

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

**Summary of proposed amendments**

**(Position as at 22 May 2000)**

Mandatory Provident Fund Schemes Ordinance (Amendment of Schedule 1) Notice 2000

<b>Item No. of Part I of Schedule 1</b>	<b>Proposed amendments</b>	<b>Remarks</b>
7(1)	To replace the term " <i>is terminated</i> " by " <i>ceases</i> ".	To address the concern of the Subcommittee that the word " <i>terminated</i> " could mean that the employer has to take certain steps to achieve the termination of employment of the relevant employee.

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

<b>Section No. of the General Regulation</b>	<b>Proposed amendments</b>	<b>Remarks</b>
7	To abdicate the amendment to section 7(1)(b)(ii) and revise the proposed new section 7(2) to qualify how " <i>net assets</i> " would be determined for the purpose of subsection (1)(b)(ii).	To address the concern of the Subcommittee that the proposed amendment to section 7(1)(b)(ii) is not consistent with the definition of " <i>net assets</i> " in section 2.

Section No. of the General Regulation	Proposed amendments	Remarks
65	<ul style="list-style-type: none"> <li>- To amend section 65(2)(a)(iii) and (b)(iii) to clarify that at the time the encumbrances were created, it was unlikely that the borrowing would exceed 90 days and 7 working days respectively.</li> <li>- To add a new subsection (4) to section 65.</li> </ul>	<ul style="list-style-type: none"> <li>- To address the concern of the Subcommittee and the industry that 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.</li> <li>- To address the concern of the Subcommittee that 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).</li> </ul>
67	To abdicate the proposal to amend section 67 so that failure to comply with the requirement under the proposed new section 66A will not be directly liable to criminal offence.	To address the concern of the Subcommittee that it is unjustified to make it a criminal offence for an approved trustee who fails to ensure that the rate of interest received, where a scheme's assets are placed on deposit, is reasonable in all the circumstances of the case.
Schedule 3	<p><u>Section 1</u> To amend section 1(b) and to add new subsections (c) and (d).</p> <p><u>Section 3</u> To introduce appropriate amendments to ensure that section 65(2)(a) and (b) are consistent with section 3 of Schedule 3.</p>	<p>To address the concern of the industry about the treatment of scheme assets as trust property.</p> <p>To address the concern of the Subcommittee.</p>

Section No. of the General Regulation	Proposed amendments	Remarks
Schedule 3	<p><u>Section 5</u> To remove the reference to "<i>indirect losses</i>" in section 5.</p> <p><u>Section 11</u> - As a result of the amendments to section 1, the Mandatory Provident Fund Schemes Authority (MPFA) will no longer be given the discretion to waive or modify the provisions of section 1(b).</p> <p>- To introduce amendments to give the MPFA the discretion to waive or modify the requirements, in respect of a subcustodial agreement, under sections 5, 6(1)(a), 6(2) and 7(a).</p> <p><u>New section 12</u> - To add a new section 12.</p>	<p>To address the concern of the Subcommittee and the industry that it is unjustified to require a custodian (or subcustodian) to indemnify the scheme for indirect losses.</p> <p>To address the concern of the industry about the difficulties of subcustodians in complying with the requirements under sections 6(1)(a), 6(2) and 7(a).</p> <p>New section 12(a) is added to address the concern of the industry. New section 12(b) is a consequential amendment to section 65 of the General Regulation.</p>