Regulation of State and Supplementary Pension Schemes in Hong Kong: Overview

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A Q&A guide to pensions law in Hong Kong.

The Q&A gives a high-level overview of the regulation of national government pensions and supplementary pensions. On national government pensions, it covers employer/employee contributions; national government pension age and monthly amount; and the public pensions body. On supplementary pensions, it covers the provision of supplementary schemes; the requirements to receive vested rights and disclosure/indexing/revaluation requirements; funding and solvency requirements; pension plan investment; member transfers; the regulatory body; applicable tax reliefs on contributions and approval/registration requirements; and the tax treatment of scheme investments and payments to members. Legal protection of employees' pension rights on a business transfer, together with participation in pension schemes, employer insolvency protection and overall scheme solvency, are also included.

National Government Pensions

1. Do employers and/or employees make pension contributions to the government in your jurisdiction?

Contributions Paid to the Government

Generally speaking, employers and employees do not make pension contributions to the government. However, subject to certain exemptions, every employer and employee is required to make mandatory contributions to the Mandatory Provident Fund (MPF). The MPF scheme is a statutorily regulated, privately managed, fully funded contribution system (this is discussed further below at *Question 5* to *Question 23*) aimed at retirement protection.

In addition, specified civil servants, teachers employed by government subsidised schools and officers holding a judicial office are members of public sector retirement schemes. Members of such schemes also do not make pension contributions to the government.

Taxation of Contributions

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Not applicable (see above, *Contributions Paid to the Government*). However, tax-deductible voluntary contributions (TVCs) are possible under the MPF scheme. The tax deductions are available against salary tax or tax under personal assessment. At present, the tax-deductible limit per year is HKD60,000.

National Government Pension Age

2. Where a national government pension is provided, at what age can pension payments be collected by an employee? Are there any provisions allowing for the early payment of this type of pension to an employee?

Not applicable (see *Question 1*, *Contributions Paid to the Government*).

Monthly Amount of the National Government Pension

3. What is the monthly amount of the national government pension?

Not applicable (see *Question 1*, *Contributions Paid to the Government*).

Public Pensions Body

4. Is there a public body or agency that oversees the operation and policy of national government pension schemes? Do any other governance regimes apply to national government pension schemes?

Public Pensions Body

Not applicable (see *Question 1*, *Contributions Paid to the Government*).

Other Governance Regimes

Not applicable (see *Question 1*, *Contributions Paid to the Government*).

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Supplementary Pensions

5. Is it common (or compulsory) for employers to provide access, or contribute, to supplementary pension schemes for their employees? If they do, are they:

- Occupational (that is, linked to an employment or professional relationship between the plan member and the entity that establishes the plan)?
- Personal (that is, not linked to an employment relationship, established and administered directly by a pension fund or a financial institution acting as pension provider, where individuals independently purchase and select material aspects of the arrangements, though the employer may make contributions)?

Unless the employee is otherwise exempt, employers in Hong Kong must enrol their employees in an MPF scheme (under the Mandatory Provident Fund Schemes Ordinance (MPFSO)), (Cap. 485, Laws of Hong Kong).

Unless the employee is exempt, where an employer fails to enrol employees in an MPF scheme, they commit a criminal offence and can be liable to a fine of up to a maximum of HKD350,000 and a term of imprisonment not exceeding three years.

Certain categories of employees that are exempt from the provisions of the MPFSO include:

- Employees covered by statutory public sector retirement schemes (see *Question 1*, *Contributions Paid to the Government*).
- Employees and self-employed persons who are either:
  - under 18 years of age; or
  - aged 65 and above.
- Employees that have been employed in continuous employment for less than 60 days (other than a casual employee).
- Domestic employees.
- Self-employed hawkers.
- Employees of the European Union Office of the European Commission in Hong Kong.
- Overseas employees entering into Hong Kong for employment for no more than 13 months, or who are members of, or covered by, overseas retirement schemes.

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- Employees participating in retirement schemes registered or exempted under the Occupational Retirement Schemes Ordinance (ORSO) (Cap. 426, Laws of Hong Kong).

Under the MPFSO, employers and employees participating in an MPF scheme must make monthly mandatory contributions of an amount equal to 5% of the employee's relevant income. "Relevant income" refers to payments expressed in monetary terms that are paid, or payable, by an employer to an employee, including:

- Wages.
- Salary.
- Leave pay.
- Fees, commissions and bonuses.
- Gratuities.
- Perquisites.
- Allowances.

Relevant income does not include severance payments or long service payments (section 2(1), MPFSO).

The current mandatory contribution level is capped at HKD1,500 per month. The maximum level of relevant income for the purpose of calculating contributions is HKD30,000 per month. The minimum level of relevant income is HKD7,100 per month. An employee with a relevant income of less than HKD7,100 per month is not required to make a mandatory contribution. However, their employer is still required to make a mandatory contribution on their behalf of an amount equal to 5% of the employee's relevant income. The contributions are submitted to the MPF trustee by the employer. Employees can determine and subsequently change their investment allocation within an MPF fund, as well as switch MPF funds. An employee can choose to transfer the accrued benefits derived from the employee's portion of mandatory contributions attributable to current or former employment to any other master trust scheme or industry scheme once a calendar year unless the governing rules of the scheme allows the employee to transfer more than once in every calendar year (section 148A, Mandatory Provident Fund Schemes (General) Regulation (MPFS Regulations)) (Cap. 485A, Laws of Hong Kong).

Contributions from various employers and scheme members are often pooled together for administration and investment under Master Trust Schemes, which are the most common type of MPF schemes in Hong Kong. Other schemes available in Hong Kong include:

- Employer Sponsored Schemes, which are available to employees of a single employer and its subsidiaries or associated companies.
- Industry Schemes, which are catered to casual employees of the catering and construction industries.

MPF schemes are occupational in nature and are linked to the employee's employment with the relevant employer.

Occupational Retirement Schemes Ordinance schemes (called ORSO schemes or ORSOs) are operated by the employer. ORSOs are retirement schemes set up voluntarily by employers to provide retirement benefits for their employees, and as such the governing rules are drawn up by individual employers. Employers can offer ORSO benefits in addition to MPF schemes benefits. MPF-exempted ORSO schemes can be offered in place of MPF schemes. Employers who have applied for an MPF exemption certificate are required to provide a one-time option to new eligible employees to choose between the ORSO and an MPF scheme, and provide the necessary information to help employees make a decision. Where an employer reduces members'

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future benefits or rights under an ORSO scheme, the employer must give each member the option of joining an MPF scheme or staying in the original scheme.

6. Where supplementary pension schemes are provided, do these schemes provide pensions, the value of which:

- Is linked to the employee's salary (defined benefit)?
- Is linked to employer and/or employee contributions and investment return on those contributions (defined contribution)?

Linked to the Employee's Salary

The calculation of benefits under ORSOs (which are defined benefit schemes) must take into account the years of service and the final salary of a scheme member.

Linked to Employer and/or Employee Contributions

MPF schemes are defined contribution schemes. The amount of benefits accrued is based on the accumulated contributions by the employer and the employee (see *Question 5*). The value of pensions under an MPF scheme is linked to employer and employee contributions (see *Question 5*). Employers and employees can choose to make additional voluntary contributions to MPF schemes. Unless specifically exempted by law, membership in the MPF scheme is compulsory for all employees in Hong Kong.

An ORSO can be a defined contribution scheme, or a defined benefits scheme, or a hybrid of the two.

7. For supplementary pensions:

- Is there a minimum period of service before workers are entitled to receive vested rights?
- Are there any requirements to disclose pension benefits to participants or beneficiaries?
- Are there any legal requirements for schemes or providers to index pensions in payment and/or revalue pension rights in deferment?

Minimum Period of Service

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There is no minimum period of service before an employee is entitled to receive accrued benefits under the MPF scheme. Employees are entitled to receive their accrued MPF benefits in relation to mandatory and voluntary contributions on reaching the retirement age of 65. Early withdrawal of accrued benefits is only allowed in specific circumstances, where the employee does one of the following:

- Takes early retirement at the of age 60 or above and has ceased all employment and self-employment.
- Permanently departs from Hong Kong.
- Suffers from total incapacity (that is, the employee is permanently and totally unable to work).
- Suffers from a terminal illness.
- Dies.
- Has accrued only a small balance of benefits of HKD5,000 or less and, at the application date, at least 12 months have elapsed since the last contribution.

Employees are entitled to receive accrued benefits in relation to voluntary contributions in accordance with the rules governing the scheme.

Disclosure Requirements

The MPF trustee must provide the following information to scheme members regularly:

- At least two fund fact sheets summarising the important information relating to the fund, including the particulars and performance of the fund that is required to be issued for each financial period.
- A fund expense ratio that presents the expenses of the fund as a percentage of the MPF fund size and is calculated based on the latest completed financial statements for the relevant financial period.
- An annual benefit statement showing the historical records of the employee's fund account, including the scheme membership details, status and the number of accounts held by the employee.

In addition to the above, an MPF trustee must provide the following information alongside or in the offering document of an MPF scheme:

- A fee table illustrating the disclosure of fees, expenses and charges.
- An ongoing cost illustration summing up the total effect of fees, expenses and charges payable in monetary terms.

An approved trustee who fails to comply with a requirement or duty imposed by sections 77 or 78 of the MPFS Regulations commits a criminal offence and is liable on conviction to a fine up to level five.

Legal Requirement to Index

There are no legal requirements for schemes to index pensions in payment and/or revalue pension rights in deferment.

Funding and Solvency Requirements

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8. In relation to supplementary schemes, are these generally funded or unfunded? If funded, are there any solvency requirements? Are there any legal requirements relating to how the scheme employer, trustee or provider must invest the assets of the scheme?

Funded or Unfunded?

MPF schemes are funded by the employer, as well as the employee.

Solvency Requirements for Funded Schemes

A company that is applying to be, or is, an approved trustee must meet one of either of the following solvency requirements (section 11, MPFS Regulations):

- It must have a paid-up share capital of HKD150 million, net assets of at least the same amount, with at least HKD15 million of the net assets held in Hong Kong.
- It must have paid-up share capital of at least HKD30 million, net assets of at least the same amount, net assets of at least HKD15 million held in Hong Kong, and is an associate of a substantial financial institution providing continuous financial support.

The investments of a constituent fund are subject to investment restrictions in the MPFSO, including, for example, the requirement that one of the constituent funds must be a capital preservation fund (sections 37 and 40, MPFS Regulations).

MPF schemes must offer a default investment strategy (DIS), providing for key features, including:

- De-risking of exposure to risky assets as scheme member approaches retirement age.
- Fee caps.
- Global investment for risk diversification.

The approved trustee of a registered scheme must prepare an investment report for each financial period of the scheme. The investment report must contain the following prescribed information:

- An analysis of the investments held by the trustee in respect of the scheme and particulars of the income derived from those investments.
- A commentary by the trustee on the analysis.
- Particulars of the investment policy followed by the trustee and any change in the statement of investment policy that will materially affect the risk attached to the investments of the scheme.

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- For that financial period and for each of the two immediately preceding financial periods (if any) of each constituent fund of the scheme:
  - the amount of net income (excluding capital appreciation or depreciation) derived from the investment of the funds of the scheme;
  - the amount by which the value of the scheme assets has appreciated or depreciated during the financial period; and
  - the value of the scheme assets derived from the investment of the funds of the scheme as ascertained in accordance with the applicable accounting guideline.

(Sections 2 and 87(2), MPFS Regulations.)

In addition to all the above, section 45 of the MPFS Regulations requires the approved trustee of a registered scheme to ensure that the contract for the appointment of an investment manager prohibits the manager from delegating the management of the investment of the scheme's funds to a person other than to a company or corporation (or partnership of companies or corporations) that is solvent.

Pension Plan Investment

9. Can supplementary pension schemes hold employer stock of the plan sponsor as a plan investment? If so, are there any limitations that apply?

There are currently no restrictions prohibiting MPF scheme holders from investing in sponsoring employer stock as a plan investment. However, if these fall within the meaning of restricted securities, section 118 of the MPFS Regulations provides that the restricted securities cannot constitute more than 10% of the total assets of each constituent fund of an employer-sponsored scheme.

10. Are there any fiduciary requirements that apply to the sponsoring employer, trustee, provider or administrator of supplementary pension schemes?

Fiduciary Requirements

An MPF trustee has a fiduciary duty to act in the interest of scheme members in their handling of contributions, and not in the trustee's or its financial group's own interests (section 43(d), MPFS Regulations). An MPF trustee should place contributions pending investment in interest-bearing accounts for the interest of scheme members. The Mandatory Provident Fund Schemes

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Authority (MPFA) oversees all the MPF trustees to promote a high standard of governance in the MPF industry. The MPFA can approve an applicant as an MPF trustee only if it is of the opinion that all businesses carried on by the applicant (other than the business of administering provident fund schemes) are compatible with the interests of members of provident fund schemes administered by the applicant (section 20, MPFS Regulations).

Prohibited Activities

Generally, there are no specific activities by fiduciaries that are prohibited.

However, on 8 June 2022, the Hong Kong Legislative Council passed the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Bill 2022 to abolish the MPF offsetting mechanism. With effect from 1 May 2025, employers will no longer be permitted to use the accrued benefits derived from their mandatory MPF employee contributions to offset statutory severance payments or long service payments payable to their employees upon termination of employment. The abolishment of the MPF offsetting mechanism will not have a retrospective effect.

Accounts and Disclosure

The disclosure requirements under the MPF regime are such that participating employers and scheme members (as well as prospective participating employers and prospective scheme members) should be provided with adequate information to enable them to make informed investment decisions. Chapters 5 and 7 of the Securities and Futures Commission Code and sections 31(2) and 54 of the MPFS Regulations provide a comprehensive framework for the provision of information to the relevant parties.

Section 31(2) of the MPFS Regulations provides that scheme information, including all of the fees and charges payable under a registered scheme, must be disclosed to a person who is considering making an application to become a scheme member or participating employer.

Section 54 of the MPFS Regulations provides that an approved trustee must ensure that, within 60 days of a person becoming a scheme member, the person is provided with a document containing general information about the scheme (including the fees and charges payable under the scheme), the particulars of constituent funds and contact details (see *Question 7*, *Disclosure Requirements*).

> 11. Are there any legal requirements relating to how the scheme's sponsoring employer, trustee, provider or administrator must account for the scheme's assets and liabilities in their financial report and accounts?

All MPF trustees have financial reporting and account keeping obligations governed by Part 7 of the MPFS Regulations. Each trustee must maintain proper accounting records concerning the transactions and financial position of the scheme, which must be made available for inspection by the MPFA (section 77, MPFS Regulations). Moreover, separate accounts must be established and maintained for each scheme member specifying the member's accrued benefits (section 78, MPFS Regulations). A violation of section 77 and/or 78 amounts to a criminal offence liable to a fine up to level five (section 94, MPFS Regulations). The trustee must also prepare financial statements and provide the auditor's report of the financial statement to the MPFA (sections 82 and 109, MPFS Regulations). The trustee must prepare the scheme report and the investment report for each financial period

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of the scheme together with a consolidated report (sections 86, 87 and 88, MPFS Regulations). The consolidated report must be made available to scheme members upon request as soon as practicable (section 90, MPFS Regulations).

12. Are there any other legal requirements for disclosure of pension scheme information to members, regulatory bodies or the public?

Disclosure to Members

See *Question 7, Disclosure Requirements*; *Question 10, Accounts and Disclosure*; and *Question 11*.

Disclosure to Regulatory Bodies

In addition to the obligation to disclose certain information to the MPFA, since 1 January 2020 MPF schemes and ORSOs have been considered to constitute reporting financial institutions under the Inland Revenue Ordinance (IRO) (Cap. 112, Laws of Hong Kong), and therefore also have certain due diligence and reporting obligations to the Inland Revenue Department (Part 8A, IRO).

Failure to comply with the due diligence and reporting obligations will constitute a criminal offence liable on conviction to a level 3 fine (section 80B(3), IRO).

Disclosure to the Public

The issuance of an advertisement, document, or invitation to the public in Hong Kong to participate/invest in a master trust scheme/industry scheme/pooled investment fund requires prior approval from the Securities and Futures Commission (SFC) under the Securities and Futures Ordinance (SFO) (Cap. 571, Laws of Hong Kong). Section 31(2) of the MPFS Regulations provides that scheme information, including all of the fees and charges payable under a registered scheme, must be disclosed to a person who is considering making an application to become a scheme member or participating employer.

The issue of any advertisement, document, or invitation to the public in Hong Kong to participate or invest in unauthorised MPF schemes or unauthorised pooled investment funds will constitute a criminal offence liable to:

- A fine of HKD500,000 and a term of imprisonment of three years on conviction on indictment.
- A level 6 fine and a term of imprisonment of six months on summary conviction.

(Section 103, SFO.)

13. Are there any specific disclosure rules regarding environmental, social or governance requirements?

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The MPF system is largely governed by the MPFA under the MPFSO and the MPFS Regulations. Currently, there are no legislative provisions concerning any disclosure rules regarding environmental or social requirements.

Member Transfers

14. In relation to access for members to the funds in their supplementary pension scheme:

- To what extent can members transfer their funds to another pension scheme?
- How do members normally receive the benefit of their funds (for example, lump sums, income withdrawals (drawdown), life annuity arrangements)?
- What are the legal restrictions upon access to the funds (for example, age)?
- What are the common arrangements for early retirement and ill-health retirement?
- Are dependants of deceased members entitled to receive benefits payable on the member's death? What form do these commonly take?

Member's Transfer of Funds

Under section 146 of the MPFS Regulations, on cessation of employment, employees can choose to transfer their benefits under the MPF relating to mandatory contributions to one of the following:

- Another account in the same master trust scheme (in the case of a member of a master trust scheme only).
- An account in another master trust scheme nominated by the employee.
- The employee's existing account in an industry scheme.
- An MPF scheme in which the employee's new employer (if any) participates.

An employee who is a member of an employer sponsored scheme must transfer their benefits relating to mandatory contributions using one of the above options once their employment ceases (section 145, MPFS Regulations).

Under section 147 of the MPFS Regulations, in the case of a casual employee whose contributions are held in an industry scheme, on cessation of employment the employee can elect to have those benefits relating to mandatory contributions transferred to any of the following:

- An account in a master trust scheme nominated by the employee.
- An existing account of the employee in another industry scheme.

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- The contribution account in another industry scheme in which the new employer (if any) is participating.

An employee can choose to transfer the accrued benefits derived from the employee's portion of mandatory contributions attributable to current or former employment to any other master trust scheme or industry scheme once a calendar year unless the governing rules of the scheme allow the employee to transfer more than once in every calendar year (sections 148A and 148B, MPFS Regulations).

Taking Pension Benefits

Once scheme members meet the MPF retirement criteria, they can withdraw benefits in the form of lump sums or by way of instalments (section 15, MPFSO).

Legal Restrictions

Benefits relating to mandatory contributions can only be withdrawn in one of the following circumstances (sections 159-162, MPFS Regulations):

- The member reaches the age of 65.
- The member dies.
- The member becomes totally incapacitated (that is, the member is permanently and totally unable to work).
- The member is diagnosed with a terminal illness.
- The member permanently leaves Hong Kong.
- The member is aged at least 60 and takes early retirement, permanently ceasing employment.
- The member's accrued benefits are less than HKD5,000 and there are no outstanding mandatory contributions in the past 12 months.

Early and Ill-Health Retirement

A member can make a claim for the payment of accrued benefits relating to mandatory contributions where the member is aged at least 60 and takes early retirement, permanently ceasing employment (section 15, MPFSO; section 160, MPFS Regulations). A member can also make a claim for the payment of accrued benefits relating to mandatory contributions where the member becomes totally incapacitated or terminally ill (section 162, MPFS Regulations).

Dependants' Benefits

A personal representative of a deceased member can make a claim for the payment of that deceased member's accrued benefits (that is, relating to both mandatory and voluntary contributions) (section 161(1), MPFS Regulations). The approved trustee of the scheme must pay those benefits as a lump sum to the personal representative of the deceased member (section 15(4), MPFSO). If there are no personal representatives, or if the personal representatives are not willing to act, the MPF trustee can treat the deceased's accrued benefits as unclaimed benefits (section 161(3), MPFS Regulations).

Regulatory Body

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15. Is there a regulatory body that oversees the operation of supplementary pension schemes? Do any other governance regimes apply to supplementary pension schemes?

Regulatory Body

The Mandatory Provident Fund Schemes Authority (MPFA) is the main regulatory body that oversees the operation of pension schemes in Hong Kong. Its functions include ensuring compliance with the MPFSO (see the contact details below).

Name. Mandatory Provident Fund Schemes Authority (MPFA).

T +(852) 2918 0102

E *mpfa@mpfa.org.hk*

W *https://www.mpfa.org.hk/en*

Regulatory Framework

The MPFA regulates all MPF trustees, maintains a register of MPF intermediaries (that is, persons who engage in MPF sales and marketing activities), issues guidelines on compliance with statutory requirements, and imposes disciplinary sanctions for non-compliance. The MPFA can issue guidance in the form of a code, standard, rule, specification, or provision relating to MPF schemes or a class of MPF schemes. If a person breaches a guideline issued by the MPFA, they do not incur any civil or criminal liability. However, in legal proceedings, if the court is satisfied that a guideline issued by the MPFA is relevant in determining the matter, the issued guideline is admissible as evidence in the proceedings (section 6H, MPFSO). The MPFA can initiate prosecution against the following:

- An employer, relevant director, chief executive officer or approved trustee who fails to comply with the MPFSO.
- A scheme member who provides false information on their claim in order to make an early withdrawal of mandatory provident fund (MPF) benefits.
- A self-employed person who fails to become, or continue to be, a member of a registered scheme or to make full and timely contribution payments.

The MFPA can issue guidelines to provide guidance for:

- Approved trustees.
- Service providers.
- Participating employers and their employees.
- Self-employed persons.

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- Regulated persons.
- Other persons concerned with the MPFSO.

Other Key Governance Requirements

The MPFA regulates MPF schemes and investment products in co-ordination with the Securities and Futures Commission (SFC). The MPFA also supervises MPF intermediaries in co-ordination with the Hong Kong Monetary Authority, the Insurance Authority and the SFC. MPF intermediaries are entities or persons engaged in MPF sales and marketing activities, or in advising clients on MPF schemes and products. There are two types of MPF intermediaries:

- Principal intermediary (PI).
- Subsidiary intermediary (SI).

Subsidiary intermediaries are registered individuals working on behalf of a PI.

The Register of MPF Intermediaries provides details of entities (PIs) and individuals (SIs) authorised to engage in MPF marketing and sales activities or to advise clients on MPF schemes and products.

Penalties for Non-Compliance

Failure to comply with the provisions of the MPFSO and related regulations can amount to a criminal offence. Potential penalties for non-compliance can include fines and/or imprisonment.

Non-compliance by an employer includes:

- Failing to enrol employees in an MPF scheme (sections 7 and 43B, MPFSO).
- Failing to pay mandatory contributions to the MPF trustee (without deducting from the employees' relevant income) (sections 7A and 43B, MPFSO).
- Failing to pay mandatory contributions to the MPF trustee (having deducted from the employees' relevant income) (sections 7A and 43B, MPFSO).
- Providing false or misleading information in monthly pay records given to employees (section 43F, MPFSO).
- Providing false or misleading information to an MPF trustee or the MPFA (section 43E, MPFSO).
- Failing to pay mandatory contributions to the MPF trustee on time (sections 7A and 43B, MPFSO).
- Failing to provide monthly pay records to employees (section 139, MPFS Regulations).
- Failing to notify the MPF trustee in writing of an employee's cessation of employment (sections 145 and 146, MPFS Regulations).
- Failing to notify the MPF trustee in writing of changes in employer information such as company name, address and telephone number (section 143, MPFSO).

Non-compliance by an approved trustee includes:

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- Paying accrued benefits outside the circumstances permitted under the MPFSO (section 43A(1)(b), MPFSO).
- Failing to pay accrued benefits as required under the MPFSO (section 43A(1)(a), MPFSO).
- Investing accrued benefits in restricted investments (section 43A(2), MPFSO).
- Failing to comply with the requirements for the transfer of accrued benefits (section 43A(3), MPFSO).
- Failing to comply with the requirements for the claim for payment of accrued benefits (section 175, MPFS Regulations).

The MPFA may take enforcement actions against any MPF trustee, including:

- Issuing warning/reminder letters.
- Imposing a financial penalty.
- Initiating criminal prosecution (by referral to the Department of Justice).
- Tightening the approval conditions of the trustee concerned.
- Suspending and revoking the approval of the trustee.
- Suspending and terminating the trustee's administration of a registered scheme.

The MPFA may take enforcement actions against employers, including:

- Contacting the employer directly to rectify non-compliance.
- Imposing a contribution surcharge on defaulting employers.
- Filing a civil claim in court to recover mandatory contributions and surcharge in arrears.
- Imposing a financial penalty on non-compliant employers.
- Initiating criminal prosecution (by referral to the Department of Justice) against non-compliant employers or persons (including directors) for breach of the MPFSO.

Tax on Pensions

16. Are any tax reliefs available on contributions to supplementary pension schemes (by the employer and employees)?

Tax Relief on Employer Contributions

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Employers can claim tax deductions for both mandatory and voluntary contributions made to an MPF scheme to the extent that they do not exceed 15% of the relevant employee's total annual emoluments (including salary together with allowance and benefits) for the period to which the payments relate (section 17(1)(h), IRO; paragraph 58, Hong Kong Inland Revenue Department, Departmental Interpretation and Practice Notes No. 23, Recognized Retirement Schemes, May 2019).

Tax Relief on Employee Contributions

Employees can claim tax deductions for their mandatory contributions to an MPF scheme, subject to a maximum amount per tax year. The current maximum deduction amount is HKD18,000. Employees cannot claim tax deductions for voluntary contributions to an MPF scheme, other than tax-deductible voluntary contributions (TVCs). TVCs made by employees and self-employed persons are deductible for tax purposes subject to a limit of HKD60,000 per year (which is an aggregate limit for both TVCs and qualifying deferred annuity policies premiums).

17. Are there any approval or registration requirements with the local tax authority where a supplementary scheme is established?

All MPF schemes must be registered with the MPFA under the MPFSO. Since 1 January 2020, MPF schemes and ORSOs have been considered to constitute reporting financial institutions under the IRO and consequently they have certain reporting obligations to the Inland Revenue Department.

18. What is the tax treatment of investments made by the scheme?

MPF schemes and the MPF trustees are not subject to profits tax on their investment income.

19. What is the tax treatment of pension and lump sum payments made to members?

The withdrawal of accrued benefits attributable to an employee's contributions (that is, both mandatory and voluntary contributions) is not subject to tax. The withdrawal of accrued benefits attributable to the employer's mandatory contributions is chargeable to tax where the accrued benefit is received by the employee in circumstances other than retirement, death, incapacity, terminal illness, termination of service or permanent departure from Hong Kong.

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On termination of service, special conditions under the "proportionate benefit rule" limit the maximum tax exemption that can be claimed for accrued benefits attributable to the employer's voluntary contributions. If an employee has worked for less than ten years for an employer, the amount received under the scheme, upon termination of service, in respect of the employer's voluntary contributions is exempt to the following extent, using the following calculation: the accrued benefit under the scheme is multiplied by the employee's completed months of service divided by 120.

20. Are there any other applicable tax charges on schemes?

There are no other applicable tax charges on schemes.

Business Transfers

21. Is there any legal protection of employees' pension rights on a business transfer?

The transferee (that is, the new employer) must comply with the mandatory contributions requirements provided for under the MPFSO. In the case of a business transfer, the transferee and the transferring employees are free to negotiate different pension rights, provided that the statutory minimum requirements relating to these rights are met (see *Question 5*).

Transfer of Accrued Pension Rights

The transferor (that is, the original employer) is responsible for the provision and funding of any statutory and contractual mandatory provident fund pension or retirement benefits that have accrued before the date of transfer (see *Question 14, Member's Transfer of Funds*).

Other Protection for Pension Rights

Not applicable.

Participation in Pension Schemes

22. Can the following participate in a pension scheme established by a parent company in your jurisdiction:

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- Employees who are working abroad?
- Employees of a foreign subsidiary company?

Employees Working Abroad

Generally speaking, the MPFSO is intended to cover only those employees who are employed in or from Hong Kong irrespective of whether the employee works from within or outside of Hong Kong. Employees working outside of Hong Kong can participate in a pension scheme established by a Hong Kong parent company provided that there is sufficient connection between the employee and Hong Kong (for example, if the relevant employment contract is governed by Hong Kong law).

Employees of a Foreign Subsidiary Company

Employees of a foreign subsidiary of a Hong Kong holding company or a company incorporated in Hong Kong are likely to be insufficiently connected to Hong Kong and are not covered by the MPF system.

Employees of a foreign subsidiary company based in Hong Kong are exempted from joining a mandatory provident fund scheme in either of the following circumstances:

- If they are members of an overseas retirement scheme.
- If the period during which they are given permission to remain in Hong Kong is 13 months or less.

Employer Insolvency and Overall Scheme Solvency

23. Is there any protection provided for pension scheme benefits where the sponsoring employer becomes insolvent? If so, who provides the protection, and how does this operate? If the scheme itself is underfunded, are there any funding obligations on connected or associated legal entities?

If an employer becomes insolvent, the mandatory contributions that have been paid to an MPF scheme will not be available to creditors. All contributions (both mandatory and voluntary), investment returns and income derived from the investment of accrued benefits are immediately vested in the employee upon receipt by the approved trustee.

Where an insolvent employer has any outstanding mandatory contributions, the MPFA can file claims with the insolvency officer or liquidator in accordance with the insolvency proceedings to recover outstanding contributions on the employees' behalf. The MPFA will pay the recovered contributions received from the liquidator to the MPF trustee for allocation to the relevant employees' MPF accounts. In the distribution of money from the realisation of assets of an insolvent employer, unpaid

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MPF contributions (capped at HKD50,000 plus 50% of any amount exceeding HKD50,000) must be paid in priority (with other preferential payments) to all other debts, with the remaining balance treated as non-preferential debt.

The treatment of a bankrupt member's vested benefits under ORSO schemes depends on the terms of the governing rules and other relevant circumstances of the case.

The administrator of an ORSO scheme must both:

- Give prior notice to the Official Receiver's Office (ORO) for the transfer of benefits vested in a bankrupt member from an ORSO scheme to another scheme, even though no payment of benefits is proposed.
- Obtain prior consent from the ORO in respect of any proposed payment of benefits to a bankrupt member, including the offsetting of long service payments/severance payments.

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