

# **Mandatory Provident Fund Schemes Examination/ MPF Intermediaries Examination**

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## **Study Notes**

Ninth Edition  
March 2017

# ADDENDUM

(Effective Date: 1 April 2017)

Changes to the Study Notes (Ninth Edition) in relation to the Default Investment Strategy are set out below. **Please note that for examination sessions to be conducted from 1 July 2017 onwards, the examination questions will be based on the updated version of the Study Notes.**

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## 5.4 Default Investment Strategy (“DIS”) *(Add to Chapter 5, after 5.3 Constituent Funds)*

Before 1 April 2017, each MPF scheme already has a **default investment arrangement** (“DIA”) about how MPF benefits are invested where a member has not made any choice of constituent funds. With effect from 1 April 2017, the MPF legislation is being changed to introduce an important feature called the **Default Investment Strategy** (“DIS”) in every MPF scheme to replace the pre-existing DIA.

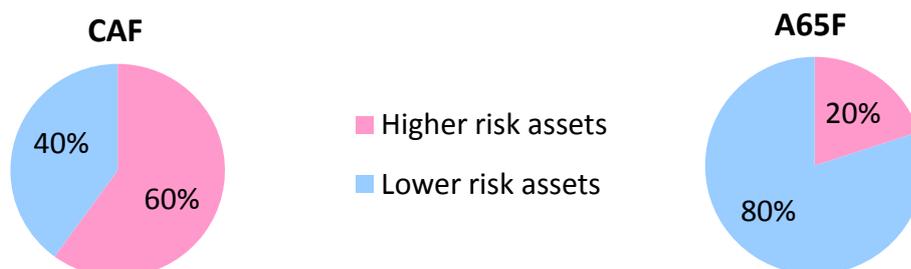
### 5.4.1 What is the DIS?

The DIS is a ready-made investment arrangement mainly designed for scheme members who are not interested or do not wish to make a fund choice. It is also available as an investment choice for members who find it suitable for their own circumstances. Effective 1 April 2017, the DIS will be implemented and is required by law to be offered in every MPF scheme. For members who do not make a fund choice for their MPF benefits in their MPF accounts, all those benefits<sup>1</sup> must be invested in accordance with the DIS.

### Two Constituent Funds

The DIS aims to balance the long term effects of risk and return through investing in two constituent funds, namely the **Core Accumulation Fund** (“CAF”) and the **Age 65 Plus Fund** (“A65F”) (collectively the “DIS Constituent Funds”), according to the pre-set allocation percentages at different ages. Both the CAF and the A65F are mixed asset funds. The CAF will invest around 60% of its net asset value (“NAV”) in higher risk assets (generally mean equities or similar investments) and 40% of its NAV in lower risk assets (generally mean bonds or similar investments) whereas the A65F will invest around 20% in higher risk assets and 80% in lower risk assets (see **Diagram 1** below).

Diagram 1: Asset Allocation of CAF and A65F



<sup>1</sup> Subject to some specific exceptions in the law, such as MPF benefits transferred in from another account under the same scheme.

**Three Key Features**

**(a) Automatic Reduction of Investment Risk According to Member’s Age**

The MPF benefits of a member invested according to the DIS will be invested in a way that adjusts investment risk according to a member’s age. The risk reduction process of the DIS (“de-risking”) will manage investment risk exposure by automatically reducing a member’s exposure to higher risk assets and correspondingly increasing the exposure to lower risk assets as the member gets older. Such de-risking is to be achieved by way of reducing the investment holding in the CAF and increasing the holding in the A65F over time. The asset allocation of the DIS remains unchanged below age 50 (100% in CAF). Then the percentage holding in the CAF reduces steadily from age 50 until age 64 and after which the member’s MPF benefits will be fully invested in the A65F.

In summary, under the DIS:

- (1) When a member is below the age of 50, all MPF benefits (i.e. accrued benefits and future investments) will be invested in the CAF (i.e. 100% allocate to the CAF).
- (2) When a member is between the ages of 50 and 64, all MPF benefits will be invested according to the allocation percentages between the CAF and the A65F as shown in the DIS De-risking Table (see **Diagram 2** below). The de-risking will be automatically carried out (i.e. no action is required by member) as described above.

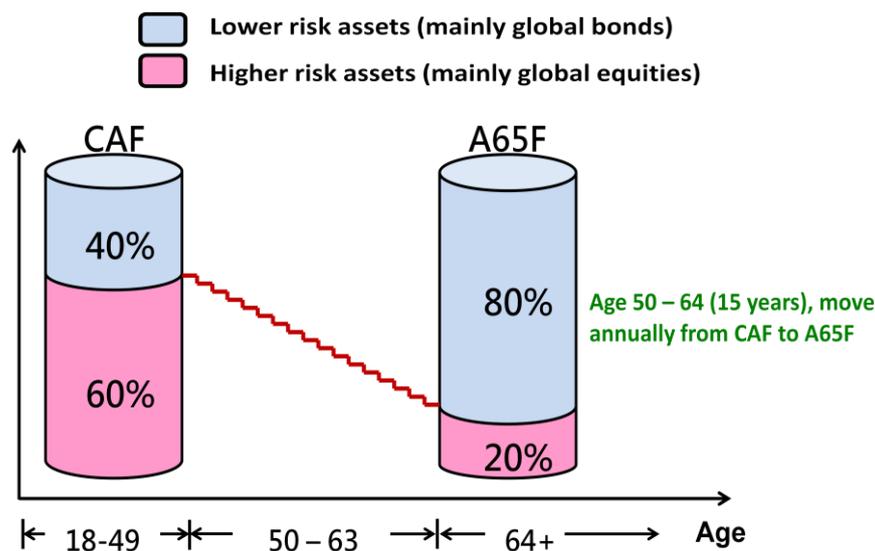
**Diagram 2: DIS De-risking Table\***

Age	CAF	A65F
Below 50	100.0%	0%
50	93.3%	6.7%
51	86.7%	13.3%
52	80.0%	20.0%
53	73.3%	26.7%
54	66.7%	33.3%
55	60.0%	40.0%
56	53.3%	46.7%
57	46.7%	53.3%
58	40.0%	60.0%
59	33.3%	66.7%
60	26.7%	73.3%
61	20.0%	80.0%
62	13.3%	86.7%
63	6.7%	93.3%
64 and above	0.0%	100.0%

\*The above asset allocation between the CAF and the A65F is made at the point of reaching the specified age (i.e. annual de-risking) and the proportion of the CAF and the A65F under the DIS portfolio may vary during the year due to market fluctuations.

Diagram 3 below presents graphically the target proportion of investment (between the CAF and the A65F) in the DIS over time.

**Diagram 3: Asset allocation between the DIS Constituent Funds in the DIS**



- (3) When a member reaches the age of 64 (or if a member's age is unknown to the MPF trustee), all MPF benefits will be invested in the A65F (i.e. 100% allocate to the A65F).

**Note: It should be noted that the above de-risking arrangement will not apply where the member chooses the CAF and the A65F as standalone constituent funds (rather than as part of the DIS).**

(b) **Fee Caps of the CAF and the A65F**

The CAF and the A65F are subject to fee and expense caps as imposed by law.

(i) **Management Fees: Not More Than 0.75% of the NAV of the Fund Per Annum**

The aggregate of the payments for services in relation to the CAF and the A65F must not, in a single day, exceed a daily rate of 0.75% per annum of the NAV of each of the DIS Constituent Funds divided by the number of days in the year. It generally includes the fees paid or payable for the services provided in relation to the DIS Constituent Funds by the MPF trustee, scheme administrator, investment manager(s), custodian and sponsor and/or promoter of the MPF scheme, any delegates of the scheme administrator, investment manager or custodian, and the relevant fees in relation to underlying investments of the respective DIS Constituent Funds.

(ii) **Recurrent Out-of-pocket Expenses: Not More Than 0.2% of the NAV of the Fund Per Annum**

The total amount of all payments that are charged to or imposed on the DIS Constituent Funds or members who invest in the DIS Constituent Funds, for out-of-pocket expenses incurred by the MPF trustee on a recurrent basis in the discharge of the trustee's duties to provide services in relation to the DIS Constituent Funds, shall not in a single year exceed 0.2% of the NAV of each of the DIS Constituent Funds.

For this purpose, out-of-pocket expenses would include, e.g. annual audit expenses, printing or postage expenses relating to recurrent activities (such as issuing annual benefit statements), recurrent legal and professional expenses, transaction costs incurred by a DIS Constituent Fund in connection with recurrent acquisition of investments for the DIS Constituent Fund (including, e.g. costs incurred in acquiring underlying investments) and annual statutory expenses (such as compensation fund levy where relevant).

(c) **Globally Diversified Investment**

As mentioned above, the DIS is an investment solution that uses two mixed asset constituent funds to diversify and reduce investment risk. The DIS Constituent Funds adopt globally diversified investment principles by investing in different markets and in different classes of assets, including global equities, fixed income, money market instruments and cash, and other types of assets allowed under the MPF legislation.

#### **5.4.2 Rules and Procedures Applicable to Investment through the DIS**

(a) **Fund Choice Combination**

With effect from 1 April 2017, members may choose to invest their MPF benefits in:

- (i) the DIS\*; or
- (ii) one or more constituent funds (including the two DIS Constituent Funds as standalone constituent funds) of their own choice under their MPF scheme and according to their assigned allocation percentage(s) to relevant fund(s) of their choice.

**\* Some MPF schemes allow partial investment in the DIS (i.e. a combination of the DIS and other constituent funds). Members should refer to offering documents for the rules of their MPF schemes or contact their MPF trustees for more information.**

It should be noted that, if members choose the CAF and/or the A65F as standalone constituent funds, those investments will **not** be subject to the automatic de-risking process. If a member's MPF benefits are invested in the DIS (whether by default or by member's specific investment instruction), the MPF benefits will be subject to the automatic de-risking process. If a member's MPF benefits are invested in any combination of the CAF and/or the A65F as standalone constituent funds (rather than as part of the DIS), the MPF benefits will **not** be subject to the de-risking process.

MPF members can give investment instruction for their MPF benefits when they set up a new MPF account. If members fail to or do not want to submit to the trustee of the scheme an investment instruction, the trustee must invest their MPF benefits in accordance with the DIS.

Apart from giving investment instruction at enrolment, MPF members can give or change their investment instructions anytime in accordance with the rules of their MPF schemes. As such, members can also switch into or out of the DIS at any time subject to scheme rules and there is no lock-in period for investment through the DIS.

Again, it should be noted that some MPF schemes allow partial investment when switching / transferring in and out of the DIS. Members should refer to offering documents for the rules of their MPF schemes or contact their MPF trustees for more information.

(b) **Annual De-risking**

The annual de-risking will be carried out automatically when a member is between the ages of 50 and 64 by gradually redeeming units in the CAF and then subscribing units of the A65F to achieve the pre-set allocation percentages between the CAF and the A65F at different ages (as per **Diagram 2** and **Diagram 3** above) in order to reduce the proportion of investment in higher risk assets when the member approaches retirement age.

The annual de-risking will normally take place on the member's birthday, and if such date is not a dealing day, it will be done on the next available dealing day.

MPF trustees will disclose clearly the handling procedures where one or more instructions (including but not limited to subscription, redemption, switching or transfer) are received immediately prior to or on the date of de-risking. Members may refer to the rules of their MPF schemes or contact their trustees for more information.

Again, it should be noted that the automatic de-risking process will not apply where a member chooses the two DIS Constituent Funds as standalone constituent funds (rather than as part of the DIS).

### **5.4.3 Key Risks Relating to the DIS**

The DIS and the two DIS Constituent Funds do not provide any guarantee on the capital and returns.

The CAF and the A65F must follow the asset allocation between higher risk assets and lower risk assets as set out in the MPF legislation and the investment manager has limited discretion to adjust the portfolio of investments to a more defensive or aggressive approach in response to market fluctuations.

The de-risking process of the DIS will not take into account factors other than age. The reduction of investment in higher risk assets through switching between the CAF and A65F will be carried out automatically solely based on the member's age regardless of the market conditions or the member's personal circumstances.

Members should refer to the offering document for further information about the investment policies of the CAF and A65F and the risks associated with investing through the DIS and in the DIS Constituent Funds under their MPF scheme(s).

For ease of reference, other changes to the Study Notes are set out below.

Chapter / Section	Updated Version (for examination to be held on or after 1 July 2017)
5 MPF SCHEMES AND INVESTMENT	<p><b>5.4.5.5</b> APPROVED POOLED INVESTMENT FUNDS (“APIFs”)</p> <p><b>5.4.1.5.5.1</b> Approval of Pooled Investment Funds</p> <p><b>5.4.2.5.5.2</b> Types of Pooled Investment Funds</p> <p><b>5.5.5.6</b> STATEMENT OF INVESTMENT POLICY</p> <p><b>5.6.5.7</b> INVESTMENT STANDARDS AND RESTRICTIONS</p> <p><b>5.6.1.5.7.1</b> Investment Management</p> <p><b>5.6.2.5.7.2</b> Permissible Investments</p> <p><b>5.6.3.5.7.3</b> Other Investment Restrictions</p> <p><b>5.6.4.5.7.4</b> Hong Kong Dollar Currency Exposure</p> <p><b>5.7.5.8</b> FEES AND CHARGES</p> <p><b>5.8.5.9</b> SWITCHING BETWEEN MPF SCHEMES / CONSTITUENT FUNDS</p> <p><b>5.9.5.10</b> CODE ON DISCLOSURE FOR MPF INVESTMENT FUNDS</p> <p><b>5.10.5.11</b> ON-GOING MONITORING OF MPF INVESTMENT FUNDS</p>
Appendix VII Glossary Page AVII/1	<p><b>Age 65 Plus Fund (“A65F”)</b> One of the two DIS Constituent Funds used in the Default Investment Strategy of a registered scheme. It is a mixed assets fund which invests in a globally diversified manner that targets to invest 20% of its net asset value in higher risk assets (such as global equities) and the rest in lower risk assets (such as global bonds). The investment in those assets may vary from 15% to 25% of the net asset value of the fund at any point in time. <b>5.4</b></p>
Appendix VII Glossary Page AVII/2	<p><b>Core Accumulation Fund (“CAF”)</b> One of the two DIS Constituent Funds used in the Default Investment Strategy of a registered scheme. It is a mixed assets fund which invests in a globally diversified manner that targets to invest 60% of its net asset value in higher risk assets (such as global equities) and the rest in lower risk assets (such as global bonds). The investment in those assets may vary from 55% to 65% of the net asset value of the fund at any point in time. <b>5.4</b></p>

<b>Chapter / Section</b>	<b>Updated Version</b> <b>(for examination to be held on or after 1 July 2017)</b>
<b>Appendix VII</b> <b>Glossary</b> <b>Page AVII/2</b>	<b>Default Investment Arrangement (“DIA”)</b> A default arrangement provided before the commencement of the Default Investment Strategy (i.e. 1 April 2017) in the governing rules of a registered scheme under which the accrued benefits in an account of a scheme member who has not given any specific investment instructions for those benefits are invested. <b>5.4</b>
<b>Appendix VII</b> <b>Glossary</b> <b>Page AVII/2</b>	<b>Default Investment Strategy (“DIS”)</b> A ready-made investment solution with fee control designed for MPF scheme members who are not interested or do not wish to make a selection of funds. DIS is a strategy that uses two constituent funds, i.e. the Core Accumulation Fund and the Age 65 Plus Fund, and automatically reduces risk exposure as a member approaches retirement age. DIS is required by law to be offered in each registered scheme. DIS is also available as an investment choice to scheme members who find it suitable for their own circumstances. <b>5.4</b>
<b>Appendix VII</b> <b>Glossary</b> <b>Page AVII/2</b>	<b>DIS Constituent Funds</b> A constituent fund used in the Default Investment Strategy (“DIS”). The two DIS constituent funds are called the Core Accumulation Fund and the Age 65 Plus Fund. <b>5.4</b>
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March 2017

# **PREFACE**

## **to the**

### **STUDY NOTES**

*These Study Notes have been prepared to correspond with the various Chapters in the Syllabus for the Mandatory Provident Fund Schemes Examination. The Examination will be based upon these Study Notes. A few representative examination questions are included at the end of each Chapter, for your further guidance.*

*The Study Notes are published for candidates preparing for the Mandatory Provident Fund Schemes Examination conducted by the Vocational Training Council and the MPF Intermediaries Examination conducted by the Hong Kong Securities and Investment Institute. Both examinations are based on the same syllabus and are the qualifying examinations specified by the Mandatory Provident Fund Schemes Authority for the purpose of enabling candidates to meet the examination requirement for registration as an MPF subsidiary intermediary.*

*We hope that these Study Notes serve as useful reference materials for candidates preparing for the Examination. Whilst every care has been taken in the preparation of the Study Notes, there may still be errors or omissions. You should therefore also refer to the relevant legislation and consult your own professional advisers. As further editions may be published from time to time to update and improve the contents of these Study Notes, we would appreciate your feedback, which will be taken into consideration when we prepare subsequent versions of the Study Notes.*

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**Representative Examination Questions – Correct Answers**

## **NOTE**

*For study purposes, it is important to be aware of the relative “weight” of the various Chapters in relation to the Examination. All Chapters should be studied carefully, but the following table indicates areas of particular importance:*

<b>Chapter</b>	<b>Relative Weight</b>
1. Introduction to the Mandatory Provident Fund (“MPF”) System	1 %
2. Regulatory Framework	6 %
3. Key Features of the MPF System (including Appendices III, IV, V)	45 %
4. MPF Trustees	5 %
5. MPF Schemes and Investment (including Appendix VI)	19 %
6. Interface Arrangements between ORSO Schemes and the MPF System	4 %
7. MPF Intermediaries (including the Guidelines on Conduct Requirements for Registered Intermediaries)	20 %
<b>Total</b>	<b>100%</b>

# 1 INTRODUCTION TO THE MANDATORY PROVIDENT FUND (“MPF”) SYSTEM

## 1.1 Need for Retirement Protection

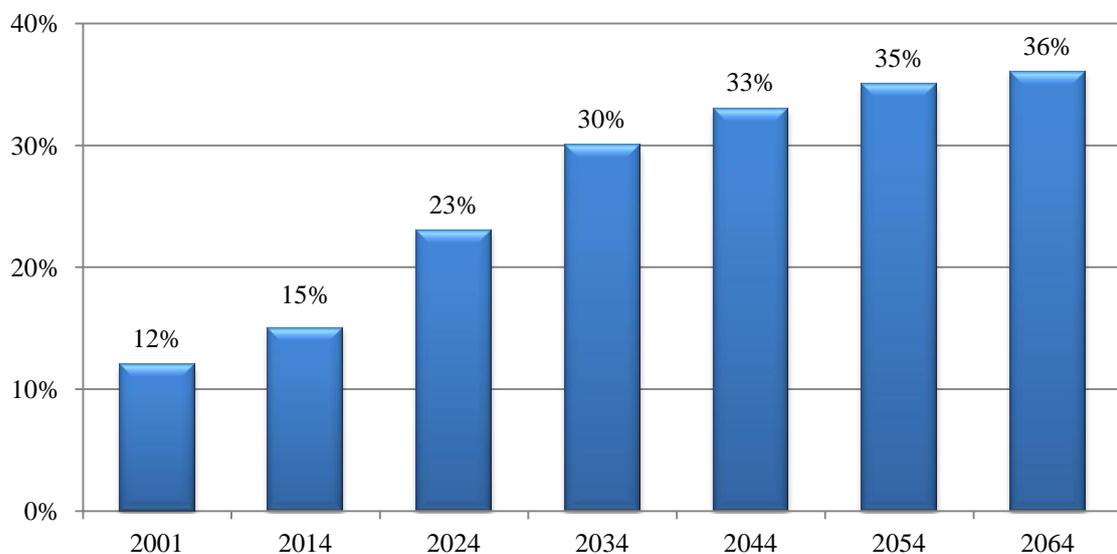
Most people are able to make both ends meet during their working life. Their income will nonetheless decrease when they retire. Some of them may not have sufficient financial resources to support their expenses in retirement. To safeguard their financial future, individuals may prepare for their old age by making sufficient retirement savings if they can afford to do so.

However, not everyone has the awareness and ability of making sufficient savings for retirement. In traditional societies, families play an important role of taking care of members who reach old age and children provide support to their aged parents. Family support as a source of retirement income has shortcomings. While some old people may not have children to take care of them, some families may not have the required resources to provide adequate care for the aged. Against this background, some elderly people may face the risk of old age poverty. To address this risk, properly designed retirement protection systems are needed to be put in place.

## 1.2 Demographic Challenges

Like many other societies in the world, Hong Kong has been facing the challenge of an ageing population. According to the Census and Statistics Department, the proportion of the population aged 65 and over is projected to rise markedly, from 12% in 2001 to 36% in 2064. An ageing population means that the working population will have a larger number of retirees to support for a longer period of time.

**Percentage of the Population Aged 65 and above in Hong Kong**

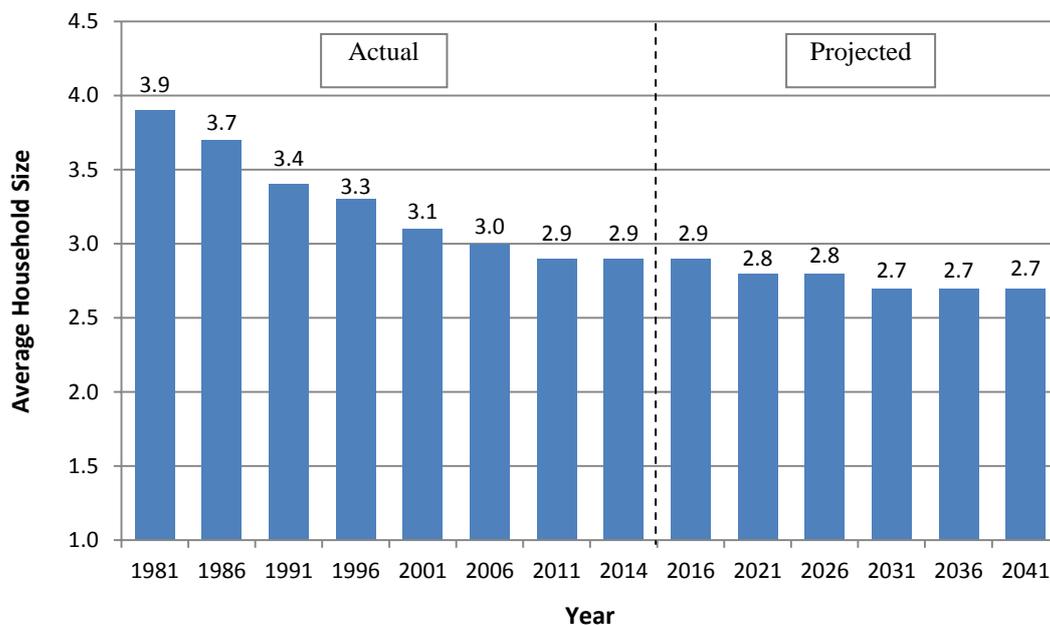


Note: Figures exclude foreign domestic helpers.  
Sources: Census and Statistics Department

Hong Kong’s ageing population is attributed to the combined effect of an increase in life expectancy and lower fertility rate. The life expectancy at birth was 72.3 years for male and 78.5 years for female in 1981. In 2014, it rose to 81.2 years for male and 86.9 years for female. It is predicted that, by 2064, the male and female life expectancy at birth will become 87.0 and 92.5 years respectively. However, the fertility rate (number of live births per 1 000 women) in Hong Kong shows a downward trend. The fertility rate was 1 933 in 1981. It fell to 1 234 in 2014 and is predicted to edge down to 1 182 in 2064.

On the back of a low fertility rate, the size of Hong Kong’s families also tends to shrink. In 1981, the average household size comprised 3.9 members. In 2014, the average size dropped to 2.9 members. It is predicted that by 2041, the average household size will further decrease to 2.7 members. Family support used to be an important source of retirement income in traditional societies. The shrinking family size will inevitably undermine the availability of this source of support.

**Average Household Size in Hong Kong**



Source: Census and Statistics Department

These demographic changes have heightened the need for strengthening retirement protection in Hong Kong.

### 1.3 Birth of the MPF System

Over many years, there had been intensive debate about the best way to provide income security for the elderly. Proposals for different types of retirement protection systems were widely discussed by different stakeholders. Overseas retirement protection systems had been studied in order to devise a system which could best suit Hong Kong’s needs. In the mid-1990s, the Government decided that some of these discussions should be put into action. After widespread consultations, the MPF System found support within the community and was seen to be a good means to provide basic retirement protection for the employed population of Hong Kong.

In July 1995, the Mandatory Provident Fund Schemes Ordinance was passed by the Legislative Council and supplemented by detailed subsidiary legislation in March 1998. The Mandatory Provident Fund Schemes Authority (“MPFA”), the statutory body charged with regulating and supervising MPF schemes, was set up in September 1998. The MPF System commenced operations in December 2000.

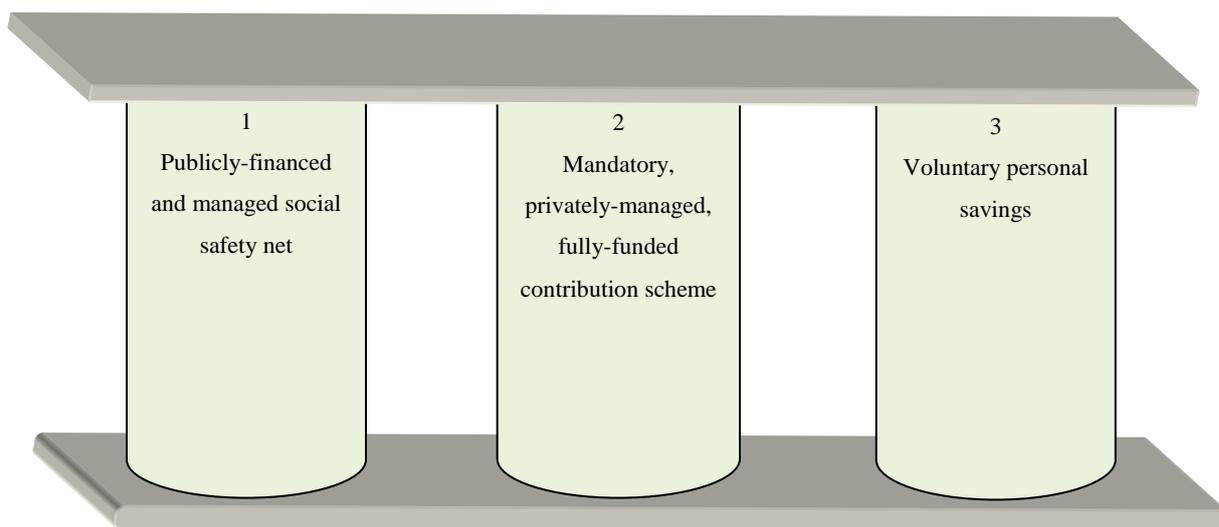
#### **1.4 Role of the MPF System in Hong Kong’s Overall Retirement Protection Framework**

Providing income security in retirement to an ageing population is an issue of paramount importance faced by many societies. Policy makers, academics and pension experts continuously explore the best ways to enhance retirement income security for the aged on the one hand, and avoid excessive financial burden on society on the other. In this regard, there is no “one-size-fits-all” solution to retirement protection, but the multi-pillar system recommended by the World Bank provides a sensible policy framework.

With reference to the retirement protection systems in many countries, the World Bank recommended a three-pillar approach in 1994 to address the issue of old-age protection. The three pillars, as proposed at that time, comprised:

- Pillar One: a publicly-financed and managed social safety net;
- Pillar Two: a mandatory, privately-managed, fully-funded contribution scheme; and
- Pillar Three: voluntary personal savings.

#### **World Bank’s Three-pillar Framework**



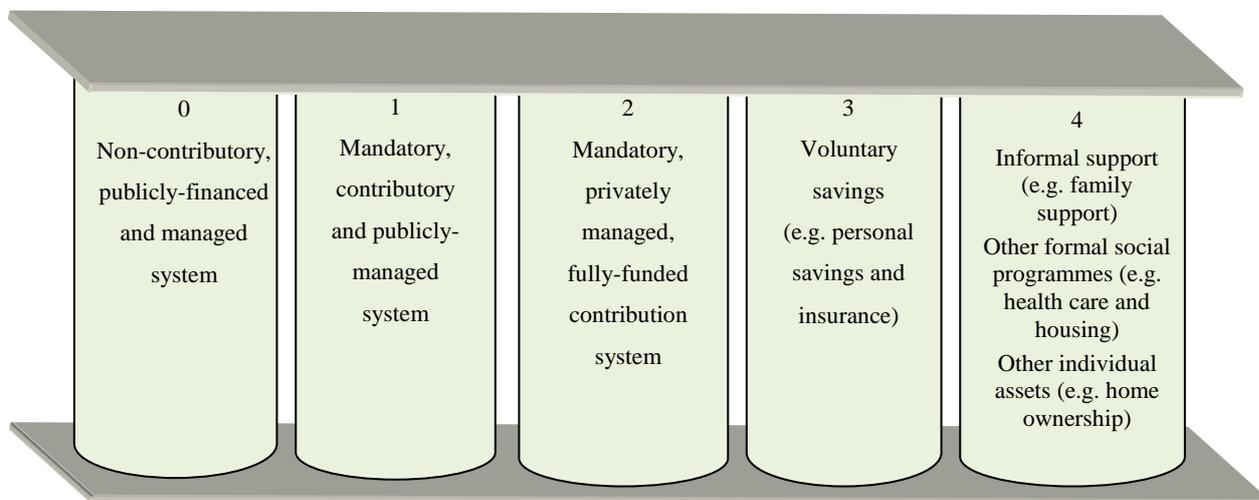
Based on this framework, the MPF System is designed as a second pillar system, i.e., a mandatory, privately-managed, employment-based, fully-funded contribution system.

In 2005, in the light of operational experience, the World Bank expanded the three-pillar framework into a five-pillar framework. The five pillars are:

- Pillar Zero: a non-contributory, publicly-financed and managed system that provides a minimal level of protection for retirement;

Pillar One: a mandatory, contributory and publicly-managed system;  
 Pillar Two: a mandatory, privately-managed, fully-funded contribution system;  
 Pillar Three: voluntary savings (e.g. personal savings and insurance); and  
 Pillar Four: informal support (e.g. family support), other formal social programmes (e.g. health care and housing), and other individual assets (e.g. home ownership).

### World Bank's Five-pillar Framework



Under the five-pillar framework, the MPF System remains as the second pillar of the overall retirement protection system in Hong Kong.

It is primarily designed for the working population, assisting them in accumulating wealth for retirement. It should be noted that MPF alone will not be sufficient to cover all retirement needs of the population of Hong Kong. According to the World Bank, no single pillar can be an effective solution to the issue of retirement protection on its own, and each pillar should complement the others. Subject to the unique circumstances of each society, the income security of the aged will be better served if relevant pillars could be put in place properly.

### 1.5 Salient Characteristics of the MPF System

As a second pillar system, the MPF System is a mandatory, employment-based, defined contribution, privately-managed, and fully-funded system. The key characteristics of the MPF System are as follows:

#### (a) Mandatory participation

The MPF System is a mandatory system. Except for exempt persons, all relevant employers, relevant employees and self-employed persons are required to join MPF. This regulatory requirement ensures a high coverage of the MPF System, so that retirement protection could be extended to all relevant employees and self-employed persons in Hong Kong.

Before MPF was implemented, it is estimated that only about one-third of Hong Kong's employed population (about 1.1 million) were covered by any sort of occupational retirement protection schemes. As at 31 December 2015, 85% of Hong Kong's employed population (about 3.2 million) were covered by the MPF System or some other forms of retirement schemes. Most of the remaining workers were not legally required to join any local retirement scheme, such as workers with overseas retirement schemes, employees aged below 18 or 65 and above, and domestic helpers.

**(b) Employment-based**

The MPF System is employment-based. Under the MPF System, employers select MPF trustee(s), join one or more schemes, and then enrol their relevant employees in the chosen scheme(s). Relevant employees then choose among the funds offered by the scheme(s) chosen by their employers. Relevant employees and their employers are required to make regular mandatory contributions. Relevant employees earning less than the minimum relevant income level (i.e. \$7,100 per month) do not need to contribute but their employers are still required to contribute 5% of the employees' relevant income.

Self-employed persons enrol in a scheme of their own choice, regardless of their level of income, unless they are exempt persons. They are required to make contributions if they are earning \$7,100 or more a month or \$85,200 or more a year.

**(c) Defined contribution**

Under the MPF System, mandatory contributions are made to a scheme member's account with reference to his income level. Contributions will be used to purchase units of MPF funds and accumulated in the scheme member's own account as are the returns generated by these MPF funds. As such, the amount of accrued benefits accumulated in the scheme member's account depends on the amount contributed to the scheme and the investment return thereon.

Between December 2000 and December 2015, net contributions (i.e. contributions received, less the amount of benefits paid) received by the MPF System stood at a total of \$479 billion. As at 31 December 2015, the aggregate accrued benefits (i.e. contributions plus investment return thereon) in the MPF System amounted to \$591 billion.

**(d) Privately-managed**

MPF schemes are managed by private entities and are operated through market mechanism. Competition among private entities tends to increase efficiency, which works to the benefit of scheme members.

As at 31 December 2015, a total of 19 approved trustees, 38 schemes and 459 constituent funds were available in the MPF market.

**(e) Fully-funded**

Under the MPF System, any mandatory contributions paid for or in respect of a scheme member are fully and immediately vested in the scheme member once they are paid into an MPF scheme. Any investment return derived from the investment of the mandatory

contributions is also fully and immediately vested in the scheme member. Therefore, the MPF System is fully-funded, meaning that the System possesses adequate assets to cover all future payments arising from withdrawal of benefits by scheme members.

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## ***Representative Examination Questions***

*The examination will consist of 80 multiple-choice questions. The majority of the questions will be straightforward, involving a simple choice from four alternatives. These we call **Type “A” Questions**. A selection of the questions will be slightly more complex, but again involving a choice between four alternatives. These we call **Type “B” Questions**. Candidates should choose the most appropriate answer for each question. Examples of each are shown below.*

### **Type “A” Questions**

- 1 In 2064, the projected percentage of the population of Hong Kong aged 65 or above is?
- (a) 36%; .....
  - (b) 26%; .....
  - (c) 19%; .....
  - (d) 13%. .....
- [Answer is in **1.2**]

- 2 It is predicted that, by 2064, the male and female life expectancy at birth will become?
- (a) 72.3 years for male and 78.5 years for female; .....
  - (b) 81.2 years for male and 86.9 years for female; .....
  - (c) 84.4 years for male and 90.8 years for female; .....
  - (d) 87.0 years for male and 92.5 years for female. ....
- [Answer is in **1.2**]

### **Type “B” Questions**

- 3 MPF belongs to which pillar of the three-pillar approach to retirement protection suggested by the World Bank report in 1994?
- (i) pillar zero;
  - (ii) pillar one;
  - (iii) pillar two;
  - (iv) pillar three.
- 
- (a) (ii); .....
  - (b) (iii); .....
  - (c) (i) and (ii); .....
  - (d) (iii) and (iv). .....
- [Answer is in **1.4**]

4 Which three of the following are the key characteristics of the MPF System?

- (i) employment-based
- (ii) fully-funded
- (iii) privately-managed
- (iv) defined benefit

- (a) (i), (ii) and (iii); .....
- (b) (i), (ii) and (iv); .....
- (c) (i), (iii) and (iv); .....
- (d) (ii), (iii) and (iv). .....

[Answer is in **1.5**]

*Note : The answers can be found by reference to Chapter 1 of the Study Notes. If required, you can also find them at the end of the Study Notes.*

## **2 REGULATORY FRAMEWORK**

In August 1995, Hong Kong took a major step in enacting the Mandatory Provident Fund Schemes Ordinance (“MPFSO”) (Cap.485) to provide a formal system of retirement protection. In 1998, amendments to the MPFSO, together with two major pieces of subsidiary legislation, namely the Mandatory Provident Fund Schemes (General) Regulation (Cap.485A) and the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap.485B) were enacted. In 1999, the Mandatory Provident Fund Schemes (Fees) Regulation (Cap.485C) was enacted. The other pieces of MPF subsidiary legislation were enacted in the following years.

### **2.1 MANDATORY PROVIDENT FUND SCHEMES AUTHORITY (“MPFA”)**

Pursuant to the MPFSO, the MPFA was established in September 1998 to ensure compliance with the MPFSO and to regulate, supervise and monitor the operation of the MPF System. The mission of the MPFA is:

- (a) to regulate and supervise privately managed provident fund schemes;
- (b) to educate the working population about saving for retirement and the role of the MPF System as one of the pillars supporting retirement living; and
- (c) to lead improvements to provident fund systems to make them more efficient and user-friendly, and better meet the needs of the working population.

With the amendment to the Occupational Retirement Schemes Ordinance (“ORSO”) (Cap.426) in 1998, the MPFA was designated as the Registrar of Occupational Retirement Schemes. On 10 January 2000, the MPFA formally took over the functions of the Registrar of Occupational Retirement Schemes from the Office of the Registrar of Occupational Retirement Schemes.

#### **2.1.1 Functions of the MPFA**

As provided under the MPFSO, the functions of the MPFA include:

- (a) ensuring compliance with MPF legislation;
- (b) registering provident fund schemes as MPF schemes;
- (c) approving qualified persons as approved trustees;
- (d) regulating the affairs and activities of approved trustees;
- (e) regulating sales and marketing activities, and the giving of advice in relation to MPF schemes;
- (f) overseeing the administration and management of MPF schemes by approved

trustees;

- (g) making rules or guidelines for the payment of mandatory contributions and for the administration of MPF schemes with respect to those contributions;
- (h) proposing legislative reforms relating to occupational retirement schemes or provident fund schemes; and
- (i) promoting the development of the retirement scheme industry in Hong Kong.

Note: The above list is not exhaustive and the functions of the MPFA are not limited to those stated above. Interested candidates may refer to section 6E of the MPFSO for details.

## **2.2 OTHER REGULATORS**

Other than the MPFA, the Securities and Futures Commission, the Insurance Authority and the Monetary Authority also have key roles to play in the regulation of MPF products, service providers and registered intermediaries.

### **2.2.1 Securities and Futures Commission (“SFC”)**

The main functions of the SFC, in respect of MPF, are to:

- (a) authorize MPF schemes (including their constituents funds) and pooled investment funds through vetting/authorizing the disclosure of information in the offering documents and marketing materials relating to MPF products;
- (b) license certain service providers, including investment managers responsible for the management of investment portfolios and custodians engaging in securities lending; and
- (c) be responsible for supervision and investigation of relevant registered MPF intermediaries whose core business is in securities.

### **2.2.2 Insurance Authority (“IA”)**

The main functions of the IA, in respect of MPF, are to:

- (a) ensure that insurance companies engaging in MPF services operate properly, with sufficient assets to meet their liabilities as stipulated under the Insurance Companies Ordinance (Cap.41); and
- (b) be responsible for supervision and investigation of relevant registered MPF intermediaries whose core business is in insurance.

**Note:** The Commissioner of Insurance is appointed as the IA for the purposes of the

Insurance Companies Ordinance to regulate and supervise the insurance industry.

### **2.2.3 Monetary Authority (“MA”)**

The main functions of the MA, in respect of MPF, are to:

- (a) regulate authorized institutions (including banks) in Hong Kong which are involved in the MPF System, whether as custodians, guarantors for MPF investment products or providers of continuous financial support to trustees or custodians, and ensure that they maintain financial soundness; and
- (b) be responsible for supervision and investigation of relevant registered MPF intermediaries whose core business is in banking.

**Note:** The Monetary Authority is the Chief Executive of the Hong Kong Monetary Authority.

The MPFA has signed a Memorandum of Understanding Concerning the Regulation of Mandatory Provident Fund Products with the SFC concerning the two regulatory bodies’ respective roles in the regulation of MPF products. The MPFA has also signed a Memorandum of Understanding with the IA to strengthen cooperation in respect of supervision of MPF funds, entities or intermediaries. In addition, the MPFA has also signed a Memorandum of Understanding Concerning the Regulation of Regulated Persons with respect to Registered Schemes under the Mandatory Provident Fund Schemes Ordinance with the MA, the IA and the SFC.

## **2.3 MPF LEGISLATION, CODES, GUIDELINES AND STANDARDS**

The **MPF legislation** includes the MPFSO and the three major pieces of subsidiary legislation, namely, the Mandatory Provident Fund Schemes (General) Regulation, the Mandatory Provident Fund Schemes (Exemption) Regulation (both enacted in April 1998), and the Mandatory Provident Fund Schemes (Fees) Regulation (enacted in May 1999).

### **2.3.1 Mandatory Provident Fund Schemes Ordinance (“MPFSO”)**

This is the primary statute and its intentions are to:

- (a) provide for the establishment of non-governmental mandatory provident fund schemes for the purpose of funding benefits on retirement;
- (b) provide for contributions to such schemes;
- (c) provide for the registration of such schemes;
- (d) provide for a regulatory regime in respect thereof;
- (e) provide for the creation of an authority (MPFA) to oversee the administration

- and management of MPF schemes;
- (f) exempt certain classes of persons from contributing to MPF schemes;
  - (g) provide for the approval of persons as trustees of MPF schemes;
  - (h) provide for the control and regulation of approved trustees;
  - (i) regulate sales and marketing activities and the giving of advice, in relation to MPF schemes; and
  - (j) make consequential amendments to other Ordinances including pension related Ordinances, and for connected purposes.

The practical details of many of the above objectives are considered in greater detail in these Study Notes.

### **2.3.2 MPF Regulations**

The following Regulations have been enacted for the detailed operation of the primary statute:

(a) **Mandatory Provident Fund Schemes (General) Regulation (“General Regulation”)**

The General Regulation sets out detailed requirements on the operation of MPF schemes, including requirements on:

- (i) trustees and other service providers;
- (ii) schemes and investment products;
- (iii) enrolment;
- (iv) contribution;
- (v) portability and withdrawal of accrued benefits arrangements;
- (vi) compensation fund; and
- (vii) investment of MPF funds.

(b) **Mandatory Provident Fund Schemes (Exemption) Regulation (“Exemption Regulation”)**

The Exemption Regulation sets out detailed requirements with regard to:

- (i) applications for exemption from MPF requirements in respect of ORSO schemes;
- (ii) effect of exemption certificate and mandatory conditions; and
- (iii) withdrawal of exemption certificate.

(c) **Mandatory Provident Fund Schemes (Fees) Regulation (“Fees Regulation”)**

The Fees Regulation prescribes the types and amount of fees imposed by the MPFA, such as fees payable on:

- (i) application for approval of trustees;
- (ii) registration of provident fund schemes, approval of constituent funds and pooled investment funds;
- (iii) application for winding up or restructuring of MPF schemes;
- (iv) application for registration as principal and subsidiary intermediaries, approval of attachment of subsidiary intermediaries to a principal intermediary, and approval of responsible officers;
- (v) annual registration by registered intermediaries;
- (vi) application for exemption certificates in respect of ORSO exempted / registered schemes; and
- (vii) annual renewal of registration of MPF schemes.

Note: The above list is not exhaustive and fees payable to the MPFA are not limited to those stated above. Interested candidates may refer to the Fees Regulation for details.

### **2.3.3 MPF Codes, Guidelines and Standards**

To supplement the MPF legislation, the MPFA has issued a number of codes and guidelines to facilitate compliance with the legislation by service providers and scheme participants, including those relating to the interface arrangements between the MPF System and ORSO schemes. In addition, the MPFA has developed some standards such as the set of Compliance Standards for the guidance of MPF approved trustees in establishing a structured framework for monitoring their compliance with statutory duties and responsibilities.

(a) **MPF Codes**

Two codes have been issued by the MPFA:

- (i) Code on MPF Investment Funds;
- (ii) Code on Disclosure for MPF Investment Funds.

(b) **MPF Guidelines**

The six parts of the MPF Guidelines issued by the MPFA deal with various matters:

- (i) Part I - Guidelines on Licensing;
- (ii) Part II - Guidelines on Reporting Requirements;
- (iii) Part III - Guidelines on Investment;

- (iv) Part IV - Guidelines on Scheme Operations;
  - (v) Part V - Guidelines on ORSO Interface;
  - (vi) Part VI - Guidelines on Intermediaries.
- (c) **Standards**
- (i) Compliance Standards for MPF Approved Trustees issued by the MPFA
  - (ii) Performance Presentation Standards developed jointly by the Hong Kong Trustees Association and the Hong Kong Investment Funds Association

Lists of the legislation, codes, guidelines and standards are set out in **Appendix II**.

#### **2.3.4 Legislation on the Regulation of MPF Intermediaries**

A statutory regulatory regime for MPF intermediaries was set up on 1 November 2012.

The establishment of the statutory regime for MPF intermediaries will enhance the regulation of sales and marketing activities of MPF schemes, thereby further strengthening protection of scheme members' interests.

*Details of regulation of MPF intermediaries are discussed in Chapter 7.*

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## *Representative Examination Questions*

### **Type “A” Questions**

- 1 The centralized body with special responsibility for the regulation of banks in Hong Kong which are involved in the MPF System is the:
- (a) Securities and Futures Commission (SFC); .....
  - (b) Insurance Authority (IA); .....
  - (c) Monetary Authority (MA); .....
  - (d) Mandatory Provident Fund Schemes Authority (MPFA). .....

[Answer is in **2.2.3**]

### **Type “B” Questions**

- 2 Which three of the following areas are covered by the guidelines issued by the MPFA?
- (i) ORSO Interface
  - (ii) MPF Schemes Operation
  - (iii) Intermediaries
  - (iv) Tax deductions allowable for MPF contributions
- (a) (i), (ii) and (iii); .....
  - (b) (i), (ii) and (iv); .....
  - (c) (i), (iii) and (iv); .....
  - (d) (ii), (iii) and (iv). .....

[Answer is in **2.3.3**]

*[If required, the answers may be found at the end of the Study Notes.]*

## **3 KEY FEATURES OF THE MPF SYSTEM**

The MPF System has a number of key features. This chapter explains the key features of the MPF System.

### **3.1 SECURITY OF SCHEME ASSETS**

All MPF schemes must be governed by the law of Hong Kong. With even the “safest” investments, there will always be an element of risk. Because of the importance of the MPF System to so many people’s lives, however, every effort has been made to ensure the security of the scheme’s assets. This is achieved through various levels of protection, sometimes collectively termed as the “safety net”.

#### **3.1.1 Stringent Authorization Requirements**

Trustees and other service providers, as well as MPF schemes, are subject to careful scrutiny as follows:

##### **(a) Trustees and Other Service Providers**

- (i) All trustees must be approved by the MPFA before they can act as trustees for MPF schemes.
- (ii) Trustees must meet stringent requirements, including having paid-up share capital and net assets of at least \$150 million each (see **4.4**) in order to be approved.
- (iii) The application for trustee approval is carefully examined by the MPFA in relation to the trustee, investment manager, custodian and other service providers engaged for the purpose of the scheme.
- (iv) The purpose of the scrutiny in (iii) above is to ensure that the persons concerned have the knowledge, qualifications, experience, financial capability and control to administer the scheme, invest the funds and safeguard members’ benefits.

##### **(b) MPF Schemes**

- (i) Provident fund schemes must be registered by the MPFA in order to become MPF schemes.
- (ii) The schemes must meet stringent requirements (see **Chapter 5**) in order to be registered.
- (iii) The MPFA examines the governing rules to ensure that they comply with the legislative requirements.

### **3.1.2 Professional Indemnity Insurance**

Professional indemnity insurance must be arranged to cover losses that MPF schemes might sustain from a number of prescribed risks. These include fraud and negligence on the part of the MPF trustee or other service providers to whom the MPF trustee have delegated their duties, as well as other risks, e.g. loss of scheme assets in transit. This insurance is in fact wider than normal professional indemnity coverage. However, the insurance does not cover losses attributable to investing the scheme's funds in the ordinary course of business.

### **3.1.3 Compensation Fund**

The compensation fund:

- (a) is established to compensate scheme members and other persons who have beneficial interests in those schemes for losses of accrued benefits due to misfeasance or illegal conduct of MPF trustees and other service providers concerned with the administration of those schemes;
- (b) consists of an initial injection of \$600 million from the government, supplemented by a levy on MPF schemes at a rate of 0.03% of the net asset value of the scheme assets; and
- (c) is a fund of "last resort", intended to be used after utilizing the professional indemnity insurance and upon application to the MPFA.

An automatic levy triggering mechanism was introduced in September 2012, under which the resumption and suspension of the compensation fund levy will be triggered at the reserve levels of \$1 billion and \$1.4 billion respectively.

## **3.2 FUNCTIONS OF APPOINTED SERVICE PROVIDERS**

The trustee of an MPF scheme is the central party responsible for all scheme administration and management functions. It may delegate its scheme administration and custodial duties to other service providers (e.g. scheme administrator and custodian) and, subject to exceptions, it must appoint an investment manager for the MPF scheme. The marketing of the scheme is conducted by MPF intermediaries. The duties and functions of an MPF trustee are covered in Chapter 4 (see **4.3**). Those of the appointed service providers are summarized below:

### **(a) Investment Managers**

They must:

- (i) be a company incorporated in Hong Kong;
- (ii) be licensed by or registered with the SFC to carry on a business of Type 9 (asset management) regulated activity under Part V of the Securities and Futures Ordinance;

- (iii) comply with their investment contracts and all applicable Guidelines issued by the MPFA and regulatory restrictions imposed upon them; and
- (iv) continue to meet all financial and other requirements imposed upon them.

(b) **Custodians**

The word means a “guardian” or someone having the care, i.e. “custody”, of something or someone, and in this context refers to the institution to which the trustee has delegated care of the trust assets. The trustee can act as a custodian of scheme assets if it satisfies the specified criteria. The custodian physically holds the assets and is likely to be an authorized institution as defined by section 2(1) of the Banking Ordinance (e.g. bank) or a trust company registered under Part VIII of the Trustee Ordinance incorporated in Hong Kong.

If it is a registered trust company, it must have paid-up share capital and net assets of at least \$150 million each. A registered trust company may satisfy the financial requirements if it has a paid up share capital and net assets of not less than \$50 million each if it complies with other requirements under the MPFSO. Interested candidates may refer to section 68 of the Mandatory Provident Fund Schemes (General) Regulation for details.

Where appointed, they must:

- (i) take proper care of all scheme assets;
- (ii) comply with all requirements in their contract (which is known as the custodial agreement) and all applicable Guidelines issued by the MPFA and regulatory restrictions imposed upon them; and
- (iii) continue to meet all financial and other requirements imposed upon them.

(c) **MPF Intermediaries**

Details of the role of MPF intermediaries are discussed in **Chapter 7**.

### **3.3 TYPES OF MPF SCHEMES**

There are three types of MPF scheme:

(a) **Employer Sponsored Scheme**

- (i) Membership is only open to the relevant employees of a single employer and its associated companies.
- (ii) Because of the limited membership, it is only cost effective to run such a scheme if the number of relevant employees is large. It is therefore likely that only large companies will consider setting up their own employer sponsored schemes.

(b) **Master Trust Scheme**

- (i) Membership is open to the relevant employees of different employers, self-employed persons, former self-employed persons and persons who, having benefits in another MPF scheme, an ORSO exempted scheme, or an ORSO registered scheme, wish to have those benefits transferred to this scheme.
- (ii) By pooling the contributions of employers together for administration and investment, such schemes can enjoy a high degree of efficiency resulting from economies of scale.

(c) **Industry Scheme**

- (i) Such a scheme is specially designed for relevant employees and self-employed persons of industries with high labour mobility and daily wage practice.
- (ii) At present, the two designated industries are the catering and construction industries.
- (iii) It is optional, not compulsory, for employers in these industries to enrol their relevant employees in such a scheme.
- (iv) A relevant employee who is a member of an industry scheme does not need to change scheme if the previous and new employers are participating in the same industry scheme. This minimizes the administrative cost to employers and casual employees entailed by the transfer of accrued benefits from one scheme to another.

### **3.4 COVERAGE**

- (a) With certain exceptions (see **3.5** below) a relevant employee or a self-employed person, aged 18 to aged below 65 is required to be enrolled in an MPF scheme.
- (b) Those covered by the MPF System (subject to exemptions) are:
  - (i) Relevant employees (other than casual employees), including full-time and part-time employees, who have been employed for a continuous period of 60 days or more under an employment contract. The location of work and number of hours worked are irrelevant.

Basically, an employee is a person engaged by an employer under an employment contract (which may be in writing or oral and includes express or implied terms).

The 60-day employment rule, however, does not apply to “casual employees” in the catering and construction industries as mentioned below.

- (ii) Casual employees in designated industries are covered by the MPF System regardless of their duration of employment. At present, only the catering and construction industries have been designated.

“Casual employee” refers to any person employed in the catering industry or the construction industry by an employer on a day-to-day basis or for a fixed period of less than 60 days.

The coverage of these two industries is as follows:

*Coverage for the Catering Industry*

For the purpose of the industry schemes, the catering industry covers holders of food business licences or permits under the Food Business Regulation (Cap. 132X), canteens at schools and workplaces and catering establishments inside clubs. The following are examples of catering establishments:

1. Food factories, milk factories, frozen confection factories & bakeries;
2. Restaurants;
3. Factory canteens;
4. Siu mei or lo mei shops;
5. Cold stores;
6. Fresh provision shops;
7. Cooked food stalls operating in a public markets;
8. Cooked food stalls which are granted hawker licences; and
9. Chinese herb tea shops.

*Coverage for the Construction Industry*

The construction industry covers the following eight major categories:

1. Foundation and associated works;
2. Civil engineering and associated works;
3. Demolition and structural alteration works;
4. Refurbishment and maintenance works;
5. General building construction works;
6. Fire services, mechanical, electrical and associated works;
7. Gas, plumbing, drainage and associated works; and
8. Interior fitting out works.

The following are examples of establishments and units engaged in construction work:

*Registered with the Buildings Department:*

1. General building contractors;
2. Specialist contractors in the ventilation category;

*Registered with the Electrical and Mechanical Services Department:*

3. Electrical contractors;
4. Lift contractors and escalator contractors;

5. Builders' lift contractors;
6. Gas contractors;

*Others:*

7. Fire service installation contractors registered with the Fire Services Department;
  8. Holders of a plumber's licence issued by the Water Supplies Department;
  9. Public works contractors with an approval letter from the Development Bureau; and
  10. All sub-contractors to which projects or works are delegated directly or indirectly from any of the 9 contractors specified above.
- (iii) Self-employed person refers to any person whose relevant income (other than in the capacity as an employee) derives from the person's production (in whole or in part) of goods or services in Hong Kong, or trade in goods or services in or from Hong Kong.

In simple words, a self-employed person is one who works for himself/herself and is not employed as an employee. For example, if a person is a sole proprietor (such as a taxi driver) or a partner of a partnership, that person is regarded as a self-employed person under the MPF System.

**Note:** Please refer to **Appendix III** for explanations as to why persons of certain types of jobs are included in or excluded from, the MPF System.

### **3.5 EXEMPT PERSONS**

There are certain categories of persons in Hong Kong who are not required to join an MPF scheme. Employers of these exempt persons will also be exempted as far as the employment is concerned. In certain cases, if these exempt persons cease to be exempted, the enrolment and contribution requirements apply as if the employment or self-employment has begun on the first day they ceased to be exempted.

Such persons include:

- (a) employees and self-employed persons who are under 18 or have reached 65;
- (b) domestic employees;
- (c) self-employed licensed hawkers;
- (d) people covered by statutory pension and provident fund schemes (such as civil servants and subsidized or grant school teachers);
- (e) people from overseas who enter Hong Kong for employment for 13 months or less;
- (f) people from overseas who enter Hong Kong for employment and are covered by overseas retirement schemes;

- (g) employees of the European Union Office of the European Commission in Hong Kong; and
- (h) members of occupational retirement schemes which are exempted from MPF requirements (“MPF exempted ORSO schemes”).

**Note:** A person under categories (b) to (d) and (g) to (h) above who have income from other employment or self-employment may not be exempted from the relevant provisions of MPFSO in respect of that other income.

## **3.6 ENROLMENT**

### **3.6.1 Duties of Employers**

- (a) Relevant employees (other than casual employees) who have been employed for a continuous period of 60 days or more are covered by the MPF System, unless they are exempt persons. Employers are required to enrol their relevant employees (other than casual employees) into MPF schemes in which the employers participate before the end of the permitted period, i.e. the first 60 days of employment.
- (b) However, if the relevant employees are casual employees, their employers are required to enrol such employees in MPF schemes participated in by the employers within the permitted period regardless of the duration of employment. The permitted period in respect of casual employees is the first 10 days of employment.
- (c) Employers can change their MPF trustee(s) and scheme(s) at any time as they consider appropriate

**Note:** An employer means any person who has entered into a contract of employment to employ another person as his/her employee.

### **3.6.2 Duties of Self-employed Persons**

- (a) A self-employed person has to become a member of MPF schemes within 60 days from the day he/she becomes self-employed (“permitted period”).
- (b) Self-employed persons are required to enrol themselves in an MPF schemes regardless of their level of income, unless they are exempt persons. However, they are only required to contribute if they are earning \$7,100 or more a month or \$85,200 or more a year.
- (c) Self-employed persons have an obligation to enrol themselves in an MPF scheme and make contributions regardless of whether they have filed tax returns or obtained business registration certificates.

### 3.6.3 Duties of Trustees

- (a) Requirements for application for membership of, or participation in, an MPF scheme, the governing rules of the scheme and fees and charges payable under the scheme must be disclosed to a person who is considering becoming a scheme member or participating employer.
- (b) A notice of participation should be issued to the scheme applicant for membership of or participation in the scheme within 30 days after the date on which the applicant submits all the information required for the application, or after the date on which the applicant agrees to comply with the governing rules of the scheme, whichever is the later.

**Note:** Except for exempt persons, all persons covered by the MPF System must join an MPF scheme. To allay any fears that some persons may have difficulty in joining a scheme, the MPF legislation includes a “**non-refusal of scheme applicants**” provision. Under this provision, an application must not be refused, provided that the applicant complies with all application requirements and agrees in writing that he/she will comply with the governing rules of the scheme.

## 3.7 CONTRIBUTIONS

The MPFSO spells out the provisions for mandatory contributions, which are set out as follows.

### 3.7.1 Mandatory Contributions

#### (a) In Respect of Relevant Employees

- (i) Who must pay?

An employer is required to make employer’s mandatory contributions in respect of a relevant employee from the employer’s own funds. The employer must deduct the relevant employee’s mandatory contribution from the relevant employee’s relevant income for each contribution period.

Mandatory contributions are required to be paid on or before the contribution day (refer to (vii) below), but there are different implications for:

- an employer: it is required to make mandatory contributions for its relevant employee from the first day of employment of the employee;
- a relevant employee (other than a casual employee): the employee is not required to contribute for the first 30 days of employment and
  - a) any incomplete wage period that immediately follows the 30-day period (*if the employee’s wage period is monthly or*

*shorter than monthly*); or

- b) the calendar month in which the 30<sup>th</sup> day of employment falls (*if the employee's wage period is longer than monthly*).

That is, contributions should start from the first complete wage period/calendar month commencing on or after 31st day of employment

The first 30 days of employment and any incomplete contribution period (depending on the remuneration cycle of the relevant employee concerned) that immediately follows, during which the relevant employee is not required to make mandatory contributions is commonly known as the "contribution holiday". Please also refer to the meaning of "contribution period" in (vi) below.

- a casual employee: the casual employee is required to make mandatory contributions from the first day of employment (i.e. no contribution holiday).

(ii) The amount

- Relevant Employees

For relevant employees (other than casual employees), both the employees and the employers are required to contribute 5% of the employees' relevant income as the employees' and the employers' mandatory contributions respectively for the benefits of the relevant employees, subject to the minimum and maximum relevant income levels.

Contributions are generally made on a monthly basis for monthly-paid relevant employees. The monthly minimum and maximum relevant income levels are:

- Minimum relevant income level : \$7,100 per month
- Maximum relevant income level : \$30,000 per month

Relevant employees (other than casual employees) earning less than the minimum relevant income level (i.e. \$7,100 per month) do not need to contribute but their employers are still required to contribute 5% of the employees' relevant income. If employees elect to make contributions, these are regarded as voluntary contributions.

For relevant employees (other than casual employees) earning between the minimum and maximum relevant income levels (i.e. between \$7,100 and \$30,000 per month), employers' and employees' mandatory contributions are each payable at 5% of the employee's relevant income.

For relevant employees (other than casual employees) earning more than the maximum relevant income level (i.e. \$30,000 per month), the employees' mandatory contributions and the employers' mandatory contributions are each capped at \$1,500 per month. With any amount of relevant income, however, both the employer and the relevant employee can opt to make voluntary contributions. However, the amount of the employer's voluntary contributions does not have to match the relevant employee's amount.

- **Casual Employees of Industry Schemes**

In the case of casual employees, both employers' mandatory contributions and employees' mandatory contributions shall be payable from the first day of employment.

The minimum and maximum relevant income levels are:

- Minimum relevant income level : \$280 per day
- Maximum relevant income level : \$1,000 per day

Mandatory contributions of casual employees and their employers under industry schemes are made in accordance with the scale of contribution as follows:

Daily relevant income	Employer's mandatory contributions	Employee's mandatory contributions
Less than \$280	\$10	Not required
\$280 to less than \$350	\$15	\$15
\$350 to less than \$450	\$20	\$20
\$450 to less than \$550	\$25	\$25
\$550 to less than \$650	\$30	\$30
\$650 to less than \$750	\$35	\$35
\$750 to less than \$850	\$40	\$40
\$850 to less than \$950	\$45	\$45
\$950 or more	\$50	\$50

**Note:** The contribution scale above does not apply to relevant employees (other than casual employees) and their employers.

(iii) Relevant income

This means, in the case of a relevant employee, any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite or allowance, expressed in monetary terms, paid or payable by an employer (directly or indirectly) to an employee in consideration of his/her employment. However, it does not include any severance or long service payments under the Employment Ordinance (Cap.57).

**Note:** Please refer to **Appendix IV** for explanations as to why certain types of income are regarded or not regarded as relevant income under the MPF System.

(iv) Permitted period

The permitted period is the period within which an employer must enrol his/her employees into an MPF scheme. For a relevant employee (other than a casual employee), the permitted period is the first 60 days of his/her employment. However, in respect of a casual employee, the permitted period is the first 10 days of his/her employment regardless of the type of scheme into which the employee is enrolled.

When enrolling employees into an MPF scheme, if the last day of the permitted period is a Saturday, a public holiday, or a gale warning day or black rainstorm warning day as defined under section 71(2) of the Interpretation and General Clauses Ordinance (Cap.1), the permitted period is extended to end on the next following day which is not a Saturday, a public holiday, or a gale warning day or black rainstorm warning day.

(v) Wage period

A wage period means each period for which the employer pays or should pay relevant income to the employee.

(vi) Contribution period

- In relation to an employer:

A contribution period means each period for which the employer pays or should pay relevant income to the employee.

- In relation to a relevant employee (other than a casual employee):

- a) where the wage period is not more than 1 month (e.g. weekly or monthly), a contribution period means each period for which the employer pays or should pay relevant income to the employee, but does not include any wage period commencing on or before the 30th day of employment;
- b) where the wage period is more than 1 month (e.g. quarterly), a

contribution period means each period for which the employer pays or should pay relevant income to the employee, but does not include the period commencing from the date of employment and ending on the last day of the calendar month in which the 30th day of employment falls.

**Note:** As explained in (vi) here, the contribution period in relation to an employee (other than a casual employee) excludes certain wage period(s). This effectively exempts the employee from paying employee's mandatory contributions in respect of the excluded wage period(s). This is in fact the contribution holiday mentioned in 3.7.1(a)(i) above.

- In relation to a casual employee:

A contribution period means each period for which the employer pays or should pay relevant income to the employee.

(vii) Contribution day

Employers are required to make mandatory contributions for a contribution period to the scheme's trustee on or before the contribution day.

In the case of relevant employees (other than casual employees), the contribution day is defined as the 10th day after the last day of:

- a) a calendar month within which the relevant contribution period ends; or
- b) the month during which the permitted period ends, whichever is the later.

In the case of casual employees who are not members of an industry scheme, the contribution day is defined as the 10th day after the last day of:

- a) the relevant contribution period; or
- b) the contribution period during which the permitted period ends, whichever is the later.

In the case of casual employees who are members of an industry scheme, the contribution day is defined as one of the following days as agreed between the employer and the trustee of the scheme concerned:

- a) the next working day (other than Saturday) immediately after the payment of relevant income for the relevant contribution period; or
- b) the 10th day after the last day of the relevant contribution period.

In computing a period of time for the definition of permitted period for

the purpose of determining the contribution day for an employee mentioned above, the permitted period ends on the 60<sup>th</sup> day of employment even if it is a Saturday, a public holiday, or a gale warning day or a black rainstorm warning day as defined under section 71(2) of the Interpretation and General Clauses Ordinance (Cap.1).

If the contribution day is a Saturday, a public holiday, or a gale warning day or black rainstorm warning day as defined under section 71(2) of the Interpretation and General Clauses Ordinance (Cap.1), the contribution day is extended to the next following day which is not a Saturday, a public holiday, or a gale warning day or a black rainstorm warning day.

**Note:** Please refer to **Appendix V** for a guide on when the contribution is considered paid under different payment methods/channels.

(viii) Remittance statement

An employer must prepare and submit a remittance statement showing the relevant income and the amount of contribution for each of the relevant employees (not including casual employees in an industry scheme whose contributions are made on the next working day (other than Saturday) immediately after the relevant income payments) to the trustee when paying contributions.

(ix) Monthly pay-record

An employer must provide each employee (other than casual employees in an industry scheme whose contributions are made on the next working day (other than Saturday) immediately after the relevant income payments) with a monthly pay-record within 7 working days after the last contribution payment during the month. The pay-record includes:

- the employee's relevant income;
- the amount of contributions (mandatory and voluntary, if any) paid by the employer and deducted from the employee's relevant income;
- the date on which the contributions were paid to the trustee.

(b) **In Respect of Self-employed Persons**

(i) Definition and amount

A self-employed person is one whose relevant income (other than in the capacity as an employee) derives from the person's production (in whole or in part) of goods or services in Hong Kong, or trade in goods or services in or from Hong Kong. Such a person is required to contribute 5% of the person's relevant income as mandatory contributions, subject to the minimum and maximum relevant income levels (refer to (vi)

below).

Self-employed persons can make voluntary contributions on top of their mandatory contributions.

**Note:** There is no additional 5% contributions from an employer.

(ii) Contribution period and contribution day

Payment must be made to the scheme's trustee on or before the end of the contribution day of each contribution period. The contribution day means the last day of the relevant contribution period. If the contribution day falls on a Saturday, a public holiday; or a gale warning day or black rainstorm warning day as defined under section 71(2) of the Interpretation and General Clauses Ordinance (Cap.1), the contribution day is extended to the next following day which is not a Saturday, a public holiday, or a gale warning day or black rainstorm warning day.

A contribution period may either be a year or a month, at the self-employed person's option. Such a person must inform the trustee at least 30 days before the end of each financial period of the scheme:

- the relevant income for the next financial period of the scheme;
- whether the person will contribute yearly or monthly for the next financial period of the scheme. If the person chooses to contribute on a monthly basis, the contribution period can be specified in writing to the scheme trustee; and the monthly contribution day is the last day of the contribution period. If the contribution is on a yearly basis, the contribution day is the financial year end of the scheme.

If the contribution day is a Saturday, a public holiday, or a gale warning day or black rainstorm warning day as defined under section 71(2) of the Interpretation and General Clauses Ordinance (Cap.1), the contribution day is extended to the next following day which is not a Saturday, a public holiday, or a gale warning day or a black rainstorm warning day.

(iii) Relevant income

A self-employed person is required to produce evidence of relevant income to the trustee, but is not required to do so if the maximum mandatory contributions of \$1,500 per month or \$18,000 per year are paid.

(iv) Ascertainment of "relevant income"

If evidence of relevant income includes the most recent Inland Revenue notice of assessment, the assessable profits shown will be accepted as the

relevant income (proportionally adjusted if the period covered by the notice is shorter or longer than one year), unless that assessment was issued more than 2 years ago.

If the most recent notice of assessment was issued more than 2 years ago, or the person objects to or appeals against that assessment in accordance with the Inland Revenue Ordinance, or if the evidence produced by the self-employed person does not consist of the most recent notice of assessment, the relevant income for the year will be an amount declared by the person as equal to the previous year's assessable profits. It is a criminal offence knowingly to make an untrue or misleading declaration to the trustee.

If the self-employed person cannot produce evidence of the relevant income (e.g. notice of assessment) to the trustee (and the trustee is satisfied that the person really cannot produce such evidence) and claims to earn less than the maximum level of relevant income (see **3.7.1(b)(vi)** below), then the relevant income will be taken as equivalent to the basic allowance within the meaning of section 28 of the Inland Revenue Ordinance.

If the self-employed person cannot produce any evidence and the trustee is not satisfied with the reason for not being able to do so, the relevant income will be taken to be equal to the maximum level of relevant income (\$360,000 per year).

(v) Negative income

If a self-employed person suffers losses, a statement may be lodged with the trustee showing the computation of the net loss in respect of the relevant business. The net loss should cover the last financial period of the self-employed business (which will be used to determine the relevant income of the self-employed person for the next financial period of the scheme). The self-employed person concerned can discontinue payment of mandatory contributions and resume when his/her relevant income exceeds the minimum level of relevant income (i.e. \$85,200 per year).

(vi) Minimum and maximum relevant income levels

For a self-employed person, the minimum level of relevant income for mandatory contribution purposes is \$7,100 per month or \$85,200 per year. The maximum level of relevant income is \$30,000 per month or \$360,000 per year.

If the person is not a member of an MPF scheme for a complete 12-month financial period, the above minimum and maximum relevant income levels should be adjusted proportionally by dividing the relevant amount by the number of days in the period as follows:

- Minimum relevant income level =  $\$85,200 \times DC/365$
- Maximum relevant income level =  $\$360,000 \times DC/365$

**Note:** DC is the number of days during the financial period of the scheme of which the self-employed person is a member.

Same as employers and employees, voluntary contributions can always be paid by self-employed persons.

(vii) Permitted period

The permitted period in relation to a self-employed person is the period within which a self-employed person must become a member of an MPF scheme. The permitted period is 60 days for self-employed persons.

When a self-employed person enrolls himself/herself into an MPF scheme, if the last day of the permitted period is a Saturday, a public holiday, or a gale warning day or black rainstorm warning day as defined under section 71(2) of the Interpretation and General Clauses Ordinance (Cap.1), the permitted period is extended to end on the next following day which is not a Saturday, a public holiday, or a gale warning day or black rainstorm warning day.

(viii) Monthly contributions

For mandatory contributions to be paid on a monthly basis, the monthly relevant income is calculated by dividing the yearly income by the number of whole months in the financial period.

(ix) Partners

Self-employed persons who are partners should calculate their relevant income by making proportional adjustments according to their share of profits of the business for that financial period.

(x) Cessation of self-employment

A self-employed person should inform the scheme trustee of his/her cessation of self-employment and should make his/her last contribution on or before the end of the contribution period in which he/she ceases to be self-employed.

(c) **Examples to Demonstrate the Application of the Above Rules**

In order to clarify the application of the above rules, some practical examples are provided below:

**Illustrations:**  
**Enrolment and Contribution Arrangements for a Relevant Employee  
(Other Than a Casual Employee)**

*I. Monthly Payroll which runs from the first day to the last day of the month*

Commencement date of employment	:	2 September 2015
30 <sup>th</sup> day of employment	:	1 October 2015
60 <sup>th</sup> day of employment	:	31 October 2015 (Saturday)
Commencement date of employer's mandatory contribution ("ERMC")	:	2 September 2015
Commencement date of employee's mandatory contribution ("EEMC")	:	1 November 2015
Deadline for performing enrolment by employer	:	2 November 2015
Deadline for remittance of first payment of ERMC	:	10 November 2015
Contribution periods covered by the first payment of ERMC	:	2 September 2015 – 30 September 2015
AND		
		1 October 2015 – 31 October 2015
Deadline for remittance of second payment of ERMC and first payment of EEMC	:	10 December 2015
Contribution period covered by the second payment of ERMC and first payment of EEMC	:	1 November 2015 – 30 November 2015

***II. Monthly Payroll which runs from the 15<sup>th</sup> day of the month to the 14<sup>th</sup> day of the following month***

Commencement date of employment	:	2 September 2015
30 <sup>th</sup> day of employment	:	1 October 2015
60 <sup>th</sup> day of employment	:	31 October 2015 (Saturday)
Commencement date of ERMC	:	2 September 2015
Commencement date of EEMC	:	15 October 2015
Deadline for performing enrolment by employer	:	2 November 2015
Deadline for remittance of first payment of ERMC	:	10 November 2015
Contribution periods covered by the first payment of ERMC	:	2 September 2015 – 14 September 2015

AND

		15 September 2015 – 14 October 2015
Deadline for remittance of second payment of ERMC and first payment of EEMC	:	10 December 2015
Contribution period covered by the second payment of ERMC and first payment of EEMC	:	15 October 2015 – 14 November 2015

***III. Twice a month payroll which runs from the 1<sup>st</sup> day to the 15<sup>th</sup> day of the month and then 16<sup>th</sup> day to the last day of the same month***

Commencement date of employment	:	2 September 2015
30 <sup>th</sup> day of employment	:	1 October 2015

60<sup>th</sup> day of employment : 31 October 2015 (Saturday)

Commencement date of ERMC : 2 September 2015

Commencement date of EEMC : 16 October 2015

Deadline for performing enrolment by employer : 2 November 2015

Deadline for remittance of first payment of ERMC & EEMC : 10 November 2015

Contribution periods covered by the first payment of ERMC : 2 September 2015 – 15 September 2015

AND

16 September 2015 – 30 September 2015

AND

1 October 2015 – 15 October 2015

AND

16 October 2015 – 31 October 2015

Contribution period covered by the first payment of EEMC : 16 October 2015 – 31 October 2015

- (iv) Relevant income: \$2,000 per month
- |                      |  |
|----------------------|--|
| Employee / Employer  | No mandatory contributions are required to be made by the relevant employee, unless the relevant employee chooses to do so as voluntary contributions, because his/her relevant income is below the minimum relevant income level for contribution purpose. However, the employer must contribute \$100 (5% of \$2,000) as employer's mandatory contributions for the relevant employee. |
| Self-employed person | Only makes contributions if the person so chooses as voluntary contributions, because his/her relevant income is below the minimum relevant income level for contribution purpose.   |

- |      |                                     |  |
|------|-------------------------------------|--|
| (v)  | Relevant income: \$15,000 per month |  |
|      | Employee / Employer                 | The relevant employee and the employer must each make mandatory contributions of \$750 (5% of \$15,000)  |
|      | Self-employed person                | Mandatory contributions of \$750 (5% of \$15,000)  |
| (vi) | Relevant income: \$40,000 per month |  |
|      | Employee / Employer                 | Mandatory contributions by the relevant employee and the employer limited to \$1,500 each (5% of maximum level of relevant income for contribution purpose). Additional amounts may be paid by the relevant employee or the employer or both as voluntary contributions. |
|      | Self-employed person                | Mandatory contributions of \$1,500 (5% of maximum level of relevant income for contribution purpose). Voluntary contributions may be made.   |

### 3.7.2 Voluntary Contributions

Although voluntary contributions are not required to be made under the MPF legislation, the MPFA encourages employers and scheme members to make such contributions to accumulate additional benefits. A number of matters requiring attention in relation to voluntary contributions are addressed below. These, the MPFA believes, effectively safeguard accrued benefits derived from voluntary contributions.

#### (a) MPF Legislative Provisions

All provisions of the MPF legislation applying to accrued benefits derived from mandatory contributions apply equally to accrued benefits derived from voluntary contributions, except those provisions relating to:

- (i) vesting;
- (ii) preservation;
- (iii) portability; and
- (iv) withdrawal

which are governed by the governing rules of the relevant MPF scheme.

#### (b) Trust Arrangements etc

Scheme assets derived from voluntary contributions are managed by the same approved trustees, qualified investment managers and custodians responsible for managing the scheme assets derived from mandatory contributions in accordance with MPF legislation. Scheme assets derived from voluntary contributions are also covered by indemnity insurance.

(c) **Investment of Contributions**

Investment of voluntary contributions is subject to the same investment restrictions applicable to mandatory contributions under an MPF scheme.

(d) **Compensation Fund**

The compensation fund covers accrued benefits derived from voluntary contributions in the same way as from mandatory contributions.

(e) **Employers to Contribute**

Subject to the governing rules of an MPF scheme, employers may make voluntary contributions for their employees and the relevant trustees of the scheme have to follow up with employers in the case of any outstanding voluntary contributions.

### **3.7.3 Tax Allowances**

The Government grants certain tax concessions, as follows:

- (a) mandatory contributions made by an employee or a self-employed person are tax deductible, but subject to the maximum amount per year as follows:
  - (i) \$17,500 for the year of assessment 2014/15; and
  - (ii) \$18,000 for the year of assessment 2015/16 and each subsequent year of assessment;
- (b) mandatory contributions by an employer are also tax deductible, but there is an annual limit. Total mandatory amounts paid into MPF schemes by the employer, together with the employer's voluntary contributions to MPF schemes or to other registered retirement schemes (ORSO schemes etc, see **Chapter 6**) are deductible up to 15% of the total annual emoluments of the employees concerned; and
- (c) benefits from mandatory contributions are tax exempt. Benefits received from voluntary contributions made by employers may be subject to tax, depending on when and how they are paid.

**Note:** Tax allowances are subject to the provisions of the Inland Revenue Ordinance.

### **3.7.4 Default Contributions**

A mandatory contribution is in arrears if it is not paid by the contribution day of a contribution period. The defaulter is liable to pay the contribution in arrears and a contribution surcharge. A financial penalty may also be imposed on the defaulter.

(a) **Duties of Approved Trustees**

- (i) Upon receipt of a remittance statement, the approved trustee must check the accuracy of the arithmetical calculation of the mandatory contribution in the statement. The trustee should also ensure the mandatory contribution paid tallies with the amount specified in the statement.
- (ii) If an employer or a self-employed person fails to pay the mandatory contribution by the contribution day, the trustee must report to the MPFA within 10 days after the contribution day.
- (iii) The trustee concerned must take action as may be reasonably required by the MPFA in connection with the recovery of arrears or surcharges.
- (iv) However, in a case where the employer of a casual employee participating in an industry scheme and the trustee of the scheme have agreed that the contribution day should be the next working day (other than a Saturday) immediately after the relevant income payment and the employer fails to pay the mandatory contributions, the trustee is not required to report to the MPFA.

(b) **Actions to be Taken by MPFA**

- (i) The MPFA, on receiving a report under (a)(ii) above, will take action to recover the arrears. This may include the issue of a notice chasing the default contribution and imposing a contribution surcharge on the defaulter. The contribution surcharge is imposed at a flat rate of 5% of the amount of mandatory contribution in arrears. In addition, the MPFA may impose a financial penalty (at the higher of \$5,000 or 10% of the amount of mandatory contribution in arrears) on the defaulter.

(c) **Offences**

- (i) An employer who fails to pay mandatory contributions to the MPF trustee (without deducting 5% from relevant employee's relevant income) and is convicted of an offence is liable to a fine of \$350,000 and imprisonment for 3 years. An employer who fails to pay the deducted wages as employee mandatory contributions and is convicted of the offence, is liable to a fine of \$450,000 and imprisonment for 4 years.
- (ii) A self-employed person who fails to pay mandatory contributions and is convicted of an offence is liable to a fine of \$50,000 and imprisonment for 6 months on the first occasion. For each subsequent occasion, the fine is \$100,000 and imprisonment of 12 months.

### **3.8 VESTING**

- (a) The meaning of “vesting” in this context is to endow or to give legal rights of possession regarding a particular financial interest. Thus, once both the relevant employee’s and the relevant employer’s mandatory contributions are paid to the approved trustee of an MPF scheme, the contributions are said to be vested fully and immediately in the relevant employee as accrued benefits.
- (b) Investment income or profit arising from the investment of mandatory contributions (after taking into account any loss arising from such investment) is also fully and immediately vested in the scheme member.
- (c) Voluntary contributions made by a relevant employee or a self-employed person are vested in full as accrued benefits in that relevant employee or self-employed person when they are paid to the trustee. However, voluntary contributions made by an employer in respect of a relevant employee are vested in the relevant employee as accrued benefits, in accordance with the governing rules of the scheme.
- (d) Even if the relevant employee ceases employment after a short while, the employer cannot claw back the accrued benefits derived from the employer’s portion of mandatory contributions and the vested portion of the employer’s voluntary contributions made previously.
- (e) Such vesting, however, is subject to section 12A of the MPFSO where severance payments or long service payments are to be paid from the accrued benefits attributable to the employer’s contributions held in MPF schemes (see also **3.13** below).

### **3.9 PRESERVATION**

The primary intention of the MPF System must never be forgotten. That is to provide a sum of money for the scheme member on retirement. It is therefore extremely important that there should be a strict preservation of any accrued benefits until the time they are to be paid. Accordingly, all benefits derived from mandatory contributions must be preserved until the scheme member reaches the age of 65, except for early withdrawals under specific circumstances described in **3.11** below.

**Note:** The above only applies to mandatory contributions. Voluntary contributions are not bound by the same rules. Voluntary contributions made by or in respect of a scheme member can be paid to the scheme member as provided by the governing rules of the scheme.

### **3.10 PORTABILITY**

#### **Types of MPF Accounts**

To better understand the portability of MPF benefits under different circumstances, you should have a clear concept about the two types of MPF accounts, namely, contribution

accounts and personal accounts<sup>1</sup>.

- (a) “Contribution account” refers to an account in an MPF scheme which mainly receives MPF contributions (both employer and employee portions) made by an employer in respect of a relevant employee under current employment. Contribution account can also receive MPF contributions made by a self-employed person while self-employed.
- (b) “Personal account” refers to an account in an MPF scheme which mainly receives the accrued benefits attributable to a member’s former employment or self-employment transferred from other MPF account(s). Personal accounts can also receive accrued benefits attributable to a member’s current employment transferred from a contribution account during current employment under Employee Choice Arrangement (“ECA”).

### **3.10.1 Relevant Employee Who Is under Current Employment**

ECA allows relevant employees to transfer part of the accrued benefits from their contribution accounts to the accounts nominated by them in an MPF scheme of his/her own choice during current employment.

#### **(a) What Is “ECA”?**

The ECA aims to increase employees’ right to choose MPF trustees/schemes and to encourage employees to actively manage their MPF investment, thereby promoting greater market competition.

Under the MPF System, employers choose MPF trustee(s) and scheme(s) for their relevant employees and enrol them as scheme members, and the relevant employees choose the funds under the scheme in which the employers’ and relevant employees’ contributions are invested. The employers’ and relevant employees’ contributions are made to a contribution account under the employer-selected scheme. The accumulated contributions together with the investment returns are generally referred as accrued benefits.

Before the implementation of ECA, if relevant employees consider the services of the trustee or the MPF scheme chosen by their employers do not suit their personal needs, they cannot transfer the accrued benefits from their MPF contribution accounts to trustees/schemes of their own choice until they cease employment with their employers.

After the implementation of ECA in November 2012, relevant employees can enjoy greater autonomy in the selection of MPF trustees and schemes. That is, they can transfer the accrued benefits derived from the relevant employees’ mandatory contributions made during current employment held in a contribution account to a personal account in another MPF scheme of their own choice while employed on a lump sum basis once every calendar year.

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<sup>1</sup> Before implementation of the ECA, the term “personal account” is known as “preserved account”.

**(b) Rights to Employees after ECA**

The table below shows the three sub-accounts keeping the mandatory contributions in a contribution account and the transferability of the accrued benefits from each of these sub-accounts during a relevant employee's current employment before and after the implementation of the ECA.

<b>Type of accrued benefits in contribution account</b>	<b>Before implementation of ECA</b>	<b>After implementation of ECA</b>
<b><u>Employer's Mandatory Contributions attributable to Current Employment</u></b>	<b>* Not transferable</b>	<b>* Not transferable</b>
<b><u>Employee's Mandatory Contributions attributable to Current Employment</u></b>	<b>* Not transferable</b>	<b>✓ Transferable in a lump sum to an MPF personal account once per calendar year*</b>
<b><u>Mandatory Contributions attributable to Former Employment or Self-employment (if any)</u></b>	<b>* Not transferable</b>	<b>✓ Transferable in a lump sum to an MPF personal account or contribution account anytime</b>

\* Unless the governing rules of the original scheme provide for more frequent transfer out.

The transferability of accrued benefits derived from voluntary contributions is subject to the governing rules of individual schemes. The ECA does not bring changes to the existing arrangement. For the governing rules of individual schemes, members may enquire with the employer or the related trustee(s).

**Note:** Even if relevant employees give effect to the transfer of accrued benefits to a personal account in another MPF scheme of their own choice while employed, employers should continue making contributions to the existing MPF scheme(s) selected by the employers by the contribution day for each contribution period.

**(c) Destination of Transfer**

A relevant employee can elect to transfer the accrued benefits of the sub-accounts such as employee's mandatory contributions attributable to current employment and mandatory contributions attributable to former employment in contribution accounts in a lump sum to the same MPF account. Alternatively, a relevant employee can transfer the accrued benefits of the sub-accounts separately to different MPF schemes and MPF accounts on different days.

The table below shows the designated types of MPF accounts for the two types of accrued benefits in a contribution account to be transferred out:

<b>Type of accrued benefits in a contribution account</b>	<b>Type of MPF accounts</b>
Employee's Mandatory Contributions attributable to <b>Current Employment</b>	Can only be transferred to <b>Personal Account</b>
Mandatory Contributions attributable to <b>Former Employment or Self-employment</b>	Can be transferred to <b>Personal Account or Contribution Account</b>

### **3.10.2 Relevant employee Who Ceases Employment with His/Her Employer**

The accrued benefits of a relevant employee held in a contribution account can be transferred to another MPF account or scheme when the relevant employee ceases employment with his/her employer.

- (a) If a relevant employee participates in a master trust scheme, on change of employment, the relevant employee can elect to transfer the accrued benefits to another MPF scheme which the relevant employee is eligible to join, or retain the benefits within the same master trust scheme in his/her own personal account. If the relevant employee would like to transfer his/her accrued benefits to the scheme of his/her new employer, all he/she needs to do is to submit a form to the trustee of the new scheme either directly or through his/her new employer. The trustees of the original scheme and the new scheme will then arrange the transfer between themselves.
- (b) If a relevant employee is a member of an employer sponsored scheme, when the relevant employee changes employment, the relevant employee must transfer the accrued benefits from the employer sponsored scheme to another MPF scheme, i.e. to the scheme in which the new employer is participating or a scheme to which the relevant employee is eligible to join.
- (c) If a relevant employee is employed in an industry (i.e. catering or construction for the time being) for which an industry scheme has been established, and both the previous and the new employers have joined the same industry scheme, on change of employment within the same industry, the relevant employee may retain the accrued benefits in the industry scheme. However, the relevant employee may also choose to transfer the accrued benefits to a master trust scheme of his/her choice.

### **3.10.3 Self-employed Person Becomes a Relevant Employee of an Employer**

If a self-employed person who is a member of a master trust scheme ceases to be self-employed and becomes a relevant employee of an employer, the person may retain the accrued benefits in the existing account in the master trust scheme, or transfer the accrued benefits to another master trust scheme or an industry scheme to which the

person is eligible to belong. The person may also transfer the accrued benefits to the MPF scheme in which the new employer is participating.

### 3.10.4 Notes to Member to Make an Election to Transfer

A scheme member may choose not to exercise the right to transfer the accrued benefits. However, if a member decides to exercise such right, he/she should consider the following factors:

- Trustee/scheme
  - Range and quality of services
  - Fees and charges
  - Choices and suitability of funds
  
- Personal factors
  - Investment objective(s)
  - Current life stage
  - Risk tolerance level
  - If he/she is currently investing in “guaranteed funds”, he/she should note that he/she may fail to fulfill certain qualifying conditions when switching the funds, and therefore may not be able to enjoy the guaranteed returns.
  
- Investment risk due to market fluctuation during the transfer
  - During the process of transfer of accrued benefits, scheme members' accrued benefits are first cashed out by the original trustee and then transferred to the new trustee for fund re-investment. In other words, there will be a time lag during which their redeemed accrued benefits will not be invested. During this period, fund prices may change due to market fluctuations, possibly resulting in a 'sell low, buy high' situation. Scheme members should take special note of this risk before transferring their funds.
  - MPF funds are traded on a “forward pricing” mechanism, i.e. the unit price of a fund has to be determined by calculating the fund's asset value when the relevant investment market closes and thus members cannot buy or sell fund units at a specific price.
  
- Relevant information
  - Read the Guide to Transfer Benefits under Employee Choice Arrangement available on the MPFA website to learn more about the features of the ECA.
  - Read the MPFA investment education publications “Step-by-Step Investing in MPF Funds”, “FAQs on MPF Investment” and “How to Make MPF Investment Decisions”<sup>2</sup> to learn more about MPF

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<sup>2</sup> Relevant publications have been posted on the MPFA website ([www.mpfa.org.hk](http://www.mpfa.org.hk)) and are available for collection at the MPFA offices, the Public Enquiry Service Centres of the District Offices or the regional offices of Labour Department.

investment.

- Study thoroughly the information provided by the trustees, such as offering documents, fee tables, fund fact sheets and annual benefit statements (**ABS**).
- Make use of the information provided in fund fact sheets and MPF “Fee Comparative Platform” ([cplatform.mpfa.org.hk](http://cplatform.mpfa.org.hk)), such as fund expense ratio, fund risk indicator, on-going cost illustrations etc. Scheme members may also refer to the website of Hong Kong Investment Funds Association ([www.hkifa.org.hk](http://www.hkifa.org.hk)) for information concerning fund performance.
- Make use of the information in “Trustee Service Comparative Platform” ([tscplatform.mpfa.org.hk](http://tscplatform.mpfa.org.hk)) about the services of various MPF schemes offered by different MPF trustees. The platform covers information in three areas: (a) fund choices, (b) account administration and (c) customer services.

### **3.10.5 Duties of the Trustee on Transfer of Accrued Benefits**

#### **(a) Original Trustee (Also Known as Transferor Trustee)**

In general, the original trustee must take all practicable steps to ensure that the accrued benefits concerned are transferred within 30 days after being notified by the new trustee of the transfer election or if a transfer request is made by a relevant employee who ceases to be employed by the employer concerned, within 30 days after the last contribution day in respect of the employment that has ceased, whichever is the later. Moreover, the original trustee has to give a transfer statement to the scheme member concerned containing particulars of the scheme member and the amount of accrued benefits transferred.

#### **(b) New Trustee (Also Known as Transferee Trustee)**

Upon receipt of the accrued benefits transferred from another MPF scheme, the new trustee has to give a written notice (transfer confirmation) to the scheme member concerned confirming the amount received.

## **3.11 WITHDRAWAL OF BENEFITS**

Since the MPF System was introduced to assist members of the workforce save for their retirement, scheme members can only claim payment of their accrued benefits derived from mandatory contributions when they reach the age of 65.

However, early withdrawals are permitted under the following specific circumstances:

- |   |   |
|---|---|
| <b>(a) Early retirement</b>                   | The scheme member must reach the age of 60 and declare that he/she has ceased all employment or self-employment, with no intention of becoming employed or self-employed again. |
| <b>(b) Permanent departure from Hong Kong</b> | The scheme member must declare that he/she has departed or will depart from Hong Kong to reside elsewhere with no   |

intention of returning for employment or to resettle in Hong Kong as a permanent resident, and provide proof satisfying the trustee that he/she is permitted to reside permanently in a place outside Hong Kong. This reason for early withdrawal can only be used once in a lifetime.

(c) **Death** The accrued benefits of a deceased member are a part of the member's estate and therefore must be claimed by the scheme member's personal representative or the Official Administrator.

(d) **Total incapacity** The scheme member must provide a medical certificate which must be issued by a registered medical practitioner or registered Chinese medicine practitioner, certifying that the scheme member has become permanently unfit to perform the particular kind of work he/she was doing in his/her last job before becoming totally incapacitated. The scheme member must also declare that the employment contract of the particular kind of work has been terminated.

(e) **Terminal Illness** The scheme member must provide a medical certificate filled in and signed by a registered medical practitioner or a registered Chinese medicine practitioner stating that in the practitioner's opinion, the scheme member is considered as having an illness that is likely to reduce his/her life expectancy to 12 months or less.

(f) **Small balance** The scheme member's balance in an MPF scheme does not exceed \$5,000. If a scheme member wants to withdraw benefits on this ground, he/she must provide statutory declaration stating the following:

- (i) the member does not intend to become employed or self-employed again;
- (ii) as at the date of the claim, at least 12 months have lapsed since the contribution day in respect of the latest contribution period for which a mandatory contribution is required to be made to any registered scheme; and
- (iii) the member does not have accrued benefits kept in any other MPF schemes.

- Accrued benefits may be withdrawn on the ground of attaining the age of 65 or early retirement either in a lump sum or by instalments. If accrued benefits are not withdrawn in a lump sum, the remaining accrued benefits will continue to be invested. Withdrawal of accrued benefits on other grounds can only be made in a lump sum.

- No fees or financial penalties may be charged to or imposed on a scheme member or deducted from the scheme member account, other than necessary transaction costs incurred or reasonably likely to be incurred in selling or buying investments in order to give effect to the withdrawal and are payable to a party other than the approved trustee, for payment of the member's accrued benefits in a lump sum or

for the first 4 withdrawals by instalments each year.

- Except for claims for payment of MPF benefits on death, which can only be made by the personal representative of a deceased scheme member, claims for payment of MPF benefits on other grounds can be made by the scheme member or a committee of the estate appointed under Mental Health Ordinance (Cap 136).

Upon receipt of all required documents, the trustee is required to pay the accrued benefits no later than whichever is the later of the following:

- (a) 30 days after the claim is lodged;
- (b) 30 days after the contribution day in respect of the last contribution period that ends before the claim is lodged.

In addition, the trustee must provide a benefit payment statement to the claimant containing the date and the amount of accrued benefits paid.

### **3.12 UNCLAIMED BENEFITS**

- (a) The trustee may treat the accrued benefits as unclaimed benefits if:
  - (i) a scheme member or some other person has become entitled to be paid the member's accrued benefits but no claim has been lodged and the trustee is unable to locate the member or other person, the trustee must, as soon as practicable after becoming so aware, take the steps as specified in (b) below. If the trustee cannot locate the member or other person within 6 months after taking the specified steps, the accrued benefits become unclaimed benefits at the end of that period.
  - (ii) a scheme member or some other person has lodged a claim with the trustee but the trustee is subsequently unable to locate the claimant before payment of the benefits, the trustee must, as soon as practicable after becoming so aware, take the steps as specified in (b) below. If the trustee cannot locate the claimant within 6 months after taking the specified steps, the accrued benefits become unclaimed benefits at the end of that period.
  - (iii) a scheme member has reached the retirement age and no claim has been lodged with the trustee, the trustee must give a notice to the member requesting him/her to elect whether he/she will retain his/her accrued benefits with the scheme or not. If no reply is received within 6 months after the notice was given and the trustee is unable to locate the member by any other means, the accrued benefits become unclaimed benefits at the end of that period. If a reply is received indicating that the member elects to retain the benefits within the scheme or no reply is received but the member can be located, the trustee must continue to give the member annual benefit statements.
  - (iv) a scheme member on whom an annual benefit statement has been served as mentioned in (iii) cannot be located subsequently while his/her accrued benefits are retained in the scheme, the trustee must, as soon as practicable, take the steps specified in (b) below. If the trustee is unable to locate the member within 6

months after taking the specified steps, the accrued benefits become unclaimed benefits.

- (v) a cheque for payment of a scheme member's accrued benefits is not presented within 6 months from the issue date of the cheque ("Specified Period") and the trustee is not able to locate the claimant during the period of 6 months after the expiry of the Specified Period, the accrued benefits become unclaimed benefits at the end of the 6-month period. However, if the trustee receives a returned cheque before the expiry of the Specified Period, the trustee should take immediate follow-up action to locate the claimant.
  - (b) The steps\* to be taken by approved trustees before they can classify the accrued benefits of a scheme member as unclaimed benefits are set out as follows:
    - (i) Send the scheme member/person a notice to the last known residential and correspondence address(es), if available;
    - (ii) Make 3 attempts (at different times and dates) within 1 month, to locate the scheme member/person via other means of contact, if known (e.g. all contact phone number(s) or fax); and
    - (iii) Contact the employer concerned to obtain any contact information of the scheme member and if the contact information so obtained is different from that in the records of the trustee, repeat steps (i) and (ii) above (as the case may be).
- \*Apart from the steps requested above, trustees are encouraged, as far as reasonable, to use any possible communication means to contact the claimant.
- (c) The unclaimed benefits retained in the scheme continue to vest in the scheme members concerned.

The MPFA maintains an Unclaimed Benefits Register for members of the public to check for free. Information available includes whether a scheme member has any unclaimed benefits and, if so, the name and contact number of the trustee with which the benefits are placed.

### **3.13 OFFSETTING OF LONG SERVICE PAYMENTS/SEVERANCE PAYMENTS**

- (a) Under the provisions of the Employment Ordinance, an employee may become entitled to a long service payment (LSP) or a severance payment (SP) from the employer on the occurrence of circumstances specified in that Ordinance. The employer is entitled to offset such payments against the accrued benefits derived from the contributions made by the employer in respect of the relevant employee in the MPF scheme.
- (b) The employer can apply to the trustee to withdraw a relevant amount of the relevant employee's accrued benefits derived from the employer's contribution as reimbursement of the LSP or SP made to the relevant employee by the employer. Some examples include:

- (i) If the amount of accrued benefits derived from the employer's contributions is \$55,000 and the amount of the LSP is \$80,000, the employer can pay the full \$80,000 to the relevant employee but he/she can then apply to the trustee to withdraw \$55,000 from the relevant employee's MPF account as reimbursement of his/her payment of \$80,000. In other words, the additional payment to be borne by the employer is \$25,000 (i.e. \$80,000 - \$55,000).
  - (ii) If the LSP is \$40,000 (with accrued benefits as with (i) above), the employer can only request the trustee to reimburse the \$40,000 paid to the departing relevant employee after the LSP has been paid. The remaining accrued benefits, namely the balance of \$15,000 derived from the employer's contributions, together with those derived from the contributions made by the relevant employee, have to be transferred to a contribution account or personal account under an MPF scheme designated by the relevant employee and preserved until the relevant employee retires. (These rules apply to mandatory contributions. The relevant employee may choose to withdraw his/her voluntary contributions subject to the governing rules of the scheme.)
- (c) The employer should note that in offsetting LSP or SP, he/she will need to comply with other requirements set out in the Employment Ordinance concerning such payments.

If an employer has to pay LSP or SP to a relevant employee, he/she should approach his/her trustee as soon as possible to check the amount of accrued benefits derived from employer's contributions in respect of the relevant employee. It is possible that part of the accrued benefits has been withdrawn by the relevant employee and the employer may not be able to reimburse the LSP/SP after making the full payment of LSP/SP.

- (d) Under the ECA, as the accrued benefits derived from the employers' mandatory contributions have to be preserved in the original scheme (i.e. the scheme selected by the employer) and cannot be transferred, the employers' administrative arrangement for offsetting of LSP or SP remains unchanged.

### **3.14 MAJOR OBLIGATIONS OF EMPLOYERS**

These may be considered under a number of headings, as follows:

#### **3.14.1 Employers Who Are Not Exempt from MPFSO**

An employer is required to arrange for all his/her relevant employees to join an MPF scheme, unless the employees are exempt persons. Duties imposed upon the employer include, for example:

- (a) selecting an MPF scheme (or schemes) from those available in the market, or arranging to set up an employer sponsored scheme;
- (b) arranging for all relevant employees within the coverage of the MPFSO to join an MPF scheme within the time limit specified as described under paragraph 3.7.1(a)(iv) of this Chapter;

- (c) calculating individual relevant employee's relevant income and amount of contributions for each contribution period;
- (d) deducting the relevant mandatory contributions from the relevant employee's income and making the employer's mandatory contribution from his/her own funds;

**Note:** It is the employer's responsibility to ensure that both the employer's and the relevant employee's contributions are made on time.

Even if an employer fails to arrange for his/her relevant employees to join an MPF scheme as required under (b) above, the employer is still obliged to ensure that both the employer's and the employee's mandatory contributions are made. Such contributions need to be paid to the MPFA. The MPFA will then pay the contributions to the appropriate MPF scheme for the benefit of the employees concerned.

- (e) ensuring the mandatory contributions are paid to the trustee of the scheme on or before the stipulated contribution day as described under paragraph 3.7.1(a)(vii) of this Chapter;
- (f) providing the trustee with a remittance statement showing all relevant details of relevant employees (not including casual employees in an industry scheme as described in paragraph 3.7.1(a)(viii) of this Chapter), relevant income and contributions;
- (g) providing each relevant employee (other than casual employees in an industry scheme as described in paragraph 3.7.1(a)(ix) of this Chapter) with a monthly pay-record, showing the relevant employee's relevant income, the amount of contribution paid by the employer and deducted from the relevant employee's relevant income, and the date on which the contributions were paid to the trustee, within 7 working days after the last contribution payment during a month.

#### **3.14.2 When a Relevant Employee (Other Than a Casual Employee) Ceases Employment**

- (a) When a relevant employee ceases employment, the employer must give a written notice to the trustee of the scheme concerned no later than the 10th day after the month in which the relevant employee concerned ceases employment. The employer may use the remittance statement to inform the MPF trustee of the relevant employee's cessation of employment and the date of cessation.
- (b) In cases where the former employer cannot be located or refuses to notify the trustee about the cessation of employment of the relevant employee, the relevant employee may give a written notice to the trustee to declare the relevant employee's cessation of employment and the date of cessation. The notice given by the relevant employee must be in a form approved by the MPFA.

- (c) If the relevant employee has not informed the trustee of his/her transfer election within 30 days after the trustee receives his/her termination notice, the trustee should inform the relevant employee, by written notice, of his/her different transfer options and the consequences of not electing any transfer options within the specified time limit. If the trustee has not received his/her election within 3 months after it receives the termination notice, the relevant employee is deemed to elect to transfer his/her accrued benefits to a personal account in the same scheme. Then the trustee will process the transfer accordingly.

### **3.15 NON-COMPLIANT EMPLOYER AND OFFICER RECORDS**

The MPFA set up the Non-Compliant Employer and Officer Records ("NCEOR") in May 2011 to further enhance the deterrent effect on non-compliant employers and officers as well as to increase the transparency of the MPFA's enforcement actions. Using the NCEOR, members of the public can view and search for information on employers and officers with MPF non-compliance records resulting from legal proceedings initiated by the MPFA.

The NCEOR comprises two parts. The first part contains records of both criminal convictions and civil awards/judgments in connection with the violation of the MPFSO by employers (including limited companies and individuals such as sole-proprietors or partners) or their officers.

The second part of the NCEOR contains records of repeated offenders. Employers and/or their officers who have been convicted of offence(s) under the MPFSO on two or more occasions will be shown under this section.

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## *Representative Examination Questions*

### Type “A” Questions

- 1 The MPF legislation includes a “non-refusal of scheme applicants” provision. The meaning of this is that:
- (a) the MPFA cannot refuse to register a scheme; .....
  - (b) everyone in Hong Kong is included within the scheme; .....
  - (c) nobody can be rejected on the ground of sex or ethnic origin; .....
  - (d) a person who complies with all requirements on enrolment/participation cannot be refused by the trustee. ....
- [Answer is in **3.6.3**]
- 2 Which of the following contributions are vested fully and immediately in the scheme member concerned when they are paid to the trustee of the MPF scheme?
- (a) voluntary contributions made by the employer only; .....
  - (b) mandatory contributions made by the employee only; .....
  - (c) mandatory contributions made by the employer only; .....
  - (d) mandatory contributions made by both the employee and employer. ....
- [Answer is in **3.8**]
- 3 Under the Employee Choice Arrangement (“ECA”), a relevant employee has a right to transfer which of the following contributions (together with the related investment return) from the contribution account to an account nominated by him/her?
- (a) employer’s mandatory contributions attributable to current employment; .....
  - (b) employee’s mandatory contributions attributable to current employment; .....
  - (c) employer’s voluntary contributions attributable to current employment; .....
  - (d) both employer’s and employee’s mandatory contributions attributable to current employment. ....
- [Answer is in **3.10.1**]

### Type “B” Questions

- 4 Which two of the following represent the current relevant income levels for the purposes of making mandatory contributions in respect of a relevant employee (other than a casual employee) to an MPF scheme?
- (i) Minimum relevant income level - \$5,000 per month
  - (ii) Minimum relevant income level - \$7,100 per month
  - (iii) Maximum relevant income level - \$30,000 per month
  - (iv) Maximum relevant income level - \$35,000 per month

- (a) (i) and (iii); .....
- (b) (i) and (iv); .....
- (c) (ii) and (iii); .....
- (d) (ii) and (iv). .....

[Answer is in **3.7.1**]

5 Which of the following statements is/are true, if the relevant income of a relevant employee under an employer sponsored scheme is only \$3,000 in a particular month?

- (i) the employer has to pay a \$150 mandatory contribution
- (ii) the employer does not have to pay a mandatory contribution
- (iii) the employee does not have to pay a mandatory contribution
- (iv) neither the employer nor the employee has to pay a mandatory contribution

- (a) (i) only; .....
- (b) (i) and (ii) only; .....
- (c) (i) and (iii) only; .....
- (d) (i), (ii), (iii) and (iv). .....

[Answer is in **3.7.1**]

6 Which three of the following statements are correct in relation to the tax situation with MPF contributions and benefits?

- (i) all accrued benefits derived from mandatory contributions, when payable, are exempt from tax
- (ii) all contributions are not tax deductible
- (iii) employee's mandatory contributions are tax deductible (limited to \$18,000 per year for the year of assessment 2015/16 and afterwards)
- (iv) employer's contributions are tax deductible (limited to 15% of the employees' emoluments paid)

- (a) (i), (ii) and (iii); .....
- (b) (i), (ii) and (iv); .....
- (c) (i), (iii) and (iv); .....
- (d) (ii), (iii) and (iv). .....

[Answer is in **3.7.3**]

*[If required, answers may be found at the end of the Study Notes.]*

## **4 MPF TRUSTEES**

Under the MPF System, all MPF schemes must be managed by a “trustee” who is an “approved trustee”.

### **4.1 TRUST ARRANGEMENT**

#### **4.1.1 Concept of Trust**

The salient features of a trust are as follows:

- (a) A trust is an arrangement whereby the trustee is made the registered owner of certain property, which is held for the benefit of others, who are known as “beneficiaries”.
- (b) The term “property” in (a) above is used in its widest legal sense namely, that a trustee holds – or is “entrusted” with – the assets in the trust.
- (c) There may be more than one trustee appointed for one trust.
- (d) A trustee may be either an individual (natural person) or a corporation (company).
- (e) Although the trustee is the registered owner, it is not the beneficial owner. The trustee therefore cannot give away the property in the trust, nor can the trustee benefit from it, other than as permitted under the terms of the trust.
- (f) Any income which the trust property generates belongs to the beneficiaries and any profit made from the trust property accrues for the interest of the beneficiaries.
- (g) Normally, a trust is established by a legal document generally known as a “trust deed”.
- (h) All the duties, powers and rights of the trustee and the beneficiaries in respect of the trust are clearly stipulated in the trust deed.
- (i) If the trustee deals with the trust property in a way that is contrary to the provisions of the trust deed, this constitutes a breach of trust, and the trustee is liable to the beneficiaries for all the losses or reduction in trust properties caused by the breach.
- (j) From the above, it is obvious that being a trustee is a considerable responsibility, and it is very important that only people of integrity act as trustees.

#### **4.1.2 Fiduciary Duties of Trustees**

The word “fiduciary” comes from a root word meaning to have faith or “trust” in someone. It implies that considerable discretion and confidence are expected from the trustee. In general terms, their duties include the following:

- (a) to exercise any discretion in the interests of the beneficiaries of the trust as a whole (this is a primary trust law obligation);
- (b) to exercise a high degree of diligence and care with the management and security of the fund;
- (c) to ensure that money is only paid to those eligible at the time the entitlement arises;
- (d) to keep proper and adequate accounts and other records, which must be available to all entitled to see them;
- (e) to ensure that assets are wisely and properly invested;
- (f) to ensure that the trust is administered in accordance with the laws and the trust deeds; and
- (g) to hold the trust properties on behalf of the beneficiaries and to act in the interest of beneficiaries and not in the trustee’s own interest.

#### **4.1.3 Recourse against Trustees**

The recourse against trustees can be categorized as:

- (a) **Restoration**
  - (i) A trustee is liable for breach of trust if it fails to perform the duties that are required of it as a trustee, or if it does what it is not entitled to do as a trustee. That means, should a breach of trust occurs, and the trust properties become lost or reduced, the beneficiaries are entitled to take legal action against the trustee to recover the loss.
  - (ii) A defaulting trustee that causes loss or damage to the trust property must, at the trustee’s own cost, restore the property. If the property in question cannot be returned or restored, the trustee would be required to pay sufficient compensation. That is, the trustee must not apply the assets of the MPF scheme to indemnify its liabilities as a result of its mistake that causes loss or reduction of scheme assets.

(b) **Accountability**

All profits made by the trustee from the trust properties must be transferred to the beneficiaries.

#### **4.1.4 Advantages of the Trust Arrangement**

The advantage of a trust arrangement is that even if the scheme trustee, other service providers or the employer is in financial difficulties, the creditor cannot request the trustee, other service providers or the employer to make use of the assets under trusteeship to repay a debt. In other words, trust arrangement provides basic protection for scheme members' assets.

## **4.2 CATEGORIES OF TRUSTEES**

There are three categories of trustees:

- (a) local corporate trustee;
- (b) offshore (outside Hong Kong) corporate trustee; and
- (c) individual (natural person) trustee.

All master trust schemes and industry schemes must be managed by corporate trustees. Individuals may act as trustees only in respect of employer sponsored schemes.

## **4.3 DUTIES AND FUNCTIONS OF TRUSTEES**

The approved trustee is the central party responsible for all scheme management functions. Although the trustee may appoint other service providers to perform the scheme functions (see 3.2), it has the duty to closely monitor the performance of those service providers in order to fulfill its fiduciary duties with respect to the scheme. The MPFSO and General Regulation specify many detailed requirements for trustees, breaches of which could constitute criminal offences, incur penalties or result in suspension of scheme administration, or revocation of approval as approved trustees. In general terms, their duties would include the following:

- (a) to secure scheme registration;
- (b) to ensure maintenance of adequate capital and professional indemnity insurance;
- (c) to maintain investment policy statements, control objectives and internal control procedures;
- (d) to exercise a level of care, skill, diligence and prudence;
- (e) to ensure that the funds of the scheme are invested in different investments so as to minimize investment risks;
- (f) to act in the interest of scheme members and in accordance with the governing rules of the scheme;

- (g) to provide information to scheme members, including scheme information, notices of participation and benefit statements;
- (h) to receive contributions and verify mandatory contribution calculations;
- (i) to process transfer and payment requests;
- (j) to keep proper accounting records and members' register; and
- (k) to prepare and lodge annual audited financial statements, scheme reports and investment reports of MPF schemes with the MPFA.

#### **4.4 APPROVAL OF TRUSTEES**

All persons purporting to be trustees of MPF schemes must apply to the MPFA for approval.

##### **(a) Corporate Trustee**

In general terms, the approval requirements in respect of a corporate trustee include:

##### **(i) Capital adequacy and financial soundness**

Corporate trustees must have paid-up share capital and net assets of at least \$150 million each.

##### **(ii) Suitability**

The directors and the chief executive officer of the trustee must be "suitable" persons, i.e. they are of good reputation and character. The chief executive officer and a majority of the directors (which must include an independent director) must possess sufficient skills, knowledge and expertise in administering provident fund schemes.

##### **(iii) Capability**

The trustee must be capable of carrying on a business of administering MPF schemes and have proper internal control procedures.

##### **(iv) Presence and control**

The trustee must have sufficient presence and control in Hong Kong.

##### **(b) Offshore Corporate Trustee**

An offshore corporate trustee must meet additional criteria e.g. it must be supervised by an offshore authority that is acceptable to the MPFA, and the standards of the local trust and company laws are comparable to those in Hong Kong. This ensures that scheme members enjoy the same degree of protection.

(c) **Individual Trustee**

An individual trustee must ordinarily reside in Hong Kong and be of good reputation and character. An individual trustee (natural person, as opposed to company) will be required to provide performance guarantee, in the form of an insurance policy or a bank guarantee, covering losses from the trustee's failure to perform or other breach of duties. This performance guarantee must be for 10% of the net asset value of the scheme, with a maximum of \$10 million. If an individual is to be appointed as a trustee, there must be at least two such trustees.

#### **4.5 ON-GOING MONITORING**

It must never be assumed that once a scheme has been launched it will carry on without problems or there is not any need for further supervision. Adequate monitoring of trustee performance and compliance with requirements must therefore be an on-going process. Some ways in which the MPFA performs this on-going monitoring function include:

- (a) requiring trustees to have proper internal control and procedures to ensure compliance with requirements;
- (b) conducting off-site review of reports and returns and on-site visits;
- (c) handling of complaints received from employers or members;
- (d) requiring trustees to report to the MPFA significant events, including (suspected) cases of breach;
- (e) conducting investigations where it reasonably believes that MPF requirements have or might have been breached;
- (f) investigating any other situation where it believes that the interests of scheme members may be adversely affected;
- (g) requesting "whistle blowing" reports from other service providers (e.g. auditors) of an MPF scheme in respect of the performance of the trustee; and
- (h) requiring trustees' rectification of any deficiencies.

#### **4.6 COMPLIANCE STANDARDS FOR MPF APPROVED TRUSTEES**

To enhance the effective operation of the MPF System, the MPFA promotes a positive compliance culture, good corporate governance and proper risk management among the approved trustees. The MPFA has developed a set of Compliance Standards for the guidance of approved trustees in establishing a structured framework for monitoring their compliance with statutory duties and responsibilities. There are eight standards, each accompanied by detailed explanatory notes and examples.

#### Standard 1 – Compliance Programme to Address Statutory Obligations

- (a) An approved trustee should have a compliance programme which provides a framework enabling the approved trustee to monitor and ensure compliance with its obligations, as well as to address any breach issues.

#### Standard 2 – Compliance Policy

- (a) An approved trustee should develop and maintain a compliance policy that drives the organization towards a positive compliance culture and encourages compliance practices.
- (b) The compliance policy should be endorsed by the approved trustee's Board of Directors and be readily available to management, staff and service providers.

#### Standard 3 – Compliance Resources

- (a) An approved trustee should have adequate and independent compliance resources to monitor its compliance and ensure that compliance reporting is timely, accurate and complete.

#### Standard 4 – Compliance Training and Communication

- (a) An approved trustee should achieve and sustain a positive compliance culture by ensuring that relevant staff understand their roles in meeting the trustee's statutory obligations.

#### Standard 5 – Complaints Handling Procedures

- (a) An approved trustee should have in place measures that enable the proactive and timely management of complaints from scheme members and participating employers.

#### Standard 6 – Compliance Programme Maintenance and Review

- (a) An approved trustee should monitor the effectiveness of its compliance programme by having measures in place for its maintenance and review.

#### Standard 7 – Reporting Mechanism to the Board of Directors including the Independent Director

- (a) The Board, including the independent directors, should be provided with timely and accurate information so that they are able to take responsibility for monitoring compliance of an approved trustee's operation.

#### Standard 8 – Compliance Plan to Address Identified Obligations

- (a) An approved trustee should have in place compliance measures that enable it to effectively identify, monitor, supervise and report on its statutory obligations.

## **4.7 SANCTIONS AND PENALTIES**

The MPFA investigates cases of suspected breach with these requirements.

- (a) For cases of breach, the MPFA may:
  - (i) order the trustee to take proper remedial action;
  - (ii) conduct a formal investigation on the trustee;
  - (iii) impose a level of financial penalty which is proportionate to the seriousness of breach in question;
  - (iv) suspend the trustee from the administration of an MPF scheme, and appoint another trustee to administer the scheme on a temporary basis;
  - (v) depending on the results of the investigation, terminate the trustee's administration of the scheme, prosecute the trustee for the non-compliance, and/or revoke the approval of the trustee.
  
- (b) Certain breaches constitute offences under the MPF legislation. An approved trustee who is convicted of an offence is liable to a fine of up to \$200,000 and imprisonment for up to 2 years.

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## *Representative Examination Questions*

### Type “A” Questions

- 1 Under the law of trusts, the trustee is considered to be:
- (a) the registered owner of the trust assets; .....
  - (b) the beneficial owner of the trust assets; .....
  - (c) totally independent and unconnected with the trust assets; .....
  - (d) none of the above. ....
- [Answer is in **4.1.1**]
- 2 Which of the following is not one of the Compliance Standards for MPF Approved Trustees?
- (a) Complaints Handling Procedures; .....
  - (b) Compliance Plan to Address Identified Obligations; .....
  - (c) Compliance Policy; .....
  - (d) Code of Ethics. ....
- [Answer is in **4.6**]

### Type “B” Questions

- 3 Which three of the following are approval criteria required in the appointment of a trustee for an MPF scheme?
- (i) fit and proper person
  - (ii) must have been a trustee before
  - (iii) adequate capital and financial soundness
  - (iv) capable of carrying on a business of administering MPF schemes
- (a) (i), (ii) and (iii); .....
  - (b) (i), (ii) and (iv); .....
  - (c) (i), (iii) and (iv); .....
  - (d) (ii), (iii) and (iv). ....
- [Answer is in **4.4**]

*[If required, answers may be found at the end of the Study Notes.]*

## **5 MPF SCHEMES AND INVESTMENT**

### **5.1 REGISTRATION OF MPF SCHEMES AND APPROVAL OF CONSTITUENT FUNDS AND POOLED INVESTMENT FUNDS**

MPF schemes, constituent funds and pooled investment funds must be approved by the MPFA and authorized by the SFC. There are complementary regulatory functions between the MPFA and the SFC. Both the MPFA and the SFC have issued codes relating to MPF products, but the codes serve different purposes with each specifying requirements relating to different aspects of MPF products.

- (a) Generally speaking, the MPFA is responsible for the overall administration of the MPF System. This involves registering MPF schemes and approving constituent funds and pooled investment funds in accordance with the provisions of the MPF Ordinance and the rules and regulations made thereunder. Therefore, the Code on MPF Investment Funds focuses on the operational and investment aspects that MPF products must comply with and specifies requirements additional to those prescribed in the MPF legislation. It also specifies the delineation of work between the MPFA and the SFC concerning the approval/authorization of these products.
- (b) On the other hand, the SFC is responsible for authorizing MPF schemes, constituent funds and pooled investment funds, vetting/authorizing the disclosure of information in offering documents, advertisements and marketing materials and licensing investment managers. As such, the SFC Code on MPF Products sets out the requirements for the authorization of MPF schemes, constituent funds and pooled investment funds, as well as disclosure requirements on offering documents. Advertisements and other invitations or documents issued to the public in Hong Kong to invest or participate in master trust schemes, industry schemes and pooled investment funds must comply with the Advertising Guidelines issued by the SFC. The SFC Code on MPF Products also specifies the requirements on the qualifications and experience of the investment managers who manage the products.
- (c) The Code on MPF Investment Funds and the SFC Code on MPF Products are complementary to each other.
- (d) The SFC Code on MPF Products sets out post-authorization requirements for MPF products, which require that any proposed changes to the offering document of an MPF product as a result of certain changes must be submitted to the SFC for prior approval. These changes include, without limitation, changes to constitutive documents, key operators and investment objectives.

### **5.2 MPF SCHEMES**

As mentioned in Chapter 3, there are three types of MPF schemes, namely employer sponsored schemes, master trust schemes and industry schemes. Each of these schemes consists of constituent funds into which scheme members invest their contributions and accrued benefits.

## 5.3 CONSTITUENT FUNDS

### 5.3.1 Features of Constituent Funds

An MPF scheme, whether employer sponsored, master trust or industry scheme, may consist of a number of constituent funds. Constituent funds are investment funds within an MPF scheme into which scheme members invest their contributions and accrued benefits. Each scheme member is entitled to decide which of the constituent fund(s) of the scheme to invest in.

All constituent funds have to meet the following requirements:

- (a) each constituent fund within a scheme must have a different investment policy, so that members have a choice in investing their accrued benefits;
- (b) all constituent funds within an MPF scheme must be made available to all scheme members;
- (c) a constituent fund may maintain a portfolio of direct investment in equities, bonds, etc., or invest in approved pooled investment funds or index-tracking collective investment schemes;
- (d) a constituent fund must be governed by Hong Kong law and denominated in Hong Kong dollars;
- (e) a constituent fund must have at least one regular dealing day per month;
- (f) all constituent funds must be unitized except for those which are non-investment linked and provide investment guarantees;
- (g) there must be an MPF Conservative Fund (pursuant to section 37 of General Regulation) in each scheme;
- (h) pricing of unitized constituent funds must be on a forward basis. If constituent funds are non-unitized, the accounts of scheme members must be credited with the investment return at least once a month; and
- (i) for master trust and industry schemes, prices of unitized constituent funds must be published at least once a month in at least one leading English and Chinese language daily newspaper in Hong Kong. For employer sponsored scheme, the approved trustee may choose other means to release such information to scheme members.

### 5.3.2 Types of Constituent Funds

#### (a) MPF Conservative Fund

At least one of the constituent funds of an MPF scheme must be an MPF Conservative Fund. As suggested by the name of the fund, its intention is to

offer members a relatively conservative option of investment. It should be noted that the MPF Conservative Fund is not a guaranteed fund. In times of high inflation, it is possible that the rate of return of the MPF Conservative Fund may not catch up with the rate of inflation.

Certain safeguards have been built into an MPF Conservative Fund, as follows:

- (i) it must be 100% invested in Hong Kong dollar investments;
- (ii) the funds must be placed in short-term bank deposits or invested in short-term debt securities that are issued or guaranteed by the government or an authority of similar standing, or meet the minimum short term credit rating set by the MPFA;
- (iii) the average investment period must not exceed 90 days;
- (iv) investments in equities or commodities are strictly prohibited;
- (v) monthly reporting to the MPFA must be performed;
- (vi) administrative expenses (such as trustee, custodian, investment management and administration fees) for running the fund cannot be deducted from the fund in any particular month, unless the achieved investment earnings of the fund for that month exceed the earnings calculated based on the prescribed savings rate (as declared by the MPFA) for the same month; and
- (vii) neither initial fees nor redemption charges can be imposed on an MPF Conservative Fund. Bid and offer spreads are also not allowed.

The two main objectives of an MPF Conservative Fund are:

- (i) to provide a low investment risk product, with minimum exposure to market fluctuations; and
- (ii) to produce a net investment return for scheme members comparable to banks' savings rate.

(b) **Guaranteed Fund**

A guaranteed fund operates by providing some form of guarantee. Holders of guaranteed funds, however, are subject to the additional risk that they may not meet the qualifying conditions for the guarantee.

Basically, there are two types of "guaranteed" fund:

- (i) The first type provides a "hard" guarantee which promises to pay a minimum net return without imposing any qualifying conditions for the guarantee.

- (ii) The second type provides a “soft” guarantee which promises to pay a minimum return when the fund holder meets certain qualifying conditions imposed by the guarantor. Usually the guarantee is in the form of a “career average” in which the minimum return is expressed as an average rate compounded over the period of employment for which the guaranteed fund has been held.

In general, most guaranteed funds guarantee one of the following:

- (i) capital guarantee i.e. guaranteeing the total amount of MPF contributions; or
- (ii) return guarantee i.e. guaranteeing the total amount of MPF contributions plus a rate of return on investment.

Most guaranteed funds available in the market are “soft” guaranteed funds requiring that a minimum period of investment be met and/or that the guarantee will only be provided under specified “qualifying events”, such as attainment of age 65, early retirement at age 60, total incapacity, terminal illness or permanent departure from Hong Kong.

If an investor redeems the guaranteed fund prior to the occurrence of a qualifying event, they will receive an amount that reflects the actual investment return. This amount may be higher or lower than the guaranteed return.

Some important features of guaranteed funds include:

- (i) Minimum investment period

During this period, if one switches out of the guaranteed fund or if the employer switches to another scheme, the guarantee becomes void.

- (ii) Limited guaranteed period

Some guaranteed funds have a fixed guarantee period, e.g. three years. When the guaranteed period expires, the fund automatically becomes a non-guaranteed fund.

- (iii) Withdrawal

The investment guarantee may only be applicable to withdrawal of accrued benefits under specific circumstances such as reaching age 65, early retirement, death, total incapacity, etc.

- (iv) Cancellation or modification of guarantee

The guarantor may unilaterally change the guaranteed rate by giving advance notice of, say, 3 or 6 months, or even cancel the guarantee in the light of unfavourable market conditions.

(v) Retained investment earnings

The guarantor may have the discretionary power to retain part or all of the investment earnings of the guaranteed fund. The retained investment earnings may be either taken as profit for the guarantor or used to offset any under-performance of the fund at other times.

(vi) Reserve charge

A reserve charge or guarantee fee will be deducted from the fund assets. Some guaranteed funds offer an exemption of the reserve charge.

A minimum return guarantee is often applied to the average return of investment over a long period of time (so that the fund has a sufficiently long period of time to achieve a stable performance above the minimum guarantee level).

The major risk faced by an investor of a guaranteed fund is the default risk of the guarantor, i.e. the inability of the guarantor to fulfill its financial obligations. However, all guarantors are required to maintain sufficient assets as reserves or provisions to support their obligations for the investment guarantees.

(c) **Other Types of Funds**

In addition to the above-mentioned funds, there is a range of different kinds of constituent funds offered by MPF service providers. They vary from conservative funds (such as money market funds, bond funds) to aggressive funds (such as equity funds, growth funds). Regardless of the type of fund, it should be emphasized that investments involve risk and investment returns are affected by prevailing economic and market conditions. Care should be taken in choosing a fund that meets one's financial situation and objectives.

The following funds are also commonly found in an MPF scheme:

(i) Money Market Fund

Money market funds mainly invest in short-term instruments such as treasury bills, certificates of deposit, commercial papers. This type of funds is the least risky compared with other types of funds, but its return is usually slightly higher than that earned from savings deposits.

(ii) Bond Fund

A bond fund primarily invests in bonds which are debt securities issued by governments, public utilities, banks, commercial organizations and supranational agencies like the World Bank. A bond issuer promises to pay interest during the life of the bond and repay the principal upon maturity of the bond.

A bond fund may earn its income from interests generated by the bonds held by the fund. The fund may either hold the bonds till maturity and get back the principal from the issuers, or trade the bonds, taking advantage of market movements. Generally, a bond fund aims to achieve a modest but stable level of income; capital appreciation is of secondary importance.

Bond funds can be categorized by the term to maturity of the bonds in which they invest. Long-term bond funds invest in bonds with at least 10 years to maturity; medium-term bond funds in bonds with 3 to 10 years to maturity and short-term bond funds in bonds of less than 3 years to maturity.

Some bonds offer fixed interest rates while others offer floating rates. In general, the longer the maturity of the bonds, the more susceptible are the bond prices to interest rate movements. Accordingly, long-term bonds will tend to offer a higher yield to compensate investors for the increased exposure to interest rate fluctuations.

Aside from the yield offered by a bond fund, the credit ratings of the bonds that the fund invests in should also be considered as they indicate the degree of risk involved in investing in the fund. The higher the credit rating of the bonds, the lower the risk of the fund that invests in them.

(iii) Mixed Assets (or Balanced) Fund

A mixed assets fund, which is also called a balanced fund, is an investment mix of bonds and equities (stocks). There are many mixed assets funds offered in the MPF market, though they may be called by other names.

A typical mixed assets fund invests in both stock markets and bond markets, either globally or regionally (e.g. Asia or North American), in order to reduce the overall risk as well as to take advantage of investment opportunities in different markets and economies. Therefore, the risk level of this kind of fund is usually somewhere between that of a bond fund and an equity fund.

As a rule of thumb, the higher the proportion invested in equities, the higher the risk. The more countries the fund invests in, the lower the risk of concentration.

Due to the investment mix of the fund, the expected return of a mixed assets fund is usually higher than that of a bond fund but lower than that of an equity fund.

Some mixed assets fund, known as Target Date Fund, automatically adjust the asset allocation (the proportion invested in equities and bonds) in the investment portfolio for scheme member as the date for

retirement gets nearer. The asset mix in the fund changes by reducing the exposure to equities and gradually increasing investments into conservative assets such as bonds closer to the target date.

(iv) Equity Fund

An equity fund primarily invests in equities traded on stock exchanges. Through investment in stocks of companies, an equity fund aims to achieve a high rate of return through capital appreciation over a period of time. However, since stock markets may go up or down quite substantially in a short period of time, the price of an equity fund could be volatile at times.

There are many different types of equity fund. Some are characterized by the countries they invest in, such as a global fund that invests in global equity markets or an Asia-Pacific regional fund that invests in the Asia-Pacific markets.

(v) Index-tracking Fund

An index-tracking fund is a collective investment scheme with the primary objective of tracking or replicating the investment performance of an index in either equities or debt securities. Such funds aim at producing or achieving investment returns that closely match or correspond to the performance of the index being tracked.

An index-tracking fund may seek to track a particular index by investing all or substantially all of its assets in the constituent securities of the underlying index, either in proportion to their respective weightings or in a representative sample of the constituent securities of that index.

## **5.4 APPROVED POOLED INVESTMENT FUNDS (“APIFs”)**

### **5.4.1 Approval of Pooled Investment Funds**

If a constituent fund is structured not to operate as an internal portfolio, it may invest in pooled investment funds that are approved by the MPFA. The MPFA is responsible for approving pooled investment funds in accordance with the requirements set out in the General Regulation and the Code on MPF Investment Funds.

For pooled investment funds that are offered to MPF schemes only, the SFC authorizes the funds in accordance with the requirements set out in SFC Code on MPF Products.

For pooled investment funds that are unit trusts available to both MPF service providers and retail investors, the SFC authorizes the funds in accordance with the requirements set out in both the SFC Code on MPF Products and the Code on Unit Trusts and Mutual Funds.

### 5.4.2 Types of Pooled Investment Funds

A constituent fund may invest in one or more APIFs. An APIF may be an insurance policy, a unit trust or a mutual fund (although under current Hong Kong law, it would not be practical to establish a mutual fund). Similar to constituent funds, APIFs must be governed by Hong Kong law.

(a) **Unit Trusts**

A pooled investment fund, if in the form of a unit trust, must be authorized as a collective investment scheme by the SFC under section 104 of the Securities and Futures Ordinance.

(b) **Insurance Policies**

An APIF, if in the form of an insurance policy, must be issued by an authorized insurer as a Class G insurance policy (Class G policies are long term insurance policies for the purpose of providing retirement-related benefits with a guarantee on capital or return). Relevant trustees are required to incorporate additional disclosure of the associated risks in their scheme offering documents. Similar to a unit trust, it must be authorized as a collective investment scheme by the SFC under section 104 of the Securities and Futures Ordinance.

## 5.5 STATEMENT OF INVESTMENT POLICY

The MPF legislation requires a statement of investment policy to be prepared and maintained in respect of each constituent fund and APIF to ensure a high degree of **transparency** in the operation of MPF schemes and APIFs (i.e. members should not be confused or uninformed in relation to the scheme investments). As such, the statement of investment policy for each constituent fund and APIF must clearly indicate:

- (a) the investment objectives of the fund;
- (b) the kinds of securities and other assets in which the fund may invest;
- (c) the balance (proportion) between various kinds of securities and markets;
- (d) the risk of the investment strategy of the overall portfolio;
- (e) the expected return of the overall portfolio;
- (f) the policy regarding the acquisition, holding and disposal of financial futures and option contracts; and
- (g) whether the fund will engage in securities lending.

## **5.6 INVESTMENT STANDARDS AND RESTRICTIONS**

To safeguard scheme members against undue investment risk, comprehensive regulations governing the investment of scheme assets have been prescribed in the MPF legislation. In summary, these have the following aims:

- (a) to ensure prudent and sound investment management;
- (b) to ensure that investment portfolios meet all required standards; and
- (c) to ensure that investments are well-diversified.

### **5.6.1 Investment Management**

#### **(a) Requirements of Investment Manager**

- (i) The primary investment manager of an MPF scheme/APIF must be a locally incorporated investment management company, with at least \$10 million paid-up share capital and net assets of at least the same amount.
- (ii) The investment manager must be licensed by or registered with, the SFC to carry on a business of Type 9 (asset management) regulated activity.
- (iii) The investment manager must be qualified and experienced in the various financial services and products it manages or in which it invests.
- (iv) The investment manager must be independent of the trustee and the custodian(s) of the MPF scheme/APIF and of any delegates of the custodian.
- (v) The investment management of MPF funds is subject to the investment restrictions as set out in the law.

#### **(b) Delegates of the Investment Manager**

- (i) With the approval of the trustee, the investment manager of an MPF scheme/APIF may delegate the investment management functions to a company/corporation that complies with the requirements set out in the General Regulation. The delegates of an investment manager should be authorized by recognized regulatory authorities and are associated with a Hong Kong based investment manager.
- (ii) The delegate of the investment manager must be independent of the trustee and custodian of the MPF scheme/APIF and of any delegates of the custodian.

## 5.6.2 Permissible Investments

A balance must be struck between the desire to safeguard assets and to allow a reasonable degree of flexibility for the investment manager in making investment decisions. A list of permissible investments for MPF schemes/APIFs has therefore been specified by law and includes investments such as:

### (a) **Equities and Other Securities**

Including fully-paid up shares listed on approved stock exchanges, index-tracking collective investment schemes approved by the MPFA, securities listed on approved stock exchanges that are approved by the MPFA, such as fully-paid up receipts or certificates listed on approved stock exchanges (with underlying shares also listed on stock exchanges), including American Depository Receipts (“ADR”), Global Depository Receipts (“GDR”), and interest in a real estate investment trust (“REIT”) listed on certain approved stock exchanges. Acquisition of partly paid-up shares and shares of collective investment schemes are not allowed for MPF investment purposes. However, investments in certain equities and other securities, authorized unit trusts and authorized mutual funds are subject to prescribed limits.

### (b) **Bank Deposits**

Bank deposits (“pure” deposit) must be placed with authorized financial institutions or eligible overseas banks and are subject to prescribed percentage limits to avoid an unduly large proportion of the funds deposited with one single financial institution.

### (c) **Debt Securities and Convertible Debt Securities**

Debt securities must be issued or guaranteed by a government or an organization of similar standing; or meet the credit rating requirements set by the Authority; or be listed on approved stock exchanges (if the debt securities are issued by, or guaranteed by, companies whose shares are so listed). Convertible debt securities listed on approved stock exchanges and convertible to shares that also listed on approved stock exchanges; or meet the credit rating requirements, are also permissible investments.

### (d) **Financial Derivatives**

Financial derivatives including financial futures and option contracts and currency forward contracts may be acquired subject to the restrictions as set out in the General Regulation. Warrants, another kind of financial derivatives, may only account for a maximum of 5% of the total funds of a constituent fund or APIF.

### **5.6.3 Other Investment Restrictions**

#### **(a) Spread of Investment**

Generally, the total amount invested in securities and permissible investments issued by any one person may not exceed 10% of the total assets of an MPF fund.

#### **(b) Restrictions on Borrowing and Lending of Securities**

- (i) No constituent fund of an MPF scheme or APIF may borrow securities.
- (ii) Securities held within a constituent fund of an MPF scheme or APIF may be lent provided no more than 10 per cent of the assets of the fund are lent. The lending is also subject to other requirements set out in the relevant MPF legislation and guidelines.

#### **(c) Restrictions on Borrowing of Money**

Money may be borrowed only if it is borrowed for the purpose of:

- (i) enabling accrued benefits to be paid to or in respect of scheme members;
- (ii) settling a transaction relating to the acquisition of securities or other investments.

The above is further subject to other requirements set out in the General Regulation.

#### **(d) Restrictions on Acquiring Securities that Carry an Unlimited Liability**

Securities involving the assumption of potential liabilities that are unlimited must not be acquired.

#### **(e) Investment Restriction on Employer Sponsored Schemes**

Employer-sponsored schemes may not have more than 10% of their assets in shares or other securities of, or issued by, the participating employer or its associates.

### **5.6.4 Hong Kong Dollar Currency Exposure**

At least 30% of a constituent fund of an MPF scheme must be held in Hong Kong dollar currency investments (i.e. investments that are denominated in Hong Kong dollars and their values are not linked to foreign currencies). Currency forward contracts may be used to meet this requirement.

## **5.7 FEES AND CHARGES**

Broadly speaking, fees charged on MPF schemes can be categorized into three types:

- (a) Asset-based fees such as trustee, custodian and investment management fees.
- (b) Lump sums charged to scheme members on an annual or one-off basis, such as joining fees or annual membership fees.
- (c) Event-based fees such as fees imposed on scheme members for investment directives they submit to the trustees.

The level of fees charged by trustees and service providers are mainly driven by competition and market forces. In general, the MPFA does not regulate the level of fees, however, certain requirements have to be observed by trustees and service providers, including:

- (a) The current and maximum levels of fees must be clearly communicated to scheme members.
- (b) Any amendments to the maximum level of fees have to be approved by the MPFA and the SFC before they take effect.
- (c) No additional initial charge can be imposed in relation to the management of a fund if the manager of the fund, or an associate of that manager, manages the relevant constituent fund.
- (d) For an MPF Conservative Fund, administrative expenses can only be deducted if the returns of the fund exceed the prescribed savings rate declared by the MPFA. Initial fees, redemption charges and bid and offer spreads are not allowed.

### **Fee Comparative Platform**

To help members better understand and compare fees and charges across MPF funds and schemes, the MPFA has developed the Fee Comparative Platform which is available on the MPFA website. The Fee Comparative Platform provides useful information for members' reference, e.g. fund expense ratio and risk level indicator. The Fee Comparative Platform is for general reference only and scheme members should refer to the source information from trustees. Apart from information on fee, there is also information on annualized return (five-year and ten-year). Scheme members should, however, be reminded that any past performance information is not necessarily indicative of future performance.

### **Low Fee Fund List**

To further enhance fund transparency, a Low Fee Fund List is also available on the MPFA website. In general, low fee funds are funds with a Fund Expense Ratio or current management fee below a certain limit. Other information such as fee and returns is also listed for general reference.

## 5.8 SWITCHING BETWEEN MPF SCHEMES/CONSTITUENT FUNDS

Important features of this include:

- (a) Scheme members may choose to invest their contributions in any constituent funds under the MPF scheme in which they participate.
- (b) Scheme members are allowed to change the choice of constituent funds at least once a year.
- (c) Employers may elect to participate in another MPF scheme by transferring the accrued benefits of their employees to the other scheme.
- (d) If there is a change in the ownership of a business, the new employer may elect to participate in another MPF scheme by transferring the accrued benefits of its employees to another scheme if the new employer has agreed to recognize the employees' length of employment with the previous employer and has assumed the liability of the previous employer for long service payment or severance payment in respect of the employees.
- (e) Upon termination of employment, an employee may choose to have their accrued benefits remain in the scheme or they may transfer them to an MPF scheme of their own choice, or to the MPF scheme of the new employer.
- (f) An employee can also transfer during their current employment, at least once per calendar year, any accrued benefits derived from the employee mandatory contributions from the MPF scheme chosen by their relevant employer to an MPF scheme of their own choice ("Employee Choice Arrangement").
- (g) Regardless of the frequency and type of transfer of accrued benefits, no fees or financial penalties may be charged to or imposed on a scheme member or deducted from the scheme member account, other than necessary transaction costs incurred or reasonably likely to be incurred in selling and buying investments in order to give effect to the transfer and are payable to a party other than the approved trustee.

## 5.9 CODE ON DISCLOSURE FOR MPF INVESTMENT FUNDS

To ensure employers and scheme members are provided with adequate information and to enable scheme members to make informed investment decisions, the MPFA has issued a Code on Disclosure for MPF Investment Funds ("Disclosure Code") to give guidance to trustees and other service providers about the disclosure of information on MPF schemes and constituent funds and information about fees, charges and performance. In summary, trustees are required to provide the following information to employers and scheme members:

### (a) **Fee Table**

In order to facilitate comparison and an "at a glance" understanding of fees and charges, all fees and charges are disclosed in a consistent manner and format in a fee table which includes:

- (i) all fees and charges;
- (ii) what a particular fee is for;
- (iii) the amount of each fee currently charged; and
- (iv) by whom each fee is payable.

The Fee Table must be included in the offering documents of the schemes.

(b) **On-going Cost Illustrations (“OCI”)**

This provides members and potential members with an OCI that shows in dollar terms, the costs that may be incurred by investing in a fund across defined time horizons based on a set of consistent assumptions. The OCI forms part of or is an accompaniment to the scheme offering document, and must be updated annually using the latest fund expense ratio data.

For those constituent funds that are MPF Conservative Funds, certain guaranteed funds and newly launched funds, no OCI is required. However, a separate illustrative example is required for MPF Conservative Funds.

(c) **Fund Fact Sheet**

To ensure that scheme members receive at least a basic level of information about the scheme, an approved trustee is required to prepare a fund fact sheet that contains the following information for each constituent fund:

- (i) The net asset value of each fund;
- (ii) The launch date of each fund;
- (iii) A brief description of the investment objectives of the fund and any change in the statement of investment policy and objectives since the last fund fact sheet;
- (iv) The allocations of assets of each fund;
- (v) The largest ten asset holdings as a percentage of fund net asset value;
- (vi) The periodic rate of return for the fund;
- (vii) A comparison of the fund’s performance against the benchmark, if any benchmark is used;
- (viii) The latest Fund Expense Ratio;
- (ix) A general indication about the level of risk of the fund;
- (x) A description of the fund type; and
- (xi) A discussion of fund performance, market review and market outlook.

At least two fund fact sheets must be issued for each financial year of a scheme. One fund fact sheet should be provided to members with the annual benefit statement and the other should be provided to members within two months after the reporting date (i.e. a date which is six months after the end of the scheme’s financial year).

(d) **Fund Expense Ratio (“FER”)**

The FER provides a measure of the expenses of a fund as a percentage of fund size. If the fund invests in an APIF or a number of APIFs, the FER will need to include fees and charges incurred at the APIF level.

The FER is calculated for all constituent funds and APIFs on an annual basis and is disclosed in the fund fact sheet, the OCI for constituent funds and the annual return of a scheme and an APIF. It is not necessary for funds with less than two years of history to show an FER.

(e) **Annual Benefit Statement (“ABS”)**

The ABS serves to confirm scheme membership and membership details, and the status and number of accounts held by the member. It helps check inflows and outflows including contributions, transfer and transactions, and to identify account balances and accruals, the extent to which they are vested, and the gains and losses associated with the accounts over the relevant financial period. The ABS is a historical record of the member's account at a point in time.

The content requirements of the ABS are set out in Part F of the Disclosure Code. The ABS must be issued within three months after the end of the financial period of a scheme.

## **5.10 ON-GOING MONITORING OF MPF INVESTMENT FUNDS**

In order to ensure compliance with MPF requirements on investment compliance and fund governance, the MPFA regularly performs various supervisory activities on and off-site, on MPF products. These include the following:

- (i) Examine the governance arrangements, compliance framework and detailed control measures via on and off-site supervision on those trustees and investment managers;
- (ii) Collect information on the portfolio holdings of MPF funds and conduct compliance checking of MPF investments;
- (iii) Review returns submitted by MPF trustees and follow up on any irregularities identified;
- (iv) Perform supervisory activities in relation to MPF custodian arrangements to ensure the safe-keeping of MPF assets;
- (v) Monitor individual MPF fund performance, and take necessary follow up action on trustees/investment managers;
- (vi) Assess investment breach cases reported by MPF trustees/identified by the MPFA and ensure that all breach cases are properly rectified, appropriate compensation is made to the affected MPF funds and effective preventive measures are implemented by trustees/investment managers to prevent recurrence of similar incidents;

- (vii) Conduct regular checking of approved index-tracking collective investment schemes in respect of the approval requirements; and
- (viii) Conduct regular sharing sessions for the compliance officers of MPF trustees and investment managers and issue newsletters to MPF trustees to keep them informed and up to date on the MPF legislation.

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## *Representative Examination Questions*

### Type “A” Questions

1 At least one of the constituent funds of an MPF scheme must:

- (a) be an MPF Conservative Fund; .....
- (b) consist totally of equity holdings; .....
- (c) consist only of investment in bonds; .....
- (d) be an approved pooled investment fund. ....

[Answer is in **5.3.2**]

2 Which of the following is not a type of approved pooled investment funds?

- (a) authorized unit trust; .....
- (b) authorized mutual fund; .....
- (c) investment fund governed by foreign law; .....
- (d) insurance policy. ....

[Answer is in **5.4.2**]

### Type “B” Questions

3 Which three of the following statements regarding constituent funds are true?

- (i) All constituent funds must be approved by MPFA
  - (ii) Investment in a constituent fund may be restricted to certain groups of MPF scheme members only
  - (iii) Each constituent fund has at least one dealing day a month
  - (iv) Each constituent fund must have its own stated investment policy
- 
- (a) (i), (ii) and (iii); .....
  - (b) (i), (ii) and (iv); .....
  - (c) (i), (iii) and (iv); .....
  - (d) (ii), (iii) and (iv). ....

[Answer is in **5.1** and **5.3.1**]

4 In which of the following circumstances will it not be permitted for the administrators to charge any administrative expenses to an MPF Conservative Fund in a particular month?

- (i) Fund's investment earnings \$3,000, return calculated based on prescribed savings rate \$2,000
- (ii) Fund's investment earnings \$3,000, return calculated based on prescribed savings rate \$3,000
- (iii) Fund's investment earnings \$3,000, return calculated based on prescribed savings rate \$4,000
- (iv) Fund's investment earnings \$6,000, return calculated based on prescribed savings rate \$5,000

- (a) (i) and (ii); .....
- (b) (i) and (iii); .....
- (c) (ii) and (iii); .....
- (d) (iii) and (iv). .....

[Answer is in **5.3.2**]

5. Which of the following information must be included in the Fee Table?

- (i) all fees and charges
- (ii) the amount of each fee currently charged
- (iii) what a particular fee is for
- (iv) by whom each fee is payable

- (a) (i) and (iii); .....
- (b) (i), (ii) and (iii); .....
- (c) (ii), (iii) and (iv); .....
- (d) (i), (ii), (iii) and (iv). .....

[Answer is in **5.9**]

*[If required, answers may be found at the end of the Study Notes.]*

## **6 INTERFACE ARRANGEMENTS BETWEEN ORSO SCHEMES AND THE MPF SYSTEM**

ORSO schemes refer to retirement schemes regulated by the Occupational Retirement Schemes Ordinance (“ORSO”). There are many interactions between ORSO schemes and the MPF System.

Unlike MPF schemes which are established under a compulsory system, an ORSO scheme is a voluntary retirement scheme set up by an employer to provide benefits to employees in the form of pensions, allowances, gratuities or other payments, payable on termination of service, death or retirement. Other than MPF schemes, all retirement schemes operated in and from Hong Kong, with certain exceptions, need to be either registered or exempted under ORSO. Considerable flexibility is allowed in drawing up the rules and provisions of such schemes.

### **6.1 TYPES OF ORSO SCHEMES**

There are various ways of classifying ORSO schemes, for example: by type of benefits provided, by being ORSO registered or exempted or, by having MPF exemption.

#### **6.1.1 Types of Benefits Provided**

According to the types of benefits provided, ORSO schemes can be classified into two categories:

##### **(a) Defined Contribution Schemes**

Both the employer’s and employees’ contribution rates are defined, and the amount of benefits accrued is based on the accumulated contributions and investment income.

##### **(b) Defined Benefit Schemes**

The employer’s contribution rates are not defined but are recommended by an actuary from time to time after performing actuarial valuations. The amount of benefits a member is entitled to is generally based on a formula with reference to their age, years of service, final average salary etc.

Hybrid schemes incorporating both defined contribution schemes and defined benefit schemes features are also classified as defined benefit schemes.

#### **6.1.2 ORSO Registered or ORSO Exempted**

An ORSO scheme can also be classified as either of the following:

(a) **ORSO Registered Schemes**

As mentioned above, all retirement schemes operated in and from Hong Kong need to be registered under ORSO, except those which fall within one of the following categories:

- (i) Schemes contained in or established by any ordinance other than the ORSO (for example, an MPF scheme established under the MPFSO);
- (ii) Schemes set up by the government of a country or territory outside Hong Kong or its agency not operating for the purpose of gain;
- (iii) Schemes that satisfy the criteria for ORSO exemption.

As (i) and (ii) do not fall within the ambit of ORSO, application for ORSO registration or ORSO exemption is not required. For (iii), application for ORSO exemption instead of ORSO registration is required.

(b) **ORSO Exempted Schemes**

This refers to schemes mentioned in (a)(iii) above. These schemes are exempt from ORSO registration, either because they are offshore schemes satisfying certain requirements, or they have a certain number of members who are Hong Kong permanent identity card holders below the prescribed limit.

### **6.1.3 MPF Exempt or Not**

From the perspective of MPF intermediaries, this should be the most pertinent way of classification of ORSO schemes. This classification came about due to the introduction of the MPF System in Hong Kong at which time, ORSO schemes were faced with various options. One of these options was to apply for MPF exemption, so that the employer and employees covered by the scheme were exempt from MPF requirements.

(a) **MPF Exempted ORSO Schemes**

These schemes satisfy the requirements for applying for MPF exemption certificates. They can be ORSO registered schemes or exempt schemes, and can be either closed or open to new members.

(b) **Non-MPF Exempted ORSO Schemes**

Schemes that were not granted MPF exemption certificates, either because they did not qualify or did not apply, fall into this category.

The criteria for granting an MPF exemption certificate are discussed in **6.3**.

## 6.2 COMPARISON OF FEATURES

It is useful to compare some MPF features with the corresponding features under ORSO schemes.

MPF	ORSO <sup>1</sup>		
	<i>Non-MPF exempted ORSO schemes</i>	<i>MPF exempted ORSO exempted schemes</i>	<i>MPF exempted ORSO registered schemes</i>
(a) Is always a defined contribution scheme	(a) May be a defined contribution scheme or a defined benefit scheme		
(b) Mandatory	(b) Voluntary		
(c) Governed by Hong Kong law	(c) May be governed by a law outside Hong Kong		
(d) Vesting 100% of employer's mandatory contributions immediately	(d) Vesting of employer's contributions is subject to the governing rules of the scheme		
(e) Trustee must be approved	(e) Approval of trustee is not required	(e) Approval for trustee is required	
(f) Other features: <ul style="list-style-type: none"> <li>• All relevant employees being employed for 60 days or more must join unless exempted</li> <li>• Minimum contribution rate</li> <li>• Benefits to be preserved</li> <li>• Benefits portable</li> <li>• Relevant income defined</li> <li>• Minimum relevant income</li> <li>• Maximum relevant income</li> <li>• Eligibility requirements for: <ul style="list-style-type: none"> <li>- Trustees / Investment Managers / Custodians</li> </ul> </li> </ul>	(f) No equivalent provisions required	(f) Other features: <ul style="list-style-type: none"> <li>• “Minimum MPF benefits” to be preserved for new members (see <b>6.5.3</b>)</li> <li>• “Minimum MPF benefits” are portable for new members (see <b>6.5.3</b>)</li> <li>• Minimum standards for: <ul style="list-style-type: none"> <li>- Trustees / Investment Managers</li> </ul> </li> </ul>	

<sup>1</sup> For illustration purposes, we have classified ORSO schemes into 3 categories as follows:

- Non-MPF exempted ORSO schemes (i.e. ORSO registered and exempted schemes that have not obtained MPF exemption)
- MPF exempted ORSO exempted schemes (i.e. ORSO exempted schemes that have obtained MPF exemption)
- MPF exempted ORSO registered schemes (i.e. ORSO registered schemes that have obtained MPF exemption)

The above three types of schemes share common features under (a) to (d). Under features (e) to (f), there are disparities between “Non-MPF exempted ORSO schemes and MPF exempted ORSO exempted schemes (which still share common features)” and “MPF exempted ORSO registered schemes”.

### **6.3 EXEMPTION CRITERIA**

To qualify for MPF exemption, the scheme must be an “ORSO exempted scheme” or a “relevant ORSO registered scheme” as defined in the Mandatory Provident Fund Schemes (Exemption) Regulation (the “Exemption Regulation”). Other exemption criteria may also need to be satisfied.

The deadline for submission of an application for MPF exemption in respect of an ORSO exempted scheme or a relevant ORSO registered scheme was 3 May 2000. Hence, no MPF exemption will be granted in respect of those MPF exemption applications made after 3 May 2000, except for successor schemes. For successor schemes, MPF exemption may be granted even if the MPF exemption application is made after 3 May 2000, provided that the scheme is the successor scheme of a relevant ORSO registered scheme and is established as a result of a genuine business transaction such as business restructuring etc. For successor schemes that successfully obtain MPF exemption, the existing members<sup>2</sup> of the MPF exempted ORSO schemes transferred to the successor scheme may retain their “existing member” status (i.e. no need to be bound by the “minimum MPF benefits” provisions) under the successor scheme.

An MPF exempted ORSO scheme is still subject to the ORSO requirements; in addition there are other requirements under the Exemption Regulation. Under the Exemption Regulation, the requirements imposed upon an MPF exempted ORSO registered scheme are more onerous than those imposed upon an MPF exempted ORSO exempted scheme (see 6.6).

### **6.4 DIFFERENT FORMS OF ORSO SCHEMES FOLLOWING THE INTRODUCTION OF THE MPF SYSTEM**

Due to the introduction of the MPF System, an employer who already operated an ORSO scheme had to decide whether and to what extent, they should continue that scheme. Whatever the decision was, the employer of the ORSO scheme had to follow the scheme terms whenever there was/is a change of the scheme or scheme particulars. Some of the factors that influenced their decision included:

- (a) whether the current employment contracts stipulated certain retirement protection arrangements; if so, they would have to continue the existing ORSO scheme for existing employees who wished to do so;
- (b) the relevant administration and other costs involved in operating ORSO and MPF schemes;
- (c) the feasibility of a total transfer of the existing scheme assets into an MPF scheme.

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<sup>2</sup> “Existing member” is defined as “a relevant employee who became a member of the scheme before or on 1 December 2000”. A “relevant employee” means an employee of 18 years of age or over and below 65.

If the employer decided to continue their ORSO scheme, the scheme would now be in one of the following forms:

(a) **MPF Exempted ORSO Scheme with Open Membership**

The employer offers the MPF exempted ORSO scheme to new eligible employees<sup>3</sup>. When doing so, the employer is obliged to offer an option to these relevant employees to choose between the ORSO scheme and an MPF scheme. For existing members, the employer should have offered them an option to join an MPF scheme in 2000.

(b) **MPF Exempted ORSO Scheme with Closed Membership**

The scheme is an MPF exempted ORSO scheme, but new relevant employees are not permitted to join this ORSO scheme and need to be covered under an MPF scheme. Existing members could continue to accrue benefits under the ORSO scheme. Again, existing members had to be offered the option to join an MPF scheme.

(c) **“Top-up” ORSO Scheme**

This option implies that all employees would be covered under an MPF scheme, but the existing ORSO scheme would be modified to provide extra benefits for existing (and perhaps also new eligible) employees. Effectively this means that contributions to the ORSO scheme would become supplementary contributions, over and above the minimum MPF contribution requirements.

(d) **“Frozen” ORSO Scheme**

There will be no future contributions made to the ORSO scheme with respect to future service. The benefits of existing members under the ORSO scheme would continue to accrue investment returns until the members are entitled to receive benefits in accordance with the governing rules of the scheme. The employer would have to enrol all existing members and new relevant employees into an MPF scheme and make mandatory contributions.

On the other hand, the employer may have decided to terminate their ORSO scheme when the MPF System began in 2000, or may have continued to operate their ORSO scheme under one of the above mentioned forms for a while but ultimately decided to terminate the scheme.

Upon terminating an ORSO scheme, the employer can, subject to the terms of the scheme:

- (a) close the scheme completely and pay out all liabilities thereunder (with the exception of “minimum MPF benefits” that need to be preserved for new members (see **6.5.3**)); or
- (b) close the scheme completely and transfer all scheme assets into an MPF scheme / another ORSO scheme, which thereby replaces the ORSO scheme.

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<sup>3</sup> “New eligible employee” is defined as “a relevant employee who is, or will become, eligible to be a member of the scheme”.

Generally, if the employer decides to pay out the liabilities, the portion of accrued benefits attributable to the employer's contributions are taxable to the employees since the benefits have not been received in the prescribed circumstances (i.e. retirement, death, incapacity and termination of service) which enable the benefits to be totally or partially exempt from Hong Kong salaries tax.

Moreover, the employer should be mindful of the charges or losses that may be incurred upon scheme termination, particularly with respect to termination cost and guarantee provisions.

In the event of the winding up of an ORSO scheme, the employer must notify the Registrar of Occupational Retirement Schemes and each scheme member of that fact, within 14 days of the commencement of the winding up.

## **6.5 IMPLICATIONS FOR EXISTING MEMBERS AND NEW ELIGIBLE EMPLOYEES**

Whatever arrangement has been adopted, there are implications for the relevant employees concerned. Where an application has been made for MPF exemption of an ORSO scheme, the following considerations arise:

### **6.5.1 Existing Members Opting to Remain in an MPF Exempted ORSO Registered Scheme**

If the ORSO registered scheme is granted an MPF exemption, an existing member knows that their existing and future benefits in the scheme will not be subject to the preservation, portability and withdrawal requirements in respect of their "minimum MPF benefits" (see 6.5.3).

The non-applicability of these requirements could be to the member's advantage if they leave the employer before retirement age, since they would (depending on the governing rules of the scheme or trust deed) then be entitled to receive the relevant termination of service benefit in cash at that time.

Moreover, upon dismissal for cause from employment, the trustee cannot forfeit an existing member's "minimum MPF benefits".

### **6.5.2 Existing Members Opting to Join an MPF Scheme**

Existing members who opt to join an MPF scheme are required to make the statutory mandatory contributions to the MPF scheme with their employer. Under the Exemption Regulation, all accrued benefits under the ORSO registered scheme should remain in that scheme until the employee becomes entitled to receive them. However, the member's rights may be treated otherwise if the member's consent has been obtained and it is allowed under the governing rules of the ORSO scheme.

### **6.5.3 New Eligible Employees Opting to Join an MPF Exempted ORSO Registered Scheme**

Unlike existing members, a new eligible employee who opts to join such a scheme and becomes a new member would be subject to the “preservation, portability and withdrawal” requirements in relation to their “minimum MPF benefits”. The essence of these requirements is that the “minimum MPF benefits” cannot be paid out until attainment of age 65, early retirement at age 60, permanent departure from Hong Kong, total incapacity, terminal illness or death of the new member. Moreover, upon change of employment and subject to statutory exceptions, the “minimum MPF benefits” must be transferred to an MPF scheme.

“Minimum MPF benefits” is defined as the lesser of:

- (a) the member’s benefits accrued and held under the scheme during the period when the exemption certificate applied to the scheme;
- (b)  $1.2 \times$  final average monthly relevant income (capped at \$25,000 on or before 31 May 2014 or \$30,000 on or after 1 June 2014)  $\times$  years of post-MPF service<sup>4</sup>.

Note: A trustee cannot forfeit the member’s “minimum MPF benefits” upon dismissal for cause, whether the members are existing members or new members.

## **6.6 ON-GOING REQUIREMENTS FOR MPF EXEMPTED ORSO SCHEMES**

In accordance with the requirements of the Exemption Regulation, the relevant employer of an ORSO exempted scheme to which an MPF exemption certificate relates is required to:

- (a) **Exhibition and Provision of Exemption Certificate**
  - (i) display the exemption certificate at all times in a conspicuous position at:
    - the relevant employer’s principal office in Hong Kong;
    - if there is no such office, each premise where a member of the ORSO scheme is employed by them.
  - (ii) provide each member with a copy of the MPF exemption certificate.

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<sup>4</sup> “Years of post-MPF service” is defined as the member’s continuous years of service (including part thereof) from the date they joined the scheme, 1 December 2000, or (if the member was previously paid on the ground of terminal illness) the date on which the trustee of the scheme received his claim for which benefits were last paid, whichever is the latest, to the earliest of:

- the termination of his employment;
- in the case of the winding up of the scheme, the date on which he ceases to be a member;
- the date on which the withdrawal of the exemption certificate takes effect; or
- the date on which the trustee of the scheme receives his latest terminal illness claim for which benefits have not been paid.

(b) **Option Offering**

To provide an option to new eligible employees to choose between the MPF exempted ORSO scheme and an MPF scheme<sup>5</sup>.

For an MPF exempted ORSO registered scheme, in addition to the above requirements, the relevant employer is also required to comply with the following:

(i) **Upon Reduction of Employee's Future Benefits**

To provide an option to affected members again to choose between the ORSO scheme and an MPF scheme whenever the relevant employer decides to reduce any member's future benefits or rights under the ORSO registered scheme.

(ii) **Appointment and Retirement of Trustees**

To ensure that the person who has the power to retire or appoint a trustee (be it a corporate trustee or an individual trustee) applies in writing for the MPFA's prior approval before retiring or appointing the trustee of the scheme ("prior approval requirements"). In the case of a corporate trustee changing its directors, the former must obtain the MPFA's prior approval before retiring and appointing its directors if it is not:

- a registered trust company in Hong Kong ("RTC"); or
- an overseas trust company which is comparable to a RTC and has a significant presence and control in Hong Kong.

The MPFA has exercised its power to exempt the person who has the power to retire or appoint a trustee which is a RTC from these prior approval requirements. Instead, the employer of the scheme must notify the MPFA in writing within one month after the date of appointment or retirement of the RTC. However, if the appointee/retiree is not an RTC, the prior approval requirements still apply.

(iii) **Appointment of Investment Managers**

When appointing an investment manager for a scheme on or after 1 December 2000, the Exemption Regulation requires that it must be an investment management company that:

- is a corporation licensed to carry on, or an authorized institution registered for carrying on, a business of Type 9 (asset management) regulated activity under Part V of the Securities and Futures Ordinance; or
- is a company authorized by an overseas authority recognized by the MPFA to carry on a business in asset management.

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<sup>5</sup> If the employees are required by an enactment of a place outside Hong Kong to remain as / become a member of the ORSO scheme and make contributions to the scheme, the employer is not required to provide such an option to these employees.

You are reminded that the above list of on-going requirements imposed under the Exemption Regulation on an MPF exempted ORSO scheme includes the major requirements only and is by no means exhaustive.

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## *Representative Examination Questions*

### Type “A” Questions

- 1 An MPF scheme in Hong Kong is:
- (a) always a defined benefit scheme; .....
  - (b) never a defined contribution scheme; .....
  - (c) always a defined contribution scheme; .....
  - (d) sometimes a defined contribution scheme. ....
- [Answer is in **6.2**]

### Type “B” Questions

- 2 Which of the following statements is/are true, if it is decided to wind up an existing ORSO scheme and replace it with an MPF scheme?
- (i) the ORSO scheme may be closed and all liabilities paid out
  - (ii) all assets may be transferred to the MPF scheme
  - (iii) the ORSO scheme cannot be closed, as liabilities may arise later
  - (iv) the ORSO scheme may be closed, but members will then lose all their benefits
- (a) (i) only; .....
  - (b) (i) and (ii) only; .....
  - (c) (ii) and (iii) only; .....
  - (d) (iii) and (iv) only. ....
- [Answer is in **6.4**]

*[If required, answers may be found at the end of the Study Notes.]*

## **7 MPF INTERMEDIARIES**

This Chapter explains to readers how MPF intermediaries are regulated and what minimum standards of conduct are expected of them. It is therefore important for those who intend to become MPF intermediaries to pay special attention to the notes which follow, especially the part that relates to the Guidelines on Conduct Requirements for Registered Intermediaries.

### **7.1 REGULATION OF MPF INTERMEDIARIES**

With rising public expectation towards investor protection in recent years, the MPFA has reviewed the administrative arrangements for the regulation of intermediaries in place since inception of the MPF System and recommended that this administrative regulatory regime should be strengthened by statute. The Government has agreed that it would be prudent to establish a statutory regulatory framework for MPF intermediaries to better protect scheme members.

As a result, the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012 was enacted by the Legislative Council in June 2012 and came into effect on 1 November 2012. Under the statutory regime, the MPFA is the authority to administer the registration of MPF intermediaries, to issue guidelines on compliance with statutory requirements applicable to registered MPF intermediaries, and to impose disciplinary sanctions. The Monetary Authority (“MA”), Insurance Authority (“IA”) and Securities and Futures Commission (“SFC”) have been given the statutory role as frontline regulators (“FRs”) responsible for the supervision and investigation of registered MPF intermediaries whose core business is in banking, insurance and securities respectively.

The key elements in the statutory regime for the regulation of MPF intermediaries include following aspects:

- (a) prohibition against carrying on regulated activities;
- (b) registration requirements for MPF intermediaries;
- (c) regulatory scope of FRs;
- (d) conduct requirements for registered intermediaries;
- (e) other requirements for registered intermediaries;
- (f) supervisory and disciplinary powers; and
- (g) appeal mechanism for decisions on registration and disciplinary sanctions.

### **7.2 REGULATORY FRAMEWORK**

#### **7.2.1 Prohibition against Carrying on Regulated Activities etc.**

##### **(a) Definition of Regulated Activity, Material Decision, Regulated Advice, and Regulated Person**

The Mandatory Provident Fund Schemes Ordinance (“MPFSO”) prohibits persons from carrying on (or holding themselves out as carrying on) a “regulated activity” in the course of their business or employment, or for reward, unless an exception applies (see **7.2.1 (b)** for details).

A person carries on a “regulated activity” if that person either:

- (i) invites or induces, or attempts to invite or induce, another person to make a “material decision”; or
- (ii) gives “regulated advice”.

Despite the above, a person does not carry on a regulated activity if:

- (i) the person issues an advertisement, invitation or document; and
- (ii) the issue is authorized by the SFC under section 105 of the Securities and Futures Ordinance.

A person makes a “material decision” if the person makes a decision in relation to the following matters:

- (i) whether, or when, to apply to join or become a member of a particular MPF scheme;
- (ii) whether, or when, to apply to participate in a particular MPF scheme as an employer;
- (iii) whether, or when, to pay contributions (including voluntary contributions) to a particular MPF scheme, or to invest in a particular constituent fund of an MPF scheme;
- (iv) the amount of contributions (including voluntary contributions) to be paid to a particular MPF scheme, or the amount to be invested in a particular constituent fund of an MPF scheme;
- (v) whether, or when, to transfer accrued benefits from a particular MPF scheme to another particular MPF scheme, or from a particular constituent fund of an MPF scheme to another particular constituent fund of the MPF scheme;
- (vi) the amount of accrued benefits to be transferred from a particular MPF scheme to another particular MPF scheme, or from a particular constituent fund of an MPF scheme to another particular constituent fund of the MPF scheme;
- (vii) whether, or when, to transfer benefits from an occupational retirement scheme to a particular MPF scheme;
- (viii) the amount of benefits to be transferred from an occupational retirement scheme to a particular MPF scheme;
- (ix) whether, or when, to make a claim for the payment of accrued benefits from an MPF scheme; and

- (x) the amount of a claim for the payment of accrued benefits from an MPF scheme.

A person gives “regulated advice” if the person gives an opinion in relation to any “material decision”.

A “regulated person” means (i) a registered intermediary (i.e., a principal intermediary or a subsidiary intermediary); or (ii) a responsible officer of a principal intermediary.

## **(b) Prohibitions against Carrying on Regulated Activities, and Exceptions**

### **Prohibitions against carrying on regulated activities**

- (i) Section 34L(1) of the MPFSO prohibits a person from carrying on regulated activities in the course of the person’s business or employment; or for reward.
- (ii) Section 34L(2) of the MPFSO prohibits a person from holding themselves out as carrying on regulated activities in the course of the person’s business or employment; or as carrying on regulated activities for reward.
- (iii) Section 34L(3) of the MPFSO prohibits a person from taking or using the title of “principal intermediary” or “subsidiary intermediary”, “主事中介人” or “附屬中介人”; or any other title suggesting that the person carries on the regulated activities in the course of the person’s business or employment; or for reward.

### **Exceptions to Prohibitions**

Section 34L of the MPFSO does not prohibit:

- (i) (1) a principal intermediary from carrying on regulated activities in the course of the principal intermediary’s business or holding themselves out as so carrying on regulated activities; or  
(2) a subsidiary intermediary attached to a principal intermediary from carrying on regulated activities in the course of acting as an employee, agent or representative of the principal intermediary or holding themselves out as so carrying on regulated activities;
- (ii) a principal intermediary from taking or using the title of “principal intermediary” or “主事中介人” or a subsidiary intermediary from taking or using the title of “subsidiary intermediary” or “附屬中介人”; and
- (iii) certain other kinds of persons or corporations from carrying on regulated activities or giving regulated advice or holding themselves out as so doing under certain circumstances which are set out in section 34M(3) to (6) of

the MPFSO:

- (1) An approved trustee, a participating employer, or a service provider is not prohibited from carrying on regulated activities for the purpose of complying with a requirement under the MPFSO.
- (2) The MPFA is not prohibited from carrying on regulated activities for the purpose of performing a function under the MPFSO.
- (3) A solicitor, counsel, or a certified public accountant is not prohibited from giving regulated advice wholly incidental to his/her practice.
- (4) A trust company registered under the Trustee Ordinance (other than an approved trustee) is not prohibited from giving regulated advice wholly incidental to the discharge of its duty.
- (5) A person is not prohibited from giving regulated advice through (i) a newspaper, magazine, book or other publication that is made generally available to the public (excluding one that is made available on subscription only); or (ii) a television broadcast or radio broadcast for reception by the public.
- (6) A company is not prohibited from giving regulated advice to its wholly owned subsidiary, another company that holds all its issued shares, or a wholly owned subsidiary of the company that holds all its issued shares.

**(c) Offence and Penalty Relating to Prohibitions**

- (i) A person who, without reasonable excuse or otherwise being exempted, carries on regulated activities in the course of the person's business or employment or for reward (or holds himself out as doing so), contravenes the prohibitions against carrying on regulated activities, commits an offence and is liable:
  - (1) on conviction on indictment to a fine of \$5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for each day on which the offence is continued; or
  - (2) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for each day on which the offence is continued.
- (ii) If a person contravenes the prohibitions by carrying on regulated activities for another person in the course of acting as an employee, agent or representative of that other person, or for holding themselves out as so carrying on regulated activities, the person is liable:

- (1) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$20,000 for each day on which the offence is continued; or
- (2) on summary conviction to a fine at \$100,000 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$2,000 for each day on which the offence is continued.
- (iii) A person who, without reasonable excuse, contravenes the prohibition by taking/using the title of principal intermediary or subsidiary intermediary or certain related titles, commits an offence and is liable on conviction to a fine at \$100,000 and, in the case of a continuing offence, to a further fine of \$2,000 for each day on which the offence is continued.

## **7.2.2 Registration Requirements for MPF Intermediaries**

There are two types of registered intermediaries, namely, principal intermediary and subsidiary intermediary.

- (i) Principal intermediary refers to a business entity (Type A regulatee) registered by the MPFA as an intermediary to carry on regulated activities.
- (ii) Subsidiary intermediary refers to a person (Type B regulatee) registered by the MPFA as an intermediary to carry on regulated activities for a principal intermediary to which the person is attached.

### **(a) Application for Registration as Principal Intermediary**

For application for registration as a principal intermediary for carrying on regulated activities under section 34T(1) of the MPFSO,

- (i) the principal applicant<sup>1</sup> must be a Type A regulatee\* of an industry regulator;
- (ii) within 1 year immediately before the date of the application, the principal applicant has not had any qualification as a Type A regulatee revoked on disciplinary grounds (section 34J(1) of the MPFSO);
- (iii) the principal applicant does not have any qualification as a Type A regulatee suspended (section 34J(2) of the MPFSO);
- (iv) within 1 year immediately before the date of the application, the principal applicant has not had a registration as a registered intermediary revoked by the MPFA under section 34ZW(3)(a)(i) of the MPFSO; and

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<sup>1</sup> Principal applicant means a person who applies under section 34T(1) for registration as an intermediary to carry on regulated activities.

- (v) the principal applicant is not disqualified by the MPFA under section 34ZW(3)(a)(ii) of the MPFSO from being registered as an intermediary for carrying on regulated activities.

According to section 34T(2) of the MPFSO, there must be accompanying applications for application as a principal intermediary at the same time as follows:

**EITHER**

If the principal applicant wants to apply for an existing subsidiary intermediary to act as the responsible officer for the principal applicant,

- (i) (1) an application made by the principal applicant under section 34V(1) of the MPFSO for approval of attachment of a subsidiary intermediary to the principal applicant for the purpose of carrying on regulated activities; and
- (2) an application made by the principal applicant under section 34W(1) of the MPFSO for approval of the subsidiary intermediary as a responsible officer in relation to the principal applicant.

**OR**

If the applicant wants to apply for an individual who is not yet registered as a subsidiary intermediary to act as the responsible officer for the principal applicant,

- (ii)(1) an application made by an individual under section 34U(1) of the MPFSO for registration as an intermediary for carrying on regulated activities for a principal intermediary to which the individual is to be attached;
- (2) an application made by the principal applicant under section 34V(1) of the MPFSO for approval of attachment of the individual to the principal applicant for the purpose of carrying on regulated activities; and
- (3) an application made by the principal applicant under section 34W(1) of the MPFSO for approval of the individual as a responsible officer in relation to the principal applicant.

**\*Type A regulatee means:**

- (i) in relation to the IA, (1) a company that is authorized under the Insurance Ordinance (“IO”) to carry on long term insurance business within the meaning of the IO; or (2) a licensed long term insurance broker company.
- (ii) in relation to the MA, an authorized financial institution<sup>2</sup> that is registered under the Securities and Futures Ordinance (“SFO”) for Type 1 or Type 4 regulated activity, or both, within the meaning of the SFO.
- (iii) in relation to the SFC, a corporation that is licensed under the SFO to carry on Type 1 or Type 4 regulated activity, or both, within the meaning of the SFO.

Please note that the MPFA may only register an applicant as registered principal intermediary if it is satisfied that, in addition to the criteria set out above, the relevant criteria for approval in relation to the accompanying applications are satisfied.

**(b) Application for Registration as Subsidiary Intermediary**

An applicant may apply to the MPFA for registration as a subsidiary intermediary under section 34U(1) of the MPFSO for carrying on regulated activities for a principal intermediary to which the applicant is to be attached. Such application must be accompanied by an application made by a principal intermediary for approval of attachment of the applicant to the principal intermediary for the purpose of carrying on regulated activities.

For application for registration as a subsidiary intermediary under section 34U(1) of the MPFSO,

- (i) the principal applicant<sup>3</sup> is a Type B regulatee\*\* of an industry regulator but not a Type A regulatee of any industry regulator;
- (ii) within 1 year immediately before the date of the application, the principal applicant has not had any qualification as a Type B regulatee revoked on disciplinary grounds (section 34K(1) of the MPFSO);
- (iii) the principal applicant does not have any qualification as a Type B regulatee suspended (section 34K(2) of the MPFSO);
- (iv) within 1 year immediately before the date of the application, the principal applicant has not had a registration as a registered intermediary revoked by the MPFA under section 34ZW(3)(a)(i) of the MPFSO;

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<sup>2</sup> Authorized financial institution means an authorized institution as defined by section 2(1) of the Banking Ordinance. Under the Banking Ordinance, an authorized institution means (a) a bank; (b) a restricted licence bank; or (c) a deposit-taking company.

<sup>3</sup> Principal applicant means a person who applies under section 34U(1) for registration as a subsidiary intermediary to carry on regulated activities for a principal intermediary to which the person is to be attached.

- (v) the principal applicant is not disqualified by the MPFA under section 34ZW(3)(a)(ii) of the MPFSO from being registered as an intermediary for carrying on regulated activities for a principal intermediary to which the principal applicant is to be attached; and
- (vi) if the principal applicant is an individual, the principal applicant has, within 1 year immediately before the date of the application, passed a qualifying examination<sup>4</sup> specified by the MPFA. This will not be applicable if within 3 years immediately before the date of the application, the principal applicant has been registered as a subsidiary intermediary and that registration has been revoked, and the revocation, or the last revocation (if there is more than one), is not made due to non-compliance with the continuing training requirement.

According to section 34U(2) of the MPFSO, the application for registration as a subsidiary intermediary must be accompanied by an application made by a principal intermediary under section 34V(1) of the MPFSO for approval of attachment of the principal applicant to the principal intermediary for the purpose of carrying on regulated activities.

**\*\*Type B regulatee means:**

- (i) in relation to the IA,
  - (1) a licensed long term individual insurance agent;
  - (2) a licensed long term insurance agency; or
  - (3) a licensed long term technical representative.
- (ii) in relation to the MA,
  - (1) a relevant individual who is registered under section 20 of the Banking Ordinance (“BO”) as engaged in Type 1 or Type 4 regulated activity, or both, within the meaning of the SFO; or
  - (2) a person who, with the consent of the MA under section 71C of the BO, is an executive officer of a registered institution appointed under section 71D of the BO to be responsible for directly supervising the conduct of each business conducted by the registered institution that constitutes Type 1 or Type 4 regulated activity, or both, within the meaning of the SFO.
- (iii) in relation to the SFC, a person who is licensed under section 120 of the SFO to carry on Type 1 or Type 4 regulated activity, or both, within the meaning of the SFO.

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<sup>4</sup> The following examinations are the qualifying examinations specified for section 34U(4)(f) of the MPFSO:  
(a) the “Mandatory Provident Fund Schemes Examination” conducted by the Vocational Training Council; and  
(b) the “MPF Intermediaries Examination” conducted by the Hong Kong Securities and Investment Institute.

**(c) Application for Approval of Attachment of a Subsidiary Intermediary to a Principal Intermediary**

A principal intermediary or a person who applies for registration as a principal intermediary (the applicant) may apply to the MPFA for approval of attachment of another person to the applicant for the purposes of carrying on regulated activities for the applicant.

For application for approval of attachment of a subsidiary intermediary to the applicant for the purposes of carrying on regulated activities under section 34V(1) of the MPFSO,

- (i) the applicant consents to the subsidiary intermediary being an intermediary for carrying on regulated activities for the applicant;
- (ii) the subsidiary intermediary is employed by, or acts as an agent or representative for, the applicant ; and
- (iii) the subsidiary intermediary is a Type B regulatee of an industry regulator that is the frontline regulator of the applicant.

**(d) Application for Approval of an Individual as Responsible Officer**

An applicant who applies for registration as a principal intermediary or a principal intermediary may apply to the MPFA for approval of an individual as an officer with specified responsibilities in relation to the applicant.

For application by a principal intermediary or a corporation applying to be a principal intermediary for approval of an individual as its responsible officer under section 34W(1) of the MPFSO,

- (i) the individual is a subsidiary intermediary attached to the applicant;
- (ii) the individual has sufficient authority within the applicant, and will be provided with sufficient resources and support, for carrying out specified responsibilities in relation to the applicant;
- (iii) within 1 year immediately before the date of the application, the individual has not had an approval as a responsible officer revoked by the MPFA under section 34ZW(4)(a)(i) of the MPFSO; and
- (iv) the individual is not disqualified by the MPFA under section 34ZW(4)(a)(ii) of the MPFSO from being approved as a responsible officer in relation to a principal intermediary.

**(e) Conditions Imposed on Approval of Application**

- (i) The MPFA may impose any conditions on registration of a principal or subsidiary intermediary, approval of attachment of a subsidiary intermediary to a principal intermediary or approval of an individual as a responsible officer of a principal intermediary (section 34X(1)&(2) of the MPFSO), as it considers appropriate.
- (ii) The MPFA may also impose any conditions on registration and/or approval that it considers appropriate after it has registered or approved a person or individual (section 34X(3) of the MPFSO) and even if it has already imposed a condition (section 34X(4) of the MPFSO).
- (iii) The MPFA may amend or revoke any conditions imposed (section 34X(5) of the MPFSO).
- (iv) The MPFA will notify in writing to the relevant parties where conditions are imposed, amended or revoked (section 34X(6) of the MPFSO).
- (v) If there are conditions imposed or amended, the MPFA will include a statement of reasons (section 34X(7) of the MPFSO).

**(f) Assignment of Frontline Regulators**

**(i) For a Principal Intermediary**

As soon as practicable after the MPFA registers a person as a principal intermediary, the MPFA shall assign an industry regulator as the frontline regulator of the person (section 34Z(1) of the MPFSO).

**(ii) For a Subsidiary Intermediary**

As soon as practicable after the MPFA approves the attachment of a subsidiary intermediary to a principal intermediary, the MPFA will assign the frontline regulator of the principal intermediary as the frontline regulator of the subsidiary intermediary in its/his/her capacity as a subsidiary intermediary attached to the principal intermediary (section 34ZA(1) of the MPFSO).

**(iii) For a Responsible Officer**

As soon as practicable after the MPFA approves an individual as a responsible officer of a principal intermediary, the MPFA will assign the frontline regulator of the principal intermediary as the frontline regulator of the individual in his/her capacity as a responsible officer of the principal intermediary (section 34ZB(1) of the MPFSO).

**(g) Public Register of Registered Intermediaries**

The MPFA maintains a register of all registered MPF intermediaries which can be accessed by the public through the internet ([www.mpfa.org.hk](http://www.mpfa.org.hk)). The public may also check an MPF intermediary's registration status by:

- (i) calling the MPFA hotline on 2918 0102; or
- (ii) visiting the MPFA offices.

### **7.2.3 Regulatory Scope of Frontline Regulators**

All registered MPF intermediaries are subject to supervisory oversight by frontline regulators (“FRs”) in accordance with the following criteria which is set out in the relevant legislation :

- (a) MA to be the FR of all principal intermediaries 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 principal intermediaries 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 principal intermediaries who are regulatees in the securities sector only.

The MPFA will assign all principal intermediaries to the appropriate FR based on the above assignment criteria.

Where the MPFA is satisfied that the principal intermediary carries on a majority of its business activities as a regulatee of another industry regulator, it may assign that other industry regulator to be the FR of the principal intermediary.

As a subsidiary intermediary will carry out regulated activities on behalf of his/her principal intermediary, the same FR will regulate the principal intermediary and their subsidiary intermediaries.

The FR of a regulated person will be guided by the Guidelines on Conduct Requirements for Registered Intermediaries (Conduct Guidelines) (see 7.4 for details) in performing its supervisory and investigatory functions relating to regulated persons under the MPFSO.

Where a FR has information which suggests that a regulated person has not complied with any conduct requirements under the MPFSO, it may conduct an investigation and provide the relevant information obtained to the MPFA for the latter’s consideration of taking disciplinary action.

### **7.2.4 Conduct Requirements for Registered Intermediaries**

The MPFSO sets out minimum standards of conduct with which registered intermediaries are obliged to comply. When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary:

- (a) must act honestly, fairly, in the best interests of the client, and with integrity;
- (b) 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;
- (c) may advise only on matters for which the principal or subsidiary intermediary is competent to advise;
  - (d) must have such regard to the client's particular circumstances as is necessary for ensuring that the regulated activity is appropriate to the client;
  - (e) 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;
  - (f) must use best endeavours to avoid a conflict between the interests of the principal or subsidiary intermediary and the interests of the client and, in the case of such a conflict, must disclose the conflict to the client;
  - (g) must ensure that client assets are promptly and properly accounted for; and
  - (h) must comply with other requirements that are prescribed by the rules.

A principal intermediary must:

- (a) keep such records of activities carried out by the principal intermediary, and of those carried out by every subsidiary intermediary attached to the principal intermediary, as may be necessary for enabling the FR of the principal intermediary to ascertain whether or not the principal intermediary and every subsidiary intermediary attached to the principal intermediary have complied with the conduct requirements in relation to the regulated activities;
- (b) establish and maintain proper controls and procedures for securing compliance by the principal intermediary, and by each subsidiary intermediary attached to the principal intermediary, with Part IVA of the MPFSO;
- (c) use the principal intermediary's best endeavours to secure observance by subsidiary intermediaries attached to the principal intermediary of the controls and procedures established by the principal intermediary;
- (d) ensure that the responsible officer has sufficient authority within the principal intermediary for carrying out specified responsibilities in relation to the principal intermediary; and
- (e) provide the responsible officer with sufficient resources and support for carrying out specified responsibilities in relation to the principal intermediary.

A responsible officer of a principal intermediary must use his or her best endeavours to carry out specified responsibilities in relation to the principal intermediary.

MPFA has issued Conduct Guidelines (see **7.4** for details) to provide guidance to registered intermediaries on compliance with the above statutory conduct requirements.

Non-compliance with the conduct requirements may render an intermediary liable to disciplinary sanction(s).

## **7.2.5 Other Requirements for Registered Intermediaries**

### **(a) Reporting of Changes in Relation to Principal Intermediaries**

A principal intermediary must give the MPFA a notice in writing of the changes mentioned below within 7 working days after they occur:

- (i) a principal intermediary ceases to carry on any regulated activity;
- (ii) there is a change in the address or any contact details of a principal intermediary;
- (iii) a principal intermediary:
  - (1) acquires any qualification as a Type A regulatee;
  - (2) ceases to be a Type A regulatee of any industry regulator; or
  - (3) has any qualification as a Type A regulatee of an industry regulator suspended; or
- (iv) a responsible officer of a principal intermediary ceases to be an officer with specified responsibilities in relation to the principal intermediary.

A person who, contravenes the above requirements without reasonable excuse, commits an offence and is liable to a fine at \$50,000.

In addition, a principal intermediary is responsible for giving notice to the MPFA if the principal intermediary intends to withdraw the consent to a subsidiary intermediary to be attached to and carry on regulated activities for the principal intermediary.

### **(b) Reporting of Changes in Relation to Subsidiary Intermediaries**

A subsidiary intermediary must give the MPFA a notice in writing of the changes mentioned below within 7 working days after they occur:

- (i) there is a change in the name of a subsidiary intermediary;
- (ii) there is a change in the address or any contact details of a subsidiary intermediary;
- (iii) a subsidiary intermediary:
  - (1) acquires any qualification as a Type B regulatee;
  - (2) ceases to be a Type B regulatee of any industry regulator; or
  - (3) has any qualification as a Type B regulatee of an industry regulator suspended; or
- (iv) a subsidiary intermediary ceases to be the responsible officer of a principal intermediary.

A person who, without reasonable excuse, contravenes the above requirements, commits an offence and is liable to a fine at \$50,000.

**(c) Payment of Annual Fees**

A person who is a registered intermediary must pay to the MPFA for every chargeable period (i.e., yearly) an annual fee of the amount prescribed by the regulations. The fee for a chargeable period must be paid within 1 month after the first day of the chargeable period.

If a person fails to pay the annual fee on time, the person must pay to the MPFA an additional fee of an amount equal to 10% of the annual fee that was unpaid.

The MPFA may suspend the registration of a registered intermediary if the person fails to pay to the MPFA the annual fee or any additional fee payable.

Where the MPFA suspends the registration of a person as a registered intermediary for failing to pay an annual fee or additional fee, the MPFA may revoke that registration if the person fails to pay to the MPFA the annual fee or additional fee within 30 days (or any longer period specified by the MPFA) after the suspension takes effect.

**(d) Submission of an Annual Return**

A person who is a registered intermediary (whether principal intermediary or subsidiary intermediary) must deliver to the MPFA an annual return. The return for a reporting period must be delivered within 1 month after the last day of the reporting period.

The MPFA may suspend the registration of the person for a period determined by the MPFA if the person fails to deliver to the MPFA, the annual return for a reporting period.

Where the MPFA suspends the registration of a registered intermediary for failing to deliver an annual return, the MPFA may revoke that registration if the person has not delivered the annual return within 30 days (or any longer period specified by the MPFA) after the suspension takes effect.

**(e) Continuing Training Requirements**

The MPFA may specify the training that is to be undertaken and the time within which the training is to be completed by individuals who are subsidiary intermediaries, as it considers necessary for ensuring that those individuals will be able to comply with the performance requirements<sup>5</sup>.

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<sup>5</sup> Performance requirement:

- in relation to a registered intermediary, means (i) a requirement under section 34ZL of the MPFSO (i.e., conduct requirements for registered intermediary); or (ii) a condition to which the registration as a principal or subsidiary intermediary, or the approval of the attachment to a principal intermediary, is

If the MPFA is satisfied that an individual subsidiary intermediary has failed to complete the training specified within the time specified by it, it may give the individual a notice in writing requiring the individual to complete the training within 30 days or any longer period specified in the notice.

The MPFA may suspend the registration of an individual as a subsidiary intermediary, if it is satisfied that the individual has failed to comply with the notice given by it.

If, within 30 days after the suspension takes effect, the individual has not complied with the requirement set out in the notice given by the MPFA, the MPFA may revoke the registration of the person as a subsidiary intermediary.

## **7.2.6 Supervisory and Disciplinary Powers of MPFA and FRs**

The MPFSO empowers the FRs to supervise and investigate registered intermediaries assigned to them in relation to non-compliance with performance requirements. On the other hand, the MPFA will be the sole authority to impose disciplinary sanctions on registered intermediaries for failure to comply with the performance requirements. When making decisions relating to disciplinary sanctions, the MPFA will take into account information obtained by the FRs during their investigations and any representations submitted by the relevant registered intermediaries.

### **(a) Inspection by Frontline Regulators for Monitoring Compliance**

The FR of a regulated person (or a former regulated person) may direct an inspector to exercise its inspection powers under section 34ZR of the MPFSO for the purpose of ascertaining compliance of the regulated person (or the former regulated person) with performance requirements.

The inspector may:

- (i) enter at any reasonable time any place of business of the regulated person;
- (ii) inspect any business record of the regulated person;
- (iii) make copies or otherwise record details of any business record of the regulated person; and
- (iv) make inquiries of the regulated person concerning any business record of the regulated person or any transaction of activity that was undertaken in the course of, or may affect, the business conducted by the regulated person.

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subject by virtue of section 34X of the MPFSO (i.e., the conditions imposed by the MPFA on registration or approval); or

- in relation to a responsible officer, means (i) a requirement under section 34ZM (i.e., conduct requirements for responsible officer); or (ii) a condition to which the approval as such responsible officer is subject by virtue of section 34X of the MPFSO (i.e., the conditions imposed by the MPFA on approval).

**(b) Investigation by Frontline Regulators of Suspected Non-compliance**

If the FR of a regulated person (or a former regulated person) has reasonable cause to believe that the regulated person (or former regulated person) may have failed to comply with a “performance requirement”, the FR may direct an investigator to carry out an investigation.

The investigator may, in writing, require a specified person:

- (i) to produce and give explanation or further particulars in respect of any record or document that is or may be relevant to any matter under investigation;
- (ii) to attend before the investigator and answer any question relating to any matter under investigation;
- (iii) to respond to any written question relating to any matter under investigation; or
- (iv) to give the investigator any assistance in connection with the investigation.

The above specified person is:

- (i) a person whom the FR has reasonable cause to believe may have failed to comply with a performance requirement; or
- (ii) a person whom the investigator has reasonable cause to believe:
  - (1) to be in possession of any record or document that contains, or that is like to contain, information relevant to any matter under investigation; or
  - (2) to be otherwise in possession of such information.

**(c) Consequence of Non-compliance with Inspection or Investigation Requirements**

A person commits an offence under the following circumstances:

- (i) without reasonable excuse, fails to comply with an inspection or investigation requirement imposed on him/her and is liable:
  - (1) on conviction on indictment to a fine of \$200,000 and to imprisonment for 1 year; or
  - (2) on summary conviction to a fine at \$50,000 and to imprisonment for 6 months.
- (ii) with intent to defraud, fails to comply with an inspection or investigation requirement imposed on him/her.
- (iii) (1) in purported compliance with an inspection or investigation requirement imposed on the person, the person produces any record or document, or gives an answer or response, or gives any explanation or particulars, that are false or misleading in a material respect; and

- (2) the person knows that, or is reckless as to whether, the record or document, or the answer or response, or the explanation or particulars, are false or misleading in a material respect.
- (iv) in purported compliance with an inspection or investigation requirement imposed on the person, the person, with intent to defraud, produces any record or document, or gives an answer or response, or gives any explanation or particulars, that are false or misleading in a material respect.
- (v) being an officer or employee of a company, the person, with intent to defraud:
  - (1) causes or allows the company to fail to comply with an inspection or investigation requirement imposed on the company; or
  - (2) causes or allows the company, in purported compliance with an inspection or investigation requirement imposed on the company, to produce any record or document, or give an answer or response, or give any explanation or particulars, that are false or misleading in a material respect.

A person who commits an offence under item (ii), (iv), (v) above is liable:

- (1) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 7 years; or
- (2) on summary conviction to a fine at \$100,000 and to imprisonment for 6 months.

A person who commits an offence under item (iii) above is liable:

- (1) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years; or
- (2) on summary conviction to a fine at \$100,000 and to imprisonment for 6 months.

**(d) Disciplinary Orders for Non-compliance**

The MPFA may make any disciplinary order under (i), (ii), (iii) or (iv) below against a regulated person if the MPFA is satisfied that the regulated person has failed to comply with a performance requirement.

The MPFA may make any disciplinary order (i.e., (i) or (ii) below) against a regulated person if the person is convicted of an offence under the MPFSO or any subsidiary legislation under the MPFSO.

(i) If the regulated person is a registered intermediary—  
the MPFA may:

- (1) order that the registration of the person as an MPF registered intermediary be revoked; and
- (2) order that the person be disqualified from being registered as an MPF intermediary for carrying on regulated activities, or as an MPF

intermediary for carrying on regulated activities for a principal intermediary to which the person is to be attached, for a period it determines; or

the MPFA may order that the registration of the person as an MPF registered intermediary be suspended for a period it determines.

(ii) If the regulated person is a responsible officer of a principal intermediary—  
the MPFA may:

- (1) order that the approval of the individual as such responsible officer be revoked; and
- (2) order that the person be disqualified from being approved as an officer with specified responsibilities in relation to a principal intermediary for a period it determines; or

the MPFA may order that the approval of the individual as such responsible officer be suspended for a period it determines.

(iii) The MPFA may order that the regulated person—

- (1) be publicly reprimanded; or
- (2) be privately reprimanded.

(iv) The MPFA may order the regulated person to pay a pecuniary penalty not exceeding whichever is the greater amount of the following—

- (1) \$10,000,000;
- (2) 3 times the amount of the profit gained or loss avoided by the regulated person as a result of the failure.

**(e) Procedural Requirements before Making a Disciplinary Order**

If the MPFA forms a preliminary view that it should make a disciplinary order against, or take further action in respect of a regulated person, it must:

- (i) give the regulated person a notice in writing with the reasons for the preliminary view, particulars of the proposed disciplinary order, the right of and the way for the regulated person to make representations; and
- (ii) must give the regulated person an opportunity to make oral or written representations on the preliminary view and the reasons for it.

**7.2.7 Appeal Mechanism for Decisions on Registration and Disciplinary Sanctions**

There is a Mandatory Provident Fund Schemes Appeal Board (“Appeal Board”) under the MPFSO for dealing with appeals against certain regulatory decisions of MPFA. The Appeal Board is responsible for handling independently all appeals

against MPFA’s decisions on registration and disciplinary sanctions made pursuant to the powers under the MPFSO. An appeal against MPFA’s decision may be submitted to the Appeal Board within 2 months after the date on which the MPFA gives written notice of its decision.

Subject to section 39 of the MPFSO (where the Appeal Board may refer any question of law arising in an appeal to the Court of Appeal for determination by way of case stated), the decision of the Appeal Board is final.

#### **7.2.8 Public Disclosure of Disciplinary Decisions Made against Registered Intermediaries**

The MPFA is empowered to disclose to the public details of disciplinary decisions made against registered intermediaries (except for private reprimand), the reasons for which the disciplinary decision was made, and any material facts relating to the case. In practice, the MPFA will disclose information to the public through the issue of a press release. The MPFA is also required to include in the Register of Intermediaries, a record of disciplinary orders it has made against registered MPF intermediaries within the last five years.

### **7.3 HANDLING OF COMPLAINTS AGAINST MPF INTERMEDIARIES**

MPFA will receive complaints in relation to MPF sales and marketing activities.

It will conduct initial processing of the complaints. If the information provided suggests a possible breach of the conduct requirements, it will refer the complaints to the relevant FRs for consideration of initiating investigation.

FRs will be responsible for the investigation of relevant registered MPF intermediaries. In misconduct cases, MPFA will be the sole authority to impose disciplinary sanctions, taking into account the information obtained by FRs in the course of their investigation and the representation of the intermediaries concerned.

### **7.4 GUIDELINES OF CONDUCT FOR MPF INTERMEDIARIES**

Intermediaries must be fully aware of the guidelines issued by the MPFA and other codes of conduct issued by the respective regimes under which they are supervised.

#### **7.4.1 Guidelines on Conduct Requirements for Registered Intermediaries (“Conduct Guidelines”)**

The Conduct Guidelines, issued under the MPFSO, provide guidance in respect of the minimum standards of conduct expected of regulated persons who engage in the conduct of sales and marketing activities and giving advice in relation to registered schemes.

In particular, they provide guidance about the circumstances in which the MPFA will be satisfied that a regulated person has, or has not, complied with a performance requirement under the MPFSO. Whilst the Conduct Guidelines are intended to assist regulated persons in understanding how to comply with the performance requirements, they are not intended to be an exhaustive description of how they should comply. Acts or omissions not mentioned in the Conduct Guidelines may also constitute a breach of the performance requirements.

The full text of the Conduct Guidelines is reproduced at the end of this Chapter. Readers who intend to become MPF intermediaries are advised to study the Conduct Guidelines carefully and familiarize themselves with the details.

## **7.5 SANCTIONS AND PENALTIES**

Should MPF intermediaries fail in their duties or otherwise be in breach of expected requirements, a number of sanctions and/or penalties may arise. The MPFA may consider them under a number of headings, as follows:

### **(a) Imposed by their Principals**

These will be within the terms of the agency or other contract which exists between the principal and the intermediary, and will be as mutually agreed. Obviously, the range of sanctions and penalties will include internal disciplinary action such as forfeiture of commission and/or reprimands, etc.

### **(b) Imposed by Statute (Ordinance) other than the MPFSO**

A complete summary of all statutory provisions in this area is not required, but some important specific areas should be noted, as follows:

#### **SFO**

Section 103 of the SFO makes it an offence to issue to the public any advertisements on MPF schemes and approved pooled investment funds unless they are authorized by the SFC or are exempt under the SFO. A breach of section 103 of the SFO carries a maximum fine of \$500,000 and 3 years of imprisonment (plus a further fine for each day the offence continues).

Section 107 of the SFO makes it an offence to induce another person to participate in an MPF scheme or invest in pooled investment funds by making fraudulent or reckless misrepresentations. A breach of section 107 of the SFO carries a maximum fine of \$1,000,000 and 7 years of imprisonment.

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## *Representative Examination Questions*

### Type “A” Questions

- 1 To give some proof of qualification for registered MPF intermediaries, the MPFA will:
- (a) provide a special marking on their I.D. card; .....
  - (b) maintain a public register of all registered MPF intermediaries through the internet; .....
  - (c) provide an identity card issued by their employer; .....
  - (d) provide a special licence, similar to a driving licence. ....

[Answer is in **7.2.2**]

- 2 A registered intermediary should have a good understanding, of any registered scheme and constituent fund which it promotes and/or on which it gives regulated advice, including:
- (a) the level of fees and charges relating to the scheme and the various constituent funds in the scheme; .....
  - (b) the investment policies, types and levels of risks and terms and conditions of the various constituent funds in the scheme; .....
  - (c) general scheme operational issues such as those relating to transfers and withdrawals; .....
  - (d) all of the above .....

[Answer is in the

**Guidelines on Conduct Requirements for Registered Intermediaries]**

### Type “B” Questions

- 3 Which of the following are among the registration requirements for a subsidiary intermediary?
- (i) applicant is a Type A regulatee
  - (ii) applicant is a Type B regulatee
  - (iii) applicant is being attached to a principal intermediary
  - (iv) new applicant passes the qualifying examination within 1 year before the date of the application
- 
- (a) (ii) and (iii) only; .....
  - (b) (ii) and (iv) only; .....
  - (c) (i), (iii) and (iv) only; .....
  - (d) (ii), (iii) and (iv) only. ....

[Answer is in **7.2.2**]

4 Which of the following are among the conduct requirements specified under the Guidelines on Conduct Requirements for Registered Intermediaries?

- (i) acting honestly and fairly, in the best interests of the client, and with integrity
- (ii) disclosure of conflict of interest
- (iii) disclosure of necessary information to the client
- (iv) care, skill and diligence

- (a) (i) only; .....
- (b) (i) and (ii) only; .....
- (c) (i), (ii) and (iii) only; .....
- (d) (i), (ii), (iii) and (iv). .....

[Answer is in the  
**Guidelines on Conduct Requirements for Registered Intermediaries]**

*[If required, answers may be found at the end of the Study Notes.]*



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

**VI.2 GUIDELINES ON  
CONDUCT REQUIREMENTS  
FOR  
REGISTERED INTERMEDIARIES**

Version 1  
September 2012

## MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

### VI.2 Guidelines on Conduct Requirements for Registered Intermediaries

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## I. INTRODUCTION, INTERPRETATION AND APPLICATION

### Introduction

- I.1 The Guidelines on Conduct Requirements for Registered Intermediaries (“Guidelines”), issued under section 6H of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“MPFSO”), provide guidance for persons concerned with the MPFSO. They provide guidance in respect of the minimum standards of conduct expected of regulated persons who engage in conducting sales and marketing activities and giving advice in relation to registered schemes. In particular, they provide guidance about the circumstances in which the Mandatory Provident Fund Schemes Authority (“MPFA”) will be satisfied that a regulated person has, or has not, complied with a performance requirement under sections 34ZL and 34ZM for the purposes of section 34ZW of the MPFSO. Whilst the Guidelines are intended to assist regulated persons in understanding how to comply with the performance requirements, they are not intended to be an exhaustive description of how they should comply. Acts or omissions not mentioned in the Guidelines may also constitute a breach of the performance requirements.
- I.2 The three industry regulators (the Insurance Authority, Monetary Authority and Securities and Futures Commission), one or more of which will be the frontline regulator of a regulated person, will also be guided by the Guidelines in performing their supervisory and investigatory functions relating to regulated persons under the MPFSO.
- I.3 Where a frontline regulator has information which suggests a regulated person has not been in compliance with a performance requirement under section 34ZL or 34ZM of the MPFSO, it may conduct an investigation and provide the relevant information it obtained from such investigation to the MPFA for the latter’s consideration of making a disciplinary order.
- I.4 For the purposes of the Guidelines, unless otherwise specified, a registered intermediary includes a responsible officer (who is necessarily a subsidiary intermediary).
- I.5 The Guidelines do not have the force of law. They should not be interpreted in a way that would override the provision of any law.
- I.6 The Guidelines are complementary to, and do not replace, any legislative provisions applicable to, or codes or guidelines issued by industry/frontline regulators in respect of regulated persons.
- I.7 The Guidelines shall become effective on 1 November 2012, the date of commencement of the operation of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012.

## Interpretation

- I.8 Where a term in the Guidelines is used or defined in the MPFSO or the Mandatory Provident Fund Schemes (General) Regulation (“MPFSGR”), except where specified in the Guidelines, that term carries the same meaning as used or defined in the MPFSO or MPFSGR. Relevant references are given for those terms that are used or defined in the MPFSO or MPFSGR.
- (a) “accrued benefits” - section 2 of the MPFSO;
  - (b) “approved trustee” - section 2 of the MPFSO;
  - (c) “client” - section 34ZL of the MPFSO;
  - (d) “constituent fund” - section 2 of the MPFSGR;
  - (e) “employee choice arrangement” means the arrangement whereby employees are allowed to transfer, on a lump sum basis, accrued benefits derived from their own mandatory contributions, from a contribution account under a registered scheme chosen by their employers to a registered scheme of their own choice at least once per calendar year;
  - (f) “fund” means constituent fund as defined in section 2 of the MPFSGR;
  - (g) “frontline regulator” - section 34E of the MPFSO;
  - (h) “industry regulator” - section 34E of the MPFSO;
  - (i) “material decision” - section 34F of the MPFSO;
  - (j) “Part” means Part IVA of the MPFSO;
  - (k) “performance requirement” - section 34E of the MPFSO;
  - (l) “principal intermediary” - section 34G of the MPFSO;
  - (m) “registered intermediary” - section 2 of the MPFSO;
  - (n) “registered scheme” - section 2 of the MPFSO;
  - (o) “regulated activity” - section 34F of the MPFSO;
  - (p) “regulated advice” - section 34F of the MPFSO;
  - (q) “regulated person” - section 2 of the MPFSO;
  - (r) “responsible officer” - section 34I of the MPFSO;
  - (s) “rules” means rules made under section 47 of the MPFSO;
  - (t) “scheme” means registered scheme as defined in section 2 of the MPFSO;
  - (u) “service provider” - section 2 of the MPFSO;
  - (v) “subsidiary intermediary” - section 34H of the MPFSO;
  - (w) “working day” - section 2 of the MPFSO.
- I.9 A reference in the Guidelines to “it” or “its” in relation to a registered intermediary shall, except where the context otherwise specifies, be construed as including a reference to “he” or “his”, “she” or “her”, as the case may be.

- I.10 A reference in the Guidelines to a “section” shall mean a reference to a section in the MPFSO or MPFSGR.
- I.11 References to legislation, regulations, rules, codes or guidelines shall include such legislation, regulations, rules, codes or guidelines as they are replaced, amended or supplemented from time to time.

## II. STATUTORY REQUIREMENTS

II.1 The conduct requirements are set out in sections 34ZL and 34ZM of Part IVA of the MPFSO. Those sections read as follows:

**“34ZL. Conduct requirements for registered intermediary**

- (1) When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary—
  - (a) must act honestly, fairly, in the best interests of the client, and with integrity;
  - (b) 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;
  - (c) may advise only on matters for which the principal or subsidiary intermediary (as the case may be) is competent to advise;
  - (d) must have such regard to the client’s particular circumstances as is necessary for ensuring that the regulated activity is appropriate to the client;
  - (e) 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;
  - (f) 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;
  - (g) must ensure that client assets are promptly and properly accounted for; and
  - (h) must comply with other requirements that are prescribed by the rules.
- (2) A principal intermediary must keep such records of activities carried out by the principal intermediary, and of those carried out by every subsidiary intermediary attached to the principal intermediary, as may be necessary for enabling the frontline regulator of the principal intermediary to ascertain—
  - (a) whether or not the principal intermediary has complied with subsection (1); and
  - (b) whether or not every subsidiary intermediary attached to the principal intermediary has complied with subsection (1).
- (3) A principal intermediary—
  - (a) must establish and maintain proper controls and procedures for securing compliance by the principal intermediary, and by each subsidiary intermediary attached to the principal intermediary, with this Part;

- (b) must use the principal intermediary's best endeavours to secure observance by subsidiary intermediaries attached to the principal intermediary of the controls and procedures established under paragraph (a);
  - (c) must ensure that the responsible officer has sufficient authority within the principal intermediary for carrying out specified responsibilities in relation to the principal intermediary; and
  - (d) must provide the responsible officer with sufficient resources and support for carrying out specified responsibilities in relation to the principal intermediary.
- (4) In this section, a reference to a client of a principal intermediary, or a subsidiary intermediary attached to a principal intermediary, when carrying on a regulated activity, is a reference to —
- (a) a person whom the principal or subsidiary intermediary invites or induces, or attempts to invite or induce, to make a material decision; or
  - (b) a person to whom the principal or subsidiary intermediary gives regulated advice.

**34ZM. Conduct requirements for responsible officer**

A responsible officer of a principal intermediary must use his or her best endeavours to carry out specified responsibilities in relation to the principal intermediary.”

*Note: Under section 34I(3) of the MPFSO, a reference to specified responsibilities in relation to a principal intermediary, is a reference to—*

- (a) *the responsibility to ensure that the principal intermediary has established and maintains proper controls and procedures for securing compliance by the principal intermediary, and by each subsidiary intermediary attached to the principal intermediary, with this Part; and*
- (b) *the responsibility to ensure that the principal intermediary uses the principal intermediary's best endeavours to secure observance by subsidiary intermediaries attached to the principal intermediary of the controls and procedures mentioned in paragraph (a).*

### **III. GUIDANCE ABOUT STATUTORY REQUIREMENTS**

- III.1 In determining whether it is satisfied that a regulated person has, or has not, complied with a performance requirement under section 34ZL or 34ZM for the purposes of section 34ZW, subject to I.1, the MPFA will have regard to the matters set out below.

#### **ACTING HONESTLY, FAIRLY, IN THE BEST INTERESTS OF THE CLIENT AND WITH INTEGRITY**

##### **Section 34ZL(1)(a)**

**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.**

##### **Accurate Representations**

- III.2 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.
- III.3 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. 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. A copy of the form should be provided to the client as soon as reasonably practicable and another copy should be kept by the principal intermediary for a minimum period of seven years. The record of the form may be kept in electronic form but should be readily accessible by the frontline regulators for supervisory and inspection purposes.

##### **Advertising and Marketing Material**

- III.4 A principal intermediary should ensure that any advertisement or marketing material issued by it does not contain information that is false, misleading or deceptive. It should ensure that the information relating to registered schemes and constituent funds is clear, fair and timely, presents a balanced picture of the registered schemes/constituent funds with adequate risk disclosure.
- III.5 A subsidiary intermediary should only distribute or give out marketing material approved by his principal intermediary.

### **Rebates, Gifts and Incentives**

- III.6 A registered intermediary should not, directly or indirectly, offer any rebates, gifts or incentives (including, without limitation, commissions or other monetary/non-monetary benefits) to any person for the purpose of encouraging a client to:
- (a) become a member of; or
  - (b) make a contribution to; or
  - (c) transfer any benefits to; or
  - (d) retain membership until a certain date or expiry of a certain period in one or more registered schemes/constituent funds.
- III.7 The above restriction does not apply where the rebate, gift or incentive takes the form of any of the following:
- (a) a discount of fees and charges by way of bonus units, bonus credit or rebates credited to the MPF account of the recipient of the offer;
  - (b) a non-monetary benefit (such as access to additional services) associated with a membership privilege program offered by or approved by the approved trustee or sponsor of the registered scheme;
  - (c) a discount of the registered intermediary's own fees and charges by way of a reduction in the amount directly payable by the client; or
  - (d) a commission or other monetary/non-monetary benefits paid to a registered intermediary for performing services as a registered intermediary.

### **Best Interests of the Client**

- III.8 A registered intermediary should act in the best interests of the client in conducting sales and marketing activities and in giving regulated advice in relation to registered schemes/constituent funds.

### **Confidentiality of Client Information**

- III.9 A registered intermediary should treat all information supplied by a client as confidential, must not disclose or use such information except as permitted at law, and avoid any misuse of the personal information obtained in the course of its business activities.

*Note: Special attention should be paid to section 41 of the MPFSO and the Personal Data (Privacy) Ordinance (Cap. 486) in handling client information.*

## **Assistance to Regulators**

III.10 A registered intermediary should co-operate with the MPFA and the relevant frontline regulator at all times, including, but not limited to, establishing the facts in the event of a complaint concerning itself, its subsidiary intermediaries or other intermediaries.

## **Handling of Client Complaints**

III.11 A registered intermediary should ensure that any complaint arising from regulated activities is promptly and fairly handled.

## **CARE, SKILL AND DILIGENCE**

### **Section 34ZL(1)(b)**

**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.**

## **Understanding of MPF System, MPF Products and Relevant Concepts**

III.12 A registered intermediary should have a general understanding of:

- (a) the mandatory provident fund (“MPF”) System and keep abreast of developments relevant to the MPF System;
- (b) the various types of registered schemes and constituent funds available in the market; and
- (c) basic investment and related concepts such as the relationship between risk and return, the importance of diversification of assets, the impact of fees on return, and the effect of compounding and dollar cost averaging.

III.13 In order to achieve the understanding referred to in III.12, a registered intermediary should, at a minimum, familiarize itself with the reference materials for intermediaries issued by the MPFA and the various tools (such as the Fee Comparative Platform, calculator on retirement needs, calculator for projecting your MPF accrued benefits and Trustee Service Comparative Platform) that would assist a client in making material decisions.

*Note: Reference materials and various tools are available under “Industry Practitioner – Intermediary” on the MPFA website.*

## **Understanding of Promoted Registered Schemes and Constituent Funds**

- III.14 A registered intermediary should have a good understanding, such that may reasonably be expected of a prudent person carrying on the regulated activity, of any registered scheme and constituent fund which it promotes and/or on which it gives regulated advice, including:
- (a) the identity of key parties concerned in the operation or distribution of the scheme (including the approved trustee, investment manager, promoter, sponsor, administrator, custodian and guarantor);
  - (b) the level of fees and charges relating to the scheme and the various constituent funds in the scheme;
  - (c) the investment policies, types and levels of risks and terms and conditions of the various constituent funds in the scheme;
  - (d) the range of services offered by the approved trustee of the scheme and its service providers in relation to the operation or distribution of the scheme; and
  - (e) general scheme operational issues such as those relating to transfers and withdrawals.
- III.15 A principal intermediary should conduct product due diligence on any registered scheme and constituent fund which it promotes and/or on which it gives regulated advice prior to the selling and marketing of such registered scheme and/or constituent fund and on an on-going basis at appropriate interval in order to ensure that its subsidiary intermediaries keep up-to-date on the issues mentioned in III.14.

## **Keeping Record of Orders**

- III.16 A registered intermediary should record the particulars of any order instructions relating to material decisions received from a client (including the date and time of receipt and details of the order). The records of orders should be kept by the principal intermediary for a minimum period of seven years.

## **Prompt Execution**

- III.17 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. Client instructions refer to instructions to the registered intermediary (e.g. passing an enrolment form to the approved trustee) and not instructions to the approved trustee (e.g. processing of the enrolment by the approved trustee).

## **Care for Clients with Special Needs**

- III.18 In the course of conducting a regulated activity, a registered intermediary should provide extra care of, and support for, clients with special needs ("vulnerable

clients”) during the sales and marketing process relating to the making of a key decision. A vulnerable client for this purpose is a person who is not, or may not be, able to fully understand the type of information to be provided and discussed or who is not, or may not be, able to make that key decision. Such clients may include, for example, those who are illiterate, with low level (primary level or below) of education, visually or otherwise impaired in a manner that affects their ability to make the relevant key decision independently. A key decision for this purpose refers to one of the following decisions:

- (a) choosing a particular constituent fund;
- (b) making a transfer that would involve a transfer out of a guaranteed fund;
- (c) making an early withdrawal of accrued benefits from the MPF System; or
- (d) making how much voluntary contributions into a particular registered scheme or a particular constituent fund.

III.19 Having assessed a client as a vulnerable client, a registered intermediary should exercise extra care, and where necessary, provide additional support during the sales and marketing process relating to that key decision. What would constitute “extra care” will depend on the particular vulnerability of the client and the nature and circumstances of the regulated activity being undertaken. It should, however, include:

- (a) offering the client the opportunity:
  - (i) to be accompanied by a companion to witness the relevant sales process and constituent fund selection process; and/or
  - (ii) to have an additional member of staff to witness the relevant sales process and constituent fund selection process.

The registered intermediary should document that the above choices were offered to the client, the choice that has been made by the client and ask the client to acknowledge the choice he has made by signing the document. A copy of the signed document should be provided to the client and the original should be kept by the principal intermediary for a minimum period of seven years;

or

- (b) conducting post-sale call to:
  - (i) confirm that the intermediary has provided the client with the offering document, explained the key features of the relevant registered scheme and constituent funds and advised the client to read carefully and understand the information contained in the offering document prior to making the key decision;
  - (ii) verify the key decision (as mentioned in III.18) that the client has made; and
  - (iii) confirm the client’s understanding of the key decision he has made.

The post-sale call, to be made within seven working days and audio recorded, should be conducted by an authorized person (not the subsidiary intermediary who conducted the regulated activity) of the principal intermediary.

Processing of the client's instruction need not wait for completion of the post-sale call process. In case the principal intermediary does not have an audio recording system, it should make arrangement with the approved trustee/sponsor/promoter for an authorized person of one of these parties to conduct the post-sale call. The arrangement should include allowing the frontline regulators access to the relevant audio record where necessary.

The authorized person should use reasonable efforts to contact the client and if the client cannot be contacted after several attempts, the principal intermediary should send a document to the client to confirm that the intermediary has provided the client with the offering document, explained the key features of the relevant registered scheme and constituent funds, and advised the client to read carefully and understand the information contained in the offering document prior to making the key decision and the key decision that the client had made.

The authorized person should document the attempts made to contact the client and the principal intermediary should keep copies of the relevant correspondence. The audio record and/or written documentation should be kept by the principal intermediary or the approved trustee/sponsor/promoter (as the case may be) for a minimum period of seven years.

### **Compliance with Requirements of Principal Intermediary**

III.20 A subsidiary intermediary should comply with the controls, procedures and standards of conduct as required by his principal intermediary.

### **ADVICE ON MATTERS WITHIN COMPETENCE**

#### **Section 34ZL(1)(c)**

**When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary may advise only on matters for which the principal or subsidiary intermediary (as the case may be) is competent to advise.**

#### **Adequate Training, Skills and Knowledge**

III.21 A subsidiary intermediary should not give advice on matters in relation to which he is not adequately trained or otherwise lacks the specific skills or knowledge necessary to assist a client.

III.22 A principal intermediary should have in place arrangements to assess whether its subsidiary intermediaries possess the relevant qualification, skills and/or knowledge.

III.23 A principal intermediary should provide sufficient training to ensure that its subsidiary intermediaries engaging in regulated activities, among other things:

- (a) have adequate knowledge and skills to provide explanations, recommendations or advice to a client about registered schemes/constituent funds;
- (b) are conversant with the selling procedures and relevant controls; and
- (c) are aware of the relevant statutory and regulatory requirements that they need to comply with.

## **HAVING REGARD TO CLIENT'S PARTICULARS AS IS NECESSARY**

### **Section 34ZL(1)(d)**

**When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must have such regard to the client's particular circumstances as is necessary for ensuring that the regulated activity is appropriate to the client.**

### **Know Your Client**

III.24 In assisting an employer/self-employed person/employee/personal account holder to participate/enrol in a registered scheme, a registered intermediary should take all reasonable steps to establish the identity of its client by checking the client's identity document (e.g. business registration certificate, identity card or passport) to verify the client's identity, and to acquire a basic understanding of its client (such as the employer's nature of business and the client's education level).

### **Suitability Assessment**

III.25 A registered intermediary should have regard to a client's particular circumstances by conducting "suitability assessment" (set out in III.27 below) in the following circumstances:

- (a) extending an invitation or inducement to a specific client<sup>1</sup> (being a self-employed person, an employee or a personal account holder) that involves the choice of a particular constituent fund; or
- (b) giving regulated advice to a specific client (being a self-employed person, an employee or a personal account holder) that involves the choice of a particular constituent fund.

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<sup>1</sup> The term "specific client" is used to denote that the invitation/inducement/advice is extended/given specifically to a particular client/clients. This is to distinguish the situation where the invitation/inducement/advice is extended/given in a group setting (e.g. in a seminar) where the invitation/inducement/advice is not directed to a specific person/persons and without taking into account individual circumstances.

*Examples of an invitation, inducement or advice that involves the choice of a particular constituent fund include an invitation/inducement/advice to:*

- *join a particular registered scheme and invest in a particular constituent fund within that registered scheme;*
- *transfer accrued benefits from one registered scheme to another registered scheme and invest in a particular constituent fund within that registered scheme;*
- *invest future contributions (mandatory or voluntary contributions) in a particular constituent fund; or*
- *transfer accrued benefits from one particular constituent fund to another particular constituent fund within a registered scheme.*

III.26 Beyond these circumstances, there may be other occasions where some assessment of a client's particular circumstances is appropriate. In assessing this, the registered intermediary should have regard to the extent to which a decision by a client might have materially adverse consequences for that client and the extent to which the client may be placing reliance on the registered intermediary. This may arise particularly where detailed advice directed to a specific client is being given in relation to:

- (a) a decision on early withdrawal of accrued benefits from the MPF System; or
- (b) a decision as to the amount of any voluntary contributions to be paid into the MPF System.

III.27 When conducting suitability assessment connected with the choice of a particular constituent fund, a registered intermediary should:

- (a) assess the client's risk profile by acquiring an understanding of the client's personal circumstances, such as the client's existing investment portfolio (including MPF portfolio if any), age, intended retirement age, financial situation, investment objective, investment knowledge, investment experience, risk tolerance and the level of risk the client is prepared to accept;
- (b) match the client's risk profile with the risk level of the constituent funds to select a constituent fund/constituent funds suitable for the client;
- (c) explain to the client why a particular constituent fund/constituent funds are suitable for the client; and
- (d) provide the client with a copy of a document containing the client's risk profile and the explanations given (including response to questions raised in relation to the choice of fund) and obtain the client's signature on the document to confirm the client's agreement on the accuracy of the information thereon. A copy of the so signed document should be provided to the client and the original to be kept by the principal intermediary for a minimum period of seven years.

### **Lack of Necessary Information**

III.28 In the case where a registered intermediary might not be able to obtain necessary information from the client to assess the client's risk profile in order to complete a necessary suitability assessment, it should explain to the client that it is not able to make a proper assessment of the client's risk profile. The registered intermediary should not invite or induce the client to consider a particular constituent fund and should not provide any regulated advice to the client in relation to a particular constituent fund.

### **Risk Matching**

III.29 Where, after conducting the suitability assessment, a client insists on choosing to invest his contribution in, or transfer his accrued benefits to, a constituent fund for which the risk level is higher than the client's risk profile as assessed by the registered intermediary ("risk mismatch"), the intermediary should:

- (a) tell the client that there is a risk mismatch between the constituent fund choice and the client's risk profile;
- (b) explain to the client the risk of the fund selection and that the constituent fund may not be suitable for the client (illustrating this by providing clear explanation of the features and risk of the constituent fund to the client);
- (c) confirm with the client that the constituent fund choice is the client's own decision and ask the client to provide the reasons for choosing that fund;
- (d) document the following:
  - (i) the risk mismatch between the constituent fund choice and the client's risk profile;
  - (ii) the explanations given to the client;
  - (iii) that the constituent fund choice is the client's own decision; and
  - (iv) the reasons given by the client in respect of that choice;
- (e) ask the client to acknowledge the content (as mentioned in (d)) of the document by signing the document; and
- (f) give a copy of the signed document as mentioned in (e) to the client and the original to the principal intermediary to be kept for a minimum period of seven years.

III.30 When the client insists on choosing a constituent fund for which the risk level is higher than the client's risk profile as assessed by the registered intermediary, the conversation regarding the risk mismatch (as set out in III.29 (a) to (c)) between the registered intermediary and the client should be audio recorded (if audio recording system is available) to provide an audit trail. If the processes are not audio-recorded, then **either** a post-sale call **or** post-sale confirmation should be implemented.

(a) **Post-sale Call**

- (i) The post-sale call, to be made within seven working days and audio recorded, should be conducted by an authorized person (not the subsidiary intermediary who conducted the regulated activity) of the principal intermediary. Processing of the client's instruction need not wait for completion of the post-sale call process. The post-sale call should confirm the client's fund choice and remind the client that there is a risk mismatch between the client's constituent fund choice and the client's risk profile as assessed by the intermediary and confirm that the fund choice was the client's own decision.
- (ii) In case the principal intermediary does not have an audio recording system, it should make arrangement with the approved trustee/sponsor/promoter for an authorized person of one of these parties to conduct the post-sale call. The arrangement should include allowing the frontline regulators access to the relevant audio record where necessary.
- (iii) The authorized person should use reasonable efforts to contact the client and if the client cannot be contacted after several attempts, the principal intermediary should send a document to the client to confirm the fund choice made by the client, remind the client that there is a risk mismatch between the client's constituent fund choice and the client's risk profile and confirm that the fund choice was the client's own decision.
- (iv) The authorized person should document the attempts made to contact the client and the principal intermediary should keep copies of the relevant correspondence. The audio record and/or written documentation should be kept by the principal intermediary or the approved trustee/sponsor/promoter (as the case may be) for a minimum period of seven years.

(b) **Post-sale Confirmation**

- (i) To reinforce the matters set out in III.29, the registered intermediary should advise the client that instructions to process the fund selection cannot be completed by the intermediary until the client has had further time to consider the matter and confirm instructions in writing no sooner than the next working day.
- (ii) The registered intermediary should not take any steps to process the fund selection of the client until he receives a signed document from the client confirming the fund choice made by the client, and acknowledging that there is a risk mismatch between the client's constituent fund choice and the client's risk profile as assessed by the intermediary (such written confirmation not being received before the start of the next working day). The registered intermediary should record the date and time of receipt of such document. Such record and the original of the document should be kept by the principal intermediary for a minimum period of seven years.

## **DISCLOSURE OF NECESSARY INFORMATION TO THE CLIENT**

### **Section 34ZL(1)(e)**

**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.**

### **Clear, Accurate and Relevant Information**

III.31 A registered intermediary should provide its client with information that is clear, accurate and relevant to the material decision being made.

### **Information about the Principal Intermediary**

III.32 A registered intermediary, in the initial contact with a client, should provide its client with adequate information about the principal intermediary including:

- (a) the name, principal place of business and nature of business of the principal intermediary and any relevant conditions which apply to its registration as a principal intermediary;
- (b) the capacity in which the principal intermediary is acting and in case it is distributing a registered scheme for a sponsor, promoter or approved trustee, a statement to this effect; and
- (c) the affiliation of the principal intermediary, if any, with the key parties (including the approved trustee, investment manager, promoter, sponsor, administrator, custodian and guarantor) connected with the operation or distribution of the registered scheme and/or any constituent funds of the registered scheme concerned.

III.33 A subsidiary intermediary, who acts for more than one principal intermediary, should make clear to his client which one of the principal intermediaries he is acting on behalf of on that occasion.

### **Information about the Subsidiary Intermediary**

III.34 A subsidiary intermediary, in the initial contact with a client, should:

- (a) identify himself with his business card bearing the name used in his registration as a registered intermediary and his MPF registration number;
- (b) disclose:
  - (i) the capacity in which he is acting and in case he is distributing a registered scheme for a sponsor, promoter or approved trustee, a statement to this effect;

- (ii) his affiliation, if any, with the key parties (including the approved trustee, investment manager, promoter, sponsor, administrator, custodian and guarantor) connected with the operation or distribution of the registered scheme and/or constituent funds of the registered scheme concerned; and
- (iii) what types of regulated activities (whether making invitation, inducement or giving regulated advice) he is conducting/will conduct and any relevant conditions which apply to his registration as a subsidiary intermediary.

### **Information about Monetary and Non-monetary Benefits of Intermediaries**

III.35 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 the 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 the subsidiary intermediary.

### **Documentation on Information Provided about the Principal/Subsidiary Intermediary**

III.36 The disclosure in III.32 to III.35 should be made in a document in hard copy or electronic form, in Chinese or English (according to the preference of the client) or both languages. Should circumstances render it not reasonably practicable to provide the disclosure in writing at the time of the invitation, inducement or advice, the subsidiary intermediary should make the disclosure verbally at the time of the invitation, inducement or advice, to be followed by the document as soon as reasonably practicable thereafter. A copy of the document should be kept by the principal intermediary for a minimum period of seven years.

### **Information about Scheme/Fund**

III.37 A registered intermediary should provide to its client information materials that would assist the client in understanding the promoted registered scheme and constituent funds relevant to a material decision being made. At a minimum, the registered intermediary should provide a copy of the latest version of the offering document of the registered scheme to the client to assist him in making material decisions.

III.38 In providing the information materials, a registered intermediary should explain to the client:

- (a) 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 trustee and its service providers in relation to the operation and distribution of the scheme;

- (b) the key features of the constituent funds within the relevant registered scheme such as investment policies, types and levels of risk, fees and charges and relevant terms and conditions; and
  - (c) in the case of a registered scheme with a guaranteed fund, the guarantee features, the guarantor, the risks associated with the failure of a guarantor, the period of the guarantee (if it is only for a limited period), the cost of the guarantee, the dilution of performance due to the guarantee structure in place as well as the material conditions that may affect the scope or validity of the guarantee,
- to enable the client to be sufficiently informed for the purpose of making material decisions.

III.39 A registered intermediary, when inviting/inducing/advising a client to join or transfer to a registered scheme, should inform the client that if no constituent fund is selected, the contribution will be invested in the default fund of the registered scheme. The key features of the default fund, such as its investment policy, the type and level of risk, fees and charges and relevant terms and conditions, should be explained to the client.

### **Information about Investment Performance**

III.40 A registered intermediary should not invite/induce/advise a client to make a registered scheme/constituent fund selection based primarily on past investment performance. If discussing past performance with the client, it should explain to the client that:

- (a) the mere fact that a constituent fund performed better than another constituent fund, whether of the same type or not, over any given period in the past, is not necessarily a reliable indicator that it will do so over any period into the future; and
- (b) special care should be taken in comparing the past performance of MPF conservative funds as some MPF conservative funds have a pricing mechanism that does not reflect the impact of fees.

III.41 Where a comparison is made, the registered intermediary should:

- (a) compare a constituent fund's performance with the performance of constituent funds of the same type and over a long term period (at least five years where practicable);
- (b) make "like with like" comparisons in terms of risk levels, investment strategies and objectives; and
- (c) where practicable, compare the net performance of one constituent fund with the net performance (and not the gross performance) of another constituent fund.

*Note: Information about a constituent fund's past performance is set out in the Fund Fact Sheet of a registered scheme, which is available on the website of the approved trustees and can be downloaded from the Fee Comparative Platform on the MPFA website.*

- III.42 Whilst it may be appropriate to make reference to general market outlook, a registered intermediary should avoid predicting, projecting or forecasting a constituent fund's future or likely performance.

### **Information about Transfer of Schemes/Funds**

- III.43 Before inviting, inducing or advising a client on transfers of registered schemes/constituent funds, a registered intermediary should enquire if the client has any existing investment in a guaranteed fund.

- III.44 A registered intermediary, in inviting, inducing or advising a client on transfers under employee choice arrangement, should provide a copy of the "Guide to Transfer Benefits under Employee Choice Arrangement" to the client. The content of the Guide should be duly explained to the client.

*Note: The "Guide to Transfer Benefits under Employee Choice Arrangement" is available on the MPFA website. A registered intermediary may refer to the "Flow Chart of Benefits Transfer Process" in that Guide in explaining to the client the processes involved in transfers and the timeframe for processing transfers.*

- III.45 A registered intermediary, if in the process of inviting, inducing or advising a client to consider transferring to another registered scheme or investing in another constituent fund, claims that the promoted registered scheme/constituent fund is to be preferred over the scheme/fund participated in/invested by the client, should explain:

- (a) the differences (in relation to the key features set out in III.38(a) and (b)) between the promoted scheme/fund and the scheme/fund participated in/invested by the client; and
- (b) the benefits, or potential benefits, of conducting the transfer.

The registered intermediary should make reference to the relevant product brochures, fund fact sheets, approved trustees' websites, and the MPFA website, etc. to obtain information about the registered schemes participated in or constituent funds invested by the client.

- III.46 A registered intermediary should explain the timeframe involved in the transfer process and that as the accrued benefits are generally first cashed out by the original approved trustee and then transferred to the new approved trustee for re-investment, there will be a time lag during which the accrued benefits will not be invested.

### **Information about Transfer into or out of Guaranteed Funds**

- III.47 A registered intermediary, when inviting, inducing or advising a specific client in relation to a transfer into a guaranteed fund, should:

- (a) explain the terms and conditions of the guaranteed fund with a particular focus on the qualifying conditions;
- (b) explain to the client the circumstances when the client will or will not meet the qualifying conditions; and
- (c) where the guaranteed fund is based on an insurance policy, explain the greater counterparty or credit risks associated with guarantees based on an insurance policy as compared to those based on a unit trust.

III.48 A registered intermediary, when inviting, inducing or advising a specific client in relation to a transfer should find out from the client whether that transfer would result in a transfer out of a guaranteed fund. If the transfer would result in a transfer out of a guaranteed fund, the registered intermediary should:

- (a) warn the client that a transfer of the accrued benefits out of that guaranteed fund may cause some or all of the guarantee conditions not being satisfied, thus resulting in the loss of the guarantee. The registered intermediary should advise the client to check the offering document of his original scheme or consult his approved trustee for details before transferring out of the guaranteed fund;
- (b) document the warning and advice given in (a) and ask the client to sign the document to acknowledge the content of the document. A copy of the document should be given to the client and the original should be kept by the principal intermediary for a minimum period of seven years.

III.49 In inviting, inducing or advising a specific client in relation to a transfer that would result in a transfer out of a guaranteed fund under III.48, the registered intermediary should:

- (a) only process the client's instruction to transfer upon the client's confirmation that he understands the consequences of termination of the investment in the guaranteed fund; and
- (b) document the client's confirmation provided in (a) and ask the client to acknowledge the content by signing the document. A copy of the document should be given to the client and the original should be kept by the principal intermediary for a minimum period of seven years.

### **Information about Fees and Charges**

III.50 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.

III.51 Where comparison of fees and charges of constituent funds between schemes is made, the registered intermediary should:

- (a) highlight the long-term impact of fees and charges on potential returns, illustrating with examples; and
- (b) compare the fees and charges of similar fund types only.

*Note: Illustrations on the long-term impact of fees and charges on potential returns can be found under the section “Fees and Charges” in Chapter 2 (Which MPF Scheme Should I Choose?) of the publication “Making Informed Decisions for your MPF Life” which is available on the MPFA website. Information relating to fees and charges is available on the Fee Comparative Platform on the MPFA website. A registered intermediary can make use of the Fee Comparative Platform to search, sort and compare the fund expense ratio of any number of funds.*

- III.52 When highlighting information about fees and charges, a registered intermediary should refer the client to other key disclosure information like the fee table, the fund expense ratio and the ongoing cost illustration of the constituent funds being compared.

*Note: Explanations of the fee table, fund expense ratio and ongoing cost illustration can be found in the “Code on Disclosure for MPF Investment Funds” which is available on the MPFA website.*

## **DISCLOSURE OF CONFLICT OF INTEREST**

### **Section 34ZL(1)(f)**

**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.**

### **Conflict of Interest**

- III.53 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).

## **PROMPT AND PROPER ACCOUNTING FOR CLIENT ASSETS**

### **Section 34ZL(1)(g)**

**When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must ensure that client assets are promptly and properly accounted for.**

### **Segregation of Client Assets**

- III.54 A registered intermediary is generally not expected to handle client assets. In the event that a registered intermediary is asked by its client to forward a cheque payment to the approved trustee of a registered scheme, it should do so promptly.
- III.55 A registered intermediary should at all times keep client assets separate from its own assets and should not use client assets for any purpose other than for the purposes of the client.

### **Cash/Cheque Payment**

- III.56 A registered intermediary must not receive cash payments and must ensure that all cheques received are crossed and made payable to the approved trustee of the registered scheme or to the registered scheme only.

## **KEEPING RECORDS OF REGULATED ACTIVITIES**

### **Section 34ZL(2)**

**A principal intermediary must keep such records of activities carried out by the principal intermediary, and of those carried out by every subsidiary intermediary attached to the principal intermediary, as may be necessary for enabling the frontline regulator of the principal intermediary to ascertain—**

- (a) whether or not the principal intermediary has complied with subsection (1)<sup>2</sup>; and**
- (b) whether or not every subsidiary intermediary attached to the principal intermediary has complied with subsection (1).**

### **Keeping of Records**

- III.57 A registered intermediary should document the information and/or documents disclosed/provided to the client. It should also document any regulated advice given, including the rationale underlying the advice and obtain the client's signature on the document to acknowledge the above. A copy of the document should be provided to the client and the original should be kept by the principal intermediary for a minimum period of seven years.
- III.58 A principal intermediary should ensure that all audio and written records required under the Guidelines are kept for a minimum period of seven years. Such records may be kept in electronic form (where applicable) but should be readily accessible by the frontline regulators for supervisory and inspection purposes.

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<sup>2</sup> Subsection (1) of section 34ZL of the MPFSO.

## **PRINCIPAL INTERMEDIARY CONTROLS AND PROCEDURES FOR COMPLIANCE**

### **Section 34ZL(3)**

**A principal intermediary—**

- (a) must establish and maintain proper controls and procedures for securing compliance by the principal intermediary, and by each subsidiary intermediary attached to the principal intermediary, with this Part;**
- (b) must use the principal intermediary's best endeavours to secure observance by subsidiary intermediaries attached to the principal intermediary of the controls and procedures established under paragraph (a);**
- (c) must ensure that the responsible officer has sufficient authority within the principal intermediary for carrying out specified responsibilities in relation to the principal intermediary; and**
- (d) must provide the responsible officer with sufficient resources and support for carrying out specified responsibilities in relation to the principal intermediary.**

### **Section 34ZL(4)**

**In this section, a reference to a client of a principal intermediary, or a subsidiary intermediary attached to a principal intermediary, when carrying on a regulated activity, is a reference to—**

- (a) a person whom the principal or subsidiary intermediary invites or induces, or attempts to invite or induce, to make a material decision; or**
- (b) a person to whom the principal or subsidiary intermediary gives regulated advice.**

### **Minimum Procedures and Controls to Ensure Compliance**

**III.59** At a minimum, a principal intermediary should have in place a rigorous framework that can:

- (a) identify those matters that require compliance by itself and its subsidiary intermediaries; and**
- (b) put in place controls, procedures and other arrangements that are designed to ensure that compliance.**

**III.60** The controls and procedures that are appropriate for any given principal intermediary would depend on a range of factors including the scale of its operations, the number of attached subsidiary intermediaries and the range and type of regulated activities undertaken. At a minimum, however, a principal intermediary should:

- (a) have adequate resources and satisfactory internal control procedures at all times for compliance with relevant legal and regulatory requirements by itself and by its subsidiary intermediaries;**

- (b) supervise adequately and monitor subsidiary intermediaries' compliance with any manuals, guidelines and checklists for the conduct of the regulated activities;
- (c) have in place arrangements, procedures and controls to ensure that only registered intermediaries are used in undertaking regulated activities on its behalf;
- (d) have in place arrangements, procedures and controls to ensure that it maintains an up-to-date list of subsidiary intermediaries acting on its behalf and notifies the MPFA as soon as practicable if it intends to withdraw the consent for a subsidiary intermediary to act on its behalf in accordance with section 34ZG of the MPFSO;
- (e) have in place arrangements, procedures and controls to ensure that the MPFA is notified of changes relating to the registered intermediaries in accordance with sections 34ZE and 34ZI of the MPFSO;
- (f) have in place arrangements, procedures and controls to ensure that it notifies the MPFA if it becomes aware of any circumstances where the responsible officer no longer satisfies the requirements of section 34W(4)(b) of the MPFSO;
- (g) have in place arrangements, procedures and controls to ensure that the offering documents and marketing materials used by itself or its subsidiary intermediaries to promote any registered schemes/constituent funds have been authorized by the SFC or are otherwise exempted from authorization;
- (h) have in place procedures and controls for handling client complaints;
- (i) have in place arrangements, procedures and controls that require a subsidiary intermediary to report to the principal intermediary all complaints against himself;
- (j) have in place arrangements to assess whether its subsidiary intermediaries possess the relevant qualification for giving regulated advice;
- (k) provide sufficient training to its subsidiary intermediaries to ensure that they keep abreast of developments in the MPF System and upgrade their professional knowledge on a continuing basis, and maintain a record of training undertaken by its subsidiary intermediaries. Such records and the documentary evidence sufficient to support their attendance or completion of the continuing training activities mentioned in (l) such as certificates of attendance issued by the course providers and examination results should be kept for a minimum period of three years;
- (l) have in place procedures and controls to ensure their subsidiary intermediaries comply with the continuing training requirement specified by the MPFA;
- (m) have in place procedures and controls to ensure annual returns are lodged by itself and its subsidiary intermediaries with the MPFA within the stipulated timeframe;
- (n) where telephone marketing campaigns are to be undertaken, provide compliance guidelines before embarking on such campaigns and maintain a call log for monitoring purposes;

- (o) have in place risk matching procedures and controls for determining whether a constituent fund matches a client's risk profile;
- (p) have in place procedures and controls to ensure that all audio and written records required under the Guidelines are kept for a minimum period of seven years;
- (q) have in place procedures and controls to ensure that its subsidiary intermediaries are aware of the requirements relating to disclosure of conflict of interest and that if any of its subsidiary intermediaries acts for more than one principal intermediary, the subsidiary intermediary should make clear to the client for which one of the principal intermediaries he is acting;
- (r) have in place procedures and controls to ensure that client assets are promptly and properly accounted for. To minimize the scope for any fraud or defalcation, a principal intermediary should have in place arrangements to prevent a subsidiary intermediary from receiving cash payments or receiving cheques that are not crossed and not made payable to the approved trustee of the registered scheme or to the registered scheme;
- (s) have in place arrangements, procedures and controls to identify any failure of the principal intermediary or its subsidiary intermediaries to comply with the provisions in relation to regulated activities in the MPFSO or any subsidiary legislation under the MPFSO, the Guidelines, and other guidelines relating to regulated activities and to report such failure to the frontline regulator and also the industry regulator (where the industry regulator is not the frontline regulator) within 14 working days of the principal intermediary identifying the failure;
- (t) have in place arrangements, procedures and controls to ensure that sufficient information is recorded and retained about its business relating to the conduct of regulated activities concerning registered schemes and constituent funds. Such records should be kept for a minimum period of seven years;
- (u) provide senior management (including the responsible officer) with management information system reports and access to all relevant information about its business on a timely basis. The reports and relevant information must also be available to the frontline regulators upon request; and
- (v) have in place compliance review and internal audit procedures as an integral part of the control procedures to regularly review and assess the effectiveness and efficiency of the principal intermediary's controls and procedures.

## **Complaint Handling**

III.61 One of the key aspects of proper controls and procedures relates to having in place adequate procedures for dealing with complaints from a client. The procedures that should be put in place by a principal intermediary depend on the scale and nature of the regulated activities undertaken. At a minimum, a principal intermediary should maintain procedures and controls to ensure:

- (a) any complaint from a client is handled in a timely and appropriate manner and that remedial action is taken as soon as possible;

- (b) steps are taken to investigate and respond promptly to the complaint;
- (c) if the complaint is not satisfactorily resolved, that steps are taken to investigate and handle the complaint by the senior officer of the subsidiary intermediary, or by the principal intermediary's designated compliance officer in a timely and reasonable manner;
- (d) if a complaint is not resolved promptly to the client's satisfaction, the client is advised of any further steps which may be available to the client under the regulatory system;
- (e) the frontline regulator as well as its respective industry regulator (if the industry regulator is not the frontline regulator) are informed immediately of any complaints of a criminal nature (such as misappropriation of client funds or forgery of client documents) or other serious nature (such as unauthorized transfer of client's accrued benefits);
- (f) all complaints are fully documented (including resolution if any) and that a summary of the complaint cases be provided to the MPFA on a quarterly basis; and
- (g) a register of complaints, containing information including but not limited to the name of the complainant, the target of the complaint, the date of submission of the complaint, the nature of the complaint and the date the complaint is remedied/addressed, whether the complaint is substantiated, a summary of the investigation results and action taken and whether there is any breach of legislation, guidelines or regulations administered by the MPFA is maintained. The register should be made available as soon as practicable to the MPFA and frontline regulators upon their request.

## **ROLE OF RESPONSIBLE OFFICER**

### **Section 34ZM**

**A responsible officer of a principal intermediary must use his or her best endeavours to carry out specified responsibilities in relation to the principal intermediary.**

*Note: Under section 34I(3) of the MPFSO, a reference to specified responsibilities in relation to a principal intermediary, is a reference to—*

- (a) the responsibility to ensure that the principal intermediary has established and maintains proper controls and procedures for securing compliance by the principal intermediary, and by each subsidiary intermediary attached to the principal intermediary, with this Part; and*
- (b) the responsibility to ensure that the principal intermediary uses the principal intermediary's best endeavours to secure observance by subsidiary intermediaries attached to the principal intermediary of the controls and procedures mentioned in paragraph (a).*

## **Responsible Officer**

III.62 One of the specified responsibilities of a responsible officer is to ensure that the principal intermediary has established and maintains proper controls and procedures for securing compliance by the principal intermediary and its subsidiary intermediaries with the requirements of Part IVA of the MPFSO. Items III.60 and III.61 are relevant to the question of what those proper controls and procedures are.

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## **APPENDIX I**

### **ABBREVIATIONS**

APIF	Approved Pooled Investment Fund
ABS	Annual Benefit Statement
Conduct Guidelines	Guidelines on Conduct Requirements for Registered Intermediaries
Disclosure Code	Code on Disclosure for MPF Investment Funds
ECA	Employee Choice Arrangement
Exemption Regulation	Mandatory Provident Fund Schemes (Exemption) Regulation
Fees Regulation	Mandatory Provident Fund Schemes (Fees) Regulation
FER	Fund Expense Ratio
FR	Frontline Regulator
General Regulation	Mandatory Provident Fund Schemes (General) Regulation
IA	Insurance Authority
MA	Monetary Authority
MPF	Mandatory Provident Fund
MPFA	Mandatory Provident Fund Schemes Authority
MPFSO	Mandatory Provident Fund Schemes Ordinance
MPF legislation	MPFSO and its subsidiary legislation
NAV	Net Asset Value
NCEOR	Non-Compliant Employer and Officer Records
ORSO	Occupational Retirement Schemes Ordinance
OCI	On-going Cost Illustration
RTC	Registered trust company in Hong Kong
SEP	Self-employed person
SFC	Securities and Futures Commission

## **APPENDIX II**

### **MPF LEGISLATION, CODES, GUIDELINES AND STANDARDS**

**(As at 29 February 2016)**

#### **A. MPF Legislation**

Mandatory Provident Fund Schemes Ordinance (Cap.485)

Mandatory Provident Fund Schemes (General) Regulation (Cap.485A)

Mandatory Provident Fund Schemes (Exemption) Regulation (Cap.485B)

Mandatory Provident Fund Schemes (Fees) Regulation (Cap.485C)

Mandatory Provident Fund Schemes (Exemption) Regulation (Specification of Date Under Sections 5 and 16) Notice (Cap.485D)

Mandatory Provident Fund Schemes (Contributions for Casual Employees) Order (Cap.485E)

Mandatory Provident Fund Schemes (Specification of Permitted Periods) Notice (Cap.485F)

Mandatory Provident Fund Schemes Rules (Cap.485G)

Mandatory Provident Fund Schemes (Compensation Claims) Rules (Cap.485H)

Mandatory Provident Fund Schemes (Winding Up) Rules (Cap.485I)

#### **B. MPF Codes**

Code on MPF Investment Funds

Erratum to the Code on MPF Investment Funds

Code on Disclosure for MPF Investment Funds

#### **C. MPF Guidelines**

##### **Part I Guidelines on Licensing**

I.1 Guidelines on Application for Approval as Trustees and Application for Approval as Controllers of Approved Trustees

I.2 Guidelines on Application for Registration of Provident Fund Schemes

I.3 Guidelines on Custodians

I.4 Guidelines on Eligible Insurers

I.5 Guidelines on Application for Approval of Constituent Funds

- I.6 Guidelines on Application for Approval of Pooled Investment Funds
- I.7 Guidelines on Central Securities Depositories
- I.8 Guidelines on Custodial / Subcustodial Agreement
- I.9 Guidelines on Approved Credit Rating Agencies
- I.10 Guidelines on Application for Cancellation of Approval of Constituent Funds
- I.11 Guidelines on Application for Cancellation of Approval of Pooled Investment Funds

**Part II Guidelines on Reporting Requirements**

- II.1 Guidelines on Monthly Returns of Registered Schemes
- II.2 Guidelines on Monthly Returns of Approved Pooled Investment Funds being Capital Preservation Funds
- II.3 Guidelines on Quarterly Statistical Returns of Registered Schemes
- II.4 Guidelines on Annual Statements of Registered Schemes
- II.5 Guidelines on Annual Statements of Approved Pooled Investment Funds
- II.6 Guidelines on Internal Control Report for Each Registered Scheme
- II.7 Guidelines on Quarterly Returns of Approved Pooled Investment Funds
- II.8 Guidelines on Monthly Statistical Returns of Registered Schemes
- II.9 Guidelines on Notification of Events of Significant Nature

**Part III Guidelines on Investment**

- III.1 Guidelines on Debt Securities
- III.2 Guidelines on Equities and Other Securities
- III.3 Guidelines on Eligible Overseas Banks and Authorized Financial Institutions
- III.4 Guidelines on Approved Exchanges
- III.5 Guidelines on Investment Managers
- III.6 Guidelines on Capital Preservation Funds
- III.7 Guidelines on Securities Lending
- III.8 Guidelines on Repurchase Agreements
- III.9 Guidelines on Reserving Standards for Investment Guarantees
- III.10 Guidelines on Index-Tracking Collective Investment Schemes
- III.11 Guidelines on Spread Requirements
- III.12 Guidelines on Deposit

III.13 Guidelines on Requirements for Securities to be Considered as “to be Listed”

**Part IV Guidelines on Scheme Operations**

IV.1 Guidelines on Disclosure of Annual Fees (Repealed with effect from June 2004)

IV.2 Guidelines on Reports Relating to Payment of Mandatory Contributions

IV.3 Guidelines on Election for Transfer of Accrued Benefits

IV.4 Guidelines on Payment of Accrued Benefits – Documents to be Submitted to Approved Trustees

IV.5 Guidelines on Payment of Accrued Benefits – Permanent Departure from Hong Kong

IV.6 Guidelines on Notice for Unclaimed Benefits (Repealed with effect from November 2008)

IV.7 Guidelines on Fees and Charges for Transfer of Accrued Benefits

IV.8 Guidelines on Enrolment and Contribution Arrangements for Relevant Employees Other Than Casual Employees

IV.9 Guidelines on Enrolment and Contribution Arrangements for Casual Employees

IV.10 Guidelines on Enrolment and Contribution Arrangements for Self-employed Persons

IV.11 Guidelines on Contribution Period in Respect of a Relevant Employee

IV.12 Guidelines on Relevant Income in Respect of a Relevant Employee

IV.13 Guidelines on Compensation Fund

IV.14 Guidelines on Remittance Statement

IV.15 Guidelines on Person Exempt under Section 4(3) of the Mandatory Provident Fund Schemes Ordinance

IV.16 Guidelines on MPF Coverage on Employees Working Outside Hong Kong

IV.17 Guidelines on Contribution Arrangement of a Self-employed Person

IV.18 Guidelines on Contribution Arrangement of a Self-employed Person Who Sustains a Loss

IV.19 Guidelines on Minimum and Maximum Levels of Relevant Income of a Self-employed Person

IV.20 Guidelines on Prepayment of Contributions

IV.21 Guidelines on Unclaimed Benefits

IV.22 Guidelines on Statement Required under Section 7AB of the Mandatory Provident Fund Schemes Ordinance

- IV.23 Guidelines on Transfer Statement and Confirmation
- IV.24 Guidelines on Transfer Process under Sections 148A and 148B of the Mandatory Provident Fund Schemes (General) Regulation
- IV.25 Guidelines on Electronic System for Transmission of Data on Transfer of Accrued Benefits

**Part V Guidelines on ORSO Interface**

- V.1 Guidelines on MPF Exempted ORSO Schemes – Application for Exemption of ORSO Exempted Schemes
- V.2 Guidelines on MPF Exempted ORSO Schemes – Application for Exemption of ORSO Registered Schemes
- V.3 Guidelines on MPF Exempted ORSO Schemes – Treatment of Accrued Rights of Existing Members who Join MPF Schemes
- V.4 Guidelines on MPF Exempted ORSO Schemes – Preservation of Benefits
- V.5 Guidelines on MPF Exempted ORSO Schemes – Illustrative Examples
- V.6 Guidelines on MPF Exempted ORSO Schemes – Application for Approval of Appointment of Trustees
- V.7 Guidelines on MPF Exempted ORSO Schemes – Application for Approval of Appointment of Directors of Trustees
- V.8 Guidelines on MPF Exempted ORSO Schemes – Application for Withdrawal of Exemption Certificate of an ORSO Exempted Scheme
- V.9 Guidelines on MPF Exempted ORSO Schemes – Application for Withdrawal of Exemption Certificate of an ORSO Registered Scheme
- V.10 Guidelines on MPF Exempted ORSO Schemes – Filing of Annual Report
- V.11 Guidelines on MPF Exempted ORSO Schemes – Withdrawal of Minimum MPF Benefits
- V.12 Guidelines on MPF Exempted ORSO Schemes – Investment Managers

**Part VI Guidelines on Intermediaries**

- VI.1 Guidelines on MPF Intermediary Registration and Notification of Changes
- VI.2 Guidelines on Conduct Requirements for Registered Intermediaries
- VI.3 Guidelines on Annual Returns to be Delivered by Registered Intermediaries
- VI.4 Guidelines on Continuing Training for Subsidiary Intermediaries

**D. Standards**

Compliance Standards for MPF Approved Trustees

Performance Presentation Standards for MPF Investment Funds

## APPENDIX III

### COVERAGE

The following is a list showing examples of different types of jobs with explanations as to why the persons engaged in these jobs are generally included in or excluded from the MPF System.

<b>Job Characteristics</b>	<b>Covered by MPF(Y/N)?</b>	<b>Remarks</b>
<b>1. Domestic Employees<sup>1</sup></b>		
Baby sitters, domestic servants and gardeners who render their services at the employer's household	N	Services rendered in a residential premises
Baby sitters, domestic servants and gardeners whose services are not rendered at the employer's household	Y	Services not rendered in a residential premises
Chauffeurs, bodyguards and boatboys employed by an individual	Y	Services not rendered in a residential premises
Licensed caretakers employed by Owners Incorporation	Y	Services not rendered in a residential premises
Security guards employed by an individual to provide security services for his/her residential premises	N	Services are substantially rendered in the residential premises of the employer
<b>2. Short-term Employees</b>		
Employees, part-time workers and summer job workers whose employment is terminated within 60 days but are re-employed by the same employer. The employment is considered a continuous contract (as defined in the Employment Ordinance) with employment period not less than 60 days	Y	Please seek advice from the Labour Department if you are in doubt of what constitutes a continuous contract

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<sup>1</sup> "Domestic employee" is defined as an employee whose contract of employment is wholly or substantially for the provision of domestic services in the residential premises of the employer. "Domestic" means "of or relating to the home or family affairs or relations". Whether services are domestic in nature is a matter of fact.

<b>Job Characteristics</b>	<b>Covered by MPF(Y/N)?</b>	<b>Remarks</b>
<b>3. Overseas Employees</b>		
Employees entering Hong Kong under an employment visa with permission to stay for a period not exceeding 13 months which is extended such that the total period of stay exceeds 13 months	N – for the first 13 months in Hong Kong	---
	Y - After the first 13 months in Hong Kong	---
Employees employed in or from Hong Kong by companies engaging in business in Hong Kong, working in Hong Kong but are residing outside Hong Kong	Y	For example, employees living in Shenzhen but commute to Hong Kong on a daily basis
Employees employed outside Hong Kong by foreign companies and are working outside Hong Kong	N	Whether the employees are residents of Hong Kong is irrelevant
<b>4. Self-employed Persons</b>		
Overseas partners of a partnership engaging in business in Hong Kong	N	---
Farmers, fishermen	Y	Usually they are self-employed persons unless employed by another farmer or fisherman
Hawkers who are not self-employed	Y	---
Drivers of taxis, public light buses and vans who are not owners of the vehicles	Y	Usually they are self-employed persons
Owners of taxis, public light buses and vans whose income is derived from both driving the vehicles and renting the vehicles to other drivers	Y	Usually they are self-employed persons
A taxi owner who derives his/her income from renting his/her taxi	Y	Usually they are self-employed persons
Private tutors and piano teachers giving private lessons	Y	Usually they are self-employed persons
<b>5. Industry Schemes</b>		
Recruiters in the catering industry	Y	Usually they are self-employed agents responsible for recruiting casual workers for banquets

Job Characteristics	Covered by MPF(Y/N)?	Remarks
		in large catering establishments such as hotels
Recruiters in the construction industry	Y	Usually they are employees of the specialist contractors (bar-bending & electrical works) responsible for recruiting workers on site
Substitute workers in the catering and construction industries	Y	Usually they are casual workers doing another person's job for a few days and are paid by that person in cash for their services
Summer job workers in the catering or construction industries	Y	---
<b>6. Others</b>		
Civil servants who are not entitled to pension benefits	Y	---
Local staff of Consulate General	Y	---
Teachers and other staff members of a private school	Y	---
Shareholders whose only source of income is the dividend received	N	Neither an employee nor a self-employed person
Landlords whose only source of income is the rent of their properties but they are not carrying on a business of renting out properties.	N	Neither an employee nor a self-employed person

## APPENDIX IV

### RELEVANT INCOME

The following is a list of examples of different types of “incomes” with explanations as to why these incomes are generally regarded or not regarded as “relevant income” under the MPF System.

Income Types	“Relevant income” (Y/N)	Remarks
<b>1. Wages and Salaries</b>		
13 <sup>th</sup> month pay	Y	---
Bonus	Y	---
- at employer’s discretion		
- performance linked		
End-of-contract gratuity	Y	---
<b>2. Reimbursement/Allowance</b>		
Payment of reimbursement nature	N	Reimbursement of expenses incurred by the employee for employment related goods and services which are necessary in the performance of an employment duty
- self-improvement education expenses		
- uniform laundry expenses		
- meals provided or obtained during office hours		
- mobile phone service charges		
- professional organization membership fee		
- entertainment expenses		
- mileage duty expenses		
Cash allowances	Y	Allowance provided by the employer in cash which the employee may spend as he/she sees fit
Internship allowance	Y	Allowances provided by the employer in cash, in connection with a vocational training programme
Leave allowance	Y	---
- annual leave		
- compassionate leave		
- examination leave		
- marriage leave		
- sick leave		

Income Types	“Relevant income” (Y/N)	Remarks
<b>3. Transportation and Car Subsidy</b>		
Transportation subsidy - free ticket / pass for use of public transport - parking coupons	N	Non-monetary benefits
Car subsidy - free use of car	N	Non-monetary benefits
- fuel and oil - maintenance expenses - payment of car registration and licence fees for car owned by an employee	Y	Employer provides cash payment for the benefit of employee
<b>4. Commission</b>		
- based on amount of transaction - based on number of transaction - on project basis irrespective of the amount or the number of transactions	Y	---
<b>5. Tips</b>		
Tips collected by the employer	Y	Tips collected via the employer and service charges included in the bill (including amounts inserted by customers on credit card bills) which are subsequently distributed partly or fully to the employees
Tips not collected by the employer	N	Money paid by customers directly to an employee, put in tin box or left by the customers on the table, and which is retained by the employee or shared among the employees without any intervention by the employer
“Pickle charges” (peanuts, snacks, pickle provided on table) shared by employees	Y	Restaurant owners usually give the pickle charges collected to employees. An implied term of the contract of employment

Income Types	“Relevant income” (Y/N)	Remarks
<b>6. Employees’ Benefits</b>		
Marriage gifts	N	Payment made to an employee on a significant personal event
Holiday tour package	N	Non-monetary benefits. Expenses paid by the employer in respect of a completed holiday to cover expenses included in the package, such as transportation, accommodation, food, etc
Meals consumed on the spot	N	Non-monetary benefits
Meals provided in the form of vouchers	N	Non-monetary benefits
<b>7. Court award / termination payment</b>		
Award determined by a court or tribunal representing “wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite or allowance”	Y	---
Payment in lieu of notice	N	Payment does not fall within any of the nine heads (i.e. wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite or allowance) of relevant income
Severance payment	N	Specifically excluded from the definition of “relevant income”
Long service payment	N	Specifically excluded from the definition of “relevant income”
<b>8. Others</b>		
Dividend income	N	Return on investment received by shareholders
Share options	N	Non-monetary benefits
Gains realized from share options	N	---
Medical claims reimbursement	N	Payments that are made by third parties, rather than the employer, to the employee pursuant to an insurance contract purchased by the employer covering that employee
Employment-related medical expenses incurred by employee but paid directly by employer	N	---

## APPENDIX V

### DATE OF PAYMENT OF CONTRIBUTION

According to the MPFSO, employers must pay contributions for their employees on or before the contribution day. Meanwhile, self-employed persons (SEPs) must pay contributions by the specified day in each month if contributions are paid on a monthly basis or at or before the end of the scheme financial year if contributions are paid on a yearly basis.

Employers and SEPs may choose to pay mandatory contributions through various methods/channels as provided by the trustees. Payment by different methods/channels will have implications on the date on which the contribution is considered paid. Please refer to the table below for details.

Payment methods/channels	Points to note
By post	<ul style="list-style-type: none"><li>➤ Contribution is considered paid on the date the payment cheque would normally be delivered by post. Therefore, sufficient mailing time should be allowed.</li><li>➤ Employers and SEPs should ensure sufficient funds in their bank account for cheque clearance (if the cheque is bounced, the contribution will be considered as not having been paid).</li></ul>
In person (through bank branches/customer service counters)	<ul style="list-style-type: none"><li>➤ Contribution is considered paid on the date payment cheque is deposited at the bank branch/customer service counter.</li><li>➤ Employers and SEPs should ensure sufficient funds in their bank account for cheque clearance (if the cheque is bounced, the contribution will be considered as not having been paid).</li></ul>
Direct debit	<ul style="list-style-type: none"><li>➤ Contribution is considered paid on the date the employer's remittance statement is received by the trustee*.</li><li>➤ For an SEP who does not need to submit remittance statement, contribution is considered paid on the date on which the trustee issues direct debit instruction.</li></ul>

	<ul style="list-style-type: none"> <li>➤ Employers and SEPs should ensure sufficient funds in their bank account for debiting (if the debit is unsuccessful, the contribution will be considered as not having been paid).</li> </ul>
Direct credit	<ul style="list-style-type: none"> <li>➤ Contribution is considered paid on the date the MPF scheme's bank account is credited.</li> <li>➤ Ensure the funds are credited to the MPF scheme's bank account on or before the <i>contribution day</i>.</li> </ul>
Deduction of reserve in the employer's MPF account to settle future contribution (subject to the scheme rules)	<ul style="list-style-type: none"> <li>➤ Contribution is considered paid on the date the employer's remittance statement is received by the trustee*.</li> <li>➤ Ensure sufficient funds in the employer's MPF account maintained by the MPF trustee for offsetting; otherwise, the employer should make up the difference in amount on or before the <i>contribution day</i>.</li> </ul>

\*Please see "Remittance statement" section with respect to when a remittance statement is considered received.

### **Remittance statement**

**Employers must also submit to trustees a duly completed remittance statement accompanying the contribution on or before *the contribution day*.** If employers send their payment and the remittance statement to the trustees separately, the receipt date of the remittance statement shall be:

- (a) the date the remittance statement would normally be delivered if it is sent by post;
- (b) the date the remittance statement is deposited at a bank branch/customer service counter; or
- (c) the date the remittance statement is faxed or submitted via other electronic means to the trustee.

Employers are recommended to keep a copy of the payment cheque and remittance statement as record before sending to trustees. If the remittance statement is sent by fax, employers are recommended to print and keep a journal recording the document sent date to support the submission by the employers to the trustees.

### **Avoid payment by cash and through intermediaries**

Payment of contributions by cash should be avoided. Moreover, payments through MPF intermediaries, whether by cash or otherwise, should be avoided. Instead, payments should be made directly to the trustees or their designated bank branches/ customer service counters.

### **Consequences of late payment**

Employers and SEPs must make mandatory contributions on time. Employers or SEPs who fail to pay mandatory contributions on time will have to pay a contribution surcharge. Offenders may also be liable to a financial penalty or prosecution.

## APPENDIX VI

### BASIC CONCEPTS OF INVESTMENT

#### DIFFERENT TYPES OF INVESTMENT INSTRUMENTS

(a) **Money Market Instruments**

Money market instruments refer to interest-bearing financial instruments that usually have short-term maturity periods. Their yields are usually slightly more attractive when compared with deposit rates offered by banks to retail customers. The major types of money market instruments are:

(i) **Treasury Bills**

They are short-term debt securities issued by the government to the public for the purpose of raising money. Investors buy the bills at a discount. At the bill's maturity, the holder receives from the government a lump sum equal to the face value of the bill. The difference between the purchase price and the face value represents the investment return on the bill.

(ii) **Certificates of Deposit**

These are certificates issued by a bank indicating that a depositor has placed a sum of money with it for a period of time at a specified rate of interest. The deposits may not be withdrawn on demand. Interest rates are usually higher than those on government bills of comparable maturity.

(iii) **Commercial Paper**

These are short-term unsecured debt securities issued by large corporations. Interest rates on commercial paper are higher than those on treasury bills of comparable maturity, reflecting its lower liquidity and higher default risk.

(b) **Bonds**

Also known as debt securities, bonds are issued by a wide variety of organizations, such as governments, government agencies, organizations such as the World Bank, and a range of companies. When you buy a bond, you are in effect lending money to the corporation that issues the bond, which promises to pay interests at regular intervals during the life of the bond and to repay you the principal or face value of the bond together with interests (if any) on a specific date. Certain features to note are:

(i) Each bond has a face value (or par value) which is the amount to be repaid when the bond is redeemed.

(ii) A bond usually has a maturity date which is the date the bond is to be

redeemed, although some have no maturity dates and are called perpetual bonds.

- (iii) A bond usually has an annual interest rate (or a “coupon rate”), as a percentage of the par value, payable to the bondholder at regular intervals until the maturity date. The periodic interest payments made to holders are usually in the form of “coupons”. Some, however, pay no interest and are called zero coupon bonds.
- (iv) Bonds of different issuers (organizations) may be awarded different investment ratings by international credit rating agencies e.g. Standard and Poor’s, Moody’s, etc. The credit rating reflects to some extent the level of risk attached to the bond.
- (v) The price of a bond moves up and down, but in an opposite direction to interest rates. So if interest rate falls, the higher coupon rate of a bond looks comparatively more attractive and the price of the bond goes up. At times of high inflation, the yield of a bond may lag behind the inflation rate.
- (vi) Unlike equities, bonds do not give the bondholder an ownership interest in the issuing corporation. If the issuer goes bankrupt, the stockholder’s money may be lost. But if there is any money left in the company, the bondholder will be paid before stockholders.

(c) **Equities**

Equities, also known as equity shares, are perhaps the widest known type of financial instruments. They are called “shares” because they represent ownership in a corporation. Each share is entitled to a proportion of financial profits of the corporation. Some basic features of equities are:

- (i) If a company makes profits, it may pay dividends and the price of its shares is also likely to rise. The investment return comprises both dividend income and capital appreciation.
- (ii) If a company is unsuccessful, then the value of its shares is likely to decline and the company may cut or terminate dividend payout.
- (iii) Share prices on stock markets can change rapidly depending on the prevailing stock market condition and the financial performance of the company.
- (iv) In general, equities are considered riskier than money market instruments and bonds.

(d) **Derivatives**

These are financial instruments which derive their values from their underlying investments such as bonds or equities. They include options, warrants, futures, etc. The features to be noted are:

- (i) They may be used to reduce investment risk, i.e. to reduce investment loss when the price or value of the primary/underlying asset falls. They are intended to have an “offset effect”, so that profits or losses as a result of price changes in the derivative will offset losses or gains on the primary/underlying asset. The process is very common and is known as **hedging**.
- (ii) They may be used for speculation, i.e. buying or selling derivatives on a “**forward**” or “**future**” basis (deal arranged now, to take place at a designated future time at a pre-determined rate).
- (iii) They are much more speculative in nature than some of the other types of investment. Due to the risk nature, they are only suitable for sophisticated or professional investors.

(e) **Unit Trusts & Mutual Funds**

- (i) A unit trust is an investment vehicle set up under a trust for different investors to pool their monies together for investment.
- (ii) A unit trust may invest in a portfolio of investments such as bonds and equities.
- (iii) It is managed by professional fund managers and sub-divided into “units” based on the market value of the portfolio.
- (iv) Hong Kong law requires that a fund’s assets be held by an independent trustee, responsible for ensuring that the terms of the trust deed are complied with.
- (v) A mutual fund is set up as a company with the objective of investing in shares of other companies. They are essentially the same as unit trusts from an investment point of view, except for their legal structure.

(f) **Insurance Policies**

- (i) Whilst most insurance contracts provide for death, disability or medical benefits with little investment element, certain insurance policies issued to retirement schemes may be linked to investment with little or no insurance element. The latter form of insurance policy may be regarded as an investment vehicle.
- (ii) An insurance policy will be underpinned by an insurance fund consisting of an investment portfolio of securities, including bonds, equities, etc.

- (iii) The insurance fund is managed either by the insurance company issuing the insurance policy or by a professional investment manager appointed by the insurance company.
- (iv) A Class G insurance policy is a policy with guarantees on capital or return. It must be backed up by a guarantor which can be the insurance company itself or a financial institution authorized by the MA as a third party guarantor.

## **DIFFERENT TYPES OF INVESTMENT FUND**

There are many types of investment funds, ranging from conservative funds (e.g. money market funds) to high risk funds (e.g. equity funds). Their classification is usually based on the stated investment objectives and underlying investments of the funds. The table on the next page lists the four common types of investment funds.



## Calculation of the Net Asset Value (“NAV”) Per Unit of a Fund

The NAV per unit of a fund is determined by dividing the aggregate market value and the cash holding of the underlying investments of the fund by the number of units issued. All administrative and management fees payable (accrued to date) are to be deducted before the derivation of the NAV of the fund.

$$\text{NAV per unit} = \frac{\begin{array}{l} \textit{Total market value} \\ \textit{of underlying} \\ \textit{investments} \end{array} + \textit{Cash} - \begin{array}{l} \textit{Administrative \&} \\ \textit{management expenses} \\ \textit{payable} \end{array}}{\begin{array}{l} \textit{Number of units} \\ \textit{issued} \end{array}}$$

## APPENDIX VII

### GLOSSARY

**60-day employment rule** This does not apply to a casual employee in the construction and catering industries. For any other full-time or part-time employee who has been employed for a continuous period of 60 days or more under an employment contract, coverage under the MPF system applies. **3.4(b)(i)**

**Accrued benefits** The amount of each scheme member's beneficial interest in an MPF scheme at any time, including sums derived from the contributions made by or in respect of that scheme member, together with the income or profits arising from any investments of the contributions, but taking into account any losses in respect of the investments and any amounts paid in respect of the scheme member. **1.5(c)**

**Annual benefit statement (ABS)** General Regulation requires trustees to provide scheme members with ABS. The ABS serves to confirm scheme membership and membership details, the status and the number of accounts held by the member, to check inflows and outflows including contributions, transfer and transactions, and to identify account balances and accruals, the extent to which they are vested, and the gains and losses associated with the accounts over the relevant financial period. The ABS is a historical record of the member's account at a point in time. **5.9(e)**

**Approved Pooled Investment Fund (APIF)** An investment fund approved by the MPFA in accordance with the requirements set out in the General Regulation and the Code on MPF Investment Funds. An APIF may be in the form of an insurance policy or a unit trust, either of which has to be authorized by the SFC. Theoretically, it could also be in the form of an authorized mutual fund, but this is not practical under current Hong Kong law. **5.4**

**Balanced fund** (See **Mixed assets fund**) **5.3.2(c)(iii)**

**Bond fund** A bond fund is a pool of money primarily invested in bonds which are debt instruments issued by governments, public utilities, corporations, banks etc. Generally a bond fund aims to achieve a level of stable income, with capital appreciation being a secondary consideration. The higher the credit ratings of the bonds held by the fund, the lower the risk of the fund. **5.3.2(c)(ii)**

**Casual employee** Under the MPF legislation, a casual employee is a person employed in the selected industries (currently catering and construction) on a day-to-day basis or for a fixed period of less than 60 days. Such an employee is covered by the MPF system. **3.4(b)(ii)**

**Compensation fund** A fund intended to compensate members of MPF schemes (and others with a beneficial interest in those schemes) for loss of accrued benefits attributable to misfeasance or illegal conduct of MPF trustees or other service providers concerned with the administration of those schemes. The fund consists of "seed money" injected by the government and levies collected by the MPFA from trustees. **3.1.3**

**Conduct requirements** Minimum standards of conduct expected of regulated persons (registered intermediaries or responsible officer) as set out in the MPFSO. **7.2.4**

**Constituent fund** An investment fund offered by an MPF scheme into which a scheme member invests his contributions and accrued benefits. All constituent funds must be approved by the MPFA. **5.3**

**Contribution account** An account in an MPF scheme which mainly receives MPF contributions (both employer and employee portions) made by an employer for and in respect of an employee under current employment. Contribution account can also receive MPF contributions made by a self-employed person while self-employed. **3.10**

**Contribution day – Casual employee** Depending on what is agreed by the participating employer and the approved trustee of the scheme concerned, the contribution day could be (i) the next working day (other than Saturday) immediately after the relevant income is paid to the casual employee; or (ii) the 10<sup>th</sup> day after the last day of the relevant contribution period. **3.7.1(a)(vii)**

**Contribution day – (Non-casual) employee** The 10<sup>th</sup> day after the last day of a calendar month within which the relevant contribution period ends, or the month during which the permitted period ends, whichever is the later. **3.7.1(a)(vii)**

**Contribution period – Casual employee** A contribution period means each period for which the employer pays or should pay relevant income to the employee. **3.7.1(a)(vi)**

**Contribution period – (Non-casual) employee** Where the wage period is not more than 1 month (e.g. weekly or monthly), a contribution period means each period for which the employer pays or should pay relevant income to the employee, but does not include any wage period commencing on or before the 30th day of employment. Where the wage period is more than 1 month (e.g. quarterly), a contribution period means each period for which the employer pays or should pay relevant income to the employee, but does not include the period commencing from the date of employment and ending on the last day of the calendar month in which the 30th day of employment falls. **3.7.1(a)(vi)**

**Contribution period - Employer** A contribution period means each period for which the employer pays or should pay relevant income to the employee. **3.7.1(a)(vi)**

**Defined benefit scheme (DBS)** A scheme where the employer's contribution rates are not defined and the benefit to a member is generally based on a formula involving a number of factors, e.g. the member's age, years of service and final average salary. **6.1.1(b)**

**Defined contribution scheme (DCS)** A scheme where both the employer's and employees' contribution rates are defined and the accrued benefits are based upon the accumulated contributions and investment income. **6.1.1(a)**

**Early retirement** One of the permitted grounds for early withdrawal of accrued benefits and the minimum MPF benefits in ORSO schemes. The scheme member concerned must have reached the age of 60 and must declare that he/she has ceased employment and self-employment with no intention of becoming employed or self-employed again. **3.11(a)**

**Employee** Any full-time and part-time employee who is employed under an employment contract. **3.4(b)(i)**

**Employee Choice Arrangement (ECA)** Allows employees to transfer the accrued benefits (i.e. the accumulated contributions and investment returns) arising from their mandatory contributions (not their employer's portion) in their MPF contribution accounts during the period they are working for their current employer. Such benefits can be transferred to a trustee and a scheme of their own choice on a lump sum basis once every calendar year. **3.10.1**

**Employer** Any person who has entered into a contract of employment to employ another person as his employee. **3.6.1**

**Employer sponsored scheme** A registered scheme where membership is only open to the relevant employees of a single employer and its associated companies. **3.3(a)**

**Employment contract** An employment contract is an agreement on the employment conditions made between an employer and an employee. The agreement can be made orally or in writing and it includes both express and implied terms. **3.4(b)(i)**

**Equity fund** A pool of money primarily invested in equities or shares of companies. Some of such funds are characterized by the countries they invest in, and some by the type of stocks invested in e.g. blue chips. Intended to achieve a high rate of return through capital appreciation, equity funds may prove volatile, especially over a short period of time, but diversification across a number of markets will lower the risk level of the fund. **5.3.2(c)(iv)**

**Exempt person** An employed person such as a domestic employee, a self-employed hawkers etc who is not required to join an MPF scheme. The employer of such a person is also exempt as far as such employment is concerned. **3.5**

**Existing member** A relevant employee who has become a member of the MPF exempted ORSO schemes on or before the commencement date of the MPF. **6.4**

**Frontline regulator** Under new regulatory regime, MPFA can assign an industry regulator as the frontline regulator for each MPF intermediary. Frontline regulators are responsible for the supervision and investigation of MPF intermediaries according to their core business, specifically (i) MA, for those in banking; (ii) IA, for those in insurance; and (iii) SFC, for those in securities. **7.1**

**Fund expense ratio ("FER")** A ratio that measures the expenses of an MPF fund as a percentage of fund size. Whilst scheme members do not directly pay fund expenses, such expenses do impact directly on the investment returns of the fund. Fees and charges are generally the main component of fund expenses. The FER is calculated for each financial period of a constituent fund based on data from the previous financial period. The published FER will not reflect any increases or decreases in fees, charges or expenses in the current financial period. The FER is provided in the Fund Fact Sheet of a scheme. It is not necessary for funds with less than two years of history to show an FER. **5.9(d)**

**Fund Fact Sheet** The report card of an MPF fund, reporting on how the fund is doing. It provides key summary information on a constituent fund, such as fund size, investment objectives, portfolio allocation, main holdings in the portfolio, fund performance, fund expense ratio, fund risk indicator and future outlook for each constituent fund in a scheme. Fund Fact Sheet is issued on a half-yearly basis. **5.9(c)**

**Guaranteed fund** In the context of the MPF scheme, a guaranteed fund promises the fund holders that they will get back either the net total amount of MPF contributions (capital guarantee) or a specified rate of return on investment (return guarantee). The guarantee may be provided without any qualifying conditions, or when the fund holder meets certain qualifying conditions. The guarantee mechanism must be clearly stated in the marketing documents of such funds. **5.3.2 (b)**

**Guaranteed fund – Hard guarantee** A minimum net return is guaranteed, without imposing any qualifying conditions. **5.3.2(b)**

**Guaranteed fund – Soft guarantee** A minimum return is promised subject to certain qualifying conditions. The minimum return is usually applied to the average rate compounded over the period of employment for which the fund has been held. In such a case the guarantee is said to be based on a “career average”. **5.3.2(b)**

**Index-tracking fund** An index-tracking fund is a collective investment scheme which has the sole investment objective of tracking a particular market index. **5.3.2(c)(v)**

**Industry scheme** A registered scheme designed especially for industries with high labour mobility and daily wage practice, at present for catering and construction industries only. **3.3(c)**

**Mandatory contributions** Compulsory contributions of both the employee and employer, as per the current provisions of the MPF system. At present, other than for a casual employee who is a member of an industry scheme (for whom special provisions apply), mandatory contributions amount to 10% of the employee’s relevant income, with the employee and employer each paying 5%. The contributions are subject to minimum and maximum relevant income levels. **3.7.1**

**Master trust scheme** A registered scheme where membership is open to the relevant employees of different employers, self-employed persons and personal account holders. **3.3(b)**

**Maximum level of relevant income – Casual employee** The maximum level of relevant income for the purpose of mandatory contributions is, in the case of a casual employee who is a member of an industry scheme, \$1,000 per day. **3.7.1(a)(ii)**

**Maximum level of relevant income – (Non-casual) employee** The maximum level of relevant income for the purpose of mandatory contributions is, in the case of a non-casual employee, \$30,000 per month or, if the employee is not remunerated on a monthly basis, that amount as prorated. **3.7.1(a)(ii)**

**Maximum level of relevant income – Self-employed person** The maximum level of relevant income for the purpose of mandatory contributions is, in the case of a self-employed person, \$30,000 per month or \$360,000 per year. **3.7.1(b)(vi)**

**Minimum MPF benefits** A new member of an exempted ORSO registered scheme is subject to the “minimum MPF benefits” rule, whereby certain MPF requirements (e.g. preservation) will apply up to the minimum sum. The “minimum MPF benefits” is defined as the lesser of (a) the member’s benefits accrued and held under the scheme during the period when the exemption certificate applied to the scheme; or (b) 1.2 x final average monthly relevant income (capped at \$30,000) x years of post-MPF service. **6.5.3**

**Minimum level of relevant income – Casual employee** The minimum level of relevant income for the purpose of mandatory contributions is, in the case of a casual employee who is a member of an industry scheme, \$280 per day. **3.7.1(a)(ii)**

**Minimum level of relevant income – (Non-casual) employee** The minimum level of relevant income for the purpose of mandatory contributions is, in the case of a non-casual employee, \$7,100 per month or, if the employee is not remunerated on a monthly basis, that amount as prorated. **3.7.1(a)(i)**

**Minimum level of relevant income – Self-employed person** The minimum level of relevant income for the purpose of mandatory contributions is, in the case of a self-employed person, \$7,100 per month or \$85,200 per year. **3.7.1(b)(vi)**

**Mixed assets fund** (also known as balanced fund) An investment mix of bonds and equities (shares). The risk level for this type of fund is usually somewhere between those of a bond fund and an equity fund. **5.3.2(c)(iii)**

**Monthly pay-record** Each employee (other than a casual employee in an industry scheme whose contribution is made on the next working day (other than Saturday) immediately after the relevant income is paid) must be provided with a monthly pay-record by the employer. This must be provided within 7 working days after the last contribution payment during the month and is to include the employee’s relevant income, the amount of mandatory and voluntary contributions (if any) deducted and the date on which contributions were paid to the trustee. **3.7.1(a)(ix)**

**MPF Conservative Fund** It is a statutory requirement that at least one of the constituent funds of an MPF scheme must be an MPF Conservative Fund. As the name suggests, the purpose of such a fund is to minimize the risk to the capital invested therein. Whilst not guaranteed, there are safeguards to achieve this primary objective. The investments of and deduction of fees from the fund is subject to s.37 of the General Regulation. **5.3.2(a)**

**MPF principal intermediary / principal intermediary** A business entity (Type A regulatee) registered by the MPFA as an intermediary to carry on regulated activities. **7.2.2**

**MPF registered intermediary / registered intermediary** An MPF principal intermediary; or an MPF subsidiary intermediary. The MPFA keeps a Register of registered intermediaries. The Register enables a member of the public to, by inspecting the Register or, upon payment of a fee, by obtaining a copy of an entry in or extract of the Register, ascertain whether he/she is dealing with a registered intermediary in any regulated activity, or to

ascertain the particulars of the registration of a person as a principal or subsidiary intermediary. **7.2.2**

**MPF scheme/registered scheme** A provident fund scheme registered with the MPFA as an employer sponsored scheme, a master trust scheme or an industry scheme. **3.3**

**MPF subsidiary intermediary / subsidiary intermediary** A person (Type B regulatee) registered by the MPFA as an intermediary to carry on regulated activities on behalf of the principal intermediary to which the person is attached. **7.2.2**

**Negative income** A self-employed person who suffers losses will not be required to make mandatory contributions (since his relevant income will be less than the minimum relevant income level). Proof of such losses may be lodged with the trustee showing the computation of the net loss, which should cover the latest financial period of his business. **3.7.1(b)(v)**

**Non-refusal of scheme applicants provision** No MPF application may be refused if the person making it complies with all requirements and agrees in writing that he will comply with the governing rules of the scheme. **3.6.3**

**Notice of participation** A notice issued by the trustee of an MPF scheme to the applicant for membership of or participation in the MPF scheme within 30 days after whichever is the later of the following dates:

- the date on which all the information required for the application is submitted;
- the date on which the applicant agrees to comply with the governing rules of the scheme.

The notice of participation shall specify:

- the name of the scheme;
- the name and address of the trustee;
- the name of the scheme member or the name of the participating employer; and
- the date of issue of the notice.

**3.6.3**

**Offering document** A document inviting participation in the registered scheme by prospective participating employers or prospective members of the scheme and containing information relating to the establishment or administration of the scheme. **3.10.4**

**On-going cost illustration (“OCI”)** An illustration of the total effect of fees and charges payable in dollar terms by converting the latest Fund Expense Ratio figure into dollars and adding that to any direct charges that a scheme member might pay, such as a contribution charge or offer spread. It shows the dollar costs of investing HK\$1,000 in different funds over periods of one, three and five years under an assumed annual rate of investment return of 5%. **5.9(b)**

**ORSO scheme** A scheme regulated by the Occupational Retirement Schemes Ordinance, set up by an employer for his employees, providing employee benefits in the form of pensions, allowances, gratuities or other payments, payable on termination of service, death or retirement. **6**

**Performance guarantee** A requirement upon individual (non-corporate) MPF trustees. It may be in the form of an insurance policy or a bank guarantee, covering losses from the trustee's failure to perform or other breach of duties. It must be for 10% of the net asset value of the scheme, with a maximum of \$10 million. **4.4(c)**

**Permitted period – Casual employee** The period within which an employer must enrol a casual employee in an MPF scheme. The permitted period is 10 days for a casual employee. **3.7.1(a)(iv)**

**Permitted period – (Non-casual) employee** The period within which an employer must enrol a non-casual employee in an MPF scheme. The permitted period is 60 days for a non-casual employee. **3.7.1(a)(iv)**

**Permitted period – Self-employed person** The period within which the self-employed person must become a member of an MPF scheme. The permitted period is 60 days for a self-employed person. **3.7.1(b)(vii)**

**Personal account** An account in an MPF scheme which mainly receives the accrued benefits attributable to a member's former employment or self-employment transferred from other MPF account(s). Personal accounts can also receive accrued benefits attributable to a member's current employment transferred from a contribution account during current employment under ECA. **3.10**

**Portability** Under the MPF system, an employer or a self-employed person can change his participation from one MPF scheme to another. An employee can transfer his accrued benefits from the original MPF scheme to another when he changes jobs. With ECA, an employee may also transfer the part of the accrued benefits from his mandatory contributions made during his current employment to an MPF scheme of his own choice on a lump sum basis. **3.10**

**Preservation** Benefits accrued from mandatory contributions must stay within the MPF system until the scheme member attains the age of 65, although provisions exist for earlier withdrawals under certain specified circumstances. **3.9**

**Professional indemnity insurance** Insurance must be arranged to cover losses that MPF schemes might sustain from certain prescribed risks. This makes the cover wider than the customary professional indemnity insurance, and includes fraud and negligence on the part of the trustee. **3.1.2**

**Qualifying examination** An examination designed for applicants for MPF intermediaries and specified by MPFA. **7.2.2(b)(vi)**

**Relevant income – Employee** Any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite or allowance, expressed in monetary terms, paid or payable by an employer (directly or indirectly) to that relevant employee in consideration of his employment under that contract, but does not include severance payments or long service payments under the Employment Ordinance. **3.7.1(a)(iii)**

**Relevant income – Partner** A partner within a partnership is considered a self-employed person, who should calculate his relevant income by making proportional adjustments according to his share of profits for the partnership for that period. **3.7.1(b)(ix)**

**Relevant income – Self-employed person** The calculation of relevant income is basically linked to the assessable profits of the self-employed person that are calculated in accordance with the Inland Revenue Ordinance. **3.7.1(b)(iii)**

**Remittance statement** A statement prepared by an employer showing the relevant income and amount of contribution per relevant employee (other than a casual employee in an industry scheme whose contribution is made on the next working day (other than Saturday) immediately after the relevant income is paid). This statement should accompany the payment to the trustee. **3.7.1(a)(viii)**

**Retirement age** In relation to a relevant employee or self-employed person, means 65 years of age or, if the regulations prescribe an earlier age, that earlier age. **3.11**

**Self-employed person** A person whose relevant income (other than in the capacity as an employee) derives from the person's production (in whole or in part) of goods or services in Hong Kong, or trade in goods or services in or from Hong Kong. **3.4(b)(iii)**

**Service provider** A service provider can be an investment manager, a custodian of MPF scheme assets or any other person appointed or engaged by the scheme trustee to provide services for the purpose of the scheme. This includes any person delegated by such a manager, custodian etc but does not include a person appointed or so engaged as an auditor, solicitor, actuary or MPF intermediary. **3.2**

**Small balance** One of the permitted grounds for early withdrawal of accrued benefits. "Small balance" means the total accrued benefits in an MPF scheme does not exceed \$5,000 and the member does not have MPF benefits in any other MPF scheme. Members applying for early withdrawal on this ground shall be subject to certain conditions (e.g. the member does not intend to be employed or self-employed again). **3.11(f)**

**Terminal illness** One of the permitted grounds for early withdrawal of accrued benefits and the minimum MPF benefits in ORSO schemes. The scheme member must provide a medical certificate issued by a registered medical practitioner or a registered Chinese medicine practitioner stating that, in the practitioner's opinion, the scheme member has an illness that is likely to reduce his/her life expectancy to 12 months or less. **3.11(e)**

**"Top-Up"** One of the options available to employers with an existing ORSO scheme. Under this option, the contributions to the existing scheme would become supplementary MPF contributions, over and above MPF requirements, and all employees would be covered under an MPF scheme. **6.4**

**Total incapacity** One of the permitted grounds for early withdrawal of accrued benefits and the minimum MPF benefits in ORSO schemes. The scheme member must provide a medical certificate issued by a registered medical practitioner or a registered Chinese medicine practitioner certifying that the scheme member has become permanently unfit to perform the kind of work that the member was last performing before becoming incapacitated. The scheme member is also required to make a declaration that he/she has terminated his/her

contract of employment of that particular kind of work.

**3.11(d)**

**Vesting** Vesting means to endow or to give legal rights of possession regarding a particular financial interest. In the context of MPF, this refers to the immediate vesting in the employee of all employee's and employer's mandatory contributions and employee's and self-employed person's voluntary contributions. **3.8**

**Voluntary contribution** Non-compulsory contribution over and above mandatory contribution. This is perfectly permissible, indeed encouraged, and where made is subject to MPF legislation applicable to mandatory contribution, except for provisions relating to portability, preservation, vesting and withdrawal (which are governed by the governing rules of the relevant MPF scheme). **3.7.2**

**Wage period** A wage period means each period for which the employer pays or should pay relevant income to the employee. **3.7.1(a)(v)**

**Withdrawal of benefits** Benefits accrued from mandatory contributions have to be preserved until the scheme member attains the retirement age of 65. Early withdrawal of benefits is permissible, in certain specified circumstances, i.e. early retirement, permanent departure from Hong Kong, total incapacity, terminal illness, small balance and death. Each may be subject to specified requirements or qualifications. **3.11**

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Occupational Retirement Scheme Ordinance (ORSO)	<b>6.1</b>	- Employee	<b>3.7.1(a)(iii)</b>
Offences	<b>3.7.4(c), 4.7(c)</b>	- Partners	<b>3.7.1(b)(ix)</b>
Offering documents	<b>2.2.1(a), 5.1(b)</b>	- Self-employed person	<b>3.7.1(b)(iii)</b>
On-going Cost Illustrations (OCI)	<b>5.9(b)</b>	Relevant ORSO registered scheme	<b>6.3</b>
Original scheme	<b>3.10.2(a)</b>	Remittance statement	<b>3.7.1(a)(viii)</b>
Original trustee	<b>3.10.5(a)</b>	Reserve charge (= Guarantee fee)	<b>5.3.2(b)(vi)</b>
ORSO exempted schemes	<b>6.1.2(b)</b>	Responsible officer	<b>7.2.2(d)</b>
ORSO registered schemes	<b>6.1.2(a)</b>	Restoration (trust property)	<b>4.1.3(a)</b>
ORSO schemes	<b>6.1, 6.2</b>	Retirement age	<b>3.11</b>
Other securities	<b>5.6.2(a)</b>	Retirement protection	<b>1.1</b>
Overseas trust company	<b>6.6</b>	Sanctions and penalties	
		- Intermediaries	<b>7.2.1(c), 7.5</b>
		- Trustees	<b>4.7</b>
Par value (= Face value)	<b>AVI(b)(i)</b>	Scale of contributions	<b>3.7.1(a)(ii)</b>
Performance guarantee	<b>4.4(c)</b>	Securities and Futures Commission (SFC)	<b>2.2.1, 7.1</b>
Permanent departure from Hong Kong	<b>3.11(b)</b>	Self-employed person	<b>3.4(b)(iii)</b>
Permissible investments	<b>5.6.2</b>	Self-employed persons (duties)	<b>3.6.2</b>
Permitted period		Service providers	<b>3.2</b>
- Casual employee	<b>3.7.1(a)(iv)</b>	Severance payment	<b>3.13</b>
- Employees	<b>3.7.1(a)(iv)</b>	SFC Code on MPF Products	<b>5.1(b)</b>
- Self-employed person	<b>3.7.1(b)(vii)</b>	Shares	<b>AVI(c)</b>
Perpetual bonds	<b>AVI(b)(ii)</b>	Small balance	<b>3.11(f)</b>
Personal account	<b>3.10(b)</b>	Statement of investment policy	<b>5.5</b>
Portability	<b>3.10</b>		

Subsidiary intermediary	<b>7.2.2(ii)</b>
Successor schemes	<b>6.3</b>
Suspend (Trustee)	<b>4.7(b)(ii)</b>
Switching (MPF schemes/constituent funds)	<b>5.8</b>
Tax allowances	<b>3.7.3</b>
Term to maturity	<b>5.3.2(c)(ii)</b>
Terminal illness	<b>3.11(e)</b>
“Three Pillars for Old Age Protection”	<b>1.4</b>
“Top-Up”	<b>6.4(c)</b>
Total incapacity	<b>3.11(d)</b>
Transfer statement	<b>3.10.5(a)</b>
Transferee trustee	<b>3.10.5(b)</b>
Transferor trustee	<b>3.10.5(a)</b>
Treasury bills	<b>AVI(a)(i)</b>
Trust (concept)	<b>4.1.1</b>
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- Approval	<b>4.4</b>
- Categories	<b>4.2</b>
- Corporate	<b>4.4(a)</b>
- Duties and functions	<b>3.6.3, 4.3</b>
- Fiduciary duties	<b>4.1.2</b>
- Individual	<b>4.4(c)</b>
- Offshore corporate	<b>4.4(b)</b>
Type 9 (asset management) regulated activity	<b>3.2(a)(i), 5.6.1(a)(ii)</b>
Type A regulatee	<b>7.2.2(a)</b>
Type B regulatee	<b>7.2.2(b)</b>
Unclaimed benefits	<b>3.12</b>
Unit trust	<b>5.4.2(a), AVI(e)</b>
Vesting	<b>3.8</b>
Voluntary contributions	<b>3.7.2</b>
Wage period	<b>3.7.1(a)(v)</b>
Warnings (Trustee)	<b>4.7(a)</b>
Warrants	<b>5.6.2(d)</b>
Withdrawal of benefits	<b>3.11</b>

# *Representative Examination Questions*

## *Correct Answers*

### QUESTIONS

<b>CHAPTER</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
1	(a)	(d)	(b)	(a)	-	-
2	(c)	(a)	-	-	-	-
3	(d)	(d)	(b)	(c)	(c)	(c)
4	(a)	(d)	(c)	-	-	-
5	(a)	(c)	(c)	(c)	(d)	-
6	(c)	(b)	-	-	-	-
7	(b)	(d)	(d)	(d)	-	-