

MANDATORY PROVIDENT FUND SCHEMES ORDINANCE  
AND  
INTERPRETATION AND GENERAL CLAUSES ORDINANCE

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**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))

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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授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."."