

STATEMENT OF DISCIPLINARY ACTION

The disciplinary action

1. The Mandatory Provident Fund Schemes Authority (**MPFA**) has suspended the registration of PANG Hiu Chung (**PANG**) as a Mandatory Provident Fund (**MPF**) intermediary for 32 months from 9 November 2022 to 8 July 2025.
2. The MPFA found that:
 - (a) PANG failed to disclose or provide accurate information to 14 scheme members about the difference in management fees charged for a personal account (**PA**) and a contribution account (**CA**);
 - (b) PANG misled 14 scheme members to believe that it is a must to open PAs before transferring MPF from their existing CAs to another scheme;
 - (c) PANG failed to disclose to two scheme members whether his principal intermediary and/or he himself will receive benefit for the transfer of the two scheme members' MPF. He failed to avoid and disclose the conflict of interest (actual or potential) in conducting transfer of MPF for the two scheme members;
 - (d) PANG gave instructions to a trustee to change a scheme member's specimen signature without the scheme member's authorization;
 - (e) PANG failed to ensure that a total of eight MPF forms were duly completed in all material respects before asking five scheme members to sign on them;
 - (f) PANG failed to provide copies of a total of 69 signed forms to the respective 17 scheme members; and
 - (g) PANG delayed in handling two scheme members' instructions for scheme enrolment.
3. PANG's conduct was in breach of the conduct requirements under sections 34ZL(1)(a), (b), (e) and (f) of the Mandatory Provident Fund Schemes Ordinance, Cap 485 (**MPFSO**), and paragraphs III.2, III.3, III.8, III.17, III.31, III.35, III.38(a), III.50 and III.53 of the Guidelines on Conduct Requirements for Registered Intermediaries (**Conduct Guidelines**).

Summary of case

4. PANG has been a subsidiary intermediary attached to Sun Life Hong Kong Limited (**Sun Life**) since 7 August 2015.
5. In early 2018, PANG approached 17 scheme members inviting them to transfer their MPF benefits to a new trustee (**Trustee**) on different occasions since the Trustee was the new MPF service provider for the scheme members. The scheme members agreed to transfer their MPF to the Trustee. Then, PANG arranged the transfers of MPF for the scheme member by: (a) setting up new PAs with the

Trustee and transferring MPF comprising employee's portion of contribution from their existing CA to the new PAs; and (b) opening CAs with the Trustee and transferring the remaining MPF comprising employer's portion to the new CAs (**PA Approach**). PANG did not tell the scheme members that they could opt for transferring all their MPF to the CAs in one go with the Trustee without the need to open any PA (**CA Approach**). PANG could only earn commissions if the transfer was conducted by the PA Approach. Nevertheless, under the PA Approach, scheme members had to pay a higher management fee for the PAs because the Trustee offered preferential fees for CAs.

6. Subsequently, when the scheme members discovered the difference in management fees charged in PA and CA, they lodged complaints with Sun Life.
7. In the course of investigation, PANG admitted that:
 - (a) he failed to disclose or provide accurate information to 14 scheme members about the difference in management fees charged for a PA and a CA;
 - (b) he did not tell 14 scheme members that they could transfer MPF to the Trustee without opening a PA or the choice of conducting transfer by the PA Approach or the CA Approach;
 - (c) he had not disclosed to two scheme members whether his principal intermediary and/or he himself will receive benefit for the transfer;
 - (d) he had changed the specimen signature of a scheme member without the knowledge of the scheme member;
 - (e) he had failed to ensure that the relevant MPF forms were duly completed in all material respects before asking five scheme members to sign on them;
 - (f) he had not provided 17 scheme members with respective copies of a total of 69 signed forms; and
 - (g) he did not follow up with two scheme members' instructions for scheme enrolment promptly.

Breaches and reasons for action

8. Section 34ZL(1)(a) of the MPFSO states that, when carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must act honestly, fairly, in the best interests of the client, and with integrity.
9. Section 34ZL(1)(b) of the MPFSO states that, when carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity.
10. Section 34ZL(1)(e) of the MPFSO states that, when carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a

principal intermediary must make such disclosure of information to the client as is necessary for the client to be sufficiently informed for the purpose of making any material decision.

11. Section 34ZL(1)(f) of the MPFSO states that, when carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must use best endeavours to avoid a conflict between the interests of the principal or subsidiary intermediary (as the case may be) and the interests of the client and, in the case of such a conflict, must disclose the conflict to the client.
12. Paragraph III.2 of the Conduct Guidelines states that a registered intermediary should not make inaccurate or misleading statements about itself, other registered intermediaries, any other party connected with the operation or distribution of registered schemes and/or constituent funds, any registered scheme or constituent fund, whether knowingly or recklessly.
13. Paragraph III.3 of the Conduct Guidelines states that a registered intermediary should ensure that any form to be signed by a client is duly completed in all material respects before asking the client to sign on it, and provide the client with a copy of the form as soon as reasonably practicable. Any alterations to the completed form must be initialed by the client or, where it is not practical to do so, otherwise authenticated as representing the client's instruction.
14. Paragraph III.8 of the Conduct Guidelines states that a registered intermediary should act in best interests of client in conducting sales and marketing activities and in giving regulated advice in relation to registered schemes/ constituent funds.
15. Paragraph III.17 of the Conduct Guidelines states that a registered intermediary should take all reasonable steps to carry out client instructions promptly and accurately, notify the client after the instructions have been carried out and alert the client within a reasonable time in case of any delay or failure to execute the client's instruction by the registered intermediary.
16. Paragraph III.31 of the Conduct Guidelines states that a registered intermediary should provide its client with information that is clear, accurate and relevant to the material decision being made.
17. Paragraph III.35 of the Conduct Guidelines states that a registered intermediary should also provide the client with a statement (at the time of the invitation, inducement or advice) on whether the principal intermediary and/or any of its subsidiary intermediaries will charge the client any direct fees for the services to be provided or will be compensated (either directly or indirectly) in some other manner (such as commission or salary bonus) in respect of the invitation, inducement or advice. The statement should also set out whether the benefits receivable would be different depending on the choice of registered scheme(s) or constituent fund(s) made by the client. The statement can be a generic disclosure of the nature of monetary and non-monetary benefits receivable by the principal and/or subsidiary intermediary.

18. Paragraph III.38(a) of the Conduct Guidelines states that in providing the information materials, a registered intermediary should explain to the client the key features of the registered scheme such as the level of fees and charges, the fund choices available in the scheme and the range of services offered by the approved trustees and its service providers in relation to the operation and distribution of the scheme to enable the client to be sufficiently informed for the purpose of making material decisions.
19. Paragraph III.50 of the Conduct Guidelines states that a registered intermediary should provide information on fees and charges of registered schemes/ constituent funds to the client and communicate any terms and conditions of the discount of fees and charges, where applicable, to the client.
20. Paragraph III.53 of the Conduct Guidelines states that a registered intermediary should avoid any conflict of interest and if it has a material interest which gives rise to an actual or potential conflict of interest, should disclose that material interest or conflict to the client and take all reasonable steps to ensure fair treatment of the client. An example of such a conflict of interest may be where the registered intermediary receives a benefit (monetary or non-monetary) upon completing a sale or upon giving regulated advice (see III.35).
21. Having considered all the circumstances of the case, the MPFA is of the view that PANG had when carrying on a regulated activity failed to (i) act honestly, fairly, in the best interests of the client and with integrity; (ii) exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity; (iii) make such disclosure of information to the client as is necessary for the client to be sufficiently informed for the purpose of making any material decision; and (iv) use best endeavours to avoid a conflict between the interests of the principal or subsidiary intermediary (as the case may be) and the interests of the client and, in the case of such a conflict, must disclose the conflict to the client by:
 - (a) failing to disclose or provide accurate information to 14 scheme members about the difference in management fees charged for a PA and a CA;
 - (b) misleading 14 scheme members to believe that it is a must to open PAs before transferring MPF from their existing CAs to the Trustee;
 - (c) failing to disclose to two scheme members whether his principal intermediary and/or he himself will receive benefit for the transfer of the two scheme members' MPF. He failed to avoid and disclose the conflict of interest (actual or potential) in conducting transfer of MPF for the two scheme members;
 - (d) giving instruction to the Trustee to change a scheme member's specimen signature without the scheme member's authorization;
 - (e) failing to ensure that a total of eight MPF forms were duly completed in all material respects before asking five scheme members to sign on them;

- (f) failing to provide copies of a total of 69 signed forms to the 17 scheme members respectively; and
- (g) delaying in handling two scheme members' instructions for scheme enrolment.

Conclusion

22. The MPFA's view is that PANG's conduct has breached the conduct requirements under sections 34ZL(1)(a), (b), (e) and (f) of the MPFSO, and paragraphs III.2, III.3, III.8, III.17, III.31, III.35, III.38(a), III.50 and III.53 of the Conduct Guidelines. The MPFA has therefore decided to take the disciplinary action set out in paragraph 1 hereinabove against PANG.
23. In determining the disciplinary sanction, the MPFA took into account all relevant circumstances, including the nature, seriousness and impact of PANG's breaches and that he has no previous disciplinary record with the MPFA.