

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

I.7 Guidelines on Central Securities Depositories

INTRODUCTION

Section 73(1) of the Mandatory Provident Fund Schemes (General) Regulation (“the Regulation”) provides that an agreement entered into between the approved trustee of a registered scheme and a custodian of scheme assets or between the custodian and delegate of the custodian may provide for scheme assets to be held in a central securities depository.

2. Under section 2 of the Regulation, a central securities depository means a depository in Hong Kong, a depository or a clearing agency outside Hong Kong that is approved by the Mandatory Provident Fund Schemes Authority (“the Authority”) for the purposes of the Regulation.

3. The Authority hereby issues guidelines to:

- (a) set out the list of central securities depositories that are approved by the Authority for the purpose of the Regulation;
- (b) provide guidance on the criteria which the Authority will apply in determining whether to approve a central securities depository; and
- (c) specify the information that needs to be submitted when seeking the approval of the Authority with respect to a depository which is not on the list of approved central securities depositories.

LIST OF CENTRAL SECURITIES DEPOSITORIES

4. For the purpose of section 2 of the Regulation, the central securities depositories in which scheme assets may be held are set out in Annex A. The

Authority also approves a central securities depository formed through the merger of two approved central securities depositories or the acquisition of one approved central securities depository by another approved depository.

5. ***Treasuries, central and reserve banks:*** Annex A includes all depositories or clearing facilities (including any central registration system, book entry system or equivalent) operated by the treasury, the central bank or the reserve bank of a country/place. No further or prior approval is required from the Authority where MPF scheme assets are to be held in such depository or clearing facilities. An illustrative list of treasuries, central banks and reserve banks that act in such capacities is shown in Annex B. For the avoidance of doubt, separately incorporated subsidiaries owned by the government or the central/reserve bank of a jurisdiction will not be considered as part of the treasury/central bank and must be separately approved.

6. Prior approval of the Authority is required if scheme assets are to be held in central securities depositories other than those listed in Annex A.

7. Notwithstanding approval by the Authority of a central securities depository, approved trustees of registered schemes should ensure that their custody arrangements provide reasonable safeguards against the custody risks associated with maintaining assets with such central securities depositories.

8. Approved trustees with scheme assets under safe-custody of approved central securities depositories should notify the Authority in writing of any proposed changes to the name or identity of the central securities depository as soon as practicable.

APPROVAL CRITERIA OF A CENTRAL SECURITIES DEPOSITORY

9. The following is a set of criteria which the Authority will apply in considering an application for approval of a central securities depository for the purposes of the Regulation:

- (a) the depository must act as or operate a system for the central handling of securities or equivalent book-entries in the country where it is incorporated, or a transnational system for the central handling of securities or equivalent book-entries;
- (b) it must be regulated by a financial regulatory authority;
- (c) it must hold assets for custodians that participate in the system under safekeeping conditions no less favorable than the conditions that apply to other participants;
- (d) it must maintain adequate records that identify the assets of each participant and segregate the system's own assets from the assets of participants;
- (e) it must provide periodic reports to its participants with respect to its safekeeping of assets, including notices of transfers to or from any participant's account; and
- (f) it must be subject to periodic examination by regulatory authorities or independent accountants.

10. The Authority may also consider other factors which include the legal structure of the depository, whether the depository is covered by professional indemnity insurance, the credit rating of the depository (if any), and whether the use of a depository is mandatory or a market practice in the relevant jurisdiction.

INFORMATION TO BE SUBMITTED FOR APPLICATION OF APPROVAL OF A CENTRAL SECURITIES DEPOSITORY

11. In seeking the approval by the Authority of any further securities depository, the relevant applicant should submit the following information to the Authority:

- (a) the particulars of the depository to be utilized, i.e. name, address, place of incorporation;
- (b) types of securities that will be deposited;
- (c) whether the use of the depository is mandatory or a market practice;
- (d) the legal status and structure of the depository, i.e. whether it is independent, non-profit-making or privately owned, etc.;
- (e) the ownership of the depository, i.e. shareholders and their shareholding;
- (f) the regulation or statute under which the depository is established and governed as well as the name of the regulatory body;
- (g) a confirmation from the depository or documentation from an independent source that the depository satisfies the conditions listed in paragraph 9 above;
- (h) whether the depository is guaranteed by a government, state, central bank or other authorities or organizations;
- (i) whether the depository is covered by professional indemnity insurance;
- (j) the credit rating of the depository, if available; and
- (k) any other information that may assist the Authority in considering the application.

12. The Authority will inform the applicant in writing whether a depository is approved as a central securities depository for the purposes of the Regulation. The applicant should notify the Authority in writing as soon as

practicable if there is any change in the information submitted to the Authority that may affect the approval given with respect to that depository. The list of Approved Central Securities Depositories in Annex A will be amended when a central securities depository is approved.

13. Approved trustees should note that these Guidelines relate only to custody and holding arrangement for assets and that nothing in these Guidelines affect what is a permissible investment of a constituent fund or approved pooled investment fund. Part II of Schedule 1 to the Regulation and the Guidelines issued for the purpose of that Part set out the permissible investments for constituent funds and approved pooled investment funds.