

L.N. 222 of 2000

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 22 June 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) 爲了作爲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) 爲了依據附表 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."."

Ricky FUNG Choi-cheung

Clerk to the Legislative Council

22 June 2000