

# THE REGULATORY STRUCTURE AND LEGISLATIVE DEVELOPMENT

The MPFSO provides the framework for the establishment of a system of privately managed, employment-based MPF schemes to accrue financial benefits for members of the workforce when they retire.

## BACKGROUND

The need for some form of comprehensive retirement protection in Hong Kong has been a subject of intense debate for over 30 years. Like many other developed countries, the increasing rate of aging of the Hong Kong population accentuates the importance of sufficient financial support to our future retirees, and the need for a comprehensive retirement protection system for the workforce has become particularly prominent.

Some employers have been operating retirement schemes to provide retirement benefits for their employees with a view to enhancing the remuneration package and retaining staff. Until the early 1990s, retirement schemes had been allowed to operate freely. With the growing number of retirement schemes covering about 20% of the workforce and incidences of scheme mis-management (e.g. inadequate funding to support the benefits, no proper separation of assets, etc.), the Government decided to put the retirement schemes under a proper regulatory framework.

The Occupational Retirement Schemes Ordinance (Cap. 426) (ORSO) was enacted in 1992

and brought into operation on 15 October 1993. It regulates private occupational retirement schemes operating in or from Hong Kong. The ORSO does not compel employers to establish occupational retirement schemes for their employees. It regulates all voluntarily established occupational retirement schemes through a registration system. The objective is to ensure that these schemes are properly administered and funded, and to provide greater certainty that retirement scheme benefits promised to employees will be paid when they fall due.

Nevertheless, ORSO schemes only covered less than one-third of the workforce. The rapidly aging population and the fact that a substantial portion of the workforce was not covered by a retirement benefit system demanded urgent action. On this premise, Hong Kong took a major step in enacting the MPFSO in August 1995 to provide the backbone of a formal system of retirement protection. The MPFSO provides the framework for the establishment of a system of privately managed, employment-based Mandatory Provident Fund (MPF) schemes to accrue financial benefits

for members of the workforce when they retire. The MPFSO was amended and supplemented by relevant subsidiary legislation in 1998 and 1999 to fill in the operational details.

## KEY FEATURES OF THE MPF SYSTEM

The key features of the MPF System are set out below:

### COVERAGE

Unless exempted, all employees aged between 18 and 65 and self-employed persons under 65 are required to participate as members of registered MPF schemes.

### CONTRIBUTIONS

Both the employer and the employee are each required to contribute 5% of the employee's relevant income. Self-employed persons are required to contribute 5% of their relevant income. Contributions are subject to the minimum and maximum levels of relevant income (\$4,000 and \$20,000 per month respectively) in the case of employees and self-employed persons, and to the maximum level of the employee's relevant income (\$20,000 per month) in the case of employers.

## VESTING, PRESERVATION AND PORTABILITY

The mandatory contributions made in respect of a scheme member are fully and immediately vested in him/her. The accrued benefits are required to be preserved until the attainment of retirement age of 65, though earlier benefit payment is allowed under certain prescribed circumstances. An employee is able to transfer his/her accrued benefits to another account in case of change of employment.

## ROLES OF PARTICIPANTS

### Employers

As the MPF System is an employer-based system, employers are responsible for ensuring that their employees become members of a MPF scheme. They also need to deduct contributions from their employees' salaries and remit them to the trustees together with the employers' own contributions.

### Employees

They select the investment options available in a MPF scheme for their accrued benefits. They also play a role in monitoring their MPF accounts.

## Self-employed Persons

Self-employed persons (SEPs) are personally responsible for becoming members of registered schemes and for remitting their contributions and monitoring their MPF accounts.

## REGULATORY STRUCTURE

The MPFSO provides for the regulation, supervision and monitoring of the operations of the MPF System by the MPFA. As provided under section 6E of the MPFSO, the functions of the MPFA are :

- (a) to be responsible for ensuring compliance with the MPFSO;
- (b) to register provident fund schemes as registered schemes;
- (c) to approve qualified persons to be approved trustees of registered schemes;
- (d) to regulate the affairs and activities of approved trustees and to ensure as far as reasonably practicable that those trustees administer the registered schemes for which they are responsible in a prudent manner;
- (e) to make rules or guidelines for the payment of mandatory contributions and for the administration of registered schemes with respect to those contributions; and

(f) to exercise such other functions as are conferred or imposed on the MPFA by or under the MPFSO or any other ordinance.

On 10 January 2000, the MPFA also formally took over the functions of the Registrar of Occupational Retirement Schemes. Hence, the MPFA is responsible for ensuring the

smooth operation of retirement benefit schemes in Hong Kong, whether set up mandatorily or voluntarily.

#### **MPF LEGISLATION**

The MPF legislation is composed of the MPFSO and several pieces of subsidiary legislation. A technical amendment was made to Schedule 1 to the MPFSO in June 2000.

The MPFA prepared and assisted all relevant parties in playing their individual roles and in complying with the legislative requirements.



The development of the subsidiary legislation in the year is summarized below:

(1) The Mandatory Provident Fund Schemes (General) Regulation (General Regulation) sets out detailed requirements on the operation of MPF schemes including requirements on trustees and other service providers, enrolment,

contribution, portability and withdrawal of accrued benefits arrangement, and investment requirements. The General Regulation was amended in June 2000 to rectify certain technical anomalies identified in the course of applying legislative provisions that may inhibit the smooth operation of the MPF System.

(2) The Mandatory Provident Fund Schemes (Exemption) Regulation sets out the detailed requirements with regard to applications for exemption from MPF requirements in respect of schemes registered under the ORSO (ORSO schemes) and the ongoing monitoring requirements.





Informative booklets explain legislative requirements in a user-friendly manner.

(3) The Mandatory Provident Fund Schemes (Fees) Regulation prescribes the types and amounts of fees imposed by the MPFA, including fees payable on application for approval of trustees, registration of MPF schemes or approval of pooled investment funds, and annual registration fees to be paid by registered MPF schemes.

(4) The Mandatory Provident Fund Schemes Rules were enacted in May 2000. The Rules set out the calculation of accrued benefits as well as the information and documents required to be submitted to the MPFA for applying for its consent to the merger and division of registered schemes.

(5) The Mandatory Provident Fund Schemes (Compensation Claims) Rules were made in November 2000. The Rules make provisions in respect of applications by the MPFA to the Court of First Instance for determining matters relating to alleged losses of accrued benefits under registered schemes for the purposes of seeking compensation from the Compensation Fund.

(6) The Mandatory Provident Fund Schemes (Winding Up) Rules were made in November 2000. The Rules make provisions in respect of applications by the MPFA to the Court of First Instance for the winding up of registered schemes.

A list of the subsidiary legislation and legislative amendments made in respect of the MPFSO since its enactment is at Appendix II.

#### ORSO LEGISLATION

The ORSO is supported by subsidiary legislation in the form of rules made by the Registrar of Occupational Retirement Schemes.

The Occupational Retirement Schemes (Recovery of Arrears) Rules, made for the recovery of contribution in arrears under a MPF exempted ORSO registered scheme, was passed by the Legislative Council in October 2000 and came into operation on 1 December 2000. The essence of the Rules is to empower the MPFA to closely monitor and rectify those unfavourable situations where the

employer of a MPF exempted ORSO registered scheme fails to make the required contributions to the scheme when they fall due. Failure to do so could render the employer liable to contribution surcharge and financial penalty imposed by the MPFA. Under certain situations, the MPFA may institute legal proceedings to recover as a debt due to the Authority any arrears and contribution surcharge and penalty.

A list of the subsidiary legislation and legislative amendments made in respect of the ORSO since its enactment is at Appendix III.

### MPF GUIDELINES AND CODES

To elaborate on the legislative requirements and to facilitate compliance of the MPF and ORSO legislation, the MPFA had issued in total 54 sets of Guidelines and two sets of Codes as of 31 March 2001. Among those guidelines, 19 sets of new guidelines were issued in the reporting year. During the same period, 8 sets of existing guidelines were revised. A complete list of all the guidelines and codes issued by the MPFA is set out in Appendix IV.

### CIRCULAR LETTERS AND BULLETINS

Apart from the guidelines and codes, the MPFA has issued a number of circular letters to service providers to express the views of the MPFA on various issues and provide further assistance on compliance. Furthermore, several bulletins have been issued to employers of MPF exempted ORSO registered schemes to give guidance in relation to certain ORSO issues. The bulk of the letters and bulletins were issued in year 2000 to facilitate the preparation for MPF implementation. A list of the circular letters and bulletins issued during the year is set out in Appendix V.

### PROPOSED LEGISLATIVE AMENDMENTS

In the course of preparing for the implementation of the MPF System, the MPFA has identified a number of areas which could be improved to

facilitate the operation of the System, to better protect the interests of scheme members, or to enhance the effectiveness of the regulation of MPF schemes by the MPFA. There are also some anomalies or ambiguities in the MPF legislation which need to be removed. Furthermore, the MPFA also has taken the opportunity to review its statutory functions with a view to ensuring that it fulfills more effectively its statutory responsibilities for overseeing and monitoring retirement protection systems in Hong Kong, including the retirement schemes industry.

With this in mind, the MPFA has planned to propose the Mandatory Provident Fund Schemes (Amendment) Bill 2001 for introduction into the Legislative Council in the second quarter of 2001. The industry consultation for the amendment exercise commenced in March 2001.

Press conference on 1 December 2000 announcing the commencement of the MPF System.

