

Occupational Retirement Schemes (Amendment) Bill 2019

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A BILL

To

Amend the Occupational Retirement Schemes Ordinance to provide for requirements to ensure that occupational retirement schemes are genuinely based on employment; to enhance the enforcement powers of the Registrar of Occupational Retirement Schemes under the Ordinance; and to provide for related matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title

This Ordinance may be cited as the Occupational Retirement Schemes (Amendment) Ordinance 2019.

2. Enactments amended

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

Part 2

Amendments to Occupational Retirement Schemes Ordinance (Cap. 426)

3. Section 2 amended (interpretation)

- (1) Section 2(1), definition of *occupational retirement scheme*, paragraph (a)—

Repeal

“and”.

- (2) Section 2(1), definition of *occupational retirement scheme*, paragraph (b)—

Repeal

“employment,”

Substitute

“employment; and”.

- (3) Section 2(1), definition of *occupational retirement scheme*, after paragraph (b)—

Add

“(c) by its terms limits membership of the scheme to eligible persons,”.

- (4) Section 2(1)—

Repeal the definitions of *existing* and *member*.

- (5) Section 2(1)—

Add in alphabetical order

“*authorized person* (獲授權人) means a person appointed or authorized under section 80A;

eligible person (合資格的人)—see section 2A;

existing scheme (現有計劃) means an occupational retirement scheme existing at the time when an application for exemption or registration is made for the scheme;

investigator (調查員) means a person carrying out an investigation under section 66C;”.

4. Sections 2A and 2B added

After section 2—

Add

“2A. Meaning of *eligible person*

(1) An eligible person, in relation to an occupational retirement scheme, is an individual who is entitled or prospectively entitled to benefits under the scheme by virtue of—

(a) the individual’s employment (whether past or present) by the relevant employer of the scheme; or

(b) an agreement (*transfer agreement*)—

(i) made between—

(A) the relevant employer of the scheme; and

(B) the relevant employer of another occupational retirement scheme (*original scheme*) of which the individual was a member,

whether or not the individual is a party to the agreement; and

- (ii) made as a result of any company amalgamation, restructuring, joint venture, or any other business transaction of a similar nature, conducted in good faith between the two employers.
- (2) However, for an individual to be an eligible person because of an entitlement by virtue of a transfer agreement, the individual must have been a member of the original scheme by virtue of being an individual described in subsection (1) or (3) in relation to the original scheme.
- (3) Also, an eligible person is an individual having an interest in the estate of a deceased individual described in subsection (1).

2B. Interpretation of employment

- (1) This section applies for the purposes of the definition of *occupational retirement scheme* in section 2(1) and of section 3.
- (2) If a person provides service on a full-time basis to a business or other organization in Hong Kong for a period of more than 4 years in a way and subject to a degree of control that the person may reasonably be regarded as an integral part of the business or organization—
 - (a) the provision of service is to be regarded as employment;
 - (b) the proprietor of the business or organization is to be regarded as an employer whether or not there is a contract of employment or service between the person and the proprietor; and

- (c) the person providing service is to be regarded as an employee of, or employed by, the proprietor of the business or organization under a contract of employment or service.
- (3) An employer does not include the government of a country, territory or place outside Hong Kong or any agency or undertaking of or by such a government that is not operated for the purpose of gain.”.

5. Section 3 amended (restrictions on operation of occupational retirement schemes)

(1) Section 3—

Repeal subsection (4)

Substitute

- “(4) For the purposes of subsections (1)(d) and (2)(b), an application made in respect of an occupational retirement scheme under section 7(1) or 15 has been finally disposed of—
- (a) if the Registrar allows the application—on the Registrar allowing the application;
 - (b) if the Registrar refuses the application and no appeal is made within the period specified in section 8(2) or 19(2) against the refusal—on the expiry of the period; or
 - (c) if the Registrar refuses the application and an appeal is made within the period specified in section 8(2) or 19(2) against the refusal—on the Appeal Board determining the appeal under section 62(4)(a) or (c).”.

(2) Section 3—

Repeal subsection (5).

6. Section 6A added

Part II, after section 6—

Add**“6A. Registrar may issue guidelines**

- (1) The Registrar may issue guidelines for the guidance of administrators, relevant employers and their employees, and other persons concerned with this Ordinance.
- (2) A guideline—
 - (a) may consist of a code, standard, specification or provision relating to occupational retirement schemes or a class of such schemes; and
 - (b) may apply, incorporate or refer to any document that has been published, either as in force at the time when the guideline is issued, or as amended or published from time to time.
- (3) A guideline may specify information or documents required to be provided to the Registrar.
- (4) The information or documents specified under subsection (3) must be of a kind that the Registrar reasonably requires for the performance of the Registrar’s functions under this Ordinance.
- (5) Subsection (3) has effect whether or not rules are made under section 73 requiring the provision of information or documents.
- (6) The Registrar may amend or revoke a guideline.
- (7) The Registrar must publish a guideline, or any amendment or revocation of it, in a way the Registrar considers appropriate.

- (8) A person does not incur a civil or criminal liability only because the person has contravened a guideline.
- (9) However, if in any legal proceedings the court is satisfied that a guideline is relevant to determining a matter that is in issue in the proceedings—
 - (a) the guideline is admissible in evidence in the proceedings; and
 - (b) proof that the person contravened or did not contravene the guideline may be relied on by any party to the proceedings as tending to establish or negate the matter.
- (10) In any legal proceedings, a document that purports to be a copy of a guideline is, in the absence of evidence to the contrary, to be presumed to be a true copy of the guideline.
- (11) To avoid doubt, the power under subsection (1) is in addition to, and not in derogation of, any other power of the Registrar to give or issue guidelines under any other provision of this Ordinance.
- (12) A guideline issued under this section is not subsidiary legislation.”.

7. Section 7 amended (exemption)

- (1) Section 7(2)(c)(ii)—

Repeal

“and”.

- (2) Section 7(2)(c)(iii)—

Repeal

“Registrar.”

Substitute

“Registrar; and”.

- (3) After section 7(2)(c)(iii)—

Add

“(iv) a written statement by the relevant employer or representative employer that—

(A) the scheme by its terms limits membership of the scheme to eligible persons; and

(B) all members of the scheme are eligible persons.”.

- (4) After section 7(5)—

Add

“(5A) The Registrar may allow an application under subsection (4)(b) or (c) only if the Registrar receives the application before the date on which the Occupational Retirement Schemes (Amendment) Ordinance 2019 (of 2019) comes into operation.

(5B) On or at any time after allowing an application for an exemption certificate for an occupational retirement scheme, the Registrar may, by written notice given to the relevant employer of the scheme, impose conditions for exemption of the scheme that the Registrar considers appropriate.

(5C) The Registrar may from time to time, by written notice given to the relevant employer of the scheme, amend or revoke a condition imposed under subsection (5B).

(5D) Before imposing, amending or revoking a condition under subsection (5B) or (5C), the Registrar must give the relevant employer of the scheme—

- (a) not less than 30 days' advance notice of the Registrar's proposed decision, specifying the grounds; and
- (b) an opportunity to make written representations to the Registrar as to why the condition should not be imposed, amended or revoked.”.

8. Section 8 amended (appeal against the Registrar's decision)

(1) Section 8—

Renumber the section as section 8(2).

(2) Before section 8(2)—

Add

“(1) If the Registrar imposes, amends or revokes a condition for exemption of an occupational retirement scheme, the relevant employer of the scheme may appeal to the Appeal Board against the decision within 2 months after the date of the notice given under section 7(5B) or (5C).”.

9. Section 8A added

After section 8—

Add

“8A. Membership requirements for exempted schemes

- (1) If, despite paragraph (c) of the definition of *occupational retirement scheme* in section 2(1), any term of an exempted scheme allows a person other than an eligible person to be a member of the scheme, without limiting section 11(1)(g) or (h) or 12(1)(g) or (h)—

- (a) the scheme continues to be an exempted scheme; and
 - (b) the term is void and unenforceable.
- (2) Subsection (1) applies only to a scheme for which an exemption certificate is issued on or after the date on which the Occupational Retirement Schemes (Amendment) Ordinance 2019 (of 2019) comes into operation.
- (3) If, without reasonable excuse, a person other than an eligible person is allowed to be a member of an exempted scheme, the relevant employer of the scheme commits an offence and is liable—
- (a) on summary conviction—to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$5,000 for every day during which the offence continues; or
 - (b) on conviction on indictment—to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.”.

10. Section 10 amended (provision of information relating to exempted schemes)

- (1) Section 10(1)—

Repeal paragraph (a)

Substitute

“(a) the Registrar may by written notice require a person to give, within the period specified in the notice, any information or document relating to the scheme that is in the person’s possession or under the person’s control;”.

(2) After section 10(1)(a)—

Add

“(ab) the Registrar may by written notice require a person to give, within the period specified in the notice, any information or document (including a legal opinion, or an auditor’s certificate, on a matter specified by the Registrar) relating to the scheme that is reasonably required to enable the Registrar to determine whether—

- (i) the scheme by its terms limits membership of the scheme to eligible persons; and
- (ii) all members of the scheme are eligible persons;”.

(3) Section 10(1)(b)—

Repeal

everything after “Registrar—”

Substitute

- “(i) an annual return for the period relating to the scheme in the form and containing the information that may be specified by the Registrar;
- (ii) a written statement as to whether at all times during the period—
 - (A) the scheme by its terms limits membership of the scheme to eligible persons; and

(B) all members of the scheme are eligible persons;

(iii) for a scheme exempted under section 7(4)(a)—documentary evidence to satisfy the Registrar of the validity of the relevant registration or approval during the period; and

(iv) for a scheme exempted under section 7(4)(b) or (c)—a written statement of the total number of members of the scheme and the number of the members who were Hong Kong permanent identity card holders on the date of the statement,

within 1 month after the expiry of the period or a longer period the Registrar may allow;”.

(4) Section 10(2)—

Repeal

“relevant employer who without reasonable cause”

Substitute

“person who without reasonable excuse”.

(5) Section 10(2)(a), after “subsection (1)(a)” —

Add

“or (ab)”.

(6) Section 10(2)(b)—

Repeal

“documentary evidence or a written statement”

Substitute

“an annual return, a written statement or documentary evidence”.

- (7) Section 10(3), (3A) and (3B)—

Repeal

“reasonable cause”

Substitute

“reasonable excuse”.

11. Section 11 amended (proposal to withdraw an exemption certificate)

- (1) After section 11(1)(b)—

Add

“(ba) a condition imposed under section 7(5B), or amended under section 7(5C), in respect of the scheme is not complied with;”.

- (2) Section 11(1)(c)—

Repeal

“or”.

- (3) Section 11(1)—

Repeal paragraph (d)

Substitute

- “(d) any requirement of section 10(1)(a), (ab) or (b) is not complied with for the scheme;
- (e) any requirement of section 67(2)(ga) is not complied with for the scheme;
- (f) the requirement of section 70B is not complied with for the scheme;
- (g) any term of the scheme allows a person other than an eligible person to be a member of the scheme;
- (h) not all members of the scheme are eligible persons;

- (i) the scheme is not, or has ceased to be, an occupational retirement scheme; or
- (j) the withdrawal is in the public interest.”.

(4) Section 11(2)—

Repeal

“occupational retirement”

Substitute

“exempted”.

(5) Section 11(2)—

Repeal paragraph (a)

Substitute

“(a) publish a notice containing the proposal in a way the Registrar considers appropriate; and”.

(6) Section 11(3), Chinese text—

Repeal

“刊登”

Substitute

“發布”.

(7) Section 11(3)(b), Chinese text, after “說明在公告”—

Add

“或通知書”.

(8) Section 11(3)(b), Chinese text, after “自公告”—

Add

“或通知書的”.

(9) Section 11—

Repeal subsection (5)

Substitute

“(5) A person who fails to comply with a requirement under subsection (2)(b)(i) or (ii) commits an offence and is liable on summary conviction to a fine at level 3.”.

12. Section 12 amended (withdrawal of exemption certificate)

(1) Section 12(1), Chinese text—

Repeal

“刊登”

Substitute

“發布”.

(2) After section 12(1)(b)—

Add

“(ba) a condition imposed under section 7(5B), or amended under section 7(5C), in respect of the scheme is not complied with;”.

(3) Section 12(1)(c)—

Repeal

“or”.

(4) Section 12(1)—

Repeal paragraph (d)

Substitute

“(d) any requirement of section 10(1)(a), (ab) or (b) is not complied with for the scheme;

(e) any requirement of section 67(2)(ga) is not complied with for the scheme;

(f) the requirement of section 70B is not complied with for the scheme;

- (g) any term of the scheme allows a person other than an eligible person to be a member of the scheme;
- (h) not all members of the scheme are eligible persons;
- (i) the scheme is not, or has ceased to be, an occupational retirement scheme; or
- (j) the withdrawal is in the public interest.”.

(5) Section 12(2)—

Repeal paragraph (a)

Substitute

- “(a) publish a notice of the withdrawal in a way the Registrar considers appropriate; and”.

(6) Section 12(3), Chinese text—

Repeal

“刊登”

Substitute

“發布”.

(7) Section 12(3)(b), Chinese text, after “公告”—

Add

“或通知書的”.

(8) Section 12—

Repeal subsection (4)

Substitute

- “(4) A person who fails to comply with a requirement under subsection (2)(b)(i) or (ii) commits an offence and is liable on summary conviction to a fine at level 3.”.

13. Section 14 amended (coming into effect of withdrawal)

(1) Section 14(3)—

Repeal paragraph (a)

Substitute

“(a) publish a notice of the coming into effect of the withdrawal in a way the Registrar considers appropriate; and”.

(2) Section 14—

Repeal subsection (4)

Substitute

“(4) A person who fails to comply with a requirement under subsection (3)(b)(i) or (ii) commits an offence and is liable on summary conviction to a fine at level 3.”.

14. Section 18 amended (registration)

(1) Section 18(1)(b)—

Repeal

“requirement of section 25(2) (in the case of an existing scheme governed by a trust) has”

Substitute

“requirements of section 25(2) and (5) (in the case of an existing scheme governed by a trust) have”.

(2) Section 18(1)(c)—

Repeal

“and”.

(3) Section 18(1)(d)—

Repeal

“satisfied,”

Substitute

“satisfied; and”.

- (4) After section 18(1)(d)—

Add

“(e) that registering the scheme is not contrary to the public interest,”.

- (5) Section 18(1)—

Repeal

“shall allow”

Substitute

“may allow”.

- (6) Section 18(3)(b)—

Repeal

“requirement of section 25(2)”

Substitute

“requirements of section 25(2) and (5)”.

- (7) Section 18(4)(c)—

Repeal

“requirement of section 25(2)”

Substitute

“requirements of section 25(2) and (5)”.

- (8) After section 18(4)—

Add

- “(4A) On or at any time after allowing an application for registration of an occupational retirement scheme, the Registrar may, by written notice given to the relevant employer of the scheme, impose conditions for registration of the scheme that the Registrar considers appropriate.
- (4B) The Registrar may from time to time, by written notice given to the relevant employer of the scheme, amend or revoke a condition imposed under subsection (4A).
- (4C) Before imposing, amending or revoking a condition under subsection (4A) or (4B), the Registrar must give the relevant employer of the scheme—
- (a) not less than 30 days’ advance notice of the Registrar’s proposed decision, specifying the grounds; and
 - (b) an opportunity to make written representations to the Registrar as to why the condition should not be imposed, amended or revoked.”.

15. Section 19 amended (appeal against the Registrar’s decision)

- (1) Section 19—

Renumber the section as section 19(2).

- (2) Before section 19(2)—

Add

- “(1) If the Registrar imposes, amends or revokes a condition for registration of an occupational retirement scheme, the relevant employer of the scheme may appeal to the Appeal Board against the decision within 2 months after the date of the notice given under section 18(4A) or (4B).”.

16. Section 20 amended (registered schemes' trustees, etc., to keep proper accounts and records, etc.)

After section 20(3)—

Add

“(3A) To avoid doubt, the financial transactions of a registered scheme include transactions involving the transfer of benefits to and from the scheme.”.

17. Sections 20A and 20B added

After section 20—

Add

“20A. Requirements in relation to certain terms

- (1) The terms of a registered scheme must at all times—
 - (a) if the scheme is not a participating scheme of a pooling agreement—not permit assets of the scheme to be used to indemnify any person who manages the scheme or any trustee of the scheme against any fraud, misfeasance or breach of trust;
 - (b) not enable any person, without the consent of a member of the scheme, to alter to the member's detriment either the member's accrued rights under the scheme or the member's vested benefits, unless the alteration is consequential on an amendment to the terms of the scheme consented to by not less than 90% of the members of the scheme;

- (c) provide that if an alteration described in paragraph (b) occurs, any vested benefit that the member concerned is entitled to receive as at the date of the alteration under the terms of the scheme becomes, if the member so elects, payable to the member as if any condition precedent of the entitlement had been satisfied; and
 - (d) have the effect provided for in section 18(1)(c) and (d).
- (2) If a registered scheme is the subject of, or regulated by, an insurance arrangement, the terms of the arrangement must at all times provide that any sum payable by the administrator of the scheme in the event of the termination of the arrangement may be paid by the administrator only to—
 - (a) another authorized insurer for the purposes of another insurance arrangement of which the scheme will be the subject, or by which the scheme will be regulated; or
 - (b) a person who will hold the sum on trust as an asset of the scheme in accordance with section 25.
- (3) If a registered scheme is a participating scheme of a pooling agreement, the terms of the agreement must at all times not permit assets of its participating schemes to be used to indemnify the administrator of the agreement against any fraud, misfeasance or breach of trust.
- (4) Any term of a registered scheme that contravenes subsection (1) is void and unenforceable.

- (5) Any term of an insurance arrangement of which a registered scheme is the subject, or by which a registered scheme is regulated, that contravenes subsection (2) is void and unenforceable.
- (6) Any term of the pooling agreement of a participating scheme that contravenes subsection (3) is void and unenforceable.

20B. Membership requirements for registered schemes

- (1) If, despite paragraph (c) of the definition of *occupational retirement scheme* in section 2(1), any term of a registered scheme allows a person other than an eligible person to be a member of the scheme, without limiting section 42(p) or (q) or 45(1)(d)(xvi) or (xvii)—
 - (a) the scheme continues to be a registered scheme; and
 - (b) the term is void and unenforceable.
- (2) Subsection (1) applies only to a scheme for which a certificate of registration is issued on or after the date on which the Occupational Retirement Schemes (Amendment) Ordinance 2019 (of 2019) comes into operation.
- (3) If, without reasonable excuse, a person other than an eligible person is allowed to be a member of a registered scheme, the relevant employer of the scheme commits an offence and is liable—
 - (a) on summary conviction—to a fine at level 6 and, in the case of a continuing offence, to a further fine of \$5,000 for every day during which the offence continues; or

- (b) on conviction on indictment—to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for every day during which the offence continues.”.

18. Section 21A amended (notice required)

Section 21A(3) and (4)—

Repeal

“reasonable cause”

Substitute

“reasonable excuse”.

19. Section 24 amended (general funding requirements and duties)

Section 24(2)—

Repeal

“Where an existing scheme”

Substitute

“If a scheme existing immediately before 15 October 1993”.

20. Section 25 amended (trusteeship requirement)

After section 25(4)—

Add

- “(5) A trustee of a registered scheme must perform the following duties with respect to the administration of the scheme—

- (a) the duty to exercise a level of care, skill, diligence and prudence that may reasonably be expected of a prudent person who is acting in a similar capacity and who is familiar with the administration, management and maintenance of a registered scheme;
- (b) the duty to use all relevant knowledge and skill, in the administration, management and maintenance of the scheme, that the trustee may reasonably be expected to have because of the trustee's business or occupation;
- (c) the duty to ensure that the assets of the scheme are invested in different investments so as to minimize the risk of losses of those assets, unless in particular circumstances it is prudent not to do so;
- (d) the duty to put the interests of the members of the scheme before the trustee's own interest; and
- (e) the duty to act in accordance with the terms of the scheme.”.

21. Section 26 amended (contravention of trusteeship requirement)

- (1) Section 26(1)—

Repeal

“where the requirement of section 25(2)”

Substitute

“if any requirement of section 25(2) or (5)”.

- (2) Section 26(1), English text—

Repeal

“relevant trustee”

Substitute

“trustee”.

- (3) Section 26—

Repeal subsection (2)

Substitute

- “(2) The Registrar may extend the period referred to in subsection (1) on application in writing by the relevant employer or the trustee (or, if there be more than 1 trustee, any of them).”.

22. Section 30 amended (annual return)

- (1) Section 30, heading, after “**return**”—

Add

“**and written statement**”.

- (2) Section 30—

Renumber the section as section 30(1).

- (3) After section 30(1)—

Add

- “(2) Within 1 month after the end of a financial year of a registered scheme, or a longer period the Registrar may allow, the relevant employer of the scheme must give the Registrar a written statement as to whether at all times during the financial year—
- (a) the scheme by its terms limits membership of the scheme to eligible persons; and
 - (b) all members of the scheme are eligible persons.”.

23. Section 32 amended (Registrar may require certain reports and certificates)

After section 32(5)—

Add

“(5A) The Registrar may, in performing any function under this Ordinance, take into account any report or certificate received under this section.”.

24. Section 33 amended (information etc. to be given to Registrar)

(1) Section 33(1)—

Repeal everything before paragraph (a)

Substitute

“(1) The Registrar may by written notice require a person to give, within the period specified in the notice, any of the following information or documents relating to a registered scheme that is in the person’s possession or under the person’s control—”.

(2) After section 33(1)—

Add

“(1A) The Registrar may by written notice require a person to give, within the period specified in the notice, any information or document (including a legal opinion, or an auditor’s certificate, on a matter specified by the Registrar) relating to a registered scheme that is reasonably required to enable the Registrar to determine whether—

- (a) the scheme by its terms limits membership of the scheme to eligible persons; and
- (b) all members of the scheme are eligible persons.”.

25. Section 33A added

After section 33—

Add**“33A. Registrar to be notified of certain events**

(1) In this section—

reportable event (須申報事件) means, in relation to a registered scheme, the occurrence of any of the following—

- (a) any requirement of section 20 is not complied with for the scheme;
- (b) any requirement of section 20A(1), (2) or (3) is not complied with for the scheme;
- (c) any requirement of section 21 is not complied with for the scheme;
- (d) any requirement of section 24 is not complied with for the scheme;
- (e) any requirement of section 25 is not complied with for the scheme;
- (f) a requirement under section 26(1) is not complied with for the scheme;
- (g) any requirement of section 27 is not complied with for the scheme;
- (h) the requirement of section 70B is not complied with for the scheme;
- (i) any term of the scheme allows a person other than an eligible person to be a member of the scheme;
- (j) not all members of the scheme are eligible persons;

working day (工作日) means a day that is not—

- (a) a general holiday;
 - (b) a Saturday; or
 - (c) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).
- (2) If the relevant employer or administrator of a registered scheme becomes aware of a reportable event that occurs on or after the date on which the Occupational Retirement Schemes (Amendment) Ordinance 2019 (of 2019) comes into operation, the relevant employer or administrator must—
- (a) not later than the seventh working day after becoming aware of the event, give written notice to the Registrar setting out the particulars of the event;
 - (b) keep a record of the particulars of the event;
 - (c) permit the Registrar to inspect the record at any reasonable time during ordinary business hours; and
 - (d) give written notice to the Registrar setting out such further or better particulars of the event as the Registrar requires as soon as practicable after the Registrar makes the requirement.
- (3) A person who, without reasonable excuse, contravenes subsection (2) commits an offence and is liable on summary conviction to a fine at level 6.”.

26. Section 36 amended (inquiries)

Section 36(5)—

Repeal

“relevant occupational retirement”

Substitute

“registered”.

27. Section 42 amended (grounds for cancellation of registration)

(1) After section 42(a)—

Add

“(ab) any requirement of section 20A(1), (2) or (3) is not complied with;”.

(2) Section 42(e)—

Repeal

“under section 27(7)”

Substitute

“of section 27”.

(3) Section 42(g)—

Repeal

“section 30”

Substitute

“section 30(1) or (2)”.

(4) Section 42(j)—

Repeal

“section 33”

Substitute

“section 33(1) or (1A)”.

- (5) Section 42(n)—

Repeal

“or”.

- (6) After section 42(n)—

Add

“(na) any requirement of section 67(2)(gab) is not complied with;

(nb) the requirement of section 70B is not complied with;”.

- (7) Section 42(o)—

Repeal

“whole,”

Substitute

“whole;”.

- (8) After section 42(o)—

Add

“(p) any term of the scheme allows a person other than an eligible person to be a member of the scheme;

(q) not all members of the scheme are eligible persons;

(r) the scheme is not, or has ceased to be, an occupational retirement scheme; or

(s) the cancellation of the registration of the scheme is in the public interest;”.

28. Section 43 amended (proposal to cancel registration)

- (1) Section 43(1)—

Repeal paragraph (a)

Substitute

“(a) publish a notice containing the proposal in a way the Registrar considers appropriate; and”.

- (2) Section 43(2), Chinese text—

Repeal

“刊登”

Substitute

“發布”.

- (3) Section 43(2)(b), Chinese text, after “說明在公告”—

Add

“或通知書”.

- (4) Section 43(2)(b), Chinese text, after “自公告”—

Add

“或通知書的”.

- (5) Section 43—

Repeal subsection (5)

Substitute

“(5) A person who fails to comply with a requirement under subsection (1)(b)(i) or (ii) commits an offence and is liable on summary conviction to a fine at level 3.”.

29. Section 44 amended (court may order freezing of assets)

- (1) Section 44(1), after “issues”—

Add

“, or intends to issue,”.

- (2) After section 44(1)—

Add

“(1A) Before making an order under subsection (1), the court must satisfy itself, so far as it can reasonably do so, that—

- (a) it is desirable that the order be made; and
- (b) the order will not unfairly prejudice any person.”.

30. Section 45 amended (cancellation of registration)

- (1) After section 45(1)(d)(i)—

Add

“(ia) any requirement of section 20A(1), (2) or (3) is not complied with;”.

- (2) Section 45(1)(d)(v)—

Repeal

“a requirement under section 27(7)”

Substitute

“any requirement of section 27”.

- (3) Section 45(1)(d)(vii)—

Repeal

“a requirement of section 30”

Substitute

“any requirement of section 30(1) or (2)”.

- (4) Section 45(1)(d)(x)—

Repeal

“a requirement under section 33”

Substitute

“any requirement under section 33(1) or (1A)”.

- (5) Section 45(1)(d)(xiv)—

Repeal

“or”.

- (6) After section 45(1)(d)(xiv)—

Add

“(xiva) any requirement of section 67(2)(gab) is not complied with;

(xivb) the requirement of section 70B is not complied with;”.

- (7) Section 45(1)(d)(xv)—

Repeal

“whole,”

Substitute

“whole;”.

- (8) After section 45(1)(d)(xv)—

Add

“(xvi) any term of the scheme allows a person other than an eligible person to be a member of the scheme;

(xvii) not all members of the scheme are eligible persons;

(xviii) the scheme is not, or has ceased to be, an occupational retirement scheme; or

(xix) the cancellation of the registration of the scheme is in the public interest;”.

- (9) Section 45(2)—

Repeal paragraph (a)

Substitute

“(a) publish a written notice of the cancellation in a way the Registrar considers appropriate; and”.

(10) Section 45(3), Chinese text—

Repeal

“刊登”

Substitute

“發布”.

(11) Section 45(3)(b), Chinese text, after “公告”—

Add

“或通知書”.

(12) Section 45—

Repeal subsection (4)

Substitute

“(4) A person who fails to comply with a requirement under subsection (2)(b)(i) or (ii) commits an offence and is liable on summary conviction to a fine at level 3.”.

31. Section 47 amended (coming into effect of cancellation)

(1) Section 47(3)—

Repeal paragraph (a)

Substitute

“(a) publish a notice of the coming into effect of the cancellation in a way the Registrar considers appropriate; and”.

(2) Section 47—

Repeal subsection (4)

Substitute

“(4) A person who fails to comply with a requirement under subsection (3)(b)(i) or (ii) commits an offence and is liable on summary conviction to a fine at level 3.”.

32. Section 49 amended (appointment of liquidator)

Section 49(1)—

Repeal

“occupational retirement”.

33. Section 50 amended (remuneration of liquidator)

Section 50—

Repeal

“an occupational retirement scheme, he shall”

Substitute

“a scheme under section 49(1), the person is to”.

34. Section 51 amended (powers of liquidator)

Section 51—

Repeal

“an occupational retirement scheme shall have”

Substitute

“a scheme under section 49(1) has”.

35. Section 52 amended (vesting of assets of scheme in liquidator)

(1) Section 52(1)—

Repeal

“an occupational retirement scheme”

Substitute

“a scheme”.

- (2) Section 52(2)—

Repeal

“any of his employees”

Substitute

“any other person”.

36. Section 53 amended (effect of winding-up order)

- (1) Section 53(1)—

Repeal

“an occupational retirement scheme”

Substitute

“a scheme”.

- (2) Section 53(1), Chinese text—

Repeal

“刊登”

Substitute

“發布”.

37. Section 54 amended (avoidance of preference in certain cases)

- Section 54(a)—

Repeal

“an occupational retirement scheme”

Substitute

“a scheme”.

38. Section 55 amended (saving of bona fide transactions, etc.)

Section 55(a)—

Repeal

“an occupational retirement scheme”

Substitute

“a scheme”.

39. Section 56 amended (distribution of assets)

(1) Section 56(1)—

Repeal

“an occupational retirement scheme shall on its winding up”

Substitute

“a scheme subject to a winding-up order made under section 48(2) are on its winding up to”.

(2) Section 56(3)—

Repeal

“relevant employer of the scheme”

Substitute

“person who was the relevant employer of the scheme immediately before the registration of the scheme was cancelled,”.

40. Section 57 amended (the court’s power after winding up)

Section 57(1), (2) and (3)—

Repeal

“an occupational retirement scheme”

Substitute

“a scheme”.

41. Section 61 amended (Appeal Board)

(1) After section 61(3)—

Add

“(3A) A person appointed under subsection (2) to be the Chairman of the Appeal Board must be—

- (a) a person who is eligible for appointment as a judge of the High Court under section 9 of the High Court Ordinance (Cap. 4);
- (b) a former Justice of Appeal of the Court of Appeal; or
- (c) a former judge or a former deputy judge of the court.”.

(2) Section 61(4)—

Repeal

“shall”

Substitute

“to be the Deputy Chairman, or one of the Deputy Chairmen, of the Appeal Board must”.

42. Section 62 amended (constitution and powers of Appeal Board)

(1) Before section 62(4)(a)—

Add

“(aa) under section 8(1), the Appeal Board may determine the appeal by upholding, varying or quashing the Registrar’s decision, and making any necessary consequential order;”.

- (2) Section 62(4)(a)—

Repeal

“section 8”

Substitute

“section 8(2)”.

- (3) After section 62(4)(b)—

Add

“(ba) under section 19(1), the Appeal Board may determine the appeal by upholding, varying or quashing the Registrar’s decision, and making any necessary consequential order;”.

- (4) Section 62(4)(c)—

Repeal

“section 19”

Substitute

“section 19(2)”.

43. Part VIIIA added

After Part VIII—

Add

“Part VIIIA

Inspection and Investigation

66A. Interpretation

In this Part—

investigation requirement (調査要求) means a requirement made under section 66D;

scheme (計劃) means a registered scheme or an exempted scheme.

66B. General powers of inspection

- (1) An authorized person may, at any reasonable time during ordinary business hours, enter premises at which the person reasonably believes that—
 - (a) the affairs of a scheme are being conducted; or
 - (b) any information or document relating to a scheme is being kept,for the purpose of ascertaining whether or not the provisions of this Ordinance are being complied with or have been complied with.
- (2) This section does not authorize an authorized person to enter premises that are being used as a private dwelling.
- (3) An authorized person must give the occupier of the premises reasonable notice of the intention to enter the premises.
- (4) However, an authorized person may enter premises under this section without giving notice and without the consent of the occupier—
 - (a) if entry is required urgently and the Registrar has expressly authorized entry; or
 - (b) if giving notice or obtaining the consent would defeat the purpose for which it is intended to exercise the power of entry.
- (5) An authorized person who enters premises under this section may do any of the following acts—

- (a) inspect the premises and examine any record found on the premises that the authorized person reasonably believes relates to a scheme;
 - (b) take photographs or videos of the premises or of any thing found on the premises that the authorized person reasonably believes relates to a scheme;
 - (c) require the occupier of the premises or any person who is apparently an employee or agent of that occupier to provide the authorized person with such assistance and facilities as are reasonably necessary to enable the authorized person to perform his or her functions;
 - (d) require any person on the premises to produce for inspection records under the control of the person relating to a scheme and, if any such records are not legible or are not in the English or Chinese language, to produce a written statement in English or Chinese setting out the contents of those records;
 - (e) make copies of all or any part of any such records or statements.
- (6) A person may exercise a power conferred by this section only if the person—
- (a) is in possession of a warrant of authority issued by the Registrar; and
 - (b) on being requested to do so, produces that warrant to the occupier of the premises sought to be entered, inspected or examined or to any other person in relation to whom it is sought to exercise that power.

66C. Investigation

- (1) The Registrar may investigate any matter if, in relation to a scheme, the Registrar—
 - (a) has reasonable cause to believe that a person may have contravened the provisions of this Ordinance;
 - (b) has reasonable cause to believe that circumstances may exist that could prejudice the interests of the members of the scheme; or
 - (c) thinks it is necessary to investigate the matter in order to decide whether to exercise any power under section 11, 12, 42 or 45.
- (2) The Registrar may—
 - (a) carry out the investigation itself; or
 - (b) in writing direct a person employed by the Registrar to carry out the investigation.
- (3) In carrying out the investigation, the Registrar or the person referred to in subsection (2)(b) may exercise the powers under section 66D.
- (4) If the Registrar directs a person under subsection (2)(b), the Registrar must provide the person with a copy of the direction.
- (5) Even though the Registrar has directed a person to carry out an investigation, the Registrar may still exercise the powers under section 66D for the purpose of the investigation.
- (6) If section 36(2)(a) applies in relation to a scheme, the Registrar must first appoint a person to conduct an inquiry under section 36 before exercising the power under subsection (2) in relation to the scheme.

66D. Investigation powers

- (1) An investigator may by written notice require a person—
 - (a) to produce, within the time and at the place specified in the notice, any record or document specified in the notice—
 - (i) that is or may be relevant to any matter under investigation; and
 - (ii) that is in the person's possession or under the person's control;
 - (b) to attend before the investigator at the time and place specified in the notice, and answer any question relating to any matter under investigation that the investigator may raise with the person;
 - (c) to respond to any written question relating to any matter under investigation that the investigator may raise with the person; or
 - (d) to give the investigator any assistance in connection with the investigation that the person is reasonably able to give.
- (2) If a person produces a record or document in compliance with a requirement under subsection (1)(a), the investigator may require the person to give an explanation or further particulars in respect of the record or document.

- (3) If a person gives any answer, response, explanation or particulars in compliance with a requirement under subsection (1) or (2), the investigator may by written notice require the person to verify, within the time specified in the notice, the answer, response, explanation or particulars by a statutory declaration.
- (4) If, for the reason that the information concerned is not within the person's knowledge or possession, a person does not give any answer, response, explanation or particulars in compliance with a requirement under subsection (1) or (2), the investigator may by written notice require the person to verify, within the time specified in the notice, that reason and fact by a statutory declaration.
- (5) If the investigator is directed under section 66C(2)(b) to carry out the investigation, the investigator must provide a copy of the direction given under the section to a person when making an investigation requirement of the person.

66E. Offences of failing to comply with investigation requirement

- (1) A person commits an offence if the person, without reasonable excuse, fails to comply with an investigation requirement made of the person.
- (2) A person commits an offence if the person, with intent to defraud, fails to comply with an investigation requirement made of the person.
- (3) A person commits an offence if, being an officer or employee of a company, the person, with intent to defraud, causes or allows the company to fail to comply with an investigation requirement made of the company.

- (4) A person is not excused from complying with an investigation requirement made of the person only on the ground that to do so might tend to incriminate the person.
- (5) A person who commits an offence under subsection (1) is liable—
 - (a) on summary conviction—to a fine at level 5 and to imprisonment for 6 months; or
 - (b) on conviction on indictment—to a fine of \$200,000 and to imprisonment for 1 year.
- (6) A person who commits an offence under subsection (2) or (3) is liable—
 - (a) on summary conviction—to a fine at level 6 and to imprisonment for 6 months; or
 - (b) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 7 years.
- (7) If a member of a professional body is alleged to have committed an offence under subsection (1), (2) or (3), the Registrar may refer the matter to the professional body.

66F. Offences of giving false or misleading information

- (1) A person commits an offence if—
 - (a) in purported compliance with an investigation requirement made of the person, the person produces any record or document, or gives any answer, response, explanation or particulars, that is or are false or misleading in a material respect; and

- (b) the person knows that, or is reckless as to whether, the record, document, answer, response, explanation or particulars is or are false or misleading in a material respect.
- (2) A person commits an offence if, in purported compliance with an investigation requirement made of the person, the person, with intent to defraud, produces any record or document, or gives any answer, response, explanation or particulars, that is or are false or misleading in a material respect.
- (3) A person commits an offence if, being an officer or employee of a company, the person, with intent to defraud, causes or allows the company, in purported compliance with an investigation requirement made of the company, to produce any record or document, or give any answer, response, explanation or particulars, that is or are false or misleading in a material respect.
- (4) A person who commits an offence under subsection (1) is liable—
 - (a) on summary conviction—to a fine at level 6 and to imprisonment for 6 months; or
 - (b) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 2 years.
- (5) A person who commits an offence under subsection (2) or (3) is liable—
 - (a) on summary conviction—to a fine at level 6 and to imprisonment for 6 months; or
 - (b) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 7 years.

- (6) If a member of a professional body is alleged to have committed an offence under subsection (1), (2) or (3), the Registrar may refer the matter to the professional body.

66G. Court's inquiry into failure to comply with investigation requirement

- (1) An investigator may, by originating summons, apply to the court for an inquiry into a person's failure to comply with an investigation requirement.
- (2) On application, the court may—
 - (a) order the person to comply with the requirement within the period specified by the court; and
 - (b) punish the person, and any other person knowingly involved in the failure, in the same way as if the person and (if applicable) that other person had been guilty of contempt of court.
- (3) An originating summons under subsection (1) is to be in Form No. 10 in Appendix A to the Rules of the High Court (Cap. 4 sub. leg. A).

66H. Criminal proceedings and applications under sections 66E, 66F and 66G

- (1) No criminal proceedings may be brought against a person under section 66E or 66F in respect of any conduct if—
 - (a) an application has previously been made against the person under section 66G in respect of the same conduct; and

- (b) either—
 - (i) the application remains pending; or
 - (ii) the court has exercised, or declined to exercise, its power under section 66G(2)(b) in relation to the application.
- (2) No application may be made against a person under section 66G in respect of any conduct if—
 - (a) criminal proceedings have previously been brought against the person under section 66E or 66F in respect of the same conduct; and
 - (b) either—
 - (i) those proceedings remain pending; or
 - (ii) because of those proceedings no criminal proceedings may again be lawfully brought against the person under section 66E or 66F in respect of the same conduct.

66I. Use of incriminating evidence in proceedings

- (1) If an investigator requires a person to give an answer or response to any question, or to give an explanation or further particulars, under section 66D, the investigator must ensure that the person has first been informed or reminded of the limitations imposed by subsection (2) on the admissibility in evidence of—
 - (a) the requirement; and
 - (b) the question and the answer or response, or the explanation or particulars.

- (2) If—
- (a) an investigator requires a person to give an answer or response to any question, or to give an explanation or further particulars, under section 66D; and
 - (b) the answer, response, explanation or particulars might tend to incriminate the person, and the person so claims before giving the answer, response, explanation or particulars,
- the requirement, as well as the question and the answer or response, or the explanation or particulars, are not admissible in evidence against the person in criminal proceedings in a court of law other than those specified in subsection (3).
- (3) For subsection (2), the criminal proceedings are those in which the person is charged, in respect of the answer, response, explanation or particulars, with an offence under—
- (a) section 66E or 66F; or
 - (b) Part V of the Crimes Ordinance (Cap. 200).”.

44. Section 67 amended (special provisions for schemes covering groups of companies)

- (1) Section 67(2)(e), after “section”—
- Add**
- “7(5B), (5C) or (5D)(a),”.
- (2) Section 67(2)(e), after “14(3)(b),”—
- Add**
- “18(4A), (4B) or (4C)(a),”.

(3) Section 67(2)(ga)—

Repeal

everything after “Registrar—”

Substitute

- “(i) an annual return for the period relating to the scheme in the form and containing the information that may be specified by the Registrar;
- (ii) a written statement as to whether at all times during the period—
 - (A) the scheme by its terms limits membership of the scheme to eligible persons; and
 - (B) all members of the scheme are eligible persons;
- (iii) for a scheme exempted under section 7(4)(a)—documentary evidence to satisfy the Registrar of the validity of the relevant registration or approval during the period; and
- (iv) for a scheme exempted under section 7(4)(b) or (c)—a written statement of the total number of members of the scheme and the number of the members who were Hong Kong permanent identity card holders on the date of the statement,

within 1 month after the expiry of the period or a longer period the Registrar may allow;”.

(4) After section 67(2)(ga)—

Add

“(gab) the representative employer of a registered scheme must, within 1 month after the end of a financial year of the scheme, or a longer period the Registrar may allow, give the Registrar a written statement as to whether at all times during the financial year—

- (i) the scheme by its terms limits membership of the scheme to eligible persons; and
- (ii) all members of the scheme are eligible persons;”.

(5) Section 67(3), (4), (5) and (6)—

Repeal

“reasonable cause”

Substitute

“reasonable excuse”.

(6) After section 67(6)—

Add

“(6A) A representative employer who without reasonable excuse fails to give the Registrar an annual return, a written statement or documentary evidence as required under subsection (2)(ga) or (gab) commits an offence and is liable on summary conviction to a fine at level 3.”.

(7) Section 67(7), (8), (9) and (10)—

Repeal

“reasonable cause”

Substitute

“reasonable excuse”.

45. Section 70B added

After section 70A—

Add**“70B. Transfer of benefits**

- (1) The relevant employer of a registered scheme or an exempted scheme (*receiving scheme*) must not accept a transfer of benefits from another scheme (*transferring scheme*) except in the circumstances set out in subsection (2).
- (2) The circumstances are that—
 - (a) the transferring scheme is a registered scheme or an exempted scheme, and—
 - (i) the transfer is made in accordance with an agreement between the relevant employer of the receiving scheme and the relevant employer of the transferring scheme;
 - (ii) the benefits are payable to a member of the receiving scheme who was a member of the transferring scheme; and
 - (iii) the benefits are held in an account in the name of the member under the transferring scheme before the transfer, and in an account in the name of the member under the receiving scheme after the transfer; or
 - (b) the transferring scheme is not a registered scheme or an exempted scheme but is a provident, pension, retirement or superannuation scheme (however described) established outside Hong Kong, and—

- (i) the transfer is made directly from the transferring scheme to the receiving scheme;
- (ii) the benefits are attributable solely to payments to the transferring scheme due to the previous employment of a member by the employer of that scheme, and held in an account in the sole name of the member under that scheme before the transfer;
- (iii) the member referred to in subparagraph (ii) is a member of the receiving scheme; and
- (iv) the benefits are held in an account in the name of the member under the receiving scheme after the transfer.”.

46. Section 75 substituted

Section 75—

Repeal the section

Substitute

“75. Immunity

- (1) A person to whom this section applies is not civilly liable for an act done or omitted to be done by the person in good faith in performing or purportedly performing a function under this Ordinance.
- (2) This section applies to—
 - (a) the Registrar;
 - (b) a director of the Registrar;
 - (c) an employee of the Registrar;
 - (d) an authorized person;

- (e) a person appointed under section 36(2);
- (f) an investigator; and
- (g) a public officer.”.

47. Section 78 amended (disclosure by Registrar)

- (1) After section 78(1)(c)—

Add

- “(ca) for seeking advice from, or the giving of advice by, a barrister or solicitor or other professional adviser acting or proposing to act in a professional capacity in connection with a matter arising under this Ordinance;
- (cb) in a form the Registrar considers appropriate but only if the information has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not prohibited under section 77;”.

- (2) Section 78(1)(d)—

Repeal

“subsection (2), to the Chief Executive, the Financial Secretary”

Substitute

“subsections (1A) and (2), to the Chief Executive, the Financial Secretary, the Secretary for Justice”.

- (3) After section 78(1)(ea)—

Add

“(eb) to the Insurance Authority, the Monetary Authority, the Securities and Futures Commission, The Ombudsman or the Financial Reporting Council established by section 6(1) of the Financial Reporting Council Ordinance (Cap. 588) if, in the opinion of the Registrar—

- (i) the disclosure is in the interests of the members of the scheme concerned;
- (ii) the disclosure is in the public interest; or
- (iii) the disclosure enables the performance of a function conferred by law;”.

(4) Section 78(1)(f)(ii)—

Repeal

“expedient.”

Substitute

“expedient;”.

(5) After section 78(1)(f)—

Add

“(g) with the consent of the person from whom the information was obtained or received and, if the information relates to another person, with the consent also of that other person; or

(h) to the public on any details of, or reasons for—

- (i) the Registrar’s exercise of power under section 11, 12, 14, 42, 43, 45 or 47; or
- (ii) the Registrar’s application under section 44, and any material facts of the case.”.

(6) After section 78(1)—

Add

- “(1A) The Registrar may only disclose information under subsection (1)(d) if the Registrar is of the opinion that—
- (a) the disclosure is in the interests of the members of the scheme concerned;
 - (b) the disclosure is in the public interest; or
 - (c) the disclosure enables the performance of a function conferred by law.”.

48. Section 79 amended (offence)

- (1) Section 79, heading—

Repeal

“Offence”

Substitute

“General offences of certain fraudulent acts”.

- (2) Before section 79(1)—

Add

“(1A) This section does not apply in relation to an act that constitutes an offence under section 66E or 66F.”.

- (3) Section 79—

Repeal subsection (3)

Substitute

- “(3) A person who commits an offence under subsection (1) or (2) is liable—
- (a) on summary conviction—to a fine at level 6 and to imprisonment for 6 months; or
 - (b) on conviction on indictment—to a fine of \$1,000,000 and to imprisonment for 2 years.”.

49. Sections 79A, 79B and 79C added

After section 79—

Add**“79A. Offences of obstructing performance of functions etc.**

- (1) This section does not apply in relation to an act that constitutes an offence under section 66E or 66F.
- (2) A person must not—
 - (a) without lawful authority, obstruct or hinder, or interfere with, the Registrar, an authorized person or an investigator in the performance of a function under this Ordinance; or
 - (b) without reasonable excuse, fail to comply with a requirement made by the Registrar, the authorized person or the investigator in the course of performing such a function.
- (3) A person who contravenes subsection (2) commits an offence and is liable—
 - (a) on a first conviction—to a fine at level 5 and to imprisonment for 6 months; or
 - (b) on each subsequent conviction—to a fine of \$200,000 and to imprisonment for 1 year.

79B. Prosecution deadline for summary offences

- (1) In this section—
summary offence (簡易程序罪行) means an offence triable summarily only.
- (2) A prosecution for a summary offence under this Ordinance may only be started before the later of—

- (a) the end of 3 years after the date on which the offence is committed; and
- (b) the end of 6 months after the date on which the offence is discovered by, or comes to the notice of, the Registrar.

Note—

This replaces the time limit under section 26 of the Magistrates Ordinance (Cap. 227).

- (3) Subsection (2) does not apply in relation to an offence committed before the date on which the Occupational Retirement Schemes (Amendment) Ordinance 2019 (of 2019) comes into operation.

79C. Proof of reasonable excuse or lawful authority

In proceedings for an offence under this Ordinance, the defendant is to be taken to have established that the defendant had a reasonable excuse or lawful authority for the contravention in question if—

- (a) sufficient evidence is adduced to raise an issue that the defendant had such a reasonable excuse or lawful authority; and
- (b) the contrary is not proved by the prosecution beyond reasonable doubt.”.

50. Section 80A added

After section 80—

Add**“80A. Registrar may appoint or authorize persons**

The Registrar may in writing appoint or authorize a person to perform functions, or specified functions, under or for the purposes of this Ordinance.”.

51. Sections 85 and 86 added

Before Schedule 1—

Add

“85. Schemes falling short of membership requirements

- (1) This section applies in relation to a scheme that has been held out as being an occupational retirement scheme and would be an occupational retirement scheme except for either or both of the following matters—
 - (a) a term of the scheme allows a person other than an eligible person to be a member of the scheme;
 - (b) not all members of the scheme are eligible persons.
- (2) Any requirement or duty imposed under this Ordinance on a relevant employer applies to the person described as an employer in the terms of the scheme, or to the person held out as a relevant employer in relation to the scheme.
- (3) Any function that may be performed under this Ordinance in relation to an occupational retirement scheme may be performed in relation to the scheme.

86. Transitional provisions for Occupational Retirement Schemes (Amendment) Ordinance 2019

- (1) In this section—

Amendment Ordinance (《修訂條例》) means the Occupational Retirement Schemes (Amendment) Ordinance 2019 (of 2019);

commencement date (生效日期) means the date on which the Amendment Ordinance comes into operation;

pre-amended Ordinance (《未經修訂條例》) means this Ordinance as in force immediately before the commencement date.

(2) If, on the commencement date, an application for exemption or registration of an occupational retirement scheme that the Registrar has received before the commencement date is not finally disposed of as described in section 3(4), the pre-amended Ordinance continues to apply in relation to the application as if the Amendment Ordinance had not been enacted.

(3) If—

(a) an exemption certificate has been issued in respect of an occupational retirement scheme; and

(b) the date of the certificate, or an anniversary of the date, falls before the commencement date,

sections 10 and 67 of the pre-amended Ordinance continue to apply in relation to the period of 12 months beginning on the date of the certificate or on the anniversary as if the Amendment Ordinance had not been enacted, even if part of the period falls on or after the commencement date.

(4) If a financial year of a registered scheme begins before the commencement date, sections 30 and 67 of the pre-amended Ordinance continue to apply in relation to the financial year as if the Amendment Ordinance had not been enacted, even if part of the financial year falls on or after the commencement date.”.

52. Schedule 1 amended (documents required for registration)

- (1) Schedule 1, Part 1, after paragraph 1(b)—

Add

“(ba) that the scheme by its terms limits membership of the scheme to eligible persons;”.

- (2) Schedule 1, Part 1, after paragraph 1—

Add

“1A. For an occupational retirement scheme in respect of which there is an application for registration—a statement by an auditor stating, as at a date within 3 months before the date of application—

(a) whether or not, in the auditor’s opinion, all members of the scheme are eligible persons in all material respects; and

(b) if not, the extent to which the requirement is, in the auditor’s opinion, not complied with.”.

- (3) Schedule 1, Part 1, after paragraph 2—

Add

“2A. A statement by the applicant stating that all members of the scheme are eligible persons.”.

- (4) Schedule 1, Part 1, paragraph 3—

Repeal

“requirement of section 25(2) (where the scheme is an existing scheme governed by a trust) has”

Substitute

“requirements of section 25(2) and (5) (if the scheme is an existing scheme governed by a trust) have”.

- (5) Schedule 1, Part 2, paragraph 1(b)—

Repeal

“requirement of section 25(2) (where the scheme is an existing scheme governed by a trust) has”

Substitute

“requirements of section 25(2) and (5) (if the scheme is an existing scheme governed by a trust) have”.

- (6) Schedule 1, Part 2, after paragraph 2(d)—

Add

“(da) that the scheme by its terms limits membership of the scheme to eligible persons;”.

- (7) Schedule 1, Part 2, after paragraph 2—

Add

“2A. For an occupational retirement scheme in respect of which there is an application for registration—a statement by an auditor stating, as at a date within 3 months before the date of application—

(a) whether or not, in the auditor’s opinion, all members of the scheme are eligible persons in all material respects; and

(b) if not, the extent to which the requirement is, in the auditor’s opinion, not complied with.”.

- (8) Schedule 1, Part 2, after paragraph 3—

Add

“3A. A statement by the applicant stating that all members of the scheme are eligible persons.”.

- (9) Schedule 1, Part 3, paragraph 2, heading—

Repeal

“an existing defined benefit scheme”

Substitute

“a defined benefit scheme existing at the time of application”.

- (10) Schedule 1, Part 3, paragraph 2(b), before “a qualified certificate”—

Add

“(for a scheme existing immediately before 15 October 1993)”.

Part 3

Amendments to Occupational Retirement Schemes (Authentication and Certification of Documents) Rules (Cap. 426 sub. leg. A)

53. Schedule 1 amended (documents to be authenticated)

(1) Schedule 1, Part 2—

Repeal item 1

Substitute

“1. The auditor’s statements described in—

- (a) paragraph 1A of Part 1, or paragraph 2A of Part 2, of Schedule 1 to the Ordinance; and
- (b) paragraph 2 of Part 1, or paragraph 3 of Part 2, of Schedule 1 to the Ordinance,

as required under section 15(e) of the Ordinance.”.

(2) Schedule 1, Part 2, item 2—

Repeal

“statement described in paragraph 3 of Part 1”

Substitute

“statements described in paragraphs 2A and 3 of Part 1, and in paragraph 3A of Part 2,”.

- (3) Schedule 1, Part 2, item 8—

Repeal

“section 30(b)(ii)”

Substitute

“section 30(1)(b)(ii)”.

Explanatory Memorandum

The objects of this Bill are to amend the Occupational Retirement Schemes Ordinance (Cap. 426) (*Ordinance*) to provide for requirements to ensure that occupational retirement schemes are genuinely based on employment, to enhance the enforcement powers of the Registrar of Occupational Retirement Schemes (*Registrar*) under the Ordinance, and to provide for related matters.

2. The Bill contains 3 Parts.

Part 1—Preliminary

3. Clause 1 sets out the short title.

Part 2—Amendments to Occupational Retirement Schemes Ordinance (Cap. 426)

4. Clause 3 repeals and adds certain definitions. It also amends the definition of *occupational retirement scheme* in section 2(1) of the Ordinance so that the terms of an occupational retirement scheme must limit membership of the scheme to those who meet certain conditions related to employment.
5. Clause 4 adds a new section 2A to the Ordinance to set out the meaning of *eligible person*. It also adds a new section 2B to the Ordinance to deal with the interpretation of employment for certain purposes.

6. Clause 5 amends section 3 of the Ordinance to clarify when an application for an occupational retirement scheme has been finally disposed of for the purposes of the restriction on entering into a contract with employees under which membership of an occupational retirement scheme is provided.
7. Clause 6 adds a new section 6A to the Ordinance to empower the Registrar to issue guidelines.
8. Clause 7 amends section 7 of the Ordinance so that the Registrar will no longer be able to issue an exemption certificate in respect of an occupational retirement scheme with not more than 10% or 50 (whichever is less) of the members of the scheme who are Hong Kong permanent identity card holders, and to enable the Registrar to impose, amend or revoke conditions on exempted schemes.
9. Clause 8 amends section 8 of the Ordinance to allow the relevant employer of an exempted scheme to appeal to the Occupational Retirement Schemes Appeal Board (***Appeal Board***) against a decision to impose, amend or revoke a condition on the scheme.
10. Clause 9 adds a new section 8A to the Ordinance to provide for the consequences of an exempted scheme not limiting membership of the scheme to those who meet certain conditions related to employment.
11. Clause 10 amends section 10 of the Ordinance to give additional powers to the Registrar to require information or document relating to exempted schemes to ensure compliance with the Ordinance.

12. Clauses 11 and 12 amend sections 11 and 12 of the Ordinance respectively to provide for additional grounds that allow the Registrar to withdraw an exemption certificate, and to give more flexibility to the Registrar in publishing the notices regarding the withdrawal.
13. Clause 13 amends section 14 of the Ordinance to give more flexibility to the Registrar in publishing a notice of the coming into effect of withdrawing an exemption certificate.
14. Clause 14 amends section 18 of the Ordinance to require the Registrar to be satisfied that registering an occupational retirement scheme is not contrary to the public interest, and to enable the Registrar to impose, amend or revoke conditions on registered schemes.
15. Clause 15 amends section 19 of the Ordinance to allow the relevant employer of a registered scheme to appeal to the Appeal Board against a decision to impose, amend or revoke a condition on the scheme.
16. Clause 16 amends section 20 of the Ordinance to clarify that the financial transactions of a registered scheme include transactions involving the transfer of benefits to and from the scheme.
17. Clause 17 adds a new section 20A to the Ordinance to provide that the terms of a registered scheme, of the pooling agreement of a participating scheme, and of an insurance arrangement of or regulating a registered scheme must meet certain requirements. It also adds a new section 20B to the Ordinance to provide for the consequences of a registered scheme not limiting membership of the scheme to those who meet certain conditions related to employment.

18. Clause 18 amends section 21A(3) and (4) of the Ordinance to make a minor textual amendment.
19. Clause 19 amends section 24 of the Ordinance consequential to the repeal of the definition of *existing* and the addition of the definition of *existing scheme* in clause 3, so that an existing scheme as referred to in the existing section remains limited to a scheme existing immediately before 15 October 1993.
20. Clause 20 amends section 25 of the Ordinance to provide for the duties of a trustee of a registered scheme.
21. Clause 21 amends section 26 of the Ordinance as a result of the amendment made by clause 20, and to make other minor amendments.
22. Clause 22 amends section 30 of the Ordinance to require the relevant employer of a registered scheme to give the Registrar an annual written statement on the membership terms related to employment, and on compliance with those terms.
23. Clause 23 amends section 32 of the Ordinance to allow the Registrar, in performing any function under the Ordinance, to take into account reports and certificates received under that section.
24. Clause 24 amends section 33 of the Ordinance to give additional powers to the Registrar to require information or document relating to registered schemes to ensure compliance with the Ordinance.

25. Clause 25 adds a new section 33A to the Ordinance to require the relevant employer or administrator of a registered scheme to notify the Registrar of certain events of non-compliance with the Ordinance.
26. Clause 26 amends section 36 of the Ordinance to make a textual amendment.
27. Clauses 27 and 30 amend sections 42 and 45 of the Ordinance respectively to add new grounds for the Registrar to cancel the registration of a registered scheme.
28. Clause 28 amends section 43 of the Ordinance to give more flexibility to the Registrar in publishing a notice proposing to cancel the registration of a registered scheme.
29. Clause 29 amends section 44 of the Ordinance so that the Registrar may apply to the Court of First Instance for an order to freeze the assets of a registered scheme if the Registrar issues, or intends to issue, a proposal to cancel the registration of the scheme.
30. Clause 31 amends section 47 of the Ordinance to give more flexibility to the Registrar in publishing a notice of the coming into effect of the cancellation of registration of a registered scheme.
31. Clauses 32 to 40 amend sections 49 to 57 of the Ordinance to make certain textual amendments.
32. Clause 41 amends section 61 of the Ordinance to provide for who may be appointed as the Chairman of the Appeal Board.

33. Clause 42 amends section 62 of the Ordinance as a result of the amendments made by clauses 8 and 15.
34. Clause 43 adds a new Part VIIIA (new sections 66A to 66I) to the Ordinance to provide for the powers of inspection and investigation, the offences of failing to comply with an investigation requirement and of giving false or misleading information, the Court of First Instance's inquiry into failure to comply with an investigation requirement, the prohibition against bringing criminal proceedings or making an application for the Court of First Instance's inquiry under certain new sections for the same conduct in respect of which an application for the Court of First Instance's inquiry has previously been made or criminal proceedings have previously been brought, and the use of incriminating evidence in proceedings.
35. Clause 44 amends section 67 of the Ordinance to provide for the additional documents required to be given to the Registrar for occupational retirement schemes covering groups of companies.
36. Clause 45 adds a new section 70B to the Ordinance to provide for the circumstances in which benefits may be transferred to a registered scheme or an exempted scheme.
37. Clause 46 substitutes section 75 of the Ordinance to provide for immunity from civil liability of certain persons.
38. Clause 47 amends section 78 of the Ordinance to provide for new exceptions to the prohibition on information disclosure by the Registrar.

39. Clause 48 amends section 79 of the Ordinance to change the penalties for the general offences of certain fraudulent acts, and to clarify that the section does not apply in relation to an act that constitutes an offence under new section 66E or 66F.
40. Clause 49 adds new sections 79A, 79B and 79C to the Ordinance to respectively provide for the offences of obstructing the performance of functions under the Ordinance etc., the prosecution deadline for summary offences, and proof of reasonable excuse or lawful authority.
41. Clause 50 adds a new section 80A to the Ordinance to empower the Registrar to appoint or authorize persons for the Ordinance.
42. Clause 51 adds a new section 85 to the Ordinance to provide for the operation of the Ordinance where a scheme falls short of membership requirements for an occupational retirement scheme. It also adds a new section 86 to the Ordinance to provide for the transitional provisions for applications for exemption or registration of occupational retirement schemes received before the date on which the Bill comes into operation.
43. Clause 52 amends Schedule 1 to the Ordinance to provide for the additional documents required for registration of an occupational retirement scheme.

Part 3—Amendments to Occupational Retirement Schemes (Authentication and Certification of Documents) Rules (Cap. 426 sub. leg. A)

44. Clause 53 amends Schedule 1 to the Occupational Retirement Schemes (Authentication and Certification of Documents) Rules (Cap. 426 sub. leg. A) to provide for the additional documents required to be authenticated before submission to the Registrar.