

THE HONG KONG RETIREMENT SCHEMES ASSOCIATION***Comments on the
Mandatory Provident Fund Schemes (Amendment) Bill 2001***

The Hong Kong Retirement Schemes Association (HKRSA) supports most of the proposed amendments. Our comments are:

1. It is important to have a regulatory body in Hong Kong that is **responsible for reviewing** all legislation relating to provident fund schemes and amended as changes in practice occur. We note that the simple structure relating to ORSO schemes has served Hong Kong well and ***we recommend that this should be preserved with minimum amendment.***
2. That body should be **able to borrow** when needed with the approval of the Financial Secretary.
3. Its officers should be **indemnified against civil liability** when acting in good faith provided there is not gross negligence involved. ***We recommend that all Ordinances relating to regulators have identical clauses for this indemnity.***
4. The responsibility of the MPFA for promoting and encouraging the development of the retirement scheme industry in Hong Kong is an important one. It would be sensible to require this activity to be undertaken on an ongoing basis from year to year with a minimum percentage of the Authority's budget set aside for this purpose (the actual allocation could always be higher). ***We recommend that the minimum should be set at 10%.***
5. We support the deregistration of schemes that have neither assets nor members *provided the master trustee does not wish to keep the scheme alive.*
6. We support the amendments to widen membership of master trust and employer sponsored schemes to includes benefits transferred by members from an ORSO scheme; to enable those under 18 and over 65 to be members contributing on a voluntary basis; to include minimum MPF benefits transferred from ORSO schemes; to clarify date of commencement of membership and to clarify that self employed persons under 18 and over 65 will not be required to be come members of MPF schemes.
7. We support strengthening the mechanism of charging contribution surcharge when employers fail to pay contributions.
8. We support providing flexibility to employers in making contributions in respect of casual employees.

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9. We have reservations and misgivings regarding the proposed power to be given to the MPFA to amend existing conditions or impose new ones on an approved trustee of a registered scheme. This is a significant power that could easily and unintentionally be misused. We note that the Trustee has only seven working days in which to reply to the proposed amendments – this is far too short. ***We recommend that the period for reply is lengthened to 30 calendar days.*** Although the Trustee may appeal against the MPFA's decision that could be an arduous process and the onus is all on the Trustee.
10. We believe the onus should be on the MPFA to ensure it does a thorough job at the time of approving a scheme. It is misleading for members and the Trustee if conditions are changed subsequent to employers joining the scheme and members being signed up. There will inevitably be uncertainty and cost involved which may be to the detriment of the members. There is also the danger of malicious market rumours arising from such actions that could lead to loss of staff and members from the scheme to the greater or partial detriment of the remaining members.
11. There has been insufficient time in which the MPFA could build up a track record of using such powers in a sensitive and reasonable manner. Until such time as it has established its record, ***we recommend that this power is not given at this time.***
12. We do not support the provision requiring the guarantor of an approved fund to keep adequate reserves and the power given to make regulations in this area. Our reason is that such proposal is intrusive and also redundant. Approved funds are provided by either authorized insurers or authorized financial institutions. The financial affairs of both types of provider are already regulated by the Insurance Authority, the Hong Kong Monetary Authority and the Securities and Futures Commission. There is sufficient regulation in this area conducted by appropriately competent and experienced bodies. To enable the MPFA to regulate also in this area is inefficient, detracts from Hong Kong's standing as an international financial centre that is sensibly regulated and could cause cost and confusion were the MPFA to attempt to develop regulations in the area of reserves for guarantees that conflicted with the regulations laid down by one or all three of the other regulators.
13. As there is clearly no need for this power, ***we recommend that the proposed clause 46(1A) (wa) of the Regulations is withdrawn.***
14. We note that it is proposed to require custodians to enter contracts for carrying out their duties only with others who could meet the requirements of being a custodian for MPF purposes. This is a technical matter which we leave to the Hong Kong Trustees Association to comment on in detail but we wonder if it is a practical requirement in all markets where a fund might invest and thus cut off from the fund manager opportunities to improve fund

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performance for the benefit of members. It would be more appropriate perhaps, for the custodian to be deemed to indemnify the scheme against all losses arising from its use of subcustodians who do not comply with the MPF requirements for a custodian.

15. We note that in the Legislative Council Brief paragraph 32 states there are no additional financial or staffing implications for Government but nothing is said as regards the MPFA. We believe it would be helpful to legislators to know if there are any implications for the MPFA and, if so, what they are projected to be.