

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

I.1 Guidelines on Application for Approval as Trustees and Application for Approval as Controllers of Approved Trustees

INTRODUCTION

Application for Approval as Approved Trustees

Section 20(1) of the Mandatory Provident Fund Schemes Ordinance (“the Ordinance”) provides that a person may apply to the Mandatory Provident Fund Schemes Authority (“the Authority”) for approval as trustee for the purposes of the Ordinance.

2. Section 20(4) of the Ordinance requires that an application must –
 - (a) be in a form approved by the Authority; and
 - (b) contain such information, and be accompanied by such documents, as may be prescribed by the guidelines; and
 - (c) be accompanied by an application fee of such amount as may be prescribed by the regulations.

Application for Approval as Controllers of Approved Trustees

3. According to section 2 of the Ordinance, the following persons are controllers of an approved trustee that is a company:
 - (a) the chief executive officer and directors of the company (“officer”);
 - (b) a person in accordance with whose instructions those directors are accustomed to act (“shadow director”);

- (c) a natural person who, alone or together with an associate, a close relative or an employee of the person, or a company of which the person is a director, or through a nominee, controls at least 15% of the voting shares of the company (“substantial shareholder”);
- (d) another company that, alone or with any associate, or any employee of an associate, of that other company, or through a nominee, controls at least 15% of the voting shares of the first-mentioned company (“substantial shareholder”).

4. Section 42B(1) of the Mandatory Provident Fund Schemes (General) Regulation (“the Regulation”) provides that an approved trustee must not, on or after 1 December 2008, appoint a person to be an officer of the trustee unless the Authority has, on the application of the trustee, given prior written consent to the person’s becoming such an officer. Sections 42C(1) and 42D(1) provide that a person must not become a shadow director or a substantial shareholder respectively of an approved trustee unless the Authority has given prior written consent to the person’s becoming such a shadow director or substantial shareholder. Sections 42B(2), 42C(2) and 42D(4) of the Regulation further require that an application for the consent of the Authority to be a controller of an approved trustee must -

- (a) be in a form approved by the Authority; and
- (b) contain such information, and be accompanied by such documents, as are specified in the form.

5. The Authority hereby issues guidelines to specify the forms for application as trustees and controllers of approved trustees and prescribe the information and documents to be submitted together with the application forms.

APPLICATION FOR APPROVAL

Prescribed Forms

Application for Approval as Approved Trustees

6. Application for approval as approved trustees can be made by either a company or a natural person.

7. For applicants which are companies (“corporate applicants”), the applications shall be made in the prescribed format as set out at Annexes A to D:

- (a) Annex A refers to the main application form (Form TC) which covers the information relating to the particulars of the applicant;
- (b) Annex B refers to the business plan (Form TC(B)) which covers the information relating to the operation system of the applicant;
- (c) Annex C refers to form (Form TC(A)) which covers the information relating to the administrator of the applicant; and
- (d) Annex D refers to the application form (Form TC(C)) which covers the information relating to the particulars of the controllers of the applicant. Each of the controllers has to fill in a separate Form TC(C).

8. For applicants who are natural persons (“individual applicants”), applications shall be made in the prescribed format as set out at Annex E (Form TI) which covers the information relating to the suitability of the applicant.

Application for Approval as Controllers of Approved Trustees

9. For application for approval as a controller of an approved trustee, the application shall be made in the prescribed format as set out at Annex D (Form TC(C)). Each applicant has to fill in a separate Form TC(C).

10. The prescribed format of the forms in the Annexes can be downloaded from the Authority's website at:

www.mpfa.org.hk

Definitions of Terms

11. 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.

Submission of Application

12. Completed application forms and the relevant application documents for approval as trustees and/or controllers of approved trustees should be submitted in hard copies and sent, together with the application fees (if any), to:

Mandatory Provident Fund Schemes Authority
Level 16, International Commerce Centre
1 Austin Road West, Kowloon
Hong Kong

Warning

13. If there is any change to the application information or documents after an application is submitted to the Authority, the applicant should inform the Authority as soon as reasonably practicable. 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.