

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

IV.24 Guidelines on Transfer Process under Sections 148A and 148B of the Mandatory Provident Fund Schemes (General) Regulation

INTRODUCTION

Sections 148A and 148B of the Mandatory Provident Fund Schemes (General) Regulation (“the Regulation”) were added by the Mandatory Provident Fund Schemes (Amendment) Ordinance 2009 (“the Amendment Ordinance 2009”) to allow an employee to transfer parts of his accrued benefits from a contribution account to his nominated account during employment.

2. Section 148A of the Regulation allows an employee to elect to transfer the accrued benefits held in the sub-account of a contribution account referred to in section 78(6)(b) of the Regulation to a personal account of the employee in a registered scheme nominated by the employee. An employee may make an election in respect of such sub-account within a registered scheme once every calendar year, or more if the governing rules of the scheme so provide.

3. Section 148B of the Regulation allows an employee to elect to transfer the accrued benefits held in the sub-account of a contribution account referred to in section 78(6)(c) of the Regulation to another contribution account or a personal account in a registered scheme nominated by the employee.

4. Section 62(1) of the Regulation stipulates various duties to be performed by the approved trustee if it becomes aware of the occurrence of an

event of significant nature. Among those duties, section 62(1)(a) of the Regulation provides that the trustee must, not later than the third working day after becoming aware of the event, give written notice to the Mandatory Provident Fund Schemes Authority (“the Authority”) setting out particulars of the event (except an event specified in the guidelines as an event to which section 62(1)(a) shall not apply). Section 62(1)(b) of the Regulation provides further that the trustee must keep a record of particulars of the event.

5. Section 6H of the Mandatory Provident Fund Schemes Ordinance (“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 and other persons concerned with the Ordinance.

6. The Authority hereby issues guidelines to:

- (a) provide guidance about the steps to be taken by approved trustees in transferring the accrued benefits of an employee during employment from the time when the transferee trustee receives the transfer election form from the employee;
- (b) provide guidance about the time limit within which approved trustees should complete certain steps under normal circumstances;
- (c) provide guidance about the reporting and record keeping requirements in the event an approved trustee fails to comply with a time limit specified in these guidelines (and whether also specified in the Regulation or not); and
- (d) specify an event to which section 62(1)(a) of the Regulation does not apply.

EFFECTIVE DATE

7. The Guidelines shall become effective on the date of commencement of operation of the Amendment Ordinance 2009, i.e. 1 November 2012.

STEPS TO BE TAKEN BY THE APPROVED TRUSTEES FOR TRANSFER OF ACCRUED BENEFITS

A. Transfer to an account in another registered scheme

8. A scheme member who wishes to make an election to transfer parts of accrued benefits in a contribution account during employment to a nominated account in another registered scheme shall complete the Employee Choice Arrangement (“ECA”) - Transfer Election Form (Form MPF(S) – P(P)) (“election form”) and submit it to the transferee trustee. The election form can be found in Annex B to the Guidelines on Election Forms for Transfer of Accrued Benefits (Guidelines IV.3).

9. The steps that should be taken by the transferee trustee after receiving the election form from the member are as follows:

- (a) The transferee trustee should check that the information on the election form is sufficient for effecting the transfer of accrued benefits. The information is considered sufficient if the transferee trustee can:
 - (i) ascertain the identity of the member;
 - (ii) identify the member account in the new scheme; and
 - (iii) identify the sub-account(s) in the transferor scheme from which the accrued benefits are to be transferred.
- (b) According to section 153(1) of the Regulation, the transferee trustee shall serve a copy of election form on the transferor trustee

as soon as practicable after being notified of the transfer election. In this respect, if the transferee trustee considers that the information on the election form is sufficient based on (a) above, it should serve a copy of election form on the transferor trustee as soon as practicable within 7 business days after receipt of the election form.

- (c) If the transferee trustee considers that the information on the election form is insufficient based on (a) above, it should, to the extent practicable, follow up with the member to obtain clarification so that it can serve the copy of election form on the transferor trustee within the above timeline. If the copy of election form is not served on the transferor trustee within 7 business days because the transferee trustee considers that the information on the election form is insufficient based on (a) above, subject to the scenario in paragraph 10 below, the transferee trustee should give a written notice of rejection in respect of the election to the member with reason(s) for rejection as soon as practicable within 10 business days after receipt of the election form. The transferee trustee should also inform the member in the same notice that if the member subsequently wishes to provide the outstanding information to the transferee trustee, the member can do so by submitting to the transferee trustee a revised or new election form. Any such revised or new election form received by the transferee trustee should be treated as a new election and the transferee trustee should go through the steps set out in (a) to (c) in this paragraph 9 again.
- (d) In a case of transfer of accrued benefits derived from employee mandatory contributions under section 148A of the Regulation, the transferee trustee should, at the same time of serving a copy of the

election form on the transferor trustee, notify the transferor trustee of the date it received the election form (or if applicable, the revised or new election form) from the member. This date should be adopted for counting the number of elections in a calendar year under section 148A(4) of the Regulation.

10. There may be occasions where the transferee trustee considers that the information on the election form is insufficient based on paragraph 9(a)(ii) above because the transferee trustee has not received the enrolment form for a person when it receives the transfer election form for that person. In such situation, to the extent practicable, the transferee trustee should, as soon as practicable and no later than 7 business days in addition to the timeframes in paragraph 9(c), follow up with that person on enrolment, and to either serve the copy of election form on the transferor trustee or, if applicable, give a written notice of rejection to the person based on paragraph 9(c) above.

11. The steps that should be taken by the transferor trustee after receiving the election form from the transferee trustee are as follows:

- (a) The transferor trustee should check that the information on the election form is sufficient for effecting the transfer of accrued benefits. The information is considered sufficient if the transferor trustee can:
 - (i) ascertain the identity of the member;
 - (ii) identify the member account in the transferor scheme; and
 - (iii) identify the sub-account(s) in the transferor scheme from which the accrued benefits are to be transferred.
- (b) According to section 153(2) of the Regulation, the transferor trustee must take all practicable steps to ensure that all the accrued benefits concerned are transferred in accordance with the election

form within 30 days after receipt of the election form from the transferee trustee. In this respect, if the transferor trustee considers that the information on the election form is sufficient based on (a) above, the transferor trustee should transfer the accrued benefits concerned in accordance with the election form as soon as practicable within that 30-day period.

- (c) If the transferor trustee considers that the information on the election form is insufficient based on (a) above, it may follow up with the member to obtain clarification so that the accrued benefits concerned can be transferred in accordance with the election form within 30 days after receipt of the election form from the transferee trustee. If the accrued benefits concerned cannot be transferred within the 30-day period, the transferor trustee should notify the transferee trustee of the rejection in respect of the election with reason(s) as soon as practicable within 10 business days after receipt of the election form. The transferee trustee should, within 7 business days after being notified of the above by the transferor trustee, notify the member in writing accordingly.
- (d) In a case of transfer of accrued benefits derived from employee mandatory contributions under section 148A of the Regulation, the transferor trustee should keep record of such date as provided by the transferee trustee on which the transferee trustee received the election form (or if applicable, the revised or new election form) from the member. That date should be adopted for counting the number of elections in a calendar year under section 148A(4) of the Regulation.
- (e) If the member makes an election to transfer accrued benefits under section 148A of the Regulation and the balance of the sub-account referred to in section 78(6)(b) of the Regulation is zero at the time

redemption of the account balance would normally occur had there been a balance in that sub-account, the transferor trustee should, within 30 days after receipt of the election form, notify the transferee trustee that no balance is available in the sub-account referred to in section 78(6)(b) of the Regulation for transfer to the transferee trustee and reject the transfer. The transferee trustee should, within 7 business days after being notified of the above by the transferor trustee, notify the member in writing accordingly. However, the transferee trustee may, if paragraph 12(b) applies, notify the member of the above by means of the transfer confirmation issued under paragraph 12(b) even if such notification is not made within the aforementioned 7-business-day time limit.

- (f) If the member makes an election to transfer accrued benefits under section 148A of the Regulation in excess of the number of elections allowed under the governing rules of the scheme, the transferor trustee should notify the transferee trustee of the rejection in respect of such transfer with reason(s) as soon as practicable within 30 days after receipt of the election form. The transferee trustee should, within 7 business days after being notified of the above by the transferor trustee, notify the member in writing accordingly. However, the transferee trustee may, if paragraph 12(b) applies, notify the member of the above by means of the transfer confirmation issued under paragraph 12(b) even if such notification is not made within the aforementioned 7-business-day time limit.
- (g) According to section 154(1) of the Regulation, the transferor trustee must give a transfer statement to the member as soon as practicable after the transfer of accrued benefits. In this respect, the transferor trustee should provide the transfer statement to the

member as soon as practicable within 5 business days after the date of transfer of accrued benefits.

12. The steps that should be taken by the transferee trustee after receiving the accrued benefits from the transferor trustee are as follows:

- (a) The transferee trustee should subscribe the transferred-in benefits into the constituent funds chosen by the member as soon as practicable within 10 business days after receiving the accrued benefits.
- (b) According to section 155 of the Regulation, the transferee trustee must give a written notice to the member confirming the transfer of the accrued benefits as soon as practicable after the transferee trustee has received the transferred-in benefits. In this respect, the transferee trustee should provide the transfer confirmation to the member as soon as practicable within 7 business days after the subscription of the transferred-in benefits into the constituent funds chosen by the member.

B. Transfer to an account in same registered scheme

13. A scheme member who wishes to make an election to transfer parts of accrued benefits in a contribution account during employment to a nominated account within the same registered scheme shall complete the election form and submit it to the trustee of the scheme.

14. The steps that should be taken by the trustee after receiving the election form from the member are as follows:

- (a) The trustee should check that the information on the election form is sufficient for effecting the transfer of accrued benefits. The information is considered sufficient if the trustee can:

- (i) ascertain the identity of the member;
 - (ii) identify the member accounts in the scheme from and to which the accrued benefits are to be transferred; and
 - (iii) identify the sub-account(s) in the scheme from which the accrued benefits are to be transferred.
- (b) According to section 153(3) of the Regulation, the trustee must arrange for the accrued benefits concerned to be transferred in accordance with the election form within 30 days after receipt of the election form from the member. In this respect, if the trustee considers that the information on the election form is sufficient based on (a) above, it should transfer the accrued benefits concerned in accordance with the election form as soon as practicable within that 30-day period.
- (c) If the trustee considers that the information on the election form is insufficient based on (a) above, it should, to the extent practicable, follow up with the member to obtain clarification so that the accrued benefits concerned can be transferred in accordance with the election form within 30 days after receipt of the election form from the member. If the accrued benefits cannot be transferred within the 30-day period, the trustee should give a written notice of rejection in respect of the election to the member with reason(s) for rejection as soon as practicable within 10 business days after receipt of the election form. The trustee should also inform the member in the same notice that if the member subsequently wishes to provide the outstanding information to the trustee, the member can do so by submitting to the trustee a revised or new election form. Any such revised or new election form received by the trustee should be treated as a new election and the trustee should go through the steps set out in (a) to (c) in this paragraph 14 again.

- (d) In a case of transfer of accrued benefits derived from employee mandatory contributions under section 148A of the Regulation, the date the trustee received the election form (or if applicable, the revised or new election form) from the member should be adopted for counting the number of elections in a calendar year under section 148A(4) of the Regulation.
- (e) If the member makes an election to transfer accrued benefits under section 148A of the Regulation and the balance in the sub-account referred to in section 78(6)(b) of the Regulation is zero at the time redemption of account balance would normally occur had there been a balance in that sub-account, the trustee should, within 30 days after receipt of the election form, notify the member that no balance is available in the sub-account referred to in section 78(6)(b) of the Regulation for transfer to his nominated account and reject the transfer. However, the trustee may, if paragraph 14(g) or paragraph 14(h) applies, notify the member of the above by means of the transfer statement issued under paragraph 14(g) or the transfer confirmation issued under paragraph 14(h) (as the case may be) even if such notification is not made within the aforementioned 30-day time limit.
- (f) If the member makes an election to transfer accrued benefits under section 148A of the Regulation in excess of the number of elections allowed under the governing rules of the scheme, the trustee should give a written notice of rejection in respect of such transfer with reason(s) to the member as soon as practicable within 30 days after receipt of the election form. However, the trustee may, if paragraph 14(g) or paragraph 14(h) applies, notify the member of the above by means of the transfer statement issued under paragraph 14(g) or the transfer confirmation issued under

paragraph 14(h) (as the case may be) even if such notification is not made within the aforementioned 30-day time limit.

- (g) According to section 154(3) of the Regulation, the trustee must give a transfer statement to the member as soon as practicable after the transfer of accrued benefits. In this respect, the trustee, in the capacity of the trustee of the scheme from which benefits are transferred, should provide the transfer statement to the member as soon as practicable within 5 business days after the date of transfer of benefits.
- (h) The trustee, in the capacity of the trustee of the scheme to which benefits are transferred, should subscribe the transferred-in benefits into the constituent funds chosen by the member as soon as practicable within 7 business days as from the funds are ready and should provide a transfer confirmation to the member as soon as practicable within 7 business days after the subscription of the transferred-in benefits into the constituent funds chosen by the member. If the transfer of accrued benefits is by means of unit transfer (i.e. no fund subscription of benefits involved), the trustee should provide a transfer confirmation to the member as soon as practicable within 7 business days after such transfer.

REPORTING AND RECORD KEEPING

15. The following paragraphs set out the reporting and record keeping requirements in respect of any failure to comply with a time limit referred to in these guidelines, which may be one of the following two types:

- (a) a time limit not specified in the Regulation (“Non-statutory Time Limit”); and

- (b) a time limit also specified in the Regulation (for example, the “within 30 days” requirements under sections 153(2) and (3) of the Regulation) (“Statutory Time Limit”).

Failure to comply with a Non-statutory Time Limit

16. With respect to a Non-statutory Time Limit, the guidance about the time limits are those which approved trustees should follow under normal circumstances (i.e. circumstances that could not be said to be unanticipated or beyond the control of the trustees). There may however be occasions when a trustee cannot meet the suggested time limits because of circumstances that are unanticipated and beyond its control (for example, where there is a surge in transfer applications beyond the number that could be reasonably expected). In such a case, failure to meet any Non-statutory Time Limit shall not be considered a breach of these guidelines and section 62(1)(a) of the Regulation does not apply. Nevertheless, the trustee should, in such a case, keep a record of particulars of the event of not meeting the time limit and the circumstances causing such events. The Authority may, at its discretion, require reporting about such events.

17. If a trustee fails to meet any Non-statutory Time Limit under normal circumstances, it will be considered a breach of these guidelines and the trustee is required to perform all duties under section 62(1) of the Regulation including giving written notice to the Authority of the event under section 62(1)(a) of the Regulation and keeping a record of particulars of the event under section 62(1)(b) of the Regulation.

18. However, the Authority will allow a 12-month grace period for certain events during which written notice to the Authority under section 62(1)(a) of the Regulation will not be required (but it should be noted, for the

sake of clarity, that in respect of such events all other duties under section 62(1) of the Regulation including the record keeping duty under section 62(1)(b) of the Regulation shall still apply). The Authority hereby specifies an event satisfying the following two conditions as an event to which section 62(1)(a) of the Regulation shall not apply: -

- (a) the event occurs during the first 12 months after these guidelines take effect; and
- (b) the event is the failure, under normal circumstances, of an approved trustee to comply with any Non-statutory Time Limit set out in these guidelines.

Failure to comply with a Statutory Time Limit or other event of significant nature

19. For the avoidance of doubt, paragraphs 16 to 18 do not cover the failure of a trustee to meet any Statutory Time Limit. In those events, the trustee shall perform all its duties under section 62(1) of the Regulation including the duty to give written notice to the Authority under section 62(1)(a) of the Regulation and the record keeping duty under section 62(1)(b) of the Regulation.

20. Further, nothing in this part of these guidelines is intended to modify any obligations to comply with section 62 of the Regulation in relation to an event that may have caused a trustee to fail to comply with a Statutory Time Limit or a Non-statutory Time Limit if such event is, of itself, an event of significant nature.

21. The Annex provides a summary of the reporting and record keeping requirements under the various scenarios described above.

DEFINITIONS OF TERMS

22. “Business day” means any day other than a Saturday, a public holiday, a gale warning day or a black rainstorm warning day within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance (Cap.1).

23. 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.

Summary of reporting and record keeping requirements
under various scenarios

Scenarios		Duty to report to the Authority	Duty to keep record
1. Failure to comply with a Non-statutory Time Limit	(i) Under normal circumstances (therefore amounting to a breach of guidelines)	Yes (s.62 of the Regulation) [except in the first 12 months after Guidelines IV.24 take effect]	Yes (s.62 of the Regulation)
	(ii) Under circumstances that are unanticipated and beyond the trustee's control (no breach of guidelines)	No	Yes (Guidelines)
2. Failure to comply with a Statutory Time Limit		Yes (s.62 of the Regulation)	Yes (s.62 of the Regulation)
3. An event of significant nature that causes a failure to comply with a Non-statutory Time Limit or a Statutory Time Limit		Yes (s.62 of the Regulation)	Yes (s.62 of the Regulation)