

Code on Pooled Retirement Funds

**First Edition pursuant to
Securities and Futures Ordinance (Cap. 571)**

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AMENDMENT

Particulars	Paragraph	Section	Effective Date
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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

DELETION

Particulars	Paragraph	Section	Effective Date
Advertising Guidelines		Appendix D	1 August 2008

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 applicant for authorization of a pooled retirement fund should lodge with the Commission:
 - (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;
- (d) A checklist of compliance with the Code (see Appendix C);
- (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 & Futures Commission”. The current fee schedule is available on request from the Commission; and
- (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.

Chapter 2: Administrative Arrangements

- 2.1 The Commission has delegated to the Committee on Investment-Linked Assurance and Pooled Retirement Funds (ILAC), an Executive Director and the Director (Investment Products), its power to authorize investment-linked assurance schemes and pooled retirement funds. Powers are normally exercised by ILAC when new management groups or new policy issues are considered; otherwise powers are normally exercised by the Director (Investment Products).
- 2.2 The Commission has established ILAC under section 8(1) of the SFO for the purposes of:
- (a) assisting the Commission in the performance of its functions to ensure the effective regulation of the marketing of investment-linked assurance schemes and pooled retirement funds;
 - (b) authorizing investment-linked assurance schemes and pooled retirement funds pursuant to section 104(1) of the SFO;
 - (c) imposing conditions on the authorization of investment-linked assurance schemes and pooled retirement funds pursuant to section 104(1) of the SFO;
 - (d) granting waivers from this Code; and
 - (e) considering whether there should be any amendments to the legislation relating to investment-linked assurance schemes and pooled retirement funds and to this Code and making recommendations to the Commission accordingly.

Constitution of Committee

- 2.3 The constitution of ILAC is:

Chairman

- (a) Any Executive Director of the SFC;

Members (11)

- (b) Non-executive Director of the SFC;
- (c) Director (Investment Products), SFC (ex-officio and deputizes as Chairman in the absence of the Chairman);
- (d) Representative of the Commissioner of Insurance;
- (e) Representative of the Mandatory Provident Fund Schemes Authority;
- (f) Chairman of the Life Insurance Council (ex-officio);
- (g) Life assurance company member;

- (h) Retirement fund company member;
- (i) Person nominated by the SFC;
- (j) Actuary member;
- (k) Trustee company member; and
- (l) Appointment (I) ad personam.

Alternate Members (4)

- (m) Alternate life assurance company member;
- (n) Alternate retirement fund company member;
- (o) Alternate actuary member; and
- (p) Alternate trustee company member.

Quorum & Meetings

- 2.4 The quorum for any meeting of ILAC is four members, one of whom must be an Executive Director or Director of the Commission and one of whom must be employed by a life assurance or retirement fund company. ILAC has appointed a staff member of the SFC as Secretary. The Secretary attends ILAC's discussions but has no vote.
- 2.5 On request, the Commission will give reasons for decisions reached.
- 2.6 Under section 10(4) of the SFO, the Commission may concurrently perform any function, power or duty which it has delegated but the Commission does not intend to exercise this right by reviewing a decision of ILAC except where there has been:
 - (a) a manifest error;
 - (b) an application of defective procedures; or
 - (c) a manifest misinterpretation of this Code.

Procedure for Amendments to the Code

- 2.7 ILAC may make recommendations to the Commission whenever it considers that the provisions of this Code should be amended or extended. If the Commission accepts ILAC's recommendation, any such change or amendment will be made known to the industry and transitional periods for compliance will be allowed where necessary.

Data Privacy

- 2.8 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

- 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.
- 3.7 “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.
- 3.10 “pooled retirement fund” has the same meaning as “pooling agreement” in the Occupational Retirement Schemes Ordinance.

- 3.11 “principal brochure” means that 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.
- 3.13 “substantial financial institution” means an authorized institution as defined in section 2(1) of the Banking Ordinance, or financial institution with a minimum paid-up capital of HK\$150,000,000 or its equivalent in foreign currency.

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, unless the fund is the subject of or regulated by an insurance arrangement (see 5.11 below).
- 5.2 A management company must:
- (a) be engaged primarily in the business of fund management;
 - (b) have sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; in particular, it must have a minimum issued and paid-up capital and capital reserves of HK\$1 million or its equivalent in foreign currency;
 - (c) not lend to a material extent; and
 - (d) maintain at all times a positive net asset position.
- 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 adviser.

Criteria for Acceptability of Management Company

- 5.5 The acceptability of the management company will be assessed on the following criteria:
- (a) The key personnel of the management company or those of the investment adviser (where the latter has been delegated the investment management function) are expected to possess at least five years investment experience managing pooled retirement funds or other public funds with reputable institutions. The expertise gained should be in the same type of investments as those proposed for the funds seeking authorization.

- (b) Key personnel must be dedicated full-time staff with a demonstrable track record in the management of pooled retirement funds or other public funds. In assessing the qualifications of the personnel of the management company, the Commission may request resumes of the directors of the management company and its delegates (if any) (see 2.8).
- (c) Sufficient human and technical resources must be at the disposal of the management company, which should not rely solely on a single individual's expertise.
- (d) The Commission must be satisfied with the overall integrity of the management company. Reasonable assurance must be secured of the adequacy of internal controls and the existence of written procedures, which should be regularly monitored by its senior management for updatedness and compliance. Conflicts of interests must be properly addressed to safeguard investors' interests.
- (e) Where the investment management functions are delegated to third parties, there should be on-going supervision and regular monitoring of the competence of the delegates by the management company to ensure that the management company's accountability to investors is not diminished. Although the investment management role of the management company may be sub-contracted to third parties, the responsibilities and obligations of the management company may not be delegated.

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 acceptable to the Commission, unless the fund is the subject of or regulated by an insurance arrangement.

Note: An acceptable trustee should either:

- (i) on an ongoing basis, be subject to regulatory supervision; or*
- (ii) appoint an independent auditor to periodically review its internal controls and systems on terms of reference agreed with the SFC and should file such report with the SFC (See Appendix E).*

6.2 A trustee must be:

- (a) a bank licensed under section 16 of the Banking Ordinance;
- (b) a trust company which is a subsidiary of such a bank or of an insurance company authorized in Hong Kong;
- (c) a trust company registered under Part VIII of the Trustee Ordinance; or
- (d) a banking institution or trust company incorporated outside Hong Kong which is acceptable to the Commission.

6.3 A trustee must be independently audited and have minimum issued and paid-up capital and non-distributable capital reserves of HK\$10 million or its equivalent in foreign currency.

6.4 Notwithstanding 6.3 above, the trustee's paid-up 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) the holding company issues a standing commitment to subscribe sufficient additional capital up to the required amount, if so required by the Commission; or
- (b) the holding company undertakes that it would not let its wholly-owned subsidiary default and would not, without prior approval of the Commission, voluntarily dispose of, or permit the disposal or issue of any share capital of the trustee such that it ceases to be a wholly-owned subsidiary of the holding company.

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

6.6 Notwithstanding 6.5 above, if the trustee and the management company are both

bodies corporate having the same ultimate holding company, whether incorporated in Hong Kong or outside Hong Kong, the trustee and the management company are deemed to be independent of each other if:

- (a) they are both subsidiaries of a bank, an insurance company or a holding company of a bank or insurance company;
- (b) neither the trustee nor the management company is a subsidiary of the other;
- (c) no person is a director of both the trustee and the management company; and
- (d) both the trustee and the management company sign an undertaking that they will act independently of each other in their dealings with the pooled retirement fund.

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.

Hong Kong Representative Agreement

- 7.5 Details of all contracts between the representative and the applicant company must be supplied to the Commission. Any subsequent amendments of these contracts must be notified to the Commission.

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 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 or advisory functions 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 acceptable to the Commission.

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 in respect of the following must be submitted to the Commission for prior approval:

- (a) changes to constitutive documents;
- (b) changes of key operators (including the applicant company, trustee / custodian, management company and its delegates and Hong Kong representative) and their regulatory status and controlling shareholder;
- (c) changes in investment objectives, policies and restrictions (including the purpose or extent of use of derivatives), fee structure and dealing and pricing arrangements; and
- (d) any other changes that may materially prejudice investors' rights or interests.

10.1A For changes to a scheme that require the Commission's prior approval pursuant to 10.1, the Commission will determine whether investors should be notified and the period of notice (if any) that should be applied before the changes are to take effect. The revised principal brochure as a result of such changes should be submitted to the Commission for prior authorization.

Notes: (1) Normally, the Commission will expect that one month's prior written notice (or such longer period as required under applicable laws and regulations or the provisions as set out in the principal brochure or constitutive documents) should be provided to investors in respect of the changes. However, the Commission may permit a shorter period of notice if the change is not significant or may require a longer period of notice (up to three months) in exceptional circumstances.

(2) For the purposes of 10.1A, significant changes would include, for example, changes in investment objectives or major investment policies, and fee structure.

(3) For any increase in fees and charges from the current level as stated in the principal brochure up to the maximum level permitted by the constitutive documents, prior approval from the Commission is not required, but no less than one month's prior notice must be given to investors.

10.1B For changes to a scheme that do not require the Commission's prior approval pursuant to 10.1, unless there is a specified minimum prior notice period in this Code, the applicant company should inform investors as soon as reasonably practicable of any information concerning the scheme which is necessary to enable investors to appraise

the position of the scheme. The principal brochure may be updated to incorporate such changes and reissued without further authorization provided that the content and format of such document remains fundamentally the same as the version previously authorized. 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 without consulting investors provided that the proposed alteration:
- (a) is necessary to make possible compliance with fiscal or other statutory or official requirements; or
 - (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.
- 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 Following the authorization of a pooled retirement fund, the applicant company should, subject to 10.6 below, give at least three months' notice to investors of any intention not to maintain such authorization. Such notice should be submitted to the Commission for prior approval and contain reasons for the withdrawal of authorization, consequences of the withdrawal, any proposed changes in the operation of the pooled retirement fund and their effects on existing investors, the alternatives available to investors (including, if possible, a right to switch without charge into another authorized pooled retirement fund) and, where applicable, an estimate of any relevant expenses and who is expected to bear them.

Merger or Termination

- 10.6 When a pooled retirement fund or any of its fund options is to be merged or terminated and there are investors remaining in the fund, in addition to following any procedures set out in the constitutive documents or governing law, notice shall be given to those investors. Such notice should be submitted to the Commission for prior approval and shall contain the reasons for the merger or termination, the relevant provisions under the constitutive documents that enable such merger or termination, the alternatives available to investors (including, if possible, a right to switch without charge into another authorized pooled retirement fund or fund option), the estimated costs of the merger or termination and who is expected to bear them.

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 Neither the applicant/management company nor any of its connected persons may retain cash or other rebates from a broker or dealer in consideration of directing transactions in the investments of the pooled retirement fund to the broker or dealer save that goods and services (soft dollars) may be retained if:
- (a) the goods or services are of demonstrable benefit to the investors;
 - (b) transaction execution is consistent with best execution standards and brokerage rates are not in excess of customary institutional full-service brokerage rates;
 - (c) adequate prior disclosure is made in the pooled retirement fund's principal brochure.

Note: Goods and services falling with (a) above may include: research and advisory services; economic and political analysis; portfolio analysis, including valuation and performance measurement; market analysis, data and quotation

services; computer hardware and software incidental to the above goods and services; clearing and custodian services and investment-related publications. Such goods and services may not include travel, accommodation, entertainment, general administrative goods or services, general office equipment or premises, membership fees, employee salaries, or direct money payments.

Notices to Investors

- 10.11 Notification to investors must be made in the language(s) in which the pooled retirement fund is offered to investors in respect of any changes or proposed changes to the principal brochure or constitutive documents as determined by the Commission pursuant to 10.1A.
- 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 The applicant company has the responsibility to ensure that the notices to investors are not misleading and contain accurate and adequate information to keep them informed. All notices should contain a Hong Kong contact number for investors to make enquiries.

Note: Notices should not include any reference to a specific date or timetable in respect of the changes made to the principal brochure or constitutive documents where such date or timetable has not been agreed in advance with the Commission.

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.

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 address 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 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

Compliance Checklist

The compliance checklist is to assist applicants in preparing an application. It should be completed and submitted to the Commission together with the other documents required for an application (see 1.6). References to the document(s) submitted should be noted in the right-hand column.

Information to be disclosed in the Principal Brochure

Where Found (Page/Para.)

- (a) *Name and Type of Pooled Retirement Fund*
- (b) *Parties Involved*
- (c) *Investment Returns*
- (d) *Fees and Charges* (i)
(ii)
(iii)
- (e) *Investment Objectives and Restrictions* (i)
(ii) ... etc.
- (f) *Borrowing Powers*
- (g) *Summary of Provisions in Constitutive Documents*
 - Valuation of Property and Pricing
 - Characteristics of Contributions
 - Benefits
 - Conditions of Termination
- (h) *Rebates*
- (i) *Application and Withdrawal Procedures*
- (j) *Governing Law*
- (k) *Taxation*
- (l) *Date of publication of the Principal Brochure*
- (m) *Responsibility Statement*
- (n) *Authorization Statement*

Contents of the Constitutive Documents

Where Found (Document/Page/Para.)

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

- (b) *Parties Involved*
- (c) *Investment Returns* (i)
(ii)
(iii)
- (d) *Valuation of Property and Pricing* (i) ... etc.
- (e) *Guarantee*
- (f) *Contributions*
- (g) *Benefits*
- (h) *Fees and Charges*
- (i) *Investment Strategy and Restrictions*
- (j) *Termination of the Pooled Retirement Fund*
- (k) *Transfer and Withdrawal of Interests*
- (l) *Governing Law*

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 either:
 - (a) on an ongoing basis, be subject to regulatory supervision; or
 - (b) appoint an independent auditor to periodically review its internal controls and systems on terms of reference agreed with the SFC and should file such report with the SFC.
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 relevant and necessary to the responsibilities of trustees/custodians in relation to scheme. The review should be conducted in accordance with generally acceptable international auditing practices¹.

¹ For example: *Practice Note 860.2* issued by the Hong Kong Society of Accountants; or *Technical Release AUDIT 4/97* issued by the Institute of Chartered Accountants in England and Wales (ICAEW) in the UK.

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 Department
Securities & Futures Commission
12/F, Edinburgh Tower
The Landmark, 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.