

Mandatory Provident Fund Schemes (Amendment) Ordinance 2016

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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE NO. 9 OF 2016



C. Y. LEUNG
Chief Executive
2 June 2016

An Ordinance to amend the Mandatory Provident Fund Schemes Ordinance and its subsidiary legislation to require approved trustees to provide in the governing rules of registered schemes a default investment strategy and to invest scheme members' accrued benefits according to the strategy in certain circumstances; to specify the requirements of the strategy; to provide for matters concerning the regulation of the strategy; to amend the publication requirement for the prescribed savings rate; to define *specified working day* for certain reporting obligations; to amend the offence of making a false or misleading statement; and to make consequential amendments.

[]

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Mandatory Provident Fund Schemes (Amendment) Ordinance 2016.

- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

2. Enactments amended

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2

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

3. Section 2 amended (interpretation)

Section 2(1)—

Add in alphabetical order

“*default investment strategy* (預設投資策略), in relation to a registered scheme, means the default investment strategy provided in the governing rules of the scheme under section 34DB(1)(a);”.

4. Section 20B amended (revocation of approval of approved trustee)

Section 20B(1)(d)—

Repeal

“section 22; or”

Substitute

“__

- (i) section 22;
- (ii) section 27(2A);
- (iii) section 34DB(1)(a), (b), (c) or (d);
- (iv) section 34DC(1);
- (v) section 34DD(1) or (4);
- (vi) section 34DH(1) or (2);
- (vii) section 34DI(1) or (2);
- (viii) section 34DJ(2), (3), (4) or (5);
- (ix) section 34DK(2); or

(x) section 34DM; or”.

5. Section 27 amended (duties and powers of approved trustees of registered schemes)

After section 27(2)—

Add

“(2A) An approved trustee of a registered scheme must invest the accrued benefits of a scheme member according to the member’s selection as permitted under the governing rules.”.

6. Section 30 amended (report of auditor)

(1) Section 30(1)—

Repeal paragraph (b)

Substitute

“(b) to provide a copy of the report to the Authority within the period specified in the notice.”.

(2) After section 30(1)—

Add

“(1A) If at any time the Authority reasonably believes that an approved trustee of a registered scheme has failed to comply with section 34DB(1)(a), (b), (c) or (d), 34DC(1), 34DD(1) or (4), 34DI(1) or (2), 34DJ(2), (3), (4) or (5) or 34DK(2), the Authority may, by written notice served on the trustee, require the trustee—

(a) to arrange for an auditor (who must be approved by the Authority)—

(i) to investigate whether or not the trustee has failed to comply with the provision;

- (ii) to investigate any other matters relating to the trustee or the scheme that may be specified in the notice; and
 - (iii) to prepare for the trustee a report on the investigation; and
- (b) to provide a copy of the report to the Authority within the period specified in the notice.”.
- (3) Section 30(2), after “subsection (1)”—
Add
“or (1A)”.
- (4) Section 30(3), after “subsection (1)”—
Add
“or (1A)”.

7. Section 33 amended (suspension and termination of approved trustee’s administration of registered scheme)

- (1) Section 33(1)(a)—
Repeal
“; or”
Substitute a semicolon.
- (2) Section 33(1)(b)—
Repeal the full stop
Substitute
“; or”.
- (3) After section 33(1)(b)—
Add
“(c) that the trustee has failed to comply with—
 - (i) section 27(2A);

- (ii) section 34DB(1)(a), (b), (c) or (d);
- (iii) section 34DC(1);
- (iv) section 34DD(1) or (4);
- (v) section 34DH(1) or (2);
- (vi) section 34DI(1) or (2);
- (vii) section 34DJ(2), (3), (4) or (5);
- (viii) section 34DK(2); or
- (ix) section 34DM.”.

- (4) Section 33(6)(a)—

Repeal

“; or”

Substitute a semicolon.

- (5) Section 33(6)(b)—

Repeal the full stop

Substitute

“; or”.

- (6) After section 33(6)(b)—

Add

“(c) that the trustee has failed to comply with—

- (i) section 27(2A);
- (ii) section 34DB(1)(a), (b), (c) or (d);
- (iii) section 34DC(1);
- (iv) section 34DD(1) or (4);
- (v) section 34DH(1) or (2);
- (vi) section 34DI(1) or (2);
- (vii) section 34DJ(2), (3), (4) or (5);

- (viii) section 34DK(2); or
- (ix) section 34DM.”.

8. Part 4AA added

After Part 4—

Add

“Part 4AA

Default Investment Strategy

Division 1—Preliminary

34DA. Interpretation

In this Part—

commencement date (生效日期) means the date on which this Part comes into operation;

DIS constituent fund (預設投資策略成分基金) means—

- (a) an Age 65 Plus Fund as defined by section 1 of Schedule 10; or
- (b) a Core Accumulation Fund as defined by section 1 of Schedule 10;

out-of-pocket expenses (實付開支) means auditor’s fee for annual audit, printing expenses and postage, fund price publication expenses, bank charges, governmental fees and charges (including but not limited to stamp duty and licence fee), other charges and expenses properly incurred and permitted under this Ordinance, the regulations and the governing rules;

pre-existing account (既有帳戶) means an account of a scheme member of a registered scheme that was opened before the commencement date;

specific investment instructions (特定投資指示), in relation to an account of a scheme member of a registered scheme, means the instructions given by the member to the approved trustee of the scheme to invest the accrued benefits in the account according to the member's selection as permitted under the governing rules.

Division 2—Default Investment Strategy

34DB. Approved trustee to invest accrued benefits according to default investment strategy

- (1) An approved trustee of a registered scheme—
 - (a) must provide in the governing rules of the scheme a default investment strategy that complies with Part 2 of Schedule 10;
 - (b) must ensure that any investment related to the strategy accords with the requirements under this Part and Part 2 of Schedule 10;
 - (c) subject to subsections (2), (3) and (4), must invest the accrued benefits of a scheme member according to the strategy; and
 - (d) must ensure that the strategy is available for selection by scheme members.
- (2) The operation of subsection (1)(c) is subject to—
 - (a) any specific investment instructions given by the member for the accrued benefits; and
 - (b) Divisions 3 and 4.

- (3) The trustee must not invest the accrued benefits in a pre-existing account of a scheme member according to the strategy if the trustee is aware that the member has reached 60 years of age before the commencement date, unless the member has given specific investment instructions to invest those benefits according to the strategy.
- (4) Subsection (1)(c) does not oblige the trustee to invest the accrued benefits in an account of a scheme member of a registered scheme according to the strategy if—
 - (a) all or any of the accrued benefits in that account—
 - (i) have been transferred from an account in another registered scheme to that account in a restructuring to which the Authority consented under section 34B(5); and
 - (ii) were not invested according to the strategy before the restructuring; or
 - (b) all or any of the accrued benefits in that account have been invested in a constituent fund but the approval granted in respect of the fund has been cancelled by the Authority under section 21BB(1)(b).

34DC. Transfer of accrued benefits to an account within the same registered scheme

- (1) If all or any of the accrued benefits in an account of a scheme member of a registered scheme (*transferor account*) are transferred to another account of the member within the scheme (*transferee account*), then the approved trustee of the scheme must ensure that

the transferred benefits remain invested in the same manner as they were invested immediately before the transfer, unless the member otherwise instructs as permitted under the governing rules.

- (2) For the purposes of this section—
- (a) section 27(2A) does not oblige the trustee to invest the transferred benefits according to any specific investment instructions that the member has given before the transfer for the accrued benefits in the transferee account; and
 - (b) section 34DB(1)(c) does not oblige the trustee to invest the transferred benefits according to the default investment strategy if the member has given specific investment instructions for the transferred benefits before the transfer.
- (3) In this section—

transferred benefits (轉移權益) means the accrued benefits in the transferor account that are transferred, or have been transferred, to the transferee account.

34DD. Control of payment for services relating to default investment strategy

- (1) Subject to subsection (3), the approved trustee of a registered scheme must ensure that no payment for the services specified in subsection (2) may be charged to or imposed on—
- (a) a DIS constituent fund of the scheme; or
 - (b) a scheme member who invests in the fund.
- (2) The services specified for the purposes of subsection (1) are services provided in relation to the DIS constituent fund by—

- (a) the approved trustee;
 - (b) a specified service provider; or
 - (c) a person named as the sponsor or promoter in the governing rules of the registered scheme.
- (3) Subsection (1) does not apply to payments for those services—
 - (a) that are calculated as a percentage of the net asset value of the DIS constituent fund;
 - (b) that are—
 - (i) for the services provided by a custodian in connection with holding, maintaining or transacting the investments of the fund; and
 - (ii) customarily not calculated as a percentage of the net asset value of the fund;
 - (c) that are for the services relating to the establishment or winding up of the fund; or
 - (d) that are charged to the member for obtaining copies of documents not required to be provided under this Ordinance.
- (4) The approved trustee must ensure that—
 - (a) the aggregate of the total amounts mentioned in subparagraphs (i) and (ii), when it is expressed as a percentage of the net asset value of the DIS constituent fund, does not, in a single day, exceed the percentage specified in section 1 of Schedule 11—
 - (i) the total amount of all payments for the services specified in subsection (2) that are—

- (A) charged to or imposed on the fund, or a scheme member who invests in the fund; and
 - (B) calculated as a percentage of the net asset value of the fund; and
 - (ii) the total amount of any proportionate underlying investment fund fees chargeable to any underlying investment fund of the fund; and
 - (b) the total amount of all payments that are charged to or imposed on the DIS constituent fund, or a scheme member who invests in the fund, for out-of-pocket expenses incurred by the approved trustee on a recurrent basis in the discharge of the approved trustee's duties to provide services in relation to the fund, when it is expressed as a percentage of the net asset value of the fund, does not, in a single year, exceed the percentage specified in section 2 of Schedule 11.
- (5) In this section—

proportionate underlying investment fund fee (按比例基礎投資項目基金費用), in relation to an underlying investment fund, means an amount that is calculated by the following formula—

$$A \times B$$

where—

- A is the underlying investment fund fee being calculated as a percentage of the net asset value of the underlying investment fund;

B is the proportion of the assets of the DIS constituent fund that is invested in the underlying investment fund;

specified person (指明人士), in relation to the definition of ***underlying investment fund fee***, means—

- (a) a person (***first mentioned person***) whose role in relation to an underlying investment fund is similar to that of any of the following persons who provide services in relation to a DIS constituent fund—
 - (i) an approved trustee of a registered scheme;
 - (ii) a specified service provider;
 - (iii) a person named as the sponsor or promoter in the governing rules of the scheme; or
- (b) a person who provides services that are identical or similar to the services provided by the first mentioned person;

specified service provider (指明服務提供者), in relation to a registered scheme, means—

- (a) the following persons appointed or engaged by the approved trustee of the scheme to provide services for the purposes of the scheme—
 - (i) an investment manager of the scheme;
 - (ii) a custodian of the scheme assets of the scheme;
 - (iii) an administrator who administers the scheme in whole or in part; or

- (b) a person to whom the provision of those services is delegated by such a manager, custodian or administrator;

underlying investment fund (基礎投資項目基金), in relation to the DIS constituent fund in which the accrued benefits of a scheme member of a registered scheme is invested, means any of the following fund or scheme in which those accrued benefits are directly or indirectly invested by the fund—

- (a) an approved pooled investment fund as defined by section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A);
- (b) an index-tracking collective investment scheme as defined by section 1(1) of Schedule 1 to that Regulation;
- (c) a collective investment scheme as defined by section 1(1) of Schedule 1 to that Regulation;

underlying investment fund fee (基礎投資項目基金費用)—

- (a) means any amount payable for the services provided in relation to an underlying investment fund by a specified person; but
- (b) does not include the payment for the services similar to those referred to in subsection (3)(b) and (c) in relation to a DIS constituent fund.

34DE. Amendment of Schedules 10 and 11

- (1) The Secretary for Financial Services and the Treasury may, by notice published in the Gazette, amend—
 - (a) Schedule 10, in relation to any or all of the following matters—

- (i) the percentage of the net asset value of the DIS constituent fund targeted to be invested in higher risk assets;
 - (ii) the range of variation of that percentage;
 - (iii) the age of scheme members specified for an investment strategy;
 - (iv) the number of constituent funds used for investments under the default investment strategy of a registered scheme;
 - (v) a percentage set out in the table in section 4(3) of Schedule 10; or
- (b) Schedule 11.
- (2) A notice made under subsection (1) may contain incidental, supplementary, consequential, transitional or savings provisions that are necessary or expedient in consequence of an amendment made by the notice.

Division 3—Transitional and Savings Provisions for Pre-existing Accounts Wholly Invested according to Default Investment Arrangement

34DF. Interpretation

In this Division—

default investment arrangement (預設投資安排)—

- (a) means a default arrangement—
 - (i) provided before the commencement date in the governing rules of a registered scheme; and

- (ii) under which the accrued benefits in an account of a scheme member who has not given any specific investment instructions for those benefits are invested; but
- (b) does not include an arrangement for investing the accrued benefits in an account of a registered scheme—
 - (i) that have been transferred from an account in another registered scheme to that account in a restructuring to which the Authority consented under section 34B(5); or
 - (ii) in another constituent fund due to the Authority's cancellation, under this Ordinance, of the approval granted in respect of a constituent fund in which the accrued benefits were invested;

DIA account (預設投資安排帳戶) means a pre-existing account of an existing member that meets the description of section 34DG(1)(b);

existing member (現有成員) means a scheme member of a registered scheme to whom this Division applies under section 34DG;

reply period (回覆期), in relation to a specified notice, means 42 days after the date of the notice;

specified notice (指明通知) means a notice that is approved, or in the form specified, by the Authority for the purposes of this Division.

34DG. Scheme members to whom this Division applies

- (1) This Division applies to a scheme member of a registered scheme if—

- (a) either of the following descriptions is met—
 - (i) the member is below 60 years of age, or becomes 60 years of age, on the commencement date;
 - (ii) the approved trustee of the scheme is not aware of the age of the member; and
 - (b) all of the accrued benefits in a pre-existing account of the member were, as at the commencement date, invested according to a default investment arrangement of the scheme and, since then, have remained so invested.
- (2) Despite subsection (1), this Division does not apply to the member if the trustee reasonably believes that the trustee has received specific investment instructions from the member to invest any of the accrued benefits in the pre-existing account according to the default investment arrangement.

34DH. Accrued benefits in pre-existing account

- (1) The approved trustee of a registered scheme must continue to invest the accrued benefits in the DIA account of an existing member according to the default investment arrangement of the scheme unless the trustee has received specific investment instructions from the member for those benefits.
- (2) Despite subsection (1), if those benefits have become invested according to the default investment strategy under section 34DI(2) or 34DJ(3) or (5), the trustee must continue to invest any accrued benefits in the account according to the default investment strategy, whether or not the member is still an existing member, unless the trustee has received specific

investment instructions from the member for the benefits in that account.

- (3) Subsection (1) does not limit the operation of sections 34DI, 34DJ and 34DK.

34DI. Approved trustee to give specified notice to scheme member

- (1) The approved trustee of a registered scheme must, within 6 months after the commencement date—
- (a) give a specified notice to each existing member in respect of the DIA account, or each of the DIA accounts, of the member; and
 - (b) in the specified notice, inform the member of the requirements under subsection (2).
- (2) Subject to section 34DK, if, by the expiry day of the reply period for a specified notice given under subsection (1) to a scheme member—
- (a) the trustee has not received specific investment instructions from the member for the accrued benefits in a DIA account of the member; and
 - (b) the member is still an existing member,
- the trustee must, within 14 days after the expiry day, invest those benefits in the account according to the default investment strategy of the scheme.
- (3) Despite section 27(2A), the trustee must comply with subsection (2) regardless of any specific investment instructions received by the trustee from the member for those benefits within the 14 days referred to in that subsection.

34DJ. Locating scheme members whose addresses are unknown etc.

- (1) This section applies if—
 - (a) it comes to the knowledge of an approved trustee of a registered scheme that a specified notice given to an existing member under section 34DI(1) is not taken to have been given under section 206(1A) or (2) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A); or
 - (b) the trustee is not aware of any contact details of an existing member that enable the trustee to give a specified notice to the member under section 34DI(1).
- (2) The trustee must proceed to locate the member in the manner, and within the time limit (*time limit*), specified in the guidelines for the purposes of this section.
- (3) Subject to section 34DK, if, after subsection (2) has been complied with in respect of a scheme member—
 - (a) the member cannot be located before the expiry of the time limit; and
 - (b) the member is still an existing member,the trustee must, within 14 days after the expiry of the time limit, invest the accrued benefits in the DIA account, or all of the DIA accounts, of the member, according to the default investment strategy of the scheme.
- (4) If a scheme member in relation to whom subsection (2) applies is located before the expiry of the time limit, and the member is still an existing member, the

trustee must, within 14 days after the day on which the member is located—

- (a) in a case falling within subsection (1)(a), give another specified notice to the member informing the member of the requirements under subsection (5); or
 - (b) in a case falling within subsection (1)(b), give a specified notice to the member informing the member of the requirements under subsection (5).
- (5) For the purposes of subsection (4) and subject to section 34DK, if, by the expiry day of the reply period for the notice given under that subsection—
- (a) the trustee has not received specific investment instructions from the member for the accrued benefits in a DIA account of the member; and
 - (b) the member is still an existing member,
- the trustee must, within 14 days after the expiry day, invest those benefits in the account according to the default investment strategy of the scheme.
- (6) Despite section 27(2A), the trustee must comply with subsection (3) or (5) regardless of any specific investment instructions received by the trustee from the member for those benefits within the 14 days referred to in that subsection.

34DK. Guaranteed funds

- (1) This section applies to the accrued benefits of an existing member that have been invested in a guaranteed fund according to a default investment arrangement of the scheme.

(2) For the purposes of section 34DI(2) or 34DJ(3) or (5), the approved trustee of the scheme must not invest those benefits according to the default investment strategy of the scheme if, on the expiry day, the market value of those benefits is less than the value guaranteed by the fund to be paid to the member on that day.

(3) In this section—

expiry day (屆滿日)—

- (a) in relation to section 34DI(2), means the expiry day referred to in that section;
- (b) in relation to section 34DJ(3), means the day on which the time limit referred to in that section expires; or
- (c) in relation to section 34DJ(5), means the expiry day referred to in that section;

guaranteed fund (保證基金) means a constituent fund that provides a guaranteed return of capital, income on capital or both the capital and the income.

Division 4—Transitional and Savings Provisions for Pre-existing Accounts Partially Invested according to Default Investment Arrangement

34DL. Interpretation

In this Division—

default investment arrangement (預設投資安排) has the meaning given by section 34DF.

34DM. Accrued benefits continue to be invested according to default investment arrangement

If—

- (a) a scheme member of a registered scheme is below 60 years of age, or becomes 60 years of age, on the commencement date; and
- (b) immediately before the commencement date, part of the accrued benefits in a pre-existing account of the member have been invested according to a default investment arrangement of the scheme,

then, the approved trustee must continue to invest part of the accrued benefits in the account according to the arrangement unless the trustee has received specific investment instructions from the member for those benefits.”.

9. Section 43E amended (offence to make false or misleading statement)

- (1) Section 43E(1), after “, an approved trustee”—

Add

“, a trustee of a relevant scheme”.

- (2) At the end of section 43E—

Add

- “(3) In this section—

relevant scheme (有關計劃) has the meaning given by section 1(1) of Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B).”.

10. Section 48 amended (amendment of Schedules)

Section 48(1)—

Repeal

“the Schedules”

Substitute

“Schedules 1 to 8”.

11. Schedules 10 and 11 added

At the end of the Ordinance—

Add

“Schedule 10

[ss. 34DA, 34DB
& 34DE]

Requirements for Default Investment Strategy

Part 1

Preliminary

1. Interpretation

In this Schedule—

Age 65 Plus Fund (65歲後基金), in relation to a registered scheme, means the constituent fund made available in the scheme under section 2(a) of this Schedule;

Core Accumulation Fund (核心累積基金), in relation to a registered scheme, means the constituent fund made available in the scheme under section 2(b) of this Schedule;

higher risk assets (較高風險資產) means any assets identified as such in the guidelines for the purposes of this Schedule.

Part 2

Requirements for Default Investment Strategy

2. Constituent funds

The approved trustee of a registered scheme must make available in the scheme the following constituent funds for investments under the default investment strategy of the scheme—

- (a) a constituent fund investing in a globally diversified manner that targets to invest 20% of the net asset value of the fund in higher risk assets, but the investment in those assets may vary from 15% to 25% of the net asset value of the fund at any point in time (***Age 65 Plus Fund***);
- (b) a constituent fund investing in a globally diversified manner that targets to invest 60% of the net asset value of the fund in higher risk assets, but the investment in those assets may vary from 55% to 65% of the net asset value of the fund at any point in time (***Core Accumulation Fund***).

3. Investment strategy for scheme members who are below 50 years of age

The approved trustee of a registered scheme must invest the accrued benefits of a scheme member who is below 50 years of age solely in the Core Accumulation Fund.

4. Investment strategy for scheme members who are 50 years of age or above but below 65 years of age

- (1) Subject to section 34DB(3), this section applies to a scheme member of a registered scheme who is 50 years of age or above, but below 65 years of age.
- (2) The approved trustee of the scheme must—
 - (a) invest the accrued benefits of the member in the Core Accumulation Fund and the Age 65 Plus Fund;
 - (b) if the member's accrued benefits have been invested under section 3 of this Schedule but not yet invested under this section—
 - (i) invest, within 60 days beginning on the member's 50th birthday, a portion of the member's investments in the Core Accumulation Fund in the Age 65 Plus Fund; and
 - (ii) ensure that immediately after the investment is made, the investments in the respective funds, each relative to the member's total investments in both funds, are of the percentages set out in columns 2 and 3, opposite to the age of 50 in column 1, of the table in subsection (3) (*Table*);
 - (c) if the member's accrued benefits have been invested under this section—
 - (i) allocate, once in each year within 60 days beginning on the birthday of the member in that year, the member's investments in the Core Accumulation Fund and the Age 65 Plus Fund respectively; and

- (ii) ensure that immediately after the allocation, the investments in the respective funds, each relative to the member's total investments in both funds, are of the percentages set out in columns 2 and 3, opposite to the member's age in column 1, of the Table; and
 - (d) for accrued benefits in the member's account in a particular year that have not been invested under this section, invest those benefits in the Core Accumulation Fund and the Age 65 Plus Fund according to the proportion expressed in the percentages set out in columns 2 and 3, opposite to the member's age in column 1, of the Table.
- (3) The table of percentages for the purposes of subsection (2) is as follows—

Column 1	Column 2	Column 3
Age	Core Accumulation Fund	Age 65 Plus Fund
50	93.3%	6.7%
51	86.7%	13.3%
52	80.0%	20.0%
53	73.3%	26.7%
54	66.7%	33.3%
55	60.0%	40.0%
56	53.3%	46.7%
57	46.7%	53.3%

Column 1	Column 2	Column 3
Age	Core Accumulation Fund	Age 65 Plus Fund
58	40.0%	60.0%
59	33.3%	66.7%
60	26.7%	73.3%
61	20.0%	80.0%
62	13.3%	86.7%
63	6.7%	93.3%
64	0.0%	100.0%

5. Investment strategy for scheme members who are 65 years of age or above

Subject to section 34DB(3), the approved trustee of a registered scheme must invest the accrued benefits of a scheme member who is 65 years of age or above solely in the Age 65 Plus Fund.

6. Investment strategy for scheme members whose age is uncertain

The approved trustee of a registered scheme must invest the accrued benefits of a scheme member solely in the Age 65 Plus Fund if the trustee is not aware of the age of the member.

Schedule 11

[ss. 34DD & 34DE]

Percentage Specified for Purposes of Section 34DD(4)

1. The percentage for the purposes of section 34DD(4)(a) is a daily rate calculated by the following formula—

$$\frac{0.75\%}{A}$$

where—

A is the number of days in the year.

2. The percentage for the purposes of section 34DD(4)(b) is 0.2%.”.

Part 3

Amendments to Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A)

12. Section 2 amended (interpretation)

Section 2—

Add in alphabetical order

“*specified working day* (指明工作日) means any day other than—

- (a) a public holiday;
- (b) a Saturday; or
- (c) a gale warning day or black rainstorm warning day within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1);”.

13. Section 36 amended (scheme may consist of a single constituent fund or of separate constituent funds)

(1) Section 36, heading—

Repeal

“a single constituent fund or of separate”

Substitute

“3 or more”.

(2) Section 36(1)—

Repeal

“a single constituent fund, or of 2”

Substitute

“3”.

14. Section 37 amended (provisions relating to capital preservation fund)

Section 37(8), definition of *prescribed savings rate*—

Repeal

“by notice published in a Chinese language newspaper and an English language newspaper circulating in Hong Kong”

Substitute

“by notice published in a manner that the Authority considers appropriate”.

15. Section 39 amended (control objectives and internal control procedures to be maintained for each registered scheme)

After section 39(2)(c)—

Add

“(ca) ensuring that the following provisions of the Ordinance are complied with in relation to the scheme—

- (i) section 27(2A);
- (ii) section 34DB(1)(a), (b), (c) and (d);
- (iii) section 34DC(1);
- (iv) section 34DD(1) and (4);
- (v) section 34DH(1) or (2);
- (vi) section 34DI(1) and (2);
- (vii) section 34DJ(2), (3), (4) and (5);
- (viii) section 34DK(2);
- (ix) section 34DM;”.

16. Section 42C amended (Authority’s consent required in respect of persons proposing to become shadow directors)

Section 42C(6), before “working days”—

Add

“specified”.

17. Section 42D amended (Authority’s consent required in respect of persons proposing to become substantial shareholders)

Section 42D(2) and (3), before “working days”—

Add

“specified”.

18. Section 42E amended (Authority may object to existing controllers)

Section 42E(10), before “working days”—

Add

“specified”.

19. Section 62 amended (approved trustee to notify Authority of events of significant nature)

Section 62(1)(a), before “working day”—

Add

“specified”.

20. Section 66 amended (approved trustee permitted to deduct from scheme members' accounts amount in respect of administrative expenses)

Section 66, after “Subject to this Regulation”—

Add

“and section 34DD of the Ordinance”.

21. Section 75 amended (service providers to report certain matters to Authority)

Before section 75(1)(a)—

Add

“(aa) becomes aware that the approved trustee of the scheme is not complying with any of the following provisions of the Ordinance—

- (i) section 27(2A);
- (ii) section 34DB(1)(a), (b), (c) or (d);
- (iii) section 34DC(1);
- (iv) section 34DD(1) or (4);
- (v) section 34DH(1) or (2);
- (vi) section 34DI(1) or (2);
- (vii) section 34DJ(2), (3), (4) or (5);
- (viii) section 34DK(2);
- (ix) section 34DM; or”.

22. Section 99 amended (removal and resignation of auditor)

Section 99(2), (3), (7) and (8), before “working days”—

Add

“specified”.

23. Section 102 amended (auditor to report on financial statements etc.)

(1) Section 102(2)(d)—

Repeal

“with.”

Substitute

“with; and”.

(2) After section 102(2)(d)—

Add

“(e) state whether or not, in the auditor’s opinion, the requirements under sections 34DB(1)(a), (b), (c) and (d), 34DC(1), 34DD(1) and (4), 34DI(1) and (2), 34DJ(2), (3), (4) and (5) and 34DK(2) of the Ordinance have been complied with in all material respects as at—

(i) the end of that period; and

(ii) 2 other dates in that period nominated by the auditor,

and, if not, specify to what extent, in the auditor’s opinion, those requirements have not been complied with.”.

(3) Section 102(3), after “(2)(d)(ii)” —

Add

“or (e)(ii)”.

24. Section 103 amended (auditor to report certain matters to Authority)

After section 103(1)(a)—

Add

- “(ab) becomes aware that the approved trustee of the scheme is not complying with any of the following provisions of the Ordinance—
- (i) section 34DB(1)(a), (b), (c) or (d);
 - (ii) section 34DC(1);
 - (iii) section 34DD(1) or (4);
 - (iv) section 34DI(1) or (2);
 - (v) section 34DJ(2), (3), (4) or (5);
 - (vi) section 34DK(2); or”.

25. Section 117 amended (approved trustee to lodge monthly return with Authority)

Section 117, before “working days”—

Add

“specified”.

26. Schedule 4 amended (financial penalties)

Schedule 4, Part 1, after item 4—

Add

“4A 27(2A)	Approved trustee to invest accrued benefits according to selection of scheme member as permitted under the governing rules	10,000	20,000	50,000
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- 4B 34DB(1)(a) Approved trustee to provide in the governing rules a default investment strategy that complies with Part 2 of Schedule 10 to the Ordinance
- if approved trustee fails to provide in the governing rules of a registered scheme a default investment strategy that complies with Part 2 of Schedule 10 to the Ordinance—
- (a) in the case of the first occasion on which the trustee fails to do so, a daily penalty of \$10,000 for each day on which the failure continues;
 - (b) in the case of the second occasion on which the trustee fails to do so, a daily penalty of \$20,000 for each day on which the failure continues; and
 - (c) in the case of the third or subsequent occasion on which the trustee fails to do so, a daily penalty of \$50,000 for each day on which the failure continues

4C	34DB(1)(b)	Approved trustee to ensure investment related to default investment strategy accords with Part 4AA of, and Part 2 of Schedule 10 to, the Ordinance	10,000	20,000	50,000
4D	34DB(1)(c)	Approved trustee to invest accrued benefits of scheme member according to default investment strategy in default of specific investment instructions	10,000	20,000	50,000
4E	34DB(1)(d)	Approved trustee to ensure default investment strategy is available for selection by scheme member	10,000	20,000	50,000

4F	34DB(3)	Approved trustee must not invest according to default investment strategy the accrued benefits in pre-existing account of scheme member who the trustee is aware has reached 60 years of age before the commencement date of Part 4AA of the Ordinance unless having received specific investment instructions	10,000	20,000	50,000
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4G	34DC(1)	Approved trustee to ensure transferred benefits remain invested in the same manner as they were invested immediately before the transfer unless scheme member otherwise instructs	10,000	20,000	50,000
4H	34DD(1)	Approved trustee to ensure only payments for services complying with section 34DD(3) of the Ordinance may be charged to or imposed on scheme member etc. relating to DIS constituent fund	10,000	20,000	50,000

4I	34DD(4)	Approved trustee to ensure aggregate of certain payments does not exceed percentage of net asset value of DIS constituent fund specified in Schedule 11 to the Ordinance	10,000	20,000	50,000
4J	34DH(1)	Approved trustee to continue to invest accrued benefits in DIA account unless having received specific investment instructions	10,000	20,000	50,000

4K	34DH(2)	Approved trustee to continue to invest any accrued benefits in DIA account according to default investment strategy after accrued benefits have been invested according to strategy under section 34DI(2) or 34DJ(3) or (5) unless having received specific investment instructions	10,000	20,000	50,000
4L	34DI(1)	Approved trustee to give specified notice to scheme member within 6 months after the commencement date of Part 4AA of the Ordinance	10,000	20,000	50,000

4M	34DI(2)	Approved trustee to invest accrued benefits according to default investment strategy in default of reply to specified notice within 14 days after expiry day	10,000	20,000	50,000
4N	34DJ(2)	Approved trustee to locate scheme member in the manner and within time limit specified in guidelines	10,000	20,000	50,000
4O	34DJ(3)	Approved trustee to invest within 14 days after time limit accrued benefits of scheme member who cannot be located	10,000	20,000	50,000

4P	34DJ(4)	Approved trustee to give specified notice to scheme member who is located	10,000	20,000	50,000
4Q	34DJ(5)	Approved trustee to invest accrued benefits of scheme member who is located according to default investment strategy in default of reply to specified notice within 14 days after expiry day	10,000	20,000	50,000

4R	34DK(2)	Approved trustee not to invest accrued benefits invested in guaranteed fund according to default investment strategy unless the market value of those benefits is not less than the value guaranteed by the fund	10,000	20,000	50,000
4S	34DM	Approved trustee to continue to invest part of accrued benefits in pre-existing account unless having received specific investment instructions	10,000	20,000	50,000”.