強制性公積金計劃管理局
MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

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Circular Letter: SU/CCI/2021/001

To: All Principal Intermediaries

Dear Responsible Officers,

Disciplinary Actions against MPF Intermediaries

The Mandatory Provident Fund Schemes Authority (MPFA) is the authority empowered under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (MPFSO) to regulate MPF intermediaries (MPFI). Pursuant to section 34ZW of the MPFSO, the MPFA may impose a disciplinary order if it is satisfied that an MPFI has failed to comply with the standards of conduct as set out in the conduct requirements under section 34ZL of the MPFSO and the Guidelines on Conduct Requirements for Registered Intermediaries (Conduct Guidelines) when conducting sales and marketing activities and giving advice in relation to registered schemes or funds thereof.

This Circular sets out some misconduct cases where the MPFA has imposed disciplinary orders. To facilitate the industry's understanding of the MPFA's decisions, this Circular also sets out the factors and considerations that the MPFA will take into account when deciding whether to impose a disciplinary order and what disciplinary order is to be made.

Misconduct cases with disciplinary orders imposed

Different types of misconduct cases and the disciplinary orders imposed are set out below. The MPFA would like to emphasize that it is of utmost importance that an MPFI must act honestly, fairly, in the best interests of the client and with integrity. More severe disciplinary orders may be imposed on cases where dishonesty is involved.

(1) Unauthorized transfer of scheme member's MPF benefits

In one case, a subsidiary intermediary (SI) was found to have, amongst other things, conducted transfers of a scheme member's MPF benefits from two MPF schemes to another scheme without the authorization or knowledge of the member. The MPFA imposed a disciplinary order by suspending the SI's registration as an MPFI for 15 months.

Another case involves a number of breaches including forgery of a scheme member's signature and unauthorized transfer. In order to effect two unauthorized transfers of the member's MPF benefits, the relevant SI forged the member's signature by photocopying and pasting the member's signature onto three MPF forms. In view of the serious nature of such breaches, the MPFA imposed a more severe disciplinary order by disqualifying the SI (who was no longer registered at the time) from being registered as an MPFI for 30 months.

(2) Impersonation

An SI impersonated a scheme member in calling an MPF trustee to obtain the member's MPF account information without the member's consent or knowledge. The MPFA suspended the registration of the SI for six months.

(3) Multiple dishonest acts

In a more recent case, in order to effect an unauthorized transfer of a scheme member's MPF benefits, an SI had forged the member's signature on five MPF forms and also impersonated the member in calling an MPF trustee to obtain the member's account information without consent. In light of the serious nature of the breaches and the multiple dishonest acts, the MPFA imposed a more severe disciplinary order by suspending the registration of the SI for 40 months.

(4) Misrepresentation to scheme members

An SI was found to have, amongst other things, provided some employers and their employees with inaccurate information about a bonus offer to the employees who agreed to transfer their MPF benefits to another MPF scheme. The SI prepared and presented marketing materials containing such inaccurate information and distributed copies of the materials to the employers and employees without obtaining prior approval from his principal intermediary (PI) on the marketing materials. The MPFA suspended the registration of the SI for three months.

Factors and considerations for disciplinary orders

The types of disciplinary orders as set out in section 34ZW(3) to (6) of the MPFSO that the MPFA may make include revocation, disqualification, suspension of registration, public or private reprimand and a fine. Press release will normally be issued (except in the case of a private reprimand).

When determining whether to impose a disciplinary order and what disciplinary order is to be made against the MPFI concerned, the MPFA will consider all the circumstances of the particular case, including but not limited to the following:

(a) nature and seriousness of the misconduct. The more serious the misconduct (such as dishonest act involving forgery), the greater the likelihood that the MPFA will impose a disciplinary order;

(b) whether the MPFI attempted to conceal the misconduct;

(c) any commission or money gained by the MPFI in the incident;

(d) any loss caused to a scheme member;

(e) any remedial steps taken including compensation to the scheme member or others affected;

(f) previous disciplinary records and compliance history;

(g) degree of cooperation with the MPFA or the relevant frontline regulator; and

(h) other aggravating and mitigating circumstances as identified in the case.

The MPFA will also take into account of the following factors in its considerations:

(i) whether there is any impact of the misconduct on the general public interest of and/ or public confidence in the MPF system;

(ii) whether the misconduct is widespread in the industry; and

(iii) whether the MPFA has issued any guidelines, guidance or circular letters concerning the misconduct.

The above factors and considerations are not exhaustive. The MPFA would consider all relevant factors and circumstances of each case. For misconduct that is recurring in the industry, the MPFA may step up its disciplinary actions in order to achieve a deterrent effect as appropriate.

The MPFA would like to remind MPFIs of the importance of compliance with the conduct requirements under the MPFSO and the Conduct Guidelines. PIs are also required to establish and maintain effective controls and procedures for securing SIs' compliance with the requirements.

Should you have any questions about the contents of this letter, please contact Ms Clio Wong on 2292 1369.

Yours sincerely,

Doris Tin

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