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22 May 2000

Miss Salumi Chan
Clerk to Subcommittee
Legislative Council
Legislative Council Building
8 Jackson Road, Central
Hong Kong

Dear Salumi,

***Subcommittee on subsidiary legislation
Relating to Mandatory Provident Fund Schemes***

Thank you for your letter of 18 May 2000. I enclose herewith a table showing the list of follow-up action further to the third Meeting of the subcommittee on 16 May 2000. The table also covers the matters raised in Clifford Chance's letter of 10 May 2000.

Also enclosed for Members reference is a set of draft amendments to the MPFSO (Amendment of Schedule 1) Notice 2000 (the Notice) and MPFS (General) (Amendment) Regulation 2000 (the Amendment Regulation). You may wish to note that the draft amendment to the Notice seeks to replace the expression 'is terminated' in the proposed item 7(1) by the word 'ceases'. The amendment would address the concerns raised by members as explained in my letter of 20 April 2000.

In respect of the Amendment Regulation, you may wish to note that item (a) of the draft amendments seeks to ensure that the proposed section 7(2)(c) is consistent with the definition of 'net assets' in section 2 of the Regulation. My letter of 20 April 2000 is relevant. The purposes of the other draft amendments are set out in the table of follow-up action mentioned above.

Yours sincerely,

(Susie Ho)
for Secretary for Financial Services

Encl.

**Subcommittee on Subsidiary Legislation
Relating to Mandatory Provident Fund Schemes**

Follow-up to the third meeting on 16 May 2000

I. Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2000

Section No.	Members' concern	Response
S65	(a) the drafting of section 65 (2)(b)(iii) does not reflect the policy intent that the borrowing period of 7 working days can be extended; and (b) the extension of the borrowing period may not satisfy the requirement that 'the borrowing is not part of a series of borrowings' under section 65(2)(b)(ii). The policy intent of this requirement is not clear.	To address the concerns raised, we now propose to amend section 65(2)(a)(iii) and s65(2)(b)(iii) to clarify that at the time the encumbrances were created, it was unlikely that the borrowing would exceed a certain period. Amendments will also be made to Item 3 in Schedule 3 to mirror the proposed changes. [Items (b), (d)(ii) & (iv) of the amendments to the (Amendment) Regulation.]

Section No.	Members' concern	Response
Section 72 and Schedule 3	<p>The representatives of custodians consider that the requirements imposed on sub-custodians by Schedule 3 are not market practices and they do not expect that sub-custodians would accept those requirements. They anticipate difficulties in renegotiating their agreements with the sub-custodians in respect of the requirements under sections 3, 5(a), 6(1)(a) and (2) and 7(a).</p> <p><u>Section 3</u> : Same concern as section 65(2).</p> <p><u>Section 5</u> : Having regard to the market practices in other jurisdictions, it may not be justified to require a custodian (or sub-custodian) to indemnify the scheme for indirect losses.</p> <p><u>Sections 6 and 7</u>: In practice, sub-custodians are safekeepers and are not expected to understand the implications of MPF Scheme Ordinance. Hence it is difficult for sub-custodians:</p> <p>(a) under section 6(1)(a), to report to their custodians any material changes affecting their eligibility to be sub-custodians;</p>	<p>Concerns addressed. See above.</p> <p>We now propose to remove the reference to 'indirect losses' in section 5. [Item (d) (iii) of the amendments to the (Amendment) Regulation.]</p> <p>The eligibility criteria in respect of a sub-custodian is spelt out in the MPF General Regulation. There are good reasons for requiring the reporting of material changes affecting the sub-custodian's eligibility criteria. Although such a requirement may not be in the existing standard sub-custodial agreement, it may be possible to set out such a requirement in a separate document. We now propose to give MPFA the</p>

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	<p>(b) under section 6(2), to lodge periodically a report stating whether any material events having occurred during the period to which the report relates; and</p> <p>(c) under section 7(a), to provide a statement as to whether or not each of their delegates satisfy the eligibility requirements as those applicable to sub-custodians.</p>	<p>discretion to waive/modify the requirements, in respect of a sub-custodial agreement, under sections 5, 6(1)(a) or (2) and 7(a). If it is demonstrated to the MPFA that to comply with the relevant requirements under such sections would cause undue hardship, or that it is not in the interest of relevant scheme members or that the provision is incapable or precluded from being complied with by virtue of a law in a place outside Hong Kong, then MPFA can waive or modify such relevant requirements. This would build in appropriate checks in the system. [Item (d) (iv) of the amendments to the (Amendment) Regulation.]</p>

Matters raised in Clifford Chance's Letter of 20 May 2000 (but not covered in the above table)

Schedule 3 Section 1(b)	A number of amendments were proposed.	We now accept the amendments proposed by Clifford Chance, on the condition that the MPFA would no longer be given the discretion to waive or modify this section. [Item (d) of the amendments to the Amendment Regulation].
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