Hong Kong, China

Exchange rate: USD 1.00 equals 7.75 Hong Kong dollars (HKD)

Regulatory Framework

1998: Mandatory Provident Fund Schemes (General) Regulation; further implements the Mandatory Provident Fund Schemes Ordinance, includes limits on the investment of scheme assets, requirements on trustees and other service providers and rules concerning enrolment, contributions, portability and withdrawal of accrued benefits and a compensation fund to be established by the Mandatory Provident Fund Schemes Authority (MPFA).

1995: Mandatory Provident Fund Schemes Ordinance; provides for the establishment of the Mandatory Provident Fund Schemes Authority (MPFA) and for the establishment and registration of mandatory provident fund schemes, defines the contribution and benefit structure under these schemes, provides for the approval of persons as trustees of these schemes, defines coverage and classes of exempt persons, and includes regulations protecting the rights of scheme members.

Types of Schemes

Employers must enrol eligible employees in, and self-employed persons must join, a mandatory provident fund scheme. Mandatory provident fund schemes are defined contribution savings schemes that provide a lump sum at retirement. Employers may choose between three types of schemes (see below) and make arrangements for employees to become a member of the scheme chosen, whereas the self-employed must join a master trust scheme or, if eligible, an industry scheme. Employers having two or more eligible employees may enrol different employees in different schemes.

Employees, employers and self-employed persons may make voluntary contributions to the mandatory provident fund scheme.

Employer-sponsored schemes: Occupational mandatory provident fund scheme sponsored by a single employer (and its associated companies) the membership of which is only open to the employees of this employer (and of its associated companies).

Industry schemes: Industry-wide mandatory provident fund scheme established for employees in industries with high labour mobility. At present, two industry schemes exist for the catering and construction industries. These schemes are only open to employers and self-employed persons in those industries. Accrued pension rights are fully portable within the industry. Employers in those industries may choose to enrol their employees in the industry scheme or in the other two types of schemes (i.e. employer-sponsored schemes or master trust schemes).

Master trust schemes: Mandatory provident fund scheme the membership of which is open to the employees of more than one employer, self-employed persons and persons with accrued benefits transferred from other schemes. By pooling the contributions of small employer units together for administration and investment, such master trust schemes may have a high degree of efficiency resulting from economies of scale.

Institutional Framework

All schemes: All schemes must be established under a trust with trustees approved by the Mandatory Provident Fund Schemes Authority (MPFA).

Registered trust companies and individuals may apply to the MPFA for approval as trustee for the purposes of the Mandatory Provident Fund Schemes Ordinance.

Approval as trustee is granted to individuals if they:

- Ordinarily reside in Hong Kong;
- Satisfy the MPFA that they are persons of good reputation and character and, in particular, have not been found guilty, whether in Hong Kong or elsewhere, of an offence involving fraud or dishonesty.

A registered trust company incorporated in Hong Kong which applies for approval as trustee must:

- Comply with the prescribed capital adequacy requirements;
- Have at least five directors of which all must be individuals;
- Have sufficient presence and control in Hong Kong;
- Satisfy the MPFA that it is capable of carrying out the business of administering mandatory provident fund schemes;
- Not do any other business than trust business;
- Satisfy the MPFA that all of the controllers of the company are persons of good reputation and character and, in particular, have not been found guilty, whether in Hong Kong or elsewhere, of an offence involving fraud or dishonesty;
- Satisfy the MPFA that the chief executive officer and the majority of directors (which must include an independent director) of the company have the skill, knowledge and experience that are necessary for the successful administration of provident fund schemes.

A company incorporated outside Hong Kong may apply for approval as trustee if it fulfils the aforementioned requirements and if additionally:

- The objectives of the company contain some of, but not more than, those specified in the Trustee Ordinance;
- The applicant is incorporated or registered in a jurisdiction where laws are in force relating to corporations and trusts that are comparable to those of Hong Kong;
- The company is adequately regulated under those laws and is adequately supervised by an authority established in that jurisdiction that is acceptable to the MPFA;
- This authority certifies to the MPFA that the applicant is of good standing and has not contravened any requirement under the laws relating to corporations or trusts in force in that jurisdiction;
- The applicant has experience in conducting business internationally and has standing as an international financial institution that is acceptable to the MPFA;
- The applicant designates one of its controllers to be its Hong Kong chief executive officer and satisfies the MPFA that the Hong Kong chief executive officer has the skill, knowledge and experience that are necessary for the successful administration of schemes;
- The applicant enters into a written undertaking with the MPFA that the applicant, and all transactions relating to the administration of provident fund schemes by the applicant in Hong Kong and all disputes arising out of those transactions, will be governed by the law of Hong Kong.

An independent director must:

- Not be an employee or partner of the trust company, or of an associate of the trust company;
- Not be a director of an associate of the trust company;
- Not hold any shares of the trust company or of any associate of the trust company;
- Satisfy the MPFA that no past or present association (financial or otherwise) that could affect impartiality exists with:
  - — the trust company (otherwise than as a director or professional advisor);
  - — any controller of the trust company;
  - — any associate of the trust company or of the trust company's controller;
- Not be a controller (otherwise than by virtue of being a director) or close relative or a partner or employee of the trust company or of any associate of the trust company;
- Not be an auditor or actuary of any provident fund scheme administered by the trust company.

A registered trust company incorporated in Hong Kong and a company incorporated outside Hong Kong must accompany the application with a written report prepared by an auditor appointed by the applicant that must state whether or not the applicant complies with the prescribed capital requirements of:

- Having a paid-up share capital of at least HKD 150 million;
- Owning net assets of at least the same amount;
- Owning assets held in Hong Kong to the value of

at least HKD 15 million.

Even if not explicitly written, the governing rules by law include the provision that the trustee(s) will:

- Comply with the governing rules;
- Exercise the care, skill, diligence and prudence to be reasonably expected of a person who is administering provident fund schemes;
- Act in the interests of scheme members and not in the trustee(s)' interests;
- Ensure that the funds of the scheme are invested in different investments so as to minimize the risk of losses of those funds.

The MPFA may require an applicant to provide such additional information and documents as are reasonably necessary to enable it to determine the application.

All subsequent amendments to the governing rules are subject to the approval by the MPFA.

The trustee(s) must:

- Manage the contribution and benefit administration or delegate these tasks to other service providers;
- Appoint a custodian to hold the scheme assets (an approved trustee may be custodian under specific circumstances);
- Establish a separate individual account for each scheme member;
- Ensure that each member's account is kept in such a manner that the market value of the accrued benefits of a member can be ascertained at least once a month;
- Appoint an asset manager to manage the investment of scheme assets.

All schemes must be registered with the MPFA. As a condition of registering a scheme, the MPFA may require the applicant to enter into an undertaking not to refuse an application for membership of the scheme made by, or on behalf of, any person who meets the respective criteria for that particular type of scheme (i.e. employer-sponsored, industry or master trust schemes). All applications for registration of a scheme must be submitted by the trustee(s) of the scheme and must:

- Specify particulars of the scheme;
- Be accompanied by a copy of the proposed governing rules;
- Include a statement of the investment policy.

Employer-sponsored schemes: An application for the registration of a provident fund scheme as an employer-sponsored scheme may be made to the MPFA by:

- An approved trustee that is a company; or
- Two or more individuals who are approved trustees of which at least one must be an independent trustee; or
- Such a company and one or more such individuals.

An independent trustee of a scheme must:

- Not be controller, close relative, employee or partner of the sponsoring employer, or of an associate of the employer;
- Not hold (where the sponsoring employer is a company) any shares of the sponsoring employer or of any of its associates;
- Satisfy the MPFA that they have the skill, knowledge, experience and qualifications that are, in the opinion of the MPFA, necessary for a person to administer provident fund schemes;
- Satisfy the MPFA that no past or present associations (financial or otherwise) exist with the sponsoring employer, a controller of this employer or an associate of the employer or its controller that could affect the impartiality of independent judgment;
- Not be auditors or actuaries of the provident fund scheme.

The independent trustee must, as far as reasonably practicable, be present at all meetings of the trustees. Any decision taken at a meeting at which the independent trustee is absent does not have effect until the independent trustee confirms it in writing.

Industry schemes: Upon invitation by the MPFA, approved company trustees may lodge an application to register a provident fund scheme as an industry scheme.

Master trust schemes: An application for the registration of a provident fund scheme as a master trust scheme may be done by an approved company trustee.

Coverage

Covered population

All schemes: Public- and private-sector employees and self-employed persons aged between 18 and 65 must become members of a provident fund scheme. This obligation applies to full-time and part-time workers holding a contract of 60 days or more.

Employees in the catering or construction industry who are employed for less than 60 days or on a daily basis (casual employees) must also be covered.

Employers must enrol all employees in a mandatory provident fund scheme within 60 days of the employment commencing (10 days in the case of casual employees). Employers having two or more eligible employees may enrol different employees in different mandatory provident fund schemes.

Self-employed persons must enrol themselves in a scheme within 60 days of becoming self-employed.

The following categories of persons are exempt from the obligation to become a member of a mandatory provident fund scheme:

- Domestic employees;
- Self-employed hawkers;
- People covered by statutory pension or provident fund schemes, for example, civil servants or teachers;
- Members of occupational retirement schemes which are granted MPFA exemption certificates (see profile on voluntary plans in Hong Kong);
- People from overseas who enter Hong Kong for employment for 13 months or less, or who are covered by overseas retirement schemes.

Enforcement of affiliation

All schemes: The law provides that the Mandatory Provident Fund Authority (MPFA) may establish, or arrange for the establishment of, a provident fund scheme, to be known as the Residual Provident Fund Scheme, and appoint an approved company trustee to administer the scheme. The residual scheme is a last resort scheme to provide membership for employees and self-employed persons if:

- Employers declare in writing to the MPFA that they have not, through their own efforts or otherwise, been able to comply with the requirement to enrol their employees in a mandatory provident fund scheme;
- Self-employed persons declare in writing to the MPFA that they have not, through their own efforts or otherwise, been able to become a member of a mandatory provident fund scheme.

The Residual Provident Fund Scheme has not yet been established as the MFPA has not received any complaint from employers or self-employed persons about having difficulty in finding a mandatory provident fund scheme to join.

The MPFA may, as a condition of registering a scheme, require the applicant for registration to enter into an undertaking not to refuse an application for membership of the scheme made by employees or self-employed persons who are eligible to join this scheme.

A person authorized by the MPFA may, for the purpose of ensuring compliance with the coverage requirements of the Mandatory Provident Fund Schemes Ordinance do all or any of the following:

- Enter, inspect and examine, by day or night, any premises in which the person knows or reasonably believes relevant employees or self-employed persons are employed or carrying on business;
- Require any person found in those premises or place to produce any record required to be kept and inspect, examine or copy the same;
- Make such examinations and inquiry as may be necessary to ascertain whether the legal requirements applicable to employers, relevant employees and self-employed persons are being complied with, and seize anything which may appear to the authorized person to be, or contain evidence of, an offence against these requirements;
- Exercise any other powers, which may be conferred on the authorized person by the regulations.

Financing / Investment

Sources of funds

Member contributions

All schemes: Employees contribute 5% of salary up to the limit of HKD 20,000 per month.

Casual employees contribute a fixed amount according to a contribution table. The maximum contribution is HKD 30 a day for casual employees with earnings of more than HKD 650 a day who are paid once a day or more frequently than once a day and HKD 32.50 for casual employees with earnings of more than HDK 650 a day who are paid less frequently than once a day.

Employees earning less than HKD 5,000 a month or casual employees earning less than HKD 160 a day are not required to contribute, but may elect to do so.

Self-employed persons contribute 5% of their relevant income up to the limit of HKD 20,000 per month. They are not required to contribute if their income is less than HKD 5,000 a month or HKD 60,000 a year. Self-employed persons who make a loss may lodge with the trustee a statement showing the amount of the loss, and request to discontinue payment of mandatory contributions until the relevant income exceeds the minimum level stated above.

Self-employed persons do not need to show proof of their income if they elect to pay the maximum level of contribution of HKD 1,000 per month.

Employees and self-employed persons may make voluntary contributions to the mandatory provident fund scheme.

Employer contributions

All schemes: Employers contribute 5% of the employee's salary up to the limit of HKD 20,000 per month.

Employers contribute a fixed amount for casual employees according to a contribution table. The contribution for employees who are paid once a day or more frequently than once a day is HKD 7.50 for employees with earnings of less than HKD 160 a day and HKD 30 for employees earning more than HKD 650 a day. The employer contribution for casual employees who are paid less frequently than once a day is 5% of income with a maximum of HKD 32.5 a day.

Employers are required to contribute for employees earning less than HKD 5,000 a month and casual employees earning less than HKD 160 a day.

Employers may make voluntary contributions to the mandatory provident fund scheme.

Other sources of funds

All schemes: If a mandatory contribution is not paid in time and is thus in arrears, the person who is liable to pay the contributions is also liable to pay to the Mandatory Provident Fund Schemes Authority (MPFA) a contribution surcharge (amount determined by multiplying the arrears by a prescribed percentage rate). The contribution surcharge is credited to the member's individual account.

Methods of Financing

All schemes: Funded in individual accounts.

Asset Management

All schemes: A mandatory provident fund scheme may consist of a single constituent fund, or of two or more constituent funds. Each constituent fund must be approved by the Mandatory Provident Fund Authority (MPFA). If the scheme comprises two or more constituent funds, each of the funds must have different investment policies among which the members of the scheme may choose to invest their accumulated capital.

The trustee(s) must prepare and maintain a statement of investment policy including sufficient information to enable scheme members to ascertain in relation to each constituent fund:

- The investment objectives of the fund;
- The policy as to the kinds of securities and other assets in which the funds may be invested;
- The policy as to the balance between different kinds of securities and other assets of the fund;

- The policy regarding the acquisition, holding, disposal of financial futures and option contracts for the purposes of the fund;
- The risks inherent in implementing these policies and returns expected.

The trustee(s) must appoint an asset manager to manage the investment of the scheme assets. The asset manager may delegate its asset management function to a qualified asset manager.

Asset managers must:

- Be a company incorporated in Hong Kong;
- Have a paid-up share capital and net assets of not less than HKD 10 million;
- Be a corporation licensed to carry on, or an authorized financial institution registered for carrying on, a business in asset management under the Securities and Futures Ordinance.

The asset manager, or its delegate, must be independent of the scheme trustee(s) and of the custodian, or its delegate, of scheme assets. This requirement is only fulfilled if:

- The asset manager, or its delegate, is not an associate of the trustee or custodian, or its delegate;
- No person is a controller of both the asset manager and the trustee or custodian or any of their delegates/associates;
- The asset manager, or its delegate, acts independently of the trustee(s) and custodian, or its delegate.

If the asset management contract allows the asset manager to delegate its functions with respect to managing the investment of the funds, the actual delegation may only be done with the approval of the trustee(s).

Any provision in the asset management contract relating to the scheme that purports to exempt the asset manager from liability for negligence or fraud, or to limit that liability, is void.

Of total assets of any one constituent fund invested:

- A minimum of 30% must be held in Hong Kong Dollar investments;
- A maximum of 10% may be in securities and other permissible investments, excluding deposits, issued by any one person (rules for aggregating exposure of certain investments having values ascertainable by reference to other securities apply).

Assets may only be invested in permissible investments, which are:

- Debt securities issued by the Hong Kong Special Administrative Region Government (HKSAR) and the Exchange Fund (a fund used to affect the exchange value of the HKD and to maintain the stability and the integrity of the monetary and financial systems of Hong Kong);
- Debt securities issued by a company all the shares of which are owned beneficially by the HKSAR, or a government, the central or reserve bank of a country or territory or a multilateral agency with the highest possible credit rating determined by a credit rating agency approved by the MPFA;
- Debt securities listed on an approved stock exchange;
- Debt securities not listed on an approved stock exchange but satisfy a minimum credit rating set by the MPFA;
- Equities;
- Index-tracking collective investment schemes approved by the MPFA;
- Convertible debt securities;
- Warrants;
- Deposits with an authorized financial institution or eligible overseas bank;
- Futures contracts traded on an approved futures exchange;
- Option contracts traded on an approved futures exchange or stock exchange;
- Currency forward contracts;
- Securities listed on an approved stock exchange approved by the MPFA.

Of total assets of any one constituent fund invested:

- Not more than 10% may be in shares listed on a stock exchange that is not an approved stock exchange and securities of a kind approved by the MPFA other than shares listed on an approved stock exchange and in authorized unit trusts or

mutual funds of a type approved by the MPFA;
- Not more than 5% may be invested in warrants;
- Unless prior approval from the MPFA is obtained, not more than 25% may be in cash deposits with a single authorized financial institution or eligible overseas bank if the total market value of the constituent fund is less than HKD 8 million, and not more than 10% in any other case.

The funds of any one constituent fund may be used to acquire a financial futures contract or a financial options contract only for hedging purposes or if the acquisition does not result in the constituent fund becoming leveraged and if the exposure does not exceed 10% of the market value of the fund.

Assets must be kept by a custodian or its delegates.

Employer-sponsored schemes: Not more than 10% of the assets of each constituent fund may be invested in restricted securities legally defined as:

- Any security of, or issued by, a sponsoring employer or an associate of the employer;
- Any security that contains an option that, if exercised, would result in the conversion of the security to shares or other securities of, or issued by, a sponsoring employer or an associate of the employer;
- Any security that is an option that, if exercised, would result in the acquisition of shares or other securities of, or issued by, a sponsoring employer or an associate of the employer.

Benefit provisions

Preservation, portability, transferability

All schemes: Upon terminating employment before retirement, the trustee(s) must inform the members in writing of:

- The different options that the member has with respect to the transfer of the accumulated capital and the time within which the member may elect to exercise one of those options;
- The consequences of not electing to exercise one of those options within a specified time.

No fees may be charged, and no financial penalties may be imposed, for transferring accumulated capital from a mandatory provident fund scheme to another scheme or from one account to another account within the scheme, other than actual and reasonable expenses incurred by the trustee(s) as a result of redeeming funds.

Employer-sponsored schemes: Upon terminating employment before retirement, the employee must elect to have the accrued benefits transferred to:

- The scheme in which the new employer is participating; or
- A scheme to which the employee is eligible to join.

Industry and master trust schemes: Upon terminating employment before retirement, employees may preserve the accumulated capital in a preserved account in the existing scheme or elect to have the capital transferred to:

- A master trust scheme; or
- The scheme in which the new employer is participating.

The capital in a preserved account may be transferred at any time to another mandatory provident fund scheme to which the member is eligible to belong if the member gives notice in writing to the trustees concerned.

A self-employed person may, at any time, elect to have the accumulated capital transferred to:

- A master trust scheme of their choice; or
- An industry scheme which the self-employed person is eligible to join.

If a self-employed person subsequently becomes employed, the person may elect to have the accumulated capital transferred to the mandatory provident fund scheme in which the employer is participating.

Retirement Benefits

Benefit qualifying conditions

All schemes: Retirement age is 65 for both men and women.

Early retirement is possible from age 60 for both men and women if members submit to the trustee a statutory declaration certifying that they have permanently ceased their employment or self-employment.

Withdrawal of funds before retirement

All schemes: A member of a mandatory provident fund scheme who has not reached the early retirement age may only receive benefits if the member has, or is about to, permanently departed from Hong Kong, or if all of the following requirements are met:

- The member does not intend to be employed or self-employed within the foreseeable future;
- The member's accumulated capital does not exceed HKD 5,000;
- No mandatory contributions were paid or required to be paid during the 12 months preceding the claim for withdrawal of benefits;
- The member does not have any accumulated capital in any other mandatory provident fund scheme.

Benefit structure / formula

All schemes: Defined contribution.

Benefits are paid as a lump sum at retirement. Retirees are not required to buy an annuity.

Benefit adjustment

All schemes: Not applicable as benefits are paid as a lump sum at retirement.

Survivors

Benefit qualifying conditions

All schemes: If a member of a mandatory provident fund scheme dies before retirement, the personal representative of the member may lodge a claim for benefits with the trustee(s) of the scheme. This claim must be accompanied by sufficient evidence of status of the personal representative.

Benefit structure

All schemes: The personal representative receives the member's accumulated capital as a lump sum.

Disability

Benefit qualifying conditions

All schemes: A member may claim disability benefits on the ground of total incapacity for work. In this case the member must:

- Provide the trustee(s) with a medical certificate issued by a registered medical practitioner certifying that the member is permanently unfit to perform the kind of work specified in the certificate for a reason so specified;
- Provide the trustee(s) with a letter from the last employer (in the case of employees) stating the employment contract has been or will be terminated; and
- Satisfy the trustee(s) that was engaged in the kind of work specified in the medical certificate immediately before becoming totally incapacitated.

Benefit structure

All schemes: The disability benefit equals the member's accumulated capital and is paid as a lump sum.

Protection of Rights

Protection of Assets

All schemes: Scheme assets must be held by a custodian completely separate from the assets of the sponsoring employers, trustee(s) and service providers.

Financial and Technical Requirements / Reporting

All schemes: For each mandatory provident fund scheme, except in the case of employer-sponsored schemes with no more than 1000 members, internal control objectives and measures must be established. The internal control objectives must ensure that the:

- Scheme assets are safeguarded in the interest of the scheme members;
- Investment restrictions are complied with;
- Scheme assets are kept separate from those of the participating employers, the trustee(s) of the

scheme and the service providers.

Internal control measures must be established including:

- Monitoring investments, scheme assets and liabilities;
- Ensuring the accuracy of statements, returns and reports required to be lodged with the Mandatory Provident Fund Schemes Authority (MPFA).

The trustee(s) must lodge yearly with the MPFA a report on the control objectives of the scheme and the major internal control measures taken.

The trustee(s) must yearly prepare financial statements consisting of a balance sheet specifying the assets and liabilities of the scheme and a statement of accounts specifying:

- The fees for administrative expenses deducted by the trustee(s) from the member's accounts;
- The contributions and contribution surcharge paid and payable by, and recovered from, scheme members and employers;
- The total returns derived from investing the funds of the scheme (taking into account any capital appreciation and depreciation);
- The total amount of accumulated capital that was paid, and of accumulated capital that became payable but was not paid to, or in respect of, scheme members;
- The amount of accumulated capital transferred to, and received by, the scheme.

The financial statements must be audited by a qualified auditor appointed to the scheme.

The trustee(s) must ensure that a yearly investment report is prepared which must be adequate to provide scheme members with a proper understanding of the investments made, the net return derived from those investments and the appreciation and depreciation of the value of scheme assets attributable to these investments. The investment report must include the following information:

- An analysis of the investments held by the trustee(s) in respect of the scheme and particulars of the income derived from these investments;
- A commentary by the trustee(s) on the analysis;
- Particulars of the investment policy followed by the trustee(s) and any change in the statement of investment policy that will materially affect the risk attached to the investments of the scheme;
- The amount of net income derived from the investment of scheme assets;
- The amount by which the value of the scheme assets has increased or decreased.

The trustee(s) must prepare a yearly scheme report that includes the following information:

- A commentary as to the financial development of the scheme consistent with the financial statements;
- Particulars of any changes that have been made to the governing rules of the scheme since the end of the immediately preceding financial period or, if there was no such period, since the scheme became registered;
- Particulars of the auditor of the financial statements and of any other service provider, and information on changes to these particulars;
- Such other information as is, in the trustee(s)' opinion, necessary to provide the scheme members with a proper understanding of the scheme and its operation;
- Specifications how, and from whom, scheme members can obtain further information about the scheme and its operation.

The trustee(s) must publish a consolidated report that must be submitted to the MPFA and that may be requested by any scheme member. The report must consist of:

- The financial statements;
- The auditor's report;
- The scheme report;
- The investment report.

A trust company must, within 6 months of the end of each financial period of the company, lodge with the MPFA a report stating whether or not the prescribed capital requirements were complied with throughout the previous financial year. The report must be accompanied by a report of the auditor of the company.

Whistleblowing

All schemes: Auditors must report to the Mandatory Provident Fund Schemes Authority (MPFA) without delay if they:

- Become aware that the trustee(s) fails to keep proper accounting records or separate accounts for each scheme member;
- Identify any transaction that, in their opinion is, or has resulted in, a misappropriation of the scheme assets;
- Identify any payment from the funds of the schemes that, in their opinion, is materially prejudicial to the interests of scheme members;
- Become aware that the scheme assets have been mixed with the funds of the trustee(s) or the assets of any other person;
- Identify any matter that may point to forbidden investment practices.

Standards for service providers

All schemes: A qualified auditor of a mandatory provident fund scheme must be:

- An accounting practice unit; or
- A person recognized by the Mandatory Provident Fund Schemes Authority (MPFA) as having the qualification in accounting equivalent to that of a certified public accountant as defined in the Professional Accountants Ordinance.

Fees

All schemes: No legal rules.

No fees may be charged, and no financial penalties may be imposed, for transferring accumulated capital from a mandatory provident fund scheme to another scheme or from one account to another account within the scheme, other than actual and reasonable expenses incurred by the trustee(s) as a result of redeeming funds.

Winding up / Merger and acquisition

All schemes: The voluntary winding up of an employer-sponsored scheme is subject to the approval of the Mandatory Provident Fund Schemes Authority (MPFA).

If an employer-sponsored scheme is wound up, a liquidator must usually be appointed by the MPFA in which case the assets vest in the liquidator and the responsibilities of the trustee(s) cease.

A person may be appointed as liquidator only if the person:

- Has consented in writing to the appointment;
- Is a certified public accountant as defined in the Professional Accountants Ordinance, or is an approved trustee;
- Is not an undischarged bankrupt.

The scheme assets are applied in the following order of priority:

- General creditors of the trustee(s) of the scheme in relation to the operation of the scheme;
- Any remaining scheme members whose accumulated capital have not previously been transferred to another mandatory provident fund scheme or paid in accordance with legal rules, the transfer of the capital in accordance with arrangements approved by the MPFA.

In all other cases, a scheme can only be wound up through a Court decision after application by the MPFA.

Bankruptcy: Insolvency Insurance / Compensation Fund

All schemes: The trustee(s) must have adequate insurance in respect of a mandatory provident fund scheme that will indemnify scheme members against losses that the members would incur as a result of the maladministration of the scheme by a trustee or by any service provider appointed to the scheme.

The trustee(s) complies with this requirement if there are one or more insurance policies that:

- Are obtained from one or more eligible insurers (i.e. an insurance company specified under the Insurance Companies Ordinance or of which the Mandatory Provident Fund Schemes Authority (MPFA) is satisfied that it is able to meet its liabilities);
- Cover the total managed assets of the trustee(s) and do not deal with any matter other than the

assets of the scheme concerned;

- Provide an insurance cover as legally specified (depending on the size of the scheme);
- Provide for the indemnity of the following risks of loss of scheme assets that are attributable to the administration of the scheme by the trustee(s) or any service provider:

— Fraudulent, wrongful or negligent acts done or omitted to be done by the trustee(s) of the scheme, a service provider appointed or engaged for the purposes of that scheme or an employee or agent of the trustee(s) or of the service provider;

— Loss while kept on the premises of the trustee(s) or service providers or at a central securities depository;

— Loss while being transported in the custody of the trustee(s) or service providers, or of a central securities depository;

— Loss arising from relying on a cheque or other negotiable instrument that is forged, fraudulently altered, lost or stolen;

— Loss arising from the fraudulent use of a computer or from fraudulent instructions given for the transfer of those assets;

— Loss arising from indemnifying the trustee(s) in accordance with the scheme rules as permitted by law.

- Specify a deductible amount that must not exceed a specified maximum (see below);
- Are governed by the law of Hong Kong.

If the insurance policy stipulates that the insurer is liable for only the part of a claim that exceeds a specified amount (known as the deductible amount), this amount must not exceed:

- HKD 100,000 if the market value of the trustee(s)' total assets under management is not more than HKD 1 million;
- The lower of HKD 500,000 and 10% of the market value of the scheme assets if the trustee(s)' total assets under management exceed HKD 1 million.

The MPFA must establish a compensation fund for the purpose of compensating members of mandatory provident fund schemes and other persons who have beneficial interests in those schemes. Schemes must contribute 0.03% of the scheme assets to the compensation fund. The Financial Secretary may provide grants or loans out of the general government revenue to the compensation fund should there be insufficient funds available.

A member may lodge with the MPFA a claim for compensation from the compensation fund on the grounds that:

- The person has suffered a loss of accumulated capital in the scheme; and
- The loss was attributable to misfeasance or illegal conduct committed by a person concerned with the administration of the scheme.

Any person whose act or omission causes any loss of accrued benefits of scheme members, for which the compensation fund must pay, is liable to repay such sum plus interest to the compensation fund.

Disclosure of information / Individual action

All schemes: The trustees must provide the scheme members with a yearly benefit statement setting out the member's accumulated capital.

Members may request a copy of the consolidated report prepared by the trustee(s) (see section Financial and technical requirements / reporting).

Other measures

All schemes: A provision of the governing rules of a mandatory provident fund scheme is void if it exempts or limits the trustee(s) of the scheme from liability for breach of trust for:

- Failure to act honestly;
- An intentional or reckless failure to exercise, as regards a matter concerning the scheme, the degree of care and diligence that is to be reasonably expected of a trustee who is exercising functions in relation to a trust.

If an individual who is a trustee becomes aware of:

- Any matter that gives rise or is likely to give rise to a conflict of interest between the person's duties as a trustee of the scheme and either their other duties as a trustee or their personal interests,

the person must immediately disclose the matter in writing to the other trustee(s) of the scheme. Such a person must not be present during any deliberation with respect to the matter and must not take part in any decisions;
- The occurrence of an event of such significant nature that it may endanger the accumulated capital of the scheme members, the trustee(s) must, not later than the third working day after becoming aware of the event, give written notice to the MPFA.

Tax Treatment

Taxation of member contributions

All schemes: Tax-deductible up to a maximum of HKD 12,000 a year.

Taxation of employer contributions

All schemes: Tax-deductible up to the limit of 15% of the employee's salary.

Taxation of investment income

All schemes: Tax-exempt.

Taxation of benefits

All schemes: Tax-exempt.

Regulatory and Supervisory Authorities

Mandatory Provident Fund Schemes Authority (MPFA): Supervises mandatory provident fund schemes and has the main functions to:

- Ensure compliance with legal requirements;
- Register provident fund schemes;
- Approve qualified persons to be trustees of mandatory provident fund schemes;
- Ensure that schemes are administered by approved trustees in a prudent manner.

The MPFA may notify a trustee that it intends to investigate certain matters related to the scheme and appoint one or more inspectors to conduct an investigation.

The MPFA may authorize a person to enter, by day or night, premises at which the person reasonably believes that the affairs of a mandatory provident fund scheme are being conducted or any document relating to the scheme is being kept.

The authorized person may:

- Inspect the premises and examine any record found that relates to a registered scheme;
- Take photographs of the premises or of anything found that relates to a mandatory provident fund scheme;
- Require the occupier of the premises or an employee of the occupier to provide the authorized person with such assistance and facilities as necessary;
- Require any person on the premises to produce for inspection records under the control of the person relating to the scheme;
- Make copies of all records or statements.

An authorized person may enter premises without giving prior notice and without the consent of the occupier if entry is required urgently and/or if giving notice or obtaining consent would defeat the purpose for which the investigation is conducted.

The MPFA may require the trustee(s) of a scheme to provide all information as specified.

If at any time the MPFA believes that circumstances exist or existed that may prejudice the accrued benefits of members it may require the trustee(s) of a scheme to:

- Arrange for an auditor (that must be approved by the MPFA) to investigate whether or not any such circumstances exist or existed;
- Provide the MPFA with a copy of the auditor's report.

The MPFA may suspend the trustee(s)' administration of the scheme if it reasonably believes that:

- The trustee(s)' conduct with respect to the scheme is having, has had or could have an adverse effect on the financial soundness of the scheme or the interests of the scheme members;

- The trustee(s) are engaging, or have engaged, in a forbidden investment practice.

After the suspension, the MPFA must hold an inquiry to determine whether or not the trustee(s)' administration should be terminated. The trustee(s)' administration is terminated if the inquiry shows that the MPFA's beliefs are confirmed. The MPFA must in this case take all reasonable steps to appoint another approved trustee.

The Mandatory Provident Fund Schemes Advisory Committee has been established to give advice to the MPFA and consists of an executive director and between 9 and 11 other members of which one or more persons:

- Have knowledge of investments and financial management;
- Have knowledge of the conduct of retirement benefit schemes;
- Represent the interests of participating employers and an equal number represent the interests of employees.

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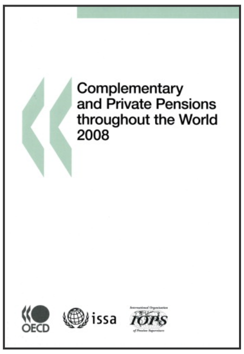
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