

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

EFFECTIVE DATE

4. These revised Guidelines (Version 10 – December 2022) shall become effective on 23 December 2022. The previous version of these Guidelines (Version 9 – June 2018) shall be superseded on that day.

5. A reference to a depository in the paragraphs below is a reference to (a) a depository in Hong Kong or (b) a depository or a clearing agency outside Hong Kong.

LIST OF CENTRAL SECURITIES DEPOSITORIES

6. For the purposes of the Regulation, the central securities depositories in which MPF scheme assets may be held are set out in Annex A. For the avoidance of doubt, provided that the approval criteria set out in paragraph 11 below continue to be satisfied:

- (a) a depository which is a central securities depository maintains its status as a central securities depository notwithstanding a change in the name of the depository; and
- (b) a depository formed through the merger of two or more central securities depositories, or the acquisition of one central securities depository by another central securities depository, remains a central securities depository.

7. ***Treasuries, central banks and reserve banks***: Annex A lists out 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 held or to be held in such depositories 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, the central bank or the reserve bank of a country/place will not be considered as part of the treasury, the central bank or the reserve bank and must be separately approved by the Authority.

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

9. Notwithstanding approval by the Authority of a 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.

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

APPROVAL CRITERIA OF A DEPOSITORY

11. The following is a set of criteria which the Authority will apply in considering an application for approval of a 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/place 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 favourable 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.

12. 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 country/place.

INFORMATION TO BE SUBMITTED FOR APPLICATION FOR APPROVAL OF A DEPOSITORY

13. In seeking the approval by the Authority of a depository, the applicant should submit the following information to the Authority:

- (a) the particulars of the depository to be utilized, i.e. the name, address and place of incorporation of the depository;
- (b) the 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, e.g. whether it is independent, non-profit-making or privately owned;
- (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 authority;
- (g) a confirmation from the depository or documentation from an independent source that the depository satisfies the conditions listed in paragraph 11 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.

14. The Authority will inform the applicant in writing whether a depository is approved as a central securities depository for the purposes of the Regulation. During the approval process and, as an ongoing obligation, after approval is granted to a depository, 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.

15. Approved trustees should note that these Guidelines relate only to custody and holding arrangement for MPF scheme assets and that nothing in these Guidelines affects what is a permissible investment for a constituent fund or approved pooled investment fund. Part 2 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.

DEFINITION OF TERMS

16. Where a term used in the Guidelines is defined in the Mandatory Provident Fund Schemes Ordinance (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

17. It is an offence under section 43E of the Ordinance if a person, in any document given to a prescribed person¹ in connection with the Ordinance, makes a statement that the person knows to be false or misleading in a material respect, or recklessly makes a statement which is false or misleading in a material respect.

¹ Prescribed person means (a) the Authority; (b) a system operator of an electronic MPF system; (c) an approved trustee; (d) a trustee of a relevant scheme; or (e) an auditor of an approved trustee or of a registered scheme.