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22 March 2019

Circular Letter: SU/CCO/2019/001

To: All Registered Intermediaries

Dear Registered Intermediaries (RIs),

Tax Deductible Voluntary Contributions (TVCs) and Related Issues

The Inland Revenue and MPF Schemes Legislation (Tax Deductions for Annuity Premiums and MPF Voluntary Contributions) (Amendment) Bill 2018, which was passed by the Legislative Council on 20 March 2019, will come into effect on 1 April 2019.

Introduction of TVCs

Starting from 1 April 2019, members of MPF schemes or MPF exempted ORSO schemes[1] are eligible for tax deduction by making tax deductible voluntary contributions (TVCs) into TVC accounts[2]. To enjoy the tax deduction, eligible scheme members must open a TVC account in a MPF scheme of his own choice, and make TVCs to the account via the respective MPF trustee. Only contributions made to TVC accounts are eligible for tax deduction.

[1] MPF Exempted ORSO Schemes are ORSO schemes exempted from the provisions of MPFSO by virtue of section 5 of MPFSO.
[2] "TVC account" is an account in an MPF scheme opened by a person under section 11A of the Mandatory Provident Fund Schemes Ordinance and into which Tax Deductible Voluntary Contributions (TVCs) are paid and the member's benefits derived from those TVCs and the TVCs transferred to the account from another TVC account are held.

To meet the purpose of encouraging extra retirement savings, TVCs are subject to the same preservation requirements as mandatory contributions. Except under specific circumstances prescribed by law, withdrawal of accrued benefits in a TVC account is not allowed until the scheme member has reached age 65.

RIs should be prepared

Most of the MPF schemes will offer TVCs starting from 1 April 2019. RIs may refer to the MPFA website for up-to-date information related to TVCs offered by respective MPF trustees.

Although scheme members may contact respective trustees directly for enquiry and opening of TVC accounts, they may also approach RIs for information and advice in relation to TVCs. It is of utmost importance that principal intermediaries (PIs) should get prepared for the implementation of TVCs and equip their subsidiary intermediaries (SIs) with the relevant knowledge before carrying on regulated activities related to TVCs. PIs should also ensure that their internal controls and procedures in place are adequate, appropriate and up-to-date, and that all relevant statutory and regulatory requirements are complied with at all times.

Salient points on conduct issues

With the approach of the introduction of TVCs, it is expected that there will be growing interest from scheme members to make enquiry and to seek advice relating to TVCs. RIs may be approached or consulted by scheme members to find out more about TVCs or to seek advice on investments in MPF schemes. To fulfill their ongoing compliance obligation, SIs should familiarize themselves with the features of TVCs and operation of TVC accounts.

In general, if an SI invites, induces or advises a scheme member to open TVC accounts and make TVCs, or gives related advice, the SI is considered to be carrying on a "regulated activity" under the Mandatory Provident Fund Schemes Ordinance (MPFSO). RIs have to comply with the relevant regulatory and conduct requirements under section 34ZL of the MPFSO and the MPFA's Guidelines on Conduct Requirements for Registered Intermediaries (Conduct Guidelines).

We take this opportunity to reiterate to all RIs some salient points and good practices when dealing with clients in relation to TVCs:

(1) **<u>Acting in the best interests of clients and managing conflict of interest</u>** (paragraphs III.8 and III.53 of the Conduct Guidelines) – A RI should act in the best interests of the client when conducting regulated activities and giving regulated advice in relation to TVCs. A RI should avoid any conflict of interest and should disclose the conflict to the client and take all reasonable steps to ensure fair treatment of the client if it has a material interest which gives rise to an actual or potential conflict of interest.

An example of such a conflict of interest may be where the RIs received different amount of benefits (monetary or non-monetary) upon completing sales of different products or under different schemes. In particular, as the tax deduction limit of $60,000 per year will be calculated in aggregate for TVCs and any premiums paid under qualifying deferred annuity policies, and if the rewards for RIs are different depending on the products, PIs should review their internal controls and procedures carefully and make appropriate arrangement, if necessary, to manage such conflict of interest.

(2) **<u>Marketing activities related to TVCs</u>** (paragraph III.60 of the Conduct Guidelines) – In the past, we have received complaints from scheme members on unsolicited calls and telephone marketing activities. As a matter of prudent practice and risk management, where marketing campaigns (e.g. telemarketing activities and roadshows) are to be undertaken, PIs are reminded to provide guidelines and standard scripts, where appropriate, for SIs before embarking on such activities and maintain a call log on telemarketing activities for monitoring purposes.

When approaching an existing or new client for cross-selling, RIs should ensure that proper consent from the client has been obtained and documented to avoid any misuse of client's personal information. As a good practice, when a new or potential client being approached is concerned about how the RI obtained the client's contact information, the RI should be able to explain the source of the information to the client.

(3) **<u>Impersonation by RIs or other entities engaged by RIs</u>** – The MPFA had received complaints in the past about suspected persons impersonating representatives of government agencies or public bodies (e.g. staff of the MPFA) when approaching scheme members. Such acts are in breach of the general conduct requirements that RIs must act honestly, fairly, in the best interests of the client, and with integrity. The

MPFA will refer suspected criminal cases to the relevant enforcement agencies when necessary.

(4) **<u>Competence in carrying on regulated activities and advising on TVCs</u>** (paragraphs III.12 to III.14, III.37 to III.39, III.43, III.45 and III.46 of the Conduct Guidelines) - SIs should only advise on matters that they are competent to do so. In promoting TVCs, SIs should be familiar with the features of TVCs and procedures relating to opening and making contribution to TVC accounts and be mindful of the following areas in assisting clients on TVC-related matters:

(a) the preservation requirements of TVC accounts are the same as mandatory contributions (withdrawal is prohibited until the scheme member has reached age 65, except for early withdrawals under statutory grounds);

(b) the maximum deductible limit of $60,000 for each assessment year is an aggregate limit for both TVCs and qualifying deferred annuity premiums[3]; and

(c) differences between TVCs and qualified deferred annuity policies (e.g. any minimum investment amount and period) should be presented in an accurate, fair and balanced way, if both products are involved in the selling and advising process.

(5) **<u>Suitability Assessment</u>** (paragraph III.26(b) of the Conduct Guidelines) - RIs should have regard to a client's particular circumstances by conducting suitability assessment when advice is given to a specific client in relation to a decision as to the amount of any TVCs to be made into a TVC account.

(6) **<u>No clients should be asked or allowed to sign incomplete form</u>** (paragraph III.3 of the Conduct Guidelines) – When opening new TVC accounts for clients, RIs should not ask or allow their clients to sign on blank or incomplete forms. RIs should ensure that any form to be signed by a client is duly completed before asking or allowing the client to sign on it and any alterations to the completed form must be initialed by the client. A copy of the duly signed form should be provided to the client as soon as practicable and another copy should be kept by the PI.

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[3] Qualifying deferred annuity premiums means premiums paid for deferred annuity products that satisfy a set of criteria stated in the guidelines issued by the Insurance Authority.

(7) **<u>Only authorized marketing materials may be used</u>** (paragraphs III.5 and III.60(g) of the Conduct Guidelines) **-** An SI should only use advertising and marketing materials approved by his PI in advance. For TVCs in particular, PIs should ensure that all the information related to TVCs is clear and presented in an unbiased manner. A PI should have in place arrangements, procedures and controls to ensure that those materials used by its SIs have been duly authorized by it and the SFC or are otherwise exempted from SFC's authorization.

(8) **<u>Internal controls and procedures</u>** (paragraphs III.57 and III.58 of the Conduct Guidelines) **-** RIs should document the information disclosed and documents provided to the client. PIs should establish and maintain proper internal controls and procedures for ensuring that all regulated activities conducted by their SIs have proper audit trails and all audio and written records required under the Conduct Guidelines are kept for a minimum period of seven years.

The MPFA will work closely with frontline regulators in ensuring that RIs conduct their regulated activities in a compliant manner. The MPFA will refer any suspected non-compliance with the performance requirements under the MPFSO to the relevant frontline regulator.

Public Education and Training

Public education campaign on TVCs and qualified deferred annuity policies will be launched shortly by the Investor and Financial Education Council (IFEC), with the joint support of the Insurance Authority and the MPFA. More relevant information for RIs (such as FAQs on TVCs) will also be available on the MPFA website.

Pursuant to paragraph III.14 of the Conduct Guidelines, PIs should arrange their relevant staff members and their SIs to attend training relating to TVCs, in order to equip them with the relevant knowledge before carrying on the relevant regulated activities. The MPFA will organize industry briefing sessions on TVCs in March and April 2019 and CPD training courses on TVCs will be provided by CPD activity providers starting from April 2019.

To provide further support to the industry, the MPFA stands ready to collaborate with industry associations and professional bodies in delivering core CPD training on TVCs to RIs. Should you have any questions about the contents of this circular letter, please contact Mr Peter Lee on 2292 1267.

Thank you for your attention

Yours sincerely,

Paul Yu

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