



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

電話號碼 Tel No. : 2918 0102
傳真號碼 Fax No. : 2259 8808
本局檔號 Our Ref. : MPFA/S/IO-O/58/1
來函檔號 Your Ref. :

28 February 2015

Circular Letter: SU/COT/2015/001

To: All relevant employers of ORSO schemes and administrators of ORSO registered schemes

Dear Sir/Madam,

Mandatory Provident Fund Schemes (Amendment) Ordinance 2015
(Amendment Ordinance)

On 21 January 2015, the Legislative Council passed the Mandatory Provident Fund Schemes (Amendment) Bill 2014. Certain legislative amendments of Amendment Ordinance took effect on 30 January 2015. Other provisions in the Amendment Ordinance will come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette. The purpose of this letter is to provide you with an overview of those amendments set out in the Amendment Ordinance which are relevant to employers and administrators of ORSO registered schemes.

(A) Amendment Ordinance relevant to ORSO schemes

The major legislative amendments which are relevant to ORSO schemes include the following

- (i) “terminal illness” as an additional ground for withdrawal of Minimum MPF benefits (MMB),
- (ii) prosecution time limitation; and
- (iii) disclosure of information.

i. Withdrawal of MMB on ground of terminal illness (applicable to MPF exempted ORSO registered schemes only)

Section 6(9A) was added in Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Exemption Regulation). An additional ground of “terminal illness” was added for withdrawal of MMB. The term “terminal illness” is defined as an illness that is likely to reduce the life expectancy of the scheme member to 12 months or less as certified by a registered medical practitioner or a registered Chinese medicine practitioner. The definition of “final average monthly relevant income” and “years of post-MPF service” were also amended to facilitate calculation of MMB upon withdrawal on the ground of terminal illness. This amendment will come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

ii. Prosecution time limitation (applicable to MPF exempted ORSO registered scheme only)

Section 26(2) of the Exemption Regulation was repealed and section 47D was added to the Mandatory Provident Fund Schemes Ordinance (MPFSO) which stipulates that proceedings in respect of an offence (other than an indictable offence) under the Ordinance or any subsidiary legislation under the Ordinance may be brought within 3 years after the commission of the offence unless otherwise specified. This amendment took effect on 30 January 2015.

iii. Disclosure of Information

To facilitate reporting to foreign tax authorities such as Internal Revenue Service of the United States of America, amendments were made to allow disclosure of members’ information acquired by performance or assistance in the performance of functions under MPFSO and the Occupational Retirement Schemes Ordinance (ORS Ordinance).

Section 42AAB was added to the MPFSO and section 78A was added to the ORS Ordinance respectively to allow such disclosure of information by administrators and/or relevant employers. An extraction of the relevant amendments (Encl. 1) is attached for your easy reference.

This amendment took effect on 30 January 2015. If information acquired by performance or assistance in the performance of functions under the respective legislation is required to be disclosed, please use the enclosed Request for Consent Form (Encl. 2) for seeking the consent of the Authority. Consent will be granted on a scheme basis for each calendar year. Administrators of pooling agreement and employers with more than one ORSO scheme can submit bulk request for our consent.

For more details about the Amendment Ordinance, please refer to the following link:

<http://www.gld.gov.hk/egazette/pdf/20151905/es1201519051.pdf>

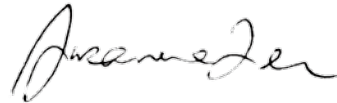
(B) Collection of Email Addresses of Employers

We would also like to take this opportunity to remind employers to provide us with their email addresses for future correspondence. For employers who have not done so in the past, please complete the "Reply Slip A" (as attached in our circular letter of 21 November 2014) and return to us by email or post on or before **31 March 2015**. Please refer to the following link for a copy of the letter and attachments:

http://www.mpfa.org.hk/eng/legislation_regulations/legulations_ordinance/circulars/orso/2011_2015/index.jsp

If you have any questions about the content of this letter, please contact the Authority's hotline on 2918 0102 or your case officer.

Yours faithfully,



(Susanna Lee)
Senior Manager
(Intermediaries/ORSO Schemes)

Encl.

1. Extract of Amendment Ordinance
2. Request for Consent Form

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

**OCCUPATIONAL RETIREMENT SCHEMES ORDINANCE (CAP. 426)
("the ORSO")**

**REQUEST FOR CONSENT FOR DISCLOSURE OF INFORMATION UNDER
SECTION 42AAB OF THE MPFSO / SECTION 78A OF THE ORSO**

SECTION I – PARTICULARS OF THE SCHEME

(If more than one scheme, please provide in a separate sheet)

- (1) ORSO Scheme No. _____
- (2) Name of the Scheme
(in English): _____
("the Scheme")
- (3) Global Intermediary
Identification Number
(GIN): _____
- (4) Name of Pooling
Agreement (if any): _____

SECTION II

PART I – REQUEST FOR CONSENT

I/We hereby request for the consent of the Mandatory Provident Fund Schemes Authority ("MPFA") to:

Disclose Information pursuant to section 42AAB(1) of the MPFSO.

*and/or

Disclose Information pursuant to section 78A(1) of the ORSO.

to Department of The Treasury Internal Revenue Service of United States of America ("IRS") for compliance with the Foreign Account Tax Compliance Act ("FATCA") of United States of America.

For the Calendar year _____

PART II – BASIS FOR REQUESTING CONSENT FOR DISCLOSURE (Please complete all items if applicable)

I/We hereby confirm that:

(1) The governing rules of the scheme permit disclosure of the scheme's/scheme members' information for compliance with FATCA.

(2) The information disclosed is limited to those required under Form 8966 of IRS. (Please provide a copy of current version of the Form)

If another Form is used, please specify and provide a copy of the current version of the Form: _____

(3) The information is to be disclosed to IRS of USA in compliance with FATCA. IRS performs or exercises functions that correspond to those of the Commissioner of Inland Revenue.

Please tick whichever is appropriate:

(4) The scheme member(s) to whom the information relates has given written consent (see attached list of relevant scheme members with name and HKID/Passport no.);

(5) For recalcitrant account holders/dormant accounts, the information is disclosed in a manner that prevents particulars relating to the identity of the person to whom the information relates from being ascertained from the information.

SECTION III - DECLARATION

I/We declare that to the best of my/our knowledge and belief, the information given in this request form and any of its supporting documents is correct and complete. ★

I/We declare that the information (the subject of the current request) in relation to the scheme(s)/scheme member(s) is to be reported to IRS only.

I/We undertake to notify the Authority of any matter which affects the validity of any information given in support of the request.

I/We confirm that the disclosure of information (the subject of the current request) is, subject to the consent as requested being granted, in compliance with all applicable laws and regulations (including, but without limitation, the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong)).

I/We shall indemnify MPFA from and against any losses, liabilities, claims, demands, actions, damages, costs and expenses arising from or in connection with the disclosure of information.

Name of the *administrator (a body corporate or natural person) / relevant employer:

Signature and company chop of the *administrator (a body corporate or natural person) / relevant employer:

Name of person signing:

Title or position of person signing:

Date:

★ Warning: Section 43E(1) of the MPFSO makes it an offence punishable with 12 months' imprisonment and a fine of \$100,000 on first conviction and 2 years' imprisonment and a fine of \$200,000 on each subsequent conviction for a person who knowingly makes a false or misleading statement in a material respect.

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

Name:

Telephone no.:

Disclaimer

The MPFA shall not be responsible or liable for any loss, destruction or damage (including without limitation consequential loss, destruction or damage) howsoever arising from the disclosure of information the subject of the current request.

Explanatory Notes

- (1) For consent requested under section 42AAB of the MPFSO, the request should be made by the administrator.
- (2) For consent requested under section 78A of the ORSO, the request should be made by the administrator or relevant employer.
- (3) The consent granted is to be considered on a per scheme and calendar year basis.
- (4) In case the scheme is a participating scheme of a pooling agreement, the administrator of the pooling agreement may submit in respect of participating schemes.
- (5) In case the scheme is a group scheme and the consent requested under section 78A of the ORSO, the request can be submitted by the representative employer.
- (6) All questions must be answered. If any question is not applicable, please write “N.A.”.
- (7) If boxes are provided, please tick whichever is appropriate.
- (8) The term “recalcitrant account holders” and “dormant accounts” under Part II of Section II refers the same definition as defined in the US Foreign Account Tax Compliance Act.
- (9) Signing requirement:
 - (a) if the request is made by a relevant employer which is a company, it is required to be signed by a director of the company.
 - (b) if the request is made by an administrator which is a company, it is required to be signed by a director or its authorized person.
- (10) * means delete whichever is inappropriate.

Extract of Mandatory Provident Fund Schemes (Amendment) Ordinance 2015

Amendments to Mandatory Provident Fund Schemes (Amendment) Ordinance (Cap.485)

42AAB. Administrator under Occupational Retirement Schemes Ordinance or approved trustee may disclose certain information despite section 41

- (1) Section 41 does not prevent an administrator as defined by section 2(1) of the Occupational Retirement Schemes Ordinance (Cap. 426), or an approved trustee of a registered scheme, from disclosing information if –
 - (a) the Authority has given written consent; and
 - (b) any of the following applies –
 - (i) the person to whom the information relates has given written consent;
 - (ii) the information is disclosed in a manner that prevents particulars relating to the identity of the person to whom the information relates from being ascertained from the information.
- (2) The Authority may give consent only if –
 - (a) the information is to be disclosed to a person located in a place outside Hong Kong;
 - (b) the person exercises or performs in that place functions that correspond to those of the Commissioner of Inland Revenue; and
 - (c) the Authority is satisfied that the disclosure will enable or assist the person to exercise or perform the person's official functions.
- (3) The Authority may, in giving consent, impose conditions that it considers appropriate.

Amendments to Occupational Retirement Schemes Ordinance (Cap. 426)

78A. Disclosure by administrator or relevant employer

- (1) Despite section 77, an administrator or the relevant employer of an occupational retirement scheme may disclose information if –
 - (a) the Registrar has given written consent; and
 - (b) any of the following applies –
 - (i) the person to whom the information relates has given written consent;
 - (ii) the information is disclosed in a manner that prevents particulars relating to the identity of the person to whom the information relates from being ascertained from the information.
- (2) The Registrar may give consent only if –
 - (a) the information is to be disclosed to a person located in a place outside Hong Kong;
 - (b) the person exercises or performs in that place functions that correspond to those of the Commissioner of Inland Revenue; and
 - (c) the Registrar is satisfied that the disclosure will enable or assist the person to exercise or perform the person's official functions.
- (3) The Registrar may, in giving consent, impose conditions that it considers appropriate.