

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

V.7 Guidelines on MPF Exempted ORSO Schemes – Application for Approval of Appointment of Directors of Trustees

INTRODUCTION

Section 7(2) of Schedule 3 to the Mandatory Provident Fund Schemes (Exemption) Regulation (“the Exemption Regulation”) provides that for a trustee which is a company but is not a trustee to which section 5(1)(a) or (b) of Schedule 3 to the Exemption Regulation applies, i.e. the trustee is not a registered trust company in Hong Kong or the trustee is a company incorporated outside Hong Kong and not comparable to a registered trust company, the trustee shall obtain the Mandatory Provident Fund Schemes Authority’s (“the Authority’s”) approval in writing before retiring or appointing, as the case may be, a director of the company.

2. With regard to the appointment of a new director, section 7(3) of Schedule 3 to the Exemption Regulation requires that the Authority’s approval shall be sought by way of an application in writing –

- (a) made to the Authority;
- (b) in a manner and form specified by the Authority;
- (c) by the appointee;
- (d) accompanied by the prescribed fee;
- (e) accompanied by a statutory declaration (see specimen at Annex A) as to the character and suitability of the directors of the trustee where section 5(2) of Schedule 3 to the Exemption Regulation applies;

- (f) accompanied by such additional particulars and undertakings as may be required by the Authority.

3. The new appointee shall meet the standards applicable to directors of trustee as set out in section 5(2) of Schedule 3 to the Exemption Regulation before the Authority may grant an approval.

4. The Authority hereby issues guidelines to specify the form for application for appointment of new director of trustee and prescribe the information and documents to be submitted together with the application form.

APPLICATION FOR APPROVAL OF RETIREMENT OR APPOINTMENT OF DIRECTOR OF TRUSTEE

Prescribed Form

5. Application shall be made by the new appointee, i.e. the new director by completing the Form OI-D in Annex B. For retirement of a director of a trustee, there will not be any prescribed forms. An application in writing to the Authority specifying the name of the retiring director and the effective date of retirement signed by the trustee will suffice.

6. 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

7. Where a term used in the Guidelines is defined in the Mandatory Provident Fund Schemes Ordinance ("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.

Submission of Application

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

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

Warning

9. 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.

MANDATORY PROVIDENT FUND SCHEMES ORDINANCE (CAP. 485)

**STATUTORY DECLARATION FOR
APPOINTMENT OF TRUSTEE/DIRECTOR OF TRUSTEE***

Name of Scheme: _____

I, _____ [name of trustee/director of trustee*]
of _____
[address of the trustee/director of trustee*], solemnly and sincerely declare that:

I am suitable to be appointed as a trustee/director of a trustee*. I have not been found guilty, whether in Hong Kong or elsewhere, of an offence involving fraud or dishonesty.

And I make solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Ordinance.

[Signature of the trustee/director of trustee*]
[Name of the trustee/director of trustee*]

Declared at _____, Hong Kong this _____ day of _____.

Before me,

[Signature of the Commissioner for Oaths]

** means delete whichever is inappropriate*

FORM OI-D

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

APPLICATION FOR APPROVAL OF
APPOINTMENT OF DIRECTOR OF TRUSTEE

NOTES:

- (1) *The applicant making an application for approval for appointment of director should read the "Guidelines on MPF Exempted ORSO Schemes - Application for Approval of Appointment of Directors of Trustees" 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.*

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 - PARTICULARS OF THE SCHEME

- (1) MPF Exemption No.
of the Scheme: _____
- (2) Name of the Scheme
(in English): _____
- (in Chinese, if any) _____

SECTION II - PARTICULARS OF THE NEW DIRECTOR

- (1) Name of the trustee (in English): _____
to which the director
is proposed to be
appointed _____
- (in Chinese,
if any): _____

- (2) Name of the director (in English): _____
- (in Chinese,
if any): _____

- (3) Date of birth:

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Day Month Year

- (4) ID No./Passport No.:* _____

- (5) Residential address:
- | | | | |
|------------------|-------|-------------------------|------------------|
| | | | |
| Flat/Room | Floor | Block | Name of building |
| | | | |
| Street no. | | Name of street | |
| | | <i>HK/Kowloon/N.T.*</i> | |
| Name of district | | | |

Telephone no.: _____ Fax no.: _____

- (6) In what capacity are you proposed to be appointed?

(a) a qualified director

(b) a director but not a qualified director

- (7) Proposed date of appointment:

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- (8) Are you previously approved by the Authority as a trustee under section 5(1)(c) or (d) or as a director of another company under section 5(2) of Schedule 3 to the Mandatory Provident Fund Schemes (Exemption) Regulation (“the Exemption Regulation”)?

Yes No

If no, please go to section III.

If yes, please state:

(a) MPF Exemption No.
of the Scheme:

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

(in Chinese, if any):

(c) Capacity:

(i) Individual non-employer trustee

(ii) Individual employer trustee

(iii) Qualified director

(iv) Director but not qualified director

If (8)(c)(i) or (iii) is ticked, please go to section V below.

If (8)(c)(ii) or (iv) is ticked, please go to section IV below.

SECTION III - CONVICTION AND DISCIPLINARY HISTORY AND FINANCIAL STATUS

- (1) Have you ever been convicted of any offence (other than a traffic offence) or are you the subject of unresolved charges, in Hong Kong or elsewhere? Yes/No*

If yes, please provide the following information:

Nature of offence:

Penalty imposed (if any):

Date of conviction or trial:

Name and place of court in which
the offence was tried:

Court reference (if any):

- (2) Have you ever been a party to any civil litigation, other than arising from a traffic accident, in Hong Kong or elsewhere? Yes/No*

If yes, please provide the following information:

Name of plaintiff, defendant and third party (if any): _____

Nature of litigation and outcome (with date): _____

Name and place of court where proceedings commenced: _____

- (3) Other than those listed under question (2), if any, have you ever been, or are you presently, or do you expect to be engaged in any litigation in Hong Kong or elsewhere? Yes/No*

If yes, please provide the following information:

Name of the parties involved: _____

Date and place of litigation: _____

Nature of litigation: _____

- (4) Have you, in Hong Kong or elsewhere, ever been dismissed from any office or position, subject to disciplinary proceedings or barred from entry to any profession or occupation? Yes/No*

If yes, please provide the following information:

Name of the organisation taking action: _____

Nature of the action taken/proceedings: _____

Outcome (if applicable): _____

Date of action/proceedings: _____

Reason for action/proceedings: _____

- (5) Have you ever been refused the right or restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required by law in any place? Yes/No*

If yes, please provide the following information:

Name of the organisation: _____

Address of the organisation: _____

Action taken by the organisation: _____

Date of such action: _____

Reason for such action: _____

- (6) Have you ever been disqualified, censured or disciplined by any professional body or by any regulatory body in Hong Kong or elsewhere? Yes/No*

If yes, please provide the following information:

Name of the organisation taking disciplinary action: _____

Nature of the disciplinary action: _____

Outcome (if applicable): _____

Date of disciplinary action: _____

Reason for disciplinary action: _____

- (7) Have you ever been disqualified by a court of competent jurisdiction from being a trustee or a controller of a company? Yes/No*

If yes, please provide the following information:

Name and place of court: _____

Reason for disqualification (with dates): _____

- (8) Do you have any record of non-compliance with any non-statutory codes or guidelines promulgated by any regulator in Hong Kong or any relevant overseas authority?

Yes/No*

If yes, please provide the following information:

Name and place of regulator/
authority:

Details of non-compliance (with
dates):

- (9) Have you failed to meet any judgement debts, judgements or courts orders for the payment of damages, or other sums of money, in Hong Kong or elsewhere, outstanding against you?

Yes/No*

If yes, please provide the following information:

Current status:

Outcome:

Amount involved:

- (10) Have you ever been adjudicated bankrupt by a court or are you currently subject to bankruptcy proceedings or a bankrupt who has been discharged; or have you ever entered into any scheme of arrangement or any form of composition with creditors, in Hong Kong or elsewhere?

Yes/No*

If yes, please provide the following information:

Name and place of adjudication:

Court of adjudication:

If discharged, the date of discharge
and conditions (if any):

SECTION IV - ADDITIONAL INFORMATION FOR NEW APPOINTEE WHO IS A QUALIFIED DIRECTOR

- (1) Please state your professional, academic, technical or other qualifications and the years in which they were obtained.

Professional and academic qualifications	Issuing institutions	Dates obtained

- (2) Present occupation or employment and occupations and employment during the last 10 years, including the name of employer, the nature of the business, the position held and relevant dates.

Details of employment	1 (Present employment)	2	3
(A) Name of employer/ corporation			
(B) Principal business address			
(C) Nature of business			
(D) Capacity in which employed			
(E) Brief description of your duties and responsibilities			
(F) Date of commencement of employment			
(G) Date of termination of employment (if applicable)	N.A.		
(H) Reasons for termination of employment	N.A.		

- (3) The companies of which you have been appointed as a trustee to their retirement schemes at any time during the past 10 years, in Hong Kong or elsewhere.

Details of appointment	1	2	3
(A) Name of company			
(B) Principal business address			
(C) Nature of scheme (defined benefit or defined contribution)			
(D) Approximate number of scheme members (if available)	<100 <input type="checkbox"/> 100-499 <input type="checkbox"/> 500-999 <input type="checkbox"/> ≥1000 <input type="checkbox"/> as at _____	<100 <input type="checkbox"/> 100-499 <input type="checkbox"/> 500-999 <input type="checkbox"/> ≥1000 <input type="checkbox"/> as at _____	<100 <input type="checkbox"/> 100-499 <input type="checkbox"/> 500-999 <input type="checkbox"/> ≥1000 <input type="checkbox"/> as at _____
(E) Approximate size of scheme assets (to the nearest million) (if available)	\$ _____ as at _____	\$ _____ as at _____	\$ _____ as at _____
(F) Appointed as member trustee, employer trustee or independent trustee?			
(G) Date of appointment			
(H) Date of retiring			
(I) Reasons for retiring			

SECTION V - DECLARATION

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 declare that to the best of my knowledge and belief, the information given in this application form is correct and complete. ✦

I certify that the documents attached to this application, if any, are true and correct copies.

I 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 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 applicant: _____

Signature: _____

Date of application: _____

✦ **Warning:** Section 43E of the Ordinance makes it an offence punishable with a maximum of 1 year 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.: _____

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