

# **CODE ON POOLED RETIREMENT FUNDS**

**Explanatory Notes:**

- (a) This Code establishes guidelines which will be applied by the Securities and Futures Commission for the authorization of pooled retirement funds, pursuant to s.4(2)(g) of the Protection of Investors Ordinance (PIO).**
- (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 an advertisement or invitation to the public in Hong Kong to invest in an unauthorized pooled retirement fund may amount to an offence under s.4 of the PIO.**
- (d) 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.

### **Documents to be supplied to the Commission**

- 1.3 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; and
  - (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.

## Chapter 2: Administrative Arrangements

- 2.1 The Commission has delegated to the Committee on Investment-Linked Assurance and Pooled Retirement Funds, 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 the Committee 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 the Committee on Investment-Linked Assurance and Pooled Retirement Funds (ILAC) under s. 6(1) of the Securities and Futures Commission Ordinance (SFC Ordinance) 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 s. 4(2)(g) of the PIO;
  - (c) imposing conditions on the authorization of investment-linked assurance schemes and pooled retirement funds pursuant to s. 4(7) of the PIO;
  - (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 (10)*

- (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 Registrar of Occupational Retirement Schemes;

- (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; and
- (k) Appointment (I) ad personam.

*Alternate Members (3)*

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

**Quorum & Meetings**

- 2.4 The quorum for any meeting of the Committee 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 s.9(2)(a) of the SFC Ordinance, 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 the Committee 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 the Committee'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 s.59 and 59A of the SFC Ordinance, 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**

- 3.1 "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 "Commission" or "SFC" means the Securities and Futures Commission established pursuant to the SFC Ordinance.
- 3.3 "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).
- 3.4 "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.
- 3.5 "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.
- 3.6 "investment portfolio" means a constituent fund of a pooled retirement fund into which assets of participating schemes are pooled for investment.
- 3.7 "investors" means the relevant employers and/or members, as appropriate, of the participating schemes under a pooled retirement fund.
- 3.8 "pooled retirement fund" has the same meaning as "pooling agreement" in the Occupational Retirement Schemes Ordinance.
- 3.9 "principal brochure" means that document issued by an applicant company, containing information on a pooled retirement fund as stipulated in Appendix A.
- 3.10 "substantial financial institution" means a licensed banking institution authorized under 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.

#### *Registration Requirement*

- 5.6 The type of registration required depends on the functions performed by the management company in Hong Kong. A management company that is incorporated in Hong Kong should normally be registered as an investment adviser under the Securities Ordinance.

#### *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:*

- (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*
- 6.2 A trustee must be:
- (a) a bank licensed under s.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:
- (i) 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;
  - (ii) accept service of any summons or writ on behalf of the applicant company;
  - (iii) 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;
  - (iv) receive notices from investors in respect of the pooled retirement fund;
  - (v) 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;
  - (vi) provide investors with information on the pooled retirement fund;
  - (vii) represent the applicant company in relation to all matters in which any investor in Hong Kong has a pecuniary interest; and
  - (viii) 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 Unit Trusts*

- 8.5 As a general principle any naming of unit trusts or mutual funds in authorized fund documents should be restricted to those which are authorized by the Commission pursuant to section 15 of the Securities Ordinance.

#### *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 unit trusts, mutual funds or other pooled funds 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 does not include units or shares in unit trusts or mutual fund corporations, either authorized under s.15 of the Securities Ordinance or recognized jurisdiction schemes pursuant to s.1.2 of 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**

#### **Changes to Documentation**

- 10.1 All proposed alterations or additions to the principal brochure and constitutive documents must be submitted to the Commission for prior approval. 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. Such notice period would not normally exceed six months, but individual cases will be considered on their merits.
- 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.

#### **Increase in Fees**

- 10.4 In respect of any increase of the fees and charges from the current level as stated in the principal brochure, up to the maximum level permitted by the constitutive documents, at least three months prior notice must be given to all investors.

#### **De-authorization**

- 10.5 Following the authorization of a pooled retirement fund, the applicant company should give at least six 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 de-authorization and the alternatives available to investors in the event of de-authorization.

#### **Termination**

- 10.6 When a pooled retirement fund is to be 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 reasons for the termination, the alternatives available to investors (including, if possible, a right to switch without charge into another authorized pooled retirement fund), the estimated costs of the termination and who is expected to bear these.

### **Advertising and Public Announcements**

- 10.7 Advertisements and other invitations to invest in a pooled retirement fund, including public announcements, must be submitted for authorization prior to their issue or publication in Hong Kong. Authorization may be varied or withdrawn by the Commission as it deems fit. The criteria for authorization of advertisements are set out in Appendix D.
- 10.8 No radio, television or cinema advertising of a pooled retirement fund is permitted in Hong Kong.
- 10.9 If a pooled retirement fund is described as having been authorized by the Commission, it must be stated that authorization does not imply official approval or recommendation.

### **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.*

## 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) (ii) the level of all fees and charges levied on the investment portfolios;
- (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*

If a pooled retirement fund is described as having been authorized by the Commission, it must be stated that authorization does not imply official approval or 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 1.3). References to the document(s) submitted should be noted in the right-hand column.

<b>Information to be disclosed in the Principal Brochure</b>	<b>Where Found (Page/Para.)</b>
<i>(a) Name and Type of Pooled Retirement Fund</i>	
<i>(b) Parties Involved</i>	
<i>(c) Investment Returns</i>	
<i>(d) Fees and Charges (i)</i>	
(ii)	
(iii)	
<i>(e) Investment Objectives and Restrictions (i)</i>  (ii)...etc.	
<i>(f) Borrowing Powers</i>	
<i>(g) Summary of Provisions in Constitutive Documents</i>  - Valuation of Property and Pricing - Characteristics of Contributions - Benefits - Conditions of Termination	
<i>(h) Rebates</i>	
<i>(i) Application and Withdrawal Procedures</i>	
<i>(j) Governing Law</i>	

<i>(k) Taxation</i>	
<i>(l) Date of publication of the Principal Brochure</i>	
<i>(m) Responsibility Statement</i>	
<i>(n) Authorization Statement</i>	
<b>Contents of the Constitutive Documents</b>	<b>Where found</b> (Document/Page/Para.)
<i>(a) Name and Type of Pooled Retirement Fund</i>	
<i>(b) Parties Involved</i>	
<i>(c) Investment Returns</i> (i) (ii) (iii)	
<i>(d) Valuation of Property and Pricing (i)...etc.</i>	
<i>(e) Guarantee</i>	
<i>(f) Contributions</i>	
<i>(g) Benefits</i>	
<i>(h) Fees and Charges</i>	
<i>(i) Investment Strategy and Restrictions</i>	
<i>(j) Termination of the Pooled Retirement Fund</i>	
<i>(k) Transfer and Withdrawal of Interests</i>	
<i>(l) Governing Law</i>	

## Appendix D

### Advertising Guidelines

As a general principle, every advertisement for a pooled retirement fund must have the prior authorization of the SFC. This requirement is derived from the Protection of Investors Ordinance (PIO), and is a provision of this Code. The issue of an unauthorized advertisement may be an offence under s.4 of the PIO. These guidelines should be interpreted as guidance rather than rigid rules, and issuers are expected to be guided by their spirit, as well as the content.

These guidelines are intended to apply to all forms of advertising, including print media, brochures, brochures, direct marketing, "fax on demand" services, posters in public places and advertising of authorized pooled retirement funds on the Internet. In the latter case, a hard copy of the relevant pages of the Internet website should be submitted to the SFC.

To facilitate efficient processing of advertisements, it is recommended that a management company nominate one person, based in Hong Kong, to liaise with the SFC.

Authorization may be varied or withdrawn by the SFC as it deems fit. Once authorized, the advertisement may be used for as long as the information it contains remains current.

### Corporate Advertisements

A corporate advertisement, which only advertises the expertise of or services offered by the applicant/management company without referring to any particular product, does not generally require authorization, unless it can be construed as a product advertisement.

### Newsletters/Updates

Newsletters, monthly updates or fact sheets may be sent to existing investors on a regular basis. Where such materials are issued in a standard format, there is no need to submit every issue once the standard format has been approved. Any subsequent changes in the format should be submitted.

## CONTENT OF ADVERTISEMENTS

1. **The general principle is that no advertisement can be made that is false, biased, misleading or deceptive.** The following statements are designed to illustrate this general principle.
2. Advertisements may not refer to any unauthorized fund, except as permitted in para. 14.

### Language & Graphics

3. A statement of opinion regarding a fund or applicant/management company's level of performance must be reasonable.
4. An advertisement should not contain words or phrases that may give investors the impression that they cannot lose money or that profits are guaranteed, unless they actually are guaranteed.
5. An advertisement should not focus on the potential return of a fund without some balancing reference to the risks involved. An advertisement should not give the impression that an investor could profit without risk.
6. An advertisement should not contain language, artwork or graphics that is inaccurate or inconsistent with its principal brochure and other documents.
7. An advertisement should not seek to denigrate a fund's competitors in such a way as might lower the reputation of the industry, or use language or artwork that would be considered by a reasonable person to be in poor taste.

#### **Statistics/Performance Figures**

8. If performance data (including charts, graphs, tables, and reference to awards and rankings) or estimated yield is quoted in a principal brochure or advertisement, supporting documents should be submitted to the SFC to substantiate the data or the calculation. The computation basis should be stated e.g. offer-to-offer or NAV-to-NAV. No forecast of the fund's performance can be made. The publication of a prospective yield does not constitute a forecast of performance.
9. Performance statistics should, where possible, be quoted from **an internationally recognised statistical source**. All performance data should be referenced to the source and dated.
10. Performance figures shown must be actual rather than simulated results. Hypothetical figures may be permitted for funds with complicated mechanisms for the purpose of explaining those mechanisms to investors, in which case such figures must be conservative, and it must be clearly stated to the effect that the figures used are for illustrative purposes only and not indicative of the actual return likely to be achieved by the investor. Annualized returns are generally only acceptable if the actual returns for all the individual years are shown in addition.
11. A comparison of performance figures should be fair, accurate and relevant, comparing "like with like".
12. If graphs are shown, they should be clearly presented without distortion. If different sets of data are plotted on the same graph, the same axis should be used.
13. If non-US\$/HK\$ denominated returns are shown, the advertisement should also show the returns in US\$/HK\$ terms. Alternatively, the advertisement should include a statement to

alert investors to the effect that *"The investment returns are denominated in [foreign currency]. US/HK dollar-based investors are therefore exposed to fluctuations in the US/HK dollar/ [foreign currency] exchange rate"*.

14. Reference to past performance of an unauthorized fund to indicate the fund manager's past track record can only be used in the following circumstances:
  - (a) the authorized fund is newly launched with short or no past track record;
  - (b) the investment objectives of the unauthorized fund are substantially the same as the authorized fund, managed by the same management team with similar investment policies and strategies;
  - (c) the advertisement makes clear that the performance figures quoted are **not** those of the authorized fund and that the unauthorized fund is clearly marked as not authorized in Hong Kong and not available to Hong Kong residents.

### **Warning Statements**

15. Warning statements are required on all advertisements:
  - (a) to the effect that investment involves risks, and that the principal brochure should be read for further details; and
  - (b) (where past performance is quoted) the past performance figures shown are not indicative of future performance.

The text may be varied but the message should be clear and not disguised. If a fund is described as having been authorized by the Commission it must be stated that authorization does not imply official approval or recommendation.

16. Warning statements should if possible be printed in type of the same size as the rest of the text in the advertisement, and in any event must be capable of being read with reasonable ease by anyone scanning the advertisement.
17. Warning requirements for advertisements of specialized investment funds are as follows:

#### *Guaranteed funds*

The advertisement must disclose:

- (a) all material conditions which affect the scope or validity of the guarantee, including, the warning, where relevant, 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
- (b) the name of the guarantor (if other than the policy issuer) and refer investors to

the principal brochure for more information.