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From : Clerk to the Legislative Council
To : All Members of the Legislative Council

Council meeting of 14 June 2006

**Proposed resolution under
the Mandatory Provident Fund Schemes Ordinance**

I forward for Members' consideration a proposed resolution which the Secretary for Financial Services and the Treasury will move at the Council meeting of 14 June 2006 under the Mandatory Provident Fund Schemes Ordinance. The President has directed that "it be printed in the terms in which it was handed in" on the Agenda of the Council.

2. The speech, in both English and Chinese versions, which the Secretary for Financial Services and the Treasury will deliver when moving the proposed resolution, is also attached.

(Mrs Betty LEUNG)
for Clerk to the Legislative Council

Encl.

MANDATORY PROVIDENT FUND SCHEMES
ORDINANCE

RESOLUTION

(Under section 46 of the Mandatory Provident
Fund Schemes Ordinance (Cap. 485))

RESOLVED that the Mandatory Provident Fund Schemes (General)
(Amendment) Regulation 2006, made by the Chief Executive in
Council on 9 May 2006, be approved.

**MANDATORY PROVIDENT FUND SCHEMES (GENERAL)
(AMENDMENT) REGULATION 2006**

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**MANDATORY PROVIDENT FUND SCHEMES (GENERAL)
(AMENDMENT) REGULATION 2006**

(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. Commencement

This Regulation shall come into operation on a day to be appointed by the Secretary for Financial Services and the Treasury by notice published in the Gazette.

2. Interpretation

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

- (a) in the definition of “financial futures contract” –
 - (i) by repealing “entered into on an approved futures exchange”;
 - (ii) in paragraph (a), by repealing “a quantity” and substituting “an agreed quantity”;
 - (iii) in paragraph (b)(i), by adding “, or an agreed quantity of specified securities,” after “specified security”;
- (b) in the definition of “financial option contract” –
 - (i) by repealing “entered into on an approved futures exchange or an approved stock exchange”;
 - (ii) by repealing “stock market index” and substituting “index of securities”.

3. Investment of scheme funds

Schedule 1 is amended –

- (a) in section 1 –

- (i) in subsection (1) –
 - (A) in the definition of “call warrant”, by repealing “that is listed on an approved stock exchange or an approved futures exchange and”;
 - (B) in the definition of “put warrant”, by repealing “that is listed on an approved stock exchange or an approved futures exchange and”;
 - (C) in the definition of “warrant” –
 - (I) in paragraph (a), by repealing “is listed on an approved stock exchange and that”;
 - (II) in paragraph (c), by repealing the comma and substituting a full stop;
 - (III) by repealing everything after paragraph (c);
 - (ii) by adding –
 - “(4) For the purposes of this Schedule, a security is to be listed on an approved stock exchange or an approved futures exchange if the requirements specified by the Authority for this purpose are complied with in relation to the security.”;
- (b) in section 2 –
- (i) in subsection (1), by adding “(excluding an investment permitted under section 11 of this Schedule)” after “permissible investments”;

- (ii) by adding –
- “(1A) For the purposes of subsection (1), where the funds of a constituent fund are invested in a relevant investment, the amount invested in the relevant investment is also to be taken into account in the manner specified by the Authority for the purposes of this subsection when ascertaining the total amount of the funds invested in the securities and other permissible investments issued by the person who issues the underlying investment of the relevant investment.”;
- (iii) by adding –
- “(1B) Where the repayment of principal or the payment of interest in respect of a debt security issued by a person is guaranteed by another person, the debt security is, for the purposes of subsection (1), to be regarded as also issued by the other person.”;
- (iv) in subsection (2), by repealing “securities or other permissible investments of a particular class” and substituting “the shares of a particular class, or the total amount of debt securities,”;
- (v) by adding –
- “(7) In this section –
- “relevant investment” (有關投資項目) means a permissible investment –
- (a) the value of which is determined by reference to the value of another investment; and

- (b) which is specified, or belongs to a class of investment specified, by the Authority as a relevant investment for the purposes of this definition;

“underlying investment” (基礎投資項目), in relation to a relevant investment, means an investment –

- (a) by reference to the value of which the value of the relevant investment is determined; and
- (b) which is specified, or belongs to a class of investment specified, by the Authority as an underlying investment for the purposes of this definition.”;

- (c) in section 6A –
 - (i) by repealing “(1)” before “The”;
 - (ii) in paragraph (a)(ii), by repealing “recognized”;
- (d) in section 7 –
 - (i) in subsection (2)(d), by repealing “recognized stock exchange” and substituting “approved stock exchange”;
 - (ii) by adding –

“(5) For the purposes of this section, “debt security” (債務證券) does not include a document issued by a person as evidence of a deposit, within the meaning of section 11 of this Schedule, that is placed with that person.”;

- (e) in section 8 –
- (i) in subsection (1) –
- (A) in paragraph (a), by repealing “or”;
- (B) in paragraph (b), by repealing the full stop and substituting “; or”;
- (C) by adding –
- “(c) securities listed on an approved stock exchange that are approved, or are of a kind approved, by the Authority.”;
- (ii) in subsection (2), by repealing everything before paragraph (c) and substituting –
- “(2) Not more than 10 per cent in total of the funds of a constituent fund may be invested in the following –
- (a) fully-paid up shares listed on a stock exchange that is not an approved stock exchange, other than the shares of a company that is a collective investment scheme;
- (b) securities that are approved, or are of a kind approved, by the

Authority, other than
 shares listed on an
 approved stock exchange;
 and”;

- (f) in section 9 –
- (i) by renumbering it as section 9(1);
 - (ii) in subsection (1)(a), by repealing “recognized stock exchange” and substituting “approved stock exchange”;
 - (iii) by adding –
 - “(2) For the purposes of this section, “convertible debt security” (可轉換債務證券) does not include a document issued by a person as evidence of a deposit, within the meaning of section 11 of this Schedule, that is placed with that person.”;
- (g) in section 10, by adding before paragraph (a) –
- “(aa) the warrant is listed on an approved stock exchange or an approved futures exchange;
 - (ab) the underlying ordinary shares to which the warrant may be converted are listed on an approved stock exchange;”;
- (h) in section 11 –
- (i) in subsection (1), in the English text, by repealing “deposited with” and substituting “placed on deposit with”;
 - (ii) by adding –
 - “(1A) The funds of a constituent fund must not be placed on deposit with a branch outside Hong Kong of an authorized financial

institution incorporated outside Hong Kong unless the authorized financial institution satisfies a minimum credit rating set by the Authority, based on the credit rating of the authorized financial institution as determined by an approved credit rating agency.”;

- (iii) in subsection (2), in the English text –
 - (A) by repealing “deposited with” and substituting “placed on deposit with”;
 - (B) by repealing “deposited would” and substituting “so placed would”;
- (iv) in subsection (3), in the English text –
 - (A) by repealing “deposited with” and substituting “placed on deposit with”;
 - (B) by repealing “deposited would” and substituting “so placed would”;
- (v) in subsection (4), in the English text, by repealing “deposited” and substituting “so placed”;
- (vi) by adding –
 - “(4A) Notwithstanding subsection (4), where a constituent fund has a total market value of less than \$8,000,000, then that subsection shall not apply to the constituent fund if the approved trustee has the prior approval of the Authority that that subsection shall not apply to the constituent fund.”;
- (vii) by adding –
 - “(4B) For the purposes of this section, where the funds of a constituent fund are invested in a certificate of deposit that is –

- (a) issued by an authorized financial institution or an eligible overseas bank; and
- (b) acquired from a person other than the authorized financial institution or eligible overseas bank,

such amount of the funds as is equal to the market value of the certificate of deposit is to be regarded as having been placed on deposit with the authorized financial institution or eligible overseas bank.”;

- (viii) in subsection (5), by repealing the definition of “deposit” and substituting –

““deposit” (存款) means a loan of money that is

repayable with or without interest or premium, either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it, but does not include a loan of money –

- (a) upon terms referable to the provision of property or services or the giving of security; or
- (b) specified by the Authority as not being regarded as a

deposit for the purposes of
this definition,

and references to placing funds on deposit
shall be construed accordingly.”;

- (i) by repealing section 12;
- (j) by repealing section 13 and substituting –

“13. **Permissible investments:
securities to be listed**

The funds of a constituent fund may be applied for
acquiring securities that are –

- (a) of a kind to which section
7(2)(d), 8(1), 9(1)(a) or 10 of this
Schedule would apply if they
were listed on an approved stock
exchange or an approved futures
exchange; and
 - (b) to be listed on an approved stock
exchange or an approved futures
exchange. ”;
- (k) in section 14 –
 - (i) in subsection (2), by repealing “listed” and
substituting “traded”;
 - (ii) by adding –
 - “(2A) A contract described in
paragraph (a) or (b)(i) of the definition of
“financial futures contract” in section 2 of this
Regulation must not be acquired for a constituent
fund unless investing in the specified security or
securities concerned is permitted under this

- Schedule at the time when the contract is entered into.”;
- (iii) in subsection (3), by repealing “listed” and substituting “traded”;
- (l) in section 15 –
- (i) in subsection (2) –
 - (A) by repealing “A” and substituting “Subject to subsection (2A), a”;
 - (B) in paragraph (a), by adding “or an eligible overseas bank” after “authorized financial institution”;
 - (ii) by adding –
 - “(2A) A currency forward contract must not be acquired from a branch outside Hong Kong of an authorized financial institution incorporated outside Hong Kong unless the authorized financial institution satisfies a minimum credit rating set by the Authority, based on the credit rating of the authorized financial institution as determined by an approved credit rating agency.”;
- (m) in section 16(3), in the definition of “Hong Kong dollar currency investment” –
- (i) in paragraph (b), by repealing “9(b)” and substituting “9(1)(b)”;
 - (ii) in paragraph (c) –
 - (A) by repealing “9(a)” and substituting “9(1)(a)”;
 - (B) by adding “or to be listed” after “listed”;

- (iii) in paragraph *(d)*, by adding “or to be listed” after “listed”.

Clerk to the Executive Council

COUNCIL CHAMBER

9 May 2006

Explanatory Note

This Regulation makes miscellaneous amendments to the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) (“principal Regulation”). The major provisions of this Regulation include the following –

- (a)* section 2(*a*)(i) and *(b)*(i) of this Regulation removes the references to an approved futures exchange and an approved stock exchange from the definitions of “financial futures contract” and “financial option contract” in section 2 of the principal Regulation. These references are considered unnecessary because section 14 of Schedule 1 to the principal Regulation has already provided that a financial futures contract or financial option contract must be listed on an approved futures exchange or an approved stock exchange in order to qualify as a permissible investment;

- (b) section 3(a)(i) of this Regulation removes from the definitions of “call warrant”, “put warrant” and “warrant” in section 1(1) of Schedule 1 to the principal Regulation the requirement that securities must be listed on an approved stock exchange or an approved futures exchange in order to fall within the meaning of these terms. The requirement is transferred to section 10 of that Schedule, which contains provisions dealing with warrants as a permissible investment (see section 3(g) of this Regulation);
- (c) section 3(a)(ii) of this Regulation provides that for the purposes of Schedule 1 to the principal Regulation, a security is to be listed on an approved stock exchange or an approved futures exchange if the requirements specified by the Mandatory Provident Fund Schemes Authority (“Authority”) for the purpose are complied with in relation to the security;
- (d) section 3(b) of this Regulation amends section 2(1) of Schedule 1 to the principal Regulation, which prescribes a ceiling on the total amount of funds that may be invested in securities and other permissible investments issued by one person. Section 3(b)(i) of this Regulation excludes deposits from the restriction imposed by that section 2(1);
- (e) section 3(b)(ii) of this Regulation provides that where the funds of a constituent fund are invested in a permissible investment (“relevant investment”) the value of which is determined by reference to the value of another investment (“underlying investment”), the amount invested in the relevant investment is also to be taken into account when ascertaining the total amount of the funds invested in the

- securities and other permissible investments issued by the person who issues the underlying investment;
- (f) section 3(b)(iii) of this Regulation provides that where the repayment of principal or the payment of interest in respect of a debt security is guaranteed by a person, the debt security is to be regarded as also issued by that person when ascertaining whether the ceiling prescribed by section 2(1) of Schedule 1 to the principal Regulation has been exceeded;
- (g) section 2(2) of Schedule 1 to the principal Regulation prescribes a ceiling on the total amount of securities and other permissible investments issued by one person that a constituent fund may acquire. Section 3(b)(iv) of this Regulation amends that section so that the 10 per cent ceiling imposed by that section applies only to shares and debt securities;
- (h) section 3(d)(ii) of this Regulation amends section 7 of Schedule 1 to the principal Regulation to clarify that in that section a debt security does not include a document evidencing a deposit within the meaning of section 11 of that Schedule;
- (i) section 3(e)(i) of this Regulation amends section 8 of Schedule 1 to the principal Regulation to permit funds to be invested in securities listed on an approved stock exchange, that are approved by the Authority;
- (j) section 3(e)(ii) of this Regulation amends section 8(2) of Schedule 1 to the principal Regulation to clarify that shares mentioned in paragraph (a) of that section 8(2) are fully-paid up shares;

- (k) section 3(f)(iii) of this Regulation amends section 9 of Schedule 1 to the principal Regulation to clarify that in that section a convertible debt security does not include a document evidencing a deposit within the meaning of section 11 of that Schedule;
- (l) section 3(h) of this Regulation amends section 11 of Schedule 1 to the principal Regulation, which provides that funds may be placed on deposit with an authorized financial institution or eligible overseas bank. Section 3(h)(ii) of this Regulation provides that funds may only be placed on deposit with a branch outside Hong Kong of an authorized financial institution incorporated outside Hong Kong if that institution satisfies a minimum credit rating set by the Authority;
- (m) section 3(h)(vi) of this Regulation provides that where a constituent fund has a total market value of less than \$8,000,000, the total amount of funds deposited with a group of associated authorized financial institution or eligible overseas banks may, with the prior approval of the Authority, exceed 25 per cent of the total market value of the constituent fund;
- (n) section 3(h)(vii) of this Regulation clarifies that where funds are invested in a certificate of deposit that is issued by an authorized financial institution or eligible overseas bank and acquired from a person other than that institution or bank, an amount equal to the market value of the certificate is to be regarded as having been deposited with that institution or bank;

- (o) section 3(*h*)(viii) of this Regulation amends the definition of “deposit” in section 11(5) of Schedule 1 to the principal Regulation;
- (p) section 3(*i*) of this Regulation repeals section 12 of Schedule 1 to the principal Regulation, which contains provisions dealing with application of funds for subscribing for debt securities from underwriters. Subscription for debt securities will be dealt with by the amended section 13 of that Schedule;
- (q) section 3(*j*) of this Regulation amends section 13 of Schedule 1 to the principal Regulation to clarify that funds may be applied for acquiring specified kinds of securities that are to be listed, irrespective of whether they are offered to the public for subscription or not. It also removes the restriction that the total value of securities to be subscribed for must not exceed the amount of money held on deposit for the constituent fund;
- (r) section 3(*k*)(ii) of this Regulation amends section 14 of Schedule 1 to the principal Regulation to provide that a stock futures contract may not be acquired for a constituent fund unless the securities to which the contract relates are themselves permissible investments;
- (s) section 3(*l*) of this Regulation amends section 15 of Schedule 1 to the principal Regulation, which relates to the acquisition of currency forward contracts. Section 3(*l*)(i)(B) of this Regulation provides that a currency forward contract may be acquired from an eligible overseas bank;
- (t) section 3(*l*)(ii) of this Regulation provides that a currency forward contract may only be acquired for a constituent

fund from a branch outside Hong Kong of an authorized financial institution incorporated outside Hong Kong if that institution satisfies a minimum credit rating set by the Authority;

- (u) section 3(*m*) of this Regulation amends the definition of “Hong Kong dollar currency investment” in section 16(3) of Schedule 1 to the principal Regulation consequent upon the amendments made to section 13 of that Schedule under section 3(*j*) of this Regulation.

Legislative Council Meeting of 14 June 2006

Speech of the Secretary for Financial Services and the Treasury for Moving a Motion for the Passage of the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2006

Madam President,

I move a motion for the passage of the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2006 ("the Amendment Regulation").

2. Since the implementation of the Mandatory Provident Fund ("MPF") System in December 2000, the Government and the Mandatory Provident Fund Schemes Authority ("the MPFA") has constantly strengthened and refined the system to ensure that it is in line with the prevailing market practice and serving the interests of MPF scheme members.

3. Over the past few years, in response to the amendment proposals regarding the MPF legislation raised by the MPFA, we have introduced two amendment bills into the Legislative Council ("the LegCo"), which were both passed. On the other hand, the MPFA has established the MPF Schemes Operation Review Committee ("the Review Committee"). The Review Committee comprises representatives of employee and employer groups, service providers, professional bodies, etc. It is tasked to review the operational aspects of the MPF legislation for further improvements. The Review Committee has completed a series of reviews on investment regulations set out in the Mandatory Provident Fund Schemes (General) Regulation.

4. In response to the MPFA's proposals, which are based on the recommendations of the Review Committee, we now introduce into the LegCo a number of technical amendments to the investment regulations governing MPF funds. In making these proposals, we have considered the operational experience and the current situation of the financial markets. They aim to enhance protection of scheme members' interests, improve operation of existing provisions, enhance flexibility of MPF investments and remove undue restrictions on investment of MPF scheme funds. We trust that the industry and scheme members will welcome these proposals.

5. Madam President, the financial markets are developing constantly. To ensure that our investment regulations are in line with the current market situation and are able to serve the best interests of MPF scheme members, it is necessary to review and refine the relevant regulations and technical arrangements from time to time. I hope that Members will support the passage of this Amendment Regulation.

6. Thank you, Madam President.