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

Dear Sirs

Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2011

We would like to submit comments on the Mandatory Provident Fund Schemes (Amendment) (No. 2) Bill ("Amendment Bill) on behalf of members of The Hong Kong Association of Banks ("**HKAB**") for the consideration of the Bills Committee.

I. General Comments

(A) Marketing and selling activities of MPF products

We strongly support the objective of the Amendment Bill to enhance, rather than to overhaul, the existing regulatory framework of Mandatory Provident Fund ("**MPF**") intermediaries in preparation for the implementation of the Employee Choice Arrangement.

In particular, we strongly support the new statutory regulatory regime in respect of the MPF intermediaries to further enhance the protection of MPF members. Specifically, we consider it to be appropriate that the Mandatory Provident Fund Authority ("**MPFA**") will be the lead regulator and coordinator in administering the registration of MPF intermediaries and setting uniform standards while the Hong Kong Monetary Authority ("**HKMA**"), the Insurance Authority and the Securities and Futures Commission will be given a statutory role as the frontline regulators ("**FRs**") responsible for the supervision and investigation of registered MPF intermediaries whose core business is in banking, insurance and securities respectively. While it is important that there is sufficient market consultation by the MPFA on the uniform standards to be applied across the MPF intermediary sector to ensure they are effective and practicable, it is equally important that any such uniform standards as set by the MPFA are consistently applied by all

FRs so that the marketing and sales activities of their regulatees are closely aligned towards enhanced protection to MPF members.

Intermediaries have built up substantial experience in the marketing and selling of MPF products under the supervision of the MPFA since 2000 when the MPF Scheme came into operation. Generally, the MPF products are relatively more straight forward and their features and risks are easy for an average investor to understand. Despite this backdrop, currently intermediaries which are also Authorised Institutions ("**AIs**") must observe additional regulatory requirements particularly where such activities take place at bank branches. These additional requirements (such as audio recording and restrictions on selling activities at designated investment corners) are only applicable to AIs but not to other MPF intermediary sectors. While we understand the policy rationale, we believe that this would be undesirable as different practices among the intermediary sectors might confuse customers. We are also concerned that there might be a high level of enquiries by MPF scheme members at the bank branches particularly in the early stage of the implementation of the Employee Choice Arrangement which would impact other normal branch activities with potential negative experience for other customers.

For the above reasons, we strongly believe that there is scope to streamline the marketing and selling of MPF products so that they are more consistent across all intermediary sectors regardless of their responsible FRs and regardless of the channels (whether bank branches or electronic channels) through which such activities take place. This would not only ensure a more level playing field among all intermediaries but will ensure reasonable efficiency in the distribution of MPF products and investor protection. In such regard, we encourage the MPFA and the FRs to engage the industries as early as possible to understand their concerns in working out a streamlined approach which would be practicable and effective in investor protection, to be reflected in the same set of rules or guidelines to be observed by all MPF intermediaries.

(B) Disciplinary sanctions

As provided for in the Amendment Bill, the MPFA will be the sole authority to impose disciplinary sanctions, including reprimand, fines, suspension and revocation of registration and prohibition from applying for registration. Such powers are exercisable after the FR has exercised its investigation powers and the MPFA must have regard to the information obtained by the FR from the investigation and disclosed to the MPFA for the purpose of assisting or enabling the MPFA to consider whether a regulated person has failed to comply with the performance requirements and what disciplinary order is to be made against the regulated person. We consider this approach to be appropriate for the following reasons:

(i) This will ensure fairness and consistency in disciplinary decisions. To achieve that in practice, we believe it to be crucial that the respective roles of the MPFA and the FRs are clearly set out and that there is seamless communication among them in exercising their respective functions while at the same time maintaining a high level of policy transparency.

(ii) The HKMA as the banking regulator is more familiar with individual banks and relevant industry practices. Such industry knowledge will be pertinent especially in considering any appropriate disciplinary sanction to be imposed. For the same reason, we believe that the MPFA will normally rely on the FR to conduct any necessary investigation, instead of also conducting its own investigation notwithstanding the powers conferred on the MPFA under section 34P of the Amendment Bill.

II. Specific Comments

(A) Regulated Activity

(i) Prohibition of regulated activity

We suggest that section 34F be further clarified as follows:

(a) Section 34F(4) be clarified to the effect that an advice including an opinion given generally without reference to any particular registered scheme such as whether or when a person is required to make mandatory contributions under the MPF legislation and the amount of such mandatory contributions to be made, will not be considered as providing regulated advice.

(b) Section 34F(5)(d) to be clarified so to provide that the "amount of contributions" referred to therein relate to the contributions to be so paid as described under section 34(5)(c).

(c) Section 34F(5)(f) to be clarified so to provide that the "amount of accrued benefits" referred to therein relate to the accrued benefits to be so transferred as described under section 34(5)(e).

(d) Section 34F(5)(h) to be clarified so to provide that the "amount of benefits" referred to therein relate to the benefits to be so transferred as described under section 34(5)(g).

(e) Section 34F(5)(j) to be clarified so to provide that the "claim" referred to therein relate to the claim made as described under section 34(5)(i).

(ii) Exemptions

Under the current Code of Conduct for MPF Intermediaries ("**Code of Conduct**"), actuaries giving advice in their professional capacity are exempted from being registered as MPF intermediaries. We suggest that this exemption continue to be made available to actuaries under the new section 34L.

(B) Registration of MPF intermediaries

(i) Registration requirements

We note that application for registration as a principal intermediary ("**PI**"), subsidiary intermediary ("**SI**"), approval for attachment of an SI to a PI and approval of a responsible officer ("**RO**") must be made in specified forms. It is important that market players are consulted if the information required to be provided under these forms differs from what is currently required to be provided.

(ii) Assignment of FR for PI

We note that the MPFA has power to replace the FR of a PI and assign another industry regulator as its FR if the MPFA considers appropriate. Where the MPFA considers that an FR assigned to a PI should be replaced, it would only be fair that the MPFA should be required to give a notice in writing to the relevant PI including a statement of reasons for such replacement. The relevant PI should be given an opportunity to make representations as to why such replacement should not be made.

(C) Performance requirements

We note that the new section 34ZL(1) requires a PI and an SI to comply with certain conduct requirements in carrying out a regulated activity ("**performance requirements**"). These performance requirements are mainly adopted from the general principles for the conduct of business of MPF intermediaries under the Code of Conduct. The general principles under the Code of Conduct are intended to provide guidance to MPF intermediaries in respect of the standards of conduct applicable to MPF intermediaries. These are principles rather than objective standards which may be adhered to in a manner appropriate to the circumstances applicable to a particular MPF intermediary. Given the consequences of non-compliance with the performance requirements are more severe than non-compliance under the Code of Conduct (e.g. making certain disciplinary order), we consider it more appropriate that section 34ZL makes reference to such standards of conduct as may be issued by the MPFA from time to time in a non-statutory code. This approach will also enable the MPFA to respond more rapidly to market developments. This is the approach adopted under the Banking Ordinance and the Securities and Futures Ordinance and in our view has proven to be effective.

(D) Register of Intermediaries

We suggest that section 34S(1)(d) be clarified to provide that only MPF-related disciplinary order imposed on such registered intermediary be included in the register as agreed by the MPFA in the consultation conclusion.

We also suggest that section 34S(1)(f) be deleted as it is too broad and does not provide certainty as to what information will be disclosed in the register.

We hope that the above comments to be useful to the Bills Committee in its deliberation of the Amendment Bill. In case the Bills Committee would like further information from HKAB, please do not hesitate to contact our Manager Ms Gladys Tang at tel no. 2526 6080.

Yours faithfully

Ronie Mak
Secretary

cc: Chief Executive, Hong Kong Monetary Authority
Dr. the Hon David K.P. Li, GBM, GBS, JP, Member of the Legislative Council