

LETTERHEAD OF RETIREMENT SCHEMES INDUSTRY GROUP

POLICY STATEMENT

The Retirement Schemes Industry Group ("RSIG") is established by three associations with the objective of providing a cross-association forum for the discussion of issues relating to the long-term development of the Hong Kong retirement fund industry.

The three associations, whose members play a pivotal role in the retirement fund industry in Hong Kong, are:

- Hong Kong Federation of Insurers,
- Hong Kong Investment Funds Association, and
- Hong Kong Trustees Association.

To provide balance of perspective to the RSIG in representing the Hong Kong retirement fund industry, independent consultants and the legal professional are also represented in the RSIG.

The RSIG aims to work with the Government, regulators, legislators as well as the community to foster the development of the retirement fund industry in Hong Kong to promote the best interest of scheme members and best practice with reference to international professional standards. The organizations represented in the RSIG bring with them vast local knowledge and global experiences which we believe will be useful in this regard.

Through a common platform and agenda/timetable, the RSIG aims to:

- provide an effective forum for the Government and the competent authorities to conduct industry consultation on policy issues and proposed legislative amendments;
- work closely with the legislators and the relevant authorities to develop new legislation to further promote a sound and robust retirement fund platform for the working population of Hong Kong;
- obtain consensus of opinions across associations and put forward suggestions to the Government on issues affecting the retirement fund industry;
- share information on the retirement fund industry to enable the formulation of practical and efficient solutions.

Specifically, the RSIG would like to see that the Hong Kong retirement fund industry, in particular the MPF system, can further develop to possess the following qualities:

- look after the best interests of members in a cost-effective manner;
- help to provide financial security throughout retirement years;
- offer investment strategies and choices to allow members to balance risk and return in global investment opportunities;
- be efficient, practical, easy to understand and operate for employees, employers and industry participants;
- offer a wide choice of providers to take advantage of healthy competition in the market place.

Towards this end, the RSIG supports the enhancement of MPF in the following areas:

- develop a clearly delineated regulatory system;
- streamline the administration of contributions and benefits;
- remove undue constraints on investments to enable fund managers to effectively balance risk and return in global investment opportunities for scheme members;
- introduce measures to encourage members to develop supplemental pensions plans and retain their benefits in the system beyond retirement.

(End)

(June 2001)

Comments on Mandatory Provident Fund Schemes (Amendment) Bill 2001

We welcome the opportunity to present our comments on the Bill.

Our comments are as follows:-

1. Section 2 interpretation paragraph 2(1)

Definition of "governing rules"

As trustees have a duty to act in accordance with the "governing rules" of a scheme, the scope of this definition is significant for us.

We note that it is proposed that the definition of "governing rules" be extended to include any offering document or participation agreement or agreements relating to the administration of a scheme, in addition to the trust deed of an MPF scheme. In relation to this the introduction of a definition of "offering document" is proposed. We believe this definition is unduly wide.

We note from the Legislative Council Brief on the Bill that the purpose of expanding the definition of "governing rules" is to ensure that MPFA approval is required before changes can be made to the governing rules of a scheme. We would comment that market practice is to submit all proposed amendments to the offering document of a scheme, in addition to any proposed amendments to the trust deed, to the MPFA for approval, in addition to submitting revisions to the offering document to the SFC for approval. Therefore we believe in practice that the issue the amendment seeks to address has been resolved by the industry.

We are concerned that the proposed new definition of "governing rules" is unduly wide and ambiguous. Also, we do not believe it is appropriate for documents relating to the administration of a scheme (which could include e.g. software agreements) to form part of the "governing rules". The trust deed comprises the scheme's governing rules. We do not believe MPFA regulation of administration agreements is necessary as at law and as under the trust deed the trustee is responsible for the operation of the scheme even if it has delegated certain functions to providers of administrative services.

SFC's approach

We note for reference that the SFC Code on Unit Trusts and Mutual Funds distinguishes between "constitutive documents" (i.e. the trust deed of a unit trust) and "offering documents". This is an appropriate distinction from a trustee's perspective as the preparation of the offering document is usually handled by the sponsor/fund manager rather than the trustee. The offering document is provided to prospective investors as a mechanism for encouraging investors to join the scheme and can be seen as a marketing document.

Our Proposal

To address the issue of MPFA approval of changes and the concerns of the trustees we would suggest that the current definition of "governing rules" is retained and a specific provision is added in the MPF (General) Regulation to provide that offering documents and any amendments to offering documents require MPFA approval. This would seem a more direct method of addressing the MPFA's concerns.

The definition of "offering document" should also be clarified to ensure that this relates only to the explanatory memorandum or principal offering document of a scheme. We have concerns that the current definition would cover all marketing materials relating to a scheme.

2. **Section 8**

We would suggest that the new wording to be added to section 11 be qualified by a reference to "Subject to the governing rules of the relevant registered scheme" as we would suggest it should be a decision for the scheme provider as to whether it wishes to accept contributions from persons not normally eligible to become members. Also, we suggest that it should be clarified that members with preserved accounts can, subject to the governing rules of the scheme, make voluntary contributions.

3. **Section 13 - Deregistration of a scheme with no members or assets**

We welcome this amendment.

4. **Section 9**

This relates to the conditions imposed on the approval of trustees. As these conditions can affect the conduct of the approved trustees' business we would suggest that 7 working days advance notice of amendments to the conditions or the imposition of additional conditions may be insufficient to enable trustees to modify their operations or computer systems to reflect new requirements. We would suggest that a longer period of notice should be specified. The same comment applies to the proposed amendments to section 21(12).

5. **Conditions**

We note that amendment of section 21 of the Ordinance is proposed to provide in a new sub-section 8A clarifying that the MPFA may impose conditions on the administration or marketing of a scheme. We note that the MPFA did impose conditions when MPF schemes were originally approved.

In respect of the amendments relating to the imposition of conditions, we wish to express our concerns that the ability to impose and vary conditions in respect of the specific approval of a scheme or a service provider gives the MPFA power to legislate by imposing additional requirements which have not been reviewed by the legislature or made known to market participants. Prospective service providers should be in a position where they know what requirements will be applicable to them before they apply for approval and these requirements should form part of the published law. The ability to impose additional requirements or vary the law by the imposition of conditions when granting approvals creates uncertainty in the market and gives scope for the arbitrary imposition of different requirements on different service providers/schemes.

6. **Comments on the proposed amendments to the MPF Scheme (General) Regulation (the "Regulation") contained in the Schedule to the Bill**

- 6.1 In relation to the amendments proposed to section 6 of the Regulation, we would again suggest that 7 days advance notice is likely to be insufficient and would request a longer minimum period.

6.2 As suggested above, we propose that the amendments to section 63 of the Regulation include an additional sub-section to refer to the requirement to have proposed amendments to the offering document approved by the authority. We suggest that this is preferable to the proposed expansion of the term "governing rules" and the proposed introduction of a new section 2A. We have concerns as to the meaning of the proposed new sub-section 2A. By way of background, participation agreements have been entered into with employers on the basis that a standard form participation agreement is provided by the scheme sponsor but in many cases this can be tailored to meet the requirements of a specific employer in relation to the voluntary contribution arrangements which the employer wishes to make. Therefore, whilst the scheme provider may have a standard form participation agreement which could be provided to the MPFA, a number of employers may have entered into a slightly different version of the participation agreement. It is not desirable for each participation agreement to require MPFA approval. Also if an employer wants to change its voluntary contribution terms (for example if it decides that it will no longer make the same level of voluntary contributions for its employees to reduce the employer's costs), it seems unreasonable that the MPFA should have to approve an amendment to the participation agreement before the employer's wishes can be agreed to by the scheme provider. Voluntary contribution arrangements are currently largely unregulated as they are voluntary.

In terms of the drafting of the proposed section 2A it seems somewhat circular to say that an amendment does not need to be notified to the MPFA and approved by the MPFA if it is in a form approved by the MPFA. Further to our proposal above, the new section 2A would not be needed.

6.3 The proposed amendments to sections 71 and 72 of the Regulation are of particular concern to trustees which act as custodians of scheme assets. The purpose of these amendments appears to be to place further obligations on such trustees and to create further offences and penalties for failure to comply with these new requirements. We would suggest that it is inappropriate to impose penalties on trustees where they have used best efforts to comply with the existing provisions of the Regulation. Industry representatives have explained to the MPFA the practical problems involved in this compliance given the way the global custody market operates. As MPF trustees are responsible for the acts and omissions of sub-custodians we would question why the additional amendments to sections 71 and 72 are required. Our view is that members of MPF schemes are already sufficiently protected against any

risks arising from custody arrangements.

6.4 We do not support the proposed amendments to section 78.

These amendments cause concern as they suggest that within a sub-account, additional sub-accounts are required to contain the specific transactions as defined as sub-items (i) to (iii) or (iv). We see no purpose in maintaining this breakdown and trustees will not be able to comply with the sub-item relating to the income or profits. As MPF investments must be made on a unitised basis, income or profits are not definable until such time as the unit holdings are realised.

We would propose that the wording of the Bill be modified to substitute either "containing" or "to which will be credited" for the word "specifying".

October 2001