STATEMENT OF DISCIPLINARY ACTION

The disciplinary action

1. The Mandatory Provident Fund Schemes Authority (MPFA) has publicly reprimanded and suspended the registration of MAK Ka Chai (MAK) as a Mandatory Provident Fund (MPF) intermediary for 20 months from 11 January 2023 to 10 September 2024 following the determination of the Mandatory Provident Fund Schemes Appeal Board (MPFSAB) of 11 January 2023.

2. The MPFSAB affirmed the MPFA's findings that MAK had:

   (a) transferred a scheme member's MPF accrued benefits from two MPF schemes to another (Subject Transfers) without the scheme member's authorization (Breach 1);

   (b) impersonated the scheme member in calling two MPF trustees to obtain the scheme member's MPF account information (Breach 2); and

   (c) failed to carry out the scheme member's MPF benefits transfer instructions from two other MPF schemes to the scheme of Manulife (International) Limited (Manulife) promptly (Breach 3).

3. MAK's conduct was in breach of the conduct requirements under sections 34ZL(1)(a) and (b) of the Mandatory Provident Fund Schemes Ordinance, Cap 485 (MPFSO), paragraphs III.17 and III.20 of the Guidelines on Conduct Requirements for Registered Intermediaries (Conduct Guidelines), as well as the internal policy/guideline of the principal intermediary[1].

Summary of case

4. MAK has been a subsidiary intermediary[2] attached to Manulife since 24 July 2014.

5. In late January 2018, a scheme member passed by and was attracted to a roadshow held in the name of Manulife (Roadshow). The scheme member then approached MAK and expressed his interest in consolidating his MPF accounts to Manulife. He provided two benefit statements of the two MPF accounts he then held to MAK who agreed to help the scheme member in effecting the consolidation.

6. However, MAK did not follow up the scheme member's instructions on account consolidation after the Roadshow. Subsequently in March 2018, the scheme member consolidated his two MPF accounts to another trustee which is not Manulife (Trustee A) with the help of another agent.

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[1] Manulife, a principal intermediary registered by the MPFA to engage in conducting MPF sales and marketing activities and giving regulated advice.

[2] A subsidiary intermediary is a person registered by the MPFA to carry out MPF sales and marketing activities and to give regulated advice on behalf of a principal intermediary to which the person is attached.

7. From July to August 2018, MAK found out that the scheme member had transferred his MPF benefits to Trustee A and, without the scheme member's knowledge and authorization, transferred the scheme member's MPF benefits held under Trustee A to Manulife by using the personal information of the scheme member obtained during the Roadshow in January 2018. The scheme member only became aware of the Subject Transfers upon receipt of a confirmation letter from Manulife in late August 2018.

8. In the course of investigation, MAK also admitted the following:

   (a) he assumed the scheme member's identity to call two trustees to obtain the scheme member's latest MPF account information; and

   (b) he had forgotten to take timely action on the scheme member's consolidation instructions given at the Roadshow in January 2018.

9. Although MAK claimed that the scheme member had confirmed his authorization to conduct the Subject Transfers in a phone call in July 2018, his evidence was not cogent and contrary to the evidence given by the scheme member. The scheme member's authorization given to MAK at the Roadshow, if any, would have lapsed by the time that his accrued benefits were transferred to Trustee A. The Subject Transfers were conducted only four months after the scheme member had transferred his MPF benefits to Trustee A via another agent. The scheme member also gave evidence that he did not authorize the Subject Transfers.

Breaches and reasons for action

10. 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.

11. 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.

12. 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.

13. Paragraph III.20 of the Conduct Guidelines states that a subsidiary intermediary should comply with the controls, procedures and standards of conduct as required by his principal intermediary.

14. Manulife also has internal guidelines prohibiting its subsidiary intermediaries from any misconduct, including unauthorized transfer, impersonation and failing to carry out client's instruction promptly.

15. Having considered all the circumstances of the case, the MPFA is of the view that when carrying on a regulated activity, MAK had failed to (i) act honestly, fairly, in the best interests of the client, and with integrity; and (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 by:

    (a) transferring the scheme member's MPF accrued benefits from two MPF schemes to the Manulife scheme without the scheme member's authorization;

    (b) impersonating the scheme member in calling two trustees to obtain the scheme member's MPF account information; and

    (c) failing to carry out the scheme member's accrued benefits transfer instructions from the schemes of two trustees to the Manulife scheme promptly.

16. In doing so, MAK had not only breached the regulatory requirements under the MPFSO and the Conduct Guidelines, he also failed to comply with Manulife's internal guidelines.

Conclusion

17. The MPFA's view is that MAK's conduct had breached the conduct requirements under sections 34ZL(1)(a) and (b) of the MPFSO, and paragraphs III.17 and III.20 of the Conduct Guidelines.

18. The MPFSAB was of the view that MAK's misconduct was very serious and affirmed the MPFA's findings. The MPFSAB determined that MAK's registration should be suspended for 20 months for Breaches 1 and 2 and publicly reprimanded for Breach 3[3].

[3] The MPFSAB has varied the suspension period imposed by the MPFA for the three breaches having regard to the facts of the case and case precedents, including that Breach 3 was a case of forgetfulness resulting in the failure to carry out the scheme member's instructions promptly and though the delay of 6 months was significant, no serious prejudice was occasioned to the member.