

**Process Review Panel in relation to the
Regulation of Mandatory Provident Fund Intermediaries**

2017 Annual Report

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Message from the Chairman

Established in 2013 following the commencement of the statutory regulatory regime of Mandatory Provident Fund (“MPF”) intermediaries, the Process Review Panel in relation to the Regulation of Mandatory Provident Fund Intermediaries (“PRP”) is an independent panel tasked to review and advise the Mandatory Provident Fund Schemes Authority (“MPFA”) on the adequacy and consistency of its internal procedures and operational guidelines vis-à-vis its regulation of MPF intermediaries.

Stepping into its fourth anniversary, the PRP continued to play an essential role in ensuring operational consistency and smooth co-ordination among the MPFA and the three Frontline Regulators of MPF intermediaries, namely, the Insurance Authority, the Securities and Futures Commission, and the Hong Kong Monetary Authority.

As the Chairman of the PRP, I am pleased to continue to lead the PRP in 2017 in producing its second report. I am also glad to learn that the MPFA has taken heed of the PRP’s various recommendations in the 2016 Annual Report and followed up accordingly. In the current review cycle, viz. from 1 November 2015 to 31 October 2016, there were a total of 17 completed conduct cases relating to MPF intermediaries. Out of these cases, the PRP selected six cases for detailed examination with the assistance of MPFA case officers. Capitalising on the expertise of our Members, the PRP made insightful observations from the case review and came up with a number of recommendations and suggestions for the MPFA’s consideration and necessary follow-up. Details of the case review can be found in Chapter 3 of this report.

On the successful completion of this year’s work, I would like to express my gratitude to all Members of the PRP for their time and dedication in supporting the work of the PRP. I would also like to thank the MPFA for their close collaboration with the PRP and their contribution to enhancing the robustness and transparency of its internal operations, thereby helping to build and defend a trustworthy regulatory regime for MPF intermediaries. Last but not least, I am most grateful for the unfailing support rendered to the PRP by the Financial Services and the Treasury Bureau.

Dr Eddy Fong Ching, GBS, JP
Chairman
August 2017

Chapter 1 : Background

Overview

- 1.1 The Process Review Panel in relation to the Regulation of Mandatory Provident Fund Intermediaries (“PRP”) is an independent panel established by the Chief Executive in November 2013.
- 1.2 The PRP is tasked to review and advise the Mandatory Provident Fund Schemes Authority (“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 its regulatory functions relating to the regulation of Mandatory Provident Fund (“MPF”) intermediaries and associated matters.

Functions

- 1.3 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 intermediaries and associated matters by the MPFA;
 - (ii) co-ordination and follow-up with the Frontline Regulators (“FRs”)¹ in relation to inspection and investigation of registered MPF intermediaries;
 - (iii) taking of disciplinary actions by the MPFA; and

¹ The Insurance Authority (“IA”), the Securities and Futures Commission (“SFC”), and the Hong Kong Monetary Authority (“HKMA”) are FRs responsible for the supervision and investigation of complaints against registered MPF intermediaries whose core business is in insurance, securities and banking respectively.

- (iv) receipt and handling of complaints against MPF intermediaries in relation to sales and marketing activities and the giving of advice, in relation to MPF registered schemes.
- (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 complaints concerning sales and marketing activities and the giving of regulated advice, in relation to registered MPF schemes, 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 adhere 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 which, subject to applicable statutory secrecy provisions and other confidentiality requirements, should be published.

1.4 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

- 1.5 The PRP comprises nine members, including the Chairman, who come from a wide spectrum of professions including the MPF and insurance sector, financial sector as well as the legal profession. The Chairman of the MPFA and the representative of the Secretary for Justice are ex-officio members of the PRP.
- 1.6 The two-year membership of the PRP from 1 November 2015 to 31 October 2017 is as follows –

Chairman

Dr Eddy FONG Ching, GBS, JP

Members

Mr CHAN Yim-kwong

Ms Agnes CHOI Heung-kwan, MH

Mr Eugene FUNG Ting-sek, SC

Mr HUI Ching-yu

Mr Alan WONG Kwok-lun

Ms Nicole YUEN Shuk-kam

Ex-officio Members

Dr David WONG Yau-kar, GBS, JP

(in his 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

The Statutory Regime

- 1.7 Under the statutory regulatory regime for MPF intermediaries which commenced operation in November 2012, the MPFA is the sole authority to administer the registration of MPF intermediaries, issue guidelines on compliance with statutory requirements applicable to registered MPF intermediaries, and impose disciplinary sanctions on them. On the other hand, the HKMA, the IA and the SFC assumed the statutory role as FRs which are responsible for the supervision and investigation of complaints against registered MPF intermediaries whose core business is in banking, insurance and securities respectively.
- 1.8 This institution-based regulatory approach has taken into account the market profile of existing MPF intermediaries who carry on MPF sales and marketing activities incidental to their main lines of business in banking, insurance and/or securities, and are regulatees of the HKMA, the IA and/or the SFC, as the case may be.
- 1.9 Under the statutory regime, a person is required to be registered with the MPFA as an MPF intermediary before he/she can engage in MPF sales and marketing activities that may influence a prospective / existing participant of an MPF scheme in making a decision that affects the latter's benefits in the MPF scheme. MPF intermediaries have to comply with a set of conduct requirements set out in the relevant provisions of the Mandatory Provident Fund Schemes Ordinance (Cap 485) ("MPFSO") and the Guidelines on Conduct Requirements for Registered Intermediaries ("Guidelines") when carrying on a regulated activity. Non-compliance with such requirements, once established, may result in disciplinary sanctions imposed by the MPFA.
- 1.10 Generally speaking, an MPF intermediary is carrying on a regulated activity when he/she invites or induces, or attempts to invite or induce, another person to make a material decision, or gives regulated advice in respect of various matters concerning a particular registered MPF scheme or a particular constituent fund of a registered MPF scheme.

Co-ordination among the MPFA and FRs

- 1.11 To institutionalise the co-ordination among the MPFA and the FRs, the MPFA signed with the FRs in May 2013 a “Memorandum of Understanding concerning the Regulation of Regulated Persons with respect to Registered Schemes under the Mandatory Provident Fund Schemes Ordinance” (“MOU”), which laid down the broad framework of the interaction and co-operation among the MPFA and the FRs. The MOU applies to the statutory regulatory regime on sales, marketing activities and giving of advice in relation to registered schemes under Part 4A of the MPFSO.

- 1.12 The Mandatory Provident Fund Intermediaries Regulation Committee (“MIRC”), a forum formed by the MPFA since 2012 for the MPFA and the FRs to discuss issues of regulatory concerns, held three meetings from 1 November 2015 to 31 October 2016 (“current review cycle”). Topics discussed included nature of complaints lodged, supervision / inspection programmes of the FRs, and updates on the PRP.

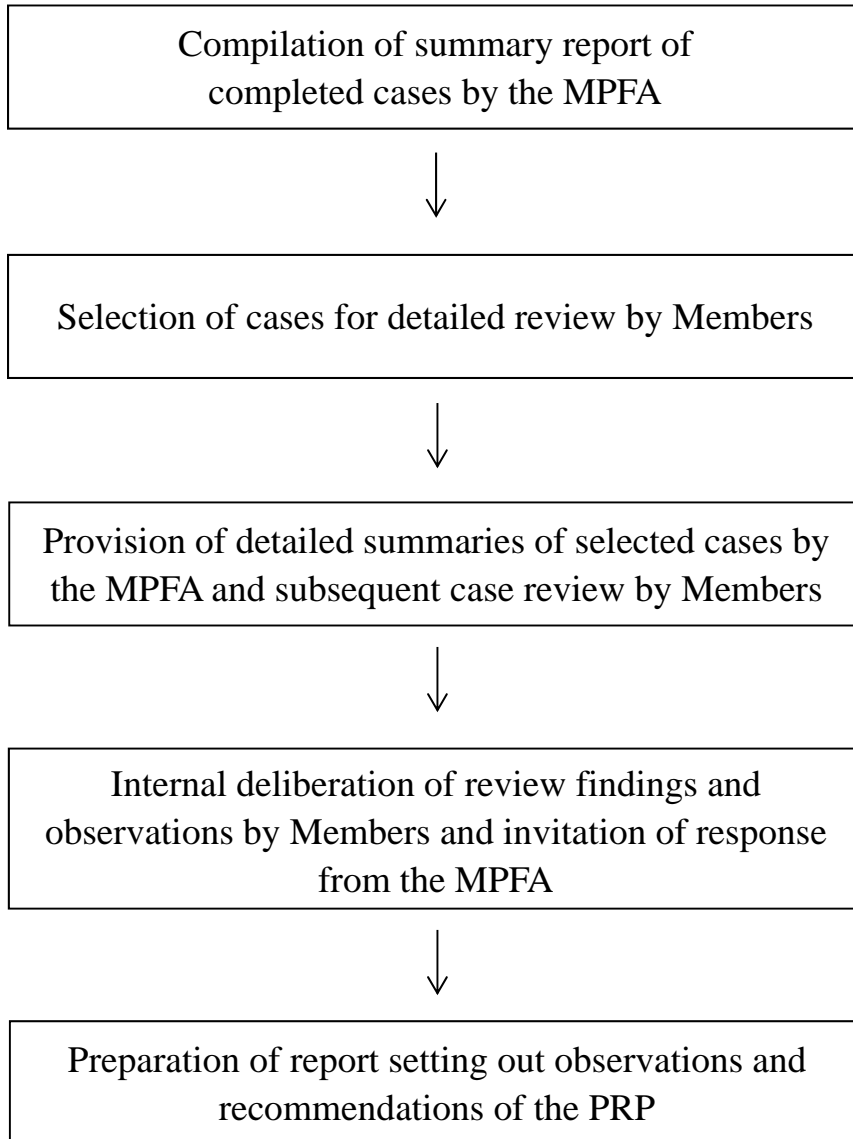
Chapter 2 : Work of the PRP

Modus Operandi

- 2.1 Where the MPFA receives a complaint against an MPF intermediary, the MPFA would carry out a preliminary assessment before referring the matter to the relevant FR for the latter to consider investigation. Where a complaint is directly lodged with an FR, the FR would carry out a preliminary assessment and then proceed with an investigation direct if it thinks fit. In any event, the outcome of all investigation by an FR will be passed to the MPFA for final assessment and necessary follow-up actions including disciplinary sanctions.
- 2.2 In exercising its core functions of reviewing and advising the MPFA on the adequacy and consistency of its internal procedures with regard to the regulation of MPF intermediaries, the PRP reviews the MPFA's operating procedures for registration, complaint handling, and disciplinary proceedings, as well as periodic reports of closed cases in relation to MPF intermediaries.
- 2.3 Members discuss and endorse observations and recommendations with respect to the operating procedures and cases reviewed for the MPFA to respond and follow up. The PRP then issues an Annual Report setting out the observations and recommendations of Members having regard to the response from the MPFA.
- 2.4 Members of the PRP 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 Members of the PRP are required to make declaration of interests upon commencement of their terms of appointment and to do so before conducting each case review.

Case Review Workflow

2.5 Workflow of the PRP case review is as follows –



Selection of Cases for Review

2.6 The MPFA completed 17 conduct cases relating to MPF intermediaries during the current review cycle. The PRP selected six of these cases for detailed examination.

2.7 With the assistance of the MPFA, case summaries of the six cases selected were prepared for Members' perusal. A case review session was held in March 2017 at the MPFA's office with the presence of Secretariat staff as well as MPFA case officers.

- 2.8 Observations of the PRP in respect of the selected cases and its recommendations to the MPFA are set out in Chapter 3.

MPFA's Follow-up on the Recommendations in the 2016 Annual Report

- 2.9 In its 2016 Annual Report, the PRP made a number of suggestions to the MPFA for improving the handling of cases and for expediting the completion of cases. These suggestions included –

- (a) standardising response and preparing templates of case assessment reports, letters and various other forms of documentation to streamline the management of cases of similar nature;
- (b) ensuring sufficient manpower resources for handling cases;
- (c) reviewing and enhancing its liaison mechanism with the FRs with respect to cases pending the FRs' completion of investigation; and
- (d) implementing administrative measures and imposing stricter conduct requirements for malpractices involving no disciplinary action or regulated activities, in order to more rigorously regulate MPF intermediaries.

- 2.10 In response, the MPFA had taken the following actions to improve the operational procedures for handling cases –

- (a) built templates of the relevant documentation and set up a database of precedent cases handled by the MPFA as well as the FRs for future reference;
- (b) increased the manpower of its Enforcement Division by permanent and temporary deployment of staff in order to deal with the backlog of cases;

- (c) enhanced the monitoring and tracking of outstanding cases under investigation by the IA²;
- (d) reinforced liaison with all three FRs through MIRC meetings as well as bi-lateral meetings with individual FR, and held experience-sharing sessions;
- (e) continued to provide training for the industry, including developing new training activities and organising train-the-trainer workshops and seminars for MPF Principal Intermediaries (“PIs”) and training activity providers to keep MPF Subsidiary Intermediaries (“SIs”) abreast of recent developments of the MPF legislation / MPF System and relevant conduct issues;
- (f) issued reminder letters to intermediaries to warn them against malpractices identified even in unsubstantiated cases; and
- (g) issued circulars to PIs highlighting important conduct issues, with a view to cultivating a compliance culture within the industry and raising the overall professional competency of PIs and SIs.

2.11 The PRP welcomes the above follow-up actions undertaken by the MPFA in the light of the recommendations in the 2016 Annual Report. The PRP hopes that the MPFA will continue the work to ensure procedural propriety of the regulatory regime.

² Since commencement of the regulatory regime, all cases referred by the MPFA involved MPF intermediaries regulated by the IA. Some of these cases were referred to the IA for investigation before being returned to the MPFA for assessment, while some other cases were received and investigated by the IA directly before being sent to the MPFA for assessment.

Chapter 3 : Observations and Recommendations from the Case Review

- 3.1 The PRP reviewed 17 completed cases relating to MPF intermediaries completed during the current review cycle, which was the 12 months following the last PRP review. All of these cases involved MPF intermediaries whose FR was the IA, eight of which had been referred to the IA for investigation.
- 3.2 The 17 cases were mainly related to allegations of the relevant SIs / PIs allowing clients to sign on incomplete forms, improper execution of clients' instructions, mishandling of information, and administrative matters.
- 3.3 Of the 17 completed cases, three cases were substantiated with sufficient evidence of breach of the MPFSO. Disciplinary action was taken in respect of one of these cases as a result of the relevant SI's conviction of an offence under the MPFSO, whereby the MPFA imposed on the SI a two-month suspension of her registration with a press release issued. In the other two substantiated cases, no disciplinary action was taken but compliance advice letters were issued to the relevant PIs and SIs.
- 3.4 The remaining 14 cases were found to be unsubstantiated as there was no carrying on of regulated activities or due to insufficient evidence. Having said so, the PRP notes that reminder letters were issued to the relevant PIs / SIs in five of these cases to remind them to comply with the conduct requirements under the MPFSO and the Guidelines. The other nine unsubstantiated cases were closed with no further action.
- 3.5 Among the 17 completed cases, the PRP reviewed six cases in detail. These included the three substantiated cases, along with three other unsubstantiated cases representative of the various categories of complaints received.
- 3.6 From the six cases identified for detailed review, the PRP notes a number of instances where the MPFA can make improvements to its complaint handling procedures with respect to the regulation of MPF intermediaries. The commonalities among the cases identified are summarised in the ensuing paragraphs.

Processing Time of Cases

3.7 In the 2016 Annual Report, the PRP noted that the time taken for completion of case assessments and closures of certain cases by the MPFA was not commensurate with their level of complexity, the volume of documents, and the number of witnesses involved. Despite the various improvement measures taken by the MPFA as per the PRP's recommendations (see paragraph 2.10), long case handling time is still apparent in certain cases in the current review cycle.

Observations

3.8 The case handling time of the six cases under detailed review ranged from 19 months to 31 months. These cases were received by the MPFA or the IA from end 2013 to early 2015 and were among the earlier cases handled by the MPFA and the IA.

3.9 The PRP is of the view that the lengthy handling time of these cases is not commensurate with their level of complexity and is mainly due to the re-organisation within the MPFA, frequent movement of staff, and manpower shortage in the Enforcement Division at the material time.

3.10 Specifically, the MPFA underwent internal re-organisation in 2014³ which contributed partly to the delay. The PRP also notes that there were frequent personnel changes within the Enforcement Division due to operational needs and departure of incumbents at the various ranks of officers leading to manpower shortage. Moreover, the PRP notes that the case officers were at the same time often asked to handle assignments other than case assessment, thereby further depleting the manpower of the Enforcement Division for such assessment work.

3.11 In the only case where disciplinary action was taken (see paragraph 3.3), the PRP observes that the MPFA spent considerable time on internal deliberation of various issues such

³ The Intermediary Investigation Team, which was responsible for co-ordinating with the FRs, conducting assessments of investigation findings of the FRs, and determining whether to take disciplinary actions against MPF intermediaries, was transferred from the Supervision Division to the Enforcement Division in April 2014 after the latter's establishment.

as preparing the Instructions to Counsel, drafting the Notice of Proposed Disciplinary Action (“NPDA”) and press release, etc. For instance, after the Enforcement Division had decided to seek external legal advice on the matter, it first sought advice from the MPFA’s Legal Department as regards the substantive Instructions to Counsel, and the relevant internal correspondence between the two parties spanned as long as four months before the Instructions to Counsel were finalised and dispatched. In addition, the draft NPDA and press release took the MPFA two months to prepare during which they were commented and revised more than once internally by various departments of the MPFA, such as the Enforcement Division, Legal Department, and External Affairs Division, as the case may be.

Recommendations

- 3.12 Similar to the cases in the last review, the PRP understands that the cases in the current review cycle were among the earlier cases handled following commencement of the MPF intermediary regulatory regime, and that the MPFA might reasonably have to exercise a higher degree of prudence in processing each case against the lack of precedent cases.
- 3.13 While appreciating the MPFA’s implementation of its recommendations to shorten the processing time of cases, such as standardisation of response and preparation of templates of various types of instruments, the PRP reminds the MPFA that lengthy processing time is undesirable to all parties involved including the MPFA, the complainants as well as the subjects under investigation.
- 3.14 As regards the personnel changes and internal re-organisation which led to lengthy processing of cases, the PRP believes that as these will unlikely recur in the near future and that more manpower has been deployed to the Enforcement Division, the MPFA can process outstanding cases more efficiently.
- 3.15 Noting that the Enforcement Division had rounds of email exchanges with the MPFA’s internal Legal Department prolonging the case handling, the PRP comments that this is undesirable especially when disciplinary action is contemplated in the first place as the parties affected may be seen as being prejudiced if ultimately disciplinary action is to be taken after a long lapse of time. Members are of the view that the situation could have

been improved if there was more effective communication between the Enforcement Division and the Legal Department.

- 3.16 While the PRP understands that correspondence issued by the MPFA to outside parties is seen to be the formal position of the MPFA and as such necessitates clearance by higher-ranking officers, the MPFA should constantly explore ways to expedite its internal clearance procedure.
- 3.17 To improve the timeliness of case assessment, the MPFA can consider putting in place an internal progress monitoring system similar to that currently maintained between the MPFA and the IA. The MPFA should also consider engaging senior staff at a relatively early stage when complications are envisaged such that efficiency can be improved.
- 3.18 Reiterating one of the recommendations in the 2016 Annual Report, the PRP advises the MPFA to consider devising rules and guidelines to mandate the proper handing-over of work whenever there is change of personnel, so as to ensure smooth and uninterrupted handling of cases.

Response from the MPFA

- 3.19 The MPFA responds that the six cases were among the earlier cases handled following commencement of the statutory regime relating to the regulation of MPF intermediaries in November 2012. Hence, the MPFA at the time needed more time to conduct case assessment while the handling procedures were being refined. Mindful that there was no precedent to make reference to when assessing these earlier cases, the MPFA needed to exercise extra prudence in handling them, which would become precedent cases for later reference, and therefore took longer time than expected to conclude them.
- 3.20 The MPFA also advises the PRP that cases received from the FRs after their investigation are assigned priority in accordance with a number of factors. For example, cases where disciplinary action is envisaged or those with apparently more serious breaches are assigned higher priorities for an expedited assessment and handling.

- 3.21 As mentioned in the 2016 Annual Report, the internal re-organisation has been completed with no apparent need for another exercise in the foreseeable future. The MPFA also advises the PRP that manpower in the Enforcement Division has stabilised with one more case officer recruited. The MPFA further suggests that the relevant case officers are focusing on case assessment which will help speed up clearance of the case backlog. Furthermore, the MPFA advises the PRP that transfer of case officers outside the Enforcement Division and personnel changes will be kept to a minimum as far as practicable in order to avoid disruption of case handling.
- 3.22 The MPFA notes the PRP's observation in paragraph 3.11 concerning the first case where disciplinary action was taken and agrees that internal deliberation of cases will be expedited with more experience gained.
- 3.23 Having implemented some of the recommendations in the 2016 Annual Report, the MPFA observes that the average case handling time has already been reduced substantially. Having said so, the MPFA believes that there is room for further expediting case assessment in future as the MPFA continues to gain experience in handling cases of similar nature, with a database of precedent cases being built and expanded for future reference. Having already built templates of some of the written instruments, the MPFA believes that the time required to prepare drafts of these instruments in future cases will also be shortened.

Implementation of Enhancement Measures after Case Closure

- 3.24 In three out of the six cases under detailed review, the MPFA issued compliance advice letters to the PIs and/or SIs concerned, reminding them to ensure compliance with the conduct requirements stipulated in the MPFSO and the Guidelines, and/or to implement enhancement measures with respect to the PIs' internal procedures. No disciplinary action was instigated. Similarly, in another unsubstantiated case under detailed review, the PRP notes that the MPFA issued reminder letters to the PIs and SIs concerned although they were not technically in breach of the relevant conduct requirements and the Guidelines.
- 3.25 The above echoes the PRP's recommendations in its 2016 Annual Report where the PRP recommended the MPFA to consider,

where appropriate, issuing compliance advice letters or reminder letters (as the case may be) to the relevant PIs and/or SIs to advise them against engaging in the substandard practices identified, and to improve and enhance the adequacy of the PIs' internal systems and procedures. The PRP hopes that these letters can raise the awareness of the PIs and SIs about their duties as specified in the MPFSO and the Guidelines and thereby enhance the overall standards of MPF intermediaries.

Observations

- 3.26 Notwithstanding the above, the PRP finds that with the issuance of the said letters, the cases were closed by the MPFA with no further follow-up actions.
- 3.27 For instance, in one case, resulting from a manual error, an SI was detached from his PI mistakenly; in another case, the MPFA found that the PI had not fully complied with its internal complaints handling procedures.
- 3.28 The PRP considers that improvements to the PIs' internal systems can apparently be made to both cases. For cases whereby the MPFA has issued compliance advice letters or reminder letters to PIs regarding the sufficiency and adequacy of their internal systems and procedures, the PRP thinks that the MPFA should follow up after case closure to check whether the advice and reminders so given are seriously considered and implemented by the PIs.

Recommendations

- 3.29 The PRP recommends the MPFA to consider, as far as practicable, revisiting closed cases particularly those relating to the adequacy, sufficiency and consistency of internal systems and procedures of PIs.
- 3.30 The PRP opines that the MPFA can go back to the relevant PIs after reasonable lapse of time following case closure to inspect whether the PIs have actually put in place improvement measures to their systems and procedures. The MPFA can also invite or mandate the PIs to tender written reports specifying the enhancement measures implemented and where appropriate, give further comments on the sufficiency of those improvement measures and ask the PIs to further refine their procedures.

- 3.31 Besides, the PRP recommends that the MPFA, in its compliance advice letters, should explicitly make it known to the recipients that the MPFA reserves the right to pursue further action should the MPFA be unsatisfied about their remedial actions.
- 3.32 With rigorous checking in place, it will probably be easier for the MPFA to ensure effective compliance by PIs and SIs, thereby more effectively enhancing the overall standards of MPF intermediaries and fortifying a compliance culture in the industry.

Response from the MPFA

- 3.33 The MPFA notes the PRP's recommendations and indicates that it will liaise with the FRs to take appropriate follow-up actions to ensure effective compliance of the MPFA's advice by MPF intermediaries after case closure. Under the existing multi-regulator framework, the FRs are responsible for case investigation and day-to-day supervision, while the MPFA is the sole authority to impose disciplinary sanctions in non-compliant cases. The MPFA will discuss with the FRs to explore and establish an effective mechanism for them to follow up or revisit closed cases with internal system and procedure issues on the part of PIs.

Adequacy and Consistency of Actions Taken

- 3.34 As mentioned in paragraph 1.4 above, the PRP does not review the merits of the MPFA's decisions and actions in individual cases. Rather, it reviews and gives advice regarding the consistency and adequacy of the MPFA's internal procedures and operational guidelines governing the actions taken and decisions made by the MPFA in regulating MPF intermediaries.
- 3.35 In one substantiated case, an SI was erroneously detached from her PI because she had been mistakenly identified as a resigned staff member of the PI whose name was the same as the SI. Upon assessment, the MPFA found that the PI had breached the Guidelines for not having proper controls and effective checking procedures at the material time to ascertain the identity of the resigned staff member. The MPFA also found that there was no cross checking or reconciliation of the SI's information between

the registers maintained by different departments of the PI. Concluding the case, the MPFA issued a compliance advice letter to the PI demanding it to enhance the relevant procedures and regularly review their effectiveness and sufficiency, with a view to enabling its staff to properly follow the enhanced procedures to avoid recurrence of similar incidents.

- 3.36 In another substantiated case, the SI concerned was found to have mistakenly sent certain documents belonging to her client and containing sensitive personal information to an unintended recipient by erroneously using a wrong address. Upon assessment, the MPFA concluded that the SI had failed to exercise a reasonable level of care and diligence expected of her as an SI. As regards the PI, the MPFA also found it in breach of the MPFSO by failing to implement a robust mechanism to facilitate rigorous checking of data accuracy, among other things. The MPFA issued compliance advice letters to the SI and PI with respect to their breaches.

Observation

- 3.37 The PRP observes that in the two substantiated cases above, the MPFA made the same response, i.e. issuing compliance advice letter, albeit the extent of the wrongdoing by the PIs concerned were not quite alike. While the PI in the first case erred by not having sufficiently robust internal checking procedures which led to the wrong detachment of an SI, the PI in the second case, in addition to not having sufficiently robust internal procedures, had seemingly also committed a more serious fault by exposing documents with sensitive personal information to an unintended recipient. On this basis, PRP Members wonder why the PIs in the relevant cases were subject to the same form of action by the MPFA.

Recommendations

- 3.38 In view of the above, the PRP suggests that the MPFA should consider formulating guidelines or setting up a system upon which case officers can rely to make consistent decisions about the appropriate actions to be taken in substantiated cases. Such guidelines may be more easily built up and refined as the MPFA continues to accumulate experience in case handling in tandem with a growing case base.

- 3.39 Besides, the MPFA should also invite the FRs to share their experience in deciding the appropriate form of disciplinary sanctions or follow-up action under different scenarios to help build up the said guidelines.

Response from the MPFA

- 3.40 Under the MPFSO, disciplinary orders that the MPFA may impose for a breach of conduct requirement include revocation or suspension of or disqualification from registration, public reprimand, private reprimand, and pecuniary penalty.
- 3.41 There are incidents where disciplinary orders are not considered appropriate and the MPFA would issue compliance advice letters to the relevant intermediaries to set out the MPFA's views on the matter and the areas of concern to assist and remind the intermediaries of compliance with the relevant regulatory requirements under the MPFSO and the Guidelines.
- 3.42 The MPFA acknowledges the observation and recommendations of PRP Members and commits that it will take into account all relevant information and exercise due care and diligence before concluding cases and deciding on the appropriate actions to be taken against the subjects under investigation. The MPFA will make use of the regular liaison mechanism with the FRs for experience sharing as recommended in paragraph 3.39 above.

Referral of Cases to FRs for Follow-up

Observations

- 3.43 In one of the cases reviewed, the SI concerned was alleged to have arranged the transfer of her client's MPF benefits without the latter's knowledge and authorisation by filing forged transfer forms with the MPFA using information obtained from her previous business encounters with the client.
- 3.44 Upon investigation by the IA and assessment by the MPFA, the suspected forgery in this complaint was referred to the Police. Although the SI was eventually convicted of four counts of forgery and sentenced to two months imprisonment suspended for two years, the MPFA found this complaint case to be

unsubstantiated as there was insufficient evidence to establish that a regulated activity was involved, and hence no disciplinary action within the MPFA's regulatory regime was pursued.

Recommendations

- 3.45 While noting that no disciplinary action could be taken within the ambit of the MPFSO, the PRP opines that the MPFA could follow up the case with the relevant FR to assess the fitness and properness of the SI from the perspective of the FR's own regulatory regime and to consider taking suitable disciplinary actions.
- 3.46 Given the rather narrow ambit of the MPFSO, the PRP thinks that the MPFA should adopt a more proactive approach to reinforce the message that MPF intermediaries, also as regulatees of their respective FRs, are subject to rigorous regulation both within the ambit of the MPFSO and relevant regulatory regimes.

Response from the MPFA

- 3.47 The MPFA notes the PRP's recommendations. Under the MPFSO, the MPFA is empowered to impose a disciplinary order in two scenarios, namely, (i) the regulatee has failed to comply with a conduct requirement, and (ii) the regulatee is convicted of an offence under the MPFSO. For cases which do not fall into either of these scenarios such that no disciplinary action can be taken within the ambit of the MPFSO, the MPFA will follow up the cases with the relevant FR on the assessment of the fitness and properness of the regulatee, and explore if any appropriate action can be taken under the FR's regulatory regime.

Chapter 4 : Way Forward

- 4.1 In the year ahead, the PRP will continue its work on the review of completed cases to ensure adequacy of the internal procedures of the MPFA, and that the FRs consistently follow the relevant internal procedures and operational guidelines.
- 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 channels⁴ –

By post : Secretariat of the Process Review Panel in relation to
the Regulation of Mandatory Provident Fund
Intermediaries
Financial Services and the Treasury Bureau
24th Floor, Central Government Offices
2 Tim Mei Avenue
Tamar, Hong Kong

By email : enq@fstb.gov.hk

⁴ Inquiries or comments not relating to the process review work of the MPFA 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

Chapter 5 : Acknowledgement

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

**Process Review Panel in relation to
the Regulation of Mandatory Provident Fund Intermediaries
August 2017**