

**《2015 年強制性公積金計劃（修訂）
條例草案》**

**Mandatory Provident Fund Schemes
(Amendment) Bill 2015**

Mandatory Provident Fund Schemes (Amendment) Bill 2015

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A BILL

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 2015.

- (2) This Ordinance comes into operation on the expiry of 6 months beginning on the day on which this Ordinance is 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) or (4);
- (v) section 34DG(1);
- (vi) section 34DH(1) or (2);
- (vii) section 34DI(2), (3), (4) or (5);
- (viii) section 34DJ(2); or
- (ix) section 34DL; 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) or (4), 34DH(1) or (2), 34DI(2), (3), (4) or (5) or 34DJ(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) or (4);

- (iv) section 34DG(1);
- (v) section 34DH(1) or (2);
- (vi) section 34DI(2), (3), (4) or (5);
- (vii) section 34DJ(2); or
- (viii) section 34DL.”.

- (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) or (4);
- (iv) section 34DG(1);
- (v) section 34DH(1) or (2);
- (vi) section 34DI(2), (3), (4) or (5);
- (vii) section 34DJ(2); or
- (viii) section 34DL.”.

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;

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 subsection (2) and Divisions 3 and 4, must invest the accrued benefits of a scheme member according to the strategy, unless the member has given specific investment instructions for those benefits; and
 - (d) must ensure that the strategy is available for selection by scheme members.
- (2) Without limiting section 27(2A), the trustee must not invest the accrued benefits in a pre-existing account of a scheme member according to the strategy if the member has reached 60 years of age before the commencement date.

34DC. 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 the aggregate of the total amounts mentioned in paragraphs (a) and (b), 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 Schedule 11—

- (a) the total amount of all payments for the services specified in subsection (2) that are—
- (i) charged to or imposed on the fund, or a scheme member who invests in the fund; and
 - (ii) calculated as a percentage of the net asset value of the fund; and
- (b) the total amount of any proportionate underlying investment fund fees chargeable to any underlying investment fund of the fund.
- (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.

34DD. 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

34DE. Interpretation

In this Division—

default investment arrangement (預設投資安排) means a default arrangement—

- (a) provided before the commencement date in the governing rules of a registered scheme; and
- (b) 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;

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 34DF(b);

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

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.

34DF. Scheme members to whom this Division applies

This Division applies to a scheme member of a registered scheme, if—

- (a) the member is below 60 years of age, or becomes 60 years of age, on the commencement date;
- (b) immediately before the commencement date, all of the accrued benefits in a pre-existing account of the member have been invested according to a default investment arrangement of the scheme; and
- (c) the approved trustee of the scheme reasonably believes that the trustee has not received specific investment instructions from the member for those benefits.

34DG. Accrued benefits in pre-existing account

- (1) Unless the approved trustee of a registered scheme has received specific investment instructions from an existing member for the accrued benefits in the member's DIA account, the trustee must continue to invest those benefits according to the default investment arrangement of the scheme.
- (2) Subsection (1) does not limit the operation of sections 34DH, 34DI and 34DJ.

34DH. 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 34DJ, if, by the expiry day of the reply period for the specified notice, the trustee has not received specific investment instructions from the member for the accrued benefits in a DIA account of the 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.

34DI. 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 34DH(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 does not know any contact details of an existing member that enable the trustee to give the specified notice to the member under section 34DH(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 34DJ, if, after subsection (2) has been complied with, the member cannot be located before the expiry of the time limit, 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.
- (4) If, after subsection (2) has been complied with, the member is located before the expiry of the time limit, the trustee must, within 14 days after the day on which the member is located—
 - (a) in a case that falls 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 that falls 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 34DJ, if, by the expiry day of the reply period for the notice given under that subsection, the trustee has not received specific investment instructions from the member for the accrued benefits in a DIA account of the 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.

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

34DK. Interpretation

In this Division—

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

34DL. 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) After 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
& 34DD]

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(2), 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) ensure that in each year, the member's investments in the Core Accumulation Fund and the Age 65 Plus Fund respectively, 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 in subsection (3); and
 - (c) for accrued benefits in the member's account in a particular year that have not been invested, 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 in subsection (3).

- (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%
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(2), 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. 34DC & 34DD]

**Percentage Specified for Purposes of Section
34DC(4)**

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

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

where—

A is the number of days in the year.”.

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) and (4);
- (iv) section 34DG(1);
- (v) section 34DH(1) and (2);
- (vi) section 34DI(2), (3), (4) and (5);
- (vii) section 34DJ(2);
- (viii) section 34DL;”.

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 34DC 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) or (4);
- (iv) section 34DG(1);
- (v) section 34DH(1) or (2);
- (vi) section 34DI(2), (3), (4) or (5);
- (vii) section 34DJ(2);
- (viii) section 34DL; 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) and (4), 34DH(1) and (2), 34DI(2), (3), (4) and (5) and 34DJ(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) or (4);
- (iii) section 34DH(1) or (2);
- (iv) section 34DI(2), (3), (4) or (5);
- (v) section 34DJ(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(2)	Approved trustee must not invest according to default investment strategy the accrued benefits in pre-existing account of scheme member who has reached 60 years of age before the commencement date of Part 4AA of the Ordinance	10,000	20,000	50,000
4G	34DC(1)	Approved trustee to ensure only payments for services complying with section 34DC(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

4H	34DC(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
4I	34DG(1)	Approved trustee to continue to invest accrued benefits in DIA account unless having received specific investment instructions	10,000	20,000	50,000

4J	34DH(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
4K	34DH(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
4L	34DI(2)	Approved trustee to locate scheme member in the manner and within time limit specified in guidelines	10,000	20,000	50,000

4M	34DI(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
4N	34DI(4)	Approved trustee to give specified notice to scheme member who is located	10,000	20,000	50,000
4O	34DI(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

4P	34DJ(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
4Q	34DL	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” .

Explanatory Memorandum

The default investment arrangements provided under the mandatory provident fund system are currently not regulated. There is a need to improve these arrangements by ensuring that all scheme members have access to a highly standardized and fee-controlled default investment strategy that is consistent with the overall objective of retirement savings. This Bill amends the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (*Ordinance*) and the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) (*Regulation*) to provide for matters concerning the introduction of the default investment strategy and to make miscellaneous amendments for the better administration of the Ordinance and the Regulation.

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 3 adds a new definition of *default investment strategy* to section 2(1) of the Ordinance.
4. Clause 4 amends section 20B of the Ordinance to empower the Mandatory Provident Fund Schemes Authority (*Authority*) to revoke the approval of an approved trustee if the trustee fails to comply with the requirements under the new section 27(2A) or the new Part 4AA.
5. Clause 5 amends section 27 of the Ordinance by adding a new subsection (2A) to impose a duty on an approved trustee to invest the accrued benefits of a scheme member according to the member's selection as permitted under the governing rules.

6. Clause 6 amends section 30 of the Ordinance to empower the Authority to require an approved trustee to arrange for an auditor to conduct an investigation and prepare a report on the investigation if the Authority reasonably believes that the trustee has failed to comply with the requirements under the new Part 4AA.
7. Clause 7 amends section 33 of the Ordinance to empower the Authority to suspend and terminate an approved trustee's administration of a registered scheme if the Authority reasonably believes that the trustee has failed to comply with the requirements under the new section 27(2A) or the new Part 4AA.
8. Clause 8 adds a new Part 4AA to the Ordinance to provide for matters concerning the default investment strategy—
 - (a) the new section 34DB requires an approved trustee to provide in the governing rules of a registered scheme a default investment strategy, to ensure that any investments made in relation to the strategy comply with the new Part 4AA and Part 2 of Schedule 10, to invest the accrued benefits of a scheme member according to the strategy subject to the prescribed exceptions, and to ensure that the strategy is available for selection by scheme members;
 - (b) the new section 34DC regulates the payment for services provided in connection with the strategy;
 - (c) the new section 34DD empowers the Secretary for Financial Services and the Treasury to amend the new Schedule 10 (in respect of the matters specified in subsection (1)(a) of that section) and Schedule 11 by notice published in the Gazette; and

- (d) Divisions 3 and 4 of the new Part 4AA provides for the transitional and savings arrangements for the investment of the accrued benefits held in the accounts of scheme members before the commencement date of that Part. Read with the existing definition of *accrued benefits* in section 2(1) of the Ordinance, these arrangements also apply to the accrued benefits paid into or transferred to these accounts on or after the commencement date.
9. Clause 9 amends section 43E of the Ordinance to provide that making a false or misleading statement to a trustee of a *relevant scheme* that is defined in Schedule 2 to the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B) is an offence under that section.
10. Clause 11 adds the new Schedules 10 and 11 to the Ordinance—
- (a) Schedule 10 provides for the requirements for the default investment strategy; and
 - (b) Schedule 11 specifies the percentage that applies, in relation to the net asset value of the DIS constituent fund, for calculating the maximum aggregate amount that may be charged as payment for services relating to the strategy.
11. Clause 12 adds a new definition of *specified working day* to the Regulation.
12. Clause 14 amends the definition of *prescribed savings rate* in section 37 of the Regulation by removing the requirement that the rate prescribed by the Authority must be published in a newspaper.

13. Clause 15 amends section 39 of the Regulation to provide that the control objectives of a registered scheme must ensure compliance with the requirements under the new section 27(2A) and the new Part 4AA.
14. Clauses 16, 17, 18, 19, 22 and 25 amend sections 42C, 42D, 42E, 62, 99 and 117 of the Regulation by replacing “working day” with “specified working day” in some of the provisions in those sections for certain reporting obligations.
15. Clause 20 amends section 66 of the Regulation to make the permission given to an approved trustee to deduct expenses from scheme members’ account subject to the requirements under the new section 34DC of the Ordinance.
16. Clause 21 amends section 75 of the Regulation to require the service providers to report to the Authority if an approved trustee fails to comply with the requirements under the new section 27(2A) or the new Part 4AA.
17. Clause 23 amends section 102 of the Regulation to provide that the auditor’s report must state whether or not the requirements under the new Part 4AA have been complied with.
18. Clause 24 amends section 103 of the Regulation to provide that the auditor must report to the Authority if an approved trustee fails to comply with the requirements under the new Part 4AA.
19. Clause 26 amends Schedule 4 to the Regulation by providing financial penalties for the contraventions of the new section 27(2A) and provisions under the new Part 4AA.