

[附屬法例]

(11) 註冊計劃的核准受託人如符合本條的資格規定，則本條並不規定該受託人須委任計劃資產的保管人。

69. 保管協議

- (1) 註冊計劃的核准受託人如委任保管人管理計劃資產，則該受託人必須確保委任保管人的合約收納一份符合附表 3 的規定的保管協議。
- (2) 註冊計劃的核准受託人如沒有委任保管人管理計劃資產，則該受託人必須藉契據給予管理局一項承諾。該項承諾必須收納符合附表 3 規定的保管協議的條款。
- (3) 註冊計劃的核准受託人如已委任計劃資產的保管人，則該受託人必須採取一切合理步驟，以確保該保管人遵守有關保管協議的條款。
- (4) 核准受託人無合理辯解而沒有遵守本條，即屬犯罪，一經定罪，可處第 5 級罰款。

70. 臨時保管人

- (1) 儘管註冊計劃的核准受託人在本條以外的情況下是不符合擔任計劃資產的保管人的資格或他已委任合資格的人為計劃資產的保管人，該受託人仍可以該計劃資產的臨時保管人的身分行事，但目的只可以是純粹為了臨時保管——
- (a) 為計劃而收取的供款及其他款項；或
- (b) 規定或准許從計劃的資金作出的付款。
- (2) 當核准受託人以計劃資產的臨時保管人的身分行事時，他必須——
- (a) 遵守第(4)款所列明的規定；
- (b) 於為計劃而從僱主或任何其他人士收取供款及其他款項後，在切實可行範圍內盡快將該等供款及其他款項支付予保管人；及
- (c) 於為支付累積權益或其他款項而從計劃資產的保管人收取款項後，在切實可行範圍內盡快將該等款項支付予有權收取該等款項的人。

[Subsidiary]

(11) Nothing in this section requires the approved trustee of a registered scheme to appoint a person to be a custodian of the scheme assets if the trustee satisfies the eligibility requirements of this section.

69. Custodial agreement

- (1) If the approved trustee of a registered scheme appoints a custodian to administer the scheme assets, the trustee must ensure that the contract for the appointment of the custodian incorporates a custodial agreement that complies with Schedule 3.
- (2) If the approved trustee of a registered scheme does not appoint a custodian to administer the scheme assets, the trustee must, by deed, give an undertaking to the Authority. The undertaking must incorporate the terms of a custodial agreement that complies with Schedule 3.
- (3) If the approved trustee of a registered scheme has appointed a custodian of the scheme assets, that trustee must take all reasonable steps to ensure that the custodian complies with the terms of the relevant custodial agreement.
- (4) An approved trustee who, without reasonable excuse, fails to comply with this section commits an offence and is liable on conviction to a fine at level 5.

70. Temporary custodian

- (1) The approved trustee of a registered scheme may act as a temporary custodian of scheme assets even though the trustee would not, apart from this section, be eligible to be a custodian of scheme assets, or has appointed an eligible person to be a custodian of the scheme assets, but only for the sole purpose of temporarily keeping—
- (a) contributions and other payments received for the purposes of the scheme; or
- (b) payments required or permitted to be made from the funds of the scheme.
- (2) When acting as a temporary custodian of scheme assets, an approved trustee must—
- (a) comply with the requirements set out in subsection (4);
- (b) as soon as practicable after receiving contributions and other amounts from an employer or any other person for the purposes of the scheme, pay them to the custodian; and
- (c) as soon as practicable after receiving the payments from a custodian of the scheme assets for the purpose of paying accrued benefits or other amounts of money, pay them to the persons entitled to receive them.

[附屬法例]

[Subsidiary]

71. 成為保管人的獲轉授人的資格

除非某人符合擔任計劃資產的保管人的資格，否則該人不符合擔任計劃資產保管人的獲轉授人的資格。

72. 次保管協議

計劃資產的保管人與另一人訂立將保管人的任何職能轉授予該另一人的任何協議，必須包括與附表 3 中指明的規定相同的規定。為將附表 3 應用於該協議，對受託人的提述須解釋為對保管人的提述，而對保管人的提述則須解釋為對獲轉授人的提述。

73. 中央證券寄存處的使用

(1) 註冊計劃的核准受託人與計劃資產的保管人之間訂立的協議，或保管人與保管人的獲轉授人之間訂立的協議，可就存放計劃資產於中央證券寄存處訂定條文。

(2) 為施行本條，中央證券寄存處不得視為在香港經營業務的保管人或其獲轉授人。

第 2 分部——

適用於服務提供者的一般條文

74. 核准受託人須審核服務提供者的報告

(1) 註冊計劃的核准受託人必須規定其所委任或聘用的每名服務提供者，向該受託人早交會使該受託人能夠根據本條例履行其責任的報告。

(2) 該受託人必須規定提供的報告，包括(但不限於)——

(a) 任何重大事件的報告；及

(b) 符合第(5)款的周年報告。

(3) 為施行第(2)(a)款，任何事件如涉及以下情況，即屬重大事件——

(a) 發生與服務提供者的資格有關的重大改變，或有作出該等重大改變的建議；或

71. Eligibility of delegate of custodian

A person is not eligible to be a delegate of a custodian of scheme assets unless the person would be eligible to be a custodian of scheme assets.

72. Subcustodial agreement

Any agreement entered into between a custodian of scheme assets and another person providing for any of the custodian's functions to be delegated to that other person must include the same requirements as those specified in Schedule 3. For the purpose of applying Schedule 3 to the agreement, references to the trustee are to be construed as references to the custodian and references to the custodian are to be construed as references to the delegate.

73. Use of central securities depository

(1) An agreement entered into between the approved trustee of a registered scheme and a custodian of scheme assets or between the custodian and a delegate of the custodian may provide for scheme assets to be held in a central securities depository.

(2) A central securities depository is not to be regarded as a custodian carrying on business in Hong Kong or its delegates for the purpose of this section.

Division 2—

Provisions applicable to service providers generally

74. Approved trustee to review service providers' reports

(1) The approved trustee of a registered scheme must require each service provider appointed or engaged by the trustee to submit to the trustee such reports as will enable the trustee to perform the trustee's duties under the Ordinance.

(2) The reports that the trustee must require include (but are not limited to)——

(a) a report of any material event ; and

(b) an annual report that complies with subsection (5).

(3) An event is a material event for the purposes of subsection (2)(a) if it involves——

(a) a material change, or a proposal for a material change, relating to the eligibility of the service provider; or