

Mandatory Provident Fund Schemes (Amendment) Bill 2019

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A BILL

To

Amend the Mandatory Provident Fund Schemes Ordinance to empower the Mandatory Provident Fund Schemes Authority to establish a wholly owned subsidiary; to revise the amount of the annual registration fee payable by the approved trustee of a registered provident fund scheme; to prohibit the trustee from passing on the fee to the scheme or its constituent fund or scheme members; and to make related amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Mandatory Provident Fund Schemes (Amendment) Ordinance 2019.

2. Enactments amended

The enactments specified in Parts 2, 3 and 4 are amended as set out in those Parts.

Part 2

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

3. **Section 2 amended (interpretation)**

(1) Section 2(1), Chinese text, definition of 職業退休計劃—

Repeal

“sheme”

Substitute

“scheme”.

(2) Section 2(1)—

Add in alphabetical order

“*wholly owned subsidiary* (全資附屬公司) means a wholly owned subsidiary established under section 6DA;”.

4. **Section 6 amended (establishment of Mandatory Provident Fund Schemes Authority)**

After section 6(2)(c)(iv)—

Add

“(v) receive and expend monies; and”.

5. **Section 6DA added**

After section 6D—

Add

“6DA. Authority may establish wholly owned subsidiary

The Authority may, with the approval of the Financial Secretary, establish a wholly owned subsidiary to facilitate the performance of the Authority’s functions.”.

6. Section 6F amended (Authority may delegate functions)

Section 6F—

Repeal subsection (1)

Substitute

“(1) The Authority may delegate any of its functions (other than this power of delegation) to—

- (a) a committee established under section 6D;
- (b) a wholly owned subsidiary; or
- (c) a designated person.”.

7. Section 6G amended (power to appoint staff and consultants)

After section 6G(4)—

Add

“(5) The Authority may arrange for any of its staff to assist in the operations of a wholly owned subsidiary.”.

8. Section 6KA amended (designation of electronic system by Authority)

(1) Section 6KA(2)—

Repeal

“by it.”

Substitute

“by—

- (a) the Authority; or
- (b) a wholly owned subsidiary.”.

(2) Section 6KA—

Repeal subsection (4)

Substitute

“(4) The Authority or the wholly owned subsidiary operating a designated electronic system (*operator*) may recover from a person who uses the system any fee or charge paid or payable by the operator to a third party in relation to the operation and administration of the system that is attributable to the person’s use.”.

9. Section 22C added

After section 22B—

Add

“22C. Approved trustee must not charge certain fees

The approved trustee of a registered scheme must ensure that no fee representing an annual registration fee payable by the trustee under section 22B is charged, whether in whole or in part, to—

- (a) the scheme;
- (b) a constituent fund of the scheme; or
- (c) a member of the scheme.”.

10. Section 42B amended (immunity)

After section 42B(1)—

Add

- “(1A) No civil liability is incurred by—
- (a) a wholly owned subsidiary; or
 - (b) a director or employee of the subsidiary,
in respect of anything done, or omitted to be done,
by the subsidiary, director or employee, as the case
may be, in good faith in the performance or
purported performance of any function delegated to
the subsidiary under section 6F(1)(b).”.
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Part 3

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

11. Schedule 4 amended (financial penalties)

Schedule 4, Part 1, after item 4—

Add

“4AA	22C	Approved trustee to ensure that no fee is charged to registered schemes, constituent funds or scheme members for annual registration fees payable under section 22B of the Ordinance	\$5,000 or 10% of the amount of the fee charged, whichever is the greater”.
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Part 4

Amendments to Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485 sub. leg. C)

12. Section 1A added

Before section 2—

Add

“1A. Interpretation

In item 4 of Schedule 1—

immediately preceding financial period (對上一個財政期),
in relation to a registered scheme, means the
immediately preceding financial period determined in
accordance with section 79 of the Mandatory
Provident Fund Schemes (General) Regulation
(Cap. 485 sub. leg. A).”.

**13. Schedule 1 amended (fees prescribed for the purposes of the
Mandatory Provident Fund Schemes Ordinance (Cap. 485))**

(1) Schedule 1—

Repeal

“[ss. 2 & 3]”

Substitute

“[ss. 1A, 2 & 3]”.

(2) Schedule 1, item 4—

Repeal everything in column 4

Substitute

“An amount equal to—

- (a) if the immediately preceding financial period of the scheme ends before 1 January 2020—0% of the net asset value of the scheme as at the end of that period; or
 - (b) if the immediately preceding financial period of the scheme ends on or after 1 January 2020—0.03% of the net asset value of the scheme as at the end of that period”.
-

Explanatory Memorandum

The main objects of this Bill are—

- (a) to empower the Mandatory Provident Fund Schemes Authority (***Authority***) to establish a wholly owned subsidiary with the approval of the Financial Secretary; and
 - (b) to revise the amount of the annual registration fee payable to the Authority by the approved trustee of a registered provident fund scheme with effect from 1 January 2020.
2. The Mandatory Provident Fund Schemes Ordinance (Cap. 485) (***Ordinance***) provides for, among other things—
 - (a) the establishment of non-governmental mandatory provident fund schemes for the purpose of funding benefits on retirement, the contributions to the schemes, the registration of the schemes and a regulatory regime in respect of the registered schemes; and
 - (b) the creation of the Authority to oversee the administration and management of the registered schemes.
3. The Bill amends the following enactments to give effect to the objects—
 - (a) the Ordinance;
 - (b) the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) (***General Regulation***); and

- (c) the Mandatory Provident Fund Schemes (Fees) Regulation (Cap. 485 sub. leg. C) (*Fees Regulation*).

Part 1—Preliminary

4. Clause 1 sets out the short title. The Bill, when enacted as an Ordinance, comes into operation on the day on which it is published in the Gazette.

Part 2—Amendments to Ordinance

5. Clause 3 amends section 2(1) of the Ordinance to rectify a typographical error in the Chinese text of the definition of *occupational retirement scheme* and adds a new defined term *wholly owned subsidiary*.
6. Clause 4 amends section 6 of the Ordinance to clarify that the Authority may receive and expend monies.
7. Clause 5 adds a new section 6DA to the Ordinance to empower the Authority to establish a wholly owned subsidiary with the approval of the Financial Secretary.
8. Clauses 6, 7, 8 and 10 amend sections 6F, 6G, 6KA and 42B of the Ordinance respectively—
- (a) to empower the Authority to delegate its functions to a wholly owned subsidiary;
 - (b) to empower the Authority to arrange for its staff to assist in the operations of the subsidiary;
 - (c) to provide that an electronic system designated by the Authority includes the system that is established and operated by the subsidiary; and

- (d) to provide for immunity from civil liability of the subsidiary, its directors and its employees in the performance of the functions delegated to the subsidiary by the Authority.

9. Clause 9 adds a new section 22C to the Ordinance requiring the approved trustee of a registered scheme to ensure that no fee representing an annual registration fee that is payable to the Authority under section 22B of the Ordinance is charged to the scheme, a constituent fund of the scheme or a scheme member.

Part 3—Amendment to General Regulation

10. Clause 11 adds a new item to Schedule 4 to the General Regulation to provide for the financial penalty that may be imposed on an approved trustee of a registered provident fund scheme if the trustee fails to comply with the requirement under section 22C of the Ordinance.

Part 4—Amendments to Fees Regulation

11. Currently, under section 22B of the Ordinance read together with item 4 of Schedule 1 to the Fees Regulation, the approved trustee of a registered scheme is required to pay to the Authority an annual registration fee in respect of the scheme of an amount equal to 0% of the net asset value of the scheme as at the end of the immediately preceding financial period. Clause 12 adds the definition of *immediately preceding financial period* which has the meaning determined in accordance with section 79 of the General Regulation.

12. Clause 13 revises the rate prescribed in item 4 so that the amount of an annual registration fee payable in respect of the scheme is 0.03% of its net asset value as at the end of the immediately preceding financial period if that period ends on or after 1 January 2020.