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Our Ref: IS1203006/el

1 March 2012

Clerk to Bills Committee on
Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2011
Legislative Council Complex
Legislative Council Road
Central
Hong Kong

Dear Sirs,

Re: Bills Committee Meeting (6 March 2012)

Thank you for the invitation to the Hong Kong Confederation of Insurance Brokers ("CIB") for our making submission to the Mandatory Provident Fund Schemes (Amendment) (No.2) bill 2011.

We focus our attention on the first part of the Amendment Bill but not to comment on the other two parts, namely establishing an electronic transfer system and enhanced deterrent against default contributions.

CIB support the setting up of a statutory regulatory regime for MPF intermediaries to replace the existing administrative arrangements. The proposed institution-based regulatory approach is acceptable to CIB, as the MPFA will be the sole authority to impose disciplinary sanctions, though we remain with concerns over the work efficiency of the upcoming two-tier regulatory regime, which will involve another three financial regulators in the day-to-day supervision of MPF intermediaries and investigation into complaints and non-compliance matters.

On the bill itself, CIB would like to note down hereby our preliminary observations:-

1. On conduct requirements for registered intermediaries, section 34ZL(1)(f) asks that they "must use best endeavour to avoid a conflict between the interests of the principal or subsidiary intermediary and the interests of the client and, in the case of such a conflict, must disclose the conflict to the clients".

We humbly ask whether the intermediary being remunerated by product providers would constitute a conflict that has to be disclosed and to what extent.

2. About private reprimand, section 34ZW(5)(b) allows the MPFA to privately reprimand a regulated person and Section 34S(d) provides that such disciplinary order need not be recorded on the Register which is open to the public for inspection.

We consider this provision undesirable and should be removed because,

- firstly the public shall have the right to know of the disciplinary orders by the MPFA,

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- secondly other financial regulators in Hong Kong or elsewhere are deprived of this material information when processing an application for registration or licence from that regulated person, and
- thirdly it leaves doubt in the regulated person's mind whether this private reprimand is a formal disciplinary action.

3. Section 34ZD stipulates that any principal intermediary without a Responsible Officer may be suspended by the MPFA.

It would be of good corporate governance for a corporate MPF intermediary to appoint more than one person as its Responsible Officer, but we are afraid there is no provision in the bill allowing the principal intermediaries to do so.

4. Section 34ZF seems to be dealing with situation of multiple attachments of a person to different principal intermediaries when that person ceasing to be a Type B regulatee of one of the principal intermediaries.

If we have not read it wrongly, the provisions therein effectively means that when that person ceasing to be a subsidiary intermediary of one principal intermediary, his or her attachment to any other principal intermediary will be revoked. We would like to clarify whether this is the intention, which seems to us to be inappropriate.

5. Section 34ZO requires registered intermediary to deliver Annual Return to MPFA but no form being specified in the bill nor any provisions governing such specification be by regulation or else.

Again, we ask for clarity and clarification.

6. Last but not least, CIB is defined as a "relevant insurance body" under section 34E (Interpretation) and the term "relevant insurance body" has been used in 4 counts (twice under the definition of Type B Regulatees and twice under Schedule 5B on Transitional and Saving Provisions), while we believe CIB is also being referred to in another 9 counts throughout the bill but under a different term of "body of insurance brokers", i.e. in section 34J (twice), 34K (4 times), Schedule 5B (3 times).

Unless there are any specific reasons of using different terms when referring to CIB in the bill, which we would like to know of, alignment is called for.

Thank you for your attention.

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


Patrick Chan
Vice Chairman

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