



DRAFT BULLETIN FOR
Disclosure Regarding The Forfeiture Of Benefits

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DISCLOSURE REGARDING THE FORFEITURE OF BENEFITS

LEGISLATIVE REFERENCES: The Pensions (Superannuation Funds and Retirement Schemes (Governance) Regulations, 2006 (the "Gov. Regulations")

Regulation: 12

1.0 INTRODUCTION

- 1.01 The Financial Services Commission ("FSC") is aware based on its review of the constitutive documents of pension plans as well as other documents obtained in on-site examinations, that various plans have provided that if members elect to receive a refund of their own contributions on termination of membership in the plan, they forfeit¹ the benefit which would have been provided from any employer's contributions. There are also other instances where the constitutive documents provide for the forfeiture of benefits, for example, as in the case of bankruptcy.
- 1.02 The FSC has received complaints from members who, due to the fact that they were not made aware of provisions in the Constitutive Documents of their pension plan relating to the forfeiture benefits under certain conditions, were of the view that they are entitled to the benefit derived from the employers' contributions, made on their behalf upon attainment of the relevant age for retirement.
- 1.03 The purpose of this bulletin is to assist persons, particularly trustees and administrators who are agents of the trustees, to provide adequate disclosure to members, where the Trust Deed and Plan Rules include a provision which results in a forfeiture of members' benefits.

2.0 LEGAL REQUIREMENTS

Pursuant to Regulation 12 of the Gov. Regulations, information disclosed to participants, beneficiaries and their representatives should be:

- (i) clear
- (ii) accurate
- (iii) complete
- (iv) timely

In addition, where technical jargon is unavoidable it should be accompanied by an explanation in simple language.

¹ Forfeiture of benefits – the termination or suspension of all or part of members' benefits or rights.

3.0 DISCLOSURE TO MEMBERS

- 3.01 Trustees must ensure that full disclosure of provisions in the Trust Deed and Rules which result in the forfeiture of members' benefits is provided to members of pension plans and their beneficiaries.

The Members' Handbook of the SF should clearly document the provision(s) of the Constitutive Documents relating to forfeiture of members' right and benefits, in keeping with Regulation 12 of the Gov. Regulations (see above). This disclosure should include the relevant references in the Constitutive Documents.

- 3.02 Regulation 12(2)(b) of the Gov. Regulations requires that a benefit statement be given to each participant, upon a change of status (i.e. termination, transfer retirement and death). Where the change of status is due to termination, benefit payment options included in the members' benefit statements should also provide information on the forfeiture of benefits, as the case requires.
- 3.03 Where members elect option(s) which result in any forfeiture of their benefits, that election should be clearly documented. Further, the election form should allow for members to indicate their understanding that choosing a particular option, will result in the forfeiture of their benefits.

Questions regarding this bulletin may be directed to the Senior Director, Pensions, at the contact details specified below:

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