



## OCCUPATIONAL RETIREMENT SCHEMES ORDINANCE (CHAPTER 426)

### ADDITIONAL GUIDANCE NOTES ON APPLICATION FOR AN EXEMPTION CERTIFICATE UNDER SECTION 7(4)(a)

#### INTRODUCTION

Under section 7(4)(a) of the Occupational Retirement Schemes Ordinance (Ordinance), the Registrar may allow an application for an exemption certificate if he receives a written statement by the relevant employer of an occupational retirement scheme that such employer has complied with section 7(3) of the Ordinance and is satisfied, where the scheme to which the application relates is an offshore scheme, that the scheme is registered or approved by an authority in a country, territory or place outside Hong Kong and that the authority performs in that country, territory or place functions which are generally analogous to the functions conferred on the Registrar by the Ordinance. These guidance notes are published for the purpose of providing applicants with guidance on application for an exemption certificate under section 7(4)(a) of the Ordinance.

#### CRITERIA FOR OVERSEAS AUTHORITY

1. In assessing whether an overseas authority performs functions which are generally analogous to those conferred on the Registrar by the Ordinance for the purpose of section 7(4)(a), the Registrar will consider the following criteria:

- (a) whether the overseas authority administers a registration regime for the scheme in question and lays down registration requirements in its jurisdiction similar to those in Part IV of the Ordinance; and
- (b) whether the overseas authority imposes ongoing operational requirements on the scheme in question comparable to those in Part V of the Ordinance, including in particular:

- (i) Keeping of proper accounts and records and preparation of annual financial statements (section 20)

Proper accounts and records as regards all assets, liabilities and financial transactions of the scheme should be kept and annual financial statements of the scheme should be prepared for audit purpose.

- (ii) Requirements in relation to assets (section 21)

The assets of the scheme must be kept separate and distinct from those of the relevant employer or those of the scheme administrator which are not vested in it in its capacity as such; such assets may only be applied for the purposes of the scheme; and, subject to certain exceptions, no assignment, charge, pledge or encumbrance may be created over such assets. Any assignment, charge, pledge or encumbrance created in contravention of this requirement will be rendered void.



(iii) Funding requirements and duties (section 24)

The employer must make contributions in accordance with the terms of the scheme and must ensure that the scheme is solvent (i.e. the assets of the scheme are sufficient to meet the aggregate vested liabilities payable to scheme members). Where the scheme is a defined benefit scheme (e.g. where a member's benefits are based on his final salary on retirement), the employer must implement the relevant actuary's recommendations as regards funding and actuarial reviews of the scheme.

(iv) Independent trusteeship (section 25)

Where the scheme is governed by a trust, there should be at least one independent trustee who must not be the employer himself, his employee or associate (as defined in the Ordinance) unless that associate is a trust company registered under the Trustee Ordinance (Chapter 29)

(v) Investment requirement or restriction (section 27)

There is prohibition of, or restriction on, loans that can be made to the employer or his associate out of the scheme's assets.

There is limit on the proportion of the scheme's assets that may be invested in any security of, or issued by, the employer or his associate.

There is prohibition of, or restriction on, investment in non-listed companies.

(vi) Filing of periodic returns (section 30)

Periodic returns and/or audited financial statements relating to the scheme are required to be filed with the overseas authority.

## **DOCUMENTS TO BE PROVIDED**

2. An application for exemption under section 7(4)(a) should be accompanied by the following documents/information:
  - (a) a copy of the scheme instrument (e.g. trust deed, insurance policy, agreements or governing rules) specifying the scheme's particulars such as eligibility of membership, membership requirement on employment basis, contribution, vesting mechanism and payment of benefits;
  - (b) information/documents evidencing the scheme is currently registered or approved by the overseas authority, e.g. a copy of the certificate of registration / approval, a copy of the latest annual return submitted to the overseas authority, the latest contribution record in respect of scheme member(s) made by the relevant employer of the scheme or an extract of the relevant record of the register of such overseas authority. The



validity of the information or the issue date of the documents must be within 6 months prior to the date of the application;

- (c) an explanatory summary prepared by a person qualified to practise as a legal practitioner in the country, territory or place in which the scheme has been approved or registered, stating the functions of the overseas authority responsible for the registration, authorization, regulation or supervision of the scheme as mentioned in 1(a) and (b) above. The particulars of that legal practitioner (including his name, professional qualifications, experience relating to that particular jurisdiction, etc.) should also be stated\*; and
- (d) any other documents/information that the relevant employer considers relevant to the application.

\* In the case of an application for an exemption certificate concerning an overseas authority which is on the “List of Authorities for the purpose of section 7(4)(a) of the Occupational Retirement Schemes Ordinance” published by the Registrar (as amended from time to time), the applicant is not required to submit such document.