



強制性公積金計劃管理局
MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

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By Email

25 September 2020

Circular Letter: PR/COT/2020/002

To: Representative/Relevant Employers of ORSO Schemes and Administrators of ORSO Registered Schemes

Dear Sirs

**Compliance with Occupational Retirement Schemes Ordinance and
Mandatory Provident Fund Schemes (Exemption) Regulation**

We refer to the circular letter dated 22 June 2020 regarding the coming into effect of the Occupational Retirement Schemes (Amendment) Ordinance 2020 on 26 June 2020. We would like to highlight certain compliance requirement and issues for your attention and necessary action:

1. For both ORSO registered and exempted schemes

Notification of changes

Under the Occupational Retirement Schemes Ordinance (Ordinance), the relevant/representative employer is obliged to (among other things) notify the Registrar (MPFA) of the following changes within one month of the relevant change:

- (a) Change to the name of a registered or exempted scheme (sections 10(1)(d), 21A(2), 67(2)(g) and 67(2)(gd) of the Ordinance);
- (b) Change of the name or address of the relevant employer or representative employer of a registered or exempted scheme (sections 10(1)(f), s.22(1)(a), 67(2)(gc) of the Ordinance); and
- (c) Change of relevant employer or representative employer (sections 10(1)(e), 21A(1) and 67(2)(gb) of the Ordinance).

A person who fails to comply with such requirements commits an offence and is liable on summary conviction to a fine of \$2,000 or \$10,000.

2. For ORSO registered schemes

(I) Notification of reportable events

Under section 33A of the Ordinance, where the relevant employer or administrator of a registered scheme becomes aware of a reportable event specified in that section that occurs on or after 26 June 2020, the employer or administrator must give written notice to the MPFA setting out the particulars of the event no later than the seventh working day after becoming aware of the event. The template of written notice is available on the MPFA's website (<http://www.mpfa.org.hk>).

A person who, without reasonable excuse, contravenes section 33A(2) commits an offence and is liable on summary conviction to a fine of \$100,000.

(II) Notification of termination and winding up of a registered scheme

Under sections 29(1) and 67(2)(h) of the Ordinance, the representative or relevant employer and designated person of a registered scheme shall within 14 days of the commencement of the winding up or termination process give a notice in writing of that fact to the MPFA and each member of the scheme.

A person who, without reasonable excuse, contravenes section 29(1) or 67(2)(h) commits an offence and shall be liable on summary conviction to a fine of \$10,000.

(III) Submission of annual written statement

Under sections 30(2) and 67(2)(gab) of the Ordinance, the representative or relevant employer must, within one month after the end of a financial year of the scheme, or a longer period the MPFA may allow, give the MPFA a written statement on ongoing compliance with the employment based criterion, i.e. the scheme by its terms limits membership of the scheme to eligible persons; and all members of the scheme are eligible persons.

The MPFA may issue a proposal to cancel the registration of the scheme pursuant to section 42 of the Ordinance for failure to comply with above requirement.

3. For ORSO exempted schemes

Submission of annual return, written statement, documentary evidence

Under section 10(1)(b) of the Ordinance, the relevant employer of an exempted scheme is required, for each period of twelve months beginning on the date of the exemption certificate or an anniversary of the date, to submit to the MPFA (i) an annual return; (ii) an annual written statement on ongoing compliance with the employment based criterion, i.e. the membership of the scheme must be limited to employees of the relevant employer; (iii) (for a scheme exempted under section 7(4)(a) of the Ordinance) documentary evidence to satisfy the MPFA of the validity of the relevant registration or approval during the period; and (iv) (for a scheme exempted under section 7(4)(b) or (c) of the Ordinance) a written statement of the total number of members of the scheme and the number of the members who were Hong Kong

permanent identity card holders on the date of the statement, within one month after the expiry of the period or a longer period the MPFA may allow.

You are reminded that the MPFA may issue a proposal to withdraw an exemption certificate in case of non-compliance with the said requirement. In addition, a person who without reasonable excuse fails to give the MPFA an annual return, written statement or documentary evidence within the timeframe as required under the Ordinance commits an offence and is liable on summary conviction to a fine of \$10,000.

4. For MPF Exempted ORSO Registered Schemes

Pre-approval requirement for the appointment or retirement of a trustee or the director of a trustee

Under the Mandatory Provident Fund Schemes (Exemption) Regulation (Regulation), the person who has the duty or power to retire or appoint a trustee of a scheme (be it a corporate trustee or an individual trustee) must obtain the MPFA's written approval before retiring or appointing the trustee. Where the trustee is a company, the trustee must obtain the MPFA's written approval before retiring or appointing a director of the trustee unless the trustee is (i) a company registered as a trust company under the Trustee Ordinance (Cap. 29) (RTC); or (ii) an overseas trust company which is comparable to an RTC and has a significant presence and control in Hong Kong. These requirements apply to any trustee of a scheme whether or not the trustee is described as an alternate trustee, emergency trustee or co-trustee in the governing rules of the scheme.

The MPFA has, on 1 December 2000, exercised its power under section 7(4) of schedule 3 of the Regulation to exempt the person who has the power to retire or appoint a trustee from this prior approval requirement if the appointee / retiree is a RTC. In this connection, the employer of the scheme shall notify the MPFA in writing within one month after the date of appointment or retirement of the RTC.

You are reminded to allow sufficient time (at least one month) for the MPFA to review and process the above applications. You are further reminded that the date of retirement or appointment of the trustee or director (as the case may be) must not be earlier than the date of approval by the MPFA.

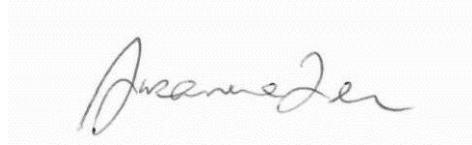
Henceforth, if the MPFA notes that there may be a possibility of any non-compliance event, we may issue an inquiry and require the relevant party(ies) to provide an explanation, as well as the preventive measures and remedial action, etc which will be taken into account when deciding on the enforcement action to be taken.

To conclude, you should ensure that you are well versed with your statutory obligations and that your ORSO schemes are compliant at all times. The MPFA takes non-compliance seriously and will take appropriate action against non-compliance.

The above is only a high-level summary of the relevant statutory requirements given for the purpose of facilitating your compliance and should not be relied on as legal advice. Please refer to the full text of the legislation (available on the internet at <http://www.elegislation.gov.hk>) and seek independent professional advice in case of doubt.

Should you have any enquiries, please contact the MPFA's hotline on 2918 0102 or your case officer.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Susanna Lee", is centered within a light gray rectangular box.

Susanna Lee
Senior Manager
ORSO Schemes Department
Product Regulation Division