



消費者委員會 CONSUMER COUNCIL

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來函編號 YOUR REF.

本函編號 OUR REF. CC 17/29

8 July, 2011

Financial Services Branch
Financial Services and the Treasury Bureau
18/F, Admiralty Centre Tower 1
18 Harcourt Road
Hong Kong

Attn : Mr. YU Wai-shing, Frederick
Assistant Secretary for Financial Services
& the Treasury

Dear Mr. Yu,

Enhanced Regulation of Mandatory Provident Fund Intermediaries

The Consumer Council would like to submit its views on the captioned subject matter for consideration of the Financial Services and the Treasury Bureau. We shall be happy to address any query you or your colleagues may have regarding the Council's submission.

Yours sincerely,


Connie LAU
Chief Executive
Consumer Council

Encl.

Consumer Council

Submission to the Financial Services and the Treasury Bureau on Enhanced Regulation of Mandatory Provident Fund Intermediaries

1. The Consumer Council (the Council) is pleased to submit views to the Financial Services and the Treasury Bureau (FSTB) regarding the paper entitled "Enhanced Regulation of Mandatory Provident Fund Intermediaries".
2. The following sets out for consideration of FSTB the Council's views on the legislative proposals raised in the paper that have direct implications to the interests of consumers of MPF products.

Regulation of MPF Intermediaries

3. The Council welcomes the Government's proposal to strengthen the protection of scheme members' interest through establishing a statutory regulatory framework for MPF intermediaries in Hong Kong.
4. On the whole, the Council fully supports introduction of legislation to prohibit against engaging in regulated MPF sales and marketing activities by persons other than registered MPF intermediaries; and provision of a range of disciplinary tools to the Mandatory Provident Fund Schemes Authority (MPFA) and the Frontline Regulators (FRs) to deter non-compliance with the statutory requirements for MPF intermediaries.
5. To secure effectiveness, the Council strongly urges that surveillance be carried out by MPFA and FRs to closely monitor and deter any improper sales and marketing practices of MPF intermediaries (e.g. setting up of promotion booths to get quick deals on the spot which may act to the disadvantages of scheme members in that they do not have adequate information or time to make an informed decision). This is important for protection of scheme members' interest since more direct and aggressive sales activities could be expected upon the implementation of the Employee Choice Arrangement (ECA).

6. With regard to the proposed shared regulatory responsibility between MPFA and FRs, the Council considers that if this approach is to be adopted, it will be important for MPFA and FRs to make collaborative efforts to ensure regulatory consistency, so as to achieve effective supervision and discipline of MPF intermediaries coming under different FRs. In this regard, the Council supports putting in place the proposed Appeal Board and independent Process Review Panel to enhance consistency among FRs in terms of enforcement.

7. The Council is of the further view that regulation should be comprehensive enough so as not to leave any unregulated areas or regulatory gaps. It would be unsatisfactory if activities were left unregulated due to lack of clarity as to which regulator is responsible. The Council welcomes provision in the proposed MPF Intermediaries Register of the name of the FR concerned in relation to each registration of an intermediary and to make the Register accessible to the public. This, at least, will make it easy for the public to see which FR is the regulator of a particular intermediary.

8. From the perspective of complaints handling, the Council is of the view that MPFA as the predominant regulator for standard setting and registration of MPF intermediaries should serve as the first contact point for scheme members to seek general advice in relation to alleged misconduct of MPF intermediaries. The Council believes it is necessary for details to be given to the public as to the role of MPFA in terms of complaints handling.

9. As regards the proposed conduct requirements, the Council suggests adding a requirement for MPF intermediaries to disclose to prospective clients at the time of carrying out MPF sales and marketing activities the level of commission (or benefits) receivable by the intermediaries for the sale of the relevant MPF products. Commission disclosure could mitigate any potential conflicts of interest especially since the level of commissions may incentivize MPF intermediaries to promote to prospective clients MPF products which are not appropriate to their circumstances.

10. In relation to the proposal of requiring MPF intermediaries to make adequate disclosure of relevant material information in dealing with their clients, the Council believes that intermediaries should also be required to explain to their clients all significant consequences, or disadvantages of any transfer of benefits. Any suspected distortions such as provision of inaccurate or misleading statements which induced clients to transfer benefits to another schemes or funds should be subject to investigation and disciplinary action. In this regard, reference can be drawn from the practice in the insurance industry in respect of replacement of insurance policies.

11. Furthermore, the Council is of the view that consideration should be given to introduce cooling-off period, where appropriate, to render full protection to scheme members. Provision of a cooling off period can provide an effective bar to later complaints as a result of improper sales practices.

12. The Council considers that introducing legislation on mandatory disclosure of prescribed material information by intermediaries and compliance check (both pre-sales and post-sales controls) by trustees and regulators are essential to ensure that relevant information is provided and suitable MPF products are promoted to scheme members. This will enhance consumer confidence in the MPF market.

Establishment of an E-platform for Transfer of MPF Benefits

13. The Council welcomes the proposal of MPFA to establish and operate an electronic transfer system (E-platform) to prepare for substantial increase in the number of elections by scheme members for transfer of benefits among MPF schemes upon the implementation of the ECA.

14. Considering that a major cause of scheme members' complaints is related to delay in fund processing and accuracy of fund transfers, the Council supports making it mandatory for all MPF trustees to participate in the system and have all transfers of MPF benefits processed by the E-platform.

15. As a value-added feature, the Council is of the opinion that scheme members should be allowed to access the E-platform to keep track of their fund transfer status and if possible to view a consolidated record of their various fund accounts (since scheme members may easily lose track of their MPF accounts if they have changed jobs a number of times and have not combined the accounts into a single account). This feature will enhance the value of the E-platform beyond just facilitating the trustees' processing of scheme members' elections for transfer of benefits.

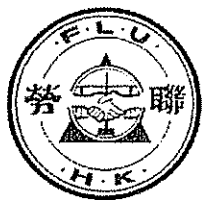
16. Allowing scheme members' access to the E-platform will also improve transparency of the fund transfer process, and make it easier to manage scheme members' expectation about the processing time and enable them to keep track of their MPF accounts.

17. The establishment of the E-platform will help to minimize the costs associated with transfers of benefits. As such the Council sees in it an opportunity for MPFA to explore with the MPF industry the lowering of the MPF administration fees.

**Consumer Council
July 2011**

港九勞工社團聯會

THE FEDERATION OF HONG KONG
& KOWLOON LABOUR UNIONS



社會事務委員會

SOCIAL AFFAIRS COMMITTEE

本會檔號 OUR REF.:

來信檔號 YOUR REF.:

財經事務及庫務局局長：

對「加強規管強積金銷售及推廣活動立法建議」之意見

強積金制度推行已超過十年。由於預期「僱員自選計劃」落實後，強積金中介人可能進行更直接的銷售活動，計劃成員預計轉移權益數量大幅增加，加上公眾對保障投資者的要求逐漸提高，因此當局正立法加強規管強積金銷售及推廣活動。就此，本會有如下意見：

維持中介人專業操守

關於中介人的專業水平及操守方面，現時中介人的註冊無須定時續期，本會關注如何有效維持其專業知識水平，以應付行業日新月異的狀況與安排。立法建議中亦提出賦予金管局、保監及證監會等前線監管機構一系列相稱的紀律懲處權力，但本會擔心不同機構的角色不一，可能導致判決和執法尺度出現差異，所以本會贊成積金局統一釐定制裁機制，並設立獨立的程序覆檢委員會保證內部執法的一致性。

保障投資者個人利益

在有關立法建議中，由於中介人將不獲發註冊證明書，市民無法即時核實中介人的合法地位，因此建議積金局為中介人印發證明卡以顯示其註冊身分。為保障市民個人私隱和利益，建議新法例禁止中介人在轉換保薦公司時將計劃成員的個人資料帶到新公司，並規管信託人可收取的佣金數目。新法例亦應讓強積金計劃成員直接向受託人或中介人（而非積金局）追討賠償。

檢討規管及收費安排

現時強積金計劃的受託人行政費用之高昂已遭受批評。另一方面，積金局會否向中介人收取年費仍是未知之數，而本會對此並不贊成，因為中介人在現行制度下需要向前線監管機構繳交費用，積金局若再向中介人徵收年費則演變成雙重徵費，不但加重中介人的負擔，其註冊年費加上未來規管架構的運作開支更可能間接由計劃成員承擔。

平衡業界與市民權益

有關立法建議之附錄甲內詳列的「提供意見之定義」與附錄丙所列的中介人操守要求（即(a)、(c)、(e)、(f)等部份）互相矛盾，將會使中介人無所適從。本會建議新的規管架構必須確保不會為強積金計劃成員的累算權益及中介人的生計帶來負面影響；容許刪除中介人過往被處分的紀錄，讓已改過人士重投強積金行業；另外，積金局亦應先讓「僱員自選計劃」落實，才對中介人的銷售活動同步進行立法規管。



港九勞工社團聯會
社會事務委員會 謹啟

2011年4月20日

香港人壽保險經理協會

意見書

立法會財經事務委員會

發出的

加強對強制性公積金中介人的規管

討論文件

協會簡介

美國 GAMA 總會成立於 1951 年，於世界各主要城市總共認可了 130 個當地協會，會員超過一萬人，規模龐大。香港人壽保險經理協會(英文簡稱 GAMAHK)於 1994 年自美國引入香港，是目前香港唯一人壽保險經理協會。本會成立的宗旨是藉著多方面的專業管理訓練課程及工作坊，提升經理們的管理技巧，包括在增員、培訓、督導及激勵各方面。

協會定期舉辦大型業內會議，邀請業界及行外有建樹的精英分享心得、交流經驗，藉此把不同公司的文化連成一線，提升保險業的專業地位。協會訂有多項國際性榮譽獎項，以表揚壽險業內有傑出管理成就的經理，每年均有眾多會員獲獎，反映香港壽險經理的管理質素正不斷提升。

協會成立至今，會員人數不斷上升，可見香港壽險經理正積極追求知識及提升管理技巧。本會更於 1999 年被保險業監理處委任為中介人素質保證計劃的督導委員會委員及考試委員會成員，負責為保險中介人考試及持續教育提供意見。另協會扮演與政府及有關機構的溝通橋樑，鞏固業界的專業形象，為業界爭取合理權益。協會於 2006 年成立專業發中心(英文簡稱 PDC)，中心成立宗旨在於加強及推廣人壽保險業界在教學研究及相關理財服務上之專業資格。

序言

就立法會財經事務委員會於2011年4月4日發出的討論文件加強對強制性公積金中介人的規管。積金局因應近年公眾對保障投資者的期望有所提高，進行檢視了現行強積金中介人的規管架構，並建議透過立法進一步強化現時以行政方式規管強積金中介人的制度。透過制定法定規管體系，加強保障強積金計劃成員的利益，讓「僱員自選計劃」能在強化的基礎上開展。建議目的是要確保對無註冊人士的強積金銷售受推廣活動有效的阻嚇；以及賦予香港金融管理局、保險業監督和證券及期貨事務監察委員會有一系列相稱的紀律懲處權力，以確保中介人合符規管銷售及推廣強積金產品的操守規定。本會有以下五項意見及建議：

- 1: 於前線規管機構及上訴機制委員會上加設保險業界前線及中介人代表，因為業界代表具行業專業性及深切了解行業運作，可以協助解決紛爭，以達至平等裁決目的。
- 2: 建議新增設客戶轉移權益聲明書以保障客戶私隱及利益同時也維持中介人的專性。
- 3: 收費安排，本會建議積金局會不應轉嫁於消費者或中介人身上，亦不應以任何形式徵收額外費用。
- 4: 為減輕對現有中介人的影響，容許現時所有合資格之註冊強積金中介人於2年過渡期可以達至法定註冊制度要求，而不應有任何額外考試或持續進修學份的要求，避免否定以往考試的認可資格。
- 5: 為免中介人混淆，清晰界定強積金中介人的角色及投資建議相關指引，給予客戶投資建議之權限及制訂書面指引作參閱



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28 April 2011

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Financial Services and the Treasury Bureau
18/F Admiralty Centre Tower 1
18 Harcourt Road
Hong Kong

Attention: Mr. Frederick Yu

Dear Mr. Yu

Enhanced Regulation of MPF Sales and Marketing Activities

Thank you for your letter and invitation for comments on the above paper which we have in turn invited views from all our members.

We note that the aim of the various proposals set out in the paper is to enhance investor protection by strengthening the existing administrative arrangement by statute. Based on what we have learned from the briefing by the Mandatory Provident Fund Schemes Authority (MPFA) to HKAB members on 11 March 2011 and our members' subsequent review of the paper, we have set out below our members' consolidated comments for the consideration of the Financial Services and the Treasury Bureau (FSTB).

A. Regulation of MPF Intermediaries

1. We strongly support the proposal of the FSTB to enhance the existing administrative arrangement whereby the Hong Kong Monetary Authority (HKMA) will take up the role as the frontline regulator of banks in their sales and marketing of MPF products based on the standards set by the MPFA and applied consistently by all frontline regulators (FRs) in the regulation of their respective regulatee sectors.
2. As per the Annex to the paper, "regulated MPF sales and marketing activity" will be defined in the proposed legislation to mean (a) inviting or inducing, or attempting to invite or induce, another person to make a specified MPF decision; or (b) giving advice to another person concerning a specified MPF decision. While we note that what constitutes "specified MPF decision" and "giving advice" are elaborated in Appendix A to the Annex, in practice there would be certain activities which cannot be as clearly determined to fall within or without the definition of "regulated MPF sales and marketing activity". It is critical that the legislation contains a clear and workable definition to avoid inadvertent breaches (e.g. the mere handing out MPF sales and marketing information to a

Chairman Bank of China (Hong Kong) Ltd
Vice Chairmen The Hongkong and Shanghai Banking Corporation Ltd
Standard Chartered Bank (Hong Kong) Ltd
Secretary Eva Wong Mei Seong

主席 中國銀行(香港)有限公司
副主席 香港上海匯豐銀行有限公司
渣打銀行(香港)有限公司
秘書 黃美嫦

customer by a non-registered person at a bank branch, assisting a customer to complete an MPF form and other activities of an administrative nature).

3. We would value the opportunity to provide our detailed comments on the draft legislation as and when it is available. Meanwhile, we set out in the attachment to this letter our members' preliminary comments on various matters pertaining to the legislative proposals for the regulation of intermediaries of MPF activities contained in the Annex, Appendix A and Appendix B to the Annex. We hope that the FSTB would find these comments helpful in the formulation of the relevant legislative provisions.
4. The paper does not contain a detailed timetable covering the transition from the current administrative arrangement to the statutory regime. We trust that the FSTB will consult the industry on the indicative timetable (including the lead time proposed to be allowed to the industry for preparation) when it is available.

B. Establishment of an E-platform for Transfer of MPF Benefits

We understand the need of the proposed establishment of the E-platform and note that the MPFA proposes to recover from the trustees on a cost recovery basis any fees paid by the MPFA to any third party in relation to the operation of the system. Following this cost recovery principle, we suggest that the relevant cost be recovered from the trustees in proportion to the transactions handled by them, instead of an equal amount payable by each trustee.

C. Enhancement of Deterrence Against Default Contributions by Employers

Apart from enhancing deterrence against default contributions by employers, we support the MPFA widening its planned education campaign to encourage employers to make timely MPF contributions.

We hope the FSTB would find our above comments useful in moving forward and preparing the necessary legislation. We look forward to engaging in further dialogue with the FSTB and the MPFA in such regard, including any discussion on this submission as deemed appropriate. Meanwhile, for any questions on this submission, please contact our Manager Ms Gladys Tang at 2526 6080.

Yours faithfully



Eva Wong
Secretary

Enc.

c.c. Chief Executive, Hong Kong Monetary Authority



Attachment

Annex – Detailed legislative proposals for the regulation of intermediaries of Mandatory Provident Fund (“MPF”) activities

Paragraph I(3), page 6 – The term “participant of an MPF scheme” should be defined as to whether it includes employer, employee, self-employed and preserved account holder.

Paragraph II(5)(a), page 7 – The “prescribed fee” would add to the cost of doing business for the intermediaries. As such, we suggest that details of the “prescribed fee” should be published as soon as practicable.

Paragraph II(5)(b), page 7 and 8 - As regards the qualification and accreditation of Sponsored Intermediaries (SIs), we believe that the same qualification and accreditation requirements will be applicable to all SIs regardless of their FRs. Please clarify whether insurance agents defined in (b)(iii) and chief executives/technical representatives of long term insurance brokers defined in (b)(iv) as SIs are required to obtain relevant investment related qualifications (e.g. Insurance Intermediaries Quality Assurance Scheme Qualifying Examination Investment-linked Long Term Insurance Paper or Licensing Examination for Securities and Futures Intermediaries Paper 1, 7 and 8).

Paragraph IV(11), page 9 – The respective roles of the FRs and the MPFA in handling complaints or conducting investigation on MPF intermediaries’ alleged breach of the statutory conduct should be clearly defined. As our members understand from the MPFA briefing on 11 March 2011, FRs will be responsible for conducting initial investigation of complaints against their respective regulatees and making recommendations to the MPFA on any enforcement action. We trust that this would be spelt out clearly and appropriately documented (e.g. in any memorandum of understanding between the MPFA and the FRs).

Appendix A to Annex - Proposed Definition of “Specified MPF decisions” and “Giving advice”, and Exemptions

Specified MPF Decisions (a) and (c) – Again, there should be a clear definition of “participant of an MPF scheme”.

Exemption (d) – Please clarify whether the exemption applies equally to a trust company which is wholly/majority/partially owned by an institution supervised by one of the FRs.

Appendix C to Annex - Proposed Conduct Requirements

It should be clearly spelt out whether each of the requirements set out in (a)-(h) is applicable to Principal Intermediaries (PIs) only, SIs only or both. Further, please clarify whether the requirement in (h) is applicable to the trustee, rather than to the PI or the SI.

Paragraph (l) appears to be very broad and is open to subjective judgement. To preserve certainty in law, we suggest this be removed from the proposed legislation.



香港保險顧問聯會
THE HONG KONG CONFEDERATION
OF INSURANCE BROKERS

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BY FAX (2529 1663) & BY MAIL

Your Ref: G6/9/22C Pt.15
Our Ref: IS1104116/el

29 April 2011

Secretary for Financial Services and the Treasury
Financial Services and the Treasury Bureau
18th Floor, Admiralty Centre Tower 1,
18 Harcourt Road,
Hong Kong

Attn: Mr. Frederick YU



Dear Sirs,

Re: Enhanced Regulation of MPF Sales and Marketing Activities

Thank you for your letter of 28 March 2011, inviting the Hong Kong Confederation of Insurance Brokers ("CIB") to send in views and comments on the legislation proposals on the enhanced regulation of sales and marketing activities. While it is noted that the legislation proposals include also (1) the establishment and operation of a platform by the MPFA to ensure accuracy and enhance efficiency of transfers of benefits among approved trustees through electronic means and (2) deterrent against default contributions by employers, CIB's response as appended will focus on the subject matter.

Background

The Mandatory Provident Fund Schemes Ordinance ("MPFSO") has been amended in July 2009 to allow the Employee Choice Arrangement ("ECA"), which was initially aimed to be implemented some time in 2011.

Brake was applied by the Mandatory Provident Fund Schemes Authority ("MPFA") in September 2010 to the implementation of the ECA, with the intent of reinforcing the existing supervisory regime for Mandatory Provident Fund intermediaries ("MPF Intermediaries") through legislative means beforehand.

The Financial Services & the Treasury Bureau ("FSTB") submitted a paper to the LegCo's Panel on Financial Affairs on 28 March 2011 to brief the legislative proposals at the Panel meeting on 4 April 2011 and to invite comments on the proposals by 30 April 2011.

According to the press release of the Government, the proposed regulatory regime:-

- Is modeled on the existing administrative arrangements with MPFA be the registration and standard-setting authority, whilst Hong Kong Monetary Authority ("HKMA"), Insurance Authority ("IA") and Securities & Futures Commission ("SFC") be the frontline regulators ("FRs").

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香港保險顧問聯會

THE HONG KONG CONFEDERATION OF INSURANCE BROKERS

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- Will minimize disruption to the existing regulatory arrangements and facilitate early implementation of the ECA.
- Is aimed to be introduced under a Bill to LegCo within 2011.

CIB's Response

The need to properly conduct a public consultation exercise

1. The legislative proposals are publicized in the form of a discussion paper submitted to the LegCo Panel on Financial Affairs with a press release dated 28 March 2011, inviting comments by 30 April 2011.
2. The regulation of MPF intermediaries is about the protection to be afforded to 2.5 million MPF scheme members. It should be treated as important as other policy initiatives.
3. There should be a proper public consultation paper, setting out details of the proposals and offering the community the usual 3-month public consultation period. The lack of this due process will compromise credibility of the legislative proposals themselves.
4. An earlier date for the implementation of the ECA shall not be at the expense of the proper protection of scheme members' interest and of the due process for public debate of policy issues.

Does it fit?

5. The Government's proposed decentralized model with the involvement of FRs is considered to be detrimental to the development of a professional MPF/pension industry and to be inefficient and unjust in its operation.
6. It is counter-proposed by CIB that the model of direct regulation of MPF intermediaries, with no delegation of authority to other regulators, by MPFA should be adopted. This is consistent with the CIB's opposition to the proposed carving out the regulation of bankers acting as insurance intermediaries from direct regulation of the proposed Independent Insurance Authority.

Market development

7. MPF activities are perceived by the Government, as portrayed in the LegCo paper, to be incidental to other business interest (banking, insurance or securities) of the MPF intermediaries. This may be true before the era of ECA, though CIB do see a few pension specialists being "forced" to be registered or licensed under a regulatory regime which they seldom practise.
8. The existing administrative regulatory regime of relying upon FRs (i.e. HKMA, IA or SFC) to "incidentally" regulate those MPF intermediaries, whom they are regulating for the respective main lines of business, may be justified for the reason of efficient or convenient use of regulatory resources when their clienteles are the corporate employers.
9. In the coming era of ECA, it is a strong view being held that, the MPF intermediation activities will and should no longer be incidental.

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10. They would and should evolve into an important financial service sector, serving in a professional manner the now 2.5 million MPF scheme members for the asset allocation of a very substantial and increasing amount (current value estimated at around HK\$182 billion: per MPFA statistics, the net asset value of MPF schemes totaled HK\$365.443 billion as at 31 December 2010, estimated half of which attributed to employees' contribution, hence the ECA market. It is comparable to the whole insurance market, where the total gross premium of insurance business in year 2010 was at HK\$207.2 billion).
11. CIB believe that there are valid reasons of asking for a strengthened regulatory regime before the ECA is implemented. CIB support the MPFA's initiative to defer the ECA implementation for this purpose.
12. Professionalism is the expectation of scheme members from the MPF intermediaries, who shall no longer be expected to remain freelance or part-time practitioners to give out MPF advice as a matter of coincidence. The 2.5 million scheme members deserve professional service which they have paid for.
13. Direct supervision by MPFA will be the catalyst to this professional development of the MPF/pension market, that CIB urge the Government to be visionary in this regard.

Operational inefficiency and injustice

14. The co-existence of multiple regulators for a single industry, in this case the MPF industry, will induce all kinds of confusion and perception of unlevelled playing fields and favourism towards a particular industry.
15. Perceptions may be wrong, but working out a mechanism to mitigate wrong perception is an important factor to be taken into account when developing a public policy.
16. The FSTB have cited in their consultation paper on the establishment of an independent Insurance Authority the perceived weakness in the system of multiple self-regulatory organizations for insurance intermediaries, that they have argued a centralized and direct regulatory regime be the solution. The same shall apply to the MPF intermediation market.
17. The minibonds saga has been the showcase of non-alignments between regulators when dealing with complaints of the same nature, that unlevelled playing fields, if not also favourism, under a single-industry-multiple-regulators regime are real.
18. There are suggestions that MPFA would administratively set up forum to ensure effective communication among the FRs on setting of standards, enforcement principles, and issues of mutual concerns over supervision mechanism, and there would also be a Process Review Panel administratively established to ensure parity of internal enforcement procedures of FRs.
19. It is argued that, given the great autonomy of the FRs (including the future IIA), such administrative infrastructure will be ineffective and costly.

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20. In a direct supervisory regime, the Process Review Panel can focus its attention to the fairness and efficiency of the MPFA procedures, saving the effort to mitigate parity among the FRs. MPFA can also save the resources in coordinating among the FRs for conducting the forum, which is bound to be unproductive in view of its lacking legislative backup.
21. The proposed allocation methodology of MPF intermediaries to FRs, e.g. "ring-fencing" bankers under HKMA, is lacking a justification. Currently, individual MPF intermediaries are classified mainly as those "permitted to advise on insurance policies" and "permitted to advise on securities". There is simply not a group of MPF intermediaries "permitted to advice on banking".
22. The discretionary power proposed for MPFA to re-allocate an MPF intermediary in light of its main line of business echoes this lack of justification in the proposed methodology.
23. The re-allocation exercise by the MPFA will require a complete review of the business portfolio of that intermediary before MPFA could tell which line of business to be its main one, and then a continual review to ensure that there is or is not any significant change in its portfolio mix hence a shift in its main line of business. This will consume substantial regulatory resources of MPFA.
24. In case where the main line of business of the MPF intermediary is MPF business itself, one will find it ridiculous, inefficient and unjust for that MPF intermediary to be allocated to the regulation of an "incidental" FR than the direct supervision of MPFA.
25. The proposed two-tier regulatory regime is with a disciplinary and appeal mechanism that will also cause difficulty and injustice.
26. It is proposed that the FRs will be empowered with a range of disciplinary sanctions except that of suspension or revocation of registration, which shall be with MPFA as the registration authority, while MPFA will suspend or revoke the registration of the MPF intermediary on the recommendation of FRs. Before exercising any such disciplinary power, MPFA or FR shall inform the person concerned in writing of its intention and give the person a reasonable opportunity of being heard.
27. To illustrate the difficulty in the workflow with an example: when an MPF intermediary has committed a very serious misconduct, say misrepresenting an equity fund as with guaranteed returns, that the likely sanctions will be a revocation of his registration if the charge is founded. Whether the FR is to write to that person on its intention of recommending to MPFA the revocation and that person will be heard by MPFA or the FR, or the FR is to conduct its own hearing, which may result in, after having considered any mitigation factors, a severe monetary fine instead.
28. There will be an issue of justice if the FR puts forth the recommendation to MPFA without conducting the hearing, and it will equally be a difficult issue as if the FR is rightful to conduct a hearing when it does intend to recommend the revocation, which is not a power it is entrusted by law.
29. There remains with difficulty in relation to the appeal mechanism if the FR is to conduct its own hearing, it then decides that revocation would be the right sanction and recommends

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to MPFA the revocation, that the MPF intermediary may elect to appeal through the FR's own appeal mechanism or the MPFA appeal mechanism against the FR's decision to make the recommendation to MPFA, a "judicial arbitrage"?

30. The same difficulty with the appeal mechanism can emerge for a lighter sanction, e.g. when the FR decides to reprimand an MPF intermediary after a hearing, and the MPF intermediary decides to appeal against the decision. He encounters a crossroad of or he is given the privilege to decide whether he is to appeal through the FR's own appeal mechanism (which is duty bound to answer to the request) or through the appeal board afforded under the MPFSO, or when he chooses to do both rightfully, how the two appeal mechanisms can resolve on the jurisdiction problem, or how the FR's appeal mechanism can address its doing justice for the appellant within its jurisdiction.
31. All the difficulties and issues of injustice illustrated above will not happen in a direct regulatory regime under MPFA.
32. The FR model may save cost to MPFA, though the analysis above does indicate that there are other regulatory costs (which may in fact be at a much higher level) incurred to MPFA under this model. The costs saved for MPFA are in reality shifted to the FRs.
33. When most of the FRs are funded by the respective industries, where there are sectors in which the practitioners do not involve themselves in MPF business, these practitioners are subsidizing the regulation of MPF intermediaries who are incidentally their fellow practitioners. This violates the users-pay principle and is unfair to non-MPF intermediaries in the respective industries.

Comments on other aspects of the legislative proposal concerning regulation of MPF intermediaries

34. There is a lack of exploration into the role and capacity of MPF intermediaries, that some of the codes of conduct will be suffering from compliance uncertainty. The question of for whom the MPF intermediaries are acting shall be raised, answered and required to be disclosed to scheme members as a piece of relevant material information.
35. When the proposed particulars to be provided in the MPF Intermediaries Register include record of public MPF-related disciplinary actions, we wonder if there would be any "private" disciplinary actions allowed under the regulatory regime.
36. There are grave concerns with the proposal of the MPF Intermediaries Register to include "details of any notification received from a frontline regulator of disciplinary proceedings taken against an MPF intermediary or responsible officer under the frontline regulator's own regulatory regime, including any suspension or revocation of the registration / licence / authorization of an MPF intermediary in his capacity as a regulatee of that frontline regulator".
37. First of all, not all disciplinary proceedings are conducted in the public, hence not all would and could be notified to MPFA. This is an unlevel playing field issue against those being subject to public disciplinary proceedings.



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38. Secondly, the extent of transparency of disciplinary proceedings and/or sanctions would likely be varying from one FR to another, being subject to differential rules on confidentiality and secrecy stipulated in their respective rulebooks. This is again an unlevel playing field issue in favour of those protected by statutory secrecy provisions, like the bankers under the Banking Ordinance.
39. "Specified MPF decisions" and "giving advice" by MPF intermediaries would include fund selection. It is proposed that if authorized insurance broker or appointed insurance agents are one of the prerequisites to be registered by MPFA, they should be those eligible to be engaged in Linked Long Term Insurance business instead of simply being eligible in Long Term Insurance business, where the latter may be short of training in advising on investment. This comment would not be relevant if the direct supervision model is eventually adopted.
40. The definition of "giving advice" may have to be further fine-tuned to clearly address whether persons comparing, recommending or expressing an opinion on any MPF scheme or MPF funds in a seminar or phone-in programme shall also be registered.
41. If the direct regulatory model is adopted, the present MPF intermediaries examination shall be enhanced to include substantial sections on investment.

Conclusion

CIB propose that the model of MPFA direct regulation of MPF intermediaries, with no delegation of authority to other regulators, should be adopted. This proposal is put forth in view of the shortcomings of the frontline regulators model (or indirect regulation model), i.e. its operational inefficiencies and injustice, and the merits of the direct model, i.e. it helps develop the professional MPF market for the long term benefit of scheme members. MPF is a long term saving for the scheme members, that any short term excitement of earlier implementation of the ECA shall not be outweighed against their long term benefits brought about by an efficient and just regulatory mechanism.

As the legislation proposals have been put forth to the LegCo Panel on Financial Affairs, we also copy this to the Panel for their reference.

Thank you for your attention.

Yours faithfully,
For and on behalf of
The Hong Kong Confederation of Insurance Brokers

Eric Lee
Secretary-General & Registrar

c.c. (by post only)

- (1) LegCo Panel on Financial Affairs (attention: The Hon Mr. CHAN Kam-lam, SBS, JP)
- (2) Mandatory Provident Fund Schemes Authority (attention: Mr. Darren McShane)

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Our Ref: Lv058/11
Your Ref: G6/9/22C Pt.15

By Fax Only
(Fax no.: 2528 3345)

5 May 2011

Mr Frederick Yu
Assistant Secretary for Financial Services and the Treasury
Financial Services Branch
Financial Services and the Treasury Bureau
18/F, Admiralty Centre Tower 1
18 Harcourt Road
Hong Kong



Dear Mr Yu

Enhanced Regulation of MPF Sales and Marketing Activities

Thank you for your letter of 28 March 2011 inviting our Federation to provide views on the above. Below please find our comments:

1. Overall Comments

- The Life Insurance Council ("LIC") is broadly supportive of the MPFA's intent to propose enhancements to the regulation of MPF intermediaries.
- The LIC notes that the existence of active, qualified and disciplined distribution channels is an important factor in providing employers and employees with a choice of MPF schemes and of MPF funds. Providing such a choice will help to achieve the ultimate aim of enabling the Hong Kong working population to enjoy a secure retirement. Importantly, such a choice, supported by active distribution, can also play a key role in ensuring that market forces deliver improvements in the cost-effective delivery of MPF schemes and related services.
- The LIC also notes that the MPF Schemes Ordinance already contains many rules governing permissible investments under MPF schemes. One effect of these rules is to limit the degree of risk within MPF investments, which the LIC considers to be entirely appropriate. We acknowledge that there are nonetheless many funds which can exhibit a degree of volatility, we would encourage the Government and the MPFA to defuse some of the more alarmist comments surrounding MPF by making it clear in their public communications that these regulations already effectively prevent a so-called "mini-bonds" scenario within the MPF environment.



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Ref: Lv058/11

5 May 2011

Mr Frederick Yu
Assistant Secretary for Financial Services and the Treasury
Financial Services Branch
Financial Services and the Treasury Bureau

2. Consistency of Intermediary Oversight

- The HKFI has previously responded to the Government's consultation on the proposed establishment of an Independent Insurance Authority. As part of that submission we expressed some concern at the potential fragmentation and duplication of intermediary oversight, as a result of the proposal that Hong Kong Monetary Authority oversee insurance sales activities within banks. Whilst we welcome the current proposal's commitment to working within the existing regulatory structure, we note that the proposed arrangements will nevertheless lead to yet another set of regulatory requirements overlaying the requirements of the Frontline Regulators (FRs). The potential for complexity and inconsistency is highlighted by the fact that the proposal calls in section VI paragraph 15 for the establishment of both a forum for regular communication between MPFA and FRs, and an independent Process Review Panel.
- In practical terms, we nevertheless appreciate that there is a need for each registered MPF intermediary to be under the supervision of the relevant FR to ensure compliance with the conduct requirements. On disciplinary sanctions, however, we believe that it will be more effective and efficient that MPFA be empowered centrally to determine and exercise the range of disciplinary sanctions to deal with MPF-related misconduct cases. This will ensure consistency in the type and level of sanction applied for misconduct of similar type and severity, and will avoid the potential inconsistencies that might arise if sanctions were determined by different FRs.

3. Detailed Comments

- Please refer to the attached summary.

4. Conclusion

- The insurance industry generally accepts the proposed regulatory enhancements and sees them as having the potential to enhance the quality of advice given by MPF intermediaries, and thereby to enhance their standing and perception within the community.



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5 May 2011

Mr Frederick Yu
Assistant Secretary for Financial Services and the Treasury
Financial Services Branch
Financial Services and the Treasury Bureau

- We do, however, encourage the Government and the MPFA to ensure that right balance is struck such that the enhanced regulations maintain intermediary discipline and protect consumer rights, but are not so constraining as to limit distribution activity and so compromise consumer choice.

Should you require any clarification, please do not hesitate to contact us on tel: 2861 9344.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Alex Chu', is written over a horizontal line.

Alex Chu
Chairman
Retirement Schemes Working Group
Life Insurance Council

AC/RS/JW/wc

c.c.: LIC Councillors

Detailed Comments

	Paragraph No.	HKFI's Comments
1.	Page 4, point 9 "MPFA proposes to recover from the trustees on a cost recovery basis any fees paid by MPFA to any third party in relation to the operation of the system." (E-platform)	We would like to draw the attention to the party concerned that such fee that is payable by the trustee may be charged to the scheme and hence will be borne by members and will increase the FER.
2.	Annex I.3 A person needs to be registered as MPF intermediary if he / she influences a prospective / existing participant of an MPF scheme in making a decision that affects the participant's benefits in an MPF scheme.	The coverage is very board, especially if it refers to "affect participant's benefits". It can happen in many ways.
3.	Page 7, Annex point 3 (b) "Giving advice to another person concerning a specified MPF decision."	MPF intermediaries not registered with the SFC for type 4 activity are prohibited from giving any investment advice. Nevertheless, an MPF intermediary should have the ability to guide the member to read the fund fact sheet (FFS). They should be trained and be equipped with capability to guide the member on how to read the FFS, for example, what is risk factor, what is FER, what is dollar cost averaging return, etc. This is because this is the type of service an MPF intermediary could provide in order to facilitate the member to make the right investment choice / decision. We comment that the regulator could consider including the fund fact sheet training / education in the MPF intermediaries' examinations for sales and marketing activities.
4.	Annex II.5 Payment of "prescribed fee" is required for registration as MPF intermediaries.	We would like to know the proposed application fee for being registered as principal intermediary and sponsored intermediary.
5.	Annex III.8 It is required that each registered MPF intermediary is subject to the supervision of	Although insurer is regulated by IA, sponsored agents are actually regulated by HKFI; similar to brokers who are regulated by industry

	HKMA, IA or SFC.	associations / professional bodies. Therefore, self regulatory organizations should be included.
6.	Annex V.12 Frontline Regulator (in our case IA) can issue reprimand or impose fines for registered intermediary.	If a MPF intermediary with capacity as insurance agents registered with HKFI commits offence, as the insurers is regulated by IA, will IA issue reprimand to the agent concerned and / or the insurer concerned?
7.	Annex VII.16 A transitional arrangement for all pre-existing registered MPF intermediaries to conduct regulated MPF sales and marketing activities for a period of 2 years would be allowed.	Does this mean that all existing MPF intermediaries are required to re-register in 2-year time in order to be allowed to conduct MPF sales and marketing activities? Does the re-registration process involve any examination or cost?
Appendix A		
8.	Definition of "Specified MPF Decisions" Under (a)(ii)(C) and (a)(iv), fund switching and making voluntary contributions are considered as specified MPF decision.	We would like to clarify what is the intention of these two definitions. There are lots of scenarios that would fit the description, for example: (a) An article published in newspaper suggesting fund switching to more aggressive type funds for young people or recommending VC will cause the writer to register as MPF intermediary. (b) A client calls to call center and what he / she should do if he / she wants to contribute more, or he / she wants to get a more aggressive fund type. (c) Call centre and admin staff from time to time may contact clients for admin and service matters. They will not give advice to facilitate the recipient to make a specified MPF decisions. If this is the case, our understanding from this proposal is that

		<p>those call centre / admin staff are not required to be licensed. From the service point of view, if admin or call centre colleagues advise the member on how to fill in a transfer form or an application form, it should not be regarded as "giving advice to facilitate the recipient to make a specified MPF decisions". To clarify the matter, we recommend the Authority to provide the industry with some specific examples with respect to what causes for an advice to facilitate the member to make an MPF decision and what causes for an advice for merely MPF administration and service. For example, if the member asks for guide to fill in a fund transfer form and the call centre staff merely provides advice to the member on how to complete the form properly, this will be regarded as an admin and service advice only.</p>
9.	Point (d), a trust company registered under Part VIII of the Trustee Ordinance (Cap 29) is exempted from the scope of Regulated MPF sales and marketing activities.	We would like this exemption to be extended to the trustee's delegates in order to allow MPF admin and call centre colleagues to discharge their duties in delivering MPF admin and customer services.
10.	Definition of "Giving Advice" and Exemption (a) - "issuance of an advertisement of document (e.g. OD, FFS) authorized by SFC"	<p>(a) In relation to "Giving Advice", we would like to clarify what is considered as "comparison". Would a simple reference to the MPFA's web page of comparative platform be considered as "comparison"?</p> <p>(b) The industry has once confirmed that individual MPF intermediary ("SI") would not provide any advice on selection of funds; therefore, they would not provide comparison of funds. In addition, information relating to comparison of schemes is also difficult to obtain except for</p>

		<p>the MPFA's comparative platform.</p> <p>(c) In relation to exemption (a), we would like to clarify that as long as written analysis and report being authorized by SFC, any direct reference or reading of such materials should not be considered as advice.</p>
11.	<p>Definition of Exemption (d) "trust company giving advice incidental to the discharge of its duty"</p>	<p>The exemption should extend to cover staff of trustee and fund administrator. In addition, if an employer has sufficient investment experience, like the "professional investor" defined under SFO, provision of advice to this type of employers should be exempted from getting license.</p> <p>Current market practice is that trustee will delegate the administrator, in particular its call centre, to answer various enquires from the members including but not limited to the administrative arrangements for Specified MPF Decisions, and the factual differences between the funds under the Scheme (e.g. risk level, where to invest, how to read the fund fact sheet), we propose to explicitly allow the exemption extended to the trustee's designates for the aforementioned purposes.</p>
Appendix B		
12.	<p>Paragraph (g) Notification of disciplinary actions from frontline regulators would be included in the MPFA's register</p>	<p>We would like to clarify what kind of information as well as disciplinary actions would be published in the register. The publication should limit to SI if the disciplinary action is towards a particular SI. Such publication should not extend to the sponsoring company ("PI").</p>
13.	<p>Paragraph (h) The MPFA can include any other particulars in the register as they consider appropriate</p>	<p>We would like to clarify what "other particulars" that the MPFA would consider appropriate to be included in the register.</p>

Appendix C		
14.	Conduct requirements are included in the legislation	
	Paragraph (c) "give advice only on"	We would like to clarify what competence (as described in (c)) they expect an intermediary in advising clients with items specified in item (e). Currently, no SFC license would be granted in providing advice on MPF scheme and fund.
	Paragraph (e) "when advising clients on"	<p>Items (e) should only be applicable to provide advice on selection of funds, but not schemes.</p> <p>In principle, we welcome the idea of investor protection. Nevertheless, as an MPF administrator, we are concerned about the administrative work in keeping and monitoring and following up about members' investment profile records. The cost of additional admin work may eventually be absorbed by the members. Another point to note is that MPF is for retirement savings and meant for long-term investment. The risk of MPF funds is relatively low and given the fact of strong regulatory protections, member's MPF investment can be safeguarded. Unlike Lehman Brother's incident, the likelihood of total loss of member's capital is low.</p> <p>When advising clients on the selection of MPF schemes or funds, the existing Code of Conduct for MPF intermediaries only requires such obligation on the selection of funds only. For the case of insurance agents who sell MPF product for their principal only, this will be practically difficult for them to objectively compare all available MPF products to fulfill such obligation. We propose to take out the reference to the MPF schemes in point (e).</p>
	Paragraph (g)	We would like to clarify that MPF

	"avoid conflicts of interest"	intermediaries receiving benefits in relation to services and / or advices provided should not be considered as "conflict of interest".
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Conclusion:

We were aware of the purpose of enhancing regulation is to provide statutory backing of the current administrative arrangements. On such basis, we do not expect more strict or more relaxed regulation on the prevailing MPF sales and marketing activities.



Hong Kong Investment Funds Association

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April 28, 2011

Professor KC Chan
Secretary for Financial Services and the Treasury Bureau
18th Floor, Admiralty Centre, Tower 1
18 Harcourt Road
Hong Kong

Dear Prof Chan,

Re: Enhanced Regulation of MPF Sales and Marketing Activities

On behalf of the Hong Kong Investment Funds Association ("HKIFA"), I welcome the FSTB's initiatives to strengthen MPF regulatory regime which facilitates the implementation of the Employee Choice Arrangement.

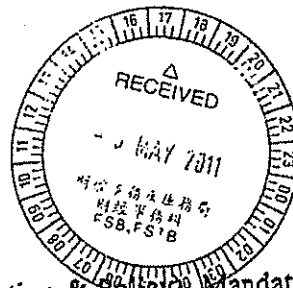
Regarding the various categories of exclusions and exemptions from the scope of Regulated MPF sales and marketing activities, we opined that they should be limited to those giving advice to corporate clients - i.e. giving advice to individual client is not allowed. This is consistent with the current practice for pensions consultants. If these categories of exclusions and exemptions wish to give advice to individuals, they should have someone with the proper MPF licenses to do so.

Notwithstanding the above, we believe registered MPF trustees and administrators should be granted exclusions and exemptions on both employer and employee levels when they act in their capacity of trustee and/ or administrator of the scheme. This shall be differentiated from the circumstance when an approved trustee provides investment advice in their capacity as product sponsor.

I welcome the opportunity to further discuss this. If you have any questions, please feel free to contact me on 2537 9912.

Yours sincerely,

Kerry Ching
Pensions Subcommittee Chairman



c.c.: Mr. Darren McShane, Executive Director (Regulation & Policy), Mandatory Provident Fund Schemes Authority



Hong Kong Trustees' Association Ltd
香港信託人公會

Date: 15 April 2011

To: Mr. Frederick Yu, FSTB
Ms Cynthia Hui, MPFA

cc: Ms Au King Chi, FSTB
Mr. Darren McShane, MPFA

From: Ka Shi Lau, HKTA

Subject: FSTB Discussion Paper to LegCo Panel on Financial Affairs on **Enhanced Regulation of Mandatory Provident Fund ("MPF") Intermediaries**

I refer to the letter issued to the Hong Kong Trustee's Association ("HKTA") by the Secretary of Financial Services and the Treasury dated 28 March 2011 on the discussion paper and the annex attached thereto regarding the detailed legislative proposals for the regulation of intermediaries of MPF activities. The discussion paper was introduced to the Panel on Financial Affairs of the Legislative Council ("LegCo") on 4 April 2011. As requested, we write to submit our views and comments as follows.

Annex
(II. Registration of MPF Intermediaries)

Some trustees who attended the 4 April 2011 Panel meeting understand from the FSTB that the prescribed fee for the registration of MPF Intermediaries would be kept at a minimum level or waived. They would like to see that understanding captured in the proposed legislation.

Appendix A to Annex
(Proposed Definition of "Specified MPF decisions" and "Giving advice", and Exemptions)

Trustees are of the view that the incidental exemption provided in the proposed legislation for a registered trust company under Exemption (d) should be extended to cover delegates of the trust company. The proposed extension is necessary to cater for situations involving a trust company delegating the scheme administration functions to a third-party administration company. In the absence of the proposed

extension, the administration company could, in carrying out the administration functions, find itself engaging in activities involving “advice on MPF decision” and would, thereby, be required to obtain registration as a MPF intermediary. Trustees believe that such outcome cannot be the legislative intent.

As regards treating withdrawal of accrued benefits from an MPF scheme as a specified MPF decision under Specified MPF Decision (a)(iii), some trustees are also of the view that advice on withdrawal, to the extent covered by legislation (e.g. retirement, early retirement, permanent departure etc) should not be considered as a regulated activity as it is merely administrative in nature.

Appendix B to Annex

(Proposed Particulars to be provided in the MPF Intermediaries Register)

Trustees support the proposal that record of public MPF-related disciplinary actions taken against intermediaries within a period of 5 years be included in the register. They are, however, of the view that details of any notification received from a frontline regulator of *disciplinary proceeding* taken against an MPF intermediary or responsible officer under the frontline regulator’s own regulatory regime (as per item (g) of the Appendix B) should not be included. Disciplinary proceedings may not result in disciplinary actions being taken and the recipient of the notice should, under established principles, be presumed “not guilty” until a decision is made to take disciplinary actions, hence the trustees’ view expressed above.

Appendix C to Annex

(Proposed Conduct Requirements)

On the basis that:

- (i) participation in MPF schemes is mandatory in nature;
- (ii) the very tight investment restrictions that apply to MPF funds including the disallowance of derivatives or structured products of any complexity; and
- (iii) MPF schemes are not “securities” as defined under the Securities & Futures Ordinance,

trustees feel strongly that MPF products should be treated differently from retail investment products such as retail funds and structured products and that it is, therefore, not appropriate for the proposed new conduct requirements (as well as the existing general principles (Chapter 3) of the Code of Conduct for MPF Intermediaries) to simply mirror the corresponding SFC requirements for the said other retail investment products. The conduct requirements for MPF products should, accordingly, be completely revamped to cater for the above-mentioned three special characteristics of MPF products.

Such an exercise should, in particular, take the following points into account (that already reflected in our previous submissions to the MPFA including the most recent one on 11 August 2010 on the Draft Guide for MPF Intermediaries Conducting Sales

and Marketing Activities Relating to the Employee Choice Arrangement (“ECA”)):

- (i) As regards item (e) of Appendix C, the reference to “MPF schemes” should be removed because this newly proposed requirement may very well give rise to the need to do member risk profiling on a lot more occasions than industry participants can handle. Take for example the future conducting of a member briefing on features of a MPF scheme (but, as per the current industry practice, not the underlying funds), as advice given at such a briefing on just the features of schemes could, after the implementation of ECA when members can select MPF schemes, be regarded as advice given to members on selection of MPF schemes, such briefings might need to be accompanied with the conduct of risk profiling on all of the attending members. The proposed requirements are, admittedly, qualified by the words “*where practicable*”, but as it is very difficult to determine whether a procedure is practicable or not, such a qualification is most unlikely to help. Besides the reasons stated above, since the marketing efforts of MPF scheme operators are pre-dominantly focused on employers, there is very limited contact with the employees (i.e. members) either at the time of enrolment or thereafter. The proposed risk assessment requirement is therefore not feasible.
- (ii) Also as regards item (e), if the reference to “funds” therein is to be maintained after the conclusion of the complete revamping of the conduct requirements proposed above, there should be a very clear definition on the kind of “advising” on fund selection envisaged by the item as warranting the taking into consideration the various aspects referred to therein. Some trustees are under the impression that when the issue of under what circumstances are risk assessments required in respect of MPF products was discussed at the presentation to LegCo on 4 April, it was mentioned that such assessments would be required for fund switching and MPF balance transfer etc. Surely, not all situations involving fund switching or MPF balance transfer should be accompanied by risk assessments and the industry is very concerned about being unduly burdened by additional procedural requirements which simply do not take into account the above-mentioned 3 special characteristics of MPF products. Take for example of an investor in certain retail investment product switching into another riskier retail investment product which is not suitable to him/her, he/she should, of course, be warned against the switch; in the context of MPF products, however, many switching instructions are received on line and it would not be feasible for the relevant industry participant to monitor them, let alone risk assess each and every one of them. Again the words “*where applicable*” are too vague to be of assistance.
- (iii) As regards item (g), if it is to be adopted at all, trustees are of the view that it should only apply to intermediaries which market MPF products provided by different sponsors, such as independent financial advisors (“IFAs”) rather than intermediaries in general.

A Uniform Sales & Marketing Guideline Applicable to all Intermediaries

Finally, as the HKTA has pointed out before, for the sake of ensuring consistency in practice and a level playing field, a sales and marketing guideline for MPF product which applies to all intermediaries (with underlying SFC, HKMA or Insurance licences) and which goes into details such as those dealing with whether MPF products should only be sold in certain zones, should be issued to coincide with the coming into effect of the new statutory framework.

Lessons should have been learned from the post-Leman period when intermediaries (holding different underlying licences) were (and still to a large extent are) at a loss as to how the new requirements issued by their respective licensing regulators would affect the way in which MPF products should be marketed. In the absence of a sales and marketing guideline that applies to all, the situation could very well get worse with the implementation of ECA.

Also, now that, under the new statutory framework, the three frontline regulators will derive their statutory power to supervise the intermediaries from a new law (which is tailor made for MPF purposes), it is only right that a sales and marketing guideline which applies to all intermediaries (regardless of the nature of their underlying licences) should be developed to coincide with the coming into effect of the new law and the most appropriate way of going about it would be for the MPFA and all of the frontline regulators to start a joint consultation with the industry with a view to developing such a guideline as a matter of urgency.

Meeting Requested

As there are quite a number of issues to be discussed and dealt with (as outlined above), it would be very useful for representatives of the MPFA and the FSTB to meet with the trustee industry as soon as practicable. We would also suggest that Hong Kong Investment Funds Association be invited to this meeting as some of their members are also sponsors of MPF schemes. Let's work on a mutually convenient time for a joint meeting. I look forward to hearing from you soon.





The Secretary for Financial Services and the Treasury
Financial Services and the Treasury Bureau
18th Admiralty Centre
Tower 1
18 Harcourt Road
Hong Kong.

c.c. Mandatory Provident Fund Schemes Authority (Attention: Mr Darren McShane)

29 April 2011

Dear Sir,

Enhanced Regulation of MPF Sales and Marketing Activities

Thank you for organizing the briefing session on 10 March 2011. We would also like to thank you again for allowing us the opportunity to review and comment on the legislative proposals to enhance the regulation of the sales and marketing activities of Mandatory Provident Fund ("MPF") intermediaries (the "Proposal"). It is envisaged that the Proposal will establish a statutory regulatory framework for MPF intermediaries before the implementation of Employee Choice Arrangement ("ECA") in order to better protect the more than 2.5 million scheme members.

As a leading professional body serving the financial planning community, the Institute of Financial Planners of Hong Kong ("IFPHK") is obliged to respond to policy changes that may have impacts to our members and their clients. Retirement planning is considered as an important focus amongst other financial topics in the daily roles of a financial planner. Today, out of the 14,000 IFPHK members in Hong Kong, approximately 42% are currently registered as MPF intermediaries. As such, the IFPHK does have specific comments on areas discussed in the Proposal that we wish to highlight for your consideration:

1. Prohibitions against engaging in regulated MPF sales and marketing activities other than by registered MPF intermediaries

The proposal ensures the availability of an effective deterrent against MPF sales and marketing activities by unregistered persons. Under the proposal, a person is obliged to be registered with MPFA as an MPF intermediary either as a principal intermediary ("PI"), or a sponsored intermediary ("SI"), before he or she can engage in MPF sales and marketing activities that may influence a prospective or existing participant of an MPF scheme in making a decision that affects the latter's benefits from that scheme.

IFPHK supports the establishment of an enforceable registration regime of MPF intermediaries. IFPHK considers that a formal system of licensing and registration will play an important role in ensuring an effective and efficient operation of the MPF market and in consequence, is a useful and important mechanism to protect the best interests of scheme members and other relevant beneficiaries. In light of the unique nature of MPF products, it is also logical to define the sales and marketing of MPF as inviting or inducing an investor to make a specific MPF-related decision, or giving advice to another person concerning a specific MPF decision. Annex A of the Proposal provides details on the scope of a "specific MPF decision" and the conditions of "giving advice". However, some details contained in Annex A may require further clarification from the Government and MPFA. This includes:

- Mis-selling of MPF products: Annex A of the Proposal provides conditions that cover the registration of MPF intermediaries, but does not contain a proposed definition or conditions for the "mis-selling of MPF products". As the MPF is a unique product type where benefits accrue over the long-term, it is difficult to quantify and determine whether a scheme member's benefit is affected by the advice of the MPF intermediaries. Hence, IFPHK recommends MPFA provide specific guidelines to the industry on conditions and case scenarios that might constitute the mis-selling of MPF products.

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- Exemptions to registration of MPF intermediaries: Annex A of the Proposal provides a list of professionals that are exempted from the registration regime. Professionals such as lawyers, accountants and trustees (hereafter referred to as "exempted persons") are exempted to register for sales and marketing activities of MPF products that are incidental to their main business. Although similar exemptions are provided in the Securities and Futures Ordinance, the same exemption may not be applicable in the context of MPF supervision. These exempted persons (except for Trustee) are not licensed or registered with any financial regulators, investors are not protected by the MPF regulation from taking advice from these exempted persons, which may influence investors and create trouble for the industry. In consideration of investor protection, the IFPHK urges the Government and MPFA to ensure that the proposed registration regime covers all persons who can provide advisory services on MPF products.

2. Registration of MPF intermediaries

The proposed regime confirms the existence of two class structures of MPF intermediaries. These include Principal Intermediaries ("PI"), and Sponsored Intermediaries ("SI"). The legislation will provide the MPFA the statutory power to register the PI and SI (sponsored by the PI) on a continuous basis. Similar to the existing administrative arrangement, intermediaries will be required to pass MPF intermediaries examination and fulfill competency and fit & proper requirements. Furthermore, the MPFA will be empowered to impose conditions on approving a registration application, amend / revoke the conditions, or impose new conditions. MPFA will also maintain an MPF intermediaries' register for public inspection.

In view of the mandatory nature of MPF contributions as well as their importance to scheme member's retirement income, it is vitally important to establish a registration framework with proper statutory backing in order to protect investors' interests. The industry professionals whom IFPHK interviewed believe the proposed regime will have no significant impact on their business, as proper compliance procedures on licensing and registration requirements have already been implemented within their organisations. The industry however needs further registration details and ongoing monitoring mechanisms. Here is a list of items for your consideration:

- registration fee and renewal fee, if differ from current system
- registration criteria and internal control requirements for PIs
- registration requirements for responsible officers for SIs
- registration procedure
- notification mechanism where intermediaries can report changes to the MPFA in a timely manner
- performance pledge on approving and renewing a registration.

3. Regulatory scope of frontline regulators ("FRs")

The Proposal maintains the spirit of the existing administrative arrangement where the MPFA is the rules and standards setter of MPF related supervision and conduct, and each registered MPF intermediary is subject to daily supervision by their respective FR. FR represents the Hong Kong Monetary Authority ("HKMA"), the Insurance Authority ("IA"), and the Securities and Futures Commission ("SFC"). The allocation criteria will be set out in the proposed legislation and the allocation of each intermediary will be published on the register for public inspection.

The IFPHK and the industry do have concerns on the proposed arrangement, which we wish to highlight here.

- Collaboration of different regulatory bodies: Under the proposed framework, collaboration between different regulators and the efficiency of their joint supervision will be the critical success factor for the development of the MPF industry. Despite open communication channels having already been established, IFPHK anticipates that the demand for transparency and collaboration of regulators will increase significantly after the implementation of ECA. Therefore, the current coordination and communication mechanism should be reviewed and enhanced.
- Regulatory development of the insurance industry: With the establishment of an independent insurance authority planned for 2013, specific arrangements should be made with the insurance industry prior to its establishment. At present 70% of registered individual MPF intermediaries are from the insurance sector. As such, any material changes on the insurance sector will have an impact on the supervision and policy of the MPF industry. The Government and MPFA must ensure that the implementation of the proposed MPF regime aligns with the timetable of the establishment of the independent insurance authority, and facilitates the migration of the insurance industry from self-regulatory to supervision by an independent regulator.

In addition, IFPHK and industry participants who we interviewed are concerned that the Proposal will solidify the existing decentralised regulatory approach, which has been controversial and heavily criticized after the Lehman Brothers Mini-Bonds issue. IFPHK had in the previous submission to the Government on the proposal to establish an independent insurance authority, the different standards in licensing and enforcement by the various regulators is not only seen to be a problem by consumers, but by financial institutions and intermediaries. As such, the IFPHK considers that varying standards may be one of the structural issues that are hampering the development of an MPF market in Hong Kong, and the industry strongly requests a cohesive and consistent set of standards for financial services intermediaries.

4. Conduct requirements for MPF intermediaries and relevant guidelines

The legislation will set out broad conduct standards with which MPF intermediaries are obliged to comply. In addition to existing conduct standards stipulated in the Code of Conduct for MPF Intermediaries, PI will be required to have a responsible officer available to supervise regulated MPF sales and marketing activities carried out by SIs. PIs will also be required to establish and maintain proper controls and procedures for compliance and to provide a responsible officer with sufficient resources and support to effectively supervise regulated MPF sales and marketing activities. Also, PIs are responsible for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by their SIs. Under the proposed regime, the MPFA will be empowered to make rules, and/or issue codes/guidelines in consultation with FRs for the purpose of giving guidance on compliance with statutory conduct requirements.

The Code of Conduct for MPF intermediaries contains high level principles that are sensible, but could be interpreted or implemented in a number of ways if they are to be executed by a decentralised regulatory approach. It is IFPHK's view that the financial planning industry has at times suffered due to varying standards of sales practice, which has unfairly tarnished the reputation of the industry. Regulatory changes imposed by various regulators in the aftermath of the Lehman Brothers saga further complicated the compliance environment despite the fact that they were introduced to protect investors.

IFPHK stresses the importance of adopting policy changes consistently by all financial intermediaries servicing consumers, and that failure to implement a consistent approach across the industry could result in significant negative consumer and industry incidents. Therefore there is urgent need to have a proactive review of the licensing, education and other qualification requirement and continue professional development requirements of all practitioners in order to ensure that proper advice has been rendered. The industry strongly requests a consistent conduct requirement on sales practices for MPF products in order to provide a level playing field across the industry. It is undesirable that consumers who seek advice on MPF products need to go through different sales processes and different experiences through a variety of distribution channels. Such inconsistencies will be confusing to both the consumer and the practitioner, and may lead to an increase in consumer complaints. IFPHK recommends the MPFA take a proactive role in developing a consistent and unique sales practice with a board and holistic view of the MPF market. In addition, coordination between the regulators should be open and transparent in order to provide a reasonable opportunity to the public and the industry to review and comment on the process.

On one hand the industry would like to have a unique professional standard covering sales conduct, on the other hand there should be specific guidelines tailored to different types of MPF intermediaries, and the selling activities for different type of consumers. For instance, the MPFA shall provide internal control guidelines to PIs in order to ensure that proper controls have been implemented on supervising SIs sponsored by the PIs. Likewise, there shall be separate guidelines on sales practices to employers and employees/individual scheme members as they are different types of consumers who are subject to different risk exposures, and thus demand different levels of protection.

5. Supervisory and disciplinary powers of the MPFA and FRs

MPFA and other FRs will be given requisite powers to discharge their statutory functions. It is proposed that FRs be empowered to issue a verbal or written reprimand, or impose fines for registered intermediaries that have failed to comply with the standards set for MPF sales and marketing, and that the MPFA be empowered to suspend or revoke the registration of an intermediary under specified circumstances. IFPHK recognises the importance of empowering the MPFA and FRs to discipline those who fail to comply. Nonetheless, the varying statutory power of FRs may cause problems for practitioners. For instance, the Banking Ordinance mandates no specific statutory responsibility for the HKMA with respect to consumer protection. The HKMA cannot intervene in a bank's commercial decisions, arbitrate disputes between banks and their customers, or order banks to pay compensation to their customers. The SFC can take regulatory action including disciplinary or legal proceedings against the parties concerned. The IA seeks to ensure that the insurer or self-regulatory body handles complaints properly, but has no statutory power to intervene in commercial disputes among insurers, insurance intermediaries, and policyholders¹.

As mentioned earlier, a decentralised regulatory approach suffers from the potential of inconsistency in the application of rules and regulations by disparate regulators and the challenges associated with interagency coordination². IFPHK is urged by industry professionals to highlight the need for implementing a consistent approach across the industry to establish a 'level playing field' among all financial planners/advisors in the different distribution segments, i.e. banking, insurance and independent financial advisors. IFPHK strongly believes that such an approach will reduce significantly any regulatory arbitrage that could potentially undermine the good intention of protecting investors and safeguarding their retirement income. Furthermore, IFPHK would like to see more conscious effort amongst the regulators to ensure that the selling practices and conduct in respect of MPF activities in the various sectors within Hong Kong are monitored according to the same standard. Similarly, the handling of consumer complaints against MPF intermediaries as well as for deciding on any disciplinary action against offenders should be aligned. It is our belief that this cannot be achieved through forums and process review panels in the absence of more explicit and accountable measures from each regulator. The functions of the process

¹ Group of Thirty, The Structure of financial supervision, approaches and challenges in a global marketplace, October 6, 2008

² Group of Thirty, The Structure of financial supervision, approaches and challenges in a global marketplace, October 6, 2008

review panels will be further discussed in section 6 below.

6. Appeals mechanism

The proposed legislation includes the same appeal mechanism stipulated under section 35 of the Mandatory Provident Fund Schemes Ordinance ("MPFSO"). The appeal mechanism will be used to handle appeals against an MPFA decision on registration and suspension / revocation of registration, as well as the disciplinary decision of FRs made pursuant to the powers under the proposed legislation. IFPHK concurs that an appeals mechanism is necessary in order to ensure fairness to the intermediaries.

The proposed appeal mechanism provides practitioners with an opportunity to appeal for any disciplinary action against them, but the Proposal is obscure on any dispute resolution service in consumer perspective. The Lehman Brothers Mini-Bond issue reflects the lack of dispute resolution services available in Hong Kong, which facilitates a fast-track process to settle complaints. Notwithstanding the power of SFC and HKMA to investigate complaints and take disciplinary action against intermediaries pursuant to section 196 of the Securities and Futures Ordinance, individuals cannot directly seek redress or direct compensation from these institutions³. Regarding demands for mediation or arbitration, the Government announced the establishment of a Financial Dispute Resolution Centre ("FDRC") as an alternative to costly and protracted litigation. It was established to ensure an effective process was available for resolving monetary disputes between an investor and a financial institution in a speedy, affordable, independent and impartial way. The FDRC was inspired by the success of similar organisations in other countries such as Australia, the UK and Singapore. IFPHK feels consumer education regarding the MPF is still not enough and that most members still tend to focus too much on short-term fund performance. Also, the decentralised regulatory approach together with the introduction of the ECA will potentially increase the number of consumer complaints and subsequently add significant pressure on the MPFA and FRs. To better protect investors, the government might consider extending the scope of the upcoming financial dispute resolution centre to MPF sales and marketing activities.

To further enhance consistency among regulators in the area of enforcement, the Proposals put forward the idea of a regulator forum and process review panel. IFPHK is doubtful regarding the effectiveness of a process review panel in ensuring parity or consistency of enforcement procedures without establishing a uniform standard of licensing, inspection, authorization, complain handling, investigation and disciplinary action among the FRs. The SFC's independent process review panel ("PRP") was established in order to review the internal operational procedures of the SFC and to determine whether it followed its internal procedures, including procedures for ensuring consistency and fairness. The PRP serves as a check-and-balance function to review the fairness and reasonableness of the institution's operational procedures on an on-going basis, to monitor whether their procedures are consistently followed, and to make recommendations to institutions in relation to these objectives. To perform its functions, the PRP receives period reports from the institutions, call for and review the institution's internal records, and submits annual reports to the Financial Secretary. The PRP is now used to ensure consistency of procedure within an institution and reviewing a single process, typically in a department such as licensing process, inspection of intermediaries, etc. It will be a significant challenge to the PRP to conduct a review of agencies with varying standards, management, and procedures. IFPHK believes that comparable professional standards and consumer protection as well as performance benchmarks for each regulator should be established before drafting the terms of reference, and a review of the methodology for the PRP. As suggested in section 5 above, explicit and accountable measures of success for each regulator could help to ensure transparency and efficiency of the MPF regulatory framework.

7. Transitional arrangements for pre-existing registered MPF intermediaries

To avoid the burden of having to re-submit applications after the commencement of the new regime, all pre-existing registered MPF intermediaries will be allowed to conduct regulated MPF sales and marketing activities for a period of two years upon commencement of the new statutory registration regime. The IFPHK welcomes such an arrangement to minimize the disruption to the industry. As mentioned in section

³ Shahla F. Ali, John Koon Wang Kwok, The Future of Financial Dispute Resolution in Hong Kong: Promoting a Comprehensive "Multi-Tier Dispute System; with reference to the "Lehman Brothers Mediation Scheme".

2 above, the government and the MPFA should consider holding more rounds of discussion with the industry to establish a more detailed registration and renewal procedures. During the transitional period, MPFA should work with each MPF service provider and highlight areas that need ratification prior to full implementation of the new registration regime. This will avoid misunderstanding in interpretation of regulation in future, hence hamper industry development.

8. Establishment of an E-platform

The MPFA proposes to establish and operate an electronic transfer system ("E-platform") to facilitate the trustees in processing scheme members' elections for transfer of benefits by electronic means. The MPFA will bear the cost of developing and establishing the E-platform. While IFPHK and industry welcome the setup of an E-platform as a "nice-to-have" function, we would wish to highlight the fact that most delays on transfer are due to having to fulfill regulatory requirements rather than administrative delays between trustees. The E-platform might not necessarily reduce administrative costs and hasten the transfer process. If the MPFA will only bear the start-up costs of the E-platform, the ongoing operation and maintenance costs will be shared by the trustees which might eventually be passed on to investors. IFPHK urges the MPFA to discuss and negotiate with the Trustees on the ongoing operation of the E-platform, and convey the correct message to the public on the purpose for establishing an E-platform.

9. Other comments

Apart from varying professional and service standards, the industry's reputation is tainted by scheme members' misunderstanding and misconception regarding the MPF and retirement planning, as various surveys have revealed.

- Lack of understanding on MPF and retirement planning, yet common belief that it is insufficient: A survey by Towers Watson shows that most employers and employees have no idea regarding the cost of retirement, though most believe that MPF mandatory contributions are not sufficient. Another survey conducted by scholars indicates that around 67% of respondents think the MPF cannot or may not be able to give them a happy retirement. Around 79% of respondents do not know the administration fee for MPF, about 71% do not know the estimated accumulative amount of MPF by the time of their retirement, and around 66% do not know how to calculate the yield on MPF⁴.
- Misconceptions on MPF investment strategies: A survey conducted by Fidelity revealed that respondents do not consider MPF as part of their overall portfolio. However, 32% of the respondents indicated that MPF assets represent more than 10% of their total assets. Only 12% of people spend more than 10% of total asset management time on their MPF investments. Also, respondents would only change their MPF portfolios when the stock market fluctuates, or when they are going to retire⁵. The financial turmoil and the ensuing economic crisis have had a major impact on the MPF market. The crisis is also causing a shift in asset allocation patterns, with investors moving into more conservative investments. Such moves risk locking in portfolio losses and could also reduce the potential of funds to generate retirement incomes. The fall in the value of assets accumulated for retirement reduces the amount of money that individuals have accumulated in defined contribution pension plans such as the MPF, to finance their retirement⁶.

Hong Kong has one of the world's fastest growing ageing populations, it is expected that MPF and retirement planning will become more prominent within the society over the coming years. Therefore the government and MPFA should be prepared for the increase in demand for education and knowledge from the public. The importance of investor education is highly regarded by international pension regulators. As stated by OECD recommendations on good practices for financial education relating to private pensions,

⁴ Dr. Wai-kee Yuen, Wan-Ling Chu, "Can a "Force Saving" Policy Enhance the Future Happiness of the Society? A Survey Study of the Mandatory Provident Fund (MPF) policy in Hong Kong, 14 June 2007

⁵ Fidelity 2010 Survey of Member's Behavior towards MPF

⁶ Pablo Antolin and Fiona Stewart, Private Pensions and Policy Responses to the Financial and Economic Crisis, IOPS Working Paper No. 9, April 2009

financial education is particularly important in the private pension field due to the unique nature of these financial products, which are complex, exceptionally long-term contracts with wide social coverage. Despite the importance of pensions, consumers consistently demonstrate low levels of financial literacy, and often lack a good understanding and knowledge of pensions and retirement saving plans. Financial education specifically related to retirement products should help to promote understanding of the changing retirement environment, the need for long-term savings, and of investment products. Well-informed consumers can help to improve the performance of trustee and financial intermediaries. Financial education as stated by the OECD paper does not substitute, but rather complements prudential regulation and consumer protection⁷.

IFPHK recognises that over the past decade the MPFA has put a tremendous amount of effort into enhancing general awareness of MPF and retirement planning. With the introduction of ECA, it is critical to review the existing education strategies and programs to meet consumer and industry needs. Referencing the OECD recommendations, IFPHK suggests the government and the MPFA be mindful of the following when working on a proposal for a comprehensive investor education program:

- Education programs shall promote the growing individual responsibility over demographic and social change that requires individuals to save more for their retirement. Such education programs help to maintain transparency and confidence in the MPF system, and thereby encourage individuals to take more responsibility towards his/her own retirement.
- Education programs relating to MPF should begin as early as possible in order to encourage individuals to start savings at a young age. The government and the MPFA should ensure that the education program is available on a continuous basis throughout an individual's life cycle, particularly at important point of one's life such as start working, marriage, birth of child, sickness, etc.
- Intermediaries should be encouraged to become involved in the education program to enhance public awareness and to boost the industry's reputation. However, clear distinctions should be made between education and commercial promotion to avoid conflicts of interests. Any advice for commercial purposes should be transparent and disclosed.
- Education programs should promote the concept of life cycle based investment as opposed to commonly known risk-based investment. Though the MPF should be considered as part of one's overall investment portfolio, the investment decision should be significantly different from other investment products. As repeatedly stated, the MPF is a defined contribution scheme where members bear the investment risk. It is the individual's responsibility to understand his or her own objective, investment risk, and product offers. Improving financial education may help in promoting income security at retirement. Adequate financial knowledge and awareness would permit people to recognize the long-term nature of saving for retirement, and the importance of keeping up contributions to pension plans in order to guarantee an adequate level of retirement income. Moreover, better understanding of the long-term nature of pensions may avoid materialising losses by selling in a downturn, and may increase the support for the stabilising function of MPF funds' investment strategies⁸.

To summarise, there are three important messages conveyed by the IFPHK in this letter:

1. An adequate regulatory framework for MPF should be enforced in a comprehensive dynamic and flexible way in order to ensure the protection of scheme members, the soundness of MPF funds, and stability of the economy. However, this framework should not provide excessive burden on practitioners and scheme members. The MPFA, as the lead regulator, should continue to work together with the industry to reduce the regulatory burden and compliance costs, without jeopardising consumer protection. Likewise, any consumer protection should not undermine the ability of practitioners to offer financial products and services efficiently and cost effectively, and the MPFA should strike a balance between protection of consumers, and **legal certainty and administrative simplicity**

⁷ OECD Council, Recommendation on good practices for financial education relating to private pensions, 28 March 2008

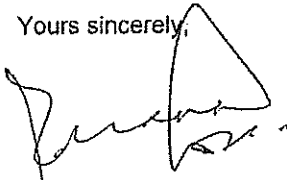
⁸ Pablo Antolin and Fiona Stewart, Private Pensions and Policy Responses to the Financial and Economic Crisis, IOPS Working Paper No. 9, April 2009.

2. Any policy change should aim towards building a **level playing field** across distribution channels and different sectors of the industry. IFPHK believes that failure to implement a consistent approach across the industry could result in significant negative consumer and industry consequences, and could expose the risk of regulatory arbitrage. IFPHK feels that consumers would be better served through a uniform standard in enforcing code of conduct, raising of professional standards, and efficient use of resources. IFPHK reminds the government and the MPFA not to underestimate the far-reaching impacts of the implementation of ECA, and take on measures that ensure fairness, consistency, transparency and public accountability of the MPF system.
3. To build a **comprehensive investor education program** that complements the policy changes and facilitate the smooth implementation of ECA. A comprehensive education program should help to promote understanding of the MPF and the related policy changes. Investor education programs should be conducted in a coherent and transparent manner where consistent messages are delivered to scheme members.

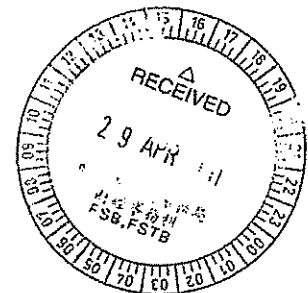
In conclusion, IFPHK believes that qualified intermediaries, well informed and educated scheme members together with a robust regulator framework, forms the core pillars for a healthy and prosperous MPF market.

Once again, we would like to thank you for allowing us the opportunity to be involved in the round-table discussion and consultation. Please note that the views expressed above have not been arrived at after a full consultation with our members. We would be happy to undertake a more broad-based member consultation if you believe any of the above points require further investigation. Please do not hesitate to contact us if you would like to discuss any of the above suggestions in greater detail.

Yours sincerely,



Eleanor Wan
Chief Executive Officer
Institute of Financial Planners of Hong Kong



**Comments from the Insurance Agents Registration Board (IARB)
on the Legislative Proposals to enhance Regulation
of Mandatory Provident Fund Intermediaries**

Introduction

1. The IARB, established in 1993, is an independent body empowered by the *Insurance Companies Ordinance* to implement and administer *the Code of Practice for the Administration of the Insurance Agents*.
2. By the Memorandum of Understanding concerning the Regulation of MPF intermediaries signed between the Mandatory Provident Fund Schemes Authority (MPFA), Insurance Authority (IA) and other authorities in 1999, IA is responsible for monitoring the activities of MPF intermediaries that fall under its regulatory regime and referring complaint cases in relation to MPF intermediaries to the SROs for follow-up actions where appropriate.
3. Being one of the three self-regulatory organizations (SROs), the IARB performs the dual role of registering qualified insurance agents, responsible officers and technical representatives and handling complaints against them.
4. The IARB consists of eight members, comprising five non-industry and three industry professionals. It is currently chaired by a non-industry professional with a legal and business background. The fact that the Chairman and the majority of the IARB are non-industry professionals fully reflects its impartiality and independence.
5. Over the past ten years, there were only a few complaints against insurance agents involving MPF matters and all of them had been resolved.

General Comments

6. The IARB understands that employees will have greater flexibility in deciding how to allocate their funds in the MPF account when the Employee Choice Arrangement is implemented next year and that there is an urgent need to have a clearly defined and robust system to regulate MPF intermediaries.
7. The IARB learns from IA that it will take up the regulation of MPF intermediaries directly once the proposed legislation to enhance regulation of MPF intermediaries is passed in June next year. In other words, once the proposed legislation is passed, IA will handle all the complaints relating to MPF intermediaries and will not refer to the SROs to follow-up.

8. Notwithstanding the above, the IARB has the following observations on the proposed legislation:
- a) the need for the Government to reconcile the setting of standards by MPFA and the interpretation and execution of standards by frontline regulators.
 - b) the need to reconcile the MPF Code and *the Code of Practice for the Administration of Insurance Agents*.
 - c) the current proposal on disciplinary powers is that the frontline regulators are empowered to issue verbal or written reprimand or impose fines while the MPFA is empowered to suspend or revoke registration upon recommendation of the frontline regulators. We need to understand further the rationale behind the Government's choice of a complicated split sanction mechanism to the apparent choice of having frontline regulators deciding on the entire disciplinary action, including the necessity to suspend or revoke registration, as well as the length of the suspension or revocation.
 - d) the addition of a power to impose fines may have implications on the nature of and standard of proof in disciplinary proceedings, specifically that the proceedings may be classified as criminal in nature and therefore all the protections accorded in determination of criminal charges could apply (ref.: *Koon Wing Yee v. Insider Dealing Tribunal (2008) 11 HKCFAR 170*). This would detract from speedy and efficient determination of complaints concerning the suitability of an individual to be an intermediary.
 - e) the operation and procedures of the appeal mechanism should be spelt out more precisely and clearly.
 - f) the respective status of the MPFA and the frontline regulators need to be addressed in case of judicial review.

The Insurance Agents Registration Board
11 May 2011



**THE LAW SOCIETY'S SUBMISSIONS ON
LEGISLATIVE PROPOSALS ON ENHANCED REGULATION OF
MPF INTERMEDIARIES**

The Law Society's Retirement Schemes Committee has considered the legislative proposals put forward by the Financial Services and the Treasury Bureau ("FSTB") and the Mandatory Provident Fund Schemes Authority ("MPFSA") in their 28 March 2011 joint paper to the Legislative Council Panel on Financial Affairs and has the following comments:

The Annex entitled "Detailed legislative proposals for the regulation of intermediaries of Mandatory Provident Fund ("MPF") activities":

Paragraph 1(c): The exemptions here suggest "specified categories of professional sectors such as lawyers, accountants, trust companies who give advice to their clients on MPF matters incidental to their main business" (emphasis added). This is different from the **Exemptions** in Appendix A to the Annex, which do not specify that giving advice needs to be incidental to the main business of the exempted persons. We suggest that it is more reasonable to NOT to limit to "giving advice incidental to the main business".

Paragraph 3(b): "Giving advice to another person" seems too narrow - there may be chances where advice is given by party A to a third party (party B) who then passes the advice to the ultimate recipient (party C) - the proposed provision here does not seem to be able to catch party A but only party B - is this the intention?

Paragraph 5(b)(iii): It is unclear who is covered by the terms "appointed insurance agent" or "responsible officer / technical representative of an appointed long term insurance agent" under this Paragraph. To our understanding, an insurance agent need only be registered with the Insurance Agents Registration Board ("IARB") set up by The Hong Kong Federation of Insurers. Is this Paragraph meant to cover an insurance agent registered with the IARB? Does it include staff of an insurance company not so registered?

Paragraph 8(a): It is unclear what it means by "dual capacities" - are there many such entities and can an example be provided?

Paragraph 9: We disagree with giving discretionary power to the MPFSA to reallocate a PI to a FR. To give certainty to PIs, we suggest that a mechanism be built in in the legislation to ascertain which regulator should be the FR for a PI where the PI's business activities could be subject to more than one FR.

Paragraph 16: A two years' transitional period may frustrate the purpose of regulating the intermediaries. How will the activities of an intermediary (whether new or pre-existing) be regulated during the two years' period? Shouldn't the effective date of this new legislative regime be timed to coincide with the date of introduction of the Employee Choice Arrangement?

Appendix A to the Annex entitled "Proposed definition of "Specified MPF decisions" and "Giving advice", and Exemptions:

"Specified MPF decisions": It is unclear if "participant" simply means employee participant or includes employer participants.

"Giving Advice": It seems that the definition is too narrow in that it only covers situations where the purpose of giving advice is to facilitate the recipient to make a specified MPF decision. Specifically:

- (1) we suggest that the term "Giving Advice" be broadened to include "giving recommendations, expressing opinions or making observations etc" - in this respect, we note that the latter part of the proposed definition seems to cover this aspect but in our view the idea would be less ambiguous if the concept of "giving recommendations, expressing opinions or making observations" is included in the term itself or otherwise covered in the beginning section of the definition;
- (2) we suggest that the word "purpose" seems too narrow - we recommend that this be changed to "effect",
- (3) we suggest that the reference to "facilitate" when it first appears in the definition be amended to read "facilitate or influence" - again, we note that the term "influence" is used at the latter part of the definition but we suggest that it be clearer if it appears at the beginning;
- (4) the term "the recipient" seems too narrow - see our comment on paragraph 3(b) of the Annex (see above).

Exemptions:

- (1) We assume each reference to "giving advice" would have the same meaning as "Giving Advice"; if not, the term "giving advice" in the exemptions provisions should be broadened to cover "giving recommendations, expressing opinions or making observations etc".
- (2) Is the exemption in (b) intended to exclude in-house lawyers who do not hold practicing certificates? We note that the Code of Conduct for MPF Intermediaries does not limit the meaning of "lawyers" (see paragraph 20.1(b) of the Code).
- (3) Are employees of a trust company meant to be included as exempted persons?
- (4) Will actuaries of a consultancy firm be included as exempted persons?

Appendix B to the Annex entitled "Proposed Particulars to be provided in the MPF Intermediaries Register"

Item (f): We suggest that the records covered by the register be extended to cover "any public MPF / FR related disciplinary actions".

Appendix C to the Annex entitled "Proposed Conduct Requirements"

Item (e): It is unclear to what extent and in what circumstances a registered person will be expected to take into consideration his clients' financial situation, investment experience, risk preferences and investment objectives - would the standard be the same as the one imposed by the HKMA?

**The Law Society of Hong Kong
Retirement Schemes Committee
26 July 2011
495222**



關於強積金中介人的立法規管

——保協提交財經事務及庫務局意見書

前言

就二零一一年四月四日 貴局向立法會財經事務委員會提交「加強對強制性公積金中介人的規管」的文件(下稱「討論文件」)，建議立法加強對強積金中介人的規管。為此，現謹陳明本會之立場如下。

有關立法建議的背景

討論文件清楚指出「因應近年公眾對保障投資者的期望有所提高」，「就落實『僱員自選計劃』前，設立法定的強積金中介人規管制度是審慎的做法，以有效地保障超過 250 萬計劃成員」。加強保障投資者(「供款僱員」)的利益，合乎公眾期望；為落實強積金僱員自選計劃而開展對強積金中介人規管的立法，堵塞現有法律漏洞，免受司法覆核的挑戰，亦合乎公眾利益。

然而，本會無法認同「超過強積金計劃成員可能面對強積金中介人更冒進和直接的銷售活動」的措辭。政府言下之意，似乎暗示業界一直以來在銷售方面都有冒進甚至不良的銷售情況。但根據保險索償投訴委員會公布的 2010 年索償投訴統計數字及個案檢討。在 2010 年共接獲 477 宗投訴個案，較前年減少 8%。(文匯報 2011 年 3 月 24 日)而當中許多個案是關乎保單如何詮釋的問題。因此，如此行文措辭卻沒有提出理據，對保險業界有欠公允，令人惋惜。

贊同立法方向 擔心細節走樣

整體而言，香港一直存在金融分業監管的問題，有關問題在雷曼迷債一事上浮現沒有解決。強積金局亦是在這樣分業監管的前提下於十多年前成立。儘管十多年來「一業四管」的隱憂無法釋除，立法維持「一業四管」亦難免予人權宜之感，本會大體上認同立法的方向。



討論文件立法建議目的有三：一)加強規管強制性公積金中介人的銷售及推廣；二)設立和營運一個平台促進受託人的轉移權益活動；以及三)加強對僱主拖欠供款的阻嚇性。就第二及第三項目的，本會不持異議。關於立法目的的首項，簡單來說，以立法方式將現行強積金中介人的規管架構納入香港法律體系之內，並賦予監管當局(金管局、保監、證監會以及積金局)一系列紀律懲處權力，以為加強規管強制性公積金中介人的銷售及推廣的規管提供法律基礎。鑑於近來的財政預算案及最低工資政策事件，政府的總體政策制定和執行能力成疑，而目前尚未見條例草案，難免令人擔心「魔鬼在細節裏」。就討論文件而言，本會認為可斟酌之處如下。

兼容專業參與 確保監管一致

討論文件中第 VI 段提及強制性公積金計劃上訴委員會將擴大權力，兼負處理涉及註冊及暫時吊銷/撤銷註冊決定和對前線規管機構的紀律懲處決定之上訴。另外，成立獨立的程序覆檢委員會和四大監管機構設立溝通平台，以協調各監管機構之執行和監管。

本會對這樣一個繁複的監管機制甚有疑慮，不提效率，其實際上的運作效果如何亦堪憂慮。本會認為有關架構(包括強制性公積金計劃上訴委員會及程序覆檢委員會)須吸納熟知業界運作的社會精英(如保險業界行內備受尊重的資深人士/已退休人士)，以確保監管與行業經營自由兩者之間取得合理的平衡，而不至於迷失於程序和運作機制之中。

釐清牌照要求 清楚教育公眾

由於保險業從業員提供服務時，免不了推介多樣的服務產品(cross-selling)，而強積金產品僅僅是其中一項。因此，在本會舉辦之簡介會上，許多前線從業員都關注向客戶提供涉及強積金產品的意見時，是否需要證監會的發牌而不致誤墜法網。雖然積金局及 貴局一再重申，只要在新制度下登記為強積金中介人，就可以在強積金產品的領域內放心提供意見和服務。然而，不少從業員仍然擔心客戶和公眾在這方面或有誤解。因此，本會提議，



在宣傳新的強積金中介人登記制度時，當局應一併宣傳有關訊息，並給予公眾和業界一個書面上的清楚保證，以避免不必要的誤會。當局在這方面的釐清，將有助於業界的經營和提高大眾的信心。

修訂操守要求 提供適切指引

在討論文件附錄丙中，《建議的操守要求》所羅列的條件要求較抽象含糊，例如「適當的技巧」、「善用……資源和程序」和「能力所及」等等字眼，不能排除主觀因素。政府應盡量以客觀、可具體量度為標準修改該操守要求，以便依循。

總結

本會關注具體的過渡安排以及具體之運作情況，希望政府當局能在草案條例中羅清楚列細節。並在此過程當中多吸納業界意見，或與業界設一協商機制檢視實施初期的情況，以有利於立法的落實。本會寄望，當局能藉此契機，深謀遠慮，致力提供清晰合理而執行一致的市場監管及締造一個公平的競爭環境予強積金產品市場。

香港人壽保險從業員協會背景資料

香港人壽保險從業員協會(『保協』)成立於1973年，是一個歷史悠久的保險界專業團體，會員人數超過8000人，是全港會員人數最多的保險業組織。『保協』主要宗旨是推動及提高人壽保險從業員之專業水準，並訂立和執行有關專業守則；舉辦教育課程與會議，提供機會給業內人士學習和交流經驗，以提高業者水平和成就；鼓勵從業員參與公益和公眾事務，回饋社會。香港人壽保險從業員協會有代表出席「保險代理登記委員會」委員之一。於2009年，『保協』成立「行業事務委員會」，藉以積極發表專業的行業意見。



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17/05/2011 10:58

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bcc

Subject PIBA reviews on MPF Sales and Marketing Activities 2011

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Dear Mr. Yu,

There is a bit late in our submission of our view, and we hope that it does not cause any much inconvenience to you.

We would like to express our views that

1. *All the existing MPF licensees can transfer smoothly without taking any examination during 2 years transitional period, and*
2. *We also agree that there will be an examination to be taken by the newcomers to protect the professionalism while the CPD requirement in the future should be maintained but subject to review in the future.*

Should you have any queries, -please feel free to contact us.

Regards

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