

## **Frequently Asked Questions relating to the Education (Amendment) Ordinance 2013**

(The following information serves as a general reference only, schools/ teachers should refer to the provisions of the Education (Amendment) Ordinance 2013 for a complete and definite statement of law. In case of doubt, legal advice should be sought.)

### **Frequently Asked Questions**

**1 Q: What is the scope of protection under the Education (Amendment) Ordinance 2013 (Amendment Ordinance)?**

A: If a Grant Schools Provident Fund or Subsidized Schools Provident Fund member is an undischarged bankrupt of a bankruptcy adjudicated on or after the date when the Amendment Ordinance comes into operation (i.e. 28 June 2013), his right or entitlement to any benefits in the Fund are excluded from his property upon bankruptcy. In other words, if the GSPF or SSPF member concerned is adjudicated bankrupt before the Amendment Ordinance comes into operation, his right or entitlement to any benefits in the Fund are NOT protected under the Amendment Ordinance.

**2 Q: Why is it necessary to amend the subsidiary legislation?**

A: Under rule 14(2) of the Grant Schools Provident Fund Rules (Cap. 279 sub. leg. C) and of the Subsidized Schools Provident Fund Rules (Cap. 279 sub. leg. D), if no lawful claim for the provident fund benefits is made within 3 years after the date on which a contributor's account is closed, the amount standing to the credit of the account is to be transferred to the credit of the reserve fund. New rules 14(2A) and (2B) are added to these Rules, so that in relation to a bankruptcy adjudicated on or after the date when the Amendment Ordinance comes into operation, in working out the period of three years from the date on which a GSPF or SSPF contributor's account is closed under rule 14(2) of GSPF Rules and SSPF Rules, any time when the contributor is an undischarged bankrupt must be disregarded. The contributor can decide whether he would withdraw the provident fund benefits during the bankruptcy period or to withdraw the benefits after his discharge from

bankruptcy. In this regard, if a contributor is adjudicated bankrupt when he is approaching retirement age, he can withdraw the benefits after discharge from bankruptcy.

**3 Q: Can a bankrupt contributor submit withdrawal application of his provident fund benefits if he has not yet been discharged from bankruptcy?**

A: Yes, a bankrupt contributor can submit withdrawal application of his provident fund benefits if he has not yet been discharged from bankruptcy. However, the contributor should understand that if he has not yet been discharged from bankruptcy, the Official Receiver/Trustee-in-Bankruptcy may invoke relevant provisions of Bankruptcy Ordinance to claim the benefits.

**4 Q: Does the Amendment Ordinance have retrospective effect?**

A: The Amendment Ordinance does not have retrospective effect. In other words, the sections in the Amendment Ordinance are only applicable to bankruptcy cases adjudicated on or after 28 June 2013.

**5 Q: If a contributor was adjudicated bankrupt before the Amendment Ordinance comes into operation, how will his benefits be treated?**

A: For bankruptcy orders made before the Amendment Ordinance comes into operation, they should be dealt with in accordance with the Court of Appeal's judgment in the relevant court case (i.e. CACV 298/2008), i.e. proportion of the benefits attributable to post-discharge service and contribution/donations are paid to the contributors and the pre-discharge benefits are paid to the trustee in bankruptcy.