

The background of the page is a complex, abstract pattern. It features a series of wavy, vertical lines that create a sense of depth and movement. Interspersed among these lines are numerous small, bright white dots of varying sizes. A prominent, thin, diagonal line runs across the upper portion of the image, adding to the overall sense of complexity and sophistication. The color palette is primarily black and white, with some subtle grey tones in the background.

# Sophisticated



## Regulation of Occupational Retirement Schemes

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### Transfer of ORSO Function

In the past, monitoring of voluntarily established ORSO schemes was the responsibility of the Office of the Registrar of Occupational Retirement Schemes (ORORS), which operated under the Financial Services Bureau. The ORORS ceased to operate on 10 January 2000 and the functions imposed upon it under the ORSO were transferred to the MPFA. Accordingly, the MPFA became the RORS and assumed the statutory functions of administering the ORSO with effect from 10 January 2000. The regulation of both MPF schemes and ORSO schemes has therefore come under the MPFA's purview.

### Regulatory Framework of ORSO Schemes

#### Criteria for Registration and Exemption

Any employer who operates, contributes to, or otherwise participates in an occupational retirement scheme or enters into a contract with his employees under which membership of an occupational retirement scheme is provided must apply to the MPFA for registration or exemption of the scheme. Such an application must be submitted to the MPFA within three months after the employer has entered into a contract with his employees for the setting up of a new scheme.

#### MPF/ORSO interface options

##### Five possible options are:

Option	Arrangement	Need for MPF exemption
1. Continue to operate the ORSO scheme as the core scheme.	<ul style="list-style-type: none"> <li>Both existing members* and new eligible employees** have a one-time option to join the ORSO scheme or an MPF scheme.</li> </ul>	✓
2. Continue to operate the ORSO scheme but only as a top-up scheme.***	<ul style="list-style-type: none"> <li>Both existing and new employees must join an MPF scheme.</li> <li>Existing and new eligible employees may join the top-up scheme.</li> </ul>	X
3. Gradually wind down the ORSO scheme (closed to new employees but existing members can accrue future service).	<ul style="list-style-type: none"> <li>One-time option available to existing members only.</li> <li>New employees must join an MPF scheme.</li> </ul>	✓
4. Gradually wind down the ORSO scheme (closed to new employees; freeze existing members' scheme service)	<ul style="list-style-type: none"> <li>Both existing and new employees must join an MPF scheme.</li> </ul>	X
5. Terminate the ORSO scheme	<ul style="list-style-type: none"> <li>Transfer all scheme assets to MPF scheme as voluntary contributions, or</li> <li>Pay out all liabilities.</li> </ul> <p>(Note: Existing members receiving the benefit may incur income tax).</p>	X

\* An existing member is an employee who has become a member of the ORSO scheme on or before the commencement date of MPF.

\*\* A new eligible employee is an employee who is eligible to join the ORSO scheme after the commencement date of MPF.

\*\*\* A top-up scheme means an ORSO scheme restructured to supplement the minimum benefits provided under an MPF scheme.

For an occupational retirement scheme to be registered under ORSO, it must fulfill certain criteria regarding the scheme terms, which are mainly designed for better protection of the employees' benefits. An occupational retirement scheme can be exempted from the ORSO registration requirements if it is an offshore scheme registered or approved by a recognized overseas regulatory authority or a certain number of its scheme members are not Hong Kong permanent identity card holders.

Once registered, ORSO schemes are still subject to ongoing requirements with regard to scheme asset arrangements, restrictions on investments, funding, audit and actuarial review, trusteeship and disclosure of information concerning scheme operation. Any changes to the scheme such as change of the scheme administrator will also need to be reported to the MPFA. Exempted ORSO schemes are required to submit documents to the MPFA annually to confirm the scheme's continuous compliance with the exemption requirements and to report scheme changes to the MPFA.

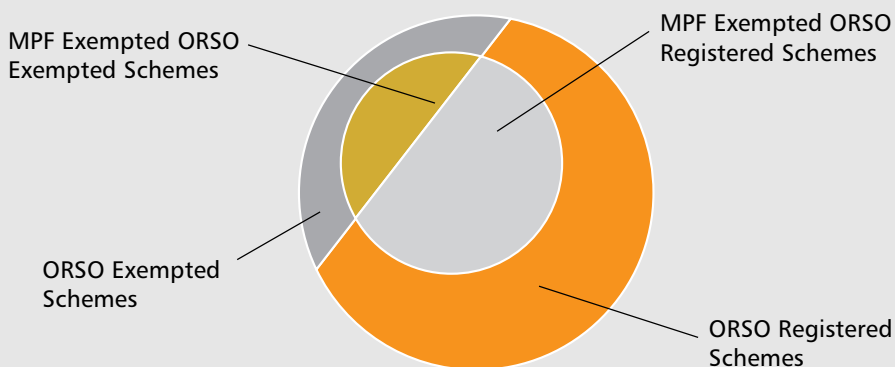
#### Exemption of ORSO Schemes from MPF Requirements

The MPF legislation sets out the detailed arrangements for the interface of ORSO schemes with the MPF System. The objective of the interface arrangements is to minimize the interference with existing voluntarily established retirement schemes and to avoid upsetting the existing contractual relationship between employers and employees. The arrangements also aim to provide equitable treatment to all employees and protect their rights and interests.

Existing ORSO schemes may be exempted from MPF requirements if certain exemption criteria are met. On top of fulfilling the requirements for ORSO schemes, the employer operating an ORSO scheme (registered ORSO scheme or exempted ORSO scheme) which has been granted MPF exemption must give all existing members and new eligible employees a one-off option to choose between the existing scheme and an MPF scheme. For those members who have elected to remain in an existing ORSO scheme, their existing and future benefits will not be subject to the full and immediate vesting and preservation requirements of MPF schemes. An option must also be given to a member to join an MPF scheme when the employer decides to reduce such member's future benefits or rights under the existing ORSO scheme.

Existing ORSO schemes may be **exempted** from MPF requirements if certain exemption criteria are met.

#### ■ ORSO Schemes under the MPF System



Where the MPFA believes that scheme **members' interests** are **jeopardized** or where the statutory requirements have been breached, the MPFA is **empowered to take intervening actions** against a registered or an exempted ORSO scheme.

Additional requirements apply to a registered ORSO scheme which has been granted MPF exemption. New members' benefits accrued under MPF exempted ORSO registered schemes will be subject to the preservation, portability and withdrawal requirements up to an amount equivalent to the minimum MPF benefits. MPF exempted ORSO registered schemes are required to meet the minimum standards on trusteeship and investments in accordance with the Exemption Regulation. Furthermore, the trustee is required to give notice in writing to the MPFA of any amendments to the governing rules of the scheme and appointment of the investment manager. Appointment of a new trustee must be approved by the MPFA. The employer is also required to submit details of the membership of the ORSO scheme to the MPFA within three months after the commencement date of the MPF System.

### Power of Intervention

Where the MPFA believes that scheme members' interests are jeopardized or where the statutory requirements have been breached, the MPFA is empowered to take intervening actions against a registered or an exempted ORSO scheme.

### Public Registers

The MPFA maintains two registers for ORSO schemes, one of which contains information regarding registered and exempted ORSO schemes and the other contains information in relation to MPF exempted ORSO registered and exempted schemes. Both registers are available for inspection by members of the public during office hours.

### Appeal Boards

The ORSO provides for the constitution of an appeal board to consider appeals against the MPFA's decisions to refuse an application for registration or exemption; or decisions to cancel the registration or to withdraw an exemption certificate in respect of a registered or an exempted ORSO scheme. A list of the members of the Occupational Retirement Schemes Appeal Board as at 31 March 2000 is at Appendix IV.

Appeals with regard to granting of MPF exemption are handled by the Mandatory Provident Fund Schemes Appeal Board provided under the MPFSO, as described in the chapter on Supervision of the MPF Industry.

## Work of the Registrar of Occupational Retirement Schemes

### Reporting period

The last reporting period of the ORORS ended on 30 September 1999. This report of the work of the RORS is therefore for the period from 1 October 1999 to 31 March 2000.

### Monitoring of Registered Schemes

The RORS monitored registered schemes for compliance with the ORSO requirements through an annual reporting system. The main regulatory focus is set on the examination of annual returns, audited financial statements and actuarial certificates of registered schemes. The first two documents are to be submitted to the RORS within six months after the end of the scheme's financial year. With regard to a defined benefit scheme, an actuarial certificate is additionally required every year or every three years depending on the funding situation reported in the immediately preceding actuarial certificate.

*Examination of Annual Returns and Audited Financial Statements*

The ORORS (from 1 October 1999 to 9 January 2000) and the MPFA (from 10 January 2000 to 31 March 2000) had received a total of 7 442 sets of annual returns and audited financial statements in respect of the registered schemes. The examination of these documents revealed that the majority of the registered schemes complied with the statutory requirements. However, there were inevitably some schemes where the auditors had expressed qualified opinions on their financial statements.

Some concerns were in relation to the failure of employers to arrange for the scheme contribution audit and to submit the employer auditor's statement to the administrator's auditor thereafter. The contribution audit is part and parcel of the overall scheme audit, and it enables the RORS to continually monitor the employers' compliance with their contribution obligations. In respect of these schemes, the RORS had subsequently required the employers concerned to comply with the relevant requirement.

Another concern is over the relevant employers failing to make contributions to their schemes in accordance with the scheme terms. With regard to a registered scheme, the employer has a legal obligation to make contributions to the scheme in accordance with the terms and rules specified in the scheme documents. Failure to make the contributions may render the scheme liable to de-registration under the ORSO.

In monitoring schemes with contribution arrears, the RORS had taken into account the interests of scheme members. The employers concerned were required to draw up a proposal for making good the contribution arrears and to give their assurance for timely payment of future contributions. The RORS also required the scheme administrator concerned to monitor the repayment of the contribution arrears and to inform scheme members of the contribution arrears as well as their right to institute civil recovery proceedings against their employers.

Where the employer of a contributory scheme has deducted contributions from the employees' payroll but fails to transfer the money to the scheme administrator, the employer concerned and its director, manager, secretary or other similar officer may be in breach of section 32 of the Employment Ordinance (Cap. 57). Scheme members may report the alleged breach to the Labour Department.

*Examination of Actuarial Certificates*

The RORS examined actuarial certificates in respect of defined benefit schemes in order to monitor the solvency of the scheme and to know whether the scheme is funded by the employer in accordance with the actuary's funding recommendations.



The MPFA maintains close liaison with the **relevant professional and industry bodies** and **corporate scheme administrators** in enhancing the regulation of ORSO schemes.

### Monitoring Compliance with Exemption Requirements

To verify continuous compliance with the exemption requirements under the ORSO, the employer of an exempted scheme shall submit to the RORS an annual compliance certificate or membership statement. During the reporting period, the RORS processed 17 compliance certificates and 816 membership statements in respect of the exempted schemes.

### Granting Consent for Change of Pooling Agreement

Where a registered scheme changes its participation from one pooling agreement to another, the former pooling agreement shall cease to apply to the scheme. Under the ORSO, the RORS' consent is required in respect of such cessation. Cessation of application of the former pooling agreement to a scheme will invalidate the scheme's original registration. As such, the relevant employer will need to apply for re-registration of the scheme.

During the reporting period, the RORS granted consent to 242 registered schemes for cessation of application of their former pooling agreements (schemes converted from insurance-based to trust-based are excluded). All of these schemes were re-registered under the ORSO. A list of the corporate administrators who administer pooling agreements for ORSO schemes is in Appendix VII.

### Conversion of Scheme Status

The Exemption Regulation specifies the criteria for granting MPF exemption to schemes registered under the ORSO. One of the criteria is that these schemes must be governed by trust. Schemes currently registered under the ORSO which are the subject of or regulated by an insurance arrangement must be converted into schemes governed by trust in order to meet the said criterion. In the case where a registered scheme participating in a pooling agreement has undergone such conversion, it is required to be re-registered under the ORSO as explained above.

Up till 31 March 2000, the RORS had received 4 181 applications for re-registration in respect of the converted schemes.

### Processing of Notification of Changes

Notifications of changes of certain scheme particulars and of termination of schemes are required to be submitted to the RORS within statutory time limits. These notification requirements ensure that the information contained in the register of registered and exempted occupational retirement schemes is up-to-date. During the reporting period, the RORS processed 703 notifications of termination of schemes.

### Processing of Applications for Registration

During the reporting period, the RORS received 718 new applications for registration (excluding 2 555 applications for re-registration in respect of the converted schemes) and 39 applications for exemption of occupational retirement schemes. Of these applications, 626 schemes were registered and 23 schemes were exempted.

As at 31 March 2000, the number of registered and exempted schemes stood at 16 974 and 1 966 respectively.

### Processing of MPF Exemption Applications

The MPFA had started receiving and processing applications for MPF exemption since 3 January 2000. The closing date for lodging such applications was 3 May 2000. It is anticipated that all the applications would have been processed by 31 July 2000.



(Postscript: At the close of the deadline for MPF exemption applications on 3 May 2000, the MPFA had received 7 111 applications, of which 6 542 were registered schemes and 569 were exempted schemes.)

### Liaison with Professional and Industry Bodies

The MPFA maintains close liaison with the relevant professional and industry bodies and corporate scheme administrators in enhancing the regulation of ORSO schemes. During the reporting

period, it held a meeting with the corporate scheme administrators to discuss how the MPF exemption application process could be simplified. Letters were sent to employers operating ORSO schemes to remind them of the deadline for submitting MPF exemption applications and to encourage them to communicate with the employees in the decision making process.

### Statistics

Statistics on ORSO schemes are set out in seven tables in Part A of the Statistics section.

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