

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

V.8 Guidelines on MPF Exempted ORSO Schemes – Application for Withdrawal of Exemption Certificate of an ORSO Exempted Scheme

INTRODUCTION

Section 8(1) of the Mandatory Provident Fund Schemes (Exemption) Regulation (the Exemption Regulation) provides that the Mandatory Provident Fund Schemes Authority (the Authority) may on an application in writing withdraw an exemption certificate of an ORSO exempted scheme where the Authority is satisfied that:

- (a) the grounds for withdrawal warrant the withdrawal; and
- (b) if the certificate is withdrawn, the relevant employer of the ORSO exempted scheme to which the certificate relates will not thereby be in breach of the provisions of the Mandatory Provident Fund Schemes Ordinance (the Ordinance).

2. Section 8(2) of the Exemption Regulation stipulates that an application for withdrawal of exemption certificate of an ORSO exempted scheme shall:

- (a) be made by the relevant employer; where the scheme is a group scheme under section 67 of the Occupational Retirement Schemes Ordinance, the application shall be made by the representative employer according to section 25(b) of the Exemption Regulation;
- (b) state the grounds for making the application;
- (c) be made in such form as may be specified by the Authority; and
- (d) be accompanied by such information or documents (including statutory declarations) as may be specified by the Authority.

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 withdrawal of exemption certificate of an ORSO exempted scheme under section 8 of the Exemption Regulation and prescribe the information and documents to be submitted together with the form.

EFFECTIVE DATE

6. These revised Guidelines (Version 5 – June 2024) shall become effective on 13 June 2024. The previous version of these Guidelines (Version 4 – April 2023) shall be superseded on that day.

APPLICATION FOR WITHDRAWAL OF EXEMPTION CERTIFICATE OF AN ORSO EXEMPTED SCHEME

Employee's Option

7. According to section 4 of the Exemption Regulation, it is a statutory requirement that the employer of an ORSO exempted scheme shall, within the specified time period, provide a statement to its existing members and new eligible employees, as defined under section 2 of the Exemption Regulation, that they have a choice to elect between the ORSO exempted scheme and an MPF scheme.

8. In the event that such statement was provided to the members or employees and any such members or employees have given notice to the employers of electing the ORSO exempted scheme, ***employers are strongly advised to communicate full details of their intentions to these members or employees*** before making the application.

The Applicant and the Prescribed Form

9. Application shall be made by the relevant/representative employer in the prescribed form as set out in the Annex (Form WD-EE). The prescribed form can be downloaded from the Authority's website at: www.mpfa.org.hk.

Signature Requirements

10. The application for the withdrawal of exemption certificate of an ORSO exempted scheme must be signed:

- (a) if the applicant is a sole proprietor or a partnership, by the sole proprietor or at least two partners of the partnership, as appropriate;
- (b) if the applicant is a company, by at least two of the directors of the company.

Submission of Application

11. The completed application form and the relevant application documents should be submitted in hard copies and sent to:

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

DEFINITION OF TERMS

12. 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

13. 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 WD-EE

MANDATORY PROVIDENT FUND SCHEMES ORDINANCE (CAP 485)**APPLICATION FOR WITHDRAWAL OF EXEMPTION CERTIFICATE
OF AN ORSO EXEMPTED SCHEME***Section 8 of the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap 485B)***NOTES:**

- (1) *The applicant making an application for withdrawal of exemption certificate of an ORSO exempted scheme should read the Guidelines on MPF Exempted ORSO Schemes - Application for Withdrawal of Exemption Certificate of an ORSO Exempted 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:	_____
Subject officer:	_____	Input officer:	_____
Verification officer:	_____		

SECTION I - THE SCHEME

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

SECTION II - CIRCUMSTANCES OF AND REASONS FOR WITHDRAWAL OF THE EXEMPTION CERTIFICATE

- ☐ The Scheme has been terminated/wound up in its entirety on _____.
- ☐ The operation in Hong Kong was terminated on _____.
- ☐ No relevant employee remained in the scheme as of _____.
- ☐ All relevant employees are exempted from MPF requirements by virtue of section 4 of the Mandatory Provident Fund Schemes Ordinance (the Ordinance).
- ☐ Others: (please also complete Section III)
- _____

SECTION III - EMPLOYEE'S ELECTION BETWEEN THE ORSO SCHEME AND AN MPF SCHEME

- (1) Have you provided to the existing members and new eligible employees, if any, the statement that they have a choice to elect between the Scheme and an MPF scheme in accordance with section 4 of and Part 1 of Schedule 1 to the Mandatory Provident Fund Schemes (Exemption) Regulation?
- ☐ Yes ☐ No
- (2) If the answer to (1) above is "Yes", has any one of the existing members or new eligible employees given notice to remain in or join the Scheme?
- ☐ Yes ☐ No

SECTION IV - ARRANGEMENT FOR MEMBERS OF THE SCHEME

- (1) Please specify below the arrangement for the members of the Scheme, who are not exempted from the provision of the Ordinance by virtue of section 4 of the Ordinance. Examples of such arrangement may be transferring members to another MPF exempted ORSO scheme, MPF scheme, etc.:

SECTION V - DECLARATION

*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, 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 (or 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 application form and any documents in relation to the application as soon as possible.

Name of *relevant/representative
employer:

Signature and company chop of
*relevant/representative employer:

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 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 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.

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

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 Withdrawal of Exemption Certificate of an ORSO Exempted Scheme required under section 8 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 8 of the Exemption Regulation of approving an application for withdrawal of an exemption certificate of an ORSO exempted 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

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

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 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>.