



**SECURITIES AND
FUTURES COMMISSION**
證券及期貨事務監察委員會

Code on Pooled Retirement Funds



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AMENDMENT

Particulars	Paragraph	Section	Effective Date
Interpretation	3.1A, 3.1B, 3.11A	3	1 August 2008
Post-Authorization Requirements	10.1, 10.1A, 10.1B, 10.4-10.9, 10.11- 10.14	10	1 August 2008
Information To Be Disclosed In The Principal Brochure	(n)	Appendix A	1 August 2008
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Management Company	5.5(b)	5	25 June 2010
Authorization Procedures	1.6 and 1.6(c), (d) (f)-(h), 1.7	1	1 January 2019
Interpretation	Introduction, 3.6A, 3.7, 3.9A-3.9C, 3.10, 3.11, 3.12A, 3.13-3.16	3	1 January 2019
Management Company	5.1, 5.2, 5.4, 5.5	5	1 January 2019*
Trustee	6.1-6.4A, 6.6	6	1 January 2019*
Hong Kong Representative	7.4, 7.5	7	1 January 2019
Operational Requirements	8.3, 8.8	8	1 January 2019
Guaranteed Funds	9.1	9	1 January 2019
Post-Authorization Requirements	10.1, 10.1A, 10.1B, 10.2, 10.5, 10.6, 10.10, 10.11, 10.13, 10.14	10	1 January 2019
Information to be disclosed in the Principal Brochure	(b)	Appendix A	1 January 2019
Contents of the Constitutive Documents	(f)	Appendix B	1 January 2019
Guidelines for Review of Internal Controls and Systems of Trustees/ Custodians	1, 5	Appendix E	1 January 2019*

DELETION

Particulars	Paragraph	Section	Effective Date
Advertising Guidelines		Appendix D	1 August 2008
Administrative Arrangements	2.3–2.8	2	25 June 2010
Compliance Checklist		Appendix C	1 January 2019

** The same implementation timetable for the Code on Unit Trusts and Mutual Funds will apply to the Code on Pooled Retirement Funds, where applicable.*

CODE ON POOLED RETIREMENT FUNDS

Explanatory Notes:

- (a) The Securities and Futures Commission is empowered under section 104(1) of the Securities and Futures Ordinance (Cap. 571) (SFO) to authorize any collective investment scheme and to impose any corresponding authorization conditions as it considers appropriate. This Code, which is published pursuant to section 399(1) of the SFO, provides guidance in relation to the authorization of a collective investment scheme that is a pooled retirement fund.**
- (b) The Commission may review its authorization at any time and may modify, add to or withdraw such authorization, as it deems fit.**
- (c) The issue of any advertisement, invitation or document to the public in Hong Kong to participate in an unauthorized pooled retirement fund may amount to an offence under section 103(1) of the SFO. The Commission is empowered under section 105(1) of the SFO to authorize any advertisement, invitation or document referred to in section 103(1) and to impose any corresponding authorization conditions as it considers appropriate.**
- (d) This Code is established having regard to the regulatory objectives of the Commission set out in section 4 of the SFO. The spirit of this Code should be observed.**
- (e) The Commission may modify or relax the application of a requirement in this Code if it considers that, in particular circumstances, strict application of the requirement would operate in an unduly burdensome or unnecessarily restrictive manner.**
- (f) This Code does not have the force of law.**

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PART I: GENERAL MATTERS

Chapter 1: Authorization Procedures

General

- 1.1 Pooled retirement funds are expected to comply with the provisions of this Code in order to be authorized in Hong Kong.
- 1.2 Applications for authorization which seek waivers of any of these provisions must give detailed reasons why waivers are sought.

Nomination of an individual as approved person

- 1.3 According to sections 104(2) and 105(2) of the SFO, an individual must be approved for the purposes of being served by the Commission with notices and decisions for, respectively, the pooled retirement fund and the issue of any related advertisement, invitation or document. An applicant for authorization is, therefore, required to nominate an individual for approval by the Commission as an approved person.
- 1.4 An approved person should:
 - (a) have his/her ordinary residence in Hong Kong;
 - (b) inform the Commission of his/her current contact details, including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address;
 - (c) be capable of being contacted by the Commission by post, telephone, facsimile and electronic mail during business hours;
 - (d) inform the Commission of any change in his/her contact details within 14 days after the change takes place; and
 - (e) comply with any other requirements as the Commission considers appropriate.
- 1.5 An individual approved by the Commission as an approved person for a pooled retirement fund shall generally be approved also for the issue of any advertisement, invitation or document made in respect of that fund.

Documents to be supplied to the Commission

- 1.6 An application for authorization of a pooled retirement fund must contain a completed Application Form as set out on the Commission's website and be accompanied by the following and such other documents as may be required by the Commission from time to time:
 - (a) The pooled retirement fund's principal brochure and constitutive documents;
 - (b) Copies of any material contracts;

- (c) All other sales literature, proposed advertisements and printed material intended to be issued in Hong Kong to prospective investors, where applicable;
- (d) A checklist of compliance with the Code;
- (e) The latest audited report and corporate information in respect of the applicant company, management company, trustee and other relevant parties, where applicable;
- (f) The application fee in the form of a cheque payable to the “Securities and Futures Commission”;

Note: The current fee schedule is available on the Commission’s website.

- (g) The letter nominating an individual to be approved by the Commission as an approved person containing the individual’s name, employer, position held and contact details, including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address; and
- (h) A written undertaking from the Hong Kong Representative, where applicable (see 7.3).

Offer of pooled retirement funds and investment portfolios

- 1.7 Pooled retirement funds and investment portfolios shall only be available to ORSO schemes, employers and/ or members of ORSO schemes.

Chapter 2: Administrative Arrangements

- 2.1 According to section 8 of the SFO, the Commission is empowered to set up committees, whether for advisory or other purposes. The Commission will establish a Product Advisory Committee for the purposes of consultation and advice on matters which may relate to collective investment schemes within the scope of this Code. The remit of the Products Advisory Committee and its membership will be set out in its Terms of Reference.

Data Privacy

- 2.2 The information requested under the Code may result in the applicant providing the Commission with personal data as defined in the Personal Data (Privacy) Ordinance. The data supplied will only be used by the Commission to perform its functions, in the course of which it may match, compare, transfer or exchange personal data with data held or obtained by the Commission, government bodies, other regulatory authorities, corporations, organizations or individuals in Hong Kong or overseas for the purpose of verifying those data. Subject to the limits in section 378 of the SFO, the Commission may disclose personal data to other regulatory bodies. You may be entitled under the Personal Data (Privacy) Ordinance to request access to or to request the correction of any data supplied to the Commission, in the manner and subject to the limitations prescribed. All enquiries should be directed to the Data Privacy Officer at the SFC.

Chapter 3: Interpretation

Unless otherwise defined, words and expressions used in this Code are as defined in the SFO.

- 3.1A “Advertising Guidelines” means the Advertising Guidelines Applicable to Collective Investment Schemes Authorized under the Product Codes.
- 3.1B “applicant company” means the company which applies to the Commission, directly or through an authorized representative, to have its pooled retirement fund authorized pursuant to this Code.
- 3.2 “approved person” has the meaning assigned to it by section 102(1) of the SFO.
- 3.3 “collective investment scheme” has the meaning assigned to it by section 1 of Part 1 of Schedule 1 to the SFO.
- 3.4 “Commission” or “SFC” means the Securities and Futures Commission referred to in section 3(1) of the SFO.
- 3.5 “connected person” in relation to a company means:
- (a) any person or company beneficially owning, directly or indirectly, 20% or more of the ordinary share capital of that company or able to exercise, directly or indirectly, 20% or more of the total votes in that company;
 - (b) any person or company controlled by a person who or which meets one or both of the descriptions given in (a);
 - (c) any member of the group of which that company forms part; or
 - (d) any director or officer of that company or of any of its connected persons as defined in (a), (b) or (c).
- 3.6 “constitutive documents” means the documents which govern the existence and operation of a pooled retirement fund and includes the policy document in the case of a pooled retirement fund which is the subject of or regulated by an insurance arrangement and the trust deed in the case of a pooled retirement fund governed by a trust.
- 3.6A “Hong Kong representative” or “representative” means the Hong Kong representative appointed pursuant to 7.1 of this Code.
- 3.7 “insurance company” means a company authorized by the Insurance Authority under the Insurance Companies Ordinance to carry on a relevant class of insurance business in Hong Kong.
- 3.8 “investment portfolio” means a constituent fund of a pooled retirement fund into which assets of participating schemes are pooled for investment.
- 3.9 “investors” means the relevant employers and/or members, as appropriate, of the participating schemes under a pooled retirement fund.

- 3.9A "investment delegate" means an entity that has been delegated the investment management function of a pooled retirement fund.
- 3.9B "management company" means the entity appointed pursuant to 5.1 of this Code.
- 3.9C "ORSO schemes" means occupational retirement schemes as defined under the Occupational Retirement Schemes Ordinance (Chapter 426 of Laws of Hong Kong).
- 3.10 "pooled retirement fund" or "scheme" has the same meaning as "pooling agreement" in the Occupational Retirement Schemes Ordinance (Chapter 426 of Laws of Hong Kong).
- 3.11 "principal brochure" means that offering document issued by an applicant company, containing information on a pooled retirement fund as stipulated in Appendix A.
- 3.11A "Product Code" means any of the following codes administered by the Commission:
- (a) Code on Unit Trusts and Mutual Funds
 - (b) Code on Investment-Linked Assurance Schemes
 - (c) Code on Pooled Retirement Funds
 - (d) SFC Code on MPF Products
- 3.12 "regulated activity" has the meaning assigned to it by section 1 of Part 1 of Schedule 1 to the SFO.
- 3.12A "SFO" means the Securities and Futures Ordinance (Chapter 571 of Laws of Hong Kong).
- 3.13 "substantial financial institution" means an authorized institution as defined in section 2(1) of the Banking Ordinance (Chapter 155 of Laws of Hong Kong), or a financial institution which is on an ongoing basis subject to prudential regulation and supervision, with a minimum net asset value of HK\$2 billion or its equivalent in foreign currency.
- 3.14 "Trustee" means the entity appointed pursuant to 6.1 of this Code.
- 3.15 "UF-driven changes" means changes to an investment portfolio falling within 10.1 of this Code that solely reflect changes made to the corresponding underlying SFC-authorized fund and such underlying fund changes have been approved, or are not required to be approved by the Commission pursuant to the UT Code or the SFC Code on MPF Products.
- 3.16 "UT Code" means the Code on Unit Trusts and Mutual Funds.

PART II: AUTHORIZATION REQUIREMENTS

Chapter 4: Applicant Company

Regulatory Status of Applicant Company

- 4.1 No pooled retirement fund will be authorized pursuant to this Code unless the applicant company is authorized:
- (a) under the Insurance Companies Ordinance to carry on the relevant class of insurance business in Hong Kong; or
 - (b) by or is subject to either the requirements of a supervisory authority in Hong Kong or any other authority which is acceptable to the Commission.

If the applicant company ceases to be authorized by or to be subject to the requirements of its supervisory authority whether in Hong Kong or elsewhere, any existing authorization of the pooled retirement fund will normally lapse.

Responsibilities of Applicant Company

- 4.2 The applicant company will be responsible for observing all requirements of the Code and any conditions imposed by the Commission in granting authorization during the continued enjoyment of that authorization, except to the extent that the Commission grants waivers in writing.
- 4.3 The applicant company is responsible for whatever information is given to the Commission on its behalf and should use its best endeavors to ensure that statements of intention in printed matter are followed.
- 4.4 The applicant company shall:
- (a) use its best endeavors to carry on and conduct its business in a proper and efficient manner and will ensure that any pooled retirement fund to which the constitutive documents relate is conducted in a proper and efficient manner; and
 - (b) exercise best endeavours and due diligence to ensure that the marketing of the pooled retirement fund is carried out professionally, honestly and fairly.

Chapter 5: Management Company

Appointment of Management Company

- 5.1 Every pooled retirement fund must have a management company acceptable to the Commission and shall comply with this Chapter on an ongoing basis, unless the fund is the subject of or regulated by an insurance arrangement (see 5.11 below).

Note: The investment delegate (who has been delegated the investment management function of a pooled retirement fund) should either be licensed or registered in Hong Kong (see 5.6 below) or based in a jurisdiction with an inspection regime acceptable to the Commission. A list of acceptable inspection regimes is published on the Commission's website. The Commission will consider other jurisdictions on their merits and may accept an undertaking from the investment delegate that the books and records in relation to its management of a pooled retirement fund will be made available for inspection by the Commission on request.

- 5.2 5.2 of the UT Code applies.

- (a) (deleted)
- (b) (deleted)
- (c) (deleted)
- (d) (deleted)

- 5.3 Indebtedness owed by the management company to its parent company will be considered as part of capital for the purpose of 5.2(b) in the following circumstances:

- (a) the indebtedness must not be settled without the prior written consent of the Commission; and
- (b) the indebtedness must be subordinated to all other liabilities of the management company, both in terms of its entitlement to income and its rights in a liquidation.

Qualifications of Directors

- 5.4 The directors of the management company must be of good repute and in the opinion of the Commission possess the necessary experience for the performance of their duties. In determining the acceptability of the management company, the Commission may consider the qualifications and experience of persons employed by the management company and any appointed investment delegate.

Criteria for Acceptability of Management Company

- 5.5 5.5 of the UT Code applies.

- (a) (deleted)
- (b) (deleted)

- (c) (deleted)
- (d) (deleted)
- (e) (deleted)

Licensing Requirement

- 5.6 A management company should be properly licensed or registered under Part V of the SFO for carrying on its regulated activities.

Retirement of a Management Company

- 5.7 The management company must be subject to removal by notice in writing from the trustee in any of the following events:
- (a) the management company goes into liquidation, becomes bankrupt or has a receiver appointed over its assets; or
 - (b) for good and sufficient reason, the trustee states in writing that a change in management company is desirable in the interests of the investors.
- 5.8 In addition, the management company must retire:
- (a) in all other cases provided for in the constitutive documents; or
 - (b) when the Commission withdraws its approval of the management company.
- 5.9 The Commission must be informed by the trustee of any decision to remove the management company.
- 5.10 Upon the retirement or dismissal of the management company, the trustee must appoint a new management company as soon as possible, subject to the approval of the Commission.

Pooled Retirement Funds under an Insurance Arrangement

- 5.11 Notwithstanding 5.1, a pooled retirement fund which is the subject of or regulated by an insurance arrangement may be managed by an insurance company which is to perform the functions analogous to those of a management company and trustee, where applicable.

Chapter 6: Trustee

Appointment of Trustee

- 6.1 Every pooled retirement fund must be governed by a trust with a trustee that is acceptable to the Commission and shall comply with this Chapter on an ongoing basis, unless the fund is the subject of or regulated by an insurance arrangement.

Note: An acceptable trustee should be subject to prudential regulation and supervision on an ongoing basis. Trustee shall appoint an independent auditor to periodically review its internal controls and systems on terms of reference in compliance with this Code (see Appendix E) and should file such report with the Commission, unless such trustee is a trust company which is a trustee of any registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of Laws of Hong Kong).

- 6.2 A trustee must be:

- (a) 4.2(a) of the UT Code applies;
- (b) a trust company registered under Part VIII of the Trustee Ordinance (Chapter 29 of Laws of Hong Kong) which is a subsidiary of such a bank or a banking institution falling under 6.2(d) or of an insurance company authorized in Hong Kong;

Note: In determining the acceptability of a subsidiary of a banking institution falling under 6.2(d), the Commission will take into account factors including the level of oversight and supervision from such banking institution.

- (c) 4.2(c) of the UT Code applies; or
- (d) 4.2(d) of the UT Code applies.

- 6.3 4.3 of the UT Code applies.

- 6.4 Notwithstanding 6.3, the trustee's paid-up share capital and non-distributable capital reserves may be less than HK\$10 million if the trustee is a wholly-owned subsidiary of a bank or an insurance company (the holding company); and

- (a) 4.4(a) of the UT Code applies; or
- (b) 4.4(b) of the UT Code applies.

Retirement of Trustee

- 6.4A 4.6 of the UT Code applies.

- 6.5 The trustee and the management company must be persons who are independent of each other.

Independence of Trustee and Management Company

6.6 4.8 of the UT Code applies.

- (a) (deleted)
- (b) (deleted)
- (c) (deleted)
- (d) (deleted)

6.7 The trustee must satisfy the Commission:

- (a) that its chief executive and directors are persons of good reputation and character and, in particular, have not been found guilty, whether in Hong Kong or elsewhere, of an offence involving fraud or dishonesty; and
- (b) that the chief executive and a majority of its directors have the skill, knowledge, experience and qualifications that are, in the opinion of the Commission, necessary for the successful operation of the pooled retirement fund.

Chapter 7: Hong Kong Representative

Appointment of Representative

- 7.1 The applicant company will be required to appoint a representative in Hong Kong if it is not incorporated in and does not have a place of business in Hong Kong. The representative must be maintained throughout the period the pooled retirement fund is authorized in Hong Kong.

Functions of a Representative

- 7.2 The representative is not required to take responsibility for the acts and omissions of the applicant company but must be empowered to:
- (a) act for the applicant company in all matters relating to the initial and continued authorization of the pooled retirement fund, pursuant to the relevant legislation and this Code;
 - (b) accept service of any summons or writ on behalf of the applicant company;
 - (c) provide the Commission with such up-to-date principal brochure, constitutive documents or other documents relevant to the pooled retirement fund as the Commission may from time to time request;
 - (d) receive notices from investors in respect of the pooled retirement fund;
 - (e) make available for public inspection in Hong Kong, free of charge, and offer for sale at a reasonable price to investors copies of all constitutive documents of the pooled retirement fund;
 - (f) provide investors with information on the pooled retirement fund;
 - (g) represent the applicant company in relation to all matters in which any investor in Hong Kong has a pecuniary interest; and
 - (h) exercise best endeavours and due diligence to ensure that the marketing of the pooled retirement fund is carried out professionally, honestly and fairly.

Written Undertaking

- 7.3 The representative must provide the Commission with a written undertaking that it will perform the duties required of a representative under this Code.

Retirement or Dismissal of Representative

- 7.4 Should the representative retire or be dismissed, it must be replaced as soon as possible by another representative whose appointment is subject to the approval of the Commission (see 10.1(b)).
- 7.5 (deleted)

Chapter 8: Operational Requirements

Pooled Retirement Fund Documentation

Matters to be Disclosed in the Principal Brochure

- 8.1 An authorized pooled retirement fund must issue an up-to-date principal brochure, which should contain the information necessary for prospective investors to be able to make an informed judgment of the investment proposed to them, and in particular should contain the information listed in Appendix A.

English and Chinese Principal Brochure

- 8.2 Except as provided herein, the information required in Appendix A must be provided in the English and Chinese languages. The Commission may waive the requirement that the information be provided in both languages on a case-by-case basis where the applicant company satisfies the Commission that the pooled retirement fund will only be offered to persons fully conversant in the language in which it is intended to publish the information.

Application Form

- 8.3 Subject to 1.7, no pooled retirement fund application form may be provided to any member of the public unless it is accompanied by the principal brochure. To that end the application form should include a statement to the effect that it should only be issued in conjunction with the principal brochure.

Inclusion of Performance Data

- 8.4 If performance data or estimated yield is quoted, the Commission may require supporting documentation. No forecast or illustration of the investment portfolios' future performance may be made in authorized fund documents except where an investment return at a certain rate is guaranteed.

Naming of Unauthorized Collective Investment Schemes

- 8.5 As a general principle any naming of collective investment schemes in authorized fund documents should be restricted to those which are authorized by the Commission pursuant to section 104(1) of the SFO.

Contents of Constitutive Documents

- 8.6 The constitutive documents of a pooled retirement fund should contain the information listed in Appendix B.

Fees and Charges

- 8.7 Where an investment portfolio proposes to invest in collective investment schemes managed or distributed by the same company or group, all initial charges of the underlying funds must be waived but recurrent management fees and charges may be levied proportionate to the amount invested.

- 8.8 The level/basis of calculation of all costs and charges payable must be clearly stated,

with percentages expressed on a per annum basis, where applicable. The aggregate level of fees for investment management function should also be disclosed.

- 8.9 If a performance fee is levied, the fee can only be payable:
- (a) no more frequently than annually; and
 - (b) only if the net asset value per unit exceeds the net asset value per unit on which the performance fee was last calculated and paid (i.e. on a “high-on-high” basis).

In the case where an investment portfolio is not unitized, a certificate from an actuary must be provided to the Commission on an annual basis to certify compliance with the foregoing except where:

- (a) there exists a year-on-year guarantee on investment return where the deficiency, if any, between the guaranteed return and the actual return is credited into the investors’ accounts not less frequently than annually; or
- (b) the investment portfolio is the subject of or regulated by an insurance arrangement in which investment returns may be declared by the policy issuer, at its discretion, at or above a stated minimum rate not less frequently than annually.

Investment Restrictions

- 8.10 An investment portfolio is expected to comply with the general provisions of Chapter 7 of the Code on Unit Trusts and Mutual Funds, where applicable.
- 8.11 In addition, no moneys of an investment portfolio may be invested in the securities of, or lent to, as applicable, the applicant company, the management company, the guarantor, the trustee, or any of their connected persons except where any of these parties is a substantial financial institution or an insurance company. For the purposes of this provision securities do not include interests in collective investment schemes, either authorized under section 104(1) of the SFO or recognized jurisdiction schemes pursuant to 1.2 of the Code on Unit Trusts and Mutual Funds.
- 8.12 These requirements should apply, individually, to all investment portfolios of a pooled retirement fund except for guaranteed funds (see Chapter 9).

Chapter 9: Guaranteed Funds

The following criteria shall apply to pooled retirement funds which contain an investment portfolio in which a guaranteed amount will be paid to investors at a specific date in the future.

Guarantor

- 9.1 If the guarantor is an entity other than the insurance company which issues the policy, it must be a substantial financial institution.

Disclosure

- 9.2 The principal brochure of the pooled retirement fund must contain:
- (a) the name of the guarantor (if other than the insurance company which issues the policy) and the terms of the guarantee;
 - (b) where applicable, a warning statement in relation to all material conditions which affect the scope or validity of the guarantee including, where relevant, the condition that the guarantee only applies to investors who hold their investment until the date specified in the guarantee and that termination or withdrawal before such date are fully exposed to fluctuations in the value of the assets comprising the pooled retirement fund and/or subject to penalties; and
 - (c) an illustration or description to clearly demonstrate the guarantee mechanism.

Guaranteed Funds with Discretionary Benefits

- 9.3 In relation to an insurance arrangement, if it is stated that discretionary benefits will or may be paid to investors in excess of the guaranteed amount, and the amounts of those benefits are determined at the discretion of the policy issuer, the principal brochure of the pooled retirement fund must contain:
- (a) a statement to the effect that the [name of policy issuer], at its sole discretion, has the right to retain investment income of the [name of investment portfolio] in excess of that required to be set aside to meet the guaranteed benefits under the [name of investment portfolio];
 - (b) a readily comprehensible description of the methods of determining the discretionary benefits, including the following information, to the extent applicable:
 - (I) the reporting date; and
 - (II) (i) **for a participating product where the policy holder has a right to participate in profits from the long term fund of the policy issuer or any part of that fund:**
 - (i) details of the fund or part fund to which the right relates;

- (ii) the principles on which the distribution of profits among policy holders and shareholders is based and whether these principles are derived from the constitution of the policy issuer or otherwise;
 - (iii) the bonus rates declared immediately prior to the reporting date and for the four years previous; *and*
 - (iv) the proportion of total distributed profits that was distributed to shareholders immediately prior to the reporting date and for the four years previous;
- (ii) for an investment-linked product:**
- (i) a description of the method which will be used to calculate unit prices from time to time; *and*
 - (ii) the percentage changes in unit prices for the five yearly intervals immediately preceding the reporting date;
- (iii) for an investment account product:**
- (i) a description of the method which will be used to calculate the interest rate for each period; *and*
 - (ii) the rate of interest declared immediately prior to the reporting date and for the four years previous; *and*
- (c) a statement that past performance should not be taken as an indication of future performance.

Note: For investment portfolios with less than five years experience, figures for shorter periods may be shown, provided the date of commencement is shown.

PART III: POST-AUTHORIZATION REQUIREMENTS

Chapter 10: Post-authorization Requirements

Scheme Changes

- 10.1 The proposed changes to a scheme (other than UF-driven changes) in respect of the following must be submitted to the Commission for prior approval:
- (a) changes to constitutive documents (other than changes that have been certified by the trustee as provided under 10.2 of this Code or changes which do not require prior approval from the Commission);
 - (b) 11.1(b) of the UT Code applies (and includes changes to the applicant company);
 - (c) 11.1(c) of the UT Code applies; and
 - (d) 11.1(d) of the UT Code applies.
- 10.1A 11.1A of the UT Code applies.
- 10.1B 11.1B of the UT Code applies and references therein to “management company” shall mean “applicant company” for the purposes of this Code except that the revised principal brochure must be filed with the Commission, together with a marked-up version against the previously filed version, within two weeks from the date of issuance.
- 10.2 The constitutive documents may be altered by the trustee and management company without consulting investors, provided that the trustee certifies in writing that in its opinion the proposed alteration:
- (a) is necessary to make possible compliance with fiscal or other statutory, regulatory or official requirements;
 - (b) does not materially prejudice investors’ interests, does not to any extent release the parties from any liability to investors and does not increase the costs and charges payable under the pooled retirement fund; or
 - (c) is necessary to correct a manifest error.
- In all other cases involving any material changes, no alteration may be made except with the approval of the Commission.
- 10.3 The Commission may accept undertakings from an applicant company to delay making a required amendment to a document until an opportune time, but in such cases the Commission may impose a reasonable time limit for carrying out the required amendment, and require a written undertaking from an applicant company to comply, in the interim period, with the substance of the requirement.
- 10.4 (Repealed)

Withdrawal of Authorization

- 10.5 11.4 of the UT Code applies and references therein to “management company” shall mean “applicant company” for the purposes of this Code.

Merger or Termination

- 10.6 11.5 of the UT Code applies and references therein to “management company” shall mean “applicant company” for the purposes of this Code.

Advertising Materials

- 10.7 Advertisements and other invitations to invest in a pooled retirement fund must comply with the Advertising Guidelines. All advertisements must be submitted to the Commission for authorization prior to their issue or publication in Hong Kong, unless exempted under section 103 of the SFO. For the avoidance of doubt, even if an advertisement is exempted from obtaining authorization from the Commission under the SFO, the applicant company must ensure that the advertisement or invitation complies with the Advertising Guidelines.

- 10.8 Where authorization by the Commission is required, it is recommended that the applicant company nominate one person, such as the Approved Person or any other persons acceptable to the Commission, based in Hong Kong to liaise with the Commission. Authorization may be varied or withdrawn by the Commission as it deems fit. Once authorized, the advertisement may be used in any distribution media and reissued without further authorization with updated performance information of schemes and general market commentary provided that the content and format of such advertisement remain fundamentally the same as the version previously authorized and the advertisement, when reissued, is in compliance with the Advertising Guidelines.

Note: For radio, television, cinema or other time-limiting advertisements/broadcasts, the script of any verbal statements in such advertisements should be submitted for the Commission’s advance clearance, followed by the demo of the broadcast (e.g. digital files) for formal authorization.

- 10.9 The applicant company must keep adequate records of the advertisements issued, either in actual form or by way of a copy of the final proof, and the relevant supporting documents for substantiation of information presented thereon. Such records must be retained for at least 3 years from the latest date of publication / distribution of an advertisement and made available to the Commission upon request.

Rebates

- 10.10 10.12 of the UT Code applies (except for 10.12(d)).

Notices to Investors

- 10.11 11.2 of the UT Code applies.
- 10.12 Subject to 10.5 and 10.6 above, notices to investors need not be approved by the Commission prior to issuance but are required to be filed with the Commission within

two weeks from the date of issuance of the notice. The Commission, however, retains its power to require the applicant company to submit draft notices for review where the Commission considers it appropriate. For the avoidance of doubt, matters relating to 10.1 above should be approved by the Commission prior to the distribution of the relevant notices to investors.

- 10.13 11.2B of the UT Code applies and references therein to “management company” shall mean “applicant company” for the purposes of this Code.

Mention of SFC Authorization

- 10.14 Where a pooled retirement fund is described as having been authorized by the Commission, it must be stated that authorization does not imply official recommendation by adding a prominent note in the following terms to the principal brochure and advertisements and other invitations to invest in the pooled retirement fund:

SFC authorization is not a recommendation or endorsement of a scheme nor does it guarantee the commercial merits of a scheme or its performance. It does not mean the scheme is suitable for all investors nor is it an endorsement of its suitability for any particular investor or class of investors.

Appendix A

Information to be disclosed in the Principal Brochure

The principal brochure should contain the information necessary for prospective investors to be able to make an informed judgment of the pooled retirement fund and in particular should contain the following:

(a) *Name and Type of Pooled Retirement Fund*

The name and description of the pooled retirement fund must not be misleading to potential investors and should be an accurate reflection of the type of pooled retirement fund and its objectives.

(b) *Parties Involved*

The names and registered addresses of all parties involved in the operation of the pooled retirement fund with a brief description of the applicant company.

(c) *Investment Returns*

Details of how the investment returns of the investment portfolios are determined. Except where the investment portfolios' investment returns are subject to a non-variable guarantee, a warning should be stated to the effect that investment involves risks.

* See Chapter 9 for additional disclosure requirements for Guaranteed Funds.

If the nature of the investment policy so dictates, a warning should be given that investment in the investment portfolios is subject to abnormal risks, together with a description of the risks involved.

(d) *Fees and Charges*

Explanations of fees and charges may be abbreviated, but should be clearly identified to include:

- (i) the level of all fees and charges payable by investors;
- (ii) the level of all fees and charges levied on the investment portfolios; and
- (iii) details of whether charges are subject to change and the relevant notice period.

A summary of all fees and charges in tabular form should be provided to allow investors to have an overview of the fees structure at a glance. Where complex calculations are required to disclose fees and charges, illustrative examples should be given for clarity.

(e) *Investment Objectives and Restrictions*

Summary of investment objective and policy of the investment portfolios including, where applicable:

- (i) the types of intended investments, and their relative proportions in the portfolio;
- (ii) the geographical distribution of the intended investments;
- (iii) the investment and borrowing restrictions; and
- (iv) if the nature of the investment policy so dictates, a warning that the investment portfolio is subject to abnormal risks, and a description of the risks involved.

(f) *Borrowing Powers*

The circumstances under which the investment portfolio may have outstanding borrowings and the purpose for which such outstanding borrowings were incurred.

(g) *Summary of Provisions in Constitutive Documents*

A summary of the provisions described in paragraphs (d), (f), (g) and (j) of Appendix B with respect to:

- Valuation of Property and Pricing
- Characteristics of Contributions
- Benefits
- Conditions of Termination

(h) *Rebates*

See 10.10 for details.

(i) *Application and Withdrawal Procedures*

A summary of procedures for application and withdrawal.

(j) *Governing Law*

The governing law of the pooled retirement fund should be disclosed and an acknowledgment that the parties concerned have the right to bring legal action in a Hong Kong court as well as in any court elsewhere which has a relevant connection with the pooled retirement fund.

(k) *Taxation*

Where the likely tax benefits to be enjoyed by investors are described, the principal brochure should also briefly explain the applicant company's understanding of the tax implications for investors, based on expert advice received by the applicant company.

Investors should also be advised to seek professional advice regarding their own particular tax circumstances.

(l) *Date of publication of the principal brochure*

All facts and figures in the principal brochure should be as reasonably up-to-date as possible.

(m) *Responsibility Statement*

A statement that the applicant company accepts responsibility for the accuracy of the information contained in the brochure.

(n) *Authorization Statement*

Where a pooled retirement fund is described as having been authorized by the Commission, it must be stated that authorization does not imply official recommendation.

Appendix B

Contents of the Constitutive Documents

The constitutive documents should incorporate the detailed terms and conditions of the pooled retirement fund. The paragraphs which follow illustrate the details which the Commission will look for although it is prepared to be flexible in determining which criteria should apply.

(a) *Name and Type of Pooled Retirement Fund*

(b) *Parties Involved*

A statement to specify the parties involved in the operation of the pooled retirement fund including, as applicable, the applicant company, the management company, the guarantor, the trustee and the auditor, giving full particulars of their functions, duties and obligations, as well as details relating to their retirement, removal and replacement.

(c) *Investment Returns*

A detailed description of how the investment returns of the investment portfolios are determined, for example, with reference to:

- (i) a fund or funds of assets held in the name of the policy issuer or the trustee;
- (ii) any notional fund (with its basis stated); or
- (iii) a rate determined at the discretion of the policy issuer.

(d) *Valuation of Property and Pricing*

- (i) For investment portfolios which are unitized;
 - the method of determining the value of the assets and liabilities of the investment portfolio;
 - the method of calculating the issue and redemption prices;
 - how frequently prices are established;
 - the lead times for the allocation of contributions to units and the realization of units; and
 - the circumstances under which the above might change.
- (ii) For investment portfolios which are not unitized;
 - how and when the non-unitized portfolio is valued;
 - how and when the investment return is calculated and distributed amongst the investors; and

- the circumstances under which the above might change.

(e) *Guarantee*

Whether investment performance or capital is guaranteed and if so details of:

- (i) the rate or amount guaranteed;
- (ii) the conditions under which the rate or amount may be altered or discontinued;
- (iii) the nature of the guarantee, e.g. a flat guarantee, career average, year on year, or compounded;
- (iv) how and when the guarantee is invoked or revoked;
- (v) any charges or consideration for the guarantee;
- (vi) the date of expiry of the guarantee;
- (vii) if the guarantor is an entity other than the policy issuer, the provisions for appointment, retirement or removal;
- (viii) where applicable, the methods of determining the discretionary benefits to be paid to investors in excess of the guaranteed amount; and
- (ix) where applicable, the extent to which, and the basis on which, the policy issuer may set up a reserve, by whatever name called, so as to smooth the progression of unit prices or rates of return.

(f) *Contributions*

- (i) The amount to be paid.
- (ii) The currency of payment.
- (iii) To whom and where paid.
- (iv) How it is paid and the options if any for payment.
- (v) The frequency, due dates and for what periods contributions must be paid.
- (vi) If there are fixed due dates, the grace period and penalties if any for late payment.
- (vii) The proportion or amount of the contributions made which will be applied for investment purposes.
- (viii) The consequences and options if any should payment of contributions be discontinued at any time.

(g) *Benefits*

- (i) The currency, dates and places of payment of benefits.

- (ii) The benefits on retirement.
- (iii) The methods of calculation of benefits.
- (iv) Any notice periods for claiming benefits.
- (v) Other settlement options or rights.
- (vi) The circumstances under which payment of benefits may be deferred or suspended.
- (vii) The maximum interval between the receipt of a properly documented request for claiming benefits and the date of payment.
- (viii) Whether interest is payable in respect of the period between the effective date of claim and the date of payment.

(h) *Fees and Charges*

- (i) All specific fees and charges under the pooled retirement fund whether calculated by way of an amount, percentage or otherwise.
- (ii) All indeterminable fees and charges.
- (iii) Information as to when and on what event the fees and charges will fall due.
- (iv) Any taxes and expenses charged to the pooled retirement fund or levied against investment portfolios on a basis deemed fair and reasonable by an actuary or other person of professional standing.
- (v) Any fees payable to, as applicable, the applicant company, management company, trustee, guarantor or any other party.

(i) *Investment Strategy and Restrictions*

The investment strategy and restrictions (see 8.10 - 8.12) of the investment portfolios and the circumstances under which these could be changed or varied.

(j) *Termination of the Pooled Retirement Fund*

The circumstances in which the pooled retirement fund or an investment portfolio may be terminated and the relevant notice to be given to investors.

(k) *Transfer and Withdrawal of Interests*

The conditions governing the withdrawal of an investor's interests or its transfer to or from other pooled or individual retirement funds.

(l) *Governing Law*

The governing law of the pooled retirement fund must be specified.

Appendix C

(Deleted)

Appendix D

(Deleted)

Appendix E

Guidelines for Review of Internal Controls and Systems of Trustees/Custodians

INTRODUCTION

1. Pursuant to Chapter 6.1 of this Code, trustees/custodians of collective investment schemes are required to be approved by the SFC. An acceptable trustee/custodian should be subject to prudential regulation and supervision on an on-going basis. Trustee shall appoint an independent auditor to periodically review its internal controls and systems on terms of reference in compliance with this Appendix, unless such trustee is a trust company which is a trustee of any registered scheme as defined in section 2(1) of the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of Laws of Hong Kong). A report of the internal control review must be filed with the Commission.
2. As a general guide, in determining the acceptability of an overseas supervisory authority, the SFC will have to be satisfied that either the overseas regulatory authority or its delegate carries out regular inspection of trustees/custodians within its jurisdiction or the latter is subject to regular review in a manner generally consistent with the SFC requirement. In the latter case, the auditor's report should be filed with the SFC.

PURPOSE OF GUIDELINES

3. These Guidelines provide further guidance to trustees and custodians of scheme regarding compliance with the periodic internal control review requirement of the Code. These Guidelines set out the minimum best practice for trustees/custodians and auditors of scheme in order to facilitate the agreement of the scope of an internal control review on terms which will be acceptable to the SFC. These Guidelines have been developed in consultation with the Hong Kong Trustees Association and the Hong Kong Society of Accountants.
4. For the purpose of these Guidelines, the term "auditors" refers to the independent reporting accountants who are engaged in reporting on the internal controls of the trustee/custodian of scheme.

SCOPE OF REVIEW

5. The internal control review should involve all material procedural and control elements necessary to discharge the responsibilities and obligations of trustees/custodians in relation to schemes. The review should be conducted to provide reasonable assurance in accordance with internationally acceptable standards.
6. The engagement letter between the trustee/custodian and the auditor should incorporate or refer to the following Terms of Reference which sets out, as a minimum, the scope of review for compliance with the requirements of the Code. The trustee/custodian may engage the auditor to expand the scope of the review, and it is important that this is agreed with the auditor before the commencement of the review.

7. Where the trustee/custodian or an associated company carries on part of its responsibilities outside of Hong Kong in a jurisdiction in which the SFC considers that there is inadequate regulatory supervision or review (as described in paragraph 2), then the scope of the review should include those functions undertaken outside Hong Kong in a way which satisfies the auditor issuing the report. Notwithstanding that an offshore company may be appointed trustee/custodian, if the trustee/custodian confirms that all relevant functions are carried out by it or delegates in Hong Kong, the scope of the review can be so limited.

TERMS OF REFERENCE

8. The precise terms of the review engagement will be as agreed between the trustee/custodian and the auditor in each particular case. Terms of Reference for the review should be incorporated in the review engagement letter and should, as a minimum, include the following:

A. *REPORT BY THE MANAGEMENT OF THE TRUSTEE/CUSTODIAN*

The management of the trustee/custodian must issue a report to describe the control objectives. As a minimum, control objectives should include the following:

- Maintenance of a control environment
- Compliance with applicable legal and regulatory requirements
- Compliance with control policies and procedures
- Safekeeping of assets against loss

The controls designed to meet the above objectives may vary from firm to firm. The SFC does not mandate specific controls to meet the control objectives. It is the responsibility of the management of the trustee/custodian to design suitable controls and ensure that these are effective and properly implemented for the purpose of achieving the control objectives so identified.

In addition, the report should describe the internal control policies and procedures designed for achieving the control objectives.

B. *OBJECTIVE OF THE REVIEW ENGAGEMENT*

The objective of the engagement is to review the control objectives and procedures as described in the report issued by the trustee/custodian and to report on the findings of the review to the management of the trustee/custodian.

C. *REPORT BY THE AUDITOR*

The auditor should issue a report, addressed to the management of the trustee/custodian, detailing the scope of the review work carried out relating to the report by management and the conclusions reached. The report should state, as a minimum:

- (i) a summary of the terms of engagement (or attach a copy of the letter of engagement);
- (ii) the respective responsibilities of the management of the

- trustee/custodian and the auditor;
- (iii) the basis of the auditor's opinion (detailing the scope of work); and
- (iv) the auditor's opinion.

D. AUDITOR'S OPINION

As a minimum requirement, the auditor's opinion should state:

- (i) whether the accompanying report by the management of the trustee/custodian describes fairly the control procedures in place during the period under review; and
- (ii) whether the specific control procedures tested (with details described) operated as described during the period under review.

Where applicable, the auditor should state the limitations to the tests performed and whether such limitations have any material impact on the auditor's opinion.

PERIOD UNDER REVIEW

- 9. The period under review should be for a period of at least twelve months and should coincide with the financial year of the trustee/custodian unless otherwise agreed with the SFC.

FILING OF REPORTS WITH THE SFC

- 10. The management of the trustee/custodian should file a copy of the auditor's report and the trustee/custodian report (as described in paragraph 8) with the SFC within four months from the end of the period under review. Where applicable, management response to the auditor's report should also be attached. The reports should be sent to:

Investment Products Division
Securities & Futures Commission
35/F, Cheung Kong Center
2 Queen's Road Central
Hong Kong

FREQUENCY OF REVIEW

- 11. The review of internal controls and systems of trustees/custodians of scheme should be conducted on an annual basis. The SFC reserves the right to demand more frequent review of a trustee or custodian should this be deemed necessary.