklets or leaflets;
- (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

13. 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 terms of “commencement date of MPF”, “minimum MPF benefits”, “relevant income”, “final average monthly relevant income” and “years of post-MPF service”, 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 rights 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) choice for existing members to remain as a member of an ORSO scheme or to become a member of an MPF scheme upon the commencement date of MPF;
 - (vi) opportunity given to the affected members to become a member of an MPF scheme upon reduction of future benefits;
 - (vii) investment restrictions on the use of derivatives and borrowing;
- (b) For schemes which open membership to new employees:
- (i) definition of terms of “commencement date of MPF”, “existing member”, “new eligible employee”, “new member”, “minimum MPF benefits”, “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 rights 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) choice for existing members to remain as a member of an ORSO scheme or to become a member of an MPF scheme upon the commencement date of MPF;
 - (vi) opportunity given to the affected members to become a member of an MPF scheme upon reduction of future benefits;
 - (vii) preservation, portability or transferability 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) investment restrictions on the use of derivatives and borrowing.

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.

Prescribed Form

15. 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 form as set out in the Annex (Form ER);
- (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.

16. The prescribed form in the Annex can be downloaded from the Authority's website at: www.mpfa.org.hk.

Signature Requirements

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

- (a) if all the trustees are natural persons, by at least two 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 two of the directors of the trustee that is a company or their authorized persons.

Submission of Application

18. The completed application form and the relevant documents should be submitted in hard copies and sent, together with the application fees, to:

Mandatory Provident Fund Schemes Authority
Level 12, Tower 1, The Millennity
98 How Ming Street, Kwun Tong
Hong Kong

DEFINITION OF TERMS

19. 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.

WARNING

20. 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 a prescribed person¹ in connection with the Ordinance, makes a statement that the person knows to be false or misleading in a material respect, or recklessly makes a statement which is false or misleading in a material respect.

¹ Prescribed person means (a) the Authority; (b) a system operator of an electronic MPF system; (c) an approved trustee; (d) a trustee of a relevant scheme; or (e) an auditor of an approved trustee or of a registered scheme.

FORM ER

MANDATORY PROVIDENT FUND SCHEMES ORDINANCE (CAP 485)**APPLICATION FOR EXEMPTION OF ORSO REGISTERED SCHEME***Section 16 of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap 485B)***NOTES:**

- (1) *The applicant making an application for exemption of an ORSO registered scheme should read the Guidelines on MPF Exempted ORSO Schemes - Application for Exemption of ORSO Registered Schemes before submitting the application.*
- (2) *Please read the Personal Information Collection Statement before completing this application form.*
- (3) *It is obligatory for the applicant to supply all the information, including personal data, requested in this application form. If any item is not applicable, please write "N/A". Failure to provide the requested information, including personal data, may result in refusal of the application.*
- (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.*

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 I - THE POOLING AGREEMENT (if applicable)

- (1) Name of the pooling agreement
(in English): _____

(in Chinese, if any): _____

SECTION II - THE ORSO REGISTERED SCHEME (the Scheme) (for applications in respect of schemes participating in a pooling agreement, use supplementary sheet in Annexure 1 for each scheme)

- (1) ORSO Registration Number of the Scheme: R -

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- (2) Name of the Scheme (in English): _____

(in Chinese, if any): _____
- (3) Date of establishment of the Scheme:

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Day Month Year
- (4) Is the application made with respect to a scheme to which section 14 of the Mandatory Provident Fund Schemes (Exemption) Regulation (the Exemption Regulation) applies?
Yes ☐
No ☐
- (5) If the answer to (4) above is “Yes”, please provide the details of the original occupational retirement scheme to which this Scheme is related (use supplementary sheet if necessary):
- (a) ORSO Registration number: R -

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- (b) Name of the Scheme
(in English): _____

(in Chinese, if any): _____

SECTION III - 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	
Name of region/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	
Name of region/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 of the Scheme and indicate below the relevant clause no. in the governing rules which provide for the following items:

Items	Clause no. in the governing rules
(a) Date of establishment of the Scheme	
(b) Definition of terms including “commencement date of MPF”, “existing member”, “new eligible employee”, “new member”, “minimum MPF benefits”, “relevant income”, “final average monthly relevant income” and “years of post-MPF service”	
(c) Eligibility of employees to join the Scheme	
(d) Treatment of accrued rights of existing members of the Scheme who opt to join an MPF scheme	
(e) Treatment of benefits upon dismissal for cause	
(f) Choice (i) for employees being the existing members to remain as a member of the Scheme or to become a member of an MPF scheme, and (ii) for new eligible employees to become a member of the Scheme or an MPF scheme	
(g) Preservation of minimum MPF benefits	
(h) Portability or transferability of minimum MPF benefits	
(i) Withdrawal of minimum MPF benefits	
(j) Treatment of “minimum MPF benefits” upon inter-group transfer and scheme transfer	
(k) Investment restrictions on the use of derivatives and 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/We* certify that I/we* have read the Personal Information Collection Statement and understand my/our* 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 attached to this application form are true and correct copies.

I/We* undertake to notify the Authority of any matter which affects the validity of any information given in (or in support of) my/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 application form and any documents in relation to the application as soon as possible.

Name of trustee:

Signature and company chop
(to be signed by two directors or
authorized 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 Mandatory Provident Fund Schemes Ordinance makes it an offence punishable with a maximum of one year's imprisonment and a fine of \$100,000 on the first occasion and two years' imprisonment and a fine of \$200,000 on each subsequent occasion for a person who, in a document given to a prescribed person which means, the Authority, a system operator of an electronic MPF system, an approved trustee, a trustee of a relevant scheme, or an auditor of an approved trustee or of a registered scheme, in connection with that Ordinance, makes a statement that the person knows to be false or misleading in a material respect, or recklessly makes a statement which is false or misleading in a material respect.

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

Name: _____

Telephone no.: _____

Annexure 1 to Form ER

**Applications in respect of ORSO registered schemes
participating in a pooling agreement**

SECTION I - THE ORSO REGISTERED SCHEME (the Scheme)

(1) ORSO Registration Number of the Scheme: R -

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(2) Name of the Scheme (in English):

(in Chinese, if any):

(3) Date of establishment of the Scheme:

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Day

Month

Year

(4) Is the application made with respect to a scheme to which section 14 of the Exemption Regulation applies?

Yes

☐

No

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(5) If the answer to (4) above is “Yes”, please provide the details of the original occupational retirement scheme to which this Scheme is related (use supplementary sheet if necessary):

(a) ORSO Registration number:

R -

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(b) Name of the Scheme
(in English):

(in Chinese, if any):

SECTION II - DOCUMENTS TO BE ATTACHED

- (1) Please provide a copy of the governing rules of the Scheme and indicate below the relevant clause no. in the governing rules which provide for the following items:

Items	Clause no. in the governing rules
(a) Date of establishment of the Scheme	
(b) Definition of terms including “commencement date of MPF”, “existing member”, “new eligible employee”, “new member”, “minimum MPF benefits”, “relevant income”, “final average monthly relevant income” and “years of post-MPF service”.	
(c) Eligibility of employees to join the Scheme	
(d) Treatment of accrued rights of existing members of the Scheme who opt to join an MPF scheme	
(e) Treatment of benefits upon dismissal for cause	
(f) Choice (i) for employees being the existing members to remain as a member of the Scheme or to become a member of an MPF scheme, and (ii) for new eligible employees to become a member of the Scheme or an MPF scheme	
(g) Preservation of minimum MPF benefits	
(h) Portability or transferability of minimum MPF benefits	
(i) Withdrawal of minimum MPF benefits	
(j) Treatment of “minimum MPF benefits” upon inter-group transfer and scheme transfer	
(k) Investment restrictions on the use of derivatives and 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

PERSONAL INFORMATION COLLECTION STATEMENT (PICS)

This PICS is made by the Mandatory Provident Fund Schemes Authority (the Authority) in accordance with the Personal Data (Privacy) Ordinance (Cap 486) (PDPO). You are advised to read this PICS carefully as it sets out your rights and obligations in relation to your personal data (as defined in the PDPO) and the manner in which the Authority may collect, use or deal with your personal data for the purposes specified below.

Purpose of Collection and Use

1. The personal data provided in (or in support of) this Application for Exemption of ORSO Registered Scheme required under section 16 of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap 485B) (the Exemption Regulation) will be used and held by the Authority for one or more of the following purposes:
 - (i) exercising and performing the Authority's functions pursuant to the Mandatory Provident Fund Schemes Ordinance (Cap 485) (the Ordinance) and the Occupational Retirement Schemes Ordinance (Cap 426) (the ORSO), including but not limited to exercising and performing functions related to section 5 of the Ordinance and sections 14 and 16 of the Exemption Regulation of approving an application for exemption of an ORSO registered scheme;
 - (ii) considering any other application(s) made under the Ordinance and the ORSO which is related to you;
 - (iii) establishing and maintaining public registers which will contain particulars including the name of employer, investment manager, designated person and scheme administrator;
 - (iv) ensuring compliance with the Ordinance and the ORSO;
 - (v) enabling or assisting the Authority and other regulatory bodies/law enforcement agencies/government departments to perform functions under the Ordinance and the ORSO or their respective regimes including without limitation monitoring, surveillance, inspection, investigation, taking supervisory and/or enforcement actions, and/or conducting any legal, disciplinary or appeal proceedings, provided that such enablement or assistance by the Authority is subject to the Ordinance or the ORSO;
 - (vi) research and statistical purposes; and
 - (vii) other purposes as permitted or required by law.
2. It is obligatory for you to supply your personal data as requested in this application and in processing your application. Failure to supply the requested personal data may result in refusal of your application by the Authority, and, in some circumstances, hindering the Authority from performing its functions.

Transfer of Personal Data

3. The Authority may disclose or transfer your personal data held by the Authority to third parties including the bodies listed below for one or more of the purposes mentioned in paragraph 1 above or any directly related purposes, or in accordance with an order of a court or in accordance with a law or a requirement made under a law:
- (i) the Chief Executive;
 - (ii) the Financial Secretary;
 - (iii) the Secretary for Justice;
 - (iv) the Insurance Authority;
 - (v) the Hong Kong Monetary Authority;
 - (vi) the Securities and Futures Commission;
 - (vii) the Commissioner of Inland Revenue;
 - (viii) the Official Receiver appointed under the Bankruptcy Ordinance (Cap 6);
 - (ix) a liquidator appointed under the pre-amended Ordinance (as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32)) or the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32);
 - (x) the Privacy Commissioner for Personal Data;
 - (xi) the Ombudsman;
 - (xii) the Registrar of Companies;
 - (xiii) the eMPF Platform Company Limited;
 - (xiv) the system operator of an electronic MPF system¹;
 - (xv) the Accounting and Financial Reporting Council established under the Accounting and Financial Reporting Council Ordinance (Cap 588);
 - (xvi) the Hong Kong Police Force;
 - (xvii) any relevant courts, panels, tribunals and committees; and
 - (xviii) other law enforcement agencies, government departments, regulatory bodies, corporations, organizations or individuals in Hong Kong or in a place outside Hong Kong for the purposes of the Ordinance or the ORSO.

Public Registers

4. The Authority is required to establish and maintain a register of MPF exempted ORSO schemes and a register of ORSO schemes registered or exempted under the ORSO, containing specified data (including personal data), pursuant to the relevant provisions of the Ordinance and the ORSO. The Authority is required by law to make the registers available to the public for inspection. The purpose of the registers is to enable members of the public to ascertain whether or not an ORSO scheme has been exempted from MPF

¹ Electronic MPF system means an electronic system designated under section 19I(1) of the Ordinance.

requirements and whether an ORSO scheme has been registered or exempted under the ORSO, and to obtain the basic information of the ORSO scheme. A member of the public may inspect the register of MPF exempted ORSO schemes free of charge. A member of the public may inspect the register of ORSO schemes registered or exempted under the ORSO, or apply for a certified copy of an entry in the register, on payment to the Authority of the respective prescribed fees.

Access to Personal Data

5. You are entitled under the PDPO to ascertain whether the Authority holds any of your personal data, and to request access to and/or correction of them, in the manner and subject to the limitations as set out in the PDPO. The Authority has the right to charge a fee as permitted under the PDPO for processing any data access request, which fee shall not be excessive. All enquiries should be directed to:

Personal Data Privacy Officer
Mandatory Provident Fund Schemes Authority
Level 12, Tower 1, The Millennium
98 How Ming Street, Kwun Tong
Hong Kong

6. The Authority's Privacy Policy Statement is available on the Authority's website at <https://www.mpfa.org.hk/en/privacy-policy>.