

***The Hong Kong and Australian Pension Systems:
The Role of the Government***

5 December 1997

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EXECUTIVE SUMMARY

1. This research project studies the role of the Government in the Hong Kong Mandatory Provident Fund (MPF) system and that in the Australian superannuation system.
2. The main regulatory bodies of the pension systems in Hong Kong and Australia are the Mandatory Provident Fund Authority (MPFA) and the Insurance and Superannuation Commission (ISC) respectively. The role of both the MPFA and the ISC is supervisory. Neither guarantees investment return, nor acts as the guarantor of the last resort.
3. The powers of the MPFA and the ISC are similar. These include the power to monitor trustees (i.e. access to information of trustees), the power to give directions to trustees to rectify deficiencies and the power to investigate into a scheme. However, the ISC has the power to grant exemptions and modifications to existing regulations, whereas the MPFA does not.
4. In Hong Kong, trustees have to submit to the MPFA a trustee return, an annual statement, a report on internal controls, a report on capital adequacy and a consolidated report (which comprises financial statements, a scheme report and an investment report). In Australia, trustees have to submit to the ISC a trustee return and an annual return.
5. In Hong Kong, information provided to members include scheme information such as scheme terms and charges, and annual benefit statements, and upon request by members, information regarding contributions and the consolidated report. In Australia, information provided to members include annual statements and an investment report monthly or quarterly.
6. Both the MPFA and the ISC have the power to investigate into a scheme when necessary. In Australia, the ISC also has the power to freeze the assets of the scheme in which case written consent from the Minister for the Treasury is required.
7. Both the MPFA and the ISC have the power to suspend or revoke the approval of approved trustees. Nevertheless, written consent from the Minister for the Treasury is required in Australia.
8. Both the MPFA and the ISC have the power to wind up a scheme. The winding up of a scheme requires the order of the court in Hong Kong, while such action requires written consent from the Minister for the Treasury in Australia.

THE HONG KONG AND AUSTRALIAN PENSION SYSTEMS: THE ROLE OF THE GOVERNMENT

PART 1 - INTRODUCTION

1. Background

1.1 This research project studies the role of the Government in the Hong Kong Mandatory Provident Fund (MPF) system and that in the Australian superannuation system. For an overview of the Australian superannuation system, please read the research project entitled *The Hong Kong and Australian Pension Systems: An Overview* (RP03/PLC). For a more in-depth analysis of the trustee, investment manager and custodian in the Australian and Hong Kong pension systems, please read the research project entitled *The Hong Kong and Australian Pension Systems: Trustee, Investment Manager and Custodian* (RP04/PLC). A chart summarizing the structure of the Australian superannuation system is attached at [Appendix I](#) for easy reference.

2. The Regulatory Bodies

Mandatory Provident Fund Authority (MPFA)

2.1 The ordinance governing the MPF system is the Mandatory Provident Fund Scheme Ordinance (Cap. 485), enacted on 3 August 1995. The regulatory body of the MPF system in Hong Kong is the Mandatory Provident Fund Authority (MPFA). The MPFA is headed by the Executive Director, who is appointed by the Chief Executive of the Special Administrative Region of Hong Kong.

2.2 The main functions of the MPFA are to ensure the compliance with the MPF Scheme Ordinance and the smooth operation of the MPF system.

Insurance and Superannuation Commission (ISC)

2.3 The main legislation regulating the Australian superannuation system is the Superannuation Industry (Supervision) Act (SIS Act), enacted in 1993. The primary regulatory body is the Insurance and Superannuation Commission (ISC). The ISC is responsible for the supervision of the insurance industry and the superannuation industry in Australia. The ISC is headed by the Commissioner for the ISC, who is appointed by the Minister for the Treasury.

2.4 The objectives of the ISC, according to the SIS Act, are to promote :

- public confidence in the security and soundness of the insurance and superannuation industries through prudential requirements which protect, but do not guarantee, the financial interests of insurance policy holders and superannuation fund members;
- retirement income saving and capital formation through the development of insurance and superannuation industries which are strong, profitable and dynamic; and
- fair trading and effective competition (and thus efficiency) within the insurance and superannuation sector, particularly through mandatory disclosure of information about the products, prices and performance of financial entities.

The Roles of the MPFA and the ISC**Table 1 - The Roles of the MPFA and the ISC**

Role	MPFA	ISC
Supervisory and monitoring	✓	✓
Guarantee on investment return	X	X
Guarantor of the last resort	X	X

Sources : Mandatory Provident Fund Office (MPFO) and ISC

2.5 Both the MPFA and the ISC play a supervisory role in monitoring the pension systems. However, neither guarantees investment return (please refer to RP04/PLC for details), nor acts as a guarantor of the last resort (please refer to RP03/PLC for details).

The Powers of the MPFA and the ISC**Table 2 - The Powers of the MPFA and the ISC**

Powers	MPFA	ISC
to grant exemptions and make modifications to existing regulations	X	✓
to monitor - access to information	✓	✓
to give directions to trustee to rectify deficiencies	✓	✓
to investigate into a scheme	✓	✓
to suspend or revoke the approval of an approved trustee	✓	✓
to wind up a scheme	✓	✓

Sources : MPFO and ISC

2.6 The powers of the MPFA and the ISC are similar, with the exception that the ISC has the power to grant exemptions and make modifications to existing regulations, whereas the MPFA does not have such power. In Hong Kong, only the Government and the Legislature have such power. It should be noted that although the ISC has the power to grant exemptions and make modifications to existing regulations, the ISC seldom exercises such power.

PART 2 - ANALYSIS

3. Comparison between the Hong Kong Mandatory Provident Fund and the Australian Superannuation System

3.1 In this part, certain important roles of the government in the Hong Kong MPF system are compared with those of the Australian Government in the Australian superannuation system. These include :

- reporting requirements for trustees; and
- possible actions taken by regulators against trustees.

3.2 Reporting requirements for trustees include :

- information to be provided to the regulator; and
- information to be provided to members.

3.3 Depending on the situation, regulators can take the following actions against the trustees in question :

- directions to rectify deficiencies;
- investigation into a scheme;
- suspension or revocation of the approval of approved trustees; and
- the winding up of a scheme.

Information to be Provided to the Regulator**Table 3 - Information to be Provided to the Regulator**

Hong Kong MPF System	Australian Superannuation System
<p>Trustee return (annual)</p> <ul style="list-style-type: none"> • details of changes if any in the particulars of the trustee during the financial period • a declaration that the trustee continues to satisfy the requirements of an approved trustee during the financial period or a declaration of any requirements not having been met • balance sheet, profit and loss account, auditor report and director's report if the trustee is (or includes) a company <p>Annual statement (annual)</p> <ul style="list-style-type: none"> • a declaration that the trustee has prudently supervised all services providers during the financial period • details of failures by services providers if any during the financial period • details of events of significant nature if any during the financial period • details of changes to investment policy if any during the financial period • details of non-compliance with the MPF Scheme Ordinance and the governing rules of the scheme if any during the financial period <p>Report on internal controls (annual)</p> <ul style="list-style-type: none"> • a statement of control objectives • procedures and internal control measures for achieving these control objectives • an auditor report <p>Report on capital adequacy (annual)</p> <ul style="list-style-type: none"> • a statement of compliance with capital adequacy requirements • an auditor report <p>Consolidated report (annual)</p> <ul style="list-style-type: none"> • comprising financial statements, scheme report and investment report (please refer to Table 4 for details) 	<p>Trustee return (provided whenever appropriate and necessary)</p> <ul style="list-style-type: none"> • details of changes if any in the particulars of the trustee during the financial period • a declaration that the trustee continues to satisfy the requirements of an approved trustee during the financial period or a declaration of any requirements not having been met • an auditor report <p>Annual return (annual)</p> <ul style="list-style-type: none"> • details of failures by services providers if any during the financial period • details of events of significant nature if any during the financial period • details of changes to investment strategy if any during the financial period • details of non-compliance with the SIS Act and Regulations if any during the financial period • details of changes to the particulars of services providers if any during the financial period

Sources : MPFO and ISC

3.4 In Australia, trustees have to submit to the ISC a trustee return and an annual return. The trustee return is submitted to the ISC whenever there is any change in the particulars of the trustee, while the annual return is submitted to the ISC every year. In Hong Kong, trustees also have to submit to the MPFA a trustee return and an annual statement on an annual basis. In addition, trustees under the Hong Kong MPF system have to provide three reports annually, namely the report on internal controls, the report on capital adequacy and the consolidated report (which comprises financial statements, a scheme report and an investment report).

Information to be Provided to Members

3.5 In Hong Kong, information to be provided to members include scheme information and annual benefit statements, and upon request by members, information regarding contributions and the consolidated report. In Australia, information provided to members include annual statements and an investment report monthly or quarterly.

3.6 The information provided in the benefit statements, information regarding contributions, scheme information such as scheme terms and charges, and the financial statements of the consolidated report required in the Hong Kong MPF system is similar to that provided in the annual statements required in the Australian system.

3.7 Although an investment report is provided under both systems, its content is quite different. In Australia, the emphasis is on the investment return and its comparison with appropriate benchmarks. In Hong Kong, much more information has to be provided in the investment report. Please refer to Table 4 for details.

Table 4 - Information to be Provided to Members

Hong Kong MPF System	Australian Superannuation System
<p>Benefit statements (annual and upon portability of accrued benefits in both Chinese and English)</p> <ul style="list-style-type: none"> • name of member, scheme and trustee • total contributions made during the financial period • total accrued benefits at the beginning and end of the financial period • particulars of amounts to or from the scheme during the financial period <p>Information regarding contributions (provided upon request from members)</p> <ul style="list-style-type: none"> • amount and date of contributions made <p>Scheme information (within 60 days after a person becomes a scheme member)</p> <ul style="list-style-type: none"> • scheme terms and charges <p>Consolidated report (provided upon request from members)</p> <ul style="list-style-type: none"> • the financial statements described below and accompanied by an auditor report • the scheme report described below • the investment report described below 	<p>Annual statements (annual)</p> <ul style="list-style-type: none"> • particulars of the fund • particulars of the trustee, investment manager and other services providers • a description of the investment strategy of the fund • a summary of procedures of the fund's arrangements in dealing with inquiries and complaints • a statement that other information is available on request • employee and employer contributions during the period • investment earnings during the period • any deductions from the member's account during the period • balance sheet • profit and loss account • an auditor report

<p><u>Financial statements</u></p> <ul style="list-style-type: none"> • balance sheet • a statement of account : costs, contributions, total returns and total accrued benefits • an auditor report <p><u>Scheme report</u></p> <ul style="list-style-type: none"> • a commentary on the financial development of the scheme • details of changes if any to the governing rules • other information on the scheme • ways in which members can obtain information • details of changes if any to the particulars of auditor and other services providers <p><u>Investment report</u></p> <ul style="list-style-type: none"> • an analysis of investments held by the trustee and particulars of the income derived from such investments • a commentary by the trustee on the analysis • particulars of the investment policy during the period and any change in the statement of investment policy which will materially affect the risk attached to the investments of the scheme • for the financial period and the 2 preceding periods : <ol style="list-style-type: none"> 1. the amount of net income (excluding capital appreciation) derived from the investments 2. the amount by which the value of the scheme assets have appreciated or depreciated 3. the value of the scheme assets 	<p>Investment report (monthly or quarterly depending on the fund)</p> <ul style="list-style-type: none"> • investment return during the period • a comparison of such return with appropriate benchmarks such as the inflation rate and the average return of all investment managers surveyed
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Sources : MPFO and ISC

Directions to the Trustee to Rectify Deficiencies**Table 5 - Directions to the Trustee to Rectify Deficiencies**

	Hong Kong MPF System	Australian Superannuation System
Regulator	MPFA	ISC
Circumstances leading to directions given by the regulator	<ul style="list-style-type: none"> • in the opinion of the MPFA that the matter is capable of being rectified • as a result of auditor report(s) • as a result of member's complaint(s) 	<ul style="list-style-type: none"> • in the opinion of the ISC that the matter is capable of being rectified • as a result of auditor report(s) • as a result of member's complaint(s)
Procedures	<ol style="list-style-type: none"> 1. gives written notice to the trustee to rectify the matter concerned 2. gives written notice to the auditor stating what has to be rectified 3. requests the auditor for a further report as to whether the trustee has rectified the matter 	<ol style="list-style-type: none"> 1. gives written notice to the trustee or the auditor or the investment manager stating what has to be rectified 2. requests the trustee or the auditor or the investment manager for a further report as to whether the trustee has rectified the matter

Sources : MPFO and ISC

3.8 Both the MPFA and the ISC have the power to give directions to the trustee to rectify any deficiencies. This can be the result of an auditor report, or a member's complaint, or the regulator considering it necessary. In such a case, a further report as to whether the trustee has improved the situation is required.

Investigation into a Scheme**Table 6 - Investigation into a Scheme**

	Hong Kong MPF System	Australian Superannuation System
Regulator	MPFA	ISC
Circumstances leading to investigation	<p>the MPFA investigates into a scheme when it becomes aware of a possible claim, e.g. upon receipt of a complaint and the MPFA believes that</p> <ol style="list-style-type: none"> 1. a person has committed a contravention of the MPF Scheme Ordinance; or 2. circumstances may exist that could prejudice the interests of scheme members; or 3. the trustee is failing, or has failed, to fulfil the trustee's duties with respect to the scheme. 	<p>the ISC investigates into the case if the ISC believes that there has a contravention of the SIS Act or Regulations or the financial position of the fund is unsatisfactory</p>
Procedures	<ol style="list-style-type: none"> 1. notifies the trustee in writing 2. investigates the matters as soon as practicable after serving such a notice 3. may direct the trustee or investment manager to provide necessary information 	<ol style="list-style-type: none"> 1. may direct the trustee or investment manager to provide necessary information 2. during the investigation period, the ISC may freeze the assets of the fund up to six months in which case consent from the Minister for the Treasury is required

Sources : MPFO and ISC

3.9 Both the MPFA and the ISC have the power to investigate into a scheme when necessary. The trustee may also have to provide further information. In Australia, the ISC may even freeze the assets of the scheme up to a period of six months in which case written consent from the Minister for the Treasury is required.

Suspension or Revocation of the Approval of Approved Trustees**Table 7 - Circumstances leading to Suspension or Revocation of the Approval of Approved Trustees**

	Hong Kong MPF System	Australian Superannuation System
Regulator	MPFA	ISC
Circumstances leading to suspension or revocation of the approval of approved trustees	<p>the trustee in question :</p> <ul style="list-style-type: none"> • has contravened the approval criteria • is unable to perform the duties of an approved trustee • is unable to meet the requirements as an approved trustee 	<p>the trustee in question :</p> <ul style="list-style-type: none"> • has contravened the approval criteria • is unable to perform the duties of an approved trustee • is unable to meet the requirements as an approved trustee • is subject to the written consent from the Minister for the Treasury

Sources : MPFO and ISC

3.10 Both the MPFA and the ISC have the power to suspend or revoke the approval of approved trustees. In Australia, written consent from the Minister for the Treasury is required. Both the MPFA and the ISC have to provide written notice to the trustee stating the reasons for such a decision. In this written notice of suspension or revocation, the MPFA gives greater details than the ISC (Table 8).

Table 8 - Procedures of Suspension or Revocation of the Approval of Approved Trustees

Procedures	Hong Kong MPF System	Australian Superannuation System
Written notice	✓	✓
Period of notice	not less than one month's notice (but the MPFA can reduce the period in circumstances which require prompt action to be taken)	no restriction
Notice should contain	<ul style="list-style-type: none"> • the decision to suspend or revoke the approved trustee • the reasons for such decision • the scheme(s) to which the sanction applies • the effective date of the sanction(s) • the manner in which the MPFA intends to exercise the sanction(s) • in the case of suspension, the period of the suspension (which will not exceed 6 months but which may be extended by the MPFA by further notice) • the name of the replacement trustee to be appointed (if any) 	<ul style="list-style-type: none"> • the decision to revoke, suspend or remove the approved trustee • the reasons for such decision • the fund(s) to which the sanction applies • the effective date of the sanction(s) • the replacement trustee appointed

Sources : MPFO and ISC

Winding up of a Scheme**Table 9 - Winding up of a Scheme**

	Hong Kong MPF System	Australian Superannuation System
Regulator	MPFA	ISC
Circumstances leading to the winding up of a scheme	<ul style="list-style-type: none"> • if the MPFA has revoked an approved trustee of the scheme but is unable to appoint another approved trustee • if it appears appropriate to the MPFA that the scheme should be wound up either in the interests of the scheme members or in the public interest 	<ul style="list-style-type: none"> • if the ISC has revoked an approved trustee of the scheme but is unable to appoint another approved trustee
Procedures	<ol style="list-style-type: none"> 1. apply to the court for winding up of a scheme 2. appoint a liquidator 3. liquidator publishes notice of winding up specifying details 	<ol style="list-style-type: none"> 1. seeks written consent from the Minister for the Treasury 2. the ISC provides a statement prescribing the scheme for winding up 3. the ISC advertises the winding up

Sources : MPFO and ISC

3.11 Both the MPFA and the ISC have the power to wind up a scheme. The winding up of a scheme requires the order of the court in Hong Kong, while the winding up requires written consent from the Minister for the Treasury in Australia.

4. Summary of Analysis

4.1 The main regulatory bodies of the pension systems in Hong Kong and Australia are the MPFA and the ISC respectively. The role of both the MPFA and the ISC is supervisory. Neither guarantees investment return, nor acts as the guarantor of the last resort.

4.2 The powers of the MPFA and the ISC are similar. However, the ISC has the power to grant exemptions and modifications to existing regulations, whereas the MPFA does not.

4.3 Under the Hong Kong MPF system, trustees have to submit to the MPFA a trustee return, an annual statement, a report on internal controls, a report on capital adequacy and a consolidated report. In Australia, trustees have to submit to the ISC a trustee return and an annual return.

4.4 Under the Hong Kong MPF system, information provided to members include scheme information such as scheme terms and charges, and annual benefit statements, and upon request by members, information regarding contributions and the consolidated report. In Australia, information provided to members include annual statements and an investment report monthly or quarterly.

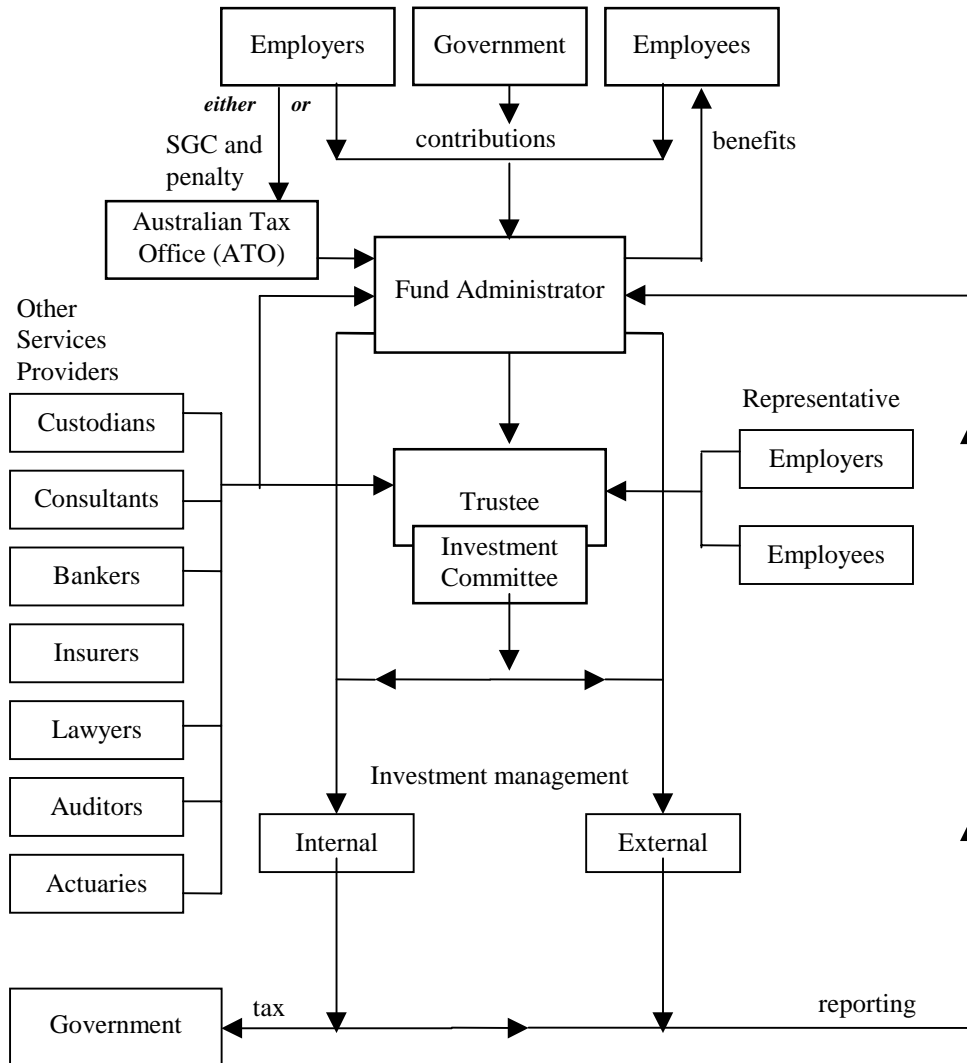
4.5 Both the MPFA and the ISC have the power to give directions to the trustee to rectify any deficiencies. Similarly, both have the power to investigate into a scheme when necessary. In Australia, the ISC also has the power to freeze the assets of the scheme in which case written consent from the Minister for the Treasury is required.

4.6 Both the MPFA and the ISC have the power to suspend or revoke the approval of approved trustees. In Australia, written consent from the Minister for the Treasury is required.

4.7 Both the MPFA and the ISC have the power to wind up a scheme. The winding up of a scheme requires the order of the court in Hong Kong, while such winding up requires written consent from the Minister for the Treasury in Australia.

Appendix I

Structure of Australian Superannuation System



- Insurance and Superannuation Commission (ISC)
- Australian Tax Office (ATO)

Source : Australian Housing and Urban Research Institute, The Superannuation Industry in Australia, July 1996.

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