

For discussion on  
4 April 2011

## **Legislative Council Panel on Financial Affairs Enhanced Regulation of Mandatory Provident Fund Intermediaries**

### **INTRODUCTION**

This paper sets out legislative proposals to (a) enhance the regulation of the sales and marketing activities of Mandatory Provident Fund (“MPF”) intermediaries; (b) provide for the establishment and operation of a platform by the Mandatory Provident Fund Schemes Authority (“MPFA”) to ensure accuracy and enhance efficiency of transfers of benefits among approved trustees through electronic means (“E-platform”); and (c) enhance the deterrent against default contributions by employers.

### **BACKGROUND**

2. Since completion of the legislative amendment exercise to implement the Employee Choice Arrangement (“ECA”), through which more than 2.5 million MPF scheme members may be subject to more aggressive and direct sales activities of MPF intermediaries, MPFA has been making preparation for its implementation, including –

- (a) ensuring the various systems of MPFA and trustees can handle the implementation of the ECA;
- (b) stepping up MPF investment education to assist employees to make informed choices that suit their own needs; and
- (c) strengthening MPF intermediaries regulation and training to better protect scheme members’ interest.

With rising public expectation towards investor protection in recent years, MPFA has reviewed the existing regulatory regime of MPF intermediaries and recommended that the existing administrative arrangement be

strengthened by statute. This is to ensure the availability of effective deterrent against MPF sales and marketing activities by unregistered persons, and of a range of proportionate disciplinary tools to the Hong Kong Monetary Authority (“HKMA”), the Insurance Authority (“IA”) and the Securities and Futures Commission (“SFC”) (collectively referred to as Frontline Regulators (“FRs”)) to promote compliance with the conduct requirements governing the sales and marketing of MPF products. The Government agrees with MPFA that it would be prudent to establish a statutory regulatory framework for MPF intermediaries before the implementation of the ECA to better protect more than 2.5 million scheme members.

3. In the context of this legislative exercise, in anticipation of substantial increase in the volume of transfers of benefits after implementation of the ECA, MPFA also proposes to introduce an E-platform by statute to facilitate trustees to exchange data for more efficient and effective transfer of benefits and to ensure data accuracy. Opportunity is also taken to introduce legislative amendments to enhance the deterrent against default contributions by employers as proposed by MPFA.

## **REGULATION OF MPF INTERMEDIARIES**

### **An Overview**

4. At present, MPFA implements an administrative regulatory regime for MPF intermediaries through its Code of Conduct for MPF Intermediaries. Under this regime, MPFA is the standard-setter and the registration authority. It relies, as far as practicable, on the regulatory efforts made by HKMA, IA and SFC for the supervision of registered MPF intermediaries who are also their own regulatees under the Banking Ordinance, the Insurance Companies Ordinance and the Securities and Futures Ordinance. There has been liaison mechanism between MPFA and FRs since inception of the MPF System in 2000.

5. As at end February 2011, there were 475 registered MPF corporate intermediaries and 28,635 registered MPF individual intermediaries. As a pre-requisite for registration with MPFA, they have to be a regulatee in the banking sector, insurance sector and / or the securities sector. Of them, about 28% have their principal line of business in banking, 70% in insurance and 2% in securities. Noting that in most if not all cases, MPF activities are incidental to the main lines of business of MPF intermediaries, the existing regulatory arrangements provide for efficient use of regulatory resources and

experience. Based on detailed discussions with MPFA and the FRs, the proposed statutory regulatory regime is modelled on the existing administrative arrangements, with modifications and enhancement as appropriate. This approach would minimize disruption to the existing regulatory arrangements and facilitate early implementation of the ECA.

## **Legislative Proposals**

6. The legislation will cover the major aspects of the MPF intermediaries regulatory regime that are essential to protect scheme members' interest, including, among others -

- (a) prohibitions against engaging in regulated MPF sales and marketing activities other than by registered MPF intermediaries;
- (b) registration of MPF intermediaries;
- (c) regulatory scope of FRs ;
- (d) conduct requirements for MPF intermediaries and relevant guidelines;
- (e) supervisory and disciplinary powers of MPFA and FRs;
- (f) appeals mechanism; and
- (g) transitional arrangements for pre-existing registered MPF intermediaries.

Detailed proposals are set out at [Annex](#).

## **ESTABLISHMENT OF AN E-PLATFORM FOR TRANSFER OF MPF BENEFITS**

### **Need for an E-platform**

7. MPFA anticipates that upon the implementation of the ECA, there will be a substantial increase in the number of elections by scheme members for transfer of benefits among MPF schemes. Having consulted the trustees, and with the aim to ensure accuracy of transfers, shorten the processing time and minimize the costs associated with transfers, MPFA proposes to establish and operate an electronic transfer system (i.e. E-platform). This is to facilitate the trustees in processing scheme members' elections for transfer of benefits through electronic means.

## **Legislative Proposals**

8. To ensure effectiveness and efficiency of the E-platform, MPFA proposes that -

- (a) all trustees should be required to participate in the system subject to certain exemptions specified by MPFA, for example, a trustee who does not administer any MPF schemes and hence is not involved in the processing of elections for transfer of benefits; and
- (b) all transfers of benefits made under the ECA between MPF schemes administered by different trustees should be required to be processed by the E-platform.

9. MPFA will bear the costs of developing and establishing the E-platform. The legislation should provide for a fee to be payable by the relevant trustees to MPFA, at a level determined with reference to the costs likely to be incurred and the number of elections likely to be processed in the daily operation of the system. MPFA proposes to recover from the trustees on a cost recovery basis any fees paid by MPFA to any third party in relation to the operation of the system. MPFA also proposes that the Mandatory Provident Fund Schemes Ordinance be amended to provide for the procedural requirements and other details necessary for the smooth operation of the E-platform.

## **ENHANCEMENT OF DETERRENT AGAINST DEFAULT CONTRIBUTIONS BY EMPLOYERS**

### **Legislative Proposals**

10. In addition, MPFA would like to take the opportunity to further enhance deterrent against employers' default contributions. Key proposals include: making it a continuous offence for failure of employers to rectify non-payment of mandatory contributions after contribution day; and creating an offence against failure of employers to pay any sum awarded by a tribunal or court, similar to the arrangement introduced under the Employment (Amendment) Ordinance 2010. We will also consider including other miscellaneous technical amendments in this legislative exercise.

## **NEXT STEPS**

11. In conjunction with MPFA, we have been engaging key industry bodies and relevant stakeholders, and will invite comments on the legislative proposals in the coming month. We also welcome views from the Panel and members of the public on the proposals.

12. We will take into account the views and comments received in preparing the Bill. Our target is to introduce the Bill into the Legislative Council within this year.

**Financial Services and the Treasury Bureau**  
**Mandatory Provident Fund Schemes Authority**  
**28 March 2011**

## **Detailed legislative proposals for the regulation of intermediaries of Mandatory Provident Fund (“MPF”) activities**

### **Key elements of the legislative proposals**

#### **I. Prohibitions against engaging in regulated MPF sales and marketing activities other than by registered MPF intermediaries**

1. The legislation will stipulate that no person shall, in the course of carrying on a business or in the course of his employment, engage in any regulated MPF sales and marketing activities or holding himself out as doing so unless the person is –

- (a) registered with the Mandatory Provident Fund Schemes Authority (“MPFA”) and the registration is not suspended;
- (b) in the case of an intermediary registered to perform for or on behalf of a principal intermediary (“PI”), engaging in the activities in such capacity; or
- (c) exempted from registration as an MPF intermediary (c.f. similar exemption provision in Securities and Futures Ordinance (“SFO”)) – e.g. specified categories of professional sectors such as lawyers, accountants, trust companies who give advice to their clients on MPF matters incidental to their main business;

2. A person commits an offence if he, without reasonable excuse, contravenes the restrictions.

3. A person is required to be registered with MPFA as a MPF intermediary<sup>1</sup> before he can engage in MPF sales and marketing activities that may influence a prospective/existing participant of an MPF scheme in making a decision that affects the latter’s benefits in an MPF scheme. Similar to the SFO, the proposed legislation will stipulate that registration is required for a person who engages in any of the following sales and marketing activities (i.e. “regulated MPF sales and marketing activity”) in the course of carrying on a business –

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<sup>1</sup> An intermediary means a principal intermediary or a sponsored intermediary, as the case may be.

- (a) inviting or inducing, or attempting to invite or induce, another person to make a specified MPF decision; or
- (b) giving advice to another person concerning a specified MPF decision.

4. To enhance certainty and clarity, the proposed legislation will define clearly what constitute “specified MPF decision” and “giving advice”. Please refer to **Appendix A**.

## II. Registration of MPF intermediaries

5. Similar to the existing administrative regulatory regime, there will be two classes of MPF intermediaries viz. PI and sponsored intermediary (“SI”). The legislation will provide that MPFA may, upon receipt of an application and payment of the prescribed fee, –

- (a) register the following persons as a PI, permitted to engage in regulated MPF sales and marketing activities -
  - (i) an authorized financial institution registered under the SFO to deal in or advise on securities;
  - (ii) a corporation licensed under the SFO to carry on dealing in securities or advising on securities;
  - (iii) an insurer authorized under the Insurance Companies Ordinance (“ICO”) to carry on long term insurance business; and
  - (iv) an insurance broker eligible to engage in long term insurance business under the ICO (“authorized long term insurance broker”); and
- (b) register the following persons as a SI sponsored by the afore-mentioned PI to carry out regulated MPF sales and marketing activities on their behalf (provided the individual also fulfills other relevant requirements including passing the relevant MPF intermediaries examination / meeting the continued professional development requirement, and not being disciplined

by the relevant regulators (see paragraph 6 below)) –

- (i) an individual licensed under the SFO to carry out dealing in securities or advising on securities;
- (ii) an individual registered under the Banking Ordinance to carry out dealing in securities or advising on securities;
- (iii) an appointed insurance agent eligible to engage in long term business in accordance with the ICO (“appointed long term insurance agent”), including the responsible officer / technical representative of an appointed long term insurance agent; and
- (iv) a chief executive / technical representative of an authorized long term insurance broker.

6. To maintain reasonable professional and conduct standards of an intermediary, the legislation will specify that a person is not eligible for registration as a PI or SI if he –

- (a) has within one year prior to the application had any of the capacities specified in paragraph 5 (a) or (b) revoked on disciplinary grounds; or
- (b) has within one year prior to the application had his registration as MPF intermediary under the proposed legislation revoked (see paragraph 13 below).

7. The proposal will empower MPFA to impose conditions on approving a registration application, and amend / revoke the conditions or impose new conditions. MPFA will maintain a list of registered MPF intermediaries for public inspection. Please see **Appendix B**.

### III. Regulatory scope of FRs

8. Each registered MPF intermediary is to be subject to daily supervision by Hong Kong Monetary Authority (“HKMA”), Insurance Authority (“IA”) or Securities and Futures Commission (“SFC”) (collectively referred as frontline regulators (“FRs”)) in accordance with the following criteria which will be set out in legislation -

- (a) HKMA to be the FR of all PIs who are its regulatees, including those who have dual capacities and are concurrently also regulatees in the insurance and / or securities sectors;
- (b) IA to be the FR of the other PIs who are its regulatees, including those who are concurrently also regulatees in the securities sector; and
- (c) SFC to be the FR of the remaining PIs who are regulatees of SFC only.

9. SI will carry out MPF intermediaries activities on behalf of his PI, as such the same FR will regulate the PI and the SI<sup>2</sup>.

#### IV. Conduct requirements for MPF intermediaries and MPF guidelines

10. Taking reference from the existing conduct standards stipulated in the Code of Conduct for MPF Intermediaries, the legislation will set out broad conduct standards with which MPF intermediaries are obliged to comply. There will be requirements on competence and integrity. In addition, PIs will be required to have a responsible officer available to supervise the conduct of regulated MPF sales and marketing activities carried out by SIs. PIs will also be required to establish and maintain proper controls and procedures for compliance with the legislation by themselves and by any SI, to provide their responsible officer with sufficient resources and support to effectively supervise regulated MPF sales and marketing activities, and to be responsible for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by their SIs. Please refer to Appendix C for the conduct requirements proposed to be stipulated in legislation.

11. MPFA will be empowered to make rules, and/or issue codes/guidelines in consultation with FRs for the purpose of giving guidance on compliance with the statutory conduct requirements. Non-compliance with the statutory conduct requirements will render an intermediary liable to disciplinary sanction. Non-compliance with codes/guidelines which are administrative in nature will not, in itself, attract any sanction but will be of

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<sup>2</sup> In case where the above allocation methodology results in a PI being allocated to a FR which supervises only a small proportion of the PI's business activities, MPFA should be given discretionary power to re-allocate the PI to a FR which will supervise the main business activities of the PI concerned.

evidential value in the determination of any breach of the conduct requirements.

#### V. Supervisory and disciplinary powers of MPFA and FRs

12. MPFA and FRs should be given requisite powers to discharge their statutory functions. It is proposed that they be given similar supervision and investigation powers to those provided for SFC, and subject to similar safeguards, as under the SFO. On disciplinary sanctions, MPFA and the FRs should have available a range of disciplinary sanctions to deal with misconduct of varying nature and severity. In this regard, it is proposed that FRs be empowered to issue a verbal or written reprimand or impose fines for a registered intermediary who has failed to comply with the standards for MPF sales and marketing, and that MPFA be empowered to suspend or revoke the registration of an intermediary under specified circumstances, e.g. on the recommendation of a FR on the ground that a registered intermediary has failed to comply with the standards for MPF sales and marketing, or is in breach of any condition imposed by MPFA in relation to registration as an intermediary.

13. Before exercising any such disciplinary power, MPFA / FR shall inform the person concerned in writing of its intention and give the person a reasonable opportunity of being heard.

#### VI. Appeals mechanism

14. There is an appeal board under section 35 of the Mandatory Provident Fund Schemes Ordinance (“MPFSO”) for dealing with appeals against certain regulatory decisions of MPFA under the MPFSO. The same mechanism will be used to handle appeals against MPFA’s decisions on registration and suspension / revocation of registration, as well as disciplinary decisions of FRs made pursuant to the powers under the proposed legislation.

15. To further enhance consistency among regulators in enforcement, we propose to put in place the following additional arrangements -

- (a) a forum for regular communication among MPFA and FRs on the setting of standards, codes and guidelines, enforcement principles, and other issues of mutual concern over the supervision; and

- (b) an independent Process Review Panel to be appointed by the Chief Executive to help maintain parity / consistency of enforcement procedures and sanctions among the FRs.

## VII. Transitional Arrangements for Pre-existing MPF Intermediaries

16. Since MPFA already has relevant information on the eligibility of existing registered MPF intermediaries, and in order not to cause undue burden on registered intermediaries by requiring them to submit fresh applications when the statutory registration regime commence, we propose to include in the legislation a transitional arrangement to allow all pre-existing registered MPF intermediaries to conduct regulated MPF sales and marketing activities for a period of two years upon commencement of the new statutory registration regime.

**Proposed definition of “Specified MPF decisions” and  
“Giving advice”, and Exemptions**

**Specified MPF Decisions** are –

- (a) a decision by a prospective/existing participant of an MPF scheme as to whether –
  - (i) to participate in a specific MPF scheme;
  - (ii) to transfer benefits –
    - (A) to an MPF scheme;
    - (B) from an MPF scheme; or
    - (C) between MPF funds within an MPF scheme;
  - (iii) to withdraw accrued benefits from an MPF scheme; or
  - (iv) to make voluntary contributions;
- (b) in respect of any of the acts mentioned in paragraph (a)(i) to (iv) above, a decision as to –
  - (i) when to perform the act; or
  - (ii) how much money or benefits should be involved; or
- (c) any other decision by a prospective/existing participant of an MPF scheme which may affect or alter that person’s accrued benefits.

**Giving Advice** to another person concerning a specified MPF decision means giving advice the purpose of which is to facilitate the recipient to make a specified MPF decision, and covers comparing, recommending, or expressing an opinion on any MPF scheme or MPF fund with a view to influencing a prospective/existing participant in making a specified MPF decision, including any such comparison, recommendation or opinion made in an analysis or report the purpose of which is to facilitate the recipient to make a specified MPF decision.

**Exemptions** from the scope of Regulated MPF sales and marketing activities include -

- (a) the issuance of an advertisement or document (e.g. offering document, fund fact sheet) authorized by the Securities and Futures Commission under section 105 of the Securities and Futures Ordinance;
- (b) a legal practitioner giving advice incidental to his practice as a legal practitioner within the meaning of the Legal Practitioners Ordinance (Cap 159);
- (c) a certified public accountant giving advice incidental to his practice as a certified public accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap 50); or
- (d) a trust company registered under Part VIII of the Trustee Ordinance (Cap 29) giving advice incidental to the discharge of its duty.

**Proposed Particulars to be provided  
in the MPF Intermediaries Register**

MPFA will establish and maintain a register of MPF intermediaries (i.e. “MPF Intermediaries Register”), containing in relation to each registration of an intermediary -

- (a) his name, business address and MPF registration number;
- (b) any conditions imposed by MPFA in relation to the registration;
- (c) if a sponsored intermediary (“SI”), the name of his sponsoring principal intermediary (“PI”);
- (d) if a PI, the name and business address of each of its responsible officers;
- (e) the Frontline Regulator (“FR”) of the intermediary;
- (f) a record of any public MPF-related disciplinary actions taken against him by MPFA/FRs within a period of 5 years;
- (g) details of any notification received from a frontline regulator of disciplinary proceedings taken against an MPF intermediary or responsible officer under the frontline regulator’s own regulatory regime, including any suspension or revocation of the registration / licence / authorization of an MPF intermediary in his capacity as a regulatee of that frontline regulator; and
- (h) such other particulars in relation to the registration of an intermediary as the MPFA considers appropriate.

MPFA shall make available the register to the public in the form of an on-line record and for inspection at MPFA’s offices during normal business hours.

**Proposed Conduct Requirements**

The legislation will reflect where appropriate the conduct requirements under the existing Code of Conduct for MPF Intermediaries. A registered person will be expected, when undertaking any regulated MPF sales and marketing activity to -

- (a) act honestly, fairly, in good faith and with integrity at all times;
- (b) act with due skill, care and diligence;
- (c) give advice only on those matters he is competent to advise on or in respect of which he has obtained advice from a superior qualified to advise on that matter;
- (d) employ effectively the resources and procedures which are needed for the proper performance of his business activities;
- (e) when advising clients on the selection of MPF schemes or funds, objectively take into consideration his clients' interests, where practicable, his clients' financial situation, investment experience, risk preferences and investment objectives;
- (f) make adequate disclosure of relevant material information in his dealings with his clients;
- (g) avoid conflicts of interest as far as possible, and when they cannot be avoided, disclose such conflicts to his clients and ensure that his clients are fairly treated;
- (h) ensure that client assets are promptly and properly accounted for;
- (i) in the case of a PI, establish and maintain proper controls and procedures so as to enable the PI and any SI to meet their obligations under the legislation;
- (j) in the case of a PI, have a responsible officer available at all times to supervise regulated MPF sales and marketing activities, and provide the responsible officer with sufficient resources and

support to effectively conduct that supervision;

- (k) in the case of a SI, not act as an intermediary in the sale and marketing of MPF schemes except as an employee, agent or representative of his sponsoring PI(s); and
- (l) avoid conduct likely to affect adversely public confidence in the operation of MPF schemes or the retirement schemes industry generally, or to be prejudicial to the public interest generally.