

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

II.9 Guidelines on Notification of Events of Significant Nature

INTRODUCTION

Section 62(1) of the Mandatory Provident Fund Schemes (General) Regulation (“the Regulation”) provides that if the approved trustee of a registered scheme becomes aware of the occurrence of an event of significant nature, the trustee must-

- (a) not later than the third specified working day after becoming aware of the event, give written notice to the Mandatory Provident Fund Schemes Authority (“the Authority”) setting out particulars of the event (except an event specified in the guidelines as an event to which this paragraph shall not apply);
- (b) keep a record of particulars of the event;
- (c) permit the Authority to inspect the record at any reasonable time during ordinary business hours; and
- (d) give written notice to the Authority-
 - (i) setting out such further or better particulars of the event as the Authority requires; and
 - (ii) as soon as is practicable after the Authority makes that requirement.

2. Section 62(2) of the Regulation provides that the reference to an event of significant nature includes (but is not limited to) the following:

- (a) any event that causes the approved trustee to contravene the Mandatory Provident Fund Schemes Ordinance (“the Ordinance”), the governing rules of the scheme or a condition to which the

approval of the approved trustee as such is subject; and

- (b) any material change to the approved trustee's capacity or ability to act as an approved trustee.

3. Section 6H of the Ordinance provides that the Authority may issue guidelines for the guidance of approved trustees, service providers, participating employers and their employees, self-employed persons, regulated persons and other persons concerned with the Ordinance.

4. The Authority hereby issues guidelines to:

- (a) specify events of significant nature to which section 62(1)(a) of the Regulation shall not apply;
- (b) provide guidance about events which are of significant nature to which section 62 of the Regulation shall apply; and
- (c) set out the minimum information about the events of significant nature to be reported by the approved trustees to the Authority pursuant to section 62(1)(a) of the Regulation.

5. By virtue of C1.2 and D1.2 of the Code on MPF Investment Funds, section 62 of the Regulation and accordingly, these Guidelines, are also applicable to approved pooled investment funds and (as applicable) their trustees.

EFFECTIVE DATE

6. These revised Guidelines (Version 3 – March 2017) shall become effective on the date of commencement of operation of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2016, i.e. 1 April 2017. The previous version of these Guidelines (Version 2 – June 2015) shall be superseded on that day.

SIGNIFICANT EVENTS TO WHICH SECTION 62(1)(a) OF THE REGULATION SHALL NOT APPLY

7. The events of significant nature specified by the Authority to which section 62(1)(a) of the Regulation shall not apply are passive breaches of investment restrictions which are beyond the control of the approved trustees or investment managers (e.g. breaches of investment diversification requirements resulting from external factors such as market movements (including movements in exchange rates) and fund inflow / outflow due to subscriptions / redemptions of fund units).

8. Approved trustees do not need to report such events to the Authority pursuant to section 62(1)(a) of the Regulation. The requirements set out in sections 62(1)(b) to (d) of the Regulation do however continue to apply as appropriate.

EVENTS OF SIGNIFICANT NATURE TO WHICH SECTION 62 OF THE REGULATION SHALL APPLY

9. The list of events of significant nature under section 62(2) of the Regulation is not exhaustive. As a general guidance, the Authority also regards events of significant nature for the purpose of section 62 of the Regulation to include the following:

- (a) any event involving any act or activity of suspected criminal nature (whether convicted or not) in relation to a registered scheme which may have a materially adverse effect to the interests of scheme members, including but not limited to any fraudulent or dishonest act, misfeasance, or illegal conduct by a staff member of an approved trustee or a service provider;
- (b) any event involving any winding up, insolvency, disciplinary or intervention action by a regulator of a service provider appointed

by the approved trustee;

- (c) any event involving winding up, insolvency, disciplinary or intervention action by a regulator of an insurer of an approved pooled investment fund in which the registered scheme administered by the trustee invests, or any other changes in the circumstances of the insurer of the approved pooled investment fund which may have a materially adverse effect to the interests of scheme members;
- (d) any event affecting a controller of an approved trustee, which may have a materially adverse effect to the interests of scheme members, including but not limited to an order or decision made by the court or other competent authority that the controller is guilty of fraud or dishonesty, an event involving any act or activity of suspected criminal nature (whether convicted or not) of the controller, an order of winding-up or bankruptcy of the controller, a decision by any regulatory or professional body to impose disciplinary action against the controller;
- (e) any event that leads to suspension of dealing or restriction of redemption in accordance with the relevant governing rules of any registered schemes; and
- (f) a breach of any undertaking given pursuant to the Ordinance or as required by the Authority from time to time.

10. As a general guidance, the Authority also regards the following as a material change to an approved trustee's capacity or ability to act as an approved trustee referred to in section 62(2)(b) of the Regulation:

- (a) the making of a claim by the approved trustee under the insurance required under section 29 of the Regulation to be maintained in respect of the scheme;

- (b) the making of a claim or legal demand, the commencement of proceedings (including arbitration proceedings), or the exercise of any rights by a creditor (including rights under any securities) against the approved trustee which may adversely prejudice the approved trustee's ability to comply with the prescribed capital adequacy requirements set out in section 11 of the Regulation; and
- (c) the disruption of the approved trustee's operations, such as staff turnover including mass resignation or dismissal and change in key personnel such as heads of operations, compliance or customer service, which may have a material impact on the approved trustee's ability to exercise or perform a function under the Ordinance.

11. Approved trustees must exercise judgement that may reasonably be expected of a prudent trustee who is familiar with the operation of registered schemes in determining whether an event is an event of significant nature under section 62(1) of the Regulation. Neither the list in section 62(2) of the Regulation nor the list in paragraph 9 or 10 above sets out exhaustively events of significant nature.

PARTICULARS OF SIGNIFICANT EVENTS TO BE INCLUDED IN WRITTEN NOTICE GIVEN TO THE AUTHORITY

12. The approved trustee must, not later than the third specified working day after becoming aware of an event of significant nature, give written notice to the Authority setting out particulars of the event pursuant to section 62(1)(a) of the Regulation. The reporting of such event should be made by the Chief Executive Officer, head of compliance, head of operation, a senior officer of similar ranking or a director of the approved trustee. In reporting the event of significant nature to the Authority, the approved trustee should at least

include the following particulars in the written notice:

- (a) the date of occurrence of the event and the date of rectification, if applicable;
- (b) the reason for reporting the event, including but not limited to the relevant section of the Ordinance, the Regulation, guidelines or codes;
- (c) the party who identified the event and the identification date;
- (d) the date when and the channel through which the approved trustee comes to notice of the event;
- (e) the name of the affected scheme(s) or constituent fund(s) or approved pooled investment fund(s);
- (f) the name of all relevant service provider(s) involved in the event;
- (g) under what situation the event was identified by the approved trustee or the relevant party; and
- (h) a brief description of the event.

If there are any particulars not available at the time of reporting to the Authority, the approved trustee should provide such particulars to the Authority as soon as practicable afterwards.

DEFINITION OF TERMS

13. Where a term used in the Guidelines is defined in the Ordinance or the subsidiary legislation then, except where specified in the Guidelines, that term carries the meaning as defined in the Ordinance or the subsidiary legislation.

WARNING

14. It is an offence under section 43E of the Ordinance if a person, in any document given to the Authority, makes a statement that he knows to be

false or misleading in a material respect, or recklessly makes a statement which is false or misleading in a material respect.