

CONFORMED COPY

as at 13 March 2020

DATED 20th October 2000

RBC INVESTOR SERVICES TRUST HONG KONG LIMITED

and

SUN HUNG KAI PROPERTIES LIMITED

AMENDED AND RESTATED TRUST DEED

relating to

SHKP MPF EMPLOYER SPONSORED SCHEME

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Key for notes

MPF Ordinance	Mandatory Provident Fund Schemes Ordinance
General Regulation	Mandatory Provident Fund Schemes (General) Regulation
MPF Code	Mandatory Provident Fund Schemes Authority’s Code on MPF Investment Funds
SFC Code	Securities & Futures Commission’s Code on MPF Products

THIS **TRUST DEED** was made on the 20th October 2000, which was amended by a Supplemental Trust Deed dated 15 August 2002, a Second Supplemental Trust Deed dated 8 July 2009, a Third Supplemental Deed dated 27 November 2012, a Fourth Supplemental Deed dated 15 October 2015, a Fifth Supplemental Deed dated 29 January 2016, a deed of retirement dated 1 November 2016, a supplemental deed relating to the adoption of the amended and restated trust deed dated 1 November 2016, a First Supplemental Deed dated 7 December 2016, a Second Supplemental Deed dated 6 July 2018, a Third Supplemental Deed dated 5 September 2018, and a Fourth Supplemental Deed dated 13 March 2020.

PARTIES

- (1) **RBC INVESTOR SERVICES TRUST HONG KONG LIMITED** whose registered office is at 51st Floor, Central Plaza, 18 Harbour Road, Wanchai, Hong Kong (the “**Trustee**”); and
- (2) **SUN HUNG KAI PROPERTIES LIMITED** whose principal place of business is at 45th Floor, Sun Hung Kai Centre, 30 Harbour Road, Wanchai, Hong Kong (the “**Principal Employer**”).

NOW THIS DEED WITNESSES as follows:-

1. INTERPRETATION

- 1.1 In this Deed the following words and expressions shall have the following meanings unless the context otherwise requires:-

“**Accounting Date**” means 31st March in each year during the continuance of the Plan commencing 31st March 2001; or such other date or dates in each year as the Trustee with the approval of the Principal Employer and the Authority may from time to time select in respect of the Plan and notify to Employers and Members;

Note: s. 79 General Regulation, para. B1.3 MPF Code

“**Accounting Period**” means a period commencing on the date of commencement of the Plan or the date of establishment of the relevant Constituent Fund (as the case may be) or on the date next following an Accounting Date and ending on the next succeeding Accounting Date;

Note: para. B1.3 MPF Code

“**Accrued Benefits**” has the same meaning as in the MPF Ordinance;

“**Administrator**” means an administrator (if any) appointed by the Trustee with the consent of the Principal Employer pursuant to Clause 16;

Note: s. 2 MPF Ordinance

“**AEOI**” means one or more of the following as the context requires:-

- (a) the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters – the Common Reporting Standards and any associated guidance;
- (b) any intergovernmental agreement, treaty, guidance, standard or other agreement between the Hong Kong government (or any government body in Hong Kong) and any other jurisdiction (including any government bodies in such jurisdiction), entered into in order to comply with, facilitate, supplement or implement the legislation, regulations, guidance or standards described in sub-clause (a) above; and
- (c) any legislation, regulations or guidance in Hong Kong that give effect to the matters outlined in the preceding sub-clauses (a) to (b) above.

“**Approved Pooled Investment Fund**” has the meaning given to it by Section 6 of the Regulation;

Note: ss.2, 6 General Regulation

“**Approved Trustee**” has the same meaning as in the MPF Ordinance;

Note: s. 2 MPF Ordinance

“**Associate**” has the same meaning as in the MPF Ordinance;

Note: s. 2, Schedule 8 MPF Ordinance

“**Associated Employer**” means a person, firm, corporation or body eligible to participate in the Plan pursuant to the MPFA Ordinance that is designated by the Principal Employer as an Associated Employer;

Note: s. 2, Schedule 8 MPF Ordinance

“**the Auditors**” means the auditor or auditors appointed by the Trustee with the prior approval of the Principal Employer pursuant to the provisions of Clause 16;

“**Authority**” means the Mandatory Provident Fund Schemes Authority established by the MPF Ordinance;

“**Authorized Financial Institution**” has the same meaning as in the Regulation;

Note: s. 2 General Regulation

“**Business Day**” means any day (other than a Saturday) on which banks are open for normal banking business in Hong Kong;

“**MPF Conservative Fund**” means:-

- (a) a Constituent Fund that has the attributes of a capital preservation fund described in the Regulation;
- (b) unless the context otherwise requires, a Feeder Fund where the Approved Pooled Investment Fund in which such Feeder Fund invests has the attributes of a capital preservation fund described in the Regulation;

Note: para. B2.16 MPF Code

“**Central Securities Depository**” has the same meaning as in the Regulation;

Note: s. 2 General Regulation

“**Collective Investment Scheme**” means:-

- (a) any arrangement made for the purpose, or having the effect, of providing facilities for the participation of persons, as beneficiaries under a trust, in profits or income arising from the acquisition, holding, management or disposal of securities or any other property whatsoever; or
- (b) any other investment vehicle of a similar nature to that described in paragraph (a) of this definition including without limitation to the generality of the foregoing, any other open-ended investment company and mutual fund;

which, in any such case, has in issue units, shares or other interests (howsoever described) which are redeemable at the option of the holder thereof Provided That:-

- (i) in the case of any such arrangement or investment vehicle the assets of which are divided into two or more separate portfolios (whether described as portfolios, sub-funds or by any other name) in which an investor may separately invest, each such portfolio shall be deemed to be a separate Collective Investment Scheme; and
- (ii) in relation to any such Collective Investment Scheme, “**unit**” means any unit, share or other interest (howsoever described) of similar nature in such Collective Investment Scheme;

“**Constituent Fund**” means any pool of assets established in the books of the Plan pursuant to Clause 3;

“**Contributions**” means Mandatory Contributions, Voluntary Contributions and Special Contributions;

“**Credit Balance**” means in respect of a Member the value of the Units and any other investments and/or moneys derived from Contributions made by, on behalf of or for the benefit of such Member and from Transfer Payments in respect of the Member from time to time standing to the credit of such Member’s account in the books of the Plan;

“**Custodian**” means the custodian appointed by the Trustee with the consent of the Principal Employer pursuant to Clause 15 and in the absence of such appointment means the Trustee;

“**Deed**” means this deed, as amended from time to time;

“**Default Fund**” means such Constituent Fund as the Trustee, with the approval of the Principal Employer, may determine from time to time and notify to Members;

“**Default Investment Strategy**” means the default investment strategy that complies with Part 2, Schedule 10 to the MPF Ordinance;

Note: s. 2, 34DB(1)(b), MPF Ordinance

“**Deposit**” has the same meaning as in the Regulation;

“**DIS Funds**” means the two Constituent Funds in the Plan having the attributes of, respectively, the Age 65 Plus Fund and the Core Accumulation Fund, as defined in Schedule 10 to the MPF Ordinance;

Note: Schedule 10 to MPF Ordinance

“**Eligible Employee**”, in respect of an Employer, means a Relevant Employee of the Employer and any other employee of the Employer determined by the Employer at its absolute discretion and notified to the Trustee in writing to be an Eligible Employee;

Note: para. 11(5) Schedule 1 General Regulation

“**Eligible Overseas Bank**” has the same meaning as in the Regulation;

Note: ss. 2, 13 General Regulation

“**Employer Sponsored Scheme**” has the same meaning as in the MPF Ordinance;

“**Employers**” means the Principal Employer and any Associated Employer participating in the Plan pursuant to Clause 8 and “**Employer**” means any one of them and in relation to a Member, Employer means the Employer that employs the Member at the relevant time;

“**Employer’s Mandatory Contribution Balance**” means in respect of a Member so much of the Member’s Credit Balance as is derived from Employer’s Mandatory Contributions;

Note: s. 78(6)(a) General Regulation

“**Employer’s Mandatory Contributions**” means in respect of a Member amounts an Employer contributes to the Plan in respect of such Member pursuant to the MPF Ordinance as mandatory contributions (within the meaning of the MPF Ordinance) and includes (i) amounts an Employer contributes to the Plan that are treated as mandatory contributions pursuant to section 2(3) of the MPF Ordinance, for so long as they are so treated and (ii) Minimum MPF Benefits of the Member transferred to the Plan, so far as such Minimum MPF Benefits relate to contributions by the Employer and (iii)

any contribution surcharge paid in respect of the relevant Member pursuant to section 18 of the MPF Ordinance where (a) the relevant income (as defined in the MPF Ordinance) of the relevant Member is less than the minimum level of relevant income per month prescribed by the MPF Ordinance and (b) there is no sub-account in the records of the Trustee for the relevant Member's Mandatory Contribution Balance;

Note: s. 78(6)(a) General Regulations

“Employer’s Voluntary Contribution Balance” means in respect of a Member so much of the Member’s Credit Balance (if any) as is derived from Employer’s Voluntary Contributions;

Note: s. 78(6)(d) General Regulation

“Employer’s Voluntary Contributions” means in respect of a Member amounts (if any) an Employer contributes to the Plan in respect of such Member in addition to Employer’s Mandatory Contributions;

“Feeder Fund” means any Constituent Fund the objective of which is to invest solely (subject as otherwise provided in this Deed) in a single Approved Pooled Investment Fund provided that the Trustee with the approval of the Principal Employer may at any time determine that such Constituent Fund shall cease to be a Feeder Fund;

“HK\$” and **“Hong Kong dollars”** means the lawful currency of Hong Kong;

“Hong Kong” means the Hong Kong Special Administrative Region of the People’s Republic of China;

“Instruction Date” means such day or days in each month or each year as the Trustee, with the consent of the Principal Employer, may determine from time to time and notify to Members provided that:-

- (a) different Instruction Dates may be determined in respect of Investment Mandates and Switching Instructions and in respect of different classes of Members; and
- (b) until otherwise determined, each Business Day shall be an Instruction Date;

Note: para. B1.8 MPF Code

“Investment Manager” means the investment manager or investment managers (if any) appointed by the Trustee with the consent of the Principal Employer pursuant to Clause 14;

“Investment Mandate” means any instruction as may from time to time be in effect and given in accordance with Clause 19 by a Member as to the percentage of the Contributions and Transfer Payments received by the Trustee in respect of the Member to be invested in the Constituent Funds and/or the Default Investment Strategy;

“Issue Price” means the issue price of a Unit of a particular class as determined by the Trustee in respect of the initial issue of Units of such class and thereafter calculated in accordance with Clause 5;

“Mandatory Credit Balance” means in respect of a Member the aggregate of (a) the Employer’s Mandatory Contribution Balance, (b) the Member’s Mandatory Contribution Balance, (c) Special Contribution Balance and (d) the Mandatory Transfer Balance of the relevant Member;

“Mandatory Contributions” means Employer’s Mandatory Contributions, Member’s Mandatory Contributions and Special Contributions;

“Mandatory Transfer Balance” means in respect of a Member so much of the Member’s Credit Balance as is derived from Transfer Payments, to the extent that such amounts relate to mandatory contributions (as defined in the MPF Ordinance), Special Contributions or Minimum MPF Benefits;

Note: s. 78(6)(c), (7)(b), (8)(a) General Regulation

“Member” means an Eligible Employee, the Employer of whom has elected to participate in the Plan, and who has not ceased to be a Member, and includes a person who has ceased to be employed by the Employer but only for so long as his Accrued Benefits remain in the Plan in accordance with this Deed, the MPF Ordinance and the Regulation;

“Member’s Mandatory Contribution Balance” means in respect of a Member so much of the Member’s Credit Balance as is derived from such Member’s Mandatory Contributions;

Note: ss. 78(6)(b), (7)(a) General Regulation

“Member’s Mandatory Contributions” means in respect of a Member amounts that Member contributes to the Plan pursuant to the MPF Ordinance as mandatory contributions (within the meaning of the MPF Ordinance) and includes (i) amounts a Member contributes to the Plan that are treated as mandatory contributions pursuant to section 2(3) of the MPF Ordinance, for so long as they are so treated and (ii) Minimum MPF Benefits of the Member transferred to the Plan, so far as such Minimum MPF Benefits relate to contributions by the Member in respect of the Member’s current employment and (iii) any contribution surcharge paid in respect of the relevant Member pursuant to section 18 of the MPF Ordinance which is not Employer’s Mandatory Contributions;

Note: s. 78(6)(b) General Regulation

“Member’s Voluntary Contribution Balance” means in respect of a Member so much of the Member’s Credit Balance (if any) as is derived from such Member’s Voluntary Contributions;

Note: s. 78(6)(e), (7)(c) General Regulation

“Member’s Voluntary Contributions” means in respect of a Member amounts (if any) that Member contributes to the Plan in addition to Member’s Mandatory Contributions;

“Minimum MPF Benefits” has the same meaning as in the Mandatory Provident Fund Schemes (Exemption) Regulation;

“MPF Ordinance” means the Mandatory Provident Fund Schemes Ordinance (Cap. 485) of the Laws of Hong Kong;

“Net Asset Value” in relation to a Constituent Fund means the net asset value of such Constituent Fund or, as the context may require, of a Unit of the class or classes relating to such Constituent Fund calculated in accordance with the provisions of Clause 5;

“Participation Agreement” means in relation to an Employer and Members employed by that Employer, the agreement executed in accordance with Clause 8 by which that Employer agrees to participate in the Plan, as amended from time to time;

“person” includes firm, joint venture, company, body corporate or unincorporate or federation, state or subdivision thereof or any government or agency thereof;

“Plan” means the employer-sponsored provident fund scheme established by this Deed and known as SHKP MPF Employer Sponsored Scheme, in English or 新地強積金僱主營辦計劃, in Chinese or, subject to Clause 13.3, such other name or names as the Trustee and the Principal Employer may agree from time to time;

“Principal Employer” means Sun Hung Kai Properties Limited or such other person, firm, corporation or body appointed as Principal Employer pursuant to Clause 13;

“Pre-existing Account” means an account in the Plan which has been opened before 1 April 2017;

Note: section 34DA, MPF Ordinance

“Realisation Price” means the realisation price of a Unit of a particular class calculated in accordance with Clause 5.7;

“Recognized Futures Exchange” has the same meaning as in the Regulation;

“Recognized Stock Exchange” has the same meaning as in the Regulation;

Note: s. 2 General Regulation

“Registered Provident Fund Scheme” means a registered scheme as defined in the MPF Ordinance;

“the Regulation” means the Mandatory Provident Fund Schemes (General) Regulation (L.N. 294 of 1998) made pursuant to the MPF Ordinance;

“Relevant Employee” has the same meaning as in the MPF Ordinance;

Note: s. 2 MPF Ordinance

“Retirement Age” has the same meaning as in the MPF Ordinance;

Note: s. 2 MPF Ordinance

“Securities and Futures Ordinance” means the Securities and Futures Ordinance (Chapter 571) of the Laws of Hong Kong;

“Service Provider” has the same meaning as in the MPF Ordinance;

Note: s. 2 MPF Ordinance

“specified form”, in relation to an application, request, notice or other document given or to be given to the Trustee pursuant to this Deed or any Participation Agreement, means the form (if any) prescribed by the Authority in respect of such application, request, notice or other document or, if no such form is so prescribed, an application, request, notice or other document in such form as the Trustee may require;

“specific investment instructions” shall have the same meaning as ascribed to it under section 34DA of the MPF Ordinance;”

“Substantial Financial Institution” has the same meaning as in the Regulation;

Note: ss. 2, 7 General Regulation

“Switching Instruction” means an instruction given by a Member to the Trustee pursuant to Clause 20 requiring the realisation of assets comprised in the Credit Balance of such Member for the time being invested in one Constituent Fund and the reinvestment of the proceeds of such realisation in another Constituent Fund;

“Transfer Payments” means in respect of a Member amounts transferred to the Plan in accordance with Clause 35 in respect of that Member and amounts transferred from one account within the Plan to another account within the Plan in respect of that Member;

“Trustee” means RBC Investor Services Trust Hong Kong Limited (formerly known as “Butterfield Trust (Hong Kong) Limited”, “Dexia Trust Services Hong Kong Limited” and “RBC Dexia Trust Services Hong Kong Limited”), or such trustee or trustees of the Plan as may be appointed from time to time;

“Trustee’s Fee” means any sum to which the Trustee may become entitled pursuant to the provisions of Clause 27;

“Unclaimed Benefits” means all amounts to be treated as unclaimed benefits in accordance with the Regulation;

“Unclaimed Benefits Account” means the account within the Plan to which all unclaimed benefits are credited in accordance with this Deed or any relevant Participation Agreement;

“Unit” means such number of individual shares or such fraction of an undivided share of the Constituent Fund to which a Unit relates as is represented by a Unit of the relevant class, determined in accordance with Clause 1.2 and except where used in relation to a particular class of Unit a reference to Units means and includes Units of all classes;

Note: para. B1.10 MPF Code

“Valuation Date” means each Business Day or such other day or days as the Trustee, with the approval of the Principal Employer may from time to time determine either generally or in relation to a particular Constituent Fund and the class or classes of Units relating to such Constituent Fund;

Note: para. B1.16 MPF Code

“Valuation Point” means the close of business in the last relevant market to close or such other time as the Trustee may agree either generally or in relation to a particular Constituent Fund and the class or classes of Units relating to such Constituent Fund;

Note: para. B1.13 MPF Code

“Voluntary Contributions” means Employer’s Voluntary Contributions and Member’s Voluntary Contributions;

“Voluntary Credit Balance” means in respect of a Member the aggregate of (a) the vested portion of the Employer’s Voluntary Contribution Balance, (b) the Member’s Voluntary Contribution Balance and (c) the Voluntary Transfer Balance of the relevant Member;

“**Voluntary Transfer Balance**” means in respect of a Member so much of the Member’s Credit Balance as is derived from Transfer Payments, to the extent that such amounts relate to voluntary contributions (as defined in the MPF Ordinance);

Note: s. 78(6)(f), (7)(d), (8)(b) General Regulation

“**year**” means calendar year;

“**may**” shall be construed as permissive;

“**shall**” shall be construed as obligatory; and

“**in writing**” and “**written**” includes printing, photography and other modes of representing or reproducing words in permanent visible form (including facsimile transmission provided that the sender’s machine shall have confirmed satisfactory transmission) and such other modes of sending and/or recording information as the Trustee and the Principal Employer may agree.

1.2 A Unit shall represent such number of undivided shares or such fraction of an undivided share in the Constituent Fund to which it relates (calculated up to a maximum of ten decimal places) in accordance with the following provisions:-

1.2.1 where there is only one class of Units in issue in relation to a Constituent Fund, each Unit of such class shall represent one undivided share in the relevant Constituent Fund;

1.2.2 where there are two or more classes of Units in issue in relation to a Constituent Fund:-

1.2.2.1 each Unit of the initial class of Units in issue (or, where two or more classes of Units were initially issued, the class of Units deemed by the Trustee to be the initial class of Units in issue) (the “**Initial Class**”) shall on the first issue of such Units represent one undivided share in the relevant Constituent Fund;

1.2.2.2 each Unit of a class in issue other than the Initial Class shall initially represent such number of undivided shares in the relevant Constituent Fund as the proportion the price at which such Units are first issued bears to (a) where the initial issue of such Units is at the same time as the initial issue of Units of the Initial Class, the price at which Units of the Initial Class are first issued, or (b) where the initial issue of such Units falls after the initial issue of Units of the Initial Class, to the Net Asset Value per Unit of the Initial Class on the Valuation Day on which such other class of Units are first issued;

- 1.2.2.3 on each Valuation Date, the number of undivided shares of the relevant Constituent Fund represented by a Unit of a class other than the Initial Class then in issue or deemed to be in issue shall be decreased or increased, as the case may be, to such extent that the Issue Price of such Unit calculated in accordance with Clause 5.6.2 (but without the adjustment upwards or the imposition of a surcharge therein mentioned) shall be decreased or increased, as the case may be, by the amount of the difference between (a) the Trustee's Fee and any fee payable to the Investment Manager (if any) appointed to manage the investment of the relevant Constituent Fund and any other liability or asset specifically attributable to the class of such Unit accrued in respect of such Unit as at such Valuation Date and (b) the Trustee's Fee and any fee payable to the Investment Manager (if any) appointed to manage the investment of the relevant Constituent Fund accrued in respect of a Unit of the Initial Class as at such Valuation Date;
- 1.2.3 each Unit of a class subsequently issued shall represent at the time of issue the same number of undivided shares of the relevant Constituent Fund as each other Unit of the same class then in issue.
- 1.3 References to Clauses, Parts and Schedules are to clauses and parts of and schedules to this Deed. Unless the context otherwise requires, references to Paragraphs are to paragraphs of the Schedule in which such reference occurs.
- 1.4 Clause, Part and Paragraph headings, the index and the notes are inserted for convenience only and shall be ignored in construing the trusts, powers and provisions contained in this Deed.
- 1.5 Unless the context otherwise requires, words importing the singular shall include the plural and vice versa and words importing one gender shall include the other genders.
- 1.6 To the extent that the provisions of any Participation Agreement are inconsistent with or conflict with the provisions of this Deed, the provisions of this Deed shall prevail.
- 1.7 References to statutory provisions shall be deemed to extend to any subsidiary legislation, statutory modification, codification or re-enactment thereof for the time being in force.
- 1.8 References to the Authority shall include any other regulatory body or authority established under any statute or law to carry out and exercise any of the functions of the Authority, as the case may be, whether as a separate body or authority or as an amalgamation or merger between another body or authority and the Authority, as the case

may be, or as a replacement or successor to the Authority and whether established to act in conjunction with or in place of the Authority.

PART I

ESTABLISHMENT OF THE PLAN

2. ESTABLISHMENT OF THE PLAN

2.1 The Plan was established and constituted by a trust deed dated 20th October 2000 (as amended and supplemented) as an employer sponsored scheme for the purpose of providing benefits to Members and persons claiming through them.

2.2 The establishment of the Plan does not:-

- (a) confer any rights upon any Employee or any person for a continuation of employment; or
- (b) limit in any way the right of the Employer to discharge any Employee or to treat such Employee without regard to the effect such treatment may have upon the Employee as a Member of the Plan.

3. ESTABLISHMENT OF CONSTITUENT FUNDS

Note: s. 36 General Regulation, s.34DB(1)(a) MPF Ordinance

3.1 The Trustee shall in the books of the Plan establish one or more Constituent Funds, which shall include the MPF Conservative Fund and the DIS Funds, and shall in the books of the Plan allocate the assets and liabilities of the Plan to each such Constituent Fund in accordance with and subject to this Deed. All the Constituent Funds (including the DIS Funds) shall have a separate statement of investment policy in accordance with Clause 23 and subject to Clause 21 shall be available to all Members.

3.2 The initial Constituent Funds were known as Standard Chartered Capital Preservation Fund - SHKP, Standard Chartered Career Average Guaranteed Fund - SHKP, Fidelity Balanced Fund, New-Alliance Global Balanced Fund, Fidelity Stable Growth Fund, Dresdner Stable Growth Fund and HSBC Capital Stable Fund.

3.3 The Trustee may with the consent of the Principal Employer (and shall at the request of the Principal Employer) at any time and from time to time, subject to any applicable regulatory requirements and any necessary regulatory approvals, establish a new Constituent Fund and a new class or classes of Units related to such Constituent Fund or

establish a new class or classes of Units relating to an existing Constituent Fund. Prior to the establishment of a new Constituent Fund, the Trustee shall prepare or cause to be prepared a statement of investment policy for such Constituent Fund containing such information as is required by the MPF Ordinance and/or the Regulation and other applicable regulatory requirements. The Trustee shall give notice of the establishment of any new Constituent Fund to Employers and Members as soon as practicable on or after such establishment.

- 3.4 The interest of each Member in respect of a Constituent Fund shall be represented by the Units relating to such Constituent Fund for the time being allocated to the Credit Balance of such Member. Members shall not have or acquire any rights against the Trustee in respect of Units allocated to the Credit Balance of such Member other than those expressly conferred upon them by this Deed. No Member shall be entitled to any interest or share in any particular part of any Constituent Fund nor shall any Unit confer any interest or share in any particular part of any Constituent Fund.

Note: para. B1.10 MPF Code

- 3.5 The following provisions shall apply in respect of each Constituent Fund:-
- 3.5.1 The Constituent Fund shall initially comprise the first amounts to be invested in accordance with Investment Mandates in Units of the class or classes relating to such Constituent Fund following the establishment of such Constituent Fund.
- 3.5.2 The Constituent Fund shall thereafter be comprised of investments cash and other property held or received by or on behalf of the Trustee for the account of such Constituent Fund, arising from the said first amounts and also out of the subsequent amounts to be invested in accordance with Investment Mandates in Units relating to such Constituent Fund but less any amount distributed or paid out pursuant to this Deed.
- 3.5.3 Amounts to be invested in accordance with Investment Mandates in Units shall be applied in the books of the Plan to the class of the Constituent Fund to which such Units relate and the assets and liabilities and income and expenditure attributable thereto shall be applied to such Constituent Fund.
- 3.5.4 Where any asset is derived from another asset (whether of cash or otherwise), such derivative asset shall be applied in the books of the Plan to the same Constituent Fund as the assets from which it was derived and on any valuation of any investment comprised

in a Constituent Fund any increase or diminution in value shall be applied to the relevant Constituent Fund.

3.5.5 In the case of any asset of the Plan which the Trustee after consultation with the Principal Employer does not consider is attributable to a particular Constituent Fund, the Trustee shall have a discretion to determine the basis upon which any such asset shall be allocated between the Constituent Funds and may from time to time vary such allocation.

3.5.6 In the case of any liability or contingent liability which the Trustee after consultation with the Auditors does not consider is attributable to a particular Constituent Fund and is not to be attributed to any particular Constituent Fund pursuant to any express provision of this Deed, the Trustee shall have a discretion to determine the basis upon which any such liabilities shall be allocated between Constituent Funds including conditions as to the subsequent re-allocation thereof if circumstances make it desirable so to do and shall have power at any time and from time to time to vary such basis.

3.6 Where:-

3.6.1 all or part of the assets of a Constituent Fund are invested in an Approved Pooled Investment Fund that is guaranteed; and

3.6.2 an amount is paid to the Trustee in respect of such guarantee (such amount the “top up amount”); and

3.6.3 the top up amount is paid in respect of a particular Member,

then (a) the Trustee shall credit the top-up amount between the Employer’s Mandatory Contribution Balance, the Employer’s Voluntary Contribution Balance (if any), the Member’s Mandatory Contribution Balance, the Member’s Voluntary Contribution Balance (if any), the Mandatory Transfer Balance (if any) and the Voluntary Transfer Balance (if any) of the Member in respect of whom the top-up amount is paid in such proportions as the Trustee deems fit and (b) the top-up amount shall not form part of the assets of the relevant Constituent Fund

3A. DEFAULT INVESTMENT STRATEGY

The Trustee shall, subject to Clause 21, make available the Default Investment Strategy under the Plan for selection by Members and must ensure that any investment related to

the Default Investment Strategy accords with the requirements under Part 4AA of the MPF Ordinance and Part 2 of Schedule 10 to the MPF Ordinance.

4. TERMINATION OF CONSTITUENT FUNDS

4.1 Subject to any applicable regulatory requirements and any necessary regulatory approvals the Trustee may with the consent of the Principal Employer (and shall at the request of the Principal Employer) at any time and from time to time determine that any Constituent Fund (the “**Terminating Fund**”) shall cease to be such by giving not less than one (1) month’s Notice to each Employer and each Member (or such other period of notice as the Authority may require) that, on the date specified in such notice (the “**Fund Termination Date**”), such Constituent Fund shall cease to be a Constituent Fund and no further Contributions or other moneys may be invested therein. The Principal Employer shall not unreasonably withhold its consent to any such determination.

4.2 Where the Trustee makes a determination pursuant to this Clause, the following provisions shall apply:-

4.2.1 Where any Units of a class relating to the Terminating Fund are credited to the account of any Member, the relevant Member shall be entitled to give a Switching Instruction prior to such date as the Trustee may determine directing the Trustee to realise such Units and invest the proceeds of realisation into such other Constituent Fund or Constituent Funds as the relevant Member may specify.

4.2.2 Where an Investment Mandate directs the investment of all or part of the Contributions by or in respect of a Member in the Terminating Fund, the relevant Member shall be entitled to give a new Investment Mandate prior to such date as the Trustee may determine directing the Trustee to invest future Contributions in such other Constituent Fund or Constituent Funds as the relevant Member may specify;

4.2.3 A relevant Member who fails to give a Switching Instruction in accordance with Clause 4.2.1 shall be deemed to have given a Switching Instruction to realise such Units and invest the proceeds of realisation (i) into the Default Fund, in the case where the termination takes effect before 1 April 2017, and (ii) in accordance with the Default Investment Strategy, in the case where the termination takes effect on or after 1 April 2017;

4.2.4 A relevant Member who fails to give a new Investment Mandate in accordance Clause 4.2.2 shall be deemed to have given a new Investment Mandate in the same terms as the

previous Investment Mandate, except that references to investing in the Terminating Fund shall be construed as references to investing (i) in the Default Fund, in the case where the termination takes effect before 1 April 2017, and (ii) in accordance with the Default Investment Strategy, in the case where the termination takes effect on or after 1 April 2017;

- 4.2.5 The Trustee shall realise all the Units of the class or classes relating to the Terminating Fund on the Valuation Date for the Terminating Fund coincident with or immediately preceding the Fund Termination Date (the “**relevant Valuation Date**”) and shall invest the proceeds of realisation in accordance with the relevant Switching Instruction in such other Constituent Fund or Constituent Funds on the Valuation Date for the relevant Constituent Fund coincident with or next following the relevant Valuation Date.

Note: para. B1.13 MPF Code

- 4.3 Subject to any applicable regulatory requirements and any necessary regulatory approvals, a Constituent Fund which is a Feeder Fund shall terminate on the termination of the Approved Pooled Investment Fund in which such Constituent Fund invests unless the Trustee with the consent of the Principal Employer and (if required) the approval of the Authority shall determine that such Constituent Fund shall invest in some other Approved Pooled Investment Fund. So far as is practicable, the provisions of Clause 4.2 shall apply in respect of such termination.

- 4.4 Subject to any applicable regulatory requirements and any necessary regulatory approvals, the Trustee may with the consent of the Principal Employer (and shall at the request of the Principal Employer) at any time and from time to time determine that any class of Units relating to a Constituent Fund (the “**Terminating Class**”) shall cease to be such by giving not less than one (1) month’s Notice to each affected Employer and each affected Member (or such other period of notice as the Authority may require) that, on the date specified in such notice (the “**Class Termination Date**”), the Terminating Class shall cease and no further Contributions or other moneys may be invested therein. The Principal Employer shall not unreasonably withhold its consent to any such determination.

- 4.5 Where the Trustee makes a determination pursuant to Clause 4.4, the following provisions shall apply:-

- 4.5.1 The Trustee shall realise all the Units of the Terminating Class on the Valuation Date for the Terminating Class coincident with or immediately preceding the Class Termination

Date and shall invest the proceeds of realisation in such other class of Units relating to the same Constituent Fund as the Terminating Class as the Principal Employer shall determine (the “**New Class**”) on such Valuation Date;

4.5.2 Where an Investment Mandate directs the investment of all or part of the Contributions or Transfer Payments by or in respect of a Member in the Terminating Class, references to the Terminating Class shall be construed as references to the New Class.

4.6 The decision of the Trustee to terminate a Constituent Fund or any class of Units shall be final and binding on all concerned but the Trustee shall be under no liability on account of any failure to terminate any Constituent Fund or class of Units pursuant to this Clause or otherwise.

5. VALUATION OF CONSTITUENT FUNDS

Note: paras. B1.12, 1.13 MPF Code

5.1 The Trustee shall determine the Net Asset Value of each Constituent Fund and the Issue Price and Realisation Price of Units of each class relating to such Constituent Fund as at the Valuation Point on each Valuation Date of the relevant Constituent Fund.

5.2 The Net Asset Value of a Constituent Fund shall be determined by valuing the assets of such Constituent Fund and deducting the liabilities attributable to such Constituent Fund. In making such determination the following provisions shall apply:-

5.2.1 In the case of any investment which is a unit, share or other interest in a Collective Investment Scheme the value thereof shall be calculated by reference to the latest available net asset value of such unit, share or other interest (where available) or (if the same is not available) the latest bid price for such unit, share or other interest;

5.2.2 In the case of any investment not included in Clause 5.2.1 which is listed, quoted or dealt in on a Recognized Stock Exchange or Recognized Futures Exchange the value thereof shall be calculated by reference to the last traded price thereof;

5.2.3 In the case of any other investment (or in the case of any investment included in Clause 5.2.1 or 5.2.2 the price of which is not available or the latest available net asset value or bid price or last traded price is not considered to be fair by the Trustee) or other property the value thereof shall be determined by any person approved by the Trustee as qualified to value the relevant investment or other property;

- 5.2.4 Where investments or other property have been agreed to be purchased or sold but such purchase or sale has not been completed, such investments or other property shall be included or excluded respectively and the net purchase or sale consideration excluded or included respectively (as the case may require) as if such purchase or sale had been duly completed;
- 5.2.5 Income derived from Deposits and from securities bearing fixed interest shall be deemed to accrue from day to day;
- 5.2.6 Dividend payments on securities which are quoted on or dealt in on a Recognized Stock Exchange shall be deemed to be received on the date on which the investment is first quoted ex the dividend payment in question;
- 5.2.7 There shall be taken into account such sum (if any) as in the estimate of the Trustee will fall to be paid or reclaimed for the account of such Constituent Fund in respect of taxation related to income and transactions down to the date as at which the valuation is made;
- 5.2.8 Every Unit of a class relating to such Constituent Fund issued as at a date prior to the date as at which the valuation is made and not subsequently cancelled prior to the date of valuation shall be deemed to be in issue, provided that such Constituent Fund shall not include the Units of the relevant class to be issued on the date as at which the valuation is made;
- 5.2.9 Where, in accordance with this Deed, Units of a class relating to a Constituent Fund have been realised but payment in respect of such realisation has not been completed, the Units in question shall be deemed not to be in issue and the value of the Units realised thereof shall be deducted from the relevant Constituent Fund, provided that no deduction shall be made in respect of Units of the relevant class to be cancelled on the date as at which the valuation is made;
- 5.2.10 Except in relation to the MPF Conservative Fund there may be included in the assets an amount equal to the appropriate portion for such Constituent Fund of the total of the costs, charges, fees and expenses incurred in establishing the Plan and referred to in Clause 31 less the amount thereof which has previously been or is then to be written off;
- 5.2.11 Subject to 5.3, there shall be deducted from the value of each Constituent Fund the amount of the following (so far as payable out of the relevant Constituent Fund in accordance with this Deed):-

- 5.2.11.1 the Trustee's Fee;
- 5.2.11.2 the fees, charges and expenses payable in accordance with Clause 31;
- 5.2.11.3 the amount of tax (if any) on capital gains accrued attributable to such Constituent Fund up to the end of the last Accounting Period remaining unpaid;
- 5.2.11.4 the aggregate principal amount for the time being outstanding of any borrowing effected under Clause 25 for the account of such Constituent Fund and the amount of any interest and expenses accrued pursuant to Clause 25 but not paid;
- 5.2.11.5 any other amounts payable out of the relevant Constituent Fund pursuant to any provision of this Deed or by law accrued but not paid or discharged and any amount which the Trustee shall consider it necessary to provide to defray any contingent liabilities or any liabilities the amount of which is for the time being unascertained which are each properly payable out of the assets of the Plan;

and such amounts may be amortized over such periods as the Trustee and the Principal Employer may from time to time agree;

- 5.2.12 Amounts expressed in currencies other than Hong Kong dollars shall be converted into Hong Kong dollars at such prevailing rates of exchange as the Trustee shall consider appropriate.

Notwithstanding the foregoing, the Trustee may make such adjustments as it thinks appropriate to take account of any other assets or liabilities attributable to the relevant Constituent Fund not otherwise reflected in a valuation.

- 5.3 In calculating the Net Asset Value of the MPF Conservative Fund as at any Valuation Date, the Trustee shall have regard to all relevant information available to the Trustee on that Valuation Date to enable compliance (so far as is possible) with section 37 of the Regulation in respect of the MPF Conservative Fund. Any accruals made in respect of the MPF Conservative Fund as at a Valuation Date may be adjusted in the light of information which becomes available to the Trustee after such Valuation Date but no valuation of the MPF Conservative Fund or the calculation of the Issue Price or Realisation Price of any class of Units relating to the MPF Conservative Fund shall be re-opened or invalidated as a result of any such adjustment.

- 5.4 The Trustee shall decide conclusively:-
- 5.4.1 the period to which any income, expenses or liabilities are to be attributed (and in particular, but without prejudice to the generality of the foregoing, where the annual accounts are to be made up to a date which is not a Valuation Date, the Trustee may in its absolute discretion decide whether income and expenses accruing between the last Valuation Date in the relevant Accounting Period and the last day of such Accounting Period are to be taken into account in such Accounting Period or carried forward to the next Accounting Period); and
- 5.4.2 how any taxation to which the Plan is or may be subject is to be treated.
- 5.5 In order to determine the Net Asset Value of a Unit of a particular class related to a Constituent Fund, the Net Asset Value of the Constituent Fund shall be calculated before the deduction of any liabilities or the addition of any assets attributable specifically to the class in question; such amount shall be apportioned between each class of Units relating to such Constituent Fund by reference to the numbers of undivided shares in the relevant Constituent Fund represented by all Units of each class relating to such Constituent Fund in issue; the liabilities and assets specifically attributable to the class of Units in question shall be deducted from or added to such apportioned amount; and the resulting sum shall be divided by the number of Units of the relevant class in issue immediately prior to the relevant Valuation Date for such class of Units.
- 5.6 The Issue Price of a Unit of a class shall be:-
- 5.6.1 on the first issue of such Units, HK\$10 or such other amount as the Principal Employer and the Trustee may agree prior to the first issue of such Units;
- Note: para. B1.11 MPF Code*
- 5.6.2 on any subsequent Valuation Date, in respect of a Unit of a Constituent Fund which is a Feeder Fund the issue price of a Unit of the Approved Pooled Investment Fund into which the relevant Constituent Fund invests or, at the discretion of the Trustee in respect of a Feeder Fund and in relation to other Constituent Funds, the Net Asset Value per Unit of the relevant class, rounded as determined by the Trustee and PROVIDED THAT the Trustee may (save in respect of a Unit of the MPF Conservative Fund otherwise than to the extent permitted by the Regulation) assess and impose such surcharge (if any) in respect of Units to be issued as shall in the opinion of the Trustee be appropriate in order to compensate for the difference between the prices at which the assets comprised in the

Constituent Fund to which such Units relate are to be valued in accordance with this Deed and the total cost of acquiring such assets or creating any Deposit comprised in such Constituent Fund including any other relevant expenses including, without limitation any stamp duty, other taxes, duties or governmental charges, brokerage, bank charges, transfer fees (to the extent permitted under the Regulation), or registration fees.

- 5.7 The Realisation Price of a Unit of a class on a Valuation Date shall, in respect of a Unit of a Constituent Fund which is a Feeder Fund be the realisation price of a Unit of the Approved Pooled Investment Fund into which the relevant Constituent Fund invests or, at the discretion of the Trustee in respect of a Feeder Fund and in relation to other Constituent Funds, be the Net Asset Value per Unit of the relevant class as at that Valuation Date, rounded as determined by the Trustee PROVIDED THAT the Trustee may (save in respect of a Unit of the MPF Conservative Fund otherwise than to the extent permitted by the Regulation) assess and impose such deduction (if any) in respect of Units to be realised as shall in the opinion of the Trustee be appropriate in order to compensate for the difference between the prices at which assets comprised in the Constituent Fund to which such Units relate are to be valued in accordance with the provisions of this Deed and the net proceeds which would be received on the realisation of such assets or the breaking of any Deposit comprised in such Constituent Fund and for any relevant expenses including, without limitation any stamp duty, other taxes, duties or governmental charges, brokerage, bank charges or transfer fees (to the extent permitted under the Regulation).

Note: para. B1.23 MPF Code

6. SUSPENSION OF VALUATION

Note: paras. B1.20. B1.21 MPF Code

- 6.1 Unless otherwise prohibited by the MPF Ordinance or the Regulation the Trustee may declare a suspension of the determination of the Net Asset Value of any Constituent Fund:-
- 6.1.1 during any period when any stock exchange or other market on which any of the investments for the time being held for the account of such Constituent Fund are quoted is closed otherwise than for ordinary holidays; or
- 6.1.2 during any period when any dealings on any such stock exchange are restricted or suspended; or

- 6.1.3 during the existence of any state of affairs as a result of which disposal of investments for the time being comprised in such Constituent Fund cannot in the opinion of the Trustee be effected normally; or
- 6.1.4 during any breakdown in the means of communication normally employed in determining the value of such Constituent Fund or part thereof or the Issue Price or Realisation Price of Units of the class or classes relating to such Constituent Fund or when for any other reason the value of any investment for the time being comprised in such Constituent Fund and representing a significant part of the value thereof cannot be promptly and accurately ascertained; or
- 6.1.5 during any period when the realisation of any investments for the time being comprised in such Constituent Fund or the transfer of funds involved in such realisation cannot in the opinion of the Trustee be effected at normal prices or normal rates of exchange respectively; or
- 6.1.6 during any suspension of payment of Accrued Benefits from the Plan pursuant to the Regulation.

Such suspension shall take effect forthwith upon the declaration thereof and thereafter there shall be no determination of the Net Asset Value of the relevant Constituent Fund or the Issue Price or Realisation Price of Units of the class or classes relating such Constituent Fund until the Trustee shall declare the suspension at an end, except that the suspension shall terminate in any event on the day following the first Business Day on which the Trustee determines that:-

- (i) the condition giving rise to the suspension shall have ceased to exist; and
- (ii) no other condition under which suspension is authorised under this sub-clause shall exist.

- 6.2 Each declaration by the Trustee pursuant to this Clause shall be consistent with such official rules and regulations, if any, relating to the subject matter thereof as shall have been promulgated by any authority having jurisdiction over the Plan or the relevant Constituent Fund and as shall be in effect at the time. To the extent not inconsistent with such official rules and regulations, and subject to the foregoing provisions hereof, the determination of the Trustee shall be conclusive.

6.3 No Units of a class relating to a Constituent Fund may be issued, realised or switched during any period when the determination of the Net Asset Value of such Constituent Fund is suspended. The Trustee shall be under no obligation to calculate or publish the Issue Price or Realisation Price of Units during any period of suspension as provided in this Clause 6.

7. ISSUE AND REALISATION OF UNITS

7.1 The Trustee shall have the power to issue and realise Units on each Valuation Date, subject to and in accordance with this Deed. Fractions of a Unit calculated as determined by the Trustee may be issued. Where there is more than one class of Units in issue in relation to a Constituent Fund and Units relating to that Constituent Fund are to be issued in accordance with this Deed, the Trustee, with the consent of the Principal Employer, shall (subject to any relevant Participation Agreement) have an absolute discretion to determine the class of Units which are so issued.

7.2 Units of a class shall be issued at the Issue Price per Unit of such class as at the Valuation Point on the appropriate Valuation Date.

7.3 Units are not transferable by any Employer or Member.

7.4 Units of a class shall be realised at the Realisation Price per Unit of such class as at the Valuation Point on the appropriate Valuation Date.

7.5 The Trustee shall be entitled but shall not be obliged to limit the total number of Units relating to a Constituent Fund realised on any Valuation Date to 10 per cent. of the total Net Asset Value of Units of such class in issue (disregarding any Units which are to be issued on such Valuation Date). Such limitation shall apply to all Members' in respect of whom Units of the relevant class or classes relating to the relevant Constituent Fund to be realised on such Valuation Date so that the proportion of Units realised in respect of each Member realised of each holding is the same proportion by value for all such Members. Any Units which, by virtue of the powers conferred on the Trustee hereby, are not realised shall be realised (subject to any further application of the provisions of this sub-clause) on the next succeeding Valuation Date for the Units of such class. Such realisations carried forward shall rank equally with new realisation requests received on the next Valuation Day. If realisations are carried forward as aforesaid, the Trustee will give notice to the Members affected thereby within seven days of such Valuation Date that such Units have not been realised and that (subject as aforesaid) they shall be realised

on the next succeeding Valuation Date for the relevant class of Units and on each Valuation Date thereafter until all outstanding realisations have been effected in full.

Note: para. B1.22 MPF Code

7.6 A Member may request the Trustee to arrange a transfer of Investments by way of payment of Accrued Benefits. In such a case following receipt of a relevant request in writing from the Member the Trustee may satisfy such realisation request by transferring in specie Investments (or partly Investments and partly cash) forming part of the Constituent Fund to which the class of Units to be realised relates in which case the following provisions shall apply:-

- (a) the Trustee shall, after consulting the Member, select the assets to be transferred;
- (b) the value of the assets to be transferred shall be calculated as at the Valuation Point on the appropriate Valuation Day;
- (c) the aggregate amount of the value of the assets to be transferred (calculated as aforesaid) and any cash to be paid shall be equivalent to the amount which would have been payable pursuant to the foregoing provisions of this Clause had the realisation of Units not been effected by a transfer in specie out of the assets of the relevant Constituent Fund; and
- (d) all stamp duty, registration fees and other charges payable in respect of any transfer (to the extent permitted under the Regulation) under this paragraph shall be payable from the realisation proceeds.

PART II
PARTICIPATION OF EMPLOYERS AND MEMBERS

8. PARTICIPATION AND CESSATION OF PARTICIPATION BY AN ASSOCIATED EMPLOYER

8.1 An Associated Employer may participate in the Plan, subject to the approval of the Principal Employer, by executing a Participation Agreement in such form as the Trustee may reasonably require. The Trustee shall issue a notice of participation to the Associated Employer as soon as practicable and in any case within such period as may be prescribed in the Regulation. The Trustee shall not refuse participation in the Plan to any Associated Employer who satisfies the requirements of this sub-clause.

8.2 On being notified that an Associated Employer is considering making an application to participate in the Plan, the Trustee shall cause to be given to such Associated Employer the information required to be given to such Associated Employer by the Regulation.

8.3 Two or more Employers (the “**relevant Employers**”) may execute the same Participation Agreement and/or agree to participate in the Plan on the same terms and conditions. In such circumstances, the relevant Employers shall nominate one of their number as their representative for the purposes of the Plan (the “**Representative Employer**”) and the following provisions shall apply subject to any requirement of the MPF Ordinance:-

8.3.1 Any obligation or requirement under this Deed, any relevant Participation Agreement or otherwise to give a notice or other communication to any of the relevant Employers shall be discharged by giving such notice or other communication to the Representative Employer; and

8.3.2 Any notice or other communication given by the Representative Employer to the Trustee shall be deemed to be given on behalf of all the relevant Employers, unless expressly stated otherwise, and the Trustee shall be entitled to rely and act on such notice or other communication accordingly.

The relevant Employers may at any time by notice to the Trustee in the specified form and signed by each of them nominate another of the relevant Employers to act as Representative Employer for the purposes of the Plan.

8.4 Each Employer shall be deemed by execution of a Participation Agreement to:-

- 8.4.1 covenant to pay to the Trustee all sums of money now or hereafter due to be paid by it in accordance with this Deed, the relevant Participation Agreement and the MPF Ordinance and the Regulation and the Employer warrants that any such payment will not breach any applicable law or regulation relating to the prevention of money laundering or otherwise;
- 8.4.2 covenant to comply with the provisions of this Deed to the extent applicable to an Employer, the relevant Participation Agreement and the MPF Ordinance and the Regulation;
- 8.4.3 subject to Clause 38.5.2, undertake and agree
- 8.4.3.1 to the extent that the Trustee is not indemnified out of the assets of the Plan, to hold the Trustee indemnified against all and any proceedings, costs, charges and liabilities, and all expenses properly and reasonably incurred, occasioned by all and any claims, actions, demands or proceedings in connection with the Plan (provided that the Trustee shall not itself bring or commence any such claim, action, demand or proceeding unless the Trustee reasonably considers that to do so is in the interests of Members) so far as they (i) relate to the Employer and Members who are attributable to the Employer (whether they relate to the Employer and such Members alone or together with another Employer or Employers and the Members attributable thereto), or (ii) are a result of any failure or omission on the part of the Employer to duly and punctually perform or observe any of the obligations on the part of the Employer to be performed or observed under and pursuant to the provisions of this Deed, the relevant Participation Agreement, the MPF Ordinance and the Regulation.
- 8.4.3.2 to the extent that the Trustee is not indemnified out of the assets of the Plan, to hold the Trustee indemnified against any loss, cost or expense arising as a result of any information provided by the Employer pursuant to Clause 8.4.4 not being true and correct or being misleading;
- 8.4.3.3 to pay all legal costs and expenses of the Trustee properly and reasonably incurred in enforcing the obligations of the Employer pursuant to this Deed or the relevant Participation Agreement;
- 8.4.4 undertake and agree to duly and punctually give to the Trustee all information and documents in the custody, power, possession or control of the Employer that the Trustee may reasonably require or request in connection with the performance of any obligations of the Trustee pursuant to the provisions of this Deed, the relevant Participation Agreement, the MPF Ordinance and the Regulation; and

8.4.5 warrant that all information provided or to be provided by the Employer pursuant to Clause 8.4.4 or in relation to Contributions and in respect of each Member, as to age, income, length of service and otherwise as the Trustee may require, will be true and correct in all material respects and not misleading.

8.5 Subject to the MPF Ordinance, an Employer may cease to participate in the Plan (either generally or in respect of some only of the Members employed by such Employer) on giving written notice of such cessation of participation to the Trustee and the Principal Employer and to each affected Member. With effect from the expiry of such notice, the Employer's and each affected Member's obligation to make Contributions to the Plan relating to the affected Members shall cease provided that (i) nothing shall affect the obligation of the Employer or an affected Member to make Contributions to the Plan for the period prior to the expiry of such notice, and (ii) all other obligations of the Employer and the affected Members under this Deed and the relevant Participation Agreement shall remain in full force and effect.

9. PROVISIONS FOR SUBSTITUTION OF NEW EMPLOYER

9.1 If any of the events referred to in Clause 9.2 occur in respect of an Employer then and in such event:-

9.1.1 the Employer shall be released from all its obligations under the Plan (other than its obligation to pay Contributions due prior to the occurrence of such event);

9.1.2 such other body corporate, individual or individuals referred to in such Clause 9.2 shall be deemed to be substituted for the Employer and shall be liable to perform such obligations; and

9.1.3 this Deed and the relevant Participation Agreement shall thenceforth have effect as if such other body corporate, individual or individuals had been a party to the Participation Agreement in place of the Employer.

9.2 The events referred to in Clause 9.1 are:-

9.2.1 an Employer (being a body corporate) enters into liquidation and another body corporate (whether in contemplation of such liquidation or after the commencement thereof) enters into an agreement with the Trustee and with the relevant Employer or its liquidator to perform the obligations of such Employer under the Plan;

- 9.2.2 an Employer (being an individual or individuals) is adjudicated bankrupt and another individual or individuals or a body corporate (whether in contemplation of such bankruptcy or after the commencement thereof) enters into an agreement with the Trustee and with the relevant Employer or its trustee in bankruptcy to perform the obligations of such Employer under the Plan;
- 9.2.3 the undertaking of an Employer (being a body corporate or an individual or individuals) is acquired by or vested in any other body corporate or individual or individuals and such other body corporate, individual or individuals either enters into an agreement with the Trustee and with such Employer or its liquidator or trustee in bankruptcy or is bound by virtue of or pursuant to any statutory provision or any order of the court or any ruling, order, regulation or direction made thereunder or otherwise to perform the obligations of such Employer under the Plan;
- 9.2.4 an Employer (being a body corporate) is dissolved by virtue of or pursuant to any statutory provision or any order of any competent court or any ruling, order, regulation or direction made thereunder or otherwise and another body corporate is bound by virtue of or pursuant to any statutory provision or any order of the court or any ruling, order, regulation or direction made thereunder or otherwise to perform the obligations of such Employer under the Plan.

PART III
TRUSTEE AND SERVICE PROVIDERS

10. APPOINTMENT OF TRUSTEE

The Trustee shall be authorized to administer the Plan in accordance with the terms and conditions of this Deed, any relevant Participation Agreements and all applicable laws, rules and regulations, including without limitation the MPF Ordinance and the Regulation.

11. APPOINTMENT REMOVAL AND RETIREMENT OF TRUSTEE

Note: s21(2) MPF Ordinance

11.1 Subject to Clauses 11.2, 11.3, and 11.4:-

11.1.1 The power (whether statutory or otherwise) of appointment of a new Trustee shall be vested in the Principal Employer and shall be exercisable by an instrument in writing.

11.1.2 The Trustee may resign as trustee of the Plan by giving to the Principal Employer not less than three months' notice in writing (or such shorter period as they may agree to accept) to that effect.

11.1.3 The Trustee shall resign as trustee of the Plan on receipt of a written request from the Principal Employer to do so, such resignation to take effect on the expiry of three months from the date of receipt of the written request (or such shorter period as the Trustee may agree to accept).

Note: s. 33(9) MPF Ordinance

11.1.4 The Trustee shall be deemed to have resigned as trustee of the Plan if (a) the approval of the Trustee as an Approved Trustee is suspended or revoked in accordance with the MPF Ordinance or (b) the Trustee's administration of the Plan is suspended or revoked in accordance with the MPF Ordinance. Such deemed resignation shall take effect from the date of such suspension or revocation.

Note: ss. 20A, 20B, 33 MPF Ordinance

11.2 No person shall be appointed as a Trustee unless that person is an Approved Trustee and the provisions of the Regulation regarding appointment of a trustee of an Employer Sponsored Scheme will be satisfied following such appointment.

Note: ss. 2, 20 MPF Ordinance, Part II General Regulation, s. 28 General Regulation

11.3 Nothing in this Deed shall limit the power of the Authority to remove the Trustee and appoint a new Trustee of the Plan pursuant to the MPF Ordinance.

Note: ss. 33A, 33B MPF Ordinance

11.4 A Trustee may not resign except with the prior written approval of the Authority.

Note: s. 33(9) MPF Ordinance

11.5 Upon resignation of a Trustee, the resigning Trustee shall assign, transfer or otherwise pay to the successor Trustee the moneys and other property then constituting the Plan less the Trustee's Fee accrued to the effective date of resignation or removal of the resigning Trustee and any other amounts due to the Trustee in accordance with this Deed and remaining unpaid. The resigning Trustee shall thereafter be absolved and released from all further obligations under this Deed or any Participation Agreement but without prejudice to the rights of any person in respect of any act or omission prior to such resignation.

11.6 Every Trustee who resigns or is removed as Trustee of the Plan shall in respect of its period of trusteeship of the Plan and notwithstanding that it shall have resigned continue to have the benefit of all indemnities, powers and privileges given to the Trustee of the Plan by this Deed, the Participation Agreements and other deeds supplemental to this Deed executed during such period in addition to the indemnities, powers and privileges given by law to a retiring Trustee.

12. COVENANTS OF THE TRUSTEE

The Trustee covenants in favour of the Principal Employer, the Employers and the Members to hold the assets of the Plan upon trust to be applied in accordance with the Deed and the relevant Participation Agreements.

13. PROVISION RELATING TO PRINCIPAL EMPLOYER AND SUBSTITUTION OF PRINCIPAL EMPLOYER

- 13.1 The Principal Employer may appoint any of the other Employers or any other person which succeeds to all or substantially all of the undertaking of the Principal Employer by deed to replace it as Principal Employer if that other Employer or person assumes the obligations of the Principal Employer under the Plan.
- 13.2 If the Principal Employer is in administration, receivership or liquidation the Trustees may appoint any one of the other Employers by deed to replace the Principal Employer if that other Employer assumes the obligations of the Principal Employer under the Plan.
- 13.3 On the appointment of a new Principal Employer, unless the then Principal Employer otherwise agrees by confirmation in writing delivered to the Trustee the then Principal Employer and/or the Trustee shall change the name of the Plan to a name not including “SHKP”.
- 13.4 The Principal Employer may at the request of the Trustee provide certain administrative services to the Plan and its participants upon such terms as agreed with the Trustee, in which case the Principal Employer shall be entitled to reimbursement out of the assets of the Plan for all reasonable costs and expenses incurred by the Principal Employer as a result of providing such services.

14. APPOINTMENT AND REMOVAL OF INVESTMENT MANAGER

- 14.1 Subject to Clause 14.5, the Trustee with the approval of the Principal Employer may but shall not be bound to appoint one or more qualified persons (including any Associate of the Principal Employer or the Trustee where such person is so qualified) to act as Investment Manager or Investment Managers of all or part of the assets of the Plan. The Principal Employer shall not unreasonably withhold its approval to any person acting as Investment Manager of the Plan. The Trustee shall not be held liable for not appointing an Investment Manager where not required to do so by the Regulation.

Note: s. 44(1) General Regulation

- 14.2 The Trustee may with the consent of the Principal Employer, and shall at the request of the Principal Employer, remove any Investment Manager or Investment Managers so appointed and, subject as provided in this Clause, appoint a new Investment Manager or

Investment Managers pursuant to Clause 14.1. The Trustee shall not be liable for the exercise or non-exercise of this power pursuant to Clause 14.2.

- 14.3 The Trustee shall enter into an investment management agreement with an Investment Manager containing the terms required by the Regulation and such other terms as the Trustee, with the approval of the Principal Employer, and the Investment Manager may agree.

Note: ss. 40(2), 44(1)(b), 45(1), (2), (5), 47, 49, 53(1), (2), 64(1), 74, Schedule 2 General Regulation, para. B1.24 MPF Code

- 14.4 The remuneration of an Investment Manager shall be as agreed between the Trustee, with the consent of the Principal Employer, and the Investment Manager and shall be payable out of the assets of the Plan in accordance with Clause 31.

- 14.5 The Trustee shall not be required to appoint an Investment Manager where not required by the Regulation to do so, but may do so, subject always to the requirements of section 44(2) of the Regulation.

Note: s. 44(2) General Regulation

15. APPOINTMENT AND REMOVAL OF CUSTODIAN

- 15.1 The Trustee may appoint one or more qualified persons (including any Associate of the Trustee where such person is so qualified) to act as Custodian or Custodians of all or part of the assets of the Plan. Except where the Custodian is an Associate of the Trustee, such appointment shall require the prior approval of the Principal Employer. Such approval shall only be effective after notification of the material terms of the appointment (including, for the avoidance of doubt, any terms in relation to remuneration) to the Principal Employer. The Principal Employer shall not unreasonably withhold its approval to any person acting as Custodian of the Plan. For the avoidance of doubt, no such approval shall be required in respect of the appointment of any sub-custodians by the Trustee where the Trustee acts as Custodian of the Plan and where the appointment of such sub-custodians would not in the reasonable opinion of the Trustee have any material adverse effect on the Plan or the assets of the Plan.

Note: s. 50 General Regulation

15.2 The Trustee may remove any Custodian or Custodians so appointed and, subject as provided in this Clause, appoint a new Custodian or Custodians in accordance with Clause 15.1.

15.3 The Trustee shall enter into a custodian agreement with a Custodian containing the terms required by the Regulation and such other terms as the Trustee and the Custodian may agree.

*Note: ss. 49, 50, 51(1), (2), 52(1), (2), 64(1), 69(1), 71, 72, 73, 74, Schedule 3
General Regulation*

15.4 The remuneration of a Custodian shall be payable out of the assets of the Plan in accordance with Clause 31.

16. APPOINTMENT AND REMOVAL OF ADMINISTRATOR

16.1 The Trustee may appoint one or more qualified persons (including any Associate of the Trustee where such person is so qualified) to act as Administrator or Administrators in respect of all or part of the Plan and may delegate to such Administrator or Administrators such of the powers, duties and discretions of the Trustee as the Trustee thinks fit. Such appointment shall require the approval of the Principal Employer, which shall only be effective after notification of the material terms of the appointment to the Principal Employer. The Principal Employer shall not unreasonably withhold its approval to any person acting as Administrator of the Plan.

16.2 The Trustee, with the consent of the Principal Employer (such consent not to be unreasonably withheld), may (and, subject to any applicable regulatory requirements and any necessary regulatory approvals, shall do so at the request of the Principal Employer) remove any Administrator so appointed and, subject as provided in Clause 16.1, appoint a new Administrator or Administrators.

16.3 The Trustee shall enter into an agreement with an Administrator containing the terms required by the Regulation and such other terms as the Trustee and the Administrator may agree.

Note: ss. 53(1), 74 General Regulation

16.4 The remuneration of an Administrator shall be as agreed between the Trustee, with the consent of the Principal Employer, and the Administrator and shall be payable out of the assets of the Plan in accordance with Clause 31.

17. AUDITORS

17.1 The Trustee, with the approval of the Principal Employer, shall from time to time appoint to be the auditor or auditors of the Plan an accountant or accountants being qualified to act as auditor or auditors of Registered Provident Fund Schemes. The Trustee may from time to time, with the approval of the Principal Employer, and shall, if the Principal Employer shall withdraw any approval previously given, remove any auditor or auditors and, with the prior approval of the Principal Employer, appoint in his or their stead another person or persons qualified as aforesaid. Any such auditor or auditors so appointed shall be independent of the Trustee, the Custodian and the Investment Manager (if any).

Note: ss. 96, 98, 99 General Regulation

17.2 The Principal Employer shall not unreasonably withhold, delay or withdraw its approval to any person or persons acting as auditors of the Plan.

17.3 The remuneration of the Auditor shall be as agreed between the Trustee, with the consent of the Principal Employer, and the Auditor and shall be payable out of the assets of the Plan in accordance with Clause 31.

18. PROVISIONS APPLICABLE TO APPOINTMENT OF PARTIES PROVIDING SERVICES TO THE PLAN

18.1 Without prejudice to the following provisions of this Clause 18 but subject to the appropriate provisions of the MPF Ordinance, the Trustee may from time to time delegate any of its powers, duties and discretions to any person upon such terms as the Trustee may determine.

18.1.2 Where the fees of any delegate appointed under Clause 18.1.1 are to be payable out of the assets of the Plan, such delegation shall be subject to the consent of the Principal Employer, such consent only to be effective after notification by the Trustee of the material terms of such delegation.

18.1.3 Any delegation under Clause 18.1.1 may be in terms which permit the delegate to sub-delegate to any person all or any of those powers, duties and discretions.

18.1.4 The Trustee shall not incur any liability in respect of or be responsible for, any acts or omissions of any delegate appointed under Clause 18.1, except only where it shall have failed to take reasonable care in the selection of such person or shall have failed to supervise or exercise proper control over such person.

18.2 In Clauses 14, 15 and 16, references to a “**qualified person**” means a person qualified to act as investment manager, custodian or administrator (as the case may be) of Registered Provident Fund Schemes.

Note: ss. 44(3), (4), (5), 46 (in respect of investment managers), s. 68 (in respect of custodians) General Regulation

18.3 Notwithstanding the delegation of any of its duties, powers and discretions under this Deed to any Service Provider, Investment Manager, Custodian or Administrator (a “**Delegate**”), the Trustee:-

18.3.1 shall remain entitled to receive and retain in full the Trustee’s Fee and other sums payable to the Trustee under this Deed;

18.3.2 shall exercise reasonable skill, care and diligence in the supervision and control of any such Delegate; and

Note: ss. 43(f), 69(3) General Regulation

18.3.3 shall be responsible to ensure that any duties, powers and discretions delegated to such Delegate are performed in relation to the Plan and the Trustee should not be absolved from the consequences of any failure by the Delegate to perform that duty, power or discretion.

Note: s. 27(4) MPF Ordinance

18.4 Without prejudice to the Trustee’s power in Clause 18.1 above, the Trustee may at the instruction of the Principal Employer appoint such person to perform services for the purposes of the Plan, including without limitation services relating to enrolment or participation of prospective Members and Employers to the Plan, upon such terms as may be determined by the Trustee with the consent of the Principal Employer provided that (i)

such person must be considered suitable or qualified by the Trustee to provide such services; and (ii) the provision of such services are beneficial to the Members and/or Employers (including prospective Members and/or Employers). The Trustee shall use reasonable care to ensure the proper performance of the services by such person. For the avoidance of doubt, such appointment does not absolve the Trustee from the consequences of any failure by such person to perform those services.

- 18.5 The Principal Employer and any Associate of the Trustee or the Principal Employer shall be entitled to retain for its own absolute use and benefit any remuneration, profit or other benefit it may receive out of the assets of the Plan in connection with, where applicable, acting as an Investment Manager, Custodian, Administrator, other Service Provider, or a person appointed under Clause 18.4, in respect of the Plan.

PART IV
INVESTMENT AND BORROWING

Note: s. 40(1) General Regulation

19. INVESTMENT MANDATES

Note: para. B1.4, B1.5, B1.6 MPF Code

- 19.1 On becoming a Member, a Member shall give an Investment Mandate in accordance with Clause 21 specifying the percentage or amount of the Contributions and Transfer Payments to be paid to the Trustee for the account of such Member which is to be invested in the Constituent Fund(s) and/or the Default Investment Strategy.
- 19.2 A Member may give an instruction to change the Member's Investment Mandate on any Instruction Date by giving a new Investment Mandate in accordance with Clause 21.
- 19.3 An Investment Mandate shall remain in effect until the date on which a new Investment Mandate takes effect. In the event that there is no Investment Mandate in effect (including where any Investment Mandate is regarded as invalid in accordance with Clause 21.1A):
- 19.3.1 prior to 1 April 2017, a Member shall be deemed to have given an Investment Mandate to invest the Accrued Benefits, Contributions and Transfer Payments (or the relevant percentage thereof) received by the Trustee for the Member's account in the Default Fund;
- 19.3.2 with effect from 1 April 2017, the Accrued Benefits, Contributions and Transfer Payments (or the relevant percentage thereof) received by the Trustee for the Member's account shall be invested in accordance with Part 4AA of the MPF Ordinance and this Deed.
- 19.4 Without prejudice to Clause 19.3, if a Member who has a Pre-existing Account is an existing member (within the meaning of section 34DF of the MPF Ordinance), subject to section 34DC of the MPF Ordinance, all his Accrued Benefits and any Contributions or Transfer Payments received by the Trustee for the account of the Member held in or made to a DIA account (within the meaning of section 34DF of the MPF Ordinance) shall be invested according to Division 3 of Part 4AA of the MPF Ordinance. Notwithstanding the aforesaid, Division 3 of Part 4AA of the MPF Ordinance does not apply to the Member if the Trustee reasonably believes that the Trustee has received specific investment

instructions from the Member to invest any of the Accrued Benefits in the Pre-existing Account according to the Default Fund.

- 19.5 Without prejudice to Clause 19.3, if a Member who has a Pre-existing Account is a Member to whom section 34DM of the MPF Ordinance applies, subject to section 34DC of the MPF Ordinance, such part of his Accrued Benefits received by the Trustee for the account of the Member held in the Pre-existing Account which are invested in the Default Fund immediately before 1 April 2017 shall be invested according to Division 4 of Part 4AA of the MPF Ordinance. Any Contributions and, subject to section 34DC of the MPF Ordinance, Transfer Payments (or the relevant percentage thereof) received by the Trustee for the account of such Member on or after 1 April 2017 shall be invested in the manner as specified in the explanatory memorandum of the Plan unless the Trustee has received an Investment Mandate from such Member for such Contributions and Transfer Payments.

Note: Division 3, 4, Part 4AA MPF Ordinance

20. SWITCHING INSTRUCTIONS

Note: para. B1.7, MPF Code

- 20.1 A Member may give a Switching Instruction in accordance with Clause 21 to require the realisation of all or any percentage, number or value of the Units allocated to the Credit Balance of such Member and the investment of the net proceeds of such realisation in another Constituent Fund or other Constituent Funds.
- 20.2 Units of a class (the “**existing class**”) shall be switched into Units of another class (the “**new class**”) in accordance (or as nearly as may be in accordance) with the following formula:-

$$N = \frac{(E \times R) - SF}{S}$$

Where:-

N is the number of Units of the new class to be issued, provided that amounts representing fractions of less than one thousandth of a Unit shall be ignored and shall be retained by the Constituent Fund relating to the new class;

E is the number of Units of the existing class to be realised;

R is the Realisation Price per Unit of the existing class applicable on the relevant Valuation Date;

S is the Issue Price per Unit for the new class applicable on the relevant Valuation Date PROVIDED THAT if the Valuation Date for the new class is not the same as the Valuation Date for the existing class, then S shall be the Issue Price per Unit of the new class applicable on the first Valuation Date for the new class falling after the relevant Valuation Date;

SF is a switching fee (if any) in accordance with Clause 29.

- 20.3 If there is, at any time during the period from the time as at which the Realisation Price per Unit of the existing class is calculated up to the time at which any necessary transfer of funds from the Constituent Fund to which the existing class relates (the “**Original Constituent Fund**”) to the Constituent Fund to which the new class relates takes place, an officially announced devaluation or depreciation of any currency in which any investment of the Original Constituent Fund is denominated or normally traded, that Realisation Price shall be reduced as the Trustee considers appropriate to take account of the effect of that devaluation or depreciation and the number of Units of the new class to be allotted to the account of any relevant Member pursuant to this Clause shall be recalculated in accordance with the formula set out in Clause as if that reduced Realisation Price had been the Realisation Price ruling for realisations of Units of the existing class on the relevant Valuation Date.

21. PROVISIONS APPLICABLE TO INVESTMENT MANDATES AND SWITCHING INSTRUCTIONS GENERALLY

- 21.1 Without prejudice to the requirements from time to time of the MPF Ordinance and the Regulation, Investment Mandates and Switching Instructions shall be given to the Trustee in the specified form and shall be subject to such terms, conditions and restrictions as may be agreed between the Trustee and the Principal Employer, including without limitation the class or classes of Units to which an Investment Mandate or Switching Instruction may relate, the number of Constituent Funds into which an Investment Mandate or Switching Instruction may direct investment, any restriction on selecting one or more Constituent Funds where the Default Investment Strategy is applicable, the minimum amount or percentage of Contributions that may be invested in each Constituent Fund, the Default Investment Strategy or otherwise.

21.1A An Investment Mandate and a Switching Instruction is only valid if given in accordance with Clause 21.1 and/or as prescribed in the explanatory memorandum of the Plan. Any Investment Mandate or Switching Instructions which are not given in accordance with Clause 21.1 and/or as prescribed in the explanatory memorandum of the Plan shall be regarded as invalid. In addition, an Investment Mandate or a Switching Instruction may be regarded as invalid in the circumstances as prescribed in the explanatory memorandum of the Plan. The Trustee shall be entitled to refuse to carry out any such invalid instructions.

21.1B A Member shall be regarded to have given a specific investment instructions for his Accrued Benefits, Contributions and Transfer Payments (or the relevant percentage thereof) (as applicable) if such Member has given an Investment Mandate in accordance with Clause 21.1A above. For the avoidance of doubt, if an Investment Mandate given by a Member is regarded as invalid in accordance with Clause 21.1A above, such Member shall be regarded to have not given any specific investment instructions for his Accrued Benefits, Contributions and Transfer Payments (or the relevant percentage thereof) (as applicable).

Note: s. 27(2A) MPF Ordinance

21.1C Subject to Clause 19.3 to Clause 19.5, Clause 21.1D and section 34DC of the MPF Ordinance, unless a Member has given specific investment instructions, the Accrued Benefits, Contributions and Transfer Payments (or the relevant percentage thereof) in respect of such Member shall be invested according to the Default Investment Strategy. For the avoidance of doubt, subject to Clause 19.3 to Clause 19.5, and Clause 21.1D and section 34DC of the MPF Ordinance, a Member who has failed to give any specific investment instructions or the specific investment instructions given are regarded as invalid, the Accrued Benefits, Contributions and Transfer Payments (or the relevant percentage thereof) in respect of such Member shall be invested according to the Default Investment Strategy.

21.1D Clause 21.1C shall not apply to oblige the Trustee to invest the Accrued Benefits, Contributions and Transfer Payments (or the relevant percentage thereof) according to the Default Investment Strategy in the case where section 34DB(4) of the MPF Ordinance applies, and the Trustee must not invest the Accrued Benefits, Contributions and Transfer Payments (or the relevant percentage thereof) according to the Default Investment Strategy if section 34DB(3) of the MPF Ordinance applies.

Note: s. 34DB(3), 34DB(4) MPF Ordinance

- 21.1E Without prejudice to other provisions of this Deed, (a) a Member may only elect to invest his Accrued Benefits, Contributions and Transfer Payments in (i) the Default Investment Strategy, or (ii) one or more Constituent Funds of the Plan, in the manner and subject to such conditions as prescribed in the explanatory memorandum of the Plan, including restrictions on switching of Accrued Benefits into or out of the Default Investment Strategy; and (b) where the Accrued Benefits, Contributions and Transfer Payments (or the relevant percentage thereof) in respect of a Member are invested according to the Default Investment Strategy, the Trustee is authorised and empowered to invest the Accrued Benefits of such Member in the DIS Funds in accordance with the Default Investment Strategy including the power to switch the Units held in a DIS Fund into Units of another DIS Fund to give effect to the allocation between the DIS Funds in accordance with the MPF Ordinance and, subject to the MPF Ordinance, in such manner, at such time or during such time period, and upon such terms and conditions as the Trustee may determine and disclosed to Members, including without limitation the rounding mechanism for the purpose of the Default Investment Strategy.
- 21.2 Subject to Clause 21.3, a duly completed Investment Mandate or Switching Instruction shall take effect not later than the Instruction Date falling 30 days (or such shorter period as the Trustee may agree) from receipt by the Trustee of the relevant Investment Mandate or Switching Instruction.

Note: para. B1.8, MPF Code

- 21.3 If dealings in any Units of any class of a relevant Constituent Fund shall be suspended for any period then the Trustee may retain any Contributions, Transfer Payments or other amounts received which would otherwise be applied to the issue of Units of that class in cash or, subject to Section 66A of the Regulation, in a deposit account with any Authorized Financial Institution or Eligible Overseas Bank (which may be the Principal Employer or any Associate of the Trustee or the Principal Employer) or the Age 65 Plus Fund as defined in Schedule 10 to the MPF Ordinance, at its own discretion pending the resumption of dealings or the resolution of the circumstance affecting the relevant class of Units and then implement the Investment Mandate or Switching Instruction or may seek a revised Investment Mandate or Switching Instruction from the relevant Member. The Trustee shall not be held liable for any losses arising as a result of the exercise of its discretion pursuant to this Clause 21.3. The Trustee shall notify the relevant Member as soon as practicable if any Investment Mandate or Switching Instruction is not implemented within a reasonable period but nothing in this Clause shall make the Trustee

liable for failure to give notice or to seek a revised Investment Mandate or Switching Instruction from a Member.

Note: para. B1.8 MPF Code

- 21.4 The Principal Employer may limit the number of Investment Mandates or Switching Instructions to be given by a Member in any year by giving one month's notice to Members and to the Trustee, provided that Members shall be entitled to give at least one Switching Instruction in each year.

22. INVESTMENT OF CONSTITUENT FUNDS

- 22.1 Subject to the provisions of this Deed, the Trustee shall have full power to invest and otherwise deal with the assets of the Plan as if it were the beneficial owner of such assets, including investment in investments not expressly authorised by law for the investment of trust funds, investments which do not produce income and investments which involve liability or the giving of security.

- 22.2 Subject to the provisions of this Deed, all or any amount of cash received for any Constituent Fund may be retained in any currency or currencies for the account of such Constituent Fund in cash or, subject to Section 66A of the Regulation, on Deposit with an Authorized Financial Institution or an Eligible Overseas Bank (which may be any Associate of the Trustee).

Note: para. 11(1) Schedule 1 General Regulation

- 22.3 Any investments or other property comprised in a Constituent Fund may at any time be realised either in order to invest the proceeds of sale in other investments for such Constituent Fund or to provide cash required for the purpose of any provision of this Deed or in order to retain the proceeds of sale in cash or on Deposit as aforesaid or partly one and partly another.

- 22.4 Underwriting or sub-underwriting contracts and repurchase agreements may be entered into in respect of any investments for the time being comprised in a Constituent Fund and investments may be loaned, subject to and in accordance with the MPF Ordinance and the Regulation.

Note: ss. 49(5), 52, para. 3(2) Schedule 1 General Regulation, Guidelines on Securities Lending

22.5 Subject to the MPF Ordinance and the Regulation, the Trustee and its Associates may as principal sell or deal in the sale of investments to the Trustee for the account of any Constituent Fund or otherwise deal as principal with any Constituent Fund. If the Trustee or its Associates so sell or deal, the Trustee or such Associate (as the case may be) may retain for their or its own absolute use and benefit any profit which they or it may derive therefrom or in connection therewith.

Note: ss. 49(2), (3), (4) General Regulation

22.6 Any transaction authorised hereunder may be effected in and moneys may be held hereunder in cash or on Deposit as aforesaid in a currency or currencies other than Hong Kong dollars and for such purpose foreign currency may be acquired either at the official rate of exchange or otherwise having regard to the prevailing market conditions and either for present or forward settlement and any costs and commissions thereby incurred shall be paid out of the relevant Constituent Fund.

22.7 Subject as otherwise provided in this Deed where any cash forming part of a Constituent Fund is transferred to a deposit account with any Associate of the Trustee (being an institution licensed to accept Deposits) such institution shall allow interest thereon in accordance with normal banking practice for Deposits of that term at a rate not lower than the prevailing rate for Deposits of a similar size and duration, in the same currency and with institutions of a similar standing negotiated at arm's length. Subject thereto such banker or other financial institution shall be entitled to retain for its own use and benefit any benefit which it may derive from any cash for the time being in its hands (whether on current or deposit account) as part of a Constituent Fund.

23. STATEMENT OF INVESTMENT POLICY

23.1 The Trustee shall prepare and maintain or cause to be prepared and maintained a statement of investment policy in respect of each Constituent Fund which shall include such information as is required by the MPF Ordinance and/or the Regulation and other applicable regulatory requirements.

Note: MPF Code, paras. B2.9, B2.12; MPF Ordinance, s. 21BB; General Regulation, ss. 24, 38; SFC Code, para. 5.5

23.2 The Trustee may, after consulting the Principal Employer and subject to applicable regulatory requirements and approvals, amend the statement of investment policy relating

to a Constituent Fund. The Trustee shall give not less than one (1) month's prior notice (or such other period of notice as the Authority may require) to each Employer and each Member holding Units in the relevant Constituent Fund of such amendment.

24. INVESTMENT RESTRICTIONS

Note: General Regulation, s. 47, Schedule 1, para. 2(j) Schedule 2; MPF Code, chapter B2

24.1 The assets of a Constituent Fund shall be invested in accordance with and subject to the restrictions and limitations contained in the MPF Ordinance and the Regulation from time to time. Where as a result of amendment to the MPF Ordinance or the Regulation such restrictions or limitations are further restricted, the revised restrictions and limitations shall apply in respect of each Constituent Fund on the expiry of such transitional period (if any) as may be specified in the amending legislation.

24.2 It shall not be necessary to effect changes of investments merely because, owing to appreciations or depreciations in the Value of the investments held or made for the account of a Constituent Fund, any of the applicable limits shall be exceeded, nor by reason of any of those limits being exceeded as a result of such Constituent Fund receiving, taking up or participating in any rights, bonuses or benefits in the nature of capital, or any scheme or arrangement for amalgamation, reconstruction, conversion or exchange, or as a result of any realisation caused by a realisation of Units or any payment out of such Constituent Fund but if and so long as any of such limits shall be exceeded no further investments may be acquired (otherwise than as aforesaid) which would result in such limit being further exceeded, and the Trustee shall procure that all reasonable steps are taken as a priority to restore the position so that the limits exceeded in such cases will not persist, at all times having regard to the interests of Members.

25. BORROWING

The Trustee may at any time make and vary arrangements for the borrowing by the Trustee for the account of any Constituent Fund of any currency, subject to and in accordance with the MPF Ordinance and the Regulation.

Note: General Regulation, s65, para. 4, Schedule 1

For the purposes of or in connection with any such borrowing the following provisions shall apply:

- 25.1 The borrowing may be effected from any person (including, if a banker, the Trustee or an Associate of the Trustee provided that the rate of interest on that borrowing and any fee or premium payable to such banker in relation to the arrangement, repayment or termination of the borrowing are not higher than such banker would, in accordance with normal banking practice, charge on an arm's length transaction for a loan of a similar size and duration in circumstances similar to those then prevailing in relation to the Plan).
- 25.2 The Trustee may in pursuance of any borrowing arrangements place on Deposit with the lender or any nominee of the lender an amount out of the Constituent Fund in question which the Trustee considers to be equivalent to the amount borrowed upon terms providing for the repayment of the Deposit at the same time or times (and, if more than once, so that on each occasion the proportion which the Deposit bears to the loan is maintained) as the borrowing is repayable.
- 25.3 Every borrowing shall be upon the terms that the borrowing shall become repayable in the event of the termination of the Constituent Fund in question.
- 25.4 Any interest on any borrowing effected under this Clause and expenses incurred in negotiating, entering into, varying and carrying into effect with or without variation and terminating the borrowing arrangements shall be payable out of the Constituent Fund in question.
- 25.5 For the purposes of securing any borrowing and interest and expenses thereof the Trustee shall be entitled, subject to the Regulation and this Deed, to charge, pledge or otherwise encumber in any manner all or any part of the Constituent Fund in question but where any part of such Constituent Fund or any document of title thereto is for the time being under the custody or control of some person other than the Trustee or any nominee, custodian or sub-custodian of the Trustee in consequence of any such charge, pledge or encumbrance the Trustee shall not be responsible for the custody and control of such part of such Constituent Fund or documents of title thereto and shall not be liable for the acts and omissions of any lender and its agents in relation to such part of such Constituent Fund or documents of title thereto. Any such charge or pledge shall be made upon the terms that the lender or such other person as aforesaid provides a written commitment to the effect that under no circumstances will it pledge or charge any of such part of such Constituent Fund to any other person or use any part of it to provide margin for or guarantee, secure, discharge or settle any borrowing, trades or contracts, or dispose of any part of it, or treat it as if any person other than the Trustee has any interest in it and that no step shall be taken to enforce the security thereby constituted until thirty days after

notice in writing shall have been given to the Trustee demanding repayment of the moneys thereby secured.

- 25.6 Subject to Clause 38.5.2, the Trustee shall not incur any liability by reason of any loss which a Member or an Employer may suffer by reason of any depletion in the Net Asset Value of any Constituent Fund which may result from any borrowing arrangements made hereunder by reason of fluctuations in rates of exchange or otherwise and the Trustee shall be entitled to be indemnified out of and have recourse to the Constituent Fund in question in respect of any liabilities, costs, claims or demands which it may suffer arising directly or indirectly from the operation of this Clause and the arrangements referred to herein.
- 25.7 In the event that any arrangements for borrowing or making Deposits under this Clause shall be made with the Trustee or any Associate of the Trustee then such person shall be entitled to retain for its own use and benefit all profits and advantages which may be derived therefrom.
- 25.8 Any borrowing for the account of any Constituent Fund shall be made on terms that the rights of the lender shall be limited to the assets of such Constituent Fund and that the lender shall have no recourse against the Trustee (save to the extent that the Trustee holds assets of such Constituent Fund in relation to which borrowings have been undertaken) or the assets of any other Constituent Fund.

26. VOTING RIGHTS ON INVESTMENTS

- 26.1 All rights of voting conferred by any investment or other property comprised in the Plan shall be exercised in such manner as the Trustee may think fit. The Trustee may refrain at its own discretion from the exercise of any voting rights and no person shall have any right to interfere or complain. The Trustee shall be entitled to exercise the said rights in what it may consider to be the best interests of Members but (a) the Trustee shall not be under any liability or responsibility in respect of any vote, action or consent given or taken or not given or taken by the Trustee whether in person or by proxy and (b) neither the Trustee nor the holder of any such proxy shall incur any liability or responsibility by reason of any error of law or mistake of fact or any matter or thing done or omitted or approval voted or given or withheld by the Trustee or by the holders of such proxy under this Deed.
- 26.2 The phrase “**rights of voting**” or the word “**vote**” used in this Clause shall be deemed to include not only a vote at a meeting but any consent to or approval of any arrangement,

scheme or resolution or any alteration in or abandonment of any rights attaching to any part of the Plan and the right to requisition or join in a requisition to convene any meeting or to give notice of any resolution or to circulate any statement.

PART V
FEES AND CHARGES

Note: s. 66 General Regulation

27. TRUSTEE'S FEE

27.1 Subject to Clause 32 in respect of the MPF Conservative Fund and Clause 32A in respect of a DIS Fund, the Trustee shall be entitled to receive in relation to each class of Units for its own account out of the relevant Constituent Fund as soon as practicable after the last Valuation Date of such class of Units in each calendar month a monthly Trustee's Fee calculated and accrued at the appropriate percentage per annum (as defined below) subject to a minimum fee as agreed by the Trustee and the Principal Employer over the appropriate period (as defined below) of the Net Asset Value of that part of the relevant Constituent Fund which relates to the relevant class of Units (such part being calculated by reference to the number of undivided shares in relevant Constituent Fund represented by Units of the relevant class in issue) of such class of Units (irrespective of any fluctuation in such Net Asset Value either before or after such Valuation Dates), provided that if the calculation of Net Asset Value is suspended pursuant to Clause 6 on any Valuation Date relevant for the purposes of this paragraph the Trustee Fee shall be calculated by reference to Net Asset Value on the last Valuation Date immediately preceding such suspension.

The "**appropriate percentage per annum**" shall be 1.00 per cent. per annum or such higher percentage per annum as may be agreed by the Trustee and the Principal Employer and (to the extent required) approved by the Authority. The Trustee may from time to time by notice in writing to the Principal Employer reduce the appropriate percentage per annum or fix a scale of percentages per annum (none of them exceeding the said percentage per annum) reducing according to the value of (i) that part of the relevant Constituent Fund to which the relevant class of Units relates (such part being calculated by reference to the number of undivided shares in the relevant Constituent Fund represented by Units of the relevant class in issue) or (ii) the Constituent Fund to which the class of Units relates or (iii) the Plan or (iv) the relevant Constituent Fund and other specified Constituent Funds as may be agreed by the Trustee and the Principal Employer (in aggregate), on the relevant Valuation Date or, for the purposes of determining the relevant value, the previous Valuation Date. The Trustee may, with the consent of the Principal Employer, increase the rate of the monthly Trustee's Fee for the time being specified up to the maximum level permitted pursuant to this Clause on giving not less

than three months' notice (or such shorter period of notice as the Trustee and the Principal Employer may agree) of such increase to affected Members.

- 27.2 The “**appropriate period**” shall be the period from the later of the initial issue of the relevant class of Units and the previous Valuation Date of the relevant class of Units on which the Trustee Fee was payable up to (and including) the Valuation Date of the relevant class of Units on or following which the relevant payment of the Trustee Fee falls due under Clause 27.1.
- 27.3 Notwithstanding Clauses 27.1 and 27.2, the fees payable to the Trustee in relation to each class of Units relating to each Constituent Fund may be calculated by reference to a method other than the method set out in those Clauses as may be agreed by the Principal Employer and the Trustee provided that any such fees shall not exceed the maximum amount that would have been payable had the method in the aforementioned Clauses been applied.
- 27.4 The Trustee's Fee in respect of the Plan shall be subject to an annual minimum fee of such amount as may be agreed between the Trustee and the Principal Employer (any shortfall between the agreed minimum fee and the Trustee's Fee calculated under Clause 27.1 being allocated to each Constituent Fund in proportion to their respective Net Asset Values as at the final Valuation Date in each relevant Accounting Period).
- 27.5 The Trustee shall in addition be entitled to retain for its own use and benefit any other fees paid to it out of the assets of the Plan pursuant to any other provision of this Deed.

28. FEES PAYABLE BY EMPLOYERS AND MEMBERS

- 28.1 Unless otherwise prohibited by the MPF Ordinance or the Regulation and subject as otherwise provided in the relevant Participation Agreement, each Employer shall pay or reimburse to the Trustee the following fees and expenses:-
- 28.1.1 a joining fee of such amount, if any, as may from time to time be agreed between the Trustee, the Principal Employer and the Employer upon execution of the relevant Participation Agreement;
- 28.1.2 the reasonable costs of amending the Participation Agreement applicable to the relevant Employer;

28.1.3 any other costs, fees and expenses expressed to be payable by the Employer in this Deed or the relevant Participation Agreement.

28.2 The Trustee shall from time to time notify each Employer in writing of the amount of the fees and expenses due under Clause 28.1, and the relevant Employer shall pay the amount so notified to the Trustee as an addition to the next payment of Contributions to be made by such Employer.

29. SWITCHING FEE AND OTHER FEES

29.1 Subject to section 34 of the Regulation, in relation to any Switching Instruction given pursuant to Clause 20, an amount representing the necessary transaction costs (within the meaning of section 34 of the Regulation) incurred or reasonably likely to be incurred may be deducted from the proceeds of realisation of the Units realised to give effect to the Switching Instruction, and any such amount imposed and received must be used to reimburse the relevant Constituent Fund. Any other fees or expenses charged which may not be deducted from the proceeds of realisation or charged to the Employer or Member concerned in accordance with the Regulation shall be paid by the Trustee. Subject to the MPF Ordinance and the Regulation, with the prior approval of the Authority and subject as otherwise provided in this Deed or any Participation Agreement, in relation to any Switching Instruction given pursuant to Clause 20 the Trustee may in consultation with the Principal Employer levy on the relevant Member a switching fee which may be retained by or paid to the Trustee for its own absolute use and benefit. Where a switching fee is levied in respect of a Switching Instruction, the Trustee is not required to implement the relevant Switching Instruction until the Trustee receives such switching fee.

Note: s. 34, General Regulation

29.2 The Trustee, with the consent of the Principal Employer shall be entitled to levy a fee on Employers and/or Members for providing additional services to such Employers and/or Members on giving not less than one month's notice (or such other period of notice as the Authority may require) to affected Employers and affected Members of its intention to levy such fee. The amount of any such fee shall, in the case of a fee payable to the Trustee, in each case as determined by the Principal Employer.

30. FEES PAYABLE ON TRANSFERS

30.1 Subject to section 34 and section 35 of the Regulation, Clause 30.2 and to the consent of the Principal Employer, in relation to making any transfer in accordance with Clause 35 and Clause 36, an amount representing the necessary transaction costs (within the

meaning of section 34 or section 35 of the Regulation, as the case may be) incurred, or reasonably likely to be incurred, may be deducted from the proceeds of realisation of the Units realised to give effect to the transfer, and any such amount imposed and received must be used to reimburse the relevant Constituent Fund. Any other fees or expenses charged which may not be deducted from the proceeds of realisation or charged to the Employer or Member concerned in accordance with the Regulation shall be paid by the Trustee.

Note: s. 34, 35 General Regulation.

- 30.2 Save for a fee representing the necessary transaction costs (within the meaning of section 35 of the Regulation), the Trustee shall not be entitled to charge any fees or impose any financial penalties in relation to making a transfer in accordance with Clause 36 from the Plan to another Registered Provident Fund Scheme or from an account within the Plan to another account within the Plan in respect of a Member if:-
- 30.2.1 Contributions have ceased to be made by or on behalf of the Member to the Plan;
 - 30.2.2 the Trustee has received a request in the specified form to transfer the Credit Balance of the Member to another Registered Provident Fund Scheme or to another account within the Plan;
 - 30.2.3 the Trustee received such request within 12 months after Contributions were last made by or on behalf of the Member;
 - 30.2.4 the Credit Balance of the Member does not exceed \$5,000 (or such other amount as may be prescribed by the Regulation); and
 - 30.2.5 no previous request has been made by that Member.

The amount received under section 35 of the Regulation shall be deducted from the proceeds of realisation of the Units realised to give effect to the transfer and used to reimburse the Constituent Fund(s) in relation to such transfer.

Note: s. 35, General Regulation

30A. FEES PAYABLE ON PAYMENT

30A.1 To the extent required by the Regulation, the Trustee shall not charge to or impose on the Member or deduct from the Member's account any fees or financial penalties to give effect to any payment of Accrued Benefits in accordance with Clause 34 in a lump sum, except for a fee representing the necessary transaction costs (within the meaning of section 35A of the Regulation).

30A.2 To the extent required by the Regulation, the Trustee shall not charge to or impose on the Member or deduct from the Member's account any fees or financial penalties to give effect to any payment of Accrued Benefits in accordance with Clause 34 by instalment, except for a fee representing the necessary transaction costs (within the meaning of section 35B of the Regulation). To the extent not restricted by the Regulation, a fee may be charged to or imposed on the Member or deducted from the Member's account or from the proceeds of realisation of the Units realised to give effect to the payment of Accrued Benefits by instalment. Such fee may be paid to the Trustee or any of its Associates for rendering services to give effect to the payment of Accrued Benefits.

Note: ss. 35A, 35B General Regulation

31. OTHER FEES, CHARGES AND EXPENSES

31.1 Without prejudice to any other charges, fees, expenses or liabilities expressly authorised by this Deed to be charged against Employers or Members or against any Constituent Fund but subject to Clause 32 in respect of an MPF Conservative Fund and Clause 32A in respect of a DIS Fund, there shall be payable out of the appropriate Constituent Fund (and where appropriate such charges, fees and expenses, if not directly attributable to any Constituent Fund, shall be apportioned pro rata between all the Constituent Funds by reference to the respective Net Asset Values of the Constituent Funds or in such other manner as the Trustee shall consider fair):

31.1.1 all stamp and other duties, taxes, governmental charges, brokerages, commissions, exchange costs and commissions, bank charges, transfer fees and expenses (to the extent permitted under the Regulation), registration fees and expenses, such transactional fees of the Trustee as may be agreed by the Principal Employer in relation to transactions involving the whole or any part of the Plan, Custodian, co-custodian, sub-custodian and proxy fees and expenses, collection fees and expenses, insurance and security costs, and any other costs, charges or expenses payable in respect of the acquisition, holding and realisation or disposal or other dealing with any investment or other property or any cash,

Deposit or loan (including the claiming or collection of income or other rights in respect thereof and including any fees or expenses charged or incurred by the Trustee or any of Associates of the Trustee in the event of the Trustee or Associates of the Trustee rendering services or effecting transactions giving rise to such fees or expenses);

31.1.2 the fees and expenses of the Investment Managers;

31.1.3 the fees and expenses of the Auditors;

Note: s. 101 General Regulation

31.1.4 the fees and expenses of the Administrator as agreed by the Principal Employer (including those of the Trustee where the Trustee is also acting as Administrator);

31.1.5 the fees and expenses of any other Service Provider;

31.1.6 fees as agreed with the Principal Employer charged by the Trustee in connection with the establishment of each Constituent Fund and thereafter the fees as agreed with the Principal Employer in connection with calculating the Net Asset Value of each Constituent Fund and the Issue Price and Realisation Price of Units of such Constituent Fund;

31.1.7 expenses in connection with the management and trusteeship of the Plan authorised by this Deed to be payable out of the Plan;

31.1.8 all reasonable legal charges and other advisory charges incurred by the Principal Employer or the Trustee in connection with the Plan and the duties of the Trustee thereunder;

31.1.9 out-of-pocket expenses reasonably incurred by the Trustee or the Principal Employer wholly and exclusively in the performance of their duties hereunder (provided that such out-of-pocket expenses are reasonable where the expenses are material);

31.1.10 the administrative expenses incurred by the Principal Employer and the Trustee in establishing the Plan and costs in connection with the initial issue of Units of each class (which expenses shall be amortised by being written off against the Constituent Funds other than the MPF Conservative Fund in proportion to their respective Net Asset Values in equal amounts over such period as the Trustee with the approval of the Principal

Employer may determine unless and until the Trustee with the approval of the Principal Employer shall determine that some other method shall be applied);

- 31.1.11 the expenses of or incidental to the preparation of deeds supplemental hereto;
- 31.1.12 the expenses of holding meetings of Employers and/or Members and of giving notices to or otherwise communicating with Employers, Members, any Investment Manager, Administrator, Custodian or other Service Provider;
- 31.1.13 the costs and expenses of obtaining and maintaining authorisation or other official approval or sanction of the Plan or any Constituent Fund under the MPF Ordinance or the Securities and Futures Ordinance or any other law or regulation in any part of the world (including any levy payable thereunder) and approved by the Trustee or in complying with any undertaking given, or agreement entered into in connection with, or any rules governing such authorisation or approval;

Note: s. 17 MPF Ordinance, s. 189 General Regulation (compensation fund levy)

- 31.1.14 fees as agreed with the Principal Employer charged by the Trustee in terminating the Plan or any Constituent Fund or any class of Units and for providing any additional services as agreed by the Principal Employer;
- 31.1.15 the fees and expenses of the Trustee which are agreed by the Principal Employer in connection with time and resources incurred by the Trustee reviewing and producing documentation in connection with the operation of any Constituent Fund including the filing of annual returns and other statutory information required to be filed with any regulatory authority having jurisdiction over the Plan; and
- 31.1.16 the costs and expenses incurred in effecting and maintaining any insurance required by the MPF Ordinance or any other applicable law or regulation to be taken out in respect of the Plan; and
- 31.1.17 without prejudice to the generality of the foregoing, all costs incurred in publishing the Issue Price and Realisation Price of Units, all costs of preparing, printing and distributing all statements, accounts and reports pursuant to the provisions of this Deed (including the Auditors' fees and the Trustee's fees in relation thereto), the expenses of preparing and printing any explanatory memorandum incurred in respect of the Plan or any Constituent Fund, any other expenses, deemed by the Trustee, after consulting the Auditors, to have been incurred in compliance with or connection with any change in or introduction of any

law or regulation or directive or guidelines (whether or not having the force of law) of any governmental or other regulatory authority or with the provisions of any code relating to Registered Provident Fund Schemes and such other charges, costs, expenses and disbursements as under the general law the Trustee is entitled to charge to the assets of the Plan.

Note: MPF Ordinance, s. 22B; General Regulation, ss. 66, 101

- 31.2 There may be paid out of each of the Constituent Funds concerned at the discretion of the Trustee all professional fees relating to the calculating, agreeing and/or contesting of taxation liabilities and recoveries to be discharged out of or paid into the Constituent Funds.
- 31.3 The Trustee shall at its discretion and after consultation with the Auditors where it considers appropriate determine whether any particular sum payable pursuant to provisions of this Clause out of any Constituent Fund shall be debited to capital or to income.
- 31.4 Any interest earned on Contributions and Transfer Payments held pending investment in Constituent Funds in accordance with the relevant Investment Mandate shall, as the Trustee in its discretion determines, but always subject to the appropriate provisions of the MPF Ordinance, either be applied to meet any of the expenses referred to in this Clause 31 or shall form part of the income of the Plan.

32. RESTRICTIONS APPLICABLE TO MPF CONSERVATIVE FUND

Note: s. 37 General Regulation

- 32.1 Notwithstanding any other provision of this Deed, no fees, charges or expenses shall be paid out of the MPF Conservative Fund except where such payment is permitted by the MPF Ordinance or the Regulation.
- 32.2 Subject to Clause 32.1, the Trustee shall pay fees, charges and expenses attributable to each class of Units relating the MPF Conservative Fund in the following order of priority:-
- 32.2.1 First, in the payment of any compensation fund levy payable to the Authority pursuant to the MPF Ordinance in respect of the MPF Conservative Fund, stamp duty and brokerage commission incurred in respect of the MPF Conservative Fund and other expenses

permitted to be paid out of the assets of the MPF Conservative Fund pursuant to the Regulation and/or guidelines or other requirements issued by the Authority from time to time (to the extent that such compensation fund levy and other costs and expenses are attributable to the relevant class of Units);

32.2.2 Second, in the payment of all fees, charges and expenses incurred by the MPF Conservative Fund during the calendar month in which the relevant Valuation Date falls other than the Trustee's Fee and any fee payable to the Investment Manager (if any) appointed to manage the investment of the MPF Conservative Fund to the extent that such fees, charges and expenses are attributable to the relevant class of Units;

32.2.3 Third, in the payment of the Trustee's Fee and any fee payable to the Investment Manager (if any) appointed to manage the investment of the MPF Conservative Fund falling due in respect of the relevant class of Units in the calendar month in which the relevant Valuation Date falls (to the extent that such fees, charges and expenses are attributable of the relevant class of Units) (provided that where the amounts available for payment are not sufficient to meet these fees in full, such amounts shall be applied pro rata to payment of the the Trustee's Fee and the fee payable to the Investment Manager (if any) or in such other proportions as the Trustee and the Investment Manager may agree);

32.2.4 Fourth, to reimburse the Paying Party (as defined below) for any Deferred Expenses (as defined below) incurred prior to the calendar month in which the relevant Valuation Date falls and for this purpose Deferred Expenses incurred earlier in time shall be discharged prior to Deferred Expenses incurred later in time;

32.2.5 Fifth, in the payment of any Deferred Fees (as defined below) arising prior to the calendar month in which the relevant Valuation Day falls and for this purpose Deferred Fees arising earlier in time shall be discharged prior to Deferred Fees arising later in time.

32.3 If in any calendar month any fees, charges or expenses (other than the Trustee's Fee and any fee payable to the Investment Manager (if any) appointed to manage the investment of the MPF Conservative Fund) incurred in respect of that calendar month cannot be paid out of the MPF Conservative Fund, the amount of such fees, charges and expenses shall be payable by the Principal Employer or such other party as the Principal Employer shall notify the Trustee ("**Paying Party**") forthwith on demand by the Trustee and shall be carried forward as "**Deferred Expenses**" to be reimbursed to the Paying Party in accordance with this Clause provided that Deferred Expenses shall cease to be reimbursable on the expiry of a period of 12 months (or such other period as may be prescribed by the Regulation) from the calendar month in which such Deferred Expenses

first arose. Where such fees, charges or expenses are paid by the Trustee including such fees otherwise payable to the Trustee save for the restrictions applicable to the MPF Conservative Fund under the MPF Ordinance or the Regulation, the Trustee shall have a right of recourse against the Paying Party for reimbursement of any such amounts paid.

- 32.4 If in any calendar month any Trustee's Fee or any fee due to the Investment Manager (if any) appointed to manage the investment of the MPF Conservative Fund that would if not for this Clause fall to be payable in respect of the MPF Conservative Fund for that calendar month is not paid, the amount of such Trustee's Fee or Investment Manager's fee shall be carried forward as "**Deferred Fees**" to be paid in accordance with this Clause provided that Deferred Fees shall cease to be payable on the expiry of a period of 12 months (or such other period as may be prescribed by the Regulation) from the calendar month in which such Deferred Fees first arose.

32A. RESTRICTIONS ON FEES AND OUT-OF-POCKET EXPENSES APPLICABLE TO DIS FUNDS

Note: s. 34DD MPF Ordinance

Notwithstanding any other provision of this Deed, in respect of a DIS Fund, any payment for services and payment for out-of-pocket expenses may only be charged to or imposed on the DIS Fund or a Member who invests in the DIS Fund, in the manner and to the extent as permitted under section 34DD of the MPF Ordinance.

33. METHOD OF PAYMENT OF FEES, CHARGES AND EXPENSES

- 33.1 The fees, charges and expenses payable in respect of the Plan or a Constituent Fund may be payable, at the election of the Trustee after consulting the Principal Employer, either:-

33.1.1 out of the assets of such Constituent Fund or out of Contributions or out of the assets of the relevant Constituent Fund (including out of Transfer Payments or other amounts held pending investment in such Constituent Fund); or

33.1.2 by realising Units of the class or classes relating to the relevant Constituent Fund,-
or partly in one way and partly in another.

- 33.2 Where the Trustee makes an election to pay fees, charges and expenses in the manner set out in Clause 33.1.2, Units of the class or classes relating to the relevant Constituent Fund

shall be debited from the Credit Balances of Members and from the Unclaimed Benefits Account pro rata to the number or value of Units allocated to the Credit Balances of Members and the Unclaimed Benefits Account or in such other manner as the Trustee shall consider fair.

33.3 Unless otherwise specified in this Deed, any fees, charges and expenses payable by a Member under this Deed or any relevant Participation Agreement may be paid:-

33.3.1 by the relevant Member by cheque or in such other manner as may be agreed between the relevant Member and the Trustee or the Principal Employer, as the case may be; or

33.3.2 at the election of the Trustee after consulting the Principal Employer, either:-

33.3.2.1 out of Contributions or other amounts held in respect of the relevant Member pending investment in accordance with the relevant Investment Mandate; or

33.3.2.2 by realising Units allocated to the Credit Balance of the relevant Member (and for this purpose the Trustee shall have an absolute discretion in determining the Units to be realised),-

or partly in one way and partly in the other.

PART VI
PAYMENTS AND TRANSFERS

34. PAYMENTS

34.1 The Trustee shall pay amounts due under the terms of this Deed or any Participation Agreement within the time specified for payment by the Regulation. At the request of a Member the Trustee may pay amounts due by a transfer of assets rather than in cash or in a combination of cash and payment in specie, subject to the provisions of Clause 7.6.

Note: ss. 166, 167 General Regulation

34.2 Before making any payment or distribution, the Trustee may make such deductions as, by the law of Hong Kong or the practice of the Inland Revenue Department of Hong Kong or by the law of any other country in which such payment or distribution is made, the Trustee is required or entitled to make in respect of any income taxes or other taxes, duties, charges or assessments whatsoever. The Trustee may also deduct the amount of any stamp duties or other governmental taxes or charges for which it might be liable in respect of such payment or distribution or any documents signed by it in connection therewith.

34.3 Subject to Clause 38.5.2, the Trustee shall not be liable to account to any Employer or Member or otherwise for any payment made or suffered by the Trustee in good faith to any duly empowered fiscal authority of Hong Kong or elsewhere for taxes or other charges in any way arising out of or relating to any transaction of whatsoever nature under this Deed or any relevant Participation Agreement or otherwise notwithstanding that any such payment ought not to be or need not have been made or suffered.

34.4 Subject to any exchange control regulations which may be in force at the time, the Trustee shall make payment of moneys due to or in respect of an Employer or Member in Hong Kong dollars or in such other currency as may be agreed between the relevant recipient and the Trustee. Payment shall be made in Hong Kong or such other place outside Hong Kong where banking facilities for the transmission of money and the conversion of currency are conveniently available as may be agreed between the Trustee and the recipient. In the event of payment being requested in a currency other than Hong Kong dollars or in a place outside Hong Kong, the Trustee may deduct the costs of conversion and transmission (as the case may be) from the moneys payable. The applicable rate of exchange for such conversion shall be such prevailing rate as the Trustee considers appropriate.

34.5 Any moneys payable by the Trustee shall as the Trustee thinks fit be paid by cheque or warrant or by telegraphic transfer to the recipient. Any cheque or warrant may be sent through the post to the address of the recipient as shown in the records of the Trustee. Every such cheque or warrant shall be made payable to the order of the person to whom it is delivered or sent and payment of the cheque or warrant shall be deemed satisfaction of the moneys payable. Where payment is by telegraphic transfer the Trustee shall be entitled to deduct the costs thereof from the moneys and payment shall be made to such account as designated by the recipient.

34.6 If any benefit is payable under this Deed to:

34.6.1 a minor; or

34.6.2 a person who in the opinion of the Trustee is by reason of mental or physical disability incapable of managing his or her own affairs,-

(each a “**restricted person**”) the Trustee may, subject to the MPF Ordinance and the Regulation, pay all or part of such benefit to such other person for the benefit of the restricted person as the Trustee thinks fit, provided that if a committee of estate (within the meaning of section 165A of the Regulation) is appointed in relation to the property and affairs of a member, the claim for payment of benefit by such committee of estate shall be processed in accordance with the Regulation. The receipt of such other person constitutes a complete discharge of the obligations of the Trustee to the restricted person.

34.7 In the absence of manifest error, the determination of the Trustee as to the identity of the proper payee of any payment from the Plan and the amount properly payable to that person shall be conclusive. Payment in accordance with such determination shall constitute a complete discharge of all obligations of the Trustee and the Plan to that person.

34.8 On making a payment of benefits in accordance with this Clause, the Trustee shall give a benefit payment statement to the recipient of the payment containing such information as may be required by the Regulation and such other information as the Trustee shall determine.

Note: S. 168 General Regulation

35. TRANSFERS INTO THE PLAN

Note: s. 14, MPF Ordinance; s. 32(2), Part XII General Regulation

35.1 The Trustee:-

35.1.1 shall accept all Accrued Benefits transferred by or in respect of a Member from (a) another Registered Provident Fund Scheme or (b) from an occupational retirement scheme (as defined in the MPF Ordinance) exempted under section 5 of the MPF Ordinance to or to the account of the Trustee for the purposes of the Plan;

Note: s. 32(2) General Regulation

35.1.2 unless otherwise prohibited by the MPF Ordinance or the Regulation, may, on the request of an Employer or a Member in the specified form, accept any other amounts transferred from any other retirement scheme, fund or arrangement.

35.2 The Trustee shall credit amounts received pursuant to this Clause to the account of the relevant Member, or as otherwise permitted under the Regulation, in accordance with the Regulation.

35.3 Pending investment in accordance with Clause 35.2, amounts received for the account of a Member pursuant to this Clause may be held by the Trustee in cash or, subject to Section 66A of the Regulation, on Deposit with any Authorised Financial Institution or Eligible Overseas Bank (which may be any Associate of the Trustee).

35.4 As soon as practicable on or after receipt of amounts pursuant to this Clause for the account of a Member, the Trustee shall notify the Member of such receipt and of the amount received, expressed in Hong Kong dollars (with amounts received other than in Hong Kong dollars converted into Hong Kong dollars at such rate of exchange as the Trustee may in its discretion determine).

36. TRANSFERS OUT

Note: Part XII General Regulation

36.1 On receipt or deemed receipt of an election made under Part XII of the Regulation, the Trustee shall have power to transfer amounts held for the account of a Member under the Plan in accordance with the election:-

- 36.1.1 where the Member transfers to and is employed by another Employer, to another account within the Plan; or
- 36.1.2 to another Registered Provident Fund Scheme; or
- 36.1.3 to an existing account of a Member in an industry scheme (as defined in the MPF Ordinance).
- 36.2 Where amounts held for the account of a Member under the Plan are to be transferred to another account within the Plan, the Trustee shall, unless otherwise provided by the MPF Ordinance:-
- 36.2.1 in the books of the Plan, establish a new account (if there is none established) within the Plan for the relevant Member for purpose of effecting the transfer in accordance with the Regulation;
- 36.2.2 in the books of the Plan, redesignate the Mandatory Credit Balance (or the relevant portion thereof as may be permitted under the Regulation) of the relevant Member as the Mandatory Transfer Balance of the relevant Member;
- 36.2.3 in the books of the Plan, transfer the aggregate of the following to the Voluntary Transfer Balance of the relevant Member (in addition to the existing Voluntary Transfer Balance of the relevant Member, if any):-
- 36.2.3.1 the Member's Voluntary Contribution Balance of the relevant Member (if any);
- 36.2.3.2 the vested portion of the Employer's Voluntary Contribution Balance of the relevant Member (if any); and
- 36.2.3.3 so much of the unvested portion of the Employer's Voluntary Contribution Balance (if any) as the Employer of the relevant Member may determine and notify to the Trustee prior to the date of transfer.
- 36.2.4 invest the amounts so transferred to the new account established under Clause 36.2.1, in accordance with section 34DC of the MPF Ordinance.

Note: Part XII General Regulation, section 34DC, MPF Ordinance

36.3 Subject to Clause 36.4, where amounts held for the account of a Member under the Plan are to be transferred to another Registered Provident Fund Scheme, and subject to any applicable requirements in section 153 of the Regulation, the Trustee shall to the extent permitted by the Regulation:-

36.3.1 realise the Units standing to the credit of the Credit Balance (or the relevant portion thereof as may be permitted under the Regulation or this Deed) of the relevant Member on a Valuation Date within 30 days (or such shorter period as the Trustee and the Principal Employer may agree) of receipt or deemed receipt of the election made under Part XII of the Regulation or, if later, the Valuation Date for the relevant Constituent Fund or Constituent Funds next following such receipt or deemed receipt; and

Note: para. B1.13 MPF Code

36.3.2 pay to the trustee of the other Registered Provident Fund Scheme, subject to Clause 30, an amount equal to proceeds of realisation as referred to in Clause 36.3.1.

Pending such payment, the Trustee may hold the realisation proceeds in cash, or subject to Section 66A of the Regulation, on Deposit with any Authorised Financial Institution or Eligible Overseas Bank (which may be any Associate of the Trustee).

36.4 Where amounts held for the account of a Member under the Plan are to be transferred to another Registered Provident Fund Scheme and such other Registered Provident Fund Scheme has the power to accept payments in specie, the Trustee may at the request of the Member and to the extent permitted by the Regulation effect such transfer by transferring in specie Investments (or partly Investments and partly cash) forming part of the Constituent Funds to which the classes of Units to be realised relates to the other Registered Provident Fund Scheme, in which case the following provisions shall apply:-

- (a) the Trustee shall, after consulting the Member, select the assets to be transferred;
- (b) the value of the assets to be transferred shall be calculated as at the Valuation Point on the appropriate Valuation Day;
- (c) the aggregate amount of the value of the assets to be transferred (calculated as aforesaid) and any cash to be paid shall be equivalent to the amount

which would have been payable pursuant to Clause 36.3 had the realisation of Units not been effected by a transfer in specie; and

- (d) all stamp duty, registration fees and other charges payable in respect of any transfer (to the extent permitted under the Regulation) under this paragraph shall be payable from the realisation proceeds.

36.5 As soon as practicable on or after any transfer pursuant to this Clause in respect of a Member, the Trustee shall notify the Member in writing of the transfer and shall provide the Member with such information as is required pursuant to the Regulation.

36.6 Any transfer from one account within the Plan to another account within the Plan or from the Plan to another Registered Provident Fund Scheme shall be made at such times, at such frequency, in such manner and subject to such conditions as may be prescribed by the MPF Ordinance, the Regulation or the Authority and otherwise as the Trustee may in its discretion determine.

PART VII
AMENDMENT OF THE PLAN

37. AMENDMENT OF THE PLAN

37.1 Subject to Clause 37.4 and Clause 37.5, the Trustee may, at the request or with the consent of the Principal Employer, at any time by deed alter, amend, extend, modify or add to any of the trusts, powers or provisions of this Deed (either generally so as to apply to all Employers and Members or so as to apply specifically to a particular Member or Members or a particular Employer or Employers and the Members employed by such Employer or Employers). The Principal Employer shall not unreasonably withhold its consent to any such alteration, amendment, extension, modification or addition made for purposes of aligning this Deed with any legislative update or amendment or complying with the requirements of the law.

37.2 Subject to Clause 37.4, the Trustee may with the prior consent in writing of the Principal Employer and the appropriate Employer at any time alter, amend, extend, modify or add to any of the provisions of the Participation Agreement applicable to such Employer.

37.3 Any alteration, amendment, extension, modification, deletion or addition (a **“modification”**) so made:-

37.3.1 shall take effect as from the date of the amending deed or agreement or as from such earlier or later date as is specified for that purpose in the deed or agreement;

37.3.2 shall be of the same validity as if it had been originally contained in this Deed or the relevant Participation Agreement, as the case may be;

37.3.3 may in like manner be altered, amended, extended, modified, deleted from and added to; and

shall be binding on each relevant Employer and Member whether such Employer or Member has executed a Participation Agreement or application for membership before or after that modification.

37.4 No modification shall be made which would cause the registration of the Plan pursuant to the MPF Ordinance to be cancelled.

37.5 Without prejudice to the generality of the foregoing, no modification may be made to any of the trusts, powers or provisions of this Deed without the prior approval of the Authority (to the extent such approval is required by the Authority).

Note: s. 63 General Regulation

37.6 Any modification which alters, amends, extends, modifies or adds to the trusts, powers or provisions of this Deed or any Participation Agreement to reflect (in whole or in part) the trusts, powers or provisions permitted by the MPF Ordinance or the Regulation (including to give effect to any relaxation of any requirement imposed by the Ordinance and/or any subsidiary legislation or requirements relating thereto) shall be deemed not to be prejudicial to the interests of Members.

37.7 The Trustee and the Principal Employer shall comply with any requirement of the Authority imposed on the Trustee or the Principal Employer respectively to give notice to Employers and Members affected by any such proposed modification.

PART VII
LIABILITIES AND INDEMNITIES

38. PROVISIONS RELATING TO THE TRUSTEE AND THE PRINCIPAL EMPLOYER

38.1 Neither the Trustee nor the Principal Employer shall be in any way responsible for the solvency of the Plan nor shall they be liable for the payment of any benefit pursuant to the Plan unless and except to the extent to which the assets of the Plan are for the time being sufficient and are available for that purpose. The assets of which the Plan for the time being consists shall be the only source to which persons who acquire rights under the Plan may look for the payment of any monies due to them pursuant to such rights provided that nothing herein shall be deemed to affect any rights such persons may have under or pursuant to the MPF Ordinance or against any relevant Employer.

38.2 Neither the Trustee nor the Principal Employer shall incur any liability in respect of any action taken or thing suffered by them in reliance upon any notice, resolution, direction, consent, certificate, affidavit, statement, certificate of stock, plan or reorganisation or other document of title, or other paper or document reasonably believed to be genuine and to have been passed, sealed or signed by the proper parties including themselves or their officers.

38.3 The Trustee and the Principal Employer shall be entitled to rely and act on any guidelines, codes or other information published by the Authority and relating to Registered Provident Fund Schemes and shall not incur any liability to Employers or Members as a result of so relying and acting. Neither the Trustee nor the Principal Employer shall incur any liability to Employers or Members for doing or failing to do any act or thing which by reason of any provision of any present or future law or regulation or of any decree, order or judgment of any Court or by reason of any request, announcement or similar action (whether of binding legal effect or not) which may be taken or made by any person or body acting with or purporting to exercise the authority of any government (whether legally or otherwise) either they or either of them shall be directed or requested to do or perform or to forbear from doing or performing. If for any reason it becomes impossible or impracticable to carry out the provisions of this Deed neither the Trustee nor the Principal Employer shall be under any liability therefor or thereby.

38.4 Neither the Trustee nor the Principal Employer nor their duly appointed agents shall be responsible for the authenticity of any signature on or any seal affixed to any form of Participation Agreement, application, Investment Mandate, Switching Instruction,

request for payment of benefits or investments (including signatures on such documents received by facsimile or electronic transmission) or other document relating to the transfer or payment of benefits or be in any way liable for any forged or unauthorised signature on or seal affixed to such form or other document or for acting on or giving effect to any such forged or unauthorised signature or seal. The Trustee and the Principal Employer respectively shall nevertheless be entitled but not bound to require that the signature of any Employer or Member to any document required to be signed by such Employer or Member under or in connection with this Deed shall be verified by a banker or broker or other responsible person or otherwise authenticated to its or their reasonable satisfaction.

38.5.1 Any indemnity expressly given to the Trustee or to the Principal Employer in this Deed is in addition to and without prejudice to any indemnity allowed by law.

38.5.2 Nothing in any of the provisions of this Deed shall indemnify the Trustee (whether this indemnity is from the assets of the Plan, any Employer or any other person) against any liability for breach of trust or in respect of any fraud, negligence, wilful default, breach of duty or trust of which the Trustee may be guilty in relation to its duties.

38.6 Nothing in this Deed shall be construed so as to prevent the Principal Employer or the Trustee in conjunction or separately from establishing or acting as sponsor, manager, adviser, trustee, successor trustee, custodian, administrator or otherwise for trusts separate and distinct from the Plan and retaining any remuneration, profit or benefit made in connection with such other trusts or engaging in any activity whatsoever and receiving for their own use and benefit any remuneration, profit or benefit derived therefrom.

38.7 No decision of or exercise of a power or discretion by the Trustee or the Principal Employer shall be invalidated or questioned on the ground that one or more of its directors or employees has or may have a direct or other personal interest by reason of being a Member. No decision of or exercise of a power or discretion by the Trustee or the Principal Employer shall be invalidated or questioned on the ground that the Trustee or the Principal Employer or any of their Associates had by reason of being the investment manager, investment adviser, trustee, custodian or administrator of any Collective Investment Scheme or otherwise a direct or other personal interest in the result of such decision or of exercising such power or discretion.

38.8 The Trustee and the Principal Employer may act upon any advice of or information obtained from any Service Provider, bankers, accountants, brokers, lawyers, agents or other persons acting as agents or advisers either of the Trustee or of the Principal

Employer and shall not be liable for anything done or omitted or suffered in good faith in reliance upon such advice or information. Neither the Trustee nor the Principal Employer shall be responsible for or incur any liability in respect of any misconduct, mistake, oversight, error of judgment, forgetfulness or want of prudence on the part of any such banker, accountant, broker, lawyer, agent or other person as aforesaid or (except as specified in this Deed) of the Principal Employer (in the case of the Trustee) or the Trustee (in the case of the Principal Employer). Any such advice or information may be obtained or sent by letter, telegram, telex message, cablegram, facsimile transmission or electronic transmission and neither the Trustee nor the Principal Employer shall be liable for acting on any advice or information purported to be conveyed by any such letter, telegram, telex message, cablegram, facsimile transmission or electronic mail although the same contains some error or shall not be authentic.

- 38.9 Except as otherwise expressed in this Deed, the Trustee and the Principal Employer shall as regards all the trusts, powers, authorities and discretions vested in each of them have absolute discretion as to the exercise thereof whether in relation to the manner or as to the mode of and the time for the exercise thereof. In the absence of fraud or negligence or breach of trust neither the Trustee nor the Principal Employer shall be in any way responsible for any loss, costs, damages or inconvenience that may result from the exercise or non-exercise thereof.
- 38.10 Nothing in this Deed shall prevent the Trustee or the Principal Employer or any of their Associates from contracting or entering into any financial, banking or other transaction with one another or with any Employer or Member or any company or body any of whose shares or securities form part of the Plan or from being interested in any such contract or transaction and the Trustee and the Principal Employer and their Associates shall not be in any way liable to account to the Plan or the Employers or the Members or any of them for any profit or benefit made or derived from any such transaction or contract.
- 38.11 In the absence of fraud or negligence or breach of trust by the Principal Employer or the Trustee respectively, they shall not incur any liability by reason of any error of law or any matter or thing done or suffered or omitted to be done by them in good faith under the provisions of this Deed and in particular, but without prejudice to the generality of the foregoing, neither the Principal Employer nor the Trustee shall, in ascertaining the Value of any investment, be under any liability by reason of the fact that a price reasonably believed to be the last published traded price or midway

between the latest available market dealing offered price and the latest available market dealing bid price, for the time being may be found not to be such.

- 38.12 Nothing in this Deed shall prevent the Trustee or the Principal Employer from buying, holding and dealing in any investments upon their respective individual accounts notwithstanding that similar investments may be held under this Deed as part of the assets of the Plan. The Trustee and the Principal Employer shall not be liable to account to each other or to the Employers or Members for any profits or benefits made or derived from or in connection with any such transaction.

39. PROVISIONS RELATING TO THE TRUSTEE

- 39.1 The Trustee shall be responsible for the safe-keeping of the assets of the Plan in accordance with this Deed and subject thereto such assets shall be dealt with as the Trustee may think proper for the purpose of providing for the safe keeping thereof.

Note: s. 64(3) General Regulation

- 39.2 Subject to Clause 38.5.2, the Trustee shall not be under any liability on account of anything done or suffered by the Trustee in good faith in accordance with or in pursuance of any request or advice of the Principal Employer. Whenever any certificate, notice, instruction or other communication is given by the Principal Employer or any other person to the Trustee the Trustee may accept as sufficient evidence a document signed or purporting to be signed on behalf of the relevant party or such other person by any person whose signature the Trustee is for the time being authorised by the relevant party or such other person to accept.
- 39.3 Where pursuant to this Deed or any Participation Agreement an Employer is required or empowered to give a direction or other communication to the Trustee, the Trustee shall be entitled to rely and act on any such direction or other communication given in writing signed by any director for the time being of the Employer or such other person as the Employer may from time to time nominate in writing and the Trustee shall not be required or responsible to enquire into any such directions or other communications and shall not be liable in any way for acting on the same.
- 39.4 The Trustee shall not incur any liability to any Member for acting in good faith in accordance with any Investment Mandate or Switching Instruction given or purported to be given by the relevant Member.

39.5 Subject as otherwise provided by the MPF Ordinance, the Trustee shall not be under any liability by reason of the fact that a price reasonably believed to be the relevant price for the purposes of Clause 5 may be found not to be such. For the purposes of ascertaining available prices the Trustee shall be entitled to use and rely upon any recognised mechanised or electronic systems of valuation dissemination which provide a daily or more frequent valuation service. Reference in this Deed to the valuation of investments on a particular day or at a particular time shall, if such a system of valuation dissemination is used by the Trustee, mean the latest such valuation, taken at a time or times selected by the system for the purpose, available on or before the day on which or time at which such valuation is required.

Note: para. B1.15 MPF Code

39.6 The Trustee may accept as sufficient evidence of the Value of any asset of any Constituent Fund, or the cost price or sale price thereof, or of any Recognized Stock Exchange or Recognized Futures Exchange, a certificate by a person, firm or association qualified in the opinion of the Trustee to provide such a certificate.

Note: para. B1.15 MPF Code

39.7 At all times and for all purposes of this Deed the Trustee may rely upon the established practice and rulings of any Recognized Stock Exchange or Recognized Futures Exchange and any committees and officials thereof on which any dealing in any investment or other property is from time to time effected in determining what shall constitute a good delivery and any similar matters and such practice and rulings shall be conclusive and binding upon all persons under this Deed.

39.8 The Trustee shall not be under any obligation to appear in, prosecute or defend any action or suit in respect of the provisions hereof or in respect of the Plan or any part thereof or the determination of any rights of the Employers or Members or any corporate or shareholders' action which in its opinion would or might involve it in expense or liability but may do so in its sole discretion and shall be indemnified out of the Plan for any cost or expense which it may incur as a result thereof.

39.9 Subject to Clause 38.5.2, the Trustee shall be indemnified out of the assets of the Plan against all liabilities incurred by the Trustee in the execution or professed execution of the trusts of the Plan and in the management and administration of the Plan.

39.10 The Trustee shall be liable only for such moneys as the Trustee shall actually receive and in no event shall the Trustee be liable for any interest in respect of such moneys. Except as otherwise required under the MPF Ordinance or the Regulation, the Trustee shall not be under any duty to take action to encourage payment or proceedings to enforce payment of any Contributions or other moneys payable under this Deed or any Participation Agreement.

Note: s. 18 MPF Ordinance, ss. 132, 133, 135, 136(5), (9), 137 General Regulation

39.11 The Trustee may at its sole discretion accept donations of money or any kind of property for the account of the Plan. The Trustee shall apply such money or property as the Trustee thinks fit for the purposes of the Plan.

39.12 The Trustee or any Service Provider with the approval of the Trustee shall (subject as in this sub-clause otherwise provided) be entitled to destroy all documents and records relating to a Member or an Employer participating in the Plan at any time after the expiration of the period required under the Regulation for which such documents and records must be kept. Neither the Trustee nor any such other person as aforesaid shall be under any liability whatsoever in consequence thereof and unless the contrary be proved every document destroyed pursuant to this Clause shall be deemed to have been a valid and effective document in accordance with the recorded particulars thereof.

39.13 The Trustee shall have the power generally to execute and do all such acts and things as the Trustee may consider necessary or expedient (subject to any restrictions contained herein) for the maintenance and preservation of the assets of the Plan and the rights of the Members and others thereunder.

39.14 Notwithstanding any other provision of this Deed, no power conferred on the Trustee by this Deed or the exercise of which may at any time be delegated by the Trustee in accordance with the provisions of this Deed shall at any time be exercised in such manner as would prejudice the registration of the Plan under the MPF Ordinance.

39.15 39.15.1 The Trustee may:-

39.15.1.1 start, carry on and defend proceedings relating in any way to the Plan; and

39.15.1.2 settle, compromise or submit to arbitration any claim or matter relating in any way to the Plan.

- 39.15.2 For the avoidance of doubt the leave of the court is not required to take any action under Clause 39.15.1 and the costs, charges and expenses incurred by the Trustee in connection with any action taken under Clause 39.15.1 are payable in accordance with Clause 31.
- 39.16 The Trustee, with the consent of the Principal Employer, may:
- 39.16.1 appoint advisers to advise the Trustee in connection with the Plan or on the exercise or non-exercise by the Trustee of any power, discretion or right conferred on the Trustee by this Deed;
- 39.16.2 remove any adviser and appoint another in place of that adviser in accordance with Clause 39.16.1;
- 39.16.3 pay such fees to any adviser as the Principal Employer and the Trustee may agree to be an expense of the Plan and will be payable in accordance with Clause 31;
- 39.16.4 where the Trustee relies upon the advice or opinion (whether or not obtained by them) of any professional adviser, it will not be responsible for any resulting loss.
- 39.17 The Trustee may, with the consent of the Principal Employer (such consent not required in respect of the employment of any person under a contract of service), from time to time employ or retain, on such terms as they may consider appropriate, such persons as the Trustee thinks fit in the transaction of any business of the Plan or in the administration of the Plan.
- 39.18 The Trustee may, with the consent of the Principal Employer (other than where the consent of the Principal Employer is not required for the appointment of such person), remove any person appointed under Clause 39.17 and appoint another person under that Clause.
- 39.19 The Trustee may from time to time in writing authorise any person to give receipts and discharges for any moneys or other property payable, transferable or deliverable to the Trustee and each receipt or discharge will be as valid as if it had been given by the Trustee.
- 39.20 The Trustee may record all telephone conversations with Employers or Members or with any other person in relation to the affairs of the Plan and any such tape recordings may be submitted in evidence in any proceedings relating to the Plan.

**PART IX
GENERAL**

40. PROVISION OF INFORMATION AND REPORTS TO EMPLOYERS AND MEMBERS

40.1 If as a result of any amendment of the MPF Ordinance or the Regulation or otherwise, the Trustee is required by law to provide information, statements and reports to Employers and/or Members in addition to those required at the date of this Deed, the Trustee shall be entitled after consulting the Principal Employer to such additional fee as is reasonable for providing such additional information, reports and statements.

40.2 The Trustee may, with the approval of the Principal Employer, provide Employers and/or Members or a particular class or classes of Employers and/or Members with such information, statements and reports in addition to that required by law as the Trustee shall think fit. Such additional information, statements and reports shall be provided at such time and in such manner and subject to such fee as the Trustee and the Principal Employer may agree.

41. ACCOUNTS AND REPORTS

41.1 The Trustee shall as soon as practicable after the date of this Deed (or, if later, its appointment as Trustee), prepare a statement of accounting policies to be followed in preparing accounts relating to the Plan and each Constituent Fund. Such statement of accounting policies shall, as a minimum, comply with the requirements of the Regulation and of any relevant regulatory authority having jurisdiction over the Plan or any Constituent Fund. Subject as provided above, the Trustee may at any time and from time to time with the consent of the Principal Employer, change such statement of accounting policies in whole or in part.

Note: General Regulation, s. 80

41.2 As at each Accounting Date the Trustee shall cause to be made up and audited accounts relating to the Plan and each Constituent Fund. Such accounts shall be made up in accordance with the statement of accounting policies referred in Clause 41.1 and otherwise shall be in such form and containing such information as the Trustee may from time to time determine in respect of the Accounting Period for the Plan or relevant Constituent Fund then ending. The accounts relating to each Accounting Period for the Plan or a Constituent Fund with the Auditors' report on such accounts referred to in

Clause 41.3 annexed thereto shall be conclusive and binding. The Trustee shall be absolutely protected in relying upon and shall act upon such accounts.

Note: General Regulation, ss. 81, 82, 83, 84, 85, 95

41.3 The accounts referred to in Clause 41.2 shall be audited by the Auditors in accordance with the statement of accounting policies referred to in Clause 41.1 and shall be accompanied by a report of the Auditors stating the matters required by the Regulation.

Note: General Regulation, ss. 82, 102

41.4 As soon as practicable after each Accounting Date, the Trustee shall prepare or cause to be prepared a scheme report on the Plan in respect of the Accounting Period then ending. Such scheme report shall contain the information required by the Regulation and such other information as the Trustee, after consulting the Principal Employer, shall determine.

Note: s. 86 General Regulation

41.5 As soon as practicable after the end of each Accounting Period and in any event within the period required by the Regulation, the Trustee shall prepare or cause to be prepared an investment report in respect of the Accounting Period then ending. Such investment report shall contain the information required by the Regulation and such other information as the Trustee, after consulting the Principal Employer, may determine.

Note: s. 87 General Regulation

42. REGISTER OF MEMBERS AND MEMBER ACCOUNTS

42.1 The Trustee shall establish and maintain a register of Members of the Plan and shall record in the register in respect of each Member:-

42.1.1 the name of the Member;

42.1.2 the residential address of the Member;

42.1.3 the date of birth of the Member; and

42.1.4 where the Member is a Relevant Employee of an Employer, the name and business address of the Employer of such Member.

Note: s. 91 General Regulation

42.2 The Trustee shall establish and maintain a separate account in respect of each Member in accordance with the requirements from time to time prescribed by the Regulation.

42.3 The Trustee shall establish and maintain an Unclaimed Benefits Account to which all Unclaimed Benefits shall be credited in accordance with this Deed or any relevant Participation Agreement. The Trustee shall maintain records of the persons entitled to amounts credited to the Unclaimed Benefits Account and the interest of such persons in the Units and other property from time to time credited to the Unclaimed Benefits Account.

43. RESTRUCTURING OF THE PLAN

43.1 Subject to compliance with the MPF Ordinance, the Trustee may with the prior approval of the Principal Employer and the Authority (and at the request of the Principal Employer shall so far as is practicable) do such things and enter into such arrangements with the trustee or trustees of one or more other Registered Provident Fund Schemes as the Trustee considers necessary or desirable to provide for the restructuring of the Plan.

Note: s. 34B MPF Ordinance, para. B1.25 MPF Code

44. TERMINATION AND WINDING UP OF THE PLAN

Note: ss. 34A, 47B MPF Ordinance, para. B1.25 MPF Code

44.1 In accordance with the provisions of the MPF Ordinance the Trustee or such other person as may be permitted to do so pursuant to the MPF Ordinance may, having obtained the consent of the Principal Employer, apply to the Authority for approval to wind up the Plan.

44.2 The Trustee may, with the prior written consent of the Principal Employer, request the Authority to apply to the Court to wind up the Plan in accordance with the MPF Ordinance. The Trustee shall, at the request of the Principal Employer, request the

Authority to apply to the Court to wind up the Plan in accordance with the MPF Ordinance.

44.3 Subject as otherwise provided in Clause 44.4, the Trustee shall give not less than one month's notice (or such other period as the Authority may agree or require) to Employers and Members of the termination of the Plan.

44.4 Subject to compliance with the MPF Ordinance, the Trustee may with the prior written consent of the Principal Employer (such consent not to be unreasonably withheld) apply to the Authority to cancel the registration of the Plan pursuant to the MPF Ordinance. Subject to compliance with the MPF Ordinance, the Trustee shall at the request of the Principal Employer apply to the Authority to cancel the registration of the Plan pursuant to the MPF Ordinance. With effect from the date of such cancellation, the Plan shall be terminated.

Note: para. B1.26 MPF Code

45. DEED BINDING ON EMPLOYERS AND MEMBERS

The terms and conditions of this Deed and the relevant Participation Agreement shall be binding on each Employer and each Member and all persons claiming through any of them as if those persons were a party to this Deed and the relevant Participation Agreement and as if this Deed contained covenants on the part of each such person to observe and be bound by all the provisions of this Deed and the relevant Participation Agreement. Except to the extent expressly provided in this Deed or the relevant Participation Agreement, no Employer or Member shall incur or assume any liability or be required to make any payment to the Trustee or the Principal Employer.

46. PROCEEDINGS BY THE TRUSTEE

At the request of the Principal Employer, the Trustee shall, if fully indemnified by the Principal Employer for its costs and expenses, take legal action against an Employer pursuant to the relevant Participation Agreement, on the Principal Employer's behalf.

47. DETERMINATION OF DISPUTES

Subject to the MPF Ordinance, the Trustee shall have full power conclusively to determine whether or not any person is entitled to any benefit from time to time under the

Plan and the amount of any such benefit and also conclusively to determine all questions and matters of doubt arising under or in connection with the Plan and the assets for the time being belonging to the Plan and whether relating to the construction thereof or otherwise. Any such determination whether made upon a question actually raised or implied in the acts or proceedings of the Trustee shall be conclusive and binding on all interested parties.

48. NOTICES

48.1 A notice or other document required to be given for the purposes of the MPF Ordinance or Regulation is taken to have been given if the notice or document is made available or given in such manner as may be prescribed by the Regulation.

Note: s. 206 General Regulation

48.2 Any notice by the Trustee or the Principal Employer to one of the others shall be addressed to the other at their respective address specified in this Deed (or any other address specified by such other party for the purpose) and shall be delivered by hand or sent prepaid post (airmail if overseas) or in such other manner as the parties may agree. Any such notice sent by post shall, in the absence of industrial action affecting any relevant part of the postal services, be deemed to have been served on the day following (or in the case of airmail on the seventh day following) that on which the letter containing the same is posted, and in proving such service it shall be sufficient to prove that such letter was properly addressed, stamped and posted.

48.3 Subject as otherwise provided in this Deed or any Participation Agreement, any notice or other document required to be given to an Employer or a Member shall be deemed to have been duly served or given if sent by post (and by airmail in respect of any overseas address) to or left at the address as appearing in the records of the Trustee, or made available or sent in such other manner as is permitted under the Regulation. Any notice or other document so sent by post shall be deemed to have been given on the day following (or in the case of airmail on the seventh day following) that on which the letter containing the same is posted and in proving such service it shall be sufficient to prove that such letter was properly addressed, stamped and posted.

48.4 Any notice or document sent by post to or left at the address of an Employer or a Member in pursuance of this Deed or any Participation Agreement or made available or sent in such other manner as is permitted under the Regulation shall notwithstanding that such person be then in liquidation, receivership, dead or bankrupt and whether or not the

Trustee or the Principal Employer have notice of such liquidation, receivership, death or bankruptcy be deemed to have been duly given.

48.5 All notices and documents sent by post to Employers or Members or in accordance with their instructions shall be sent at the risk of the persons entitled thereto.

49. PROVISION OF INFORMATION TO REGULATORS AND OTHERS

49.1 Without prejudice to section 41 of the MPF Ordinance and subject to the MPF Ordinance, if the Trustee, the Principal Employer or any Investment Manager, Custodian or Administrator is requested by any regulatory authority, body or any department of any government or administration (which may be located within or outside Hong Kong), or is otherwise required under any agreement, to provide such regulatory authority, body or department with any information regarding the Plan and/or Employers and/or Members and/or the investments and income of the Plan and/or the provisions of this Deed and/or any Participation Agreement and complies with such request or requirement, whether or not it was in fact enforceable, neither the Trustee nor the Principal Employer nor any such Investment Manager, Custodian or Administrator shall incur any liability to Employers or Members or any of them or to any other person as a result of such compliance or in connection with such compliance.

49.2 Without prejudice to Clause 49.1, the Trustee and/or the Principal Employer may disclose information relating to the Plan and its participants, including without limitation information relating to Employers, Members, and the investments and income of the Plan subject to such requirements as set out under the MPF Ordinance and the Regulation and such conditions as may be imposed by the Authority from time to time.

Note: ss. 19, 31, 41, 42AAB MPF Ordinance, Part IX, ss. 135, 136 General Regulation

49A. CERTIFICATION etc. IN RESPECT OF TAX REPORTING

Each Member (i) shall be required to, upon demand by the Trustee and/or the Principal Employer, provide in such manner and within such time as determined by the Trustee and/or the Principal Employer, any form, certification or other information reasonably requested by and acceptable to the Trustee and/or the Principal Employer that is necessary for the Trust to satisfy due diligence, reporting or other obligations relating to any law, regulation or any agreement with any tax or fiscal authority in any jurisdiction applicable to the Trust (including but not limited to any law, rule and requirement relating to AEOI),

(ii) will, in such manner and within such time as determined by the Trustee and/or the Principal Employer, update or replace such form, certification or other information in accordance with its terms or subsequent amendments or when such form, certificate or other information is no longer accurate, and (iii) will otherwise comply with any registration, due diligence and reporting obligations imposed by the laws of Hong Kong or any other jurisdiction (including but not limited to any law, rule and requirement relating to AEOI), including such obligations that may be imposed by future legislation.

50. POWER TO EXTEND TIME LIMITS

50.1 Subject to Clause 50.2 below, where any period (other than the period relating to the notice required to be given by a Trustee in order to retire under Clause 11.1) or date is specified in this Deed:-

50.1.1 as the period within which or the date by which anything is to be done; or

50.1.2 as applying to or in respect of a Relevant Employee who is eligible for membership or a Member,

the Trustee may, on written application being made for that purpose (notwithstanding that such period has expired or that such date has passed), extend that period or fix a later date on such terms and conditions as it may prescribe.

50.2 Notwithstanding the generality of Clause 50.1 above, the Trustee must not extend any period or fix any later date where such extension or change of date would result in breach of the MPF Ordinance.

51. SEVERABILITY

If any provision in this Deed shall be determined to be void or unenforceable in whole or in part for any reason whatsoever such invalidity or unenforceability shall not affect the remaining provisions or any part thereof contained within this Deed and such void or unenforceable provisions shall be deemed to be severable from any other provision or part thereof herein contained.

52. PROPER LAW

52.1 This Deed is governed by and shall be interpreted in accordance with the laws of Hong Kong.

52.2 Each of the parties hereby submit to the jurisdiction of the Courts of Hong Kong in connection herewith. Each Employer shall be deemed by execution of a Participation Agreement and each other Member shall be deemed by execution of an application to become a Member to submit to the jurisdiction of the Courts of Hong Kong in connection herewith.

Note: s. 21(7)(b) MPF Ordinance

SCHEDULE 1

MEMBERSHIP, CONTRIBUTIONS AND BENEFITS

1. REQUIREMENTS FOR AND TERMS OF MEMBERSHIP

Note: s. 7 MPF Ordinance, s. 31 General Regulation

- 1.1. On being notified that an Eligible Employee of an Employer is considering making an application for membership of the Plan, the Trustee shall cause to be given to such Eligible Employee the information required to be given to such Eligible Employee pursuant to the Regulation.

Note: s. 31(2), (3) General Regulation

- 1.2. An Eligible Employee of an Employer may apply to become a Member by completing an application in the specified form (which shall include an agreement on the part of the Eligible Employee to comply with this Deed and the relevant Participation Agreement so far as applicable to the Eligible Employee as a Member of the Plan) and providing such other information as the Trustee may reasonably require.

- 1.3. For so long as required so to do by the Regulation, the Trustee shall not refuse membership of the Plan to any Eligible Employee of an Employer who complies with the requirements of Paragraph 1.2.

Note: s. 31(1) General Regulation

- 1.4. An Eligible Employee of an Employer who makes an application in accordance with Paragraph 1.2 shall become a Member on the date on which the Trustee accepts such Eligible Employee's application for membership (subject to the Regulation).

- 1.5. The Trustee shall issue a notice of participation to the Eligible Employee within such period as may be prescribed in the Regulation.

Note: s. 31(4) General Regulation

- 1.6. An Eligible Employee who becomes a Member and any person claiming benefits through such person shall be bound by the terms and provisions of this Deed and of any relevant Participation Agreement as if a party to this Deed and such Participation Agreement.

1.7. A Member shall continue as a Member of the Plan until such membership is terminated by the approved trustee:-

1.7.1. in accordance with this Deed or any relevant Participation Agreement; and

1.7.2. with the written agreement of the Member or the Employer of that Member.

Note: s. 31(5) General Regulation

2. MANDATORY CONTRIBUTIONS

2.1. Except to the extent that such payment is not required by the MPF Ordinance, each Employer must pay Employer's Mandatory Contributions to the Trustee in respect of each Member employed by such Employer who has not reached Retirement Age.

2.2. Except to the extent that such deduction and payment is not required by the MPF Ordinance, each Employer must:-

2.2.1. deduct from the relevant income (as defined in the MPF Ordinance) of each Member employed by such Employer and who has not reached Retirement Age an amount equal to the Member's Mandatory Contributions of such Member; and

2.2.2. pay such amount to the Trustee.

2.3. Mandatory Contributions shall be calculated in accordance with the MPF Ordinance.

Note: ss. 7A, 7C MPF Ordinance; Part XI General Regulation

2.4. Mandatory Contributions shall be paid to the Trustee at such times and in such manner as may be prescribed by the MPF Ordinance and the Regulation and otherwise as may be agreed between the Trustee and the relevant Employer.

Note: Part XI General Regulation

2.5. Special Contributions - Any Special Contributions shall be dealt with in accordance with the MPF Ordinance and the Regulation. Without prejudice to Clause 49 of the Deed, the Trustee shall be entitled to disclose such information to the Authority or take such actions as may be required under the MPF Ordinance and the Regulation in relation to Special

Contributions, and shall not incur any liability to Employers or Members or any of them or any person as a result of so doing.

3. MEMBER'S VOLUNTARY CONTRIBUTIONS

Note: ss. 12 (Contributions to vest in scheme member as accrued benefits), 13 (Preservation of accrued benefits derived from contributions), 14 (Portability of accrued benefits) and 15(1) to (3) (Withdrawal of accrued benefits) of the MPF Ordinance do not apply to voluntary contributions - see s. 11(8) of the MPF Ordinance

3.1. Without prejudice to Paragraph 3.2, where a Participation Agreement requires a Member to make Voluntary Contributions then (subject as provided below) the relevant Member must make Voluntary Contributions in accordance with that Participation Agreement.

3.1.1. The obligation of a Member who is a Eligible Employee of an Employer to pay Member's Voluntary Contributions pursuant to the relevant Participation Agreement shall cease where the Employer of such Member reduces or suspends the payment of Employer's Voluntary Contributions in respect of the Member in accordance with Paragraph 4.1.

3.2. Unless otherwise prohibited by the MPF Ordinance or the Regulation, a Member may at any time elect to make Member's Voluntary Contributions. An election to make Member's Voluntary Contributions:-

3.2.1. shall be in the specified form;

Note: s. 10 MPF Ordinance

3.2.2. shall contain such information as the Trustee may reasonably require, including the method of calculation and the frequency of payment of such Voluntary Contributions;

3.2.3. shall be given to the Trustee and the Employer of the relevant Member; and

3.2.4. unless otherwise agreed with the Trustee and the Employer of the relevant Member, shall take effect from the date the Trustee receives such election.

Note: ss. 10, 11 MPF Ordinance

3.3. An election made under Paragraph 3.2 may be revoked by the relevant Member by notice to the Trustee and the Employer of the relevant Member in the specified form. Unless otherwise agreed with the Trustee and the Employer of the relevant Member, such revocation shall take effect from the date the Trustee receives such revocation.

3.4. Unless otherwise agreed with the Trustee, Member's Voluntary Contributions shall be paid to the Trustee at the same time and in the same manner as Member's Mandatory Contributions. An Employer must, on the request of a Member employed by the Employer, pay to the Trustee any Member's Voluntary Contributions of that Member.

Note: s. 33(2)(a) General Regulation

3.5. Member's Voluntary Contributions shall at all times be fully vested in the relevant Member.

Note: s. 33(2)(c) General Regulation

4. EMPLOYER'S VOLUNTARY CONTRIBUTIONS

Note: ss. 12 (Contributions to vest in scheme member as accrued benefits), 13 (Preservation of accrued benefits derived from contributions), 14 (Portability of accrued benefits) and 15(1) to (3) (Withdrawal of accrued benefits) of the MPF Ordinance do not apply to voluntary contributions - see s. 11(8) of the MPF Ordinance

4.1. Without prejudice to Paragraph 4.2, where a Participation Agreement requires an Employer to make Employer's Voluntary Contributions then (subject as provided below) the relevant Employer must make Employer's Voluntary Contributions in accordance with that Participation Agreement.

4.1.1. An Employer who has agreed in the relevant Participation Agreement to pay Employer's Voluntary Contributions may at any time in its absolute discretion reduce or suspend payment of such Employer's Voluntary Contributions by giving not less than three (3) months' notice (or such shorter period of notice as the Trustee may agree) to the Trustee in the specified form and to each relevant Member employed by such Employer to this effect. The reduction or suspension of payment of Employer's Voluntary Contributions may be in respect of a class or classes of Members employed by the Employer only or in respect of all Members employed by the Employer.

4.1.2. A notice given pursuant to Paragraph 4.1.1 shall take effect from the last day of the calendar month in which such notice expires. Upon such notice taking effect the liability of such Employer shall be reduced or suspended to the extent specified in the notice except in respect of any amounts due on or before the date upon which the notice takes effect.

4.2. An Employer may at any time elect to make Employer's Voluntary Contributions in respect of all or some only of the Members employed by such Employer. An election to make Employer's Voluntary Contributions:-

4.2.1. shall be in the specified form;

Note: s. 10 MPF Ordinance

4.2.2. shall contain such information as the Trustee may reasonably require, including the method of calculation and the frequency of payment of such Employer's Voluntary Contributions and the Members in respect of whom such Employer's Voluntary Contributions will be made;

4.2.3. shall be given to the Trustee; and

4.2.4. unless otherwise agreed with the Trustee, shall take effect from the date the Trustee receives such election.

Note: ss. 10, 11 MPF Ordinance

4.3. An election made under Paragraph 4.2 may be revoked by the relevant Employer by notice to the Trustee in the specified form and to each relevant Member employed by such Employer. Unless otherwise agreed with the Trustee, such revocation shall take effect from the date the Trustee receives such revocation.

4.4. Unless otherwise agreed with the Trustee, Employer's Voluntary Contributions shall be paid to the Trustee at the same time and in the same manner as Employer's Mandatory Contributions.

4.5. Subject as otherwise provided in this Deed or the relevant Participation Agreement, Employer's Voluntary Contributions shall at all times be fully vested in the relevant Member.

- 4.6. Subject to the provisions of the relevant Participation Agreement, in the event that a Member is dismissed from employment summarily for cause the Employer's Voluntary Contribution Balance in respect of such Member shall be forfeited to the relevant Employer.

Note: s. 33(2)(b) General Regulation

5. RECEIPT AND APPLICATION OF CONTRIBUTIONS

- 5.1. The Trustee shall accept all Contributions paid to or to the account of the Trustee for the purposes of the Plan and shall hold and deal with such Contributions in accordance with this Deed and any relevant Participation Agreement.

Note: s. 32(1) General Regulation

- 5.2. On receipt of Contributions, the Trustee shall credit the relevant accounts as required by the Regulation.
- 5.3. Pending such investment all moneys received for the account of a Member may be held by the Trustee in cash or, subject to section 66A of the Regulation, on Deposit with any Authorized Financial Institution or Eligible Overseas Bank (which may be any Associate of the Trustee).

Note: para. B1.13 MPF Code

6. ENTITLEMENT TO BENEFITS

- 6.1. Subject to Clause 34.1 and Paragraph 9, where:-
- 6.1.1. a Member becomes entitled to benefits pursuant to this Deed in respect of Mandatory Contributions, the Trustee shall realise (in such manner as may be determined by the Trustee) the Units standing to the credit of the Mandatory Credit Balance of the relevant Member on (a) a Valuation Date within 30 days (or such shorter period as the Trustee and the Principal Employer may agree) of the later of (i) the date the Member becomes entitled to such benefits, and (ii) the date the Trustee receives satisfactory notice and supporting documentation of such entitlement or (b) if later, the Valuation Date for the relevant Constituent Fund or Constituent Funds next following the date the Trustee receives satisfactory notice and supporting documentation of such entitlement;

6.1.2. a Member becomes entitled to benefits pursuant to this Deed in respect of Voluntary Contributions, the Trustee shall realise (in such manner as may be determined by the Trustee) the Units standing to the credit of the Employer's Voluntary Contribution Balance (if any), the Member's Voluntary Contribution Balance (if any) and the Voluntary Transfer Balance (if any) of the relevant Member on (a) a Valuation Date within 30 days (or such shorter period as the Trustee may agree) of the later of (i) the date the Member becomes entitled to such benefits, and (ii) the date the Trustee receives satisfactory notice and supporting documentation of such entitlement or (b) if later, the Valuation Date for the relevant Constituent Fund or Constituent Funds next following the date the Trustee receives satisfactory notice and supporting documentation of such entitlement.

Note: para. B1.13 MPF Code

6.2. A Member who has attained the Member's Retirement Age, or who has not attained Retirement Age but has attained the age specified in Schedule 7 to the MPF Ordinance and satisfied the requirements in section 15(2) of the MPF Ordinance, shall be entitled, on giving a request to the Trustee in the specified form and complying with such other requirements as may be imposed by the MPF Ordinance and the Regulation, to receive:-

6.2.1. the Mandatory Credit Balance of the relevant Member; and

6.2.2. unless the Participation Agreement applicable to the Member provides otherwise, the Voluntary Credit Balance of the relevant Member,

in the manner as set out in Paragraph 6.2A.

6.2A Subject to the MPF Ordinance and the Regulation, any payment by the Trustee of a Member's entitlement under Paragraph 6.2 shall be made in a manner as provided in the explanatory memorandum of the Plan and/or the relevant claim form or otherwise as prescribed by the Trustee from time to time, subject to such terms and conditions as may be determined by the Trustee.

Note: s. 15(1), 15(2) MPF Ordinance, s. 159, 160, 166 General Regulation

6.3. A Member who is entitled to be paid in the circumstances specified in section 162(1) of the Regulation shall be entitled, on giving a request to the Trustee in the specified form

and complying with such other requirements as may be imposed by the Regulation, to receive a lump sum equal to:-

- 6.3.1. the Mandatory Credit Balance of the relevant Member; and
- 6.3.2. unless the Participation Agreement applicable to the Member provides otherwise, the Voluntary Credit Balance of the relevant Member.

Note: ss. 15(2), (3) MPF Ordinance, ss. 162-165 General Regulation

- 6.4. If a Member dies the Trustee shall, on receipt of a request from a personal representative of the Member in the specified form and on the personal representative complying with such other requirements as may be imposed by the Regulation, pay a lump sum equal to:-

- 6.4.1. the Mandatory Credit Balance of the relevant Member; and
- 6.4.2. unless the Participation Agreement applicable to the Member provides otherwise, the Voluntary Credit Balance of the relevant Member,-

to the persons entitled under the MPF Ordinance to receive such amount.

- 6.5. Notwithstanding the provisions of this Paragraph 6, the Trustee is only obliged to make payments on receiving satisfactory evidence supporting a claim. Any Member or Employer shall be bound to produce such evidence and information as may be required by the Trustee and, where relevant, permitted by the MPF Ordinance, for the purposes of the Plan and payment under this Deed to any Plan shall be conditional upon prior production by that person of such evidence or information.

Note: s. 15(4) MPF Ordinance, s. 161 General Regulation

7. ENTITLEMENT TO VOLUNTARY CONTRIBUTIONS

- 7.1. Without prejudice to Paragraphs 6.2 and 6.2A, and subject as otherwise provided in the relevant Participation Agreement, a Member who ceases employment with an Employer shall at any time be entitled on request to the Trustee in the specified form to payment of an amount equal to the Voluntary Credit Balance of such Member in a lump sum or by instalment, subject to such terms and conditions (to the extent not restricted by the MPF Ordinance and the Regulation) as may be determined by the Trustee in consultation with the Principal Employer.

Note: s. 33(3) General Regulation

7.2. Where in respect of a Member:-

7.2.1. the relevant Participation Agreement requires the Employer of that Member to make Employer's Voluntary Contributions; and

7.2.2. the Employer has failed to make such Employer's Voluntary Contributions within 6 months (or such other period as may be prescribed by the Regulation) after the end of the period determined in accordance with section 33(3) of the Regulation,-

the Member shall be entitled on giving notice to the Trustee in the specified form to receive a lump sum equal to the Voluntary Credit Balance of that Member.

Note: s. 12A MPF Ordinance, s. 33(3) General Regulation

7.3. A Participation Agreement may specify other situations in which a Member shall be entitled to receive all or part of the Employer's Voluntary Contribution Balance, Member's Voluntary Contribution Balance and/or Voluntary Transfer Balance of such Member.

7.4. On the termination of employment of a Member with an Employer, the Trustee shall apply any amount of the Employer's Voluntary Contribution Balance of such Member which is not otherwise paid or transferred in accordance with this Deed or any relevant Participation Agreement as the relevant Employer may direct in writing to:-

7.4.1. reduce Contributions due to the Plan from the Employer; and/or

7.4.2. pay any fees, costs or expenses relating to the Plan and payable by the Employer; and/or

7.4.3. refund all or part of such amount to the relevant Employer

or otherwise as the Employer may direct in writing. Pending application as provided above, the Trustee shall in accordance with the instructions of the Principal Employer hold such amount in cash and/or, subject to section 66A of the Regulation, on Deposit (including with the Trustee or any Associate of the Trustee) and/or shall invest such amount in such one or more of the Constituent Funds as the Principal Employer may direct the Trustee.

8. SEVERANCE PAYMENTS AND LONG SERVICE PAYMENTS

- 8.1. An Employer may make an application to the Trustee in the specified form for payment to the Employer of any amount which the Employer has paid to or in respect of a Member employed by such Employer as a severance payment or a long service payment in accordance with the Employment Ordinance (Cap.57) of the Laws of Hong Kong (such amount referred to in this sub-paragraph as the “Relevant Amount”). Subject to the MPF Ordinance, and as otherwise agreed with such Employer on receipt of such application the Trustee shall pay the Relevant Amount to the Employer:-
- 8.1.1. out of the vested portion of the Employer’s Voluntary Contribution Balance (if any) of the relevant Member; and
- 8.1.2. if after payment under Paragraph 8.1.1 any part of the Relevant Amount remains outstanding, out of the Employer’s Mandatory Contribution Balance of the relevant Member.
- 8.2. A Member or an Employer in respect of a Member may make an application to the Trustee in the specified form for payment to the Member of any amount which the Employer is required to pay to or in respect of such Member as a severance payment or a long service payment in accordance with the Employment Ordinance (Cap.57) of the Laws of Hong Kong and which, at the time of the application, has not been paid to or in respect of such Member (such amount referred to in this sub-paragraph as the “Relevant Amount”). Subject to the MPF Ordinance, and as otherwise agreed with such Employer on receipt of such application the Trustee shall pay the Relevant Amount to the relevant Member:-
- 8.2.1. out of the vested portion of the Employer’s Voluntary Contribution Balance (if any) of the relevant Member; and
- 8.2.2. if after payment under Paragraph 8.3.1 any part of the Relevant Amount remains outstanding, out of the Employer’s Mandatory Contribution Balance of the relevant Member.
- 8.3. No payment shall be made out of the Plan pursuant to this Paragraph in respect of the excess (if any) of the Relevant Amount over the aggregate of the Employer’s Mandatory Contribution Balance and the vested portion of the Employer’s Voluntary Contribution Balance of the relevant Member.

9. UNCLAIMED BENEFITS

Note: ss. 170, 171, 172, 173 General Regulation

- 9.1. Where any amounts due to a Member are to be treated as Unclaimed Benefits the Trustee shall:-
- 9.1.1. transfer such amounts in the books of the Plan to the Unclaimed Benefits Account and record the interest of the relevant Inactive Member in the Unclaimed Benefits Account; and
- 9.1.2. continue to hold such amounts for such period as may be prescribed by the Regulation and shall:-
- 9.1.2.1. where such amounts are invested in one or more Constituent Funds immediately prior to being treated as Unclaimed Benefits continue to invest such amounts in such Constituent Fund or Constituent Funds or realise the Units and invest in cash, as the Trustee may decide;
- 9.1.2.2. where such amounts are not invested in one or more of the Constituent Funds immediately prior to being treated as Unclaimed Benefits, invest such amounts in (i) before 1 April 2017, the Default Fund and (ii) on or after 1 April 2017, in the Age 65 Plus Fund as defined in Schedule 10 to the MPF Ordinance, on a Valuation Date for the relevant Constituent Fund within 30 days (or such shorter period as the Trustee and the Principal Employer may agree) of the date on which such amounts are to be treated as Unclaimed Benefits or, if later, the Valuation Date for the relevant Constituent Fund next following the date of which such amounts are to be treated as Unclaimed Benefits;
- 9.1.3. transfer the Unclaimed Benefits to a master trust scheme in accordance with the Regulation within the period specified in the Regulation.

IN WITNESS whereof the Trustee and the Principal Employer have executed this Deed on the day and year first above written.

SEALED with the **COMMON SEAL** of)
RBC INVESTOR SERVICES)
TRUST HONG KONG LIMITED)
)
)
in the presence of:-)

SEALED with the **COMMON SEAL** of)
SUN HUNG KAI PROPERTIES LIMITED)
in the presence of:-)
)