

LN223-E

MANDATORY PROVIDENT FUND SCHEMES (GENERAL)

(AMENDMENT) REGULATION 2000

(Made by the Chief Executive in Council under section 46 of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) subject to the approval of the Legislative Council)

1. Interpretation

Section 2 of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.) is amended---

(a) by repealing the definition of "custodian" and substituting---

"custodian" (保管人), in relation to the assets of a registered scheme, includes the approved trustee of the scheme if acting as the custodian of those assets in accordance with section 50(2);";

(b) in the definition of "net assets"---

(i) by adding "or corporation" after "company";

(ii) by adding "or corporation's, as the case may be," after "company's";

(c) by adding---

"corporation" (法團) means a body corporate which is incorporated in a place outside Hong Kong and is not an oversea company;

"delegate" (獲轉授人), in relation to a custodian, means a person to whom the custodian has delegated the custodian's function as a custodian;

"Insurance Authority" (保險業監督) means the Insurance Authority appointed under section 4 of the Insurance Companies Ordinance (Cap. 41);

"Monetary Authority" (金融管理專員) means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Cap. 66);

"working day" (工作日) means any day other than---

(a) a public holiday; or

(b) a gale warning day or black rainstorm warning day within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).".

2. What is a substantial financial institution for the purposes of this Regulation?

Section 7 is amended---

(a) by renumbering it as section 7(1);

(b) in subsection (1)(b)---

(i) in subparagraph (i), by repealing "等值外幣" and substituting "以外幣計算的相同款額";

(ii) by repealing subparagraph (ii) and substituting---

" (ii) tangible assets exceeding its liabilities by at least \$150,000,000 or its equivalent in a foreign currency.";

(c) by adding---

"(2) The reference to "liabilities" in subsection (1)(b)(ii) may exclude in part or in whole a subordinated debt of the institution concerned where, subject to subsection (3), the Authority declares in writing that it is satisfied that under the terms of the debt instrument concerned---

(a) the claims of the lender against the institution are fully subordinated to those of all unsubordinated creditors;

(b) the debt is not secured against any assets of the institution;

(c) the debt has a minimum initial period to maturity of more than 5 years (and notwithstanding that the period may be reduced with the prior consent of the Authority); and

(d) the debt is not repayable prior to maturity without the prior consent of the Authority.

(3) The Authority shall not make a declaration under subsection (2) in relation to an institution except after consultation with---

(a) if the institution is an authorized financial institution, the Monetary Authority;

(b) if the institution is an authorized insurer, the Insurance Authority."

3. What is adequate insurance for the purposes of registered schemes?

Section 8(8) is repealed.

4. Prescribed capital adequacy requirements

Section 11(3)(a) is amended---

(a) by adding "或法團" after "下述公司";

(b) in subparagraphs (i) and (ii), by adding "or corporation" after "a company".

5. What is continuous financial support for the purposes of this Regulation?

Section 12 is amended---

(a) by adding "by deed or like form" after "undertaking";

(b) in paragraph (b), by repealing "of or issue" and substituting "of".

6. Non-refusal of scheme applicants

Section 31 is amended---

(a) in subsection (1)(a)---

(i) by repealing "complies with the requirements, and";

(ii) by adding "such" after "respect to";

(b) by adding---

"(1A) An application for participation in a registered scheme that is made by or on behalf of an employer must not be refused if that employer---

(a) provides or is willing to provide the information required by the approved trustee with respect to applications for participation; and

(b) agrees in writing to comply with the governing rules of the scheme.

(1B) An application for membership of a registered scheme that is made by a person only for the purpose of maintaining a preserved account within the scheme must not be refused if that person---

(a) provides or is willing to provide the information required by the approved trustee with respect to such applications for membership of the scheme; and

(b) agrees in writing to comply with the governing rules of the scheme.";

(c) in subsection (2)---

(i) by adding "or participating employer" after "scheme member";

(ii) in paragraph (a), by adding "or participation in" after "of";

(d) in subsection (4), by adding "or participation in" after "membership of";

(e) in subsection (5)---

(i) by adding "by the approved trustee" after "terminated";

(ii) in paragraph (a), by adding "given not earlier than 60 days before the termination" after "employer of that member";

(iii) in paragraph (b)---

(A) by adding "or former self-employed person" after "self-employed person";

(B) by adding "given not earlier than 60 days before the termination" after "that member";

(f) by adding---

"(6) The participation of an employer may be terminated by the approved trustee only in accordance with the governing rules of the scheme and with the written agreement of the participating employer given not earlier than 60 days before the termination.

(7) In respect of a scheme member whose accrued benefits are being or have been transferred pursuant to Part XII, no fees may be charged, no financial penalties may be imposed and no other restrictions or requirements shall be applied to prevent or to hinder the relevant participating employer or the scheme member from terminating his participation in the registered scheme of the transferor trustee or the liability to contribute to that registered scheme."

7. Provisions relating to capital preservation fund

Section 37(8) is amended, in the definition of "authorized financial institution", by adding "by the Authority" after "specified".

8. Approved trustee to appoint investment manager

Section 44(5) is amended by adding "and of any delegate of the custodian" after "assets".

9. Delegation of investment management functions

Section 45 is amended---

(a) in subsections (1) and (2)(c), by adding "or corporation or partnership of companies or corporations" after "a company";

(b) in subsections (3) and (4), by adding "or corporation or partnership of companies or corporations" after "A company";

(c) in subsection (5), by adding "and of any delegate of the custodian" after "assets".

10. Independence of investment manager

Section 46 is amended---

(a) in subsection (1)---

(i) by adding "and a delegate of the custodian of the scheme assets" after "assets";

(ii) in paragraphs (a) and (b), by adding "or the delegate of the custodian" after "custodian" wherever it appears;

(iii) in paragraph (c), by adding "and the delegate of the custodian" after "custodian";

(b) in subsections (2) and (3), by adding "or the delegate of the custodian of the scheme assets" after "assets";

(c) in subsection (3)(c), by repealing "各自獨立" and substituting "獨立於對方而".

11. Investment management contract

Section 47(5) is amended---

(a) by adding "or an associate of the approved trustee" after "associate of that manager";

(b) by repealing "those transactions is to be transacted through the agency of" and substituting "the commissions or other agency rewards paid for those transactions is to be paid to";

(c) by adding "or associates of the approved trustee" after "associates of that

manager".

12. Approved trustee to ensure that scheme assets are not improperly encumbered

Section 65(2) is amended---

(a) in paragraph (b)(iv), by repealing "necessary." and substituting "necessary; or";

(b) 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.".

13. Section added

The following is added---

"66A. Interest to be received where a scheme's assets are placed on deposit

Where a scheme's assets are placed on deposit, then the approved trustee must ensure that the rate of interest received for the deposit is reasonable in all the circumstances of the case taking into account the rate of interest available in the relevant market---

(a) at the time of the deposit; and

(b) for deposits of like amount and nature.".

14. Offences

Section 67 is amended by repealing "or 65" and substituting ", 65 or 66A".

15. Eligibility for appointment as custodian

Section 68 is amended---

(a) in subsection (2)(b)(i) and (ii), by adding "or corporation" after "a company";

(b) in subsection (3), by adding "or corporation" after "A company";

(c) in subsection (5)---

(i) by adding "or corporation" after "A company";

(ii) by adding "or corporation" after "a company";

(iii) by adding "by deed or like form" after "undertaking";

(iv) in paragraph (b)---

(A) by repealing "of or issue" and substituting "of";

- (B) by adding "或法團" after "是該公司";
- (v) by adding "或法團" after "言該公司";
- (d) by repealing subsection (7).

16. Section substituted

Section 71 is repealed and the following substituted---

"71. Eligibility of delegate
of custodian

A person is not eligible to be a delegate of a custodian of scheme assets unless the person---

- (a) would be eligible to be a custodian of scheme assets;
- (b) is an approved overseas bank or approved overseas trust company which complies with section 68(4); or
- (c) is an overseas bank or overseas trust company which is a wholly-owned subsidiary of an approved overseas bank or approved overseas trust company referred to in paragraph (b)."

17. Limitations and prohibitions as
to investment in restricted
investments

Section 118(5) is amended, in the definition of "restricted securities", in paragraph (a), by adding "or corporation" after "company".

18. Participating employer to calculate
relevant income and pay mandatory
contributions

Section 122 is amended---

(a) in subsection (1)---

(i) by repealing the definition of "contribution day" and substituting---
""contribution day" (供款日)---

(a) in relation to a mandatory contribution payable by a participating employer in respect of a relevant employee (other than a casual employee who is a member of an industry scheme), means, subject to subsection (4), the tenth day after the last day of---

- (i) the relevant contribution period; or
- (ii) the contribution period during which the permitted period ends, whichever is the later; and

(b) in relation to a mandatory contribution payable by a participating employer in respect of a casual employee who is a member of an industry scheme, means, subject to subsection (4), whichever of the following days is agreed by the participating employer and the approved trustee of the scheme concerned as the contribution day

for that employee---

(i) the day on which the relevant income for the relevant contribution period is paid to the casual employee;

(ii) the tenth day after the last day of the relevant contribution period;"

(ii) by adding---

"permitted period" (特准限期) has the same meaning as in section 7(3)(a) of the Ordinance.";

(b) by adding---

"(4) If the contribution day is a public holiday, or a gale warning day or black rainstorm warning day within the meaning of section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1), then the contribution day shall mean the next following day, not being a public holiday or such a gale warning day or black rainstorm warning day."

19. Transfer by participating employer
of employee's accrued benefits

Section 150(d) is repealed and the following substituted---

"(d) the employer providing notice, personally or through the transferee trustee, of his intention to cease participation in the first-mentioned scheme in respect of that member."

20. Accrued benefits, etc. not to be
transferred if scheme accounts
are being audited or if scheme
is being investigated

Section 157(1) is amended by adding "or an election to transfer scheme assets" after "Part".

21. Accrued benefits, etc. not to be
paid if scheme accounts are
being audited or if scheme
is being investigated

Section 167(1) is amended---

(a) by adding "or if the approved trustee has received a request for other payment of scheme assets out of the scheme" after "Part";

(b) by adding "or scheme assets" after "pay the accrued benefits".

22. Investment of Scheme Funds

Schedule 1 is amended---

(a) by repealing "[ss. 37, 39, 40 & 118]" and substituting "[ss. 37, 39, 40, 65 & 118 & Sch. 3]";

(b) in section 1(1), in the definitions of "call warrant" and "put warrant", by adding

"or corporation or corporations" after "company or companies";

(c) in section 2, by adding---

"(3) Notwithstanding subsections (1) and (2), where part or all of the funds of a constituent fund are invested in approved pooled investment funds under section 6(b) of this Schedule, then subsections (1) and (2) shall not apply to that part or all of the funds of the constituent fund so invested.";

(d) in section 7(2)(d), by adding "or corporation" after "company";

(e) in sections 18(3) and 19(3), by repealing "局" and substituting "專員".

23. Contents of Custodial Agreements

Schedule 3 is amended---

(a) in section 1(b), by adding "subject to section 11 of this Schedule," before "to be administered and dealt with as trust";

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

(c) in section 3---

(i) in paragraph (b)(v), by repealing "necessary." and substituting "necessary; or";

(ii) by adding---

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

(d) in section 5, by repealing "The" and substituting "Subject to section 11 of this Schedule, the";

(e) in section 7, by repealing "60 days" and substituting "4 months";

(f) 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---

(a) the provisions of section 1(b) of this Schedule in the case of an agreement referred to in section 72 of this Regulation; or

(b) the provisions of section 2 or 5 of this Schedule,

where the Authority is of the opinion that the provisions---

(i) cause undue hardship;

(ii) are incapable of or precluded from being complied with by virtue of a law in a place outside Hong Kong; or

(iii) are not in the interests of relevant scheme members.".

CHENG Mei-sze, Maisie

Clerk to the Executive Council

Council Chamber

21 March 2000

Explanatory Note

This Regulation amends the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg.) to refine provisions which may cause operational difficulties and to remove anomalies which have been identified. The principal amendments are---

(a) to add a reference to "corporation" in certain provisions of the Regulation where the reference to "company" in those provisions is too restrictive because the definition of "company" in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) does not include a body corporate which is incorporated in a place outside Hong Kong and is not an oversea company (the definition of "corporation" at section 1(c) and sections 4, 9(a) and (b), 15(a), (b) and (c)(i) and (ii), 17 and 22(b) and (d));

(b) to amend the criteria determining what is a substantial financial institution for the purposes of the Regulation (section 2);

(c) to make it unlawful for an application for participation in a registered scheme made by an employer, or an application for membership of a registered scheme made by a person for the purpose of maintaining a preserved account within the scheme, to be refused if the applicant meets certain specified requirements (new section 31(1A) and (1B) at section 6(b));

(d) to specify the only circumstances in which the participation of an employer in a registered scheme may be terminated by the approved trustee (new section 31(6) at section 6(f));

(e) to widen the range of encumbrances which may be placed on scheme assets (sections 12(b) and 23(c)(ii));

(f) to ensure that where a scheme's assets are placed on deposit, the rate of interest paid on the deposit is reasonable in all the circumstances of the case taking into account the rate of interest available in the relevant market (new section 66A at section 13);

(g) to specify new criteria which render a person eligible to be a delegate of a custodian of scheme assets (new section 71 at section 16); and

(h) to empower the Mandatory Provident Fund Schemes Authority to waive or modify the provisions of section 1(b), 2 or 5 of Schedule 3 to the Regulation in specified

circumstances (new section 11 of Schedule 3 at section 23(f)).