

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

III.2 Guidelines on Equities and Other Securities

INTRODUCTION

Section 8 of Schedule 1 to the Mandatory Provident Fund Schemes (General) Regulation (“the Regulation”) provides that:

- (a) The funds of a constituent fund may be invested in –
 - (i) fully-paid up shares listed on an approved stock exchange other than the shares of a company which is a collective investment scheme;
 - (ii) an index-tracking collective investment scheme approved by the Mandatory Provident Fund Schemes Authority (“the Authority”) for the purposes of section 6A of this Schedule; or
 - (iii) securities listed on an approved stock exchange that are approved, or are of a kind approved, by the Authority.
- (b) Not more than 10% in total of the funds of a constituent fund may be invested in the following:
 - (i) 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;
 - (ii) securities that are approved, or are of a kind approved, by the Authority, other than shares listed on an approved stock exchange; and
 - (iii) an authorized unit trust or authorized mutual fund of a kind to which Part IV of Schedule 1 to the Regulation does not apply but which is approved by the Authority.

2. Section 6H of the Mandatory Provident Fund Schemes Ordinance (“the Ordinance”) provides that the Authority may issue guidelines for the guidance of approved trustees, service providers and other persons concerned with the Ordinance.

3. The Authority hereby issues guidelines to:

- (a) set out the general criteria that will be applied by the Authority in considering applications for approval of investments under sections 8(1)(c) and 8(2)(b) of Schedule 1 to the Regulation;
- (b) specify the securities that are approved, or are of a kind approved by the Authority for the purposes of section 8(1)(c) of Schedule 1 to the Regulation;
- (c) specify securities that are approved, or are of a kind approved by the Authority for the purposes of section 8(2)(b) of Schedule 1 to the Regulation; and
- (d) specify the kind of authorized unit trusts or authorized mutual funds approved by the Authority for the purposes of section 8(2)(c) of Schedule 1 to the Regulation.

ADDITIONAL TYPES OF PERMISSIBLE INVESTMENTS UNDER SECTION 8(1)(C) OF SCHEDULE 1 TO THE REGULATION

4. Pursuant to section 8(1)(c) of Schedule 1 to the Regulation, the Authority has approved the following kind of securities:

- (a) securities which are receipts or certificates entitling the holders (either directly or through another receipt or certificate) to the economic benefits (which may or may not include voting rights) of ownership of the underlying shares of a single company where:

- (i) the receipts or certificates are listed on an approved stock exchange;
 - (ii) the underlying shares of the company are fully-paid up and are listed on an approved stock exchange; and
 - (iii) the receipts or certificates are fully-paid up and do not require any further or future payment; or
- (b) fully-paid up receipts or certificates listed on an approved stock exchange where the underlying securities satisfy (a) above.

Receipts or certificates that satisfy (a) and (b) above do not require any separate approval and include, by way of illustration:

- (i) American Depositary Receipts (“ADRs”) and Global Depositary Receipts (“GDRs”) which are listed on an approved stock exchange where the respective underlying shares are fully-paid up and are listed on an approved stock exchange;
- (ii) CHESS Depositary Interests (“CDIs”) listed on the Australian Stock Exchange where the respective underlying shares are fully-paid up and are listed on a foreign (i.e. outside Australia) stock exchange which is an approved stock exchange;
- (iii) Non-Voting Depositary Receipts (“NVDRs”) listed on the Stock Exchange of Thailand where the respective underlying shares (but not warrants or transferable subscription rights) are fully-paid up and are listed on the same stock exchange;
- (iv) fully-paid up depositary receipts (certificaten van aandelen) listed on Euronext Amsterdam;
- (v) Richemont “A” equity units listed on the SWX Swiss Exchange;

- (vi) non-voting equity securities (“NES”) issued by Roche Holdings Limited listed on SWX Swiss Exchange; and
- (vii) fully-paid up receipts or certificates listed on an approved stock exchange where the underlying securities satisfy any of the above.

CATEGORIES OF OTHER SECURITIES

Shares listed on a stock exchange that is not an approved stock exchange

5. Guidelines III.4 on approved exchanges set out a list of approved stock exchanges. References should be made to those guidelines for the purposes of section 8(2)(a) of Schedule 1 to the Regulation.

Securities approved by the Authority other than shares listed on an approved stock exchange

6. Pursuant to section 8(2)(b) of Schedule 1 to the Regulation, the Authority has approved securities which are receipts or certificates entitling the holders (either directly or through another receipt or certificate) to the economic benefits (which may or may not include voting rights) of ownership of the underlying shares of a single company where:

- (a) the receipts or certificates are listed on an approved stock exchange;
- (b) the underlying shares of the company are fully-paid up and are listed on a stock exchange other than an approved stock exchange; and
- (c) the receipts or certificates are fully-paid up and do not require any further or future payment.

Receipts or certificates that satisfy these conditions do not require any separate approval.

7. Securities other than those set out in paragraphs 4 and 6 may be considered for approval under section 8(1)(c) or 8(2)(b) of Schedule 1 to the Regulation. In considering applications for approval, the Authority will apply the following criteria:

- (a) Securities would not be approved for inclusion if such inclusion would be contrary to a clear and express restriction in the law. The approval discretion would generally be limited to those cases where existing impermissibility was unintended, not contemplated or unclear.
- (b) The securities should be generally appropriate for MPF investments taking into account factors including the following:
 - (i) the nature of the securities is such that they are analogous to other permissible investments (e.g. for the purpose of section 8(1)(c), the proposed securities are similar in nature to other listed securities that are already permissible);
 - (ii) the securities could not be used as a means of by-passing existing restrictions such as those relating to borrowing money, securities lending or the use of derivatives;
 - (iii) the securities must be fully-paid up and do not require any further or future payment; and
 - (iv) for securities to be approved under section 8(1)(c), it is not appropriate that the 10% limit in section 8(2) should apply by analogy with other permissible investments.

8. The Authority may waive any of the above criteria on a case-by-case basis, after considering whether such waiver furthers the objectives of the MPF system. Where it is consistent with the criteria set out above, and possible to do so, the Authority will approve securities by kind so that subsequent individual

application is not needed.

9. Approved trustees and investment managers who wish to submit an application for approval of particular securities should provide the following information to the Authority for its consideration:

- (a) a detailed description of the characteristics of the relevant securities, including information on the issuer, product and legal structure, risks associated with investment in the securities, pricing, valuation, liquidity, etc;
- (b) a justification of the suitability of such securities as permissible investments for MPF purposes having regard to the underlying policy of Schedule 1 to the Regulation, the existing range of permissible investments, and the general approval criteria as set out in paragraph 7; and
- (c) any other information that may assist the Authority in considering the application.

Other authorized unit trusts and authorized mutual funds

10. Pursuant to section 8(2)(c) of Schedule 1 to the Regulation, the Authority has approved those authorized unit trusts and authorized mutual funds (not being approved pooled investment funds) that are authorized by the Securities and Futures Commission (“the SFC”) as meeting the requirements of:

- (a) Chapter 7 of the SFC’s Code on Unit Trusts and Mutual Funds (“the Code”); or
 - (b) Chapter 8.1 of the Code (Unit Portfolio Management Funds); or
 - (c) Chapter 8.2 of the Code (Money Market / Cash Management Funds);
- or

- (d) Chapter 8.5 of the Code (Guaranteed Funds) where the underlying investments meet the core investment requirements of Chapter 7 of the Code; or
- (e) the SFC's Code on Real Estate Investment Trusts.

TRANSITIONAL ARRANGEMENTS

11. Before the expiry of six months from the date of commencement of the Mandatory Provident Fund Schemes (General) (Amendment) Regulation 2006, the approval of securities in paragraphs 4(a), 4(b) and 6 above applies only to the extent that the total amount invested in such securities representing underlying securities of a company plus the amount, if any, invested directly in those same securities and other permissible investments issued by the issuer of those securities do not exceed 10% of the total funds of a constituent fund or an approved pooled investment fund, as the case may be.

DEFINITIONS OF TERMS

12. Except where otherwise specified in the Guidelines, the terms common to the Ordinance and the subsidiary legislation of the Ordinance carry the same meanings as defined in the Ordinance and the subsidiary legislation. References should be made to the Ordinance and the subsidiary legislation, where necessary.