

MANDATORY PROVIDENT FUND SCHEMES ORDINANCE
AND
INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 46 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and section 35 of the Interpretation and General Clauses Ordinance (Cap. 1))

MANDATORY PROVIDENT FUND SCHEMES (GENERAL)
(AMENDMENT) REGULATION 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 the full-stop
and substituting "; 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 concerned 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 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 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; or";

(B) by deleting subparagraph (ii) in the Chinese text and substituting -

"(ii) 加入—

"(c) 為了作為中央證券寄存處或保管人的獲轉受人妥善保管或管理計劃資產的費用申索的保證而設定的產權負擔；或

(d) 為了依據附表 1 第 14 條取得財務期貨合約或依據附表 1 第 15 條取

得貨幣遠期合約而設定的產權負

擔；或

(e) 藉香港法律或香港以外地方的法

律的施行而設定的產權負

擔。";";

(iii) by deleting paragraphs (d), (e) and (f) 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";

(e) in section 6(1) and (2), by repealing "The" and substituting "Subject to section 11 of this Schedule, the";

(f) in section 7 -

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

(ii) by repealing "60 days" and substituting "4 months";

(g) by adding -

"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 of this Schedule, 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; and

(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
depository
customarily
operate;
and

(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 of this
Schedule shall remain
valid throughout the
period for which the
borrowing concerned
remains
outstanding."."