

MANDATORY PROVIDENT FUND SCHEMES ORDINANCE
AND
INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION OF THE LEGISLATIVE COUNCIL

MANDATORY PROVIDENT FUND SCHEMES (GENERAL)
(AMENDMENT) REGULATION 2000

Resolution made and passed by the Legislative Council under section 46 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and section 35 of the Interpretation and General Clauses Ordinance (Cap. 1) on 2000.

RESOLVED that the Mandatory Provident Fund Schemes (General)(Amendment) Regulation 2000, made by the Chief Executive in Council on 21 March 2000, be approved, subject to the following amendments -

(a) in section 2 -

(i) by deleting paragraph (b)(ii);

(ii) in paragraph (c), in the proposed section 7(2),
by adding "in the determination of net assets
as referred to" after "liabilities";

(b) by deleting section 12 and substituting -

**"12. Approved trustee to
ensure that scheme
assets are not**

**improperly
encumbered**

Section 65 is amended -

(a) in subsection (2) -

(i) by repealing paragraph (a)(iii) and
substituting -

"(iii) at the time the borrowing was
made, it was unlikely that the
period of the borrowing would
exceed 90 days; or";

(ii) in paragraph (b) -

(A) by repealing subparagraph (iii)
and substituting -

"(iii) at the time the borrowing
was made, it was unlikely
that the period of the
borrowing would exceed 7
working days; and";

(B) in subparagraph (iv), by
repealing "necessary." and
substituting "necessary; or";

(iii) by adding -

"(c) is created for the purpose of
securing a claim of payment for
the safe custody or
administration of the scheme
assets by a central securities

depository or a delegate of a
custodian; or

(d) is created for the purpose of
acquiring a financial futures
contract pursuant to section 14
of Schedule 1 or a currency
forward contract pursuant to
section 15 of Schedule 1; or

(e) is created by the operation of
law in Hong Kong or in a place
outside Hong Kong." ;

(b) by adding -

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

(c) by deleting section 14;

(d) in section 23 -

(i) by deleting paragraph (a) and

substituting -

"(a) by repealing section 1(b) and
substituting -

"(b) to be entrusted to the
custodian for safe keeping;

and

(c) entrusted to the
custodian -

(i) where the scheme
assets are in
registered form, to
be -

(A) registered in
the name of the
custodian or
its delegate;
or

(B) administered
and dealt with
by the
custodian or
its delegate in
such manner as
may be
customary and
prudent in the
relevant market;

(ii) where the scheme
assets are in bearer
form, to be held in
the physical
possession of the

custodian or its
delegate; and

(d) to be segregated from the
custodian's and its
delegates' assets."."

(ii) in paragraph (c) -

(A) by deleting subparagraph (i) and
substituting -

"(i) by repealing paragraphs (a)
and (b) and substituting -

"(a) where the encumbrance
is created for the
purpose of securing
an amount borrowed to
enable accrued
benefits to be paid
to or in respect of
scheme members, and
then only if -

(i) the amount
borrowed
(together with
any other
borrowings
made for the
same purpose)
does not

exceed 10 per cent of the market value of the scheme assets at the time of the borrowing; and

(ii) the borrowing is not part of a series of borrowings; and

(iii) at the time the borrowing was made, it was unlikely that the period of borrowing would exceed 90 days; or

(b) where the encumbrance is created for the purpose of securing an amount borrowed to settle a transaction relating to the

acquisition of scheme
assets, and then only
if -

- (i) the amount
borrowed
(together
with any
other
borrowings
made for the
same purpose)
does not
exceed 10 per
cent of the
market value
of the scheme
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time of the
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and
- (ii) the borrowing
is not part
of a series
of borrowings;
and
- (iii) at the time
the borrowing

was made, it
was unlikely
that the
period of
borrowing
would exceed
7 working
days; and

(iv) at the time
the decision
to enter into
the
transaction
was made, it
was unlikely
that the
borrowing
would be
necessary."."

(iii) by deleting paragraph (d) and
substituting -

"(d) in section 5 -

(i) by repealing "The" and
substituting "Subject to
section 11 of this
Schedule, the";

(ii) in paragraph (a), by

repealing "losses incurred
(directly or indirectly)"
and substituting "direct
losses incurred";".";

(iv) in paragraph (f), by deleting the
proposed section 11 and substituting -

"11. The Authority may,
subject to such conditions as the
Authority thinks fit, by notice
in writing (published in such
manner as the Authority thinks
fit) waive or modify the
provisions of section 2, and, in
the case of a delegate of a
custodian, section 2, 5, 6(1)(a)
or (2) or 7(a), of this Schedule,
where the Authority is of the
opinion that the provisions -

(a) cause undue

hardship;

(b) are incapable of

or precluded from

being complied

with by virtue of

a law in a place

outside Hong Kong;

or

- (c) are not in the interests of relevant scheme members.

12. For the avoidance of doubt, it is hereby declared that -

- (a) scheme assets -
 - (i) comprising cash held by a custodian which is an authorized financial institution, an eligible overseas bank or an approved overseas bank may be held by any such custodian in its capacity as a bank;
 - (ii) may be

deposited by
the
custodian
and its
delegates
with, and
held in, any
central
securities
depository
on such
terms as
such central
securities
depositories
customarily
operate;

- (b) any encumbrance
created over the
scheme assets of a
registered scheme
that is, at the
time of creation,
consistent with
the exception
under section 3
shall remain valid

throughout the
period for which
the borrowing
concerned remains
outstanding."."

Clerk of the Legislative Council

2000

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"(iii) at the time the borrowing was made, it was unlikely that the period of the borrowing would exceed 90 days; or";

(ii) in paragraph (b) -

(A) by repealing subparagraph (iii) and substituting -

"(iii) at the time the borrowing was made, it was unlikely that the period of the borrowing would exceed 7 working days; and";

(B) in subparagraph (iv), by repealing "necessary." and substituting "necessary; or";

(iii) by adding -

"(c) is created for the purpose of securing a claim of payment for the safe custody or administration of the scheme assets by a central securities depository or a delegate of a custodian; or

(d) is created for the purpose of acquiring a financial futures contract pursuant to section 14 of Schedule 1 or a currency

forward contract pursuant to
section 15 of Schedule 1; or

(e) is created by the operation of
law in Hong Kong or in a place
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hereby declared that any encumbrance created
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possession of the
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custodian's and its
delegates' assets."."

(ii) in paragraph (c) -

(A) by deleting subparagraph (i) and substituting -

"(i) by repealing paragraphs (a) and (b) and substituting -

"(a) where the encumbrance is created for the purpose of securing an amount borrowed to enable accrued benefits to be paid to or in respect of scheme members, and then only if -

(i) the amount borrowed (together with any other borrowings made for the same purpose) does not exceed 10 per cent of the market value of the scheme assets at the time of the

borrowing; and

(ii) the borrowing
is not part of
a series of
borrowings;
and

(iii) at the time
the borrowing
was made, it
was unlikely
that the
period of
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(b) where the encumbrance
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proposed section 11 and substituting -

"11. The Authority may, subject to such conditions as the Authority thinks fit, by notice in writing (published in such manner as the Authority thinks fit) waive or modify the provisions of section 2, and, in the case of a delegate of a custodian, section 2, 5, 6(1)(a) or (2) or 7(a), of this Schedule, where the Authority is of the opinion that the provisions -

- (a) cause undue hardship;
- (b) are incapable of or precluded from being complied with by virtue of a law in a place outside Hong Kong; or
- (c) are not in the interests of relevant scheme members.

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- (a) scheme assets -
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 - (ii) may be deposited by the custodian and its delegates with, and

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