Regulation of state and supplementary pension schemes in Hong Kong: overview

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Country Q&A | Law stated as at 01-Feb-2020 | Hong Kong - PRC

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

The Q&A gives a high level overview of the key practical issues including: state pensions; supplementary pensions; funding and solvency requirements; tax on pensions; business transfers; participation in pension schemes; and employer insolvency and overall scheme solvency.

To compare answers across multiple jurisdictions, visit the pensions *Country Q&A tool*.

The Q&A is part of the global guide to pensions law. For a full list of jurisdictional Q&As visit *global.practicallaw.com/pensions-guide*.

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/or employees do not make pension contributions to the government. However, subject to exemptions, every employer and employee is required to make mandatory contributions to the Mandatory Provident Fund (MPF). The MPF scheme is a privately managed, fully-funded contribution system (this is discussed further below at *Question 8* to *Question 20*).

Specified civil servants, teachers employed by government subsidised schools and officers holding a judicial office are members of government-sponsored retirement schemes. Members of such schemes do not make pension contributions to the government.

Taxation of contributions

Not applicable (*see above*, *Contributions paid to the government*).

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 above, 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?

Monthly amount of the government pension

Not applicable (*see above, 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 above, Question 1, Contributions paid to the government*).

Other governance regimes

Not applicable (*see above, Question 1, Contributions paid to the government*).

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 otherwise exempted, employers in Hong Kong must enrol their employees in a mandatory provident fund (MPF) scheme (Mandatory Provident Fund Schemes Ordinance) (MPFSO), (*Cap 485, Laws of Hong Kong*).

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 who are aged 64 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.
- Employees who are members of a scheme outside Hong Kong.
- 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 are required to 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.
- 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.

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

Employers may offer occupational retirement scheme benefits in addition to MPF schemes benefits. MPF exempted ORSO registered schemes may be offered in place of MPF schemes. Occupational retirement schemes are operated by the employer. ORSO schemes 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 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 scheme and an MPF scheme. Where an employer reduces members' future benefits or rights under an ORSO scheme, the employer must give each member the option of joining an MPF 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 Occupational Retirement Schemes Ordinance 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

Mandatory provident fund (MPF) schemes are defined contribution schemes. The value of pensions under an MPF scheme is linked to employer and employee contributions (*see Question 5*). Employers and employees may make additional voluntary contributions to MPF schemes.

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

There is no minimum period of service before an employee is entitled to receive accrued benefits under a mandatory provident fund (MPF) scheme.

An employee will be entitled to receive his or her accrued MPF benefits in relation to mandatory 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 age 60 or above.
- Permanently departs from Hong Kong.
- Suffers from total incapacity.
- Suffers from a terminal illness.
- Dies.
- Has accrued only a small balance of benefits of HKD5,000 or less.

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

Disclosure requirements

An employer is required to provide the following to employees regularly:

- A fund fact sheet summarising the important information relating to the fund, including the particulars and performance of the fund. An employer is required to issue at least two fund fact sheets to employees 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 employer is required to 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.

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

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?

Mandatory provident fund (MPF) schemes must be funded by the employer, as well as the employee.

Solvency requirements for funded schemes

A company applying to be an approved trustee must meet one of either of the following solvency requirements (*section 11, Mandatory Provident Fund Schemes Ordinance (General) Regulation* (MPFSO Regulations), (*Cap 485A, Laws of Hong Kong*)):

- 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 a 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 Mandatory Provident Fund Schemes Ordinance (MPFSO), including, for example, the requirement that one of the constituent funds must be a capital preservation fund (*section 40, MPFSO Regulations*).

As of 1 April 2017, 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 control.
- DIS where there are no investment directions from a scheme member.

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 (*sections 2 and 87(2), MPFSO Regulations*):

- 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.
- 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.

Accounts and disclosure

The five types of MPF funds currently available for employees are (ranked from low to high risk):

- MPF conservative fund.
- Guaranteed fund.
- Bond fund.

- Mixed assets fund.
- Equity fund.

Plan assets are invested depending on the type of MPF scheme. Common forms of investments include bonds and equities.

Employees have the right to choose among the investment choices offered under the MPF scheme selected by their employer for investment. Employees can adjust the ratio of stocks to bonds in their portfolio based on their investment objectives, risk tolerance level and preference. If employees have not specified their investment choice, their MPF contributions will be automatically invested according to the DIS, a ready-made investment solution (*see above, Solvency requirements for funded schemes*).

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

There are currently no restrictions prohibiting MPF scheme holders from investing sponsoring employer stock as a plan investment.

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

Fiduciary requirements

Trustees have a fiduciary duty to protect, and act in, the interests of scheme members in their handling of contributions, and not in the trustees' or their financial group's own interests. Trustees should place contributions pending investment in interest-bearing accounts for the interest of scheme members.

Prohibited activities

Not applicable.

11. 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 take 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 Mandatory Provident Fund Schemes Ordinance (General) Regulation (MPFSO Regulations), (*Cap 485A, Laws of Hong Kong*), on cessation of employment, an employee can choose to transfer his or her benefits under the mandatory provident fund (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 his or her benefits relating to mandatory contributions using one of the above options once his or her employment ceases (*section 145, MPFSO Regulations*).

Under section 147 of the MPFSO 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.
- 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 year (*sections 148A and 148B, MPFSO 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 Regulations*).

Legal restrictions

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

- The member reaches the age of 65.
- The member dies.
- The member becomes totally incapacitated.
- 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 160, MPFSO 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, MPFSO 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 15(4), Mandatory Provident Fund Schemes Ordinance*) (MPFSO), (*Cap 485, Laws of Hong Kong*).

If there are no personal representatives, or if the personal representatives are not willing to act, the trustee can treat the deceased's accrued benefits as unclaimed benefits (*section 161(3), MPFSO Regulations*).

Regulatory body

12. 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 Mandatory Provident Fund Schemes Ordinance (MPFSO), (*Cap 485, Laws of Hong Kong*) (see the contact details below).

Name. Mandatory Provident Fund Schemes Authority.

T: Hotline: +(852) 2918 0102.

E: *mpfa@mpfa.org.hk*.

W: *www.mpfa.org.hk/eng/main/*.

Regulatory framework

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

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.

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*).

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 trustee (without deducting from the employees' relevant income) (*sections 7A and 43B, MPFSO*).
- Failing to pay mandatory contributions to the 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 MPF trustees or the MPFA (*section 43E, MPFSO*).
- Failing to pay mandatory contributions to the trustee on time (*sections 7A and 43B, MPFSO*).
- Failing to provide monthly pay records to employees (*section 139, MPFSO Regulations*).
- Failing to notify the trustee in writing of an employee's cessation of employment (*sections 145 and 146, MPFSO Regulations*).
- Failing to notify the 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:

- 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, MPFSO Regulations*).

The MPFA may take enforcement actions against trustees, 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 trustees concerned.
- Suspending and revoking the approval of the trustees.
- 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

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

Tax relief on employer contributions

Employers can claim tax deductions for both mandatory and voluntary contributions made to a mandatory provident fund (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) (*paragraph 45, Hong Kong Inland Revenue Department, Departmental Interpretation and Practice Notes No. 23, Recognized Retirement Schemes, September 2006*).

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.

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

All mandatory provident fund schemes must be registered with the Mandatory Provident Fund Schemes Authority under the Mandatory Provident Fund Schemes Ordinance (MPFSO), (*Cap 485, Laws of Hong Kong*).

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

Mandatory provident funds (MPF) schemes, and the trustees of MPFs, are not subject to profits tax on their investment income.

16. 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 or termination of service.

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 12.

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

There are no other applicable tax charges on schemes.

Business transfers

18. 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 Mandatory Provident Fund Schemes Ordinance (MPFSO), (*Cap 485, Laws of Hong Kong*) and Hong Kong law.

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 11, Member's transfer of funds*.

Other protection for pension rights

Not applicable.

Participation in pension schemes

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

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

Employees working abroad

Employees working outside of Hong Kong can participate in a pension scheme established by a Hong Kong parent company if, for example, the relevant employment contract is governed by Hong Kong law.

Employees of a foreign subsidiary company

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

20. 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 a mandatory provident fund scheme will not be available to creditors. All contributions (both mandatory and voluntary), investment returns and income derived from 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 Mandatory Provident Fund Schemes Authority (MPFA) may file claims with the insolvency officer or liquidator in accordance with the insolvency proceedings to recover outstanding contributions on behalf of the employees. The MPFA will pay the recovered contributions received from the liquidator to the mandatory provident funds (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 MPF contributions must be paid in priority (with other preferential payments) to all other debts.

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