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(高偉紳律師行用箋)

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陳美卿小姐

各位議員：

《強制性公積金計劃(一般)規例》(下稱“一般規例”)

在2000年4月26日(上星期三)出席小組委員會的會議後，一羣保管人／受託人(即我們在2000年4月11日來函末所載的團體成員)(下稱“團體”)昨天與強制性公積金計劃管理局(下稱“管理局”)會面，進一步討論團體所提的重點。

與管理局會商後，並因應該次會議的結果，我們謹此附上團體擬訂的“草擬摘要”。這份“草擬摘要”反映團體的要求(而該等要求尚未在《2000年強制性公積金計劃(一般)(修訂)規例》中反映出來)。該等“草擬摘要”仍須經管理局批准，(以及經財經事務局審閱和批准)。

有關將附表3應用於次保管協議(收錄於一般規例第72條)，較可取的做法是把第72條整條廢除(有關的理據早前已解釋)。就准許的產權負擔而言，財經事務局在2000年4月20日發出的函件中承認，可取的做法是，保管人不須“.....與[他們每位次保管人]再次磋商新的次保管協議，因為此舉可能有困難、需時甚久及所費不菲”。要達到這一步，最佳做法是廢除第72條。然而我們理解，基於種種理由，廢除該條可能不可接受。為此，我們在“草擬摘要”內提出另一可行做法，而無須廢除第72條，而團體認為他們可說服其次保管人接納該做法。若沒有一個可行做法獲得批准，符合強積金要求的次保管協議將不能再磋商，必定會有實質風險，結果導致該等計劃將不可投資在由該等次保管人經營的市場上。團體認為這種情況是真正的風險。

團體的代表樂意出席小組委員會於2000年5月16日舉行的會議。各代表的名單將於稍後提交。

高偉紳
(簽署)

副本致：財經事務局
何淑兒女士

強制性公積金計劃管理局
Greg Willis先生／譚偉民先生

MPF - Drafting Notes

1. Section 65
 - Amend the first part of Section 65(2)(a)(iii) and (b)(iii):

"at the time the borrowing was made, it was unlikely that the period of the borrowing would exceed....."
 - Add new Section 65(4):

(4) "For the avoidance of doubt, any encumbrance created over scheme assets of a registered scheme that is, at the time of creation, consistent with subsection (2) shall remain valid throughout the period for which the borrowing remains outstanding."

2. Section 72
 - Repeal Section 72; **OR**
 - Amend Section 72:

"Any agreement entered into between a custodian of scheme assets and any delegate of the custodian shall be on terms that are not inconsistent in substance with the requirements specified in Schedule 3".

Schedule 3

3. Paragraph 1(b):
 - Amend Paragraph 1(b):

(b) "to be entrusted to the custodian for safe keeping;"
 - Add new paragraph 1(c):

(c) "entrusted to the custodian:
 - (i) which are in registered form, to be registered in the name of the custodian or its delegate; or
 - (ii) which are in bearer form, to be held in the physical possession of the custodian, or its delegate;"
 - Add new paragraph 1(d):

(d) "be segregated from the custodian's and its delegates' own assets."
 - Add new Paragraph 1A:

"The agreement must require the custodian to hold any document of title and document evidencing title in its or its delegate's physical possession."

- Add new Paragraph 1B:

"The agreement must require the custodian to be responsible for the collection of any income due to be paid for the account of the scheme."

- Add new Paragraph 1C:

"For the avoidance of doubt, scheme assets:

- (a) comprising cash held by a custodian which is an authorised institution or an approved overseas bank may be held by such custodian in its capacity as a bank;
- (b) may be deposited by the custodian and its delegates with, and held in, any central securities depository on such terms as such central securities depository's customarily operate".

4. Paragraph 3

- Reflect in paragraph 3 the same changes as sections 652(a)(iii) and (b)(iii), described under 1. above.
- Add new Paragraph 4A:

"Any encumbrance created over scheme assets of a registered scheme that is, at the time of creation, consistent with paragraph 3 above shall remain valid throughout the period for which the borrowing remains outstanding."

5. Paragraph 5(a)

- Amend the first part of paragraph 5(a):

"for any direct losses incurred by scheme members that are....."

- Add proviso to the end of paragraph 5(a):

"...provided that the agreement need not require the custodian to indemnify scheme members for any indirect losses"