

Your Ref : CB1/BC/11  
Our Ref : Lv022/12

**By Email Only**  
(yhcheung@legco.gov.hk)

20 February 2012

Mr Hugo Chiu  
Legislative Council Complex  
1 Legislative Council Road  
Central  
Hong Kong

Dear Mr Chiu

**Bills Committee on  
Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill 2011**

Thank you for your letter dated 7 February 2012 inviting us to provide views on the above Bill.

We have submitted our comments on the subject of "Enhanced Regulation of MPF Sales and Marketing Activities" to the Financial Services & the Treasury Bureau in May 2011, a copy of which is attached as our written submission to the Bills Committee.

Yours sincerely



Alex Chu  
Chairman  
Retirement Schemes Working Group  
Life Insurance Council

AC/JW/sl  
Encl. (10 pgs incl. this cover)

cc.: Mr Thomas Lee, LIC Chairman

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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## **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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- 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



Alex Chu  
Chairman  
Retirement Schemes Working Group  
Life Insurance Council

AC/RS/JW/wc

c.c.: LIC Councillors

## Detailed Comments

	<b>Paragraph No.</b>	<b>HKFI's Comments</b>
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?
<b>Appendix A</b>		
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.	<p>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.</p>	<p>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.</p>
10.	<p>Definition of “Giving Advice” and Exemption (a) -- “issuance of an advertisement of document (e.g. OD, FFS) authorized by SFC”</p>	<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>
<b>Appendix B</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.