

**Process Review Panel for the  
Mandatory Provident Fund Schemes Authority**

**2022 Annual Report**

## Table of Contents

	<b>Page</b>
<b>Message from the Chairman</b>	2
<b><u>Chapter 1</u></b>	
Background	3 - 6
<b><u>Chapter 2</u></b>	
Work of the Process Review Panel	7 - 12
<b><u>Chapter 3</u></b>	
Observations and Recommendations	13 - 62
- <i>Case Summaries and PRP's Case-specific Observations</i>	<i>14 - 52</i>
- <i>PRP's General Observations and Recommendations</i>	<i>53 - 62</i>
<b><u>Chapter 4</u></b>	
Way Forward	63
<b><u>Chapter 5</u></b>	
Acknowledgement	64

## **Message from the Chairman**

Formerly known as the Process Review Panel in relation to the Regulation of Mandatory Provident Fund Intermediaries (“PRP-MPFI”), the Process Review Panel for the Mandatory Provident Fund Schemes Authority (“PRP”) took on an expanded role in the Mandatory Provident Fund (“MPF”) sphere under a new name starting from the 2021-22 review cycle. The PRP now reviews the internal procedures and operational guidelines in respect of all core regulatory activities of the Mandatory Provident Fund Schemes Authority (“MPFA”).

Against this backdrop, I am pleased to present the 2022 Annual Report of the PRP, which marks a milestone in the PRP’s journey to help strengthen the regulatory role of the MPFA. This year, the PRP scrutinised cases that span across the MPFA’s regulatory work concerning MPF schemes, trustees, intermediaries, products and investment, as well as regulation of occupational retirement schemes (“ORSO schemes”). The PRP’s observations distilled from the case review sessions, and recommendations on filling the gaps in existing procedures and practices, can be found in Chapter 3 of this Annual Report.

The widened ambit of the PRP enables better checks and balances in safeguarding and maintaining public confidence in the MPF System. I look forward to the continued collaboration with the MPFA in the common pursuit of providing an ever improving MPF regulatory regime.

On completion of this year’s review cycle, I wish to thank Members of the PRP for their contribution and devotion, in particular their support to the increased responsibilities following the expanded scope of review. The PRP continues to benefit from Members’ wealth of experience and industry expertise in formulating sound recommendations for the MPFA. I also wish to thank the Financial Services and the Treasury Bureau for the support given to the PRP.

**Mr Eugene FUNG, SC**  
**Chairman**  
**December 2022**

# Chapter 1: Background

## Overview

- 1.1 The PRP-MPFI, established in November 2013, had a relatively limited scope of review, covering only the internal procedures and guidelines of the MPFA in respect of the regulation of MPF intermediaries.
- 1.2 After six years of operation, the former Chairman Dr Eddy Fong suggested in the 2019 Annual Report to expand the scope of work of the PRP-MPFI to bring it on par with that of the Process Review Panels for other financial regulators in Hong Kong.
- 1.3 With the agreement of the Chief Executive and starting from 1 November 2021, the PRP-MPFI expanded its terms of reference to review the internal procedures and operational guidelines in respect of all core regulatory activities of the MPFA, covering not only regulation of MPF intermediaries, but also registration and approval of MPF schemes, trustees and products; regulation of MPF investment; and matters relating to registration of ORSO schemes. To reflect its expanded ambit, the PRP-MPFI was renamed as the PRP on the same day.

## Terms of Reference

1.4 The terms of reference of the PRP are as follows –

- (a) to review and advise the MPFA on the adequacy and consistency of its internal procedures and operational guidelines governing the actions taken and operational decisions made by the MPFA and its staff in the performance of the regulatory functions in relation to the following areas –
  - (i) registration of MPF schemes and approval of MPF funds;
  - (ii) approval and inspection of MPF trustees and associated matters;
  - (iii) registration of MPF intermediaries and associated matters;
  - (iv) co-ordination and follow-up with the Frontline Regulators (“FRs”)<sup>1</sup> in relation to inspection and investigation of registered MPF intermediaries;
  - (v) registration and exemption of ORSO schemes and associated matters;
  - (vi) exercise of statutory powers of investigation, inquiry, disciplinary actions and prosecution relating to the regulation of the above areas; and
  - (vii) receipt and handling of complaints relating to the above;

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<sup>1</sup> The Hong Kong Monetary Authority, the Insurance Authority, and the Securities and Futures Commission are the FRs responsible for the supervision and investigation of complaints against registered MPF intermediaries whose core business is in banking, insurance and securities respectively.

- (b) to receive and consider periodic reports from the MPFA on all completed or discontinued cases in the above-mentioned areas, including reports on investigation cases which are not completed within one year and on any appeals;
- (c) to receive and consider periodic reports from the MPFA in respect of the manner in which complaints against the MPFA or its staff have been considered and dealt with, including periodic reports on complaints that have not been concluded within one year;
- (d) to call for and review the files of the MPFA relating to any case or complaint referred to in the periodic reports mentioned in paragraphs (b) and (c) above for the purpose of verifying that the actions taken and decisions made in relation to that case or complaint adhered to and are consistent with the relevant internal procedures and operational guidelines, and to advise the MPFA accordingly;
- (e) to advise the MPFA on such other relevant matters as the MPFA may refer to the PRP or on which the PRP may wish to advise; and
- (f) to submit annual reports and, if appropriate, special reports (including reports on problems encountered by the PRP) to the Financial Secretary (“FS”) which, subject to applicable statutory secrecy provisions and other confidentiality requirements, should be published.

1.5 The PRP does not review the merits of the MPFA’s decisions and actions. Rather, it focuses on the procedural propriety in the regulatory regime.

## **Membership**

- 1.6 The PRP comprises the Chairman and Members coming from a wide spectrum of professions and industry sectors. The Chairman of the MPFA and the Secretary for Justice (or his representative) are ex officio members of the PRP.
- 1.7 The membership of the PRP for the 2021-22 review cycle is as follows –

### Chairman

Mr Eugene FUNG Ting-sek, SC

### Members

Mr Abraham CHAN Lok-shung, SC

Miss Grace CHAN Man-yee

Mrs Agnes KOON WOO Kam-oi, MH

Mr Allen LAU Kai-hung

Dr James LIN

Mr Jeff WONG Kwan-kit

Ms Grace YU Ho-wun

### Ex officio Members

Mrs Ayesha Macpherson LAU, BBS, JP

*(in her capacity as the Chairman of the MPFA)*

Mr YUNG Lap-yan

*(in his capacity as the representative of the Secretary for Justice)*

### Secretariat

Financial Services and the Treasury Bureau

## **Chapter 2: Work of the PRP**

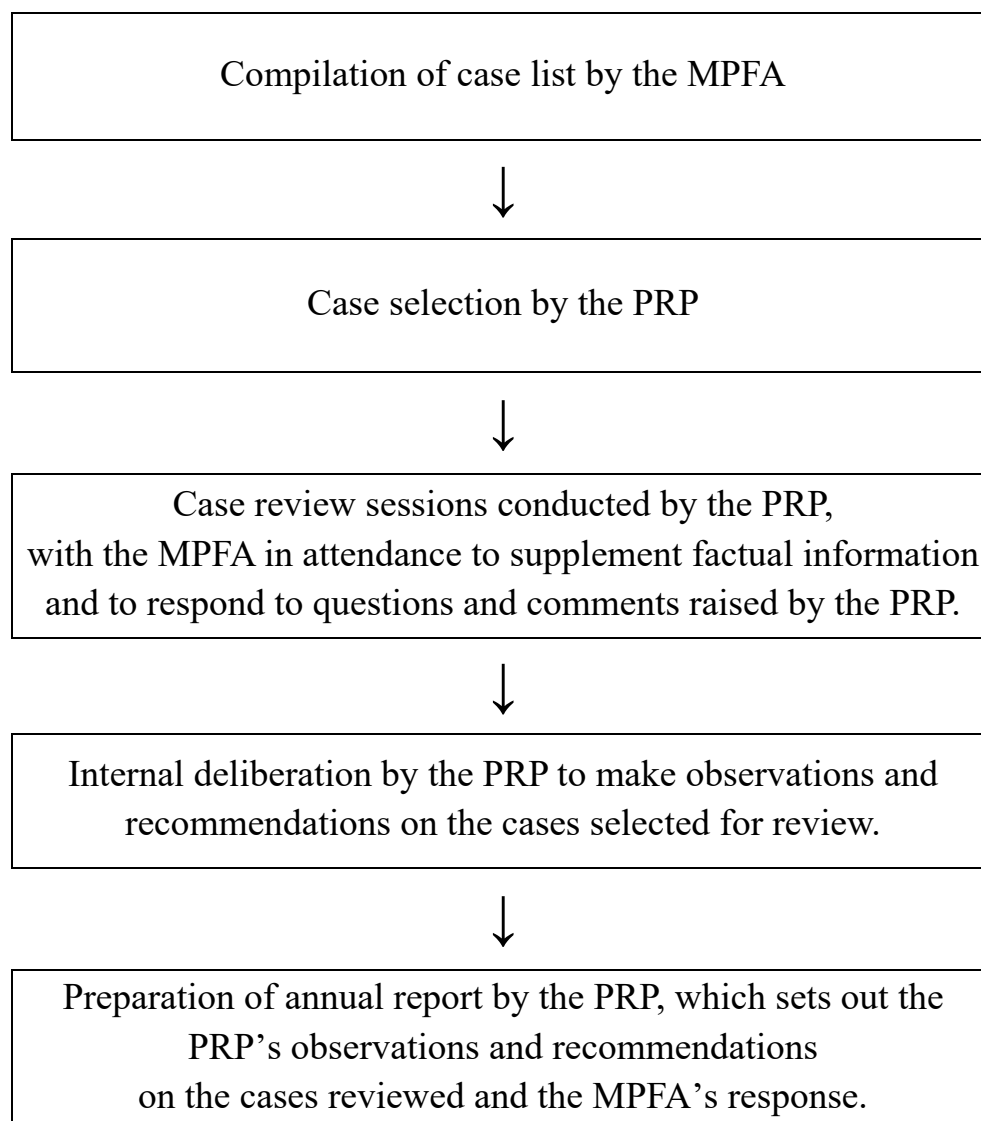
### **Modus Operandi**

- 2.1 To facilitate the PRP's review work, the MPFA provides the PRP with lists of cases completed or discontinued during the review cycle twice a year, from which the PRP selects cases for detailed review.
- 2.2 With the aid of case summaries and supplementary information provided by the MPFA, the PRP holds case review sessions with the MPFA to understand the processes through which MPFA officers made various decisions in the cases selected for review.
- 2.3 The PRP deliberates on each case being reviewed, with a view to making observations and recommendations for the MPFA to respond and follow up on. The PRP's views and MPFA's response are compiled into an annual report to be submitted to the FS and for publication in due course.
- 2.4 PRP members are obliged to keep confidential the information furnished to them in the course of the PRP's work. To maintain the independence and impartiality of the PRP, all PRP members are required to make declaration of interests upon commencement of their terms of appointment and again before they engage in each case review and relevant discussions, as appropriate.



## Case Review Workflow

2.5 The workflow of the PRP is summarised as follows –



2.6 When concluding the annual review exercise, the PRP will also take note of the MPFA's follow-up actions on those observations and recommendations made by the PRP in previous review cycle.

## 2021-22 Case Review Cycle

2.7 A total of 10,251 cases were closed or discontinued during the 2021-22 review cycle from 1 May 2021 to 30 April 2022. These cases can be classified into five categories with reference to the MPFA's core regulatory functions. Of these closed/discontinued cases, the PRP selected 30 cases for detailed review. The distribution of cases is as follows –

	Category of Cases	No. of Cases Closed or Discontinued	No. of Cases Selected for Review in 2021-22
I.	Approval / Registration of MPF Trustees, Schemes and Funds	27	2
II.	Regulation of MPF Trustees	618	16
III.	Registration and Regulation of MPF Intermediaries	9,523	6
IV.	Registration, Exemption and Regulation of ORSO Schemes	81	5
V.	Complaints against MPFA and its Staff	2	1
<b>Total:</b>		<b>10,251</b>	<b>30</b>

2.8 The MPFA provided case summaries, relevant correspondence and internal procedural manuals relating to the 30 selected cases for the PRP's perusal. The PRP held two case review sessions in April and July 2022 respectively to scrutinise the MPFA's internal and operational processes in detail.

2.9 During the case review sessions, the MPFA gave briefings to the PRP on the work of the MPFA in respect of the 30 selected cases and responded to questions raised by the PRP.

2.10 Summaries and the PRP's major observations in respect of the selected cases, and the PRP's recommendations to the MPFA for 2021-22 review cycle, are set out in Chapter 3.

## MPFA’s Follow-up on the Recommendations in the 2021 Annual Report

2.11 In its 2021 Annual Report, the PRP made a number of recommendations to the MPFA. In response, the MPFA had taken the following actions –

PRP’s Recommendations in 2021 Annual Report	MPFA’s Follow-up Actions
<b>Case Handling Time</b> ( <i>paragraphs 3.33-3.35</i> )	
<ul style="list-style-type: none"> <li>The MPFA was suggested to devise specific timeline and duration for complaint cases where legal advice from external lawyers is warranted and ensure that the imposed timetable is strictly followed.</li> <li>The MPFA was advised to conduct internal review on cases in which handling time by the MPFA exceeds either of the second-tier target timeframes of the two Key Performance Indicators (“KPIs”) concerning regulation of MPF intermediaries, and report the outcome and findings to the PRP starting from the next review cycle.</li> </ul>	<ul style="list-style-type: none"> <li>The MPFA had devised specific timeline and duration for complaint cases with enhanced control and close monitoring on the time in obtaining external legal advice, and required external lawyers to strictly follow such timeline. Furthermore, in cases with various legal issues involved, the MPFA prioritized the core issues for counsel’s quick views; and</li> <li>The MPFA was committed to conducting internal review on cases in which handling time by the MPFA exceeds the second-tier target timeframes and report the outcome and findings to the PRP in each review cycle. In respect of the 2021-22 review cycle, all conduct cases were handled within the applicable target timeframe of the KPIs.</li> </ul>
<b>Training and Public Education</b> ( <i>paragraphs 3.38-3.39</i> )	
<ul style="list-style-type: none"> <li>The MPFA was advised to require practitioners to receive continuous and refresher training on a regular basis apart from having to fulfil the Continuing Professional</li> </ul>	<ul style="list-style-type: none"> <li>The MPFA had enhanced its collaboration with industry associations and delivered more training to subsidiary intermediaries (“SIs”) directly, on top of the existing train-the-</li> </ul>

<p>Development (“CPD”) requirements.</p> <ul style="list-style-type: none"> <li>The MPFA was advised to educate the SIs directly on top of the existing train-the-trainer model, such as by way of direct delivery of personalised promotional messages to practitioners via email and social media.</li> </ul>	<p>trainer model. For the period from May 2021 to April 2022, the MPFA had conducted 17 sessions of training with industry associations, which was double the number of training sessions conducted in the last period from May 2020 to April 2021. The MPFA had further strengthened the training programme to enhance promotion of compliance culture in the industry; and</p> <ul style="list-style-type: none"> <li>The MPFA had enhanced its system to directly promulgate its messages (such as circulars or important notices) to SIs starting from July 2022.</li> </ul>
<p><b>Scope of Investigation and Follow-up Actions</b> (<i>paragraphs 3.43-3.44</i>)</p>	
<ul style="list-style-type: none"> <li>The PRP recommended the MPFA to explore the feasibility of expanding the scope of investigation to cover all persons who are found to be in potential breach of conduct, regardless of whether they are original targets of an investigation.</li> <li>In cases involving serious misconduct, the MPFA was advised to take follow-up actions as appropriate, regardless of whether regulated activities are involved.</li> </ul>	<ul style="list-style-type: none"> <li>The MPFA had discussed and explored with the relevant FRs the feasibility of expanding the scope of investigation, in particular where additional target is identified, which the FRs will consider in appropriate cases; and</li> <li>The MPFA had enhanced guidelines for making referrals to other enforcement agencies (including explaining to the complainant the criminal nature and seriousness of misconduct involved, and that the MPFA will refer the matter to other enforcement agencies as appropriate with the complainant’s consent and full cooperation) to ensure that complaints of serious nature outside the MPF jurisdiction are brought to their attention for appropriate actions under their regimes.</li> </ul>

<b>Guidelines on Range of Penalties to be Imposed</b> ( <i>paragraph 3.49</i> )	
<ul style="list-style-type: none"> <li>The MPFA was advised to promulgate guidelines setting out clearly the recommended range of penalty vis-à-vis each type of misconduct to promote transparency.</li> </ul>	<ul style="list-style-type: none"> <li>The MPFA had issued and published on its website in May 2022 a circular titled “Range of Disciplinary Sanctions against Registered Intermediaries” to the industry setting out different types of disciplinary sanctions, factors for determining level of sanctions to be imposed, and the range of sanctions in some precedent cases vis-à-vis different types of misconduct after consulting the FRs on their guidelines and practices in determining disciplinary sanctions; and</li> <li>The MPFA continued to update its database on precedents and enrich contents of statutory notices issued to MPF intermediaries in disciplinary actions, as well as press release and statement of disciplinary action attached thereto, in order to enhance consistency and transparency of decision.</li> </ul>
<b>Use of Regulatory Technology</b> ( <i>paragraph 3.55</i> )	
<ul style="list-style-type: none"> <li>The MPFA was advised to consider using regulatory technology to convert lengthy audio recordings into written transcripts to save manpower resources.</li> </ul>	<ul style="list-style-type: none"> <li>The MPFA had explored the use of regulatory technology and engaged external transcription service to convert lengthy audio recordings into written transcripts for saving manpower resources.</li> </ul>

2.12 The PRP welcomes the above follow-up actions taken by the MPFA, and looks forward to the MPFA’s continuous efforts to ensure procedural propriety of the regulatory regime.

## **Chapter 3: Observations and Recommendations**

### **Introduction**

- 3.1 Out of the cases completed or discontinued by the MPFA during the 2021-22 review cycle, the PRP selected at least one case from each of the five categories as mentioned in paragraph 2.7 for detailed review. The majority of cases reviewed (16 cases) were relevant to MPFA's regulation of MPF trustees. The rest (14 cases) concerned MPFA's regulation of MPF products, MPF intermediaries, ORSO schemes, and a complaint against MPFA staff. Cases were reviewed on a case-by-case basis. The case summaries and the PRP's observations specific to individual cases are set out at paragraph 3.3.
- 3.2 For 2021-22 review cycle, the PRP recognised the MPFA's effort in discharging its various regulatory functions, and did not observe any serious issues with the MPFA's internal procedures when handling the 30 cases under review. Meanwhile, apart from the case-specific observations, the PRP identified some general areas for enhancement and made a number of recommendations on the adequacy and consistency of MPFA's internal procedures and operational guidelines. These general observations and recommendations are summarised in paragraphs 3.4-3.15, 3.22-3.24 and 3.28-3.30.

## Case Summaries and PRP's Case-Specific Observations

<p><i>Category I - Approval / Registration of MPF Trustees, Schemes and Funds (2 cases)</i></p>
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### *A. Applications for Registration / Approval of MPF Schemes and Funds*

#### *Case 1*

- 3.3.1.1 Case 1 concerns an application for approval of a new constituent fund. The procedure for the approval of constituent funds involves a sequential approval process: (i) applicant to lodge an application with MPFA first to seek approval-in-principle; (ii) with MPFA's approval-in-principle, applicant to submit application to SFC for authorisation; and (iii) with the Securities and Future's Commission ("SFC")'s authorisation, MPFA would grant approval to the constituent fund.
- 3.3.1.2 In this case, the applicant had duly submitted relevant application documents to MPFA for final approval after receipt of MPFA's approval-in-principle and SFC's authorisation. The applicant later requested that the application be put on hold until more details of a relevant legislative proposal which might affect the application became available. Eventually, the applicant updated the relevant application documents and made further submission to the MPFA. Approval was ultimately granted by the MPFA which considered that the new constituent fund had met the relevant regulatory requirements as set out in the Mandatory Provident Fund Schemes Ordinance (Cap. 485) ("MPFSO"), the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) ("MPFS(G)R"), the applicable Code on MPF Investment Funds ("Investment Code") and the Code on Disclosure for MPF Investment Funds ("Disclosure Code").

3.3.1.3 The total handling time for this case was 8 months: 1 month for MPFA to grant approval-in-principle, 2 months for SFC to grant authorisation, and 5 months for MPFA to grant final approval (including the time during which the application was put on hold). The handling time for this case was within the relevant timeframe as set out in the applicable KPI.

*PRP's Case-specific Observations*

3.3.1.4 The PRP noted that the MPFA was generally able to process constituent fund-related applications and granted approval-in-principle within their internal time target, as there were usually pre-application exchanges between the applicant and the MPFA prior to formal submission to facilitate MPFA's assessment of the eventual application.

3.3.1.5 The PRP also noted that the longer time taken in handling this case was largely due to the application being put on hold by the applicant for around 4 months.

*Case 2*

3.3.2.1 Case 2 concerns an application for approval of new pooled investment funds which involved a new umbrella fund and its sub-fund. The procedure involves a process similar to that of approval of constituent funds as mentioned in paragraph 3.3.1.1 above.

3.3.2.2 The MPFA granted approval for the subject funds as they had met the relevant regulatory requirements as set out in the MPFSO, the MPFS(G)R, the Investment Code and the Disclosure Code.

3.3.2.3 The total handling time for this case was 6 months: 3 months for MPFA to grant approval-in-principle, 2 months for SFC to grant authorisation, and 1 month for MPFA to grant final



approval. The handling time was within the relevant timeframe as set out in the applicable KPI.

*PRP's Case-specific Observations*

- 3.3.2.4 The PRP observed that longer time was taken to process and grant approval-in-principle due to several rounds of submission of relevant information by the applicant.

***B. Applications for Approval of MPF Trustees***

- 3.3.2.5 No cases in this category were closed or discontinued during the reporting period. Hence, no relevant cases were chosen for review.

***Category II - Regulation of MPF Trustees (16 cases)***

***A. Supervisory Work***

***(a) Supervisory Work (investment-related non-compliance)***

**Case 3**

- 3.3.3.1 Case 3 concerns a fund pricing error by a trustee, which undervalued the fund price of an Approved Pooled Investment Fund (“APIF”) by 0.6%. The case was reported by the trustee to the MPFA in accordance with the regulatory requirement.
- 3.3.3.2 The trustee was required by the MPFA to submit an assessment report of the incident, covering the cause of the pricing error, analysis of the trustee’s internal control mechanism, assessment of the financial impact on the APIF and investors, and rectification and preventive measures taken by the trustee. The trustee was also asked to engage a third-party consultant to review the control measures put in place and assess whether the independent review could address MPFA’s concerns on recurring errors.
- 3.3.3.3 Upon review of the trustee’s assessment report and discussion with trustee on their review plan for internal control framework, the MPFA was of the view that the incident constituted a non-compliance with the Investment Code. As the Investment Code was not subsidiary legislation, and since the incident involved generally an operational error which did not constitute a breach of any MPF legislation, the MPFA could not take enforcement action against such non-compliance. Nevertheless, the MPFA was of the view that the case warranted supervisory action. As such, the MPFA issued a supervisory letter to the trustee and reminded them to ensure that all the proposed preventive measures would be properly and

effectively implemented. The supervisory letter also required the trustee to provide a written confirmation to MPFA, setting out details of the preventive measures being carried out to avoid recurrence of similar incident in the future. The trustee was further required to report results of the independent review and relevant enhancement plan.

- 3.3.3.4 The total handling time for this case was 4.3 months, which was within the relevant timeframe as set out in the applicable KPIs.

*PRP's Case-specific Observations*

- 3.3.3.5 The PRP noted that in assessing holistically whether the breaches warranted supervisory or enforcement actions, the MPFA would take into account the causes, seriousness and impact of the breaches, frequency of such errors committed by the same trustee, findings of the third-party assessment, as well as measures to enhance trustee's internal control mechanism.
- 3.3.3.6 Given that the trustee in this case had a history of similar breaches, the PRP considered that the MPFA's follow-up actions, i.e. issue of a supervisory letter might be too lenient and not sufficient. The PRP took note that the breach related to non-compliance with the Investment Code only and the severity of the case alone did not justify enforcement actions against breach of the trustee's general duty with respect to administration of scheme under section 43 of the MPFS(G)R. It appeared that the MPFA had limited powers or options to sanction breaches of this sort.

#### Case 4

- 3.3.4.1 Case 4 concerns an APIF which invested amounts into a financial institution's certificates of deposits that exceeded 10% of the issued capital and reserves of that financial institution, in breach of the limit set out in section 11(2) of Schedule 1 to the MPFS(G)R. The case emerged from MPFA's regular compliance review on the MPF trustees.
- 3.3.4.2 The trustee was required by the MPFA to submit an assessment report of the incident, covering the cause of the error, analysis of the trustee's internal control mechanism, assessment of the financial impact on the APIF, as well as rectification and preventive measures taken by the trustee. The MPFA also reviewed precedent cases of similar nature reported by the same trustee to assess whether the incident revealed any systemic weaknesses or failure of the management and internal controls of the trustee or its service providers.
- 3.3.4.3 Upon review of the trustee's information, the MPFA believed that the incident constituted a non-compliance with the Investment Code, which, as in Case 3, would warrant supervisory action but not enforcement against the trustee. As such, the MPFA issued a supervisory letter to the trustee and reminded them to ensure that all the proposed preventive measures would be properly and effectively implemented. The supervisory letter also required the trustee to provide a written confirmation to MPFA setting out details of the preventive measures to avoid future recurrence of similar incidents.
- 3.3.4.4 The total handling time for this case was 4.3 months, which was within the relevant timeframe as set out in the applicable KPIs.

### PRP's Case-specific Observations

- 3.3.4.5 The PRP noted that the breach in question was not common and did not suggest a systemic issue of the trustee. Nevertheless, similar to Case 3 above, the PRP was concerned that issuance of a supervisory letter to the non-compliant trustee was only a mild form of sanction, and that the MPFA did not have many regulatory tools or statutory power to impose sanctions against these types of operational breaches of the investment rules. The current regime might limit the MPFA's exercise of regulatory functions.

### Case 5

- 3.3.5.1 Case 5 concerns the investment by two APIFs into impermissible securities, in contravention of section 8(1)(c) of Schedule 1 to the MPFS(G)R. The case was reported by the trustee to the MPFA in accordance with the regulatory requirement.
- 3.3.5.2 The trustee was required by the MPFA to submit an assessment report of the incident, covering the cause of non-compliance, analysis of the trustee's internal control mechanism, assessment of the financial impact on the APIF, as well as rectification and preventive measures taken by the trustee. The MPFA also reviewed precedent cases of similar nature reported by the same trustee to ascertain whether the incident revealed any systemic weaknesses and failure of the management and internal controls of the trustee or its service providers.
- 3.3.5.3 The breach stemmed from a failure of the APIFs' investment manager in the automated compliance monitoring process. Upon review of the trustee's assessment report, the MPFA was of the view that the incident constituted a non-compliance with the Investment Code, which, as in Cases 3 and 4 above, would warrant supervisory actions but not enforcement against the

trustee. As such, the MPFA issued a supervisory letter to the trustee and reminded them to ensure that all the proposed preventive measures would be properly and effectively implemented. The supervisory letter also required the trustee to provide a written confirmation to MPFA setting out details of the preventive measures to avoid future recurrence of similar incidents.

3.3.5.4 The total handling time for this case was 4.2 months, which was within the relevant timeframe as set out in the applicable KPIs.

***(b) Supervisory Work (suspected breach and non-compliance cases)***

**Case 6**

3.3.6.1 Case 6 concerns a trustee's delayed transfer of accrued benefits of 17 scheme members to the new trustees. The trustee reported the case to the MPFA in accordance with the regulatory requirement.

3.3.6.2 The MPFA identified three root causes of the incident after investigation –

- (i) there was oversight by staff of the scheme administrator;
- (ii) the scheme administrator did not issue the relevant cheque for the transfer of accrued benefits in a timely manner; and
- (iii) the scheme administrator did not establish control mechanism to monitor the process of cheque re-issuance.

3.3.6.3 The MPFA noted that the breach was partly due to the scheme administrator staff's manual selection of an incorrect payee name during the data input process, thereby causing the delay in the transfer of accrued benefits. According to the trustee's report, remedial actions had been implemented to prevent similar incident in future, and compensations for the investment

losses incurred by 17 scheme members were made. Eventually, the MPFA issued a supervisory letter to the trustee.

- 3.3.6.4 The total handling time for this case was 7 months, which was within the relevant timeframe as set out in the applicable KPIs.

*PRP's Case-specific Observations*

- 3.3.6.5 The PRP noted that the trustee had taken longer time than usual to provide relevant information to the MPFA for investigation. The main reason for this was that the trustee was at the material time handling the aftermath of the scheme administrator's major system revamp, which had led to a number of operational issues and complaints. The subject case however was not directly related to the system revamp. Meanwhile, investigation for possible enforcement actions against the trustee's failure to arrange transfer of accrued benefits within the statutory timeframe was in progress.

*Case 7*

- 3.3.7.1 Case 7 concerns a trustee's failure to invest the accrued benefits of 2,029 scheme members in accordance with a pre-determined asset allocation percentage based on the scheme members' chosen investment strategy. The case was reported by the trustee to the MPFA in accordance with the regulatory requirement.
- 3.3.7.2 The trustee was required by the MPFA to submit an assessment report of the incident covering the cause of incident and rectification and preventive measures taken by the trustee. The assessment report revealed that the trustee's failure was due to a system defect in the scheme administrator's new scheme administration system, and that the scheme administrator did not conduct sufficient testing on the system prior to its launch. For rectification, the trustee made compensations to the

members who were in a loss position due to the error. For those scheme members who were in a gain position, the excess balances derived from the rectification were kept in members' accounts.

3.3.7.3 For the present case, the MPFA issued a supervisory letter to the trustee setting out its concerns and supervisory directives, while reserving its right to take further action on the case as appropriate. As the incident constitutes a breach of the MPFSO, the case was being investigated by the MPFA for possible enforcement actions.

3.3.7.4 The total handling time for this case was 7 months, which was within the relevant timeframe as set out in the applicable KPIs.

***(c) Supervisory Work (operational issues arising from complaints)***

**Case 8**

3.3.8.1 Case 8 concerns a complaint against a trustee, alleging that the trustee had reported to the MPFA incorrect records of default contribution due to insufficient steps taken by the trustee in handling the employer's transfer request.

3.3.8.2 The MPFA conducted inquiries into the incident, including requiring the trustee to provide information on the procedures for handling such transfer requests and root cause of the incident. It was revealed that there was deficiency in the trustee's transfer handling procedure when the transfer involved newly-employed employees. On request by the MPFA, the trustee took improvement measures to avoid recurrence of similar incident, including rectification of the incorrect reports, enhancing procedures for handling transfer requests, updating relevant internal guidance, and providing training to the operation staff. Having reviewed the trustee's improvement



measures and necessary steps taken to avoid recurrence of similar error, the MPFA finally decided that no further action with respect to the trustee was required.

- 3.3.8.3 The total handling time for this case was 3 months, which was within the relevant timeframe as set out in the applicable KPI.

*PRP's Case-specific Observations*

- 3.3.8.4 The PRP noted that in considering whether follow-up actions were required for a particular case, the MPFA would assess on a case-by-case basis, with reference to the internal guidelines which set out the factors of consideration such as root cause of the breach, financial impact on the scheme member concerned, and whether the error was recurring. The PRP suggests the MPFA to provide these factors of consideration to the PRP in future cases to better understand how the MPFA came up with a decision on the follow-up actions, and whether the MPFA staff concerned had adhered to the relevant internal guidelines.

*Case 9*

- 3.3.9.1 Case 9 concerns a complaint alleging that a trustee had disclosed information to an unrelated third party, by sending letters which belonged to an unknown person to the complainant's address, even though the complainant had returned the letters to the trustee several times.
- 3.3.9.2 The MPFA's investigation revealed that due to a setting in the trustee's system, an employer who was yet to update its particulars with the trustee would remain contactable by the trustee in accordance with the correspondence address on the system record. The current setting did not remove such employer from the contactable list even if mails were returned to the trustee. This explained why the complainant at the address concerned would receive trustee's letters not related to

them. In response, the trustee had enhanced its internal handling procedures for returned mails by blocking mails to a reported invalid address. The trustee also reminded its staff to adhere to the enhanced procedure. Having reviewed the trustee's improvement measures and steps taken to avoid recurrence of incident, the MPFA finally decided that no further action with respect to the trustee was required.

- 3.3.9.3 The total handling time for this case was 1.5 months, which was within the relevant timeframe as set out in the applicable KPI.

## ***B. Inspection of MPF Trustees***

### **Case 10**

- 3.3.10.1 Case 10 concerns the MPFA's on-site inspection on a trustee to assess whether they had put in place robust and effective controls for recording unclaimed benefits of scheme members that could not be located, and enrolment and contributions received for accounts that remain unopened due to failure by the employees to provide completed self-declaration of their tax residency status. The subject trustee was amongst the six trustees selected by the MPFA for on-site inspection during the review cycle and was the largest one in terms of the asset size of unclaimed benefits it managed.
- 3.3.10.2 Prior to inspection, the MPFA sent a document request list, questionnaire, and notification letter to the trustee to collect information on its team structure, relevant policies, and procedures. Fieldwork commenced a month later, including meetings to review operational process flow and assess whether there were any control deficiencies. After the fieldwork, the MPFA followed up with the trustee regarding outstanding or additional information. An on-site inspection report was prepared summarising MPFA's findings, observations, and

recommendations. The trustee then submitted written responses and action plans to address the observations identified in the Report, to which the MPFA provided feedback on. A “wrap-up” letter was finally issued to the trustee to conclude the inspection process.

3.3.10.3 From the inspection, the relevant staff of the MPFA identified a suspected non-compliance incident where the trustee did not reinvest the redeemed unclaimed benefits of two claimants into relevant funds within a specified timeframe in accordance with the funds’ governing rules. The case was referred to another department of the MPFA for follow-up.

3.3.10.4 The total handling time for this case was 9 months. The supervisory letter was issued to the trustee within the relevant timeframe as set out in the applicable KPI.

*PRP’s Case-specific Observations*

3.3.10.5 The PRP noted that the MPFA performed inspection on trustees on a regular basis and would initiate inspection if there were emerging issues or concerns about a trustee. The PRP considered it a good practice for the MPFA to track trustees’ frequency and types of breaches over the years in the process.

## *C. Complaints Handling (MPF Trustees)*

### *Case 11*

- 3.3.11.1 Case 11 concerns a complaint against a trustee for the long processing time of MPF contributions as opposed to tax-deductible voluntary contributions, and to express dissatisfaction regarding the trustee's dropping the previous practice of setting up temporary MPF accounts for employees pending receipt of the completed enrolment forms.
- 3.3.11.2 The MPFA found both allegations unsubstantiated. There was no information or evidence indicating that the trustee had failed to process MPF contributions within a reasonable time, or that the trustee had failed to fulfil its services pledge. Neither was there any regulatory issue regarding the trustee's cessation of the administrative practice to set up temporary MPF accounts. Hence, no issues of non-compliance were identified. Accordingly, the MPFA issued a substantive reply to the complainant to conclude the complaint.
- 3.3.11.3 The total handling time for this case was 6 months. The issue of substantive reply exceeded the relevant timeframe as set out in the applicable KPI by 2 months.

### *PRP's Case-specific Observations*

- 3.3.11.4 The PRP noted that longer handling time was needed for this case as the complainant had requested to postpone the deadline for providing their employer's authorisation form, which was required to authorise the complainant to act on behalf of the employer, by 1.5 months. The complainant also raised a new allegation 4 months after lodging the complaint.

## Case 12

- 3.3.12.1 Case 12 concerns a complaint against a trustee for (i) incorrect reporting of default contribution by the complainant's employer, (ii) unsatisfactory hotline services, and (iii) the complainant not being able to locate the employer's records of contribution for its employees on the trustee's online platform.
- 3.3.12.2 The MPFA found that allegation (i) was not substantiated, but allegations (ii) and (iii) were substantiated. The MPFA noted that the trustee had taken steps to deploy more resources to improve its hotline services and fix their system issue such that the employer's contribution records could be shown properly on the trustee's online platform. The MPFA also noted that the trustee had sent its apologies to the complainant for the dissatisfaction in respect of allegations (ii) and (iii). Having regard to the nature of the case and trustee's responses, the MPFA issued a reminder letter to the trustee reminding them of the importance of properly handling instructions from employers or scheme members. The MPFA also issued a substantive reply to the complainant to conclude the case.
- 3.3.12.3 The total handling time for this case was 4 months, which was within the relevant timeframe as set out in the applicable KPIs.

### PRP's Case-specific Observations

- 3.3.12.4 The PRP noted that the complaints against the trustee's scheme administration services stemmed from the scheme administrator's system revamp, same as Cases 6 and 7 above. According to the MPFA, trustees prior to introducing major system changes would be required by the MPFA to conduct proper testing and commission third-party assessments before and after the launch of the new system to ensure a smooth transition.

### Case 13

- 3.3.13.1 Case 13 concerns two separate complaints (lodged one month apart) by the same complainant against a trustee for its failure to process the complainant's request to transfer accrued benefits to another trustee, and to timely follow up on the request raised by the complainant's former employer to offset the long service payment by MPF.
- 3.3.13.2 Upon review of the case materials, the MPFA found both allegations substantiated. The trustee had processed the complainant's transfer request beyond the 30-day statutory requirement, and only followed up with the complainant's former employer's request two months after receipt of the request due to oversight by a staff of the trustee. The MPFA issued a substantive reply to the complainant to conclude the case.
- 3.3.13.3 The total handling time for this case was 4 months, which was within the relevant timeframe as set out in the applicable KPIs.

#### PRP's Case-specific Observations

- 3.3.13.4 The PRP observed that the case involved two allegations that were raised at different times. It was noted that for such cases, the MPFA would consider how best to resolve the matter from the complainant's perspective. Where it would be in the best interest of the complainant to handle the separate complaints together, the MPFA would do so even if it might have impact on meeting the target timeframe set under the KPI for case-handling. In the present case, as the second allegation which was raised shortly after the first complaint was based on the same facts of the first allegation, the MPFA considered it appropriate and in the interest of the complainant to handle the two allegations in one go.

3.3.13.5 The PRP also observed that the case was being separately investigated by the MPFA for possible enforcement actions including financial penalty.

#### ***D. Enforcement Actions against MPF Trustees***

##### **Case 14**

3.3.14.1 Case 14 concerns a trustee's incorrect reporting of personal accounts in 148 different monthly returns submitted to the MPFA, in breach of section 117(a) of the MPFS(G)R and the Guidelines on Monthly Returns of Registered Schemes issued by the MPFA. This case was unveiled during the MPFA's handling of a separate complaint concerning the trustee's deficiency in its reporting practice of personal accounts.

3.3.14.2 The breaches were found to be substantiated by the MPFA. There were 148 separate monthly returns submitted to the MPFA during the relevant period which contained inaccurate information, involving 565 personal accounts that were wrongly reported as terminated or omitted to be reported as personal accounts. The incorrect reporting had been rectified. There was no adverse impact on the scheme members' accrued benefits in the personal accounts despite the wrong reporting.

3.3.14.3 As each of the incorrect monthly return constituted a separate breach, the MPFA imposed a total financial penalty of HK\$1,480,000 on the trustee for the breaches – a HK\$10,000 penalty per breach as prescribed by Schedule 4 to the MPFS(G)R, multiplied by 148 for the 148 inaccurate returns.

3.3.14.4 The total handling time for this case was 30 months, which exceeded the relevant timeframe as set out in the applicable KPI by 4 months.

### PRP's Case-specific Observations

3.3.14.5 The PRP observed that the MPFA had taken 25 months to complete the investigation due to (i) high complexity of the case and the novel issues involved; (ii) large-scale non-compliance involving 148 non-compliant returns covering over a breach period of 14 years; and (iii) the MPFA's work arrangement. In reviewing its work arrangement, the MPFA would consider the financial impact on scheme members and the level of cooperation of the trustees in question to make timely rectification of the errors. Whilst noting the MPFA's assessment that the case-handling efficiency had been improved and foresaw no major bottleneck in future, the PRP suggests the MPFA to continue reviewing its case-handling procedures and explore possible ways to expedite the investigation process.

### Case 15

3.3.15.1 Case 15 concerns a trustee's failure (i) to timely issue the letter to a scheme member regarding different options with respect to the transfer or preservation of one's accrued benefits ("Transfer Options Letter"), and (ii) to timely preserve the scheme member's accrued benefits in a personal account, contrary to sections 152 and 153(3) of the MPFS(G)R respectively. The case was reported by the trustee in accordance with the regulatory requirement and taken for investigation upon case referral from another department of the MPFA.

3.3.15.2 The MPFA found both breaches to be substantiated. For breach (i), the trustee issued the Transfer Options Letter more than three months late due to an omission by a staff of the scheme administrator to input relevant information into the system. For breach (ii), the scheme administrator completed the auto-preservation process 17 days after the statutory timeframe. Despite the trustee having delegated the task of data entry to the scheme administrator, the MPFA was of the



view that this did not absolve the trustee from the consequences of the scheme administrator's failure to perform such duty.

- 3.3.15.3 After considering all the facts and circumstances of the case, the financial penalty amounts prescribed in the MPFS(G)R and the trustee's records of non-compliance, the MPFA imposed a total financial penalty of HK\$70,000 on the trustee – HK\$20,000 for the trustee's 2<sup>nd</sup> failure to issue Transfer Options Letter, and HK\$50,000 for the trustee's 5<sup>th</sup> failure to auto-preserve the accrued benefits within the statutory timeframe
- 3.3.15.4 The total handling time for this case was 17 months, which was within the relevant timeframe as set out in the applicable KPIs.

*PRP's Case-specific Observations*

- 3.3.15.5 The PRP observed that whilst the case was relatively straightforward, it had taken 15 months for the MPFA to complete investigation on the two separate breaches. The longer handling time was mainly due to the time taken to collate relevant information from the trustee. Nonetheless, the case was handled by the MPFA within the relevant timeframe as set out in the applicable KPIs.

**Case 16**

- 3.3.16.1 Case 16 concerns a trustee's failure to invest accrued benefits according to a scheme member's investment mandate; instead, the trustee incorrectly invested the accrued benefits in another constituent fund, contrary to section 27(2A) of the MPFSO. The case was reported by the trustee to the MPFA in accordance with the regulatory requirement and taken for investigation upon case referral from another department of the MPFA.
- 3.3.16.2 The MPFA found that the trustee had breached the relevant

regulatory requirements. Due to the incorrect investment mandate recorded in the system by a staff of the scheme administrator, all the accrued benefits of scheme member received from other trustees were invested into the wrong constituent fund for four separate times. Although the mistake was made by a staff of the scheme administrator, the MPFA was of the view that this did not absolve the trustee from the consequence of the scheme administrator's failure to perform such duty as stipulated under section 27(4)(b) of the MPFSO. It was estimated that the scheme member concerned suffered an investment loss of some HK\$57,000 as a result. The trustee had compensated the scheme member in full.

3.3.16.3 After considering all the facts and circumstances of the case, the financial penalty amounts prescribed in the MPFS(G)R and the trustee's records of non-compliance, the MPFA imposed a total financial penalty of HK\$40,000 on the trustee – a HK\$10,000 penalty per breach as prescribed by Schedule 4 to the MPFS(G)R, multiplied by 4 for the 4 times the trustee incorrectly invested the scheme member's transferred-in accrued benefits.

3.3.16.4 The total handling time for this case was 11 months, which was within the relevant timeframe as set out in the applicable KPIs.

*PRP's Case-specific Observation*

3.3.16.5 The PRP observed that the financial penalty regime prescribed under the MPF legislation was quite rigid. For example, the total amount of financial penalty imposed on the trustee's failure to invest accrued benefits in the present case (HK\$40,000) was significantly lower than the aggregate amount of financial penalty imposed on trustee for its failure in data input in Case 14 above (HK\$1.48 million), mainly due to the counts of breaches. The PRP considered that the financial penalty might not reflect the relatively serious nature of the non-

compliance in the present case.

- 3.3.16.6 In determining appropriate sanctions against the non-compliant trustee, the PRP noted that the MPFA would consider whether the trustee concerned had made compensations for the affected scheme members. Relevant factors of consideration would be set out in the MPFA's notice to the trustee on imposing financial penalty. In this case, apart from financial penalty, the trustee had implemented more training for staff and made use of technology to improve data accuracy and minimise human error. Scheme members who suffered financial losses were also compensated.
- 3.3.16.7 The PRP considered that for transparency and more informed choices by scheme members in selecting MPF trustees, the MPFA should make available more information on the past records of enforcement actions against each MPF trustee.

### **Case 17**

- 3.3.17.1 Case 17 concerns a trustee's failure (i) to timely preserve a scheme member's accrued benefits in a personal account in breach of section 153(3) of the MPFS(G)R, and (ii) to timely report an event of significant nature to MPFA in breach of section 62(1)(a) of the MPFS(G)R. The case was reported by the trustee to the MPFA according to the regulatory requirement and taken for investigation upon case referral from another department of the MPFA.
- 3.3.17.2 Both allegations were found to be substantiated by the MPFA. For breach (i), the trustee only completed the preservation of accrued benefits for the scheme member two years after the statutory deadline. For breach (ii), the trustee's report to MPFA was delayed by 15 days.

- 3.3.17.3 After considering all the facts and circumstances of the case, the financial penalty amounts prescribed in the MPFS(G)R and the trustee's records of non-compliance, the MPFA imposed a total financial penalty of HK\$100,000 on the trustee – HK\$50,000 for the trustee's 9<sup>th</sup> failure to auto-preserve the accrued benefits within the statutory timeframe, and HK\$50,000 for the trustee's 3<sup>rd</sup> failure to report to the MPFA within the statutory timeframe after becoming aware of the occurrence of a significant event.
- 3.3.17.4 The total handling time for this case was 16 months, which was within the relevant timeframe as set out in the applicable KPIs.

*PRP's Case-specific Observations*

- 3.3.17.5 The PRP observed that under the current financial penalty regime, quite a number of breaches prescribed in Schedule 4 to the MPFS(G)R concerned failure in discharging scheme administration tasks such as reporting, issuing letters and making transfers. An escalation mechanism was built in under Schedule 4 to the MPFSO to reflect severity of the repeated breaches, e.g. a financial penalty of HK\$10,000 for first breach, HK\$20,000 for second breach, and HK\$50,000 for third or more breaches.

**Case 18**

- 3.3.18.1 Case 18 concerns a share acquisition within a chain of holding companies of a trustee ("Acquisition"), after which indirect shareholding in the trustee by two companies (C1 and C2) increased to the effect of becoming the substantial shareholders of the trustee. The suspected breaches which took place after the Acquisition and as revealed by an enquiry by MPFA to the trustee related to –

- (i) failure of companies C1 and C2 to obtain MPFA's prior written consent before becoming substantial shareholders of an approved MPF trustee, and
- (ii) the subject trustee's failure to timely apply for MPFA's consent after becoming aware that C1 and C2 had become substantial shareholders, contrary to section 42D of the MPFS(G)R.

3.3.18.2 Both suspected breaches were found to be substantiated by the MPFA. For breach (i), MPFA was of the view that despite C1 and C2 having delegated all compliance matters related to MPF in Hong Kong to the trustee for handling, C1 and C2 were still obliged by law to seek MPFA's prior written consent before becoming substantial shareholders, for which they failed to do so. For breach (ii), MPFA was of the view that if the trustee had prudently conducted a comprehensive analysis on the possible impact on the shareholdings of C1 and C2, they should have been aware that C1 and C2 would become substantial shareholders after the Acquisition, which would require MPFA's prior written consent. Despite the above breaches, no scheme members suffered financial loss as a result.

3.3.18.3 After considering all the facts and circumstances of the case, the MPFA decided to issue Compliance Advice Letters ("CALs") to the trustee, C1 and C2 reminding them of their duties to ensure compliance with relevant requirements under section 42D of the MPFS(G)R.

3.3.18.4 The total handling time for this case was 21 months, which was within the relevant timeframe as set out in the applicable KPIs.

*PRP's Case-specific Observations*

3.3.18.5 The PRP observed that the MPFA took longer than usual to handle the case, as it was the first time that the MPFA dealt with a suspected breach of the relevant provision, and investigation into a complex shareholding arrangement and the suspected breaches involving different targets took time. Legal advice was also sought on the matter. Furthermore, another case concerning the same provision and trustee (but different shareholders) emerged shortly after this. Hence, similar to the case-handling in Case 13 above, the MPFA decided to consider the two cases together, thus the longer handling time for this case.

***Category III - Registration and Regulation of MPF Intermediaries  
(6 cases)***

***A. Applications for Registration of MPF Intermediaries***

**Case 19**

- 3.3.19.1 Case 19 concerns an application for registration as an SI and accompanying application for approval of attachment by the SI to a Principal Intermediary (“PI”). Requirements for registration as an SI include (i) being a regulatee of the FRs, and (ii) passing an MPF qualifying examination within one year immediately before the date of application unless the applicant was registered as an SI within three years immediately before the date of application.
- 3.3.19.2 During the vetting of the application, the MPFA found that the applicant did not meet requirement (ii) as his date of passing the MPF qualifying examination was not within one year immediately before the date of application, and that his previous registration as an SI was not within three years immediately before the date of application. The applications were eventually rejected by the MPFA. Neither the applicant nor the PI responded to the MPFA’s invitation to make representations as to why the applications should not be rejected.
- 3.3.19.3 The total handling time for this case was 74 working days, which exceeded the relevant timeframe as set out in the applicable KPI by 54 days.

### PRP's Case-specific Observations

3.3.19.4 The PRP noted that it was rare for SI applicants to fail to meet the relevant requirements at the time of application, and that this was the only case out of the 7,689 cases under this category during this review cycle which exceeded the target timeframe. It further noted that the applicant in this case had failed to provide proof of passing a valid MPF qualifying examination, and that MPFA had to spend one more month to further check against the pass lists of MPF qualifying examinations held during the month after the date of submission of application to confirm that the applicant did not meet relevant requirements to be an SI. In addition, the applicant and the PI were given 15 working days to make representations as to why the applications should not be rejected. These explained the longer handling time for this case.

### Case 20

3.3.20.1 Case 20 concerns an application for approval of attachment by an SI to a PI. The requirements for such an application are that (i) the applicant must be employed by, or acts as an agent or representative for the PI, and (ii) the applicant must be a regulatee of the relevant FR of the PI. After vetting, the MPFA was satisfied that the applicant met both the requirements for approval of attachment. The application was approved and both the applicant and the PI were notified by MPFA via e-notice.

3.3.20.2 The total handling time for this case was 15 working days, which was within the relevant timeframe as set out in the applicable KPI.



## ***B. Complaint Handling and Enforcement Actions against MPF Intermediaries***

### **Case 21**

3.3.21.1 Case 21 concerns a complaint lodged with the PI against an SI, alleging that the SI had –

- (i) transferred the complainant’s accrued benefits (“Transfer”) without the complainant’s authorisation and knowledge;
- (ii) forged the complainant’s signature by replicating it from a previously-signed form for another purpose to the form for the subject Transfer (“Transfer Form”) without the complainant’s authorisation and knowledge;
- (iii) failed to provide a copy of the signed Transfer Form to the complainant;
- (iv) failed to record the complainant’s instructions in relation to the Transfer; and
- (v) failed to comply with the PI’s internal policy and guidelines.

The case was reported by the PI to the relevant FR. The FR conducted an investigation into the case.

3.3.21.2 During MPFA’s subsequent case assessment on the FR’s investigation, it was found that allegations (i), (ii) and (v) were substantiated, while allegations (iii) and (iv) were unsubstantiated. Having considered all the circumstances of the case including seriousness of the breaches, various mitigating factors, and precedent cases of similar nature, the MPFA suspended the registration of the SI as an MPF intermediary for 20 months.

3.3.21.3 The total handling time for the case was 29 months: 17 months for the FR’s investigation, 5 months for MPFA’s case assessment, and 7 months for disciplinary proceedings relating to suspension of registration of the SI. The notice of proposed

disciplinary action was issued by the MPFA within the relevant timeframe as set out in the applicable KPIs.

*PRP's Case-specific Observations*

- 3.3.21.4 The PRP noted that the 20-month suspension of the SI registration had factored in the serious nature of the misconduct (unauthorised transfer and forgery) and made reference to the degree of sanctions imposed in other cases of similar nature. The PRP was concerned whether suspension of SI's registration alone was effective in deterring future incidents or repeated offenders. The PRP was also concerned that SIs with previous conduct transgressions could start with a clean slate, simply by working for another PI. The PRP considered that a clear message should be sent to SIs that maintaining integrity was of utmost importance.
- 3.3.21.5 Further, the PRP noted that the complainant withdrew their complaint and refused to attend an interview with the relevant FR or file a police report. While the MPFA could still proceed with the disciplinary action on the basis of the available evidence (including a self-admission by the SI in question), the MPFA could not refer the case to the police directly without the complainant's consent to transfer their personal information.

*Case 22*

- 3.3.22.1 Case 22 concerns a complaint lodged with the PI against a personal assistant of an SI, alleging that the personal assistant had misappropriated the complainant's MPF funds. The case was reported by the PI to the relevant FR. The FR decided that no investigation on the complaint could be initiated due to insufficient information and evidence. Nevertheless, the FR noted that the PI had taken remedial measures to strengthen internal control over the monitoring of personal assistants by its SIs.

- 3.3.22.2 During a subsequent case assessment on FR’s report, the MPFA had reviewed all the circumstances of the complaint including the PI’s own review and enhancement of its internal process. In the end, the MPFA issued CALs to both the PI and SI, highlighting areas of regulatory concern in relation to PI’s internal control over personal assistants of SIs and advising them to comply with the relevant conduct requirements under the Guidelines on Conduct Requirements for Registered Intermediaries issued by the MPFA (“Conduct Guidelines”).
- 3.3.22.3 The total handling time for this case was 38 months: 35 months for the FR’s investigation and 3 months for MPFA’s case assessment and issuance of CALs. The case was closed with CALs issued by the MPFA within the relevant timeframe as set out in the applicable KPIs.

### **Case 23**

- 3.3.23.1 Case 23 concerns a complaint against 2 SIs (SI1 and SI2) lodged with the FR, alleging that the two SIs had transferred the MPF accrued benefits of the complainant and her husband without their authorisation. The FR decided that no investigation on the complaint could be initiated as there was insufficient evidence to establish that SI1 and SI2 had conducted any regulated activities in the incident.
- 3.3.23.2 Whilst no formal investigation was initiated on the complaint, the MPFA had reviewed the case and eventually issued CALs to SI1 and SI2 to remind them to comply with the relevant conduct requirements under the MPFSO and the Conduct Guidelines. The MPFA also expressed serious concerns over SIs’ failure to act honestly, fairly and in the best interests of the client.

3.3.23.3 The total handling time was 14 months: 12 months for the FR's investigation and 2 months for MPFA's case assessment and issuance of CALs. The case was closed with CALs issued by the MPFA within the relevant timeframe as set out in the applicable KPIs.

#### **Case 24**

3.3.24.1 Case 24 concerns a complaint lodged with the PI against an SI, alleging that (i) the SI had altered the complainant's Request for Fund Transfer Form and (ii) forged the complainant's signature next to the alterations without the complainant's authorisation. The case was reported by the PI to the FR. The FR decided that no investigation could be initiated as the complainant refused to respond to the FR's enquiry.

3.3.24.2 Despite that no formal investigation could be conducted by the FR, both allegations were found to be substantiated based on the SI's self-admission. Having considered the facts of the case and for enhanced awareness on compliance, the MPFA issued a CAL to the SI to remind him to comply with the relevant conduct requirements under the MPFSO and the Conduct Guidelines. In the CAL, the MPFA also expressed serious concern over the SI's dishonesty and lack of integrity.

3.3.24.3 The total handling time was 14 months: 12 months for the FR's investigation and 2 months for MPFA's case assessment and issuance of a CAL. The case was closed with a CAL issued by the MPFA within the relevant timeframe as set out in the applicable KPIs.

*PRP's Case-specific Observations*

3.3.24.4 The PRP compared the follow-up actions taken under this case and that of Case 21 above, which shared similarities. The PRP observed that while forgery of client's signature and altering a client's form appeared to be a more serious misconduct, the MPFA only issued a CAL in the present case, while the sanction imposed for Case 21 involving unauthorised transfer and forgery of signature was a 20-month suspension of the SI's registration. The PRP was concerned that the MPFA could not take disciplinary actions against non-regulated activity by the SIs other than issuing an advisory letter as in the present case. Despite the SI's self-admission and clearly dishonest behaviour, the MPFA also could not take forward the case and refer it to the police for criminal investigation as the complainant refused to give consent to share their personal information.

***Category IV - Registration, Exemption and Regulation of ORSO Schemes (5 cases)***

***A. Applications for Registration / Exemption of ORSO Schemes***

**Case 25**

3.3.25.1 Case 25 concerns an application for registration of an ORSO scheme under section 15 of the Occupational Retirement Schemes Ordinance (Cap. 426) (“ORSO”).

3.3.25.2 During the vetting of application, the MPFA had exercised discretion to grant an extension of time for the applicant’s submission of information pending revision of the draft trust deed. Eventually, the MPFA was satisfied that all the requirements under the relevant provisions of the ORSO were met. The registration was approved.

3.3.25.3 The total handling time for this case was 8 months, which was within the relevant timeframe as set out in the applicable KPI.

**PRP’s Case-specific Observations**

3.3.25.4 The PRP observed that original draft trust deed submitted did not satisfy the application requirements. The MPFA had to conduct a few rounds of requisitions with the applicant regarding their draft trust deed over the course of 3 months, and the applicant took a further 4 months to revise and submit their revised trust deed to the satisfaction of the MPFA. This explained the longer handling time of this case.

## Case 26

- 3.3.26.1 Case 26 concerns an application for MPF exemption for an ORSO scheme under section 16 of the Mandatory Provident Schemes (Exemption) Regulation (Cap. 485B) (“MPFS(E)R”).
- 3.3.26.2 After conducting vetting of the application, including seeking clarifications and provision of relevant documentation from the applicant, the MPFA was satisfied that all requirements under the relevant provisions of the MPFS(E)R were met. Accordingly, the MPFA granted approval for MPF exemption to the subject ORSO scheme and issued the certificate of registration.
- 3.3.26.3 The total handling time for this case was 6 months, which was within the relevant timeframe as set out in the applicable KPI.

### PRP’s Case-specific Observations

- 3.3.26.4 The PRP noted that longer time was needed for the applicant to provide the relevant supporting documents for MPFA’s vetting as it was the first time this applicant had submitted such an application for MPF exemption of a hybrid scheme which has both defined benefit and defined contribution sections.

## ***B. Complaints Handling (ORSO Schemes)***

### **Case 27**

- 3.3.27.1 Case 27 concerns a complaint lodged against a trustee of a registered ORSO scheme, alleging that (i) the trustee did not give prior notice to the complainant and scheme members about suspension of the trustee's website during a specific period, hence scheme members could not perform fund switching online, and that (ii) the rectification of incorrect rebate records was not shown on the trustee's website after resumption of the website service, resulting in a lack of audit trail.
- 3.3.27.2 The MPFA found allegation (i) partially substantiated and allegation (ii) unsubstantiated. While the trustee did fail to give prior notice to the complainant and scheme members on the temporary suspension of website, scheme members could still perform fund switching in paper form as usual during the period in question. The trustee also showed evidence that full audit trail of the reversal of incorrect rebate record was kept properly although it was not shown online.
- 3.3.27.3 After closure of the case, the MPFA followed up with the trustee regarding the handling of suspension of its website. In response, the trustee updated its Operation Procedure Guide to incorporate the complainant's comments to ensure adequate communication with members before website maintenance.
- 3.3.27.4 The total handling time for this case was 2 months, which was within the relevant timeframe as set out in the applicable KPIs.



## Case 28

- 3.3.28.1 Case 28 concerns a complaint lodged by a complainant on behalf of 67 members of the subject ORSO scheme against the scheme administrators, alleging that (i) there was suspected unauthorised transfer of investors' assets from their own pension schemes into the ORSO scheme in or around 2015, and (ii) the assets were invested in unregulated investments which were not suitable for scheme members and involved undisclosed commission.
- 3.3.28.2 Due to the lack of information provided by the complainant to support the allegations and insufficient evidence based on the MPFA's own inquiry, the two allegations were found to be unsubstantiated. On the other hand, while the allegation on undisclosed commission fell outside the ambit of the ORSO, the MPFA was given to understand that the complainant had approached relevant law enforcement agencies in Hong Kong and overseas for assistance and follow-up. To conclude the case, the MPFA issued a final reply to the complainant.
- 3.3.28.3 The total handling time for this case was 15 months, including 9 months for the MPFA to receive all the authorisation forms duly signed by the complainant and the 67 relevant scheme members before the MPFA could proceed to handle the complaint. The handling time for this case exceeded the relevant timeframe as set out in the applicable KPI by 11 months.

### PRP Case-specific Observations

- 3.3.28.4 The PRP noted that the long handling time of this case was largely due to the lead time taken by the complainant to collate the authorisation from relevant scheme members, who were mostly located overseas.

## Case 29

- 3.3.29.1 Case 29 concerns a complaint lodged against a trustee, the former administrator of the registered ORSO scheme set up by the complainant's employer. The complainant alleged that the trustee had failed to transfer out the complainant's minimum MPF benefits ("MMB") from the said ORSO scheme to an MPF scheme for a period of eight years (2013-2021).
- 3.3.29.2 After considering the information provided by the trustee, the MPFA concluded that the allegation was substantiated, as the former staff of the trustee did fail to follow through internal procedures for handling the MMB transfer by providing a transfer form to the complainant. Upon MPFA's request, the trustee provided their proposed remedial actions to the MPFA and the complainant. The complainant was dissatisfied with the remedial actions proposed by the trustee, and requested further explanation and compensation from the trustee, and approached the media with regard to the complaint which was later broadcast on television. The trustee eventually offered additional compensation in kind to the complainant as a gesture of goodwill.
- 3.3.29.3 Having regard to the facts of the case and responses made by the trustee including the enhanced internal procedure to avoid reoccurrence of similar case, the MPFA issued a final reply to the complainant, who agreed to close the case despite refusal to accept the trustee's proposal.
- 3.3.29.4 The total handling time for this case was 7 months, which exceeded the relevant timeframe as set out in the applicable KPI by 3 months.

*PRP's Case-specific Observations*

- 3.3.29.5 The PRP observed that the longer time taken in handling this case was due to the fact that (i) the trustee took around 2 months to provide a satisfactory reply to the MPFA with sufficient information regarding the complaint, and (ii) the complainant was dissatisfied and demanded the trustee to re-assess the case and give a further explanation, which took another month.
- 3.3.29.6 The PRP also noted that the MPFA had internal protocols to deal with cases that were publicly reported in the course of case handling, whereby the MPFA's External Affairs Division would handle all media enquiries centrally.

***C. Enforcement Actions against ORSO Administrators***

- 3.3.29.7 No cases in this category were closed or discontinued during the reporting period. Hence, no relevant cases were chosen for review.

*Category V - Complaints against MPFA and its Staff (1 case)*

**Case 30**

- 3.3.30.1 Case 30 concerns a complaint lodged against the MPFA (“subject Complaint”) regarding the findings of an investigation into suspected non-compliance of an Employer (“original Complaint”), and the handling of the original Complaint by two staff of the MPFA.
- 3.3.30.2 The Executive Director (Members) of the MPFA appointed a Head of Department and a Senior Manager, being two independent parties not involved in the investigation of the original Complaint, as the Complaint Officer and Investigation Officer respectively to handle the subject Complaint. On review, the MPFA found the subject Complaint unsubstantiated. Based on the information collected, the investigation findings of the original Complaint were considered justified and no non-compliance by the Employer was identified. Neither was there any evidence to substantiate the allegation against the two relevant staff on their handling of the original Complaint. Accordingly, the MPFA issued a reply to the complainant to conclude the case. The above notwithstanding, the MPFA reminded the relevant staff to enhance communication skills in future.
- 3.3.30.3 The total handling time for this case was 19 working days, which was within the relevant timeframe as set out in the applicable KPI.

*PRP's Case-specific Observations*

- 3.3.30.4 The PRP observed that the MPFA had internal manuals on complaint handling and was transparent in its investigation process by providing contact details of the case officer to the complainant and ensuring that the investigation on complaints against MPFA staff would not be handled by a staff from the complainee's department or team.

## **PRP's General Observations and Recommendations**

### **A. Range of Follow-up Options or Powers of the MPFA**

#### Observations

- 3.4 The PRP observed generally that the MPFA had rather limited regulatory powers in respect of breaches of non-statutory requirements (e.g. Cases 3-5) and misconduct of MPF intermediaries (e.g. Cases 23-24). In those cases where criminal prosecution was not possible or when the intermediaries' misconduct fell outside the scope of MPFA's regulatory regime, the only option left for the MPFA was to issue a supervisory letter or CAL to MPF trustees/intermediaries. There were no other intermediate powers or options available to the MPFA for sanctioning against non-compliant parties or apparent misconduct.
- 3.5 This is an issue observed by the PRP when reviewing the MPFA's regulation of MPF intermediaries in previous years. The PRP had made recommendations to the MPFA in previous annual reports, including to require PIs to strengthen their oversight of SIs; promulgate guidelines setting out clearly the recommended range of penalty for each type of misconduct and the factors taken into consideration in determining the penalty, and explore with FRs the feasibility of expanding their scope of investigation to cover all persons in potential breach of conduct, regardless of whether they were original targets of their investigation. In response, the MPFA had discussed the matters with FRs, inviting them to assess PIs and SIs' fitness and propriety under the FRs' own regulatory regimes, and published informative circulars and press releases to the MPF industry setting out the types and levels of penalties that could be issued and a list of MPFA's considerations.

- 3.6 Notwithstanding the MPFA's follow-up actions taken in respect of MPF intermediaries, the PRP is of the view that the MPFA's limited regulatory powers has hindered the MPFA's ability to discharge its regulatory functions beyond the regulation of MPF intermediaries. In particular, the PRP observes from this review cycle that there are limited options of sanctions that the MPFA can impose against MPF trustees in violation of relevant investment-related rules, and that the MPFA has little or even no power to discipline those MPF intermediaries or relevant parties whose actions do not constitute regulated activity under the MPF regime.
- 3.7 The PRP also observed that the MPFA's hands were tied when complainants withdrew their complaint or refused to give express consent for the transfer of personal information, making it difficult for the MPFA to proceed with enforcement actions or referral of suspected criminal cases to relevant law enforcement agencies. This is also an issue previously raised by the PRP. In its previous annual reports, the PRP recommended the MPFA to proactively refer cases to relevant FRs and law enforcement agencies for further investigation, despite the withdrawal of complaint by the complainant. In response, the MPFA had enhanced the monitoring and tracking of outstanding cases under investigation by relevant FRs, and enhanced MPFA's internal guidelines for making referrals to other enforcement agencies. The MPFA would explain to the complainant the criminal nature and seriousness of misconduct involved, and that the MPFA would refer the matter to other enforcement agencies as appropriate with the complainant's consent and full cooperation.
- 3.8 Despite the MPFA's new protocols as mentioned in paragraph 3.7 above, the PRP observes that complainants are generally not inclined to escalate their case to other law enforcement agencies even where the matter merits further investigation.

- 3.9 The PRP further notes that imposing financial penalty is a common enforcement tool by MPFA for breaches of mostly scheme administrative requirements, but the current design of the financial penalty regime, with built-in escalation for repeated breaches only, calls into a wider question of whether the MPFA's follow-up actions as permitted by the financial penalty regime could proportionally reflect the gravity of each non-compliance case. The cases in point are Cases 14 and 16, wherein the level of financial penalty varies mainly with the count of breaches and recurrence, rather than to discern the nature and seriousness of the breaches.

### Recommendations

- 3.10 Given that some observations above point to a recurrent issue about regulation of different MPF practitioners and the applicable tools of regulation and sanction, the PRP considers that it may be time for the MPFA to review the existing regulatory framework and legislation to ensure that it would continue to regulate effectively the MPF industry, including MPF trustees and intermediaries, with a view to better serving the needs and interest of scheme members.
- 3.11 The PRP considers that the MPFA would benefit from a wider range of follow-up options or powers in its exercise of regulatory functions. The objective is to offer more options for the MPFA to consider appropriate sanctions on non-compliances or suspected misconduct, so as to fill the gaps between issuance of supervisory letters or CALs (the mildest form) and triggering prosecution (the highest threshold), and the void in respect of non-regulated activities.
- 3.12 Adjustment to the current fixed rates, or inclusion of sub-categories within each type of breach with a sliding scale of financial penalty may be explored to better reflect severity of the breaches. In its review, the MPFA may draw reference from the case records to distinguish cases of different severity within the



same category of breach, and consider applying a heavier penalty to those cases of a more severe nature.

- 3.13 The PRP considers that where the MPFA has a reasonable suspicion as regards potential criminal conduct (e.g. forgery), the MPFA as a regulatory authority should be given a power to file a report to relevant law enforcement agencies, regardless of whether the complainant has withdrawn their complaint, or would lodge a case directly with the police, or give consent for MPFA's referral. Building on the PRP's previous recommendation, this power should cover the passing of information of all relevant persons in potential breach of conduct, regardless of whether they were the original targets of a complaint or investigation.
- 3.14 The PRP suggests the MPFA to consider the above recommendations and review whether legislative amendments are necessary to enable it to better discharge its regulatory role. The MPFA is encouraged to discuss with relevant FRs and the Government as appropriate to further enhance the MPF regulatory regime.
- 3.15 In the interim, the PRP suggests the MPFA to make reference to PRP's previous recommendation (and MPFA's current practice) on the promulgation of guidelines to MPF intermediaries that set out the type and range of penalty that can be imposed on non-compliant intermediaries and the factors to be taken into consideration by the MPFA in determining the penalty, and consider to promulgate similar guidelines for all other MPF regulatees.

#### MPFA's Responses

- 3.16 Concerning the issues of limited regulatory powers and options for sanctions, the MPFA welcomes the PRP's recommendations. The MPFA considers that while it would be better to have intermediate regulatory powers and sanction options, the MPFA

has been able to deploy the different regulatory tools to discharge its regulatory functions and achieve its regulatory objectives, and this is reflected in the overall compliance of regulatees. The MPFA will review the sufficiency and appropriateness of the MPFA's regulatory tools and powers in respect of breaches of non-statutory requirements relating to investment by trustees and misconduct of MPF intermediaries. The MPFA will also explore ways to improve the MPF industry regulation's effectiveness to serve the scheme members' needs and interests.

- 3.17 In assessing investment breach cases and deciding what course of action to take, the MPFA considers and weighs all the factors of the particular case, including without limitation, the nature and seriousness of the misconduct involved, any benefit gained by the target, loss caused to scheme members and funds, and remedial steps taken such as whether they had made appropriate compensation to affected scheme members and funds.
- 3.18 Based on past experience, investment breaches are generally operational in nature. Apart from issuing supervisory letter, the MPFA may take other regulatory actions such as requiring trustees and their appointed service providers to put in place adequate controls, take improvement measures and report to the MPFA on implementing such controls and measures.
- 3.19 For intermediary cases that do not involve any regulated activity, apart from issuing to the intermediary a CAL which forms part of the intermediary's compliance history, the MPFA has other regulatory measures in place to deter wrongdoings, including:
- (a) explore with the relevant FR on any other possible regulatory action under the FR's regime;
  - (b) continuously collaborate with industry associations to provide more and enhance training;
  - (c) issue circulars to the industry to warn against improper acts and malpractices of intermediaries; and

(d) issue enforcement alerts or educational messages on the MPFA's website and social media.

3.20 Concerning the observations or recommendations on referrals to other law enforcement agencies, the MPFA will explore with relevant law enforcement agencies on how non-compliances or suspected misconduct of serious nature outside the MPF jurisdiction can be tackled.

3.21 Concerning the observations or recommendations on the financial penalty regime, the MPFA will continue to consider case precedents and all relevant facts and circumstances of a case, including the nature, seriousness and duration of a breach as well as any impact on scheme members, in determining the appropriate financial penalty to ensure that it is fair, reasonable and proportionate to the non-compliance. Further, the MPFA will explore how the fixed penalty regime can be enhanced so as to ensure that the amount of financial penalty imposed reflects the severity of a breach adequately.

## **B. Transparency in the Performance of MPF Regulatees**

### Observations

- 3.22 Given the confines of the MPFA's exercise of regulatory powers as mentioned in paragraphs 3.4-3.9 above, the PRP noted that the interests of stakeholders of the MPF sector could be better safeguarded by improving transparency in the performance of MPF regulatees such as MPF trustees and intermediaries. For example, information on regulatees' past records of serious non-compliances or misconduct would help not only the scheme members and the general public to make an informed decision when choosing MPF services, but also PIs in assessing the suitability of the SIs when the latter seek employment or attachment.

### Recommendations

- 3.23 The PRP recommends the MPFA to publish information on the number, frequency and type of serious non-compliances committed by each MPF trustee who had been subject to the MPFA's regulatory or disciplinary actions.
- 3.24 The MPFA is also suggested to raise public awareness of the existing public register of SIs with prior breaches of a severe nature, so as to enhance transparency of and access to such information on MPFA's website and increase deterrence against similar misconduct.

### MPFA's Responses

- 3.25 The MPFA acknowledges the PRP's recommendations. Information on enforcement action against MPF trustees' non-compliance is published in summary form on the MPFA's website and Annual Reports. The MPFA will continue to promote and explore ways to increase transparency of the performance of MPF trustees.

- 3.26 When a disciplinary order is made against an SI, a press release with a statement of disciplinary action is issued by the MPFA to disclose the non-compliant intermediary and details of the misconduct, and the disciplinary record is also posted on the public register maintained by the MPFA, all made available on the MPFA's website. The MPFA will further enhance public education and remind the public that they can access such information on the MPFA's website.
- 3.27 Furthermore, when a person applies to the MPFA for registration as an SI with attachment to a new PI, he is required to make a declaration on the application form whether he has been suspended/ disqualified/ revoked by the relevant FR on disciplinary grounds, and the MPFA would verify the accuracy of such declaration made.

## C. Training for MPF Practitioners

### Observations

- 3.28 The PRP observed that a number of cases reviewed during this review cycle (Cases 6, 15, 21, 23, 24) stemmed from or suggesting insufficient or improper training for the MPF practitioners. In particular, cases involving serious misconduct such as forgery of client's signature (Cases 21 and 24) pointed to the need for stepping up training on ethics for MPF intermediaries.

### Recommendations

- 3.29 The PRP recommends the MPFA to enhance the standard of training for MPF practitioners by setting or increasing the CPD requirements, and to include regular courses on regulatory compliance and ethics for MPF intermediaries. The MPFA should also be more actively involved in the monitoring of training provided by MPF trustees to fund or investment managers.
- 3.30 For cases involving SIs in breach of regulatory requirements, the MPFA is invited to provide more information to the PRP in future review cycles on how the PI concerned followed up with the SI, including whether the SI was required to attend further training.

### MPFA's Responses

- 3.31 The MPFA welcomes the PRP's recommendations. Currently, the CPD requirements are set out in the Guidelines on Continuing Training for Subsidiary Intermediaries ("CPD Guidelines"). SIs are required to attend 10 hours of CPD activities each year, of which 2 hours must be core CPD activities. The topics of core CPD activities involve the MPF legislation and the understanding of MPF System and MPF products. The MPFA will review the CPD Guidelines to

enhance the CPD requirements, in particular on regulatory compliance and ethics.

- 3.32 The MPFA will more actively monitor the training provided by trustees to their appointed investment managers when such training is provided.
- 3.33 The MPFA will provide more information to the PRP in future review cycles on follow-up work of the relevant PI in respect of non-compliances of the SI including training requirements.

## Chapter 4: Way Forward

- 4.1 The PRP is pleased to note the MPFA's positive response to the PRP's recommendations in past years and the current report. The PRP will continue to render advice and recommendations to the MPFA to enhance the adequacy and efficiency of the MPFA's internal procedures and guidelines concerning all areas of its regulatory work.
- 4.2 The PRP welcomes and attaches great importance to the views of the public and market participants on the work of the PRP. Comments relating to the PRP's work can be referred to the Secretariat of the PRP via the following channels<sup>2</sup> –

By post: Secretariat of the Process Review Panel for the  
Mandatory Provident Fund Schemes Authority

24<sup>th</sup> Floor, Central Government Offices  
2 Tim Mei Avenue  
Admiralty, Hong Kong

By email: [prpmpf@fstb.gov.hk](mailto:prpmpf@fstb.gov.hk)

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<sup>2</sup> Enquiries or comments not relating to the process review work of the PRP should be made to the MPFA direct –

By post: Level 8, Tower 1, Kowloon Commerce Centre, 51 Kwai Cheong  
Road, Kwai Chung, Hong Kong

By telephone: (852) 2918 0102

By fax: (852) 2259 8806

By email: [mpfa@mpfa.org.hk](mailto:mpfa@mpfa.org.hk)



## **Chapter 5: Acknowledgement**

- 5.1 The PRP would like to express its gratitude to the MPFA for its assistance in facilitating the review process, and the MPFA's co-operation in responding to the PRP's enquiries and recommendations.

**Process Review Panel for the  
Mandatory Provident Fund Schemes Authority  
December 2022**