

Enhanced Regulation of Mandatory Provident Fund Intermediaries

Frequently Asked Questions

Q1. What is the outcome of the consultation on the legislative proposals on the regulation of MPF intermediaries?

A1. The Consultation Paper was published in end March 2011. As at 28 July 2011, we have received a total of 13 written submissions from various organizations. Respondents include industry groups, labour unions, the Consumer Council and professional bodies. There is general support for enhancing the regulation of Mandatory Provident Fund (“MPF”) intermediaries before implementation of the Employment Choice Arrangement (“ECA”) and the majority of respondents did not indicate disagreement with the proposal that the statutory regulatory regime be modelled on the existing administrative regulatory arrangements. The views received during the consultation period and our detailed responses have been posted on the websites of the Financial Services and the Treasury Bureau and the Mandatory Provident Fund Schemes Authority (“MPFA”).

In light of the importance of enforcement consistency, we suggest enhancing the legislative proposals in different aspects and have provided further details regarding the content of the legislative proposals. We are now working on the drafting of the legislation. One of the measures to ensure regulatory consistency is to vest with the MPFA all the disciplinary powers (including reprimand, fines, suspension and revocation of registration) to strengthen the role of the MPFA as the lead regulator of all MPF intermediaries. The frontline regulators (“FRs”) will participate actively in the disciplinary process to ensure regulatory consistency.

Q2. Why is the MPFA not taking up all regulatory work?

A.2 Currently, financial institutions operate in various sectors which involve selling many different products. To accommodate market development, supervision should adopt an integrated approach. The existing “integrated” approach adopted in Hong Kong taking into account both the business of the institutions and the industry, and has been functioning well. It is able to meet the actual needs of the market. From a vertical perspective, the sector to which a financial institution belongs determines the institution’s regulatory authority, while from the horizontal point of view, products of the same type will be subject to the supervision of the same regulator regardless of the financial institutions. Under the “integrated” approach, the regulatory requirements applicable to industry and businesses would complement each other, and would avoid fundamental change to the existing regulatory regime. It can facilitate MPF intermediaries adapt the new regime, and is considered to be the most effective way to facilitate industry compliance and the early implementation of the ECA.

Q3. How to ensure consistency in regulation and a level playing field?

A.3 To further ensure regulatory consistency, we will modify the proposal such that all disciplinary powers would be vested with the MPFA (including reprimand, fines, suspension and revocation of registration and prohibition from applying for registration) with active participation of FRs in the disciplinary process. In actual operation, the MPFA will be assisted by the Hong Kong Monetary Authority (“HKMA”), the Insurance Authority (“IA”) and the Securities and Futures Commission (“SFC”), which, in recognition of their distinct role as the primary and lead regulator for their own sectors, will perform the role of the frontline regulators for MPF intermediaries from their own sectors. Before making any disciplinary decision, the MPFA will take into account the investigation results and recommendations of the FRs and institute process for ensuring procedural fairness for the intermediaries concerned, including the opportunity of being heard before imposing any disciplinary action. We believe this modified proposal will further ensure fairness and consistency in disciplinary decisions and create a level playing field.

The relevant measures to ensure regulatory consistency suggested in the original proposal will be kept, e.g. –

- (a) the MPFA will be the authority to register MPF intermediaries;
- (b) the MPFA will be the sole standard-setter and be empowered to make rules, after consultation with FRs, on statutory conduct requirements. It will also be empowered to issue codes/guidelines for the purpose of giving guidance on compliance with the statutory conduct requirements;
- (c) the legislation will delineate clearly the respective powers and functions of the MPFA and the FRs, and arrangements will be agreed between the MPFA and the FRs on this basis through, for example, the signing of a Memorandum of Understanding among them;
- (d) all appeals against registration and disciplinary decisions with regard to MPF intermediaries will be handled by a single independent appellate body;
- (e) the MPFA will establish a regular liaison mechanism with participation of all FRs to enhance communication and exchange of views on the making of codes, guidelines and rules on conduct requirements, enforcement principles and other issues of mutual concern over the regulation of MPF intermediaries; and
- (f) an independent Process Review Panel will be established to review the enforcement procedures of the MPFA and the FRs to ensure, among other things, consistent internal process on MPF enforcement among the FRs and within the MPFA.

Q4. What would be the role of the self-regulatory organizations (SROs) of the insurance sector under the new regulatory regime and after the establishment of the independent Insurance Authority?

A4. The proposed independent Insurance Authority will become the frontline regulator of MPF intermediaries from the insurance sector. Before its establishment, the Office of the Commissioner of Insurance will be responsible for the frontline work. Currently, the MPFA has kept a register of MPF intermediaries, including members of SROs of the insurance sector. In future, the MPFA, Insurance Authority and self-regulatory organizations will discuss the transitional arrangements. The MPFA will further consult the industry, including self-regulatory organizations, in preparing the new Code of Conduct for MPF Intermediaries. We believe that under the new regulatory regime, self-regulatory organizations will continue to play its role as an industry body to represent the rights of its members and to organize training courses and other publicity programmes for the industry.

Q5. Can the pre-existing MPF intermediaries continue to sell MPF products? What are the details of the transitional arrangement?

A5. The Administration and the MPFA have proposed to provide a two-year transitional period after the implementation of the new regulatory regime. MPF intermediaries already validly registered with the MPFA before commencement of the new regulatory regime will be automatically transferred to the new regime. If they wish to continue to carry on MPF sales and marketing activities after the transitional period, they will need to complete application procedures with the MPFA before the expiry of the transition period. In order to protect the interests of MPF scheme members, all MPF intermediaries should comply with the conduct requirements under the new regulatory regime during the transitional period, otherwise they may be subject to disciplinary actions.

Q6. Will the MPFA impose new examination or Continuing Professional Development (“CPD”) requirements on pre-existing intermediaries during the transitional period?

A6. All along, the MPFA is responsible for reviewing the registration criteria for MPF intermediaries from time to time in the light of market development and public expectation and making appropriate amendments. At present, the MPFA has no plan to impose new examination or CPD requirements through the introduction of the statutory regulatory regime and will consult before putting forth any new proposals.

Q7. Will additional conduct requirement be imposed on MPF intermediaries?

A7. The MPFA will issue a code on the conduct requirements for compliance by MPF intermediaries. The MPFA plans to release the draft code of conduct in the fourth quarter this year for further consultation with the industry.

Q8. What is the level of the registration fee?

A8. The MPFA will be empowered to collect registration fee from MPF intermediaries under the legislative proposals, which is a common arrangement in legislation. The fee will be prescribed through subsidiary legislation. Initially, the MPFA plans to waive the fee for the initial years of implementation of the statutory regulatory regime. The MPFA has made clear that if fee is to be collected in future, the level will only be determined on a cost-recovery basis.

Q9. What is the latest legislative timetable?

A9. The Administration and the MPFA are making full steam on the drafting of the legislation. We aim to introduce the Bill into LegCo in Q4 this year with a view to completing the legislative process within the current LegCo term such that the MPFA may implement the ECA in the second half of 2012.

Q10. When can the ECA be implemented?

A10. The MPFA is carrying out the relevant preparatory work for the implementation of the ECA, such as establishing an electronic platform to process the transfers of MPF benefits, formulating operational policies, setting up a personal account register, providing training to MPF intermediaries and enhancing education of scheme members.

The MPFA has also set up a steering group and project team to discuss the implementation details and to monitor the progress. It will determine the timetable for the implementation of the ECA after the completion of the legislative process in light of the actual preparatory progress. The present target is to implement the ECA in the second half of 2012 once the Bill is passed in the 2011-12 legislative session.

Q11. How to access the consultation conclusions?

A11. The consultation conclusions have been uploaded to the websites of the Financial Services and the Treasury Bureau at http://www.fstb.gov.hk/fsb/ppr/consult/mpf_conclusion.htm and the MPFA at http://www.mpfa.org.hk/english/quicklinks/quicklinks_cp/quicklinks_cp.html.