

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

2024 Annual Report

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Abbreviations used in this Report

CAL	Compliance Advice Letter
Disclosure Code	Code on Disclosure for MPF Investment Funds
ESG	Environmental, social, and governance
FR	Frontline regulator
FP	Financial penalty
Investment Code	Code on MPF Investment Funds
KPIs	Key Performance Indicators
MPF	Mandatory Provident Fund
MPFA	Mandatory Provident Fund Schemes Authority
MPFSAB	Mandatory Provident Fund Schemes Appeal Board
MPFS(G)R	Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A)
MPFSO	Mandatory Provident Fund Schemes Ordinance (Cap. 485)
ORSO	Occupational Retirement Schemes Ordinance (Cap. 426)
PI	Principal intermediary
PRP	Process Review Panel for the Mandatory Provident Fund Schemes Authority
SFC	Securities and Futures Commission
SI	Subsidiary intermediary

Message from the Chairman

PRP is an independent panel established by the Chief Executive to review and advise MPFA on the adequacy and consistency of the internal procedures and operational guidelines with respect to all core regulatory activities of MPFA. Since the expansion of its role in the 2021-22 review cycle, PRP has already reviewed 89 cases in detail, making a significant milestone in PRP's path to facilitate the enhancement of the regulatory work of MPFA.

Similar to the previous years, much of PRP's attention was drawn to the consistency and transparency of MPFA in enforcement actions against MPF trustees and intermediaries respectively. Despite the considerable efforts made to enhance its consistency and transparency, we still consider that there is some room for improvement by MPFA in this regard, particularly on the sampling approach in imposing FP. On this front, we have made recommendations to MPFA with a view to promoting public interest and enhancing public confidence in the MPF System.

Overall, we are glad to see that MPFA has further enhanced its case handling time. All cases selected for review this year met the target timeframes as stipulated by the applicable KPIs. We also appreciate MPFA's active follow-up on PRP's recommendations, such as the implementation of a banding system to categorise cases for the imposition of FP as recommended by PRP in the previous year.

Upon completion of this year's review, I wish to express my sincere appreciation to PRP Members for their valuable advice and contributions. I particularly express my gratitude to the two outgoing members, Mr Allen LAU and Ms Grace YU, whose observations during case review sessions have enriched our work. Finally, I thank the Financial Services and the Treasury Bureau for their secretarial support to PRP.

Mr Eugene FUNG, S.C., J.P.

Chairman

March 2025

Chapter 1: Background

Overview

- 1.1 PRP is an independent panel established by the Chief Executive to review and advise MPFA on the adequacy and consistency of the internal procedures and operational guidelines in respect of all core regulatory activities of MPFA, including registration and approval of MPF schemes, trustees and products; regulation of MPF investment; regulation of MPF intermediaries; and matters relating to registration of ORSO schemes.
- 1.2 PRP was formerly known as the Process Review Panel in relation to the Regulation of Mandatory Provident Fund Intermediaries, which was established in November 2013 to review MPFA's internal procedures only in respect of the regulation of MPF intermediaries. The renaming and current scope of PRP's work took effect from 1 November 2021 with the agreement of the Chief Executive.

Terms of Reference

1.3 The terms of reference of PRP are as follows –

- (a) to review and advise MPFA on the adequacy and consistency of its internal procedures and operational guidelines governing the actions taken and operational decisions made by 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 FRs¹ 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;

¹ The Hong Kong Monetary Authority, the Insurance Authority, and SFC 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 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 MPFA in respect of the manner in which complaints against 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 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 MPFA accordingly;
- (e) to advise MPFA on such other relevant matters as MPFA may refer to PRP or on which PRP may wish to advise; and
- (f) to submit annual reports and, if appropriate, special reports (including reports on problems encountered by PRP) to the Financial Secretary which, subject to applicable statutory secrecy provisions and other confidentiality requirements, should be published.

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

Membership

- 1.5 PRP comprises the Chairman and Members coming from a wide spectrum of professions and industry sectors. The Chairman of MPFA and the Secretary for Justice (or his representative) are ex officio members of PRP.
- 1.6 The membership of PRP for the 2023-24 review cycle is as follows –

Chairman

Mr Eugene FUNG Ting-sek, S.C., J.P.

Members

Mr Abraham CHAN Lok-shung, S.C.

Mr Johnny IP Chun-yuen

Mrs Agnes KOON WOO Kam-oi, M.H.

Mr Allen LAU Kai-hung

Mr Alex LIU Kin-sing

Mr Jeff WONG Kwan-kit

Ms Grace YU Ho-wun, M.H.

Ex officio Members

Mrs Ayesha MACPHERSON LAU, B.B.S., J.P.

(in her capacity as the Chairman of MPFA)

Mr YUNG Lap-yan

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

Secretariat

Financial Services and the Treasury Bureau

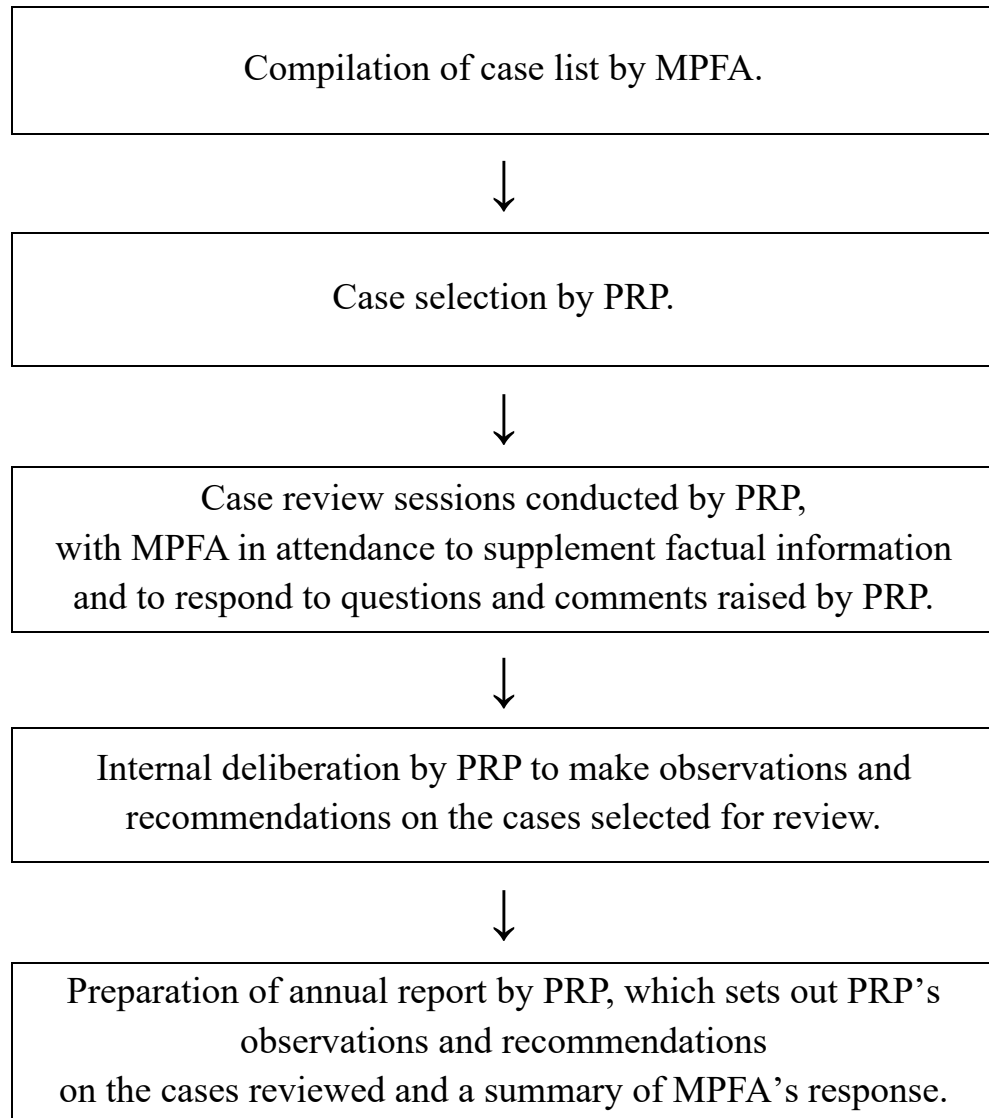
Chapter 2: Work of PRP

Modus Operandi

- 2.1 To facilitate PRP's review work, MPFA provides PRP with a list of cases completed or discontinued during the review cycle, from which PRP selects cases for detailed review.
- 2.2 With the aid of case summaries and supplementary information provided by MPFA, PRP holds case review sessions with MPFA to understand the processes through which MPFA officers made various decisions in the cases selected for review.
- 2.3 PRP deliberates on each case being reviewed, with a view to making observations and recommendations for MPFA to respond and follow up on. PRP's views and a summary of MPFA's response are compiled into an annual report to be submitted to the Financial Secretary and for publication in due course.
- 2.4 PRP Members are obliged to keep confidential the information furnished to them in the course of PRP's work. To maintain the independence and impartiality of PRP, all 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 PRP is summarised as follows –



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

MPFA's Follow-up on PRP's Recommendations in the 2023 Annual Report

2.7 In its 2023 Annual Report, PRP made a number of recommendations to MPFA. In response, MPFA had taken the following actions –

A. Handling Time <i>(paragraph 3.5)</i>

PRP's Recommendations

- (1) To review the current KPIs for each category of cases, and adjust downwards the target timeframes with reference to the latest average case handling times.

MPFA's Follow-up Actions

- (1) MPFA will continue to enhance the efficiency of various processes and review regularly the applicable KPIs for each category of cases and strive for further enhancements.

B. Consistency and Transparency in Imposing Sanctions <i>(paragraphs 3.10-3.13)</i>

PRP's Recommendations

- (1) To conduct cross-comparison between cases of similar nature when imposing sanctions, and elaborate on the key differences between cases leading to different amounts of FP imposed or different durations of suspension;

- (2) To consider implementing a banding system to categorise cases as minor, moderate or severe according to the aggravating and mitigating factors of the case, with each category corresponding to a range of FP;
- (3) To consider setting out fixed principles in its internal guidelines to strictly govern the circumstances under which sampling is used for calculating the amount of FP imposed; and
- (4) To provide PRP with details of the considerations and reasoning for arriving at the specific sanctions imposed, including the weight given on each aggravating and mitigating factor in assessing the proportionality of FP *vis-à-vis* severity of breach.

MPFA's Follow-up Actions

- (1) MPFA is committed to following well-established principles of fairness, reasonableness and proportionality and maintaining consistency in the determination of sanctions against regulatees. Over the years, it has developed and continuously refined relevant guidelines and procedures with the accumulation of case experience.
- (2) MPFA has consistently conducted cross-comparison between cases of similar nature and considered key differences in cases in accordance with established procedures when deriving the appropriate amount of FP or disciplinary sanction in each case.
- (3) While insisting that the sampling mechanism adopted in a specific case is based on rational grounds, MPFA welcomes and has adopted PRP's suggestion of a banding system to categorise seriousness of cases.
- (4) MPFA will continue to refine procedures to ensure that any FP imposed on MPF trustees is fair, reasonable and proportional to the magnitude of the breach and consistent with applicable case precedents.

- (5) MPFA has provided PRP with all relevant documents and information to facilitate its review conducted in 2024, and will continue to do so to facilitate its future reviews.

<p>C. Efficacy of MPFA’s Regulatory Actions (paragraphs 3.23-3.25)</p>

PRP’s Recommendations

- (1) To consider more severe repercussions for all types of misconduct by SIs, such as raising the minimum duration of suspension order across the board to increase the deterrent effect;
- (2) Echoing PRP’s recommendation in the 2022 Annual Report, that as a regulatory authority, MPFA should be given a power to file a report to relevant law enforcement agencies in cases where there is reasonable suspicion that an MPFA regulatee has committed potential criminal conduct, despite not being the victim of impersonation or forgery; and
- (3) Regarding the electronic administration system revamp incident², to inform relevant industry stakeholders about the potential serious impact caused by a defective administration system, and to provide guidance to the industry on how to prevent similar incidents from happening again.

² In October 2020, a scheme administrator of a trustee launched a new electronic administration system and thereafter encountered various system issues and human errors, resulting in multiple supervisory and enforcement cases selected for review in the 2021-22, 2022-23 and 2023-24 case review cycles. Cases 7 and 16 of the 2024 Annual Report also concern the system revamp incident of the same trustee.

MPFA's Follow-up Actions

- (1) MPFA has stepped up enforcement actions against serious misconduct to achieve a stronger deterrent effect, and has been issuing guidance and reminder to the industry to raise the standards of MPF intermediaries, including –
 - (i) to increase the requirements for Continuing Professional Development, particularly those on integrity and compliance;
 - (ii) to issue guidance on telemarketing to strengthen the controls of PIs over SIs to help combat scam calls; and
 - (iii) to enhance the transparency of benefits receivable by intermediaries.
- (2) MPFA further discussed with the Police on referring to them appropriate cases involving suspected crimes and further enhanced criteria for case referral.
- (3) MPFA regularly shares with trustees the lessons learnt from significant operational incidents to avoid the recurrence of similar incidents. In relation to incidents like the system revamp which were rare and one-off, MPFA issued a newsletter in September 2023 to MPF trustees drawing their attention to scheme administration errors resulting from the incident and providing guidance to prevent similar incidents from happening.
- (4) In response to PRP's recommendation in its report in 2022, MPFA has recently completed a holistic review of regulatory and enforcement powers, and has submitted to the Government for consideration legislative amendment proposals to include a power for disclosure of specific information about regulatory and enforcement actions against trustees which MPFA is currently lacking.

D. Disclosure of Case Information in Case Review Session <i>(paragraphs 3.32-3.34)</i>
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PRP's Recommendations

- (1) To provide PRP with the case summaries that include details on the investigation process, such as steps taken and particular difficulties faced by MPFA, and other useful materials that could facilitate PRP's understanding of MPFA's actions taken; and
- (2) Where there are multiple selected cases stemming from the same incident, to include the conclusion of other related cases in the case summaries or present the cases altogether in the case review session.

MPFA's Follow-up Actions

- (1) In the latest PRP's review conducted in 2024, MPFA enhanced the case summaries with useful materials that could facilitate PRP's understanding of MPFA's actions taken and presented any related cases together in order to give PRP a comprehensive understanding of the entire incident and allow full assessment of the impact. MPFA will continue to do so to facilitate PRP's future reviews.

- 2.8 PRP welcomes the above follow-up actions taken by MPFA to enhance the efficacy of the MPF regulatory regime.

2023-24 Case Review Cycle

- 2.9 Cases handled by MPFA can be classified into five categories with reference to MPFA's core regulatory functions. During the 2023-24 review cycle from 1 May 2023 to 30 April 2024, a total of 6 557 cases were closed or discontinued. From these cases, PRP selected 29 cases for detailed review³, with distribution of cases and cases selected as follows –

	Category of Cases	No. of Cases Closed or Discontinued	No. of Cases Selected for Review
I.	Approval / Registration of MPF Trustees, Schemes and Funds	25	3
II.	Regulation of MPF Trustees	458	14
III.	Registration and Regulation of MPF Intermediaries	5 977	7
IV.	Registration, Exemption and Regulation of ORSO Schemes	94	3
V.	Complaints against MPFA and its Staff	3	2
Total:		6 557	29

- 2.10 MPFA provided case summaries, relevant correspondence and internal procedural manuals relating to the 29 selected cases for PRP's perusal. PRP held a case review session in October 2024 to scrutinise MPFA's internal and operational processes in detail.
- 2.11 During the case review session, MPFA briefed PRP on the work of MPFA in respect of the 29 selected cases and responded to questions raised by PRP.
- 2.12 Case summaries, PRP's major observations in respect of the selected cases, and PRP's recommendations to MPFA for 2023-24 review cycle, are set out in Chapter 3 below.

³ Originally, MPFA had submitted a total of 6 558 cases, from which PRP selected 30 cases for detailed review in accordance with established past practice. Nevertheless, one of the selected cases became subject to judicial review immediately before the case review session and was therefore removed from the cases to be reviewed in the 2023-24 review cycle.

Chapter 3: Observations and Recommendations

Introduction

- 3.1 Out of the cases completed or discontinued by MPFA during the 2023-24 review cycle, PRP selected at least one case from each of the five categories as mentioned in paragraph 2.9 for detailed review. The majority of cases reviewed (14 cases) were relevant to MPFA's regulation of MPF trustees. The rest (15 cases) concerned MPFA's regulation of MPF products, MPF intermediaries, ORSO schemes, and complaints against MPFA staff. Cases were reviewed on a case-by-case basis. The case summaries and PRP's observations specific to individual cases are set out at paragraph 3.3 below.
- 3.2 Apart from the case-specific observations, PRP has 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 3.4-3.5, 3.7-3.10, 3.12-3.17 and 3.20-3.26 below.

Case Summaries and PRP's Case-specific Observations

Category I – Approval / Registration of MPF Trustees, Schemes and Funds

A. *Applications for Registration / Approval of MPF Schemes and Funds*

Case 1

3.3.1.1 Case 1 concerned 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 SFC's authorisation, MPFA would grant approval to the constituent fund.

3.3.1.2 Following the approval process above, the applicant submitted an application for approval of the new constituent fund for MPFA's approval-in-principle. The new constituent fund would be invested in two or more existing approved pooled investment funds and/or approved index-tracking collective investment schemes. Having reviewed the application documentation, MPFA issued the requisite approval-in-principle.

3.3.1.3 The applicant then submitted the application to SFC for authorisation. SFC took some time to process the authorisation, during which the applicant revised the application documents to address SFC's comments on the disclosure of the offering documents of the new constituent fund.

- 3.3.1.4 Approval was eventually granted by MPFA having considered that the new constituent fund had met the relevant regulatory requirements as set out in MPFSO, MPFS(G)R, the Investment Code and the Disclosure Code.
- 3.3.1.5 The total handling time for this case was 4 months: 1 month 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 for this case was within the relevant timeframe as set out in the applicable KPIs.

Case 2

- 3.3.2.1 Case 2 concerned an application for approval of two new constituent funds, which would be invested wholly in two new pooled investment funds respectively. The application of the new pooled investment funds was submitted separately by another applicant.
- 3.3.2.2 Following the sequential approval process, the applicant submitted the application for approval of the new constituent funds for MPFA's approval-in-principle. Since the application was related to another application for approval of the new pooled investment funds, MPFA had handled them concurrently and issued approval-in-principle for both on the same day.
- 3.3.2.3 The two applicants then submitted the applications to SFC for authorisation, during which both applicants revised their application documents to address SFC's comments on the disclosure regarding the investment objective of the new constituent funds and the new pooled investment funds.

- 3.3.2.4 Approval was eventually granted by MPFA having considered that the new constituent funds and the new pooled investment funds had met the relevant regulatory requirements as set out in MPFSO, MPFS(G)R, the Investment Code and the Disclosure Code.
- 3.3.2.5 The total handling time for this case was 3 months: half a month for MPFA to grant approval-in-principle, 1.5 months for SFC to grant authorisation, and 1 month for MPFA to grant final approval. The handling time for this case was within the relevant timeframe as set out in the applicable KPIs.

Case 3

- 3.3.3.1 Case 3 concerned an application for approval of two new pooled investment funds. The approval process for new pooled investment funds is similar to that of the approval for constituent funds as mentioned in paragraph 3.3.1.1.
- 3.3.3.2 Similar to Cases 1 and 2, the applicant first submitted the application to MPFA. After obtaining MPFA's approval-in-principle, the applicant then proceeded with seeking SFC's authorisation, during which the applicant revised the application documents to address SFC's comments on the disclosure of the offering documents of the new pooled investment funds. Approval was eventually granted by MPFA having considered that the new pooled investment funds had met the relevant regulatory requirements as set out in MPFSO, MPFS(G)R, the Investment Code and the Disclosure Code.
- 3.3.3.3 The total handling time for this case was 4 months: 1 month for MPFA to grant approval-in-principle, 1.5 months for SFC to grant authorisation, and 1.5 months for MPFA to grant final approval. The handling time for this case was within the relevant timeframe as set out in the applicable KPIs.

PRP's Case-specific Observations

- 3.3.3.4 PRP noted that the handling time of MPFA on Cases 1-3 fell within the target timeframe as stipulated by the applicable KPIs. PRP also noted that MPFA would normally require more time to consider applications for approval of new funds that are non-conventional in nature (e.g. funds with a high concentration of assets, including specialty funds like ESG-themed funds and sector funds), or of which the fee level proposed by applicants is higher than that of the same type of existing funds in the market.

B. Applications for Approval of MPF Trustees

- 3.3.3.5 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

A. *Supervisory Work*

(a) *Supervisory Work (Investment-related Non-compliance)*

Case 4

- 3.3.4.1 Case 4 concerned a fund pricing error by a trustee, which resulted in an overstatement of 0.7% of the net asset value per unit of an approved pooled investment fund. The case was reported by a trustee to MPFA in accordance with the Investment Code.
- 3.3.4.2 The trustee was required by 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, and rectification and preventive measures taken by the trustee. 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.
- 3.3.4.3 Upon review of the trustee's information provided, MPFA found that the fund pricing error stemmed from an exceptional manual adjustment in the fund price calculation process when the maturity settlement of a bond is in a currency other than its denominated currency. MPFA confirmed that the incident was not recurrent in nature, and was satisfied with the trustee's preventive measure of eliminating the manual process by automating the workflow of this process. Full compensation was also made for the financial losses to affected scheme members.

- 3.3.4.4 As the case only concerned an operational error, MPFA was of the view that no enforcement action was required, but supervisory action was warranted. As such, MPFA issued a supervisory letter to the trustee to remind it to conduct regular assessments on the preventive measures to avoid recurrence of similar incidents. The trustee confirmed that it would comply.
- 3.3.4.5 The total handling time for this case was 4.5 months, which was within the relevant timeframe as set out in the applicable KPIs.

PRP's Case-specific Observations

- 3.3.4.6 PRP noted that this case involved a manual error in an exceptional fund price calculation process, which the trustee had already addressed by automating the relevant process. PRP also noted that the trustee made full compensation, such that the financial interests of scheme members were not prejudiced.

Case 5

- 3.3.5.1 Case 5 concerned fund pricing errors made by a service provider engaged by a trustee for valuation process, which resulted in misstatement of the net asset values per unit of a number of approved pooled investment funds and constituent funds. The case was reported by the trustee to MPFA in accordance with the Investment Code.
- 3.3.5.2 Similar to Case 4 above, the trustee was required by MPFA to submit an assessment report of the incident, covering the cause of the pricing error, analysis of the trustee's and its service provider's internal control mechanism, assessment of the financial impact, and rectification and preventive measures taken by the relevant parties. 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.

- 3.3.5.3 Upon review of the trustee's information provided, MPFA found that the pricing errors stemmed from the operational errors made by the service provider in handling the calculation of fund prices, including incorrect system settings and incorrect manual accounting entries. While MPFA confirmed that the incident was not recurrent in nature, it was concerned about whether the service provider, which was newly appointed, had allocated sufficient resources and expertise to handle the price calculation activities. In response, the service provider strengthened its internal control process, whereas the trustee enhanced its monitoring framework, conducted training workshops for the service provider and engaged an independent consultant to review the remedial and preventive measures taken by the trustee and the service provider. As such, MPFA issued a supervisory letter to the trustee requiring it to review the capability of the service provider in providing fund accounting services and to report the result of the review conducted by the independent consultant. The trustee confirmed that it would comply and reported the results of the review to MPFA with no further concern raised.
- 3.3.5.4 The total handling time for this case was 4.5 months, which was within the relevant timeframe as set out in the applicable KPIs.

PRP's Case-specific Observations

- 3.3.5.5 PRP noted that the root cause of the incident stemmed from a novice service provider not familiar with the trustee's fund price calculation process. MPFA's assessment and the independent consultant's review encompassed the internal control process of both the trustee and the service provider.

Case 6

- 3.3.6.1 Case 6 concerned the engagement of two delegates of the custodian for holding MPF assets under an approved pooled investment fund. The two custodial delegates failed to meet all the regulatory requirements under MPFS(G)R. The case was reported by the trustee, which is also the custodian of the approved pooled investment fund, to MPFA in accordance with the regulatory requirement.
- 3.3.6.2 Similar to Cases 4 and 5 above, the trustee/custodian was required by MPFA to submit an assessment report of the incident, covering the cause of the non-compliance, analysis of the trustee/custodian's and the sub-custodian's internal control mechanism, assessment of the financial impact, and rectification and preventive measures taken by the relevant parties. MPFA also reviewed precedent cases of similar nature reported by the same trustee/custodian to assess whether the incident revealed any systemic weaknesses or failure of the management and internal controls of the trustee/custodian or its sub-custodian.
- 3.3.6.3 Upon review of the trustee/custodian's information provided, MPFA found that the incident stemmed from the failure of the trustee/custodian to supervise and exercise proper control over the sub-custodian, which was engaged for the first time as a global custodian managing a network of local custodians in different markets. One of the custodial delegates engaged was ineligible to act as a delegate as it is neither a bank nor a trust company, while the custodian agreement entered with the other custodial delegate failed to cover all the regulatory requirements. Although the incident was rectified by transferring all assets held by the ineligible delegate to other eligible delegates and the sub-custodian covered all the cost of the transfer with no financial impact on scheme members, given the seriousness of the control failure and the non-compliance with sections 71 and 72 of MPFS(G)R by virtue of section 17(2)(g) of Schedule 1 to MPFS(G)R, MPFA issued a supervisory letter to the

trustee/custodian requiring it to complete a questionnaire in relation to the governance framework put in place over custodian management and conduct regular assessments on the effectiveness and adequacy of preventive measures adopted by the relevant parties to avoid future recurrence of similar incidents. The trustee/custodian confirmed that it would comply, and submitted the questionnaire accordingly. MPFA was satisfied with the monitoring measures put in place.

- 3.3.6.4 The total handling time for this case was 4.5 months, which was within the relevant timeframe as set out in the applicable KPIs.

PRP's Case-specific Observations

- 3.3.6.5 While the two custodial delegates did not have serious deficiencies and the incident did not cause any financial impact, PRP observed that MPFA lacks enforcement powers on investment-related non-compliance cases. Further, PRP also observed that the relevant MPF legislation neither requires MPFA to approve the custodial delegates, nor requires the applicant to disclose information about the custodial delegates when applying for approval of a new pooled investment fund.

(b) *Supervisory Work (Suspected Breach and Non-compliance Cases)*

Case 7

- 3.3.7.1 Case 7 concerned a trustee's failure to conduct annual de-risking for 4 964 scheme members, who invested in Default Investment Strategy or a pre-determined asset allocation strategy based on member's age offered by the trustee, according to the required timeframes stipulated by MPFSO and the governing rules of the MPF scheme respectively. It was one of the many cases in the episode of the system revamp incident, where multiple system defects and human errors were encountered after the launch of the new electronic administration system by the trustee's scheme administrator in October 2020. The matter was reported by the trustee to MPFA in accordance with the regulatory requirement.
- 3.3.7.2 Upon evaluation of the trustee's incident report, MPFA found that the trustee had taken remedial actions to rectify the issues and implemented preventive measures to avoid the recurrence of the incident in future. In cases where there was a financial loss in scheme members' accounts, the trustee had made compensations to the members affected. MPFA also reviewed precedent cases of similar non-compliance reported by the same trustee and confirmed that the incident was not recurrent in nature.
- 3.3.7.3 Nevertheless, given the severity of the control failure and the number of scheme members affected, MPFA considered that the case warranted further investigation to determine if any enforcement action should be taken on the non-compliance with relevant sections under the legislation, and referred the case to the Enforcement Division for further investigation. MPFA also issued a supervisory letter setting out its concerns and supervisory directives to the trustee, and a newsletter in September 2023 to provide guidance for all MPF trustees when implementing any system revamp or enhancements.

- 3.3.7.4 The total handling time for this case was 7 months: 1 month for referral to Case Discussion Session⁴, 1 month between the case referral to Case Discussion Session and the date of the Case Discussion Session, and 5 months for supervisory action. The handling time for this case was within the relevant timeframe as set out in the applicable KPIs.

PRP's Case-specific Observations

- 3.3.7.5 PRP noted that Case 7 was one of the cases in the system revamp incident and was referred to MPFA's Enforcement Division for further investigation. PRP also noted that the subsequent enforcement case, albeit not selected by PRP for detailed review, eventually resulted in an FP over HK\$5,000,000, reflecting the seriousness of the case and the widespread impact on a large number of scheme members.

Case 8

- 3.3.8.1 Case 8 concerned a trustee's failure to timely report certain default contribution records to MPFA in breach of statutory requirements. The issue was identified by the scheme administrator when handling an employer's enquiry and was reported by the trustee to MPFA.
- 3.3.8.2 Upon review of the trustee's incident report, MPFA found that the trustee's failure to timely report default contribution records stemmed from scheme administration system errors in recognising and extracting the default contribution record for terminated member accounts. As a result, there were a total of 19 non-reported default contribution records involving 11 scheme members spanning from May 2011 to December 2022.

⁴ Case Discussion Session is a joint forum between the Enforcement Division and other relevant divisions, including the Supervision Division, to discuss the merits of each suspected non-compliance case on the basis of the available evidence to decide whether the case would be taken up by the Enforcement Division for further investigation and enforcement.

3.3.8.3 While MPFA reviewed precedent cases of similar non-compliance reported by the same trustee and confirmed that the incident was not recurrent in nature, given the severity of the case and the long period of non-compliance, MPFA considered that the case warranted further investigation to determine if any enforcement action should be taken on the non-compliance with relevant sections under the legislation. This case was thus referred to the Enforcement Division for further investigation. MPFA also issued a supervisory letter to require the trustee to monitor and assess whether it had fixed the system errors properly to prevent similar incidents from recurring and conduct a post-rectification review to ensure its compliance with the MPF legislation.

3.3.8.4 The total handling time for this case was 6 months: 2 months for referral to Case Discussion Session, 1 month between the case referral to Case Discussion Session and the date of the Case Discussion Session, and 3 months for supervisory action. The handling time for this case was within the relevant timeframe as set out in the applicable KPIs.

(c) *Supervisory Work (Operational Issues Arising from Complaints)*

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

B. Inspection of MPF Trustees

Case 9

- 3.3.9.1 Case 9 concerned MPFA's on-site inspection of a trustee to assess whether it had put in place effective plans, procedures and systems for enabling and facilitating its migration to the eMPF Platform, before the phased onboarding of each MPF scheme. By way of background, the eMPF Platform is a common electronic platform operated by the eMPF Platform Company Limited, a wholly-owned subsidiary of MPFA, which will streamline, standardise and automate the current MPF scheme administration processes.
- 3.3.9.2 Prior to the inspection, MPFA sent a document request list and a notification letter setting out the theme, scope and commencement date of the fieldwork of the on-site inspection to the trustee. The fieldwork commenced 2 months later by way of enquiring and discussing with the trustee's senior management and relevant personnel to understand their governance and status of its preparatory work to onboard to the eMPF Platform; and obtaining and reviewing relevant policies, plans, procedures and records from the trustee to track their completion of onboarding preparation steps. After the fieldwork, MPFA followed up with the trustee regarding outstanding and additional information. An on-site inspection report and a management letter were prepared summarising MPFA's findings, observations, and recommendations. The trustee then submitted action plans to address the observations identified during the on-site inspection, which were found to be satisfactory by MPFA. Another letter was issued to the trustee to conclude the inspection process.

- 3.3.9.3 The total handling time for this case was 7 months: 2.5 months between the issuance of pre-onsite notification letter and the commencement of the on-site inspection fieldwork; half a month for carrying out the on-site inspection; 2 months for preparing and issuing the management letter to the trustee; and 2 months for preparing and issuing the final letter to the trustee. The management letter was issued to the trustee within the relevant timeframe as set out in the applicable KPIs.

C. Complaints Handling (MPF Trustees)

Case 10

- 3.3.10.1 Case 10 concerned a complaint lodged with MPFA against a trustee, alleging poor performance of a constituent fund owing to the change of sponsor. The complainant also raised further questions regarding the investment policy of the constituent fund and whether the changes in the investment policy had been properly notified to the scheme members.
- 3.3.10.2 Upon review of the information provided by the trustee and the complainant, MPFA found the allegation unsubstantiated. In response to the complainant, the trustee explained factors affecting the performance of the constituent fund, that there was no change to the investment objective, policy and risk profile of the constituent fund arising from the change of sponsor; and that the change of investment policy of the constituent fund was communicated to the scheme members. MPFA was satisfied with the trustee's response and issued a substantive reply to the complainant to conclude the case.
- 3.3.10.3 The total handling time for this case was 3 months, which was within the relevant timeframe as set out in the applicable KPIs.

Case 11

- 3.3.11.1 Case 11 concerned a complaint lodged with MPFA against a trustee for failing to conduct auto-preservation of the complainant's MPF benefits by transferring her accrued benefits from the contribution account to a personal account in a timely manner.
- 3.3.11.2 Upon review of the information provided by the trustee and the complainant, MPFA found the allegation substantiated. The incident stemmed from a human oversight in the manual process of auto-preservation involving voluntary contributions. As a result, the trustee failed to set up a personal account for the complainant and transfer her MPF benefits into the personal account within the statutory timeframe⁵. Only when the complainant lodged a complaint with MPFA 8 months after the ex-employer's notification did the trustee take remedial action to set up the personal account and transfer the concerned benefits thereto.
- 3.3.11.3 The complainant did not suffer any financial loss despite the delay of transfer, as it only involved the transfer of fund units between accounts. However, MPFA considered that the trustee's conduct may constitute non-compliance with legislative requirements, hence the case was referred to MPFA's Enforcement Division for follow-up.
- 3.3.11.4 The total handling time for this case was 2 months, which was within the relevant timeframe as set out in the applicable KPIs.

⁵ If a member does not make any transfer election within three months after an MPF trustee is notified of his/her cessation of employment, the MPF benefits in the contribution account should then be transferred to a personal account under the same scheme within 30 days.

PRP's Case-specific Observations

- 3.3.11.5 PRP noted that Case 11 was likely to be an isolated incident. Unlike the majority of cases, the complainant's ex-employer had made voluntary contributions, and as a result, the process of auto-preservation requires manual processing which was found to be in error.

Case 12

- 3.3.12.1 Case 12 concerned a complaint lodged with MPFA against a trustee for –

- (i) failing to process contributions for the employer-complainant; and
- (ii) wrongly reporting to MPFA that the complainant had default contributions.

- 3.3.12.2 Upon review of the information provided by the trustee and the complainant, MPFA found the allegation substantiated. The complainant switched their employer account from the trustee's MPF scheme to another trustee's scheme in 2018 and then back to the trustee's scheme in 2021, which triggered complications with the trustee's processing of the complainant's contributions since 2021.

- 3.3.12.3 Despite its complex nature and the complainant's own failure to respond to the trustee's follow-up attempts, the trustee was found to have failed to take more timely and proactive steps to follow up with the complainant, which contributed to the delay in processing the complainant's contributions since 2021. Hence, MPFA issued a reminder to the trustee reminding it to follow up with employers in a more timely and proactively manner in processing employers' applications and contributions.

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

Case 13

- 3.3.13.1 Case 13 concerned a complaint lodged with MPFA against a trustee for failing to process the complainant's MPF enrolment in a timely manner.
- 3.3.13.2 Upon review of the information provided by the trustee and the complainant, MPFA found the allegation unsubstantiated. The incident stemmed from the failure of the complainant's employer to complete a due diligence questionnaire arising from anti-money laundering concerns. The trustee took some time to follow up with and seek clarification from the employer about the questionnaire and the complainant's personal information. As a result, the trustee could not process the complainant's enrolment in a timely manner. Nevertheless, MPFA issued a reminder to the trustee reminding it to follow up with employers on outstanding information or documents in a more timely manner.
- 3.3.13.3 The total handling time for this case was 3 months, which was within the relevant timeframe as set out in the applicable KPIs.

PRP's Case-specific Observations

- 3.3.13.4 PRP observed that MPFA has set two tiers of applicable KPIs regarding complaints handling on MPF trustees, which are formulated in light of the nature and the number of complaint cases in a given period, with the 2nd tier KPI to cater for more complex cases or a surge in the number of cases arising from a major incident which require longer handling time. PRP also noted that Cases 10-13 were all handled within the time contemplated for the 1st tier KPI, and that MPFA would conduct regular reviews of its KPIs for further enhancement of its functions and services.

D. Enforcement Actions against MPF Trustees

Refined Mechanism for Imposing Financial Penalty

- 3.3.13.5 In response to PRP’s recommendations in the 2023 Annual Report, MPFA has refined its mechanism for imposing FP with a view to adhering to the principles of fairness, reasonableness and proportionality and maintaining consistency in the determination of sanctions against MPF trustees.
- 3.3.13.6 The refined mechanism involves a 3-step approach of imposing FP as follows –
- (i) *Step 1*: Ascertaining the maximum amount of FP to be imposed;
 - (ii) *Step 2*: Banding and benchmarking; and
 - (iii) *Step 3*: Sampling (if applicable).
- 3.3.13.7 For *Step 1*, the maximum FP amount is ascertained by multiplying the base amount of FP and the total number of breaches involved in a case. The base amount of FP for different breaches of statutory provisions is prescribed by Schedule 4 to MPFS(G)R.
- 3.3.13.8 For *Step 2*, MPFA will first categorise the case into one of the three established bandings, namely “minor”, “moderate” and “serious”, with reference to all relevant facts and circumstances of the case, including but not limited to the aggravating and mitigating factors. Then, precedent cases in the same banding with similar nature and/or scale will be selected for benchmarking to consider whether imposing the maximum amount of FP arrived in *Step 1* would be reasonable and proportionate to the breach of the case.

- 3.3.13.9 If the maximum amount of FP is considered unreasonable and disproportionate, MPFA will use the sampling approach under *Step 3*. MPFA will, at its discretion, select a meaningful and representative portion or sample of the breaches for applying the base amount of FP as prescribed by Schedule 4 to MPFS(G)R. This sampling approach is aimed at ensuring the amount of FP imposed for the case is reasonable and proportionate.
- 3.3.13.10 In formulating the refined mechanism, MPFA has considered advice given by its internal and external legal counsels, and external consultants. The refined mechanism has been generally applied to Cases 14-17 below in determining the appropriate amount of FP imposed by MPFA on the respective trustees.

Case 14

3.3.14.1 Case 14 concerned a trustee's delay in –

- (i) issuing a letter to a scheme member regarding different options with respect to the transfer of MPF benefits upon termination of employment; and
- (ii) completing the auto-preservation of the member's MPF benefits from the contribution account to a personal account,

contrary to sections 152 and 153(3) of MPFS(G)R respectively. The case stemmed from a complaint lodged by the scheme member, which was transferred to the Enforcement Division for further investigation and enforcement actions.

- 3.3.14.2 MPFA found both breaches substantiated upon investigation. In this case, the trustee improperly held up the processing of the member's employment termination in light of the issues on long service payment offsetting, thereby causing delay in issuing the option letter and completing the auto-preservation of MPF benefits. The procedural issue identified by MPFA was subsequently transferred to the Supervision Division for follow-up with the trustee, which has rectified the incident and enhanced its procedures to prevent recurrence of similar incidents in the future.
- 3.3.14.3 Having considered all facts and circumstances of the case, including but not limited to the trustee's breach history, aggravating and mitigating factors, and two precedent cases of similar nature selected for benchmarking, MPFA imposed a total FP of HK\$70,000 on the trustee as prescribed by Schedule 4 to MPFS(G)R – HK\$20,000 for the trustee's 2nd failure to issue the option letter, and HK\$50,000 for the trustee's 3rd failure to auto-preserve the MPF benefits within the statutory timeframe.
- 3.3.14.4 The total handling time for this case was 18 months: 15 months to complete the investigation and issue the Notice of Intention to Impose Financial Penalty, and 3 months to complete regulatory action. The case was closed within the relevant timeframe as set out in the applicable KPIs.

Case 15

- 3.3.15.1 Case 15 also concerned the same trustee's delay in –
- (i) issuing a letter to a scheme member regarding different options with respect to the transfer of MPF benefits upon termination of employment; and

- (ii) completing the auto-preservation of the member's MPF benefits from the contribution account to a personal account,

contrary to sections 152 and 153(3) of MPFS(G)R respectively. The case stemmed from a complaint lodged by the scheme member, which was transferred to the Enforcement Division for further investigation and enforcement actions.

- 3.3.15.2 MPFA found both breaches substantiated upon investigation. Similar to Case 14 above, the trustee improperly held up the processing of the member's employment termination in light of the issues over severance payment offsetting, thereby causing delay in issuing the option letter and completing the auto-preservation of MPF benefits. The procedural issue identified by MPFA was subsequently transferred to the Supervision Division for follow-up with the trustee, which has rectified the incident and enhanced its procedures to prevent recurrence of similar incidents in the future.
- 3.3.15.3 Having considered all facts and circumstances of the case, including but not limited to the trustee's breach history, aggravating and mitigating factors, and two precedent cases of similar nature selected for benchmarking, MPFA imposed a total FP of HK\$100,000 on the trustee as prescribed by Schedule 4 to MPFS(G)R – HK\$50,000 for the trustee's 3rd failure to issue the option letter, and HK\$50,000 for the trustee's 5th failure to auto-preserve the MPF benefits within the statutory timeframe.
- 3.3.15.4 The total handling time for this case was 18 months: 15.5 months to complete the investigation and issue the Notice of Intention to Impose Financial Penalty, and 2.5 months to complete regulatory action. The case was closed within the relevant timeframe as set out in the applicable KPIs.

PRP's Case-specific Observations

- 3.3.15.5 PRP understood that the refined mechanism for imposing FP was still being formulated when FP was determined and imposed for Cases 14 and 15, such that MPFA did not apply the refined mechanism in its full fledge.

Case 16

- 3.3.16.1 Case 16 concerned a trustee's delay in –

- (i) transferring a scheme member's MPF benefits to the transferee trustee according to the member's election upon termination of employment; and
- (ii) completing the auto-preservation of nine members' MPF benefits from the contribution accounts to personal accounts,

contrary to sections 153(2) and (3) of MPFS(G)R respectively. This case was reported by the relevant trustee to MPFA.

- 3.3.16.2 As with Case 7, this non-compliance case was connected to the system revamp incident by the same scheme administrator of the trustee, as the new electronic administration system failed to automatically process scheme members' terminations of employment where no valid correspondence addresses were found in its database. After identifying the incident, the trustee rectified the breaches, made compensations to affected members and conducted enhancement on the administration system.

- 3.3.16.3 MPFA found the breach substantiated upon investigation. As for the FP, MPFA applied the refined mechanism to the present case and imposed a total FP of HK\$500,000 on the trustee as prescribed by Schedule 4 to MPFS(G)R – \$50,000 for the trustee’s 6th breach of section 153 of MPFS(G)R, multiplied by 10 breaches in this case. In determining the appropriate amount of FP, MPFA benchmarked one precedent case in *Step 2* and considered that the maximum amount of FP arrived in *Step 1* (i.e. HK\$500,000) is reasonable and proportionate. *Step 3* was not used.
- 3.3.16.4 The total handling time for this case was 18 months: 15 months to complete the investigation and issue the Notice of Intention to Impose Financial Penalty, and 3 months to complete regulatory action. The case was closed within the relevant timeframe as set out in the applicable KPIs.

Case 17

3.3.17.1 Case 17 concerned a trustee’s –

- (i) delay in conducting an annual de-risking for a scheme member who invested in Default Investment Strategy; and
- (ii) incorrect allocation of the member’s weekly MPF contributions for 19 weeks according to the specified proportions under the Default Investment Strategy,

contrary to section 34DB(1)(c) of MPFSO. This case was reported by the relevant trustee to MPFA.

3.3.17.2 MPFA found the breach substantiated upon investigation. The non-compliance was caused by human oversight as the annual de-risking for the scheme member with weekly contributions had to be done manually. MPFA also looked into the trustee's controls over its scheme administrator which took some time to investigate the incident. MPFA found that the trustee had adequate controls in overseeing its scheme administrator in investigating and reporting the incident. The trustee has also enhanced its relevant procedures and controls, issued a warning to relevant staff as well as conducted refresher training.

3.3.17.3 Similar to Case 16, this case was one of the pilot cases where MPFA applied the refined mechanism for imposing FP. MPFA imposed a total FP of HK\$80,000, although the amount of FP as prescribed by Schedule 4 to MPFS(G)R is HK\$200,000 – HK\$10,000 for the trustee's first breach, multiplied by 20 breaches in this case. In determining the appropriate amount of FP, MPFA benchmarked two precedent cases⁶ in *Step 2*, and considered that the maximum amount of FP arrived in *Step 1* (i.e. HK\$200,000) is not appropriate. The appropriate amount of FP should be around the mid-point between the financial penalties imposed in the two precedent cases (i.e. HK\$80,000), in light of the scale and severity of the present case. Hence, MPFA decided to select the following 8 (out of 20) breaches for applying the base amount of FP as prescribed by Schedule 4 to MPFS(G)R (i.e. HK\$10,000) in *Step 3* in deriving the final FP of HK\$80,000 –

- (i) 1 breach concerning the delay in conducting de-risking; and
- (ii) 7 meaningful and representative breaches (out of 19) concerning incorrect allocation of weekly MPF contributions.

⁶ While in one precedent case, an FP of HK\$40,000 was imposed for 4 breaches for a duration of 8 months, an FP of HK\$120,000 was imposed for 54 breaches for a duration of 19 months in another precedent case.

- 3.3.17.4 The total handling time for this case was 16 months: 14.5 months to complete the investigation and issue the Notice of Intention to Impose Financial Penalty, and 1.5 months to complete regulatory action. The case was closed within the relevant timeframe as set out in the applicable KPIs.

PRP's Case-specific Observations

- 3.3.17.5 PRP noted that Cases 16 and 17 were the pilot cases selected by MPFA for applying the refined mechanism for imposing FP. Despite this, PRP observed that the details of the precedent cases as referred by MPFA in deciding the amount of FP in these cases were not expressly set out in MPFA's considerations and reasoning in their Notice of Intention to Impose Financial Penalty.
- 3.3.17.6 Regarding the sampling approach in *Step 3* in Case 17, PRP observed that MPFA appeared to be able to arrive at the appropriate amount of FP after benchmarking two precedent cases in *Step 2*. PRP noted that *Step 3* appeared to be unnecessary and merely a purported attempt by MPFA to exercise its discretionary power of imposing FP and is similar to "sample charges" laid against a defendant in criminal proceedings. PRP queried the rationale for *Step 3* as it may create an additional burden for MPFA to justify how the sample breaches were selected for calculating the final amount of FP, rendering the mechanism susceptible to challenge.

Category III – Registration and Regulation of MPF Intermediaries

A. *Applications for Registration of MPF Intermediaries*

Case 18

3.3.18.1 Case 18 concerned an application for registration as an SI and the accompanying application for approval of attachment by SI to 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.

3.3.18.2 In accordance with established procedures, MPFA performed vetting to check whether the applicant met the requirements for registration as an SI. Having checked the public register of the relevant FR, the SI's disciplinary record with the FR and MPFA, and the record of the MPF qualifying examination, the applicant was found to have satisfactory vetting results. Subsequently, MPFA issued a notice to the applicant and the PI informing them respectively that the application had been approved.

3.3.18.3 The total handling time for this case was 20 working days, which was within the relevant timeframe as set out in the applicable KPIs.

B. Complaints Handling and Enforcement Actions against MPF Intermediaries

Case 19

3.3.19.1 Case 19 concerned 20 scheme members' complaints lodged with PI against three SIs regarding a roadshow for promoting the PI's MPF business in 2017. The complainants alleged the same SIs had –

- (i) transferred the complainants' MPF benefits from one trustee to another without the complainants' authorisation (**"Breach 1"**);
- (ii) failed to execute the instructions of some complainants to transfer MPF benefits to another trustee (**"Breach 2"**); and
- (iii) impersonated some complainants to obtain MPF accounts information (**"Breach 3"**).

3.3.19.2 The case was reported by the PI to the relevant FR, which investigated the case and faced various difficulties in collecting evidence, including that some complainants refused to cooperate and/or did not provide any evidence to the relevant FR. Only one complainant could provide concrete information about the relevant allegations against one of the SIs.

3.3.19.3 During MPFA's subsequent case assessment on the FR's investigation findings, it was found that both Breaches 1 and 3 were substantiated for one of the SIs (**"SI1"**), while the Breaches 1-3 against the remaining SIs were unsubstantiated due to insufficient evidence. Having considered all circumstances of the case, including but not limited to seriousness of the breaches, aggravating and mitigating factors, and precedent cases of similar nature, MPFA decided to impose a disciplinary order against SI1 by way of a 20-month disqualification from registration as an MPF intermediary. A press release with a statement of

disciplinary action against SI1 was also made available on MPFA's website. In addition, MPFA issued CALs to the remaining SIs to remind them of the importance of compliance with MPFSO, and to the PI demanding it to take enhancement actions including to strengthen training for all SIs attached to it. The PI subsequently reported back its enhancement actions to the satisfaction of MPFA.

- 3.3.19.4 The total handling time for this case was 66 months: 53 months for FR's investigation, 9.5 months for MPFA's case assessment and issuance of Notice of Proposed Disciplinary Action, and 3.5 months to complete regulatory action. The case was closed within the relevant timeframe as set out in the applicable KPIs.

PRP's Case-specific Observations

- 3.3.19.5 PRP noted that in light of the increasing number of common impersonation cases committed by SIs in recent years, MPFA has already asked trustees to strengthen verification procedures by asking for more personal details of scheme members. Specifically for Case 19, PRP considered that the SIs might have also been in breach of other legislation, such as the Personal Data (Privacy) Ordinance (Cap. 486).
- 3.3.19.6 PRP also observed that the relevant FR used a relatively long period to investigate the case, bearing in mind that it was a complicated case involving multiple complainants. PRP also noted that where a case was being handled by FRs for a long period, MPFA would follow up with FRs at appropriate times to ensure a timely investigation.

Case 20

- 3.3.20.1 Case 20 concerned a complaint lodged with the relevant FR against two SIs, alleging that the SIs had transferred the complainant's MPF benefits from one trustee to another without the complainant's authorisation. The case was also reported to the Police.
- 3.3.20.2 After assessing the matter, the relevant FR decided not to initiate investigation into the allegation, as the available information was insufficient to support any selling or regulated activity⁷ that had taken place. The complainant also gave inconsistent evidence as to whether she had given authorisation to the SI with whom she had contact ("SI1"). At all material times, SI1's registration of attaching to PI had not taken effect. Therefore, SI1 sought assistance from his manager with whom the complainant had no contact ("SI2") to complete the transfer of the complainant's MPF benefits. Having considered all the circumstances of the case including the FR's decision not to initiate investigation, MPFA issued CALs to the SIs to remind them of the importance of compliance with MPFSO.
- 3.3.20.3 The total handling time for this case was 17 months: 16 months for FR's investigation, and 1 month for MPFA's case assessment. The case was closed with CALs issued by MPFA within the relevant timeframe as set out in the applicable KPIs.

⁷ Regulated activity (e.g. invitation or inducement, or attempt to do so, by an MPF intermediary to a scheme member to join an MPF scheme) is a prerequisite for establishing a breach of conduct requirements and taking a disciplinary action against a non-compliant MPF intermediary.

Case 21

- 3.3.21.1 Case 21 concerned a complaint lodged with MPFA against an SI, alleging that the SI had transferred the complainant's MPF benefits from one trustee to another without the complainant's authorisation. MPFA referred the case to the relevant FR, which investigated the case. There was a connected case where another SI was involved in the same incident against whom a separate complaint was lodged by the same complainant.
- 3.3.21.2 After assessing the matter, the relevant FR decided not to initiate investigation into the allegation, as there was insufficient evidence showing any regulated activity and breach of conduct by the SI. According to PI's internal investigation, the complaint was a case of miscommunication rather than misconduct. Having considered all the circumstances of the case including the FR's decision not to initiate investigation, MPFA issued a CAL to the SI to remind the SI of the importance of compliance with MPFSO.
- 3.3.21.3 The total handling time for this case was 7 months: 1 month for MPFA's preliminary assessment, 5 months for FR's investigation, and 1 month for MPFA's case assessment. The case was closed with a CAL issued by MPFA within the relevant timeframe as set out in the applicable KPIs.

Case 22

- 3.3.22.1 Case 22 concerned a complaint lodged by an employer with the relevant FR against an SI, alleging that the SI had failed to –
- (i) execute the complainant's instructions for account opening and enrolment of six employees ("**Breach 1**");
 - (ii) forward two cheques issued by the complainant for making MPF contribution payments to the trustee ("**Breach 2**");

(iii) ensure that the two cheques were made payable to the correct payee, namely the trustee (“**Breach 3**”); and

(iv) provide copies of the signed MPF forms to the complainant and its employees as soon as reasonably practicable (“**Breach 4**”).

3.3.22.2 With the SI’s admissions, MPFA found that Breaches 1-4 substantiated during MPFA’s subsequent case assessment on the FR’s investigation. Having considered all the circumstances of the case including seriousness of the breaches, aggravating and mitigating factors, precedent cases of similar nature and the latest appeal decision by MPFSAB, MPFA decided to impose a disciplinary order against the SI by way of a 20-month disqualification from registration as an MPF intermediary, with a public reprimand to send a clear message to the industry that similar misconduct would not be tolerated, having considered that disqualifying the SI who has already left the industry may not have sufficient deterrent effect. A press release with a statement of disciplinary action against the SI was made available on the MPFA website.

3.3.22.3 The total handling time for this case was 38 months: 27 months for the FR’s investigation, 8 months for MPFA’s case assessment and issuance of the Notice of Proposed Disciplinary Action, and 3 months to complete regulatory action. The case was closed with the Notice of Proposed Disciplinary Action issued by MPFA within the relevant timeframe as set out in the applicable KPIs.

Case 23

3.3.23.1 Case 23 concerned a complaint lodged with MPFA against an SI, alleging that the SI had –

- (i) failed to execute the complainant’s instruction to transfer MPF benefits from one trustee to another (“**Breach 1**”); and
- (ii) transferred the MPF benefits to another trustee without the complainant’s authorisation (“**Breach 2**”).

3.3.23.2 MPFA referred the case to the relevant FR for investigation, but the complainant refused to attend any interview to facilitate the investigation. Nevertheless, during MPFA’s subsequent case assessment on the FR’s investigation findings, MPFA was able to gather sufficient evidence to substantiate Breach 1, while Breach 2 remained unsubstantiated. Having considered all the circumstances of the case including seriousness of the breach, aggravating and mitigating factors, precedent cases of similar nature and the latest appeal decision by the MPFSAB, MPFA decided to impose a disciplinary order against the SI by way of a 1-month disqualification from registration as an MPF intermediary. A press release with a statement of disciplinary action against the SI was also made available on MPFA’s website.

3.3.23.3 In imposing the 1-month disqualification, MPFA particularly took reference from the latest appeal decision by the MPFSAB, which considered that any suspension for registration would necessarily impact the livelihood of SIs and would thus require justifications to deviate from the starting point of a reprimand. The sanction of 1-month disqualification was considered appropriate by MPFA, as the SI admitted that he had deliberately failed to execute the complainant’s instruction for Breach 1.

- 3.3.23.4 The total handling time for this case was 32 months: half a month for MPFA’s preliminary assessment, 22 months for the FR’s investigation, 8 months for MPFA’s case assessment and issuance of the Notice of Proposed Disciplinary Action, and less than 2 months to complete regulatory action. The case was closed with the Notice of Proposed Disciplinary Action issued by MPFA within the relevant timeframe as set out in the applicable KPIs.

PRP’s Case-specific Observations

- 3.3.23.5 PRP noted the MPFSAB’s decision and that a heavier sanction was imposed on the same SI in Case 24 below. Nevertheless, PRP doubted that the 1-month disqualification from registration would have any actual deterrent effect on the SI. Such a short period of disqualification might also send a mixed message to the MPF industry.

Case 24

- 3.3.24.1 Case 24 concerned two complaints lodged with the PI against the same SI in Case 23 above, alleging that the SI transferred the complainants’ MPF benefits from one trustee to another without the complainants’ authorisation (“**Breach**”). The case was reported by the PI to the relevant FR, which investigated the case.
- 3.3.24.2 During MPFA’s subsequent case assessment on the FR’s investigation findings, it was found that the Breach was substantiated. Although the complainants refused to attend any interview to facilitate the investigation and had no contact with the SI prior to the transfer applications, MPFA, with external legal advice, was able to establish the requisite regulated activity on the part of the SI for taking disciplinary action under the MPF intermediary regulatory regime.

- 3.3.24.3 Having considered all the circumstances of the case including seriousness of the breaches, aggravating and mitigating factors, precedent cases of similar nature and the recent stepping-up of MPFA's disciplinary sanctions for serious misconduct by SIs, MPFA decided to impose a disciplinary order against the SI by way of a 5-year disqualification from registration as an MPF intermediary, with a public reprimand to send a clear message to the industry that similar misconduct would not be tolerated, having considered that disqualifying the SI who has already left the industry may not have sufficient deterrent effect. This is by far the heaviest disciplinary order imposed by MPFA. A press release with a statement of disciplinary action against the SI was made available on the MPFA website.
- 3.3.24.4 The total handling time for this case was 31 months: 20 months for the FR's investigation, 9 months for MPFA's case assessment and issuance of the Notice of Proposed Disciplinary Action, and 2 months to complete regulatory action. The case was closed with the Notice of Proposed Disciplinary Action issued by MPFA within the relevant timeframe as set out in the applicable KPIs.

PRP's Case-specific Observations

- 3.3.24.5 PRP noted that the facts and evidence of Case 24 were insufficient to suggest that the complainant's employer was engaged in any regulated activity, thereby requiring registration with MPFA as a subsidiary.
- 3.3.24.6 PRP also observed that among the four cases in which disqualification from registration was imposed (i.e. Cases 19, 22, 23 and 24 above), public reprimand was only issued in Cases 22 and 24. Though PRP understood that some were earlier cases (e.g. Case 19) where MPFA had considered it unnecessary to issue public reprimand at the material time prior to its stepping-up of disciplinary actions against SIs, PRP considered that public reprimand should be issued in a more consistent manner to send a clearer message to the industry.

Category IV – Registration, Exemption and Regulation of ORSO Schemes

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

Case 25

3.3.25.1 Case 25 concerned an application for registration of an ORSO scheme under section 15 of ORSO. As a result of corporate demerger, the applicant, as the employer of the relevant ORSO scheme, intended to set up and register the ORSO scheme, to maintain the same retirement benefits for employees.

3.3.25.2 After reviewing the application, the relevant documents and the major terms of governing rules of the ORSO scheme, MPFA was satisfied that all requirements under the ORSO were met. Accordingly, MPFA granted approval for registration of the ORSO scheme and issued the certificate of registration.

3.3.25.3 The total handling time for this case was 16 working days, which was within the relevant timeframe as set out in the applicable KPIs.

Case 26

3.3.26.1 Case 26 also concerned an application for registration of an ORSO scheme under section 15 of ORSO. As a result of corporate demerger, the applicant, as the employer of the relevant ORSO scheme, intended to set up and register the ORSO scheme, to maintain the same retirement benefits for employees.

- 3.3.26.2 After reviewing the application, the relevant documents and the major terms of governing rules of the ORSO scheme, MPFA was satisfied that all requirements under the ORSO were met. Accordingly, MPFA granted approval for registration of the ORSO scheme and issued the certificate of registration.
- 3.3.26.3 The total handling time for this case was 19 working days, which was within the relevant timeframe as set out in the applicable KPIs.

B. Complaints Handling (ORSO Schemes)

Case 27

- 3.3.27.1 Case 27 concerned an employee complaint against the trustees of an ORSO scheme about the lengthy processing time for releasing his ORSO benefits.
- 3.3.27.2 MPFA found that the alleged delay was caused by the complainant's misconduct of misappropriating a customer's insurance premium, which resulted in the employer's compensation to the customer. The employer thus exercised its right under the governing rules of the ORSO scheme to forfeit all the employer's portion and deduct the compensation amount from the complainant's portion⁸. The remaining ORSO benefits were released to the complainant 17 weeks after the termination of the complainant's employment with the employer.

⁸ These rules are not prohibited in the ORSO.

- 3.3.27.3 MPFA concluded that the allegation against the trustees was unsubstantiated, as the trustees had duly processed the ORSO benefits payment within the specified timeframe as stipulated in their internal procedures – the process of the ORSO benefits payment is normally within 10-12 weeks after the termination of employment, subject to change owing to various complex circumstances. There was no breach of any legislative requirement. As a result, MPFA issued a substantive written reply to the complainant to conclude the case.
- 3.3.27.4 The total handling time for this case was 3 months and 23 days, which was within the relevant timeframe as set out in the applicable KPIs.

C. Enforcement Actions against ORSO Administrators

- 3.3.27.5 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

Case 28

3.3.28.1 Case 28 concerned an employer complaint about the handling of the relevant MPFA staff on a default contribution case. At all material times, the complainant had neither enrolled nor made contributions for its employee. Upon receiving employees' assistance request and investigation, MPFA filed a civil claim with the Small Claims Tribunal against the complainant to recover the default contributions on behalf of the employee. After initiating the civil claim, a limited company ("**Company**") which claimed to be the employer of the employee settled the outstanding contributions and the case was resolved.

3.3.28.2 After the default contribution case had been resolved, the complainant lodged a complaint with MPFA, alleging that the relevant MPFA staff –

- (i) sided with the employee during the investigation of the default contribution case;
- (ii) misled the complainant that the complainant would be arrested for failing to settle default contribution;
- (iii) called the complainant many times to ask the complainant to ignore and not to attend the court hearing at the Small Claims Tribunal; and
- (iv) failed to allocate the settlement of contributions into the MPF scheme nominated by the Company.

- 3.3.28.3 MPFA launched an internal investigation according to the established procedures. It was found that that none of the allegations were substantiated against the relevant staff. MPFA therefore issued a substantive reply to the complainant to explain the findings to close the case. To further improve communication skills, additional coaching was also given to the relevant staff.
- 3.3.28.4 The total handling time for this case was 39 working days, which was within the relevant timeframe as set out in the applicable KPIs.

Case 29

- 3.3.29.1 Case 29 concerned a complainant's dissatisfaction about MPFA's findings on his separate and earlier complaint against an MPF trustee, alleging that the trustee failed to handle his fund switching instruction.
- 3.3.29.2 Despite the explanation of the case findings offered by the relevant MPFA staff, the complainant was not satisfied with the findings and lodged a complaint with MPFA, alleging that –
- (i) MPFA and the relevant staff failed to handle the prior complaint against the trustee in a timely manner;
 - (ii) MPFA and the relevant staff had never read the complainant's letter; and
 - (iii) the relevant staff was evasive in her reply regarding the prior complaint against the trustee, and her ability to understand the complainant's letter in English was poor.

3.3.29.3 MPFA launched an internal investigation according to the established procedures and found that the relevant staff had –

- (i) acted in accordance with the established procedures and timeline to handle and review the prior complaint against the trustee and provided replies to the complainant, explaining why the fund switching instruction had not been executed;
- (ii) properly considered and followed up on the matters raised by the complainant in his letters and handled the prior complaint properly; and
- (iii) provided replies to the complainant addressing his queries and concerns in accordance with the established procedures within the applicable KPIs target timeframe.

MPFA therefore concluded that the complainant's allegations were unsubstantiated and issued a substantive reply to the complainant.

3.3.29.4 The total handling time for this case was 29 working days, which was within the relevant timeframe as set out in the applicable KPIs.

PRP's General Observations and Recommendations

A. Handling Time

Observations

- 3.4 PRP recognised the considerable efforts by MPFA to enhance the case handling process in recent years. All 29 cases selected for detailed review this year were handled within the timeframes as set out in applicable KPIs. MPFA was also able to offer explanations to PRP regarding the design of the two-tier applicable KPIs on cases involving complaints handling on MPF trustees.

Recommendations

- 3.5 Following PRP's recommendation in the 2023 Annual Report, MPFA is encouraged to promote further efficiency of its case handling process. MPFA should constantly review its current KPIs and adjust the target timeframes downwards with reference to the latest average case handling time.

MPFA's Response

- 3.6 MPFA is grateful to PRP for its recommendations and recognition of MPFA's considerable efforts made in enhancing case handling over the years and will continue to enhance efficiency by regularly reviewing and fine-tuning the KPIs.

B. Enforcement Powers on Investment-related Non-compliance

Observations

- 3.7 Following up on its observations and recommendations in the 2022 Annual Report, PRP considered that MPFA is generally lack of enforcement powers against trustees involved in investment-related non-compliance.
- 3.8 For instance, the trustee/custodian in Case 6 above engaged two ineligible custodial delegates contrary to MPFS(G)R. While the breaches in that case were considered mild with no financial impact on scheme members, MPFA could only direct supervisory actions to instruct the trustee/custodian to change the delegates, rather than imposing FP similar to other breaches committed by trustees (e.g. Cases 14-17). Similarly, MPFA has rather limited regulatory powers in respect of breaches of non-statutory requirements as stipulated by the Investment Code as shown in Cases 4 and 5 involving fund pricing errors.
- 3.9 PRP considered that the lack of enforcement powers by MPFA is undesirable, especially when the breaches are not merely technical but involve serious deficiencies on the part of the trustee's internal control process which would ultimately jeopardise the financial interests of scheme members.

Recommendations

- 3.10 Understanding that MPFA has been conducting a holistic review of its regulatory and enforcement powers, PRP recommends that MPFA should continue to explore different means to strengthen its regulatory and enforcement powers to better discharge its statutory functions of protecting the interests of scheme members.

MPFA's Response

- 3.11 In response to the PRP's recommendations in its 2022 Annual Report, MPFA has recently completed a holistic review of its regulatory and enforcement powers, which looked into, *inter alia*, the sufficiency and appropriateness of the MPFA's regulatory tools and powers, and has submitted to the Government for consideration corresponding legislative amendment proposals.

C. Consistency and Transparency in Imposing Financial Penalty against MPF Trustees

Observations

- 3.12 PRP appreciated MPFA's efforts in following up on PRP's recommendation in the 2023 Annual Report, including to implement a banding system to categorise cases as "minor", "moderate" and "serious" in the refined mechanism for imposing FP. PRP also recognised that MPFA has substantially enriched its case summaries and enhanced its demonstration of consistency in imposing FP supported by precedent cases.
- 3.13 Nevertheless, PRP observed that the precedent cases were not expressly mentioned in MPFA's considerations and reasoning in their Notice of Intention to Impose Financial Penalty, which is a document issued to trustees to invite further representation prior to finalising the amount of FP imposed.
- 3.14 Regarding *Step 3* in the refined mechanism for imposing FP, PRP queried the rationale for the sampling approach. As shown by Case 17, MPFA was already able to arrive at the appropriate amount of FP after benchmarking two precedent cases in *Step 2*. While PRP noted that MPFA may have used *Step 3* to select sample breaches in light of the fixed FP schedule prescribed in the legislation, thereby attempting to exercise discretionary power of imposing FP under the statutory FP regime, it could potentially undermine the reasoning in *Step 2* which has already performed an analysis of the nature and/or scale of precedent cases. The inclusion of *Step 3* may create an extra burden for MPFA to justify the sample breaches chosen for imposing the final FP amount, in particular for multiple breaches that are caused by the same incident or error, for example, the system revamp incident in Case 16 and a human oversight over a period of time in Case 17, making it vulnerable to challenges.

- 3.15 PRP’s observation in paragraph 3.14 above echoes its observations in the 2022 Annual Report and the 2023 Annual Report, where PRP considered it necessary for MPFA to demonstrate a clear and consistent mechanism of imposing FP.

Recommendations

- 3.16 PRP considers that transparency is an important principle for the imposition of FP. MPFA may consider mentioning the precedent cases referred to in its considerations and reasoning in the Notice of Intention to Impose Financial Penalty.
- 3.17 PRP understands that MPFA has been conducting the holistic review of its regulatory and enforcement powers, including, *inter alia*, its statutory FP regime. In conducting the holistic review, MPFA may wish to consider further fine-tuning the refined mechanism for imposing FP in light of the PRP’s observations made earlier. This may include critically assessing the necessity of (i) including a sampling approach in *Step 3*, and (ii) setting fixed principles and criteria on how to select representative breaches which do not undermine the adoption of banding and benchmarking precedent cases in *Step 2*.

MPFA’s Response

- 3.18 MPFA acknowledges the importance of transparency and has been continuously striving to enhance transparency of its decisions through different means, including explaining in detail the factors and considerations that MPFA has taken into account as well as its rationale in the Notice of Intention to Impose Financial Penalty and issuing an explanatory note to the industry on MPFA’s enforcement approach. MPFA welcomes PRP’s recommendations and would further review and enhance the contents of the Notice of Intention to Impose Financial Penalty.

3.19 MPFA has recently completed a holistic review of regulatory and enforcement powers, and has submitted to the Government for consideration legislative amendment proposals to enhance the powers with a refined mechanism for imposing FP against trustees, which can address PRP's recommendations in paragraph 3.17.

D. Enforcement Actions against MPF Intermediaries

Observations

- 3.20 Echoing its observations in the 2022 Annual Report and the 2023 Annual Report, PRP observed that there is an increasing trend of impersonation and forgery cases committed by intermediaries. Particularly, Case 19 involved an SI arranging a third party to impersonate the complainant to obtain the necessary account information from the trustee to complete the transfer of MPF benefits without the complainant's authorisation. This kind of impersonation case not only touches upon the MPF intermediary regulatory regime but also the data privacy regime under the Personal Data (Privacy) Ordinance (Cap. 486).
- 3.21 PRP also observed that among the four cases in which disqualification from registration was imposed (i.e. Cases 19, 22, 23 and 24 above), public reprimand was only issued in Cases 22 and 24, although imposing a disqualification from registration necessarily implies the serious nature of misconducts involved in the case.
- 3.22 As for Case 23, PRP observed that imposing the 1-month disqualification from registration for the SI's deliberate failure to execute the complainant's instruction may not have sufficient practical deterrent effect on the SI. A short period of disqualification might also send a mixed message to the MPF industry.

Recommendations

- 3.23 PRP is of the view that MPFA, being the responsible financial regulator for the MPF industry, should be more proactive in escalating and following up on impersonation and forgery cases, even though certain criminal enforcement and prosecution may fall outside the purview of MPFA.
- 3.24 In this regard, PRP reiterates its previous suggestion of empowering MPFA to file a report to relevant law enforcement agencies in cases where there is reasonable suspicion that an MPFA regulatee has committed potential criminal conduct, despite MPFA not being the victim of impersonation or forgery. The relevant law enforcement agencies may extend to the Office of the Privacy Commissioner for Personal Data.
- 3.25 To guard against impersonation from the root, MPFA should also remind trustees about the prevalence of impersonation cases in recent years and to step up verification procedures, including, asking a list of questions beyond the basic personal information of a scheme member and introducing multi-factor authentication.
- 3.26 Similar to the imposition of FP above, MPFA should also ensure consistency and transparency in imposing disciplinary orders and other sanctions against intermediaries. MPFA may consider formulating a clear policy to guide the imposition of disqualification from registration and the issuance of public reprimands, especially when the imposition of the former usually implies the serious nature of the misconduct, in order to send a strong unified message to the MPF industry that misconduct is not tolerated.

MPFA's Response

- 3.27 Having discussed with different enforcement agencies and FRs, MPFA has enhanced its case referral mechanism to facilitate the referral of appropriate cases to the relevant law enforcement agencies including but not limited to the Office of the Privacy Commissioner for Personal Data.
- 3.28 Concerning impersonation cases, MPFA from time to time provides guidance by issuing circulars to trustees reminding them of the importance of putting in place robust control measures to safeguard the interests of scheme members. MPFA will continue to monitor the status of compliance by trustees and issue further guidance to trustees when necessary.
- 3.29 In order to strengthen the deterrent effect, MPFA had further stepped up its disciplinary sanctions by consistently imposing public reprimands in cases where disqualifications from registration were imposed. MPFA will continue to enhance its existing policies and guidelines to guide the imposition of appropriate disciplinary sanctions in order to convey a strong message to the industry that misconduct is not tolerated.

Chapter 4: Way Forward

- 4.1 PRP is pleased to note MPFA's positive response to PRP's recommendations in past years and the current report. PRP will continue to render advice and recommendations to MPFA to enhance the adequacy and efficiency of MPFA's internal procedures and guidelines concerning all areas of its regulatory work.
- 4.2 PRP welcomes and attaches great importance to the views of the public and market participants on the work of PRP. Comments relating to PRP's work can be referred to the Secretariat of PRP via the following channels⁹ –

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

24th Floor, Central Government Offices
2 Tim Mei Avenue
Admiralty, Hong Kong

By email: prpmpf@fstb.gov.hk

⁹ Enquiries or comments not relating to the process review work of PRP should be made to MPFA direct –

By post: Level 12, Tower 1, The Millennity, 98 How Ming Street, Kwun
Tong, Hong Kong

By telephone: (852) 2918 0102

By fax: (852) 2259 8806

By email: mpfa@mpfa.org.hk

Chapter 5: Acknowledgement

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

**Process Review Panel for the
Mandatory Provident Fund Schemes Authority
March 2025**