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來函檔號 YOUR REF.:

22 February 2012

Assistant Legal Adviser
(Attn: Ms Carrie WONG)
Legislative Council Complex,
1 Legislative Council Road,
Hong Kong

Dear Ms Wong,

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

I refer to your letter of 9 February 2012. The response of the Administration and the Mandatory Provident Fund Schemes Authority on the issues raised at letter is set out at the Annex.

Yours sincerely,

A handwritten signature in black ink that reads 'Frederick'.

(Frederick Yu)

for Secretary for Financial Services and the Treasury

**Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2011
Response to the questions raised by Assistant Legal Adviser**

The response of the Administration and the Mandatory Provident Fund Schemes Authority (“MPFA”) to the questions raised and comments made by Assistant Legal Adviser in the letter dated 9 February 2012 on the Mandatory Provident Fund Schemes (Amendment) (No.2) 2011 (“the Bill”) is set out in the ensuing paragraphs. We will review the drafting of and propose some amendments to certain provisions in the Bill in light of the comments received.

Section 6KA (Designation of electronic system by Authority) (para. 1 of ALA’s letter)

2. We will review the drafting of the proposed sections 6KA(5) and (6) as well as the proposed amendment to sections 153(1C)(a) and (b) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) in light of the comments received.

Section 34E (Interpretation) (para. 2 of ALA’s letter)

3. Throughout the Bill, the word “person”, which is defined in the Interpretation and General Clauses Ordinance (Cap. 1), is being used consistently. We consider that it is not necessary to specifically use “individual” in cases where only natural persons are relevant, unless its use will create ambiguity (for example, in case of application as a responsible officer under the proposed section 34W(1), the word “individual” is used to confine the eligible applicant to a natural person.)

4. Paragraph (b)(i) of the definition of “Type B regulatee” refers to “a relevant individual who is registered under section 20 of the Banking Ordinance (Cap. 155)”. “Relevant individual” is a term used and defined under section 20 of the Banking Ordinance. We therefore follow the original term used in the Banking Ordinance in order to import the concept of “relevant individual” into the Bill.

5. For paragraphs (a)(ii) to (iv), (b)(ii) and (c) of the definition of “Type B regulatee”, in light of the clarification given at paragraph 3 above, we consider it appropriate to use the term “person”.

Section 34F (Regulated activity, material decision and regulated advice)
(paras. 3 and 4 of ALA's letter)

6. We consider that it is appropriate to use the word “該” in the proposed sections 34F(5)(a), (b), (c) and (i). The word “該” is used so that the term “申請”、“投資”、“供款” or “申索” referred therein can only be the one mentioned in the preceding part of the same paragraph, but not just any “申請”、“投資”、“供款” or “申索” as the case may be.

7. Having reviewed the current wording in the proposed sections 34F(5)(e) (i.e. “或何時轉移該累算權益”) and (g) (i.e. “或何時轉移該權益”), we confirm that it reflects the policy intent and is consistent with the English text, and hence we would not propose any amendment.

Section 34I (Responsible officer and specified responsibilities) (para. 5 of ALA's letter)

8. We are satisfied that the use of the term “確保” (as the rendition for “ensure”, “securing” and “secure”) in the proposed sections 34I(3)(a) and (b) can accurately reflect the policy intent and hence we would not propose any amendment.

Section 34K (Revocation or suspension of qualification as Type B regulatee) (paras. 6 – 8 of ALA's letter)

9. Yes, the “person” referred to in the proposed sections 34K(1)(c)(i) and (1)(2)(i) does not include corporate person. In terms of drafting, please refer to paragraph 3 above regarding the use of “person” and “individual” throughout the Bill. In addition, the proposed section 34K begins with the phrase “a person has a qualification as a Type B regulatee revoked on disciplinary ground if” and “person” should be used in subsections (1)(c)(i) and (1)(d)(i) for continuity.

10. With reference to section 70(4) of the Insurance Companies Ordinance (Cap. 41), under which the body of insurance brokers is required to “保存一份其成員登記冊”, we consider that the adoption of “保存” in the proposed section 34K(1)(d) is appropriate. The same consideration applies to section 3(4)(c)(ii) of the proposed Schedule 5B.

11. We will review the drafting with regard to the rendition of “被中止/被終止” in the proposed sections 34K(1)(a) and (b), 34J, and sections 32(a)(i) and (ii) of the proposed Schedule 5B, in light of the comments received.

Section 34O (Initiating investigation) (para. 9 of ALA's letter)

12. The word “該” is added to refer the “調查” back to the one mentioned in the proposed section 34O(1)(a). The word makes it clear that the investigation is the one mentioned in sub-paragraph 1(a) of that section but not any other investigation.

Section 34P (Investigation powers) (paras. 10 and 11 of ALA's letter)

13. It should be noted that an English word may have more than one Chinese renditions (and vice versa), depending on the context. In the proposed sections 34P(1)(a) and (3), the requirement to “produce” the record or document concerned is not simply to “出示” (i.e. to show) but to require the person to hand over the record or document to the investigator. Therefore, we consider “交出” is a more appropriate rendition. The same also applies to the rendition of “produce” in the proposed sections 34ZR(3) and 34ZU(1)(a) and (3).

14. In the proposed section 34O(3)(b), the intention is requiring the investigator to let the subject concerned have sight of copy of the direction and hence “出示” is more appropriate. The same also applies to the rendition of “produce” in the proposed sections 34ZQ(3)(b), and 34ZT(2)(b).

15. We also consider that the meaning is clear in the Chinese text: the person is required to answer questions from the investigator raised at the meeting or to respond to written questions from the investigator. The rendition of “may raise” as “提出” in proposed sections 34P(1)(b) and 34ZU(1)(b) and (c) is also used in section 28 of the Financial Reporting Council Ordinance (Cap. 588).

Section 34Q (Register of intermediaries) (paras. 12 - 15 of ALA's letter)

16. In the proposed sections 34Q(5) and 34X(6), if “方可行使” is to be adopted, the phrase will become “只為以下目的方可行使”. In comparison, we consider the current rendition in the Bill better from a linguistic point of view.

17. We will review the drafting of the relevant provisions.

Section 34R (Register to be made available as on-line record) (para. 16 of ALA's letter)

18. In the context of proposed section 34R, the phrase “make available to the public” means to let the public read the records. We consider the current rendition can better reflect the meaning.

Section 34T (Registration as principal intermediary and related matters) (para. 17 of ALA's letter)

19. In light of the comments received, we will propose a Committee Stage Amendment (CSA) to add “它信納” to the proposed sections 34U(6), 34V(3) and 34W(3).

Section 34U (Registration as subsidiary intermediary) (para. 18 of ALA's letter)

20. We will propose CSA to remove the reference to “(as may be applicable)” in the English text as there should be no ambiguity on the applicable application given the context.

Section 34Z (Assignment of frontline regulator for principal intermediary) (para. 19 of ALA's letter)

21. We consider adding “同時” in the Chinese text of the proposed sections 34Z(5) and (6), and sections 8(5) and (6) of the proposed Schedule 5B will help to make the meaning clearer, whilst this meaning is explicit in the English version.

Section 34ZC (Principal intermediary ceasing to be Type A regulatee etc.) (para. 20 of ALA's letter)

22. We will review the drafting of the relevant provisions in light of the comments received.

Section 34ZF (Subsidiary intermediary ceasing to be Type B regulatee etc.) (para. 21 of ALA's letter)

23. We consider the legal effect of the Chinese text of the proposed section 34ZF(2) is the same with the English text even without “如” . However, we will review the drafting from a linguistic point of view.

Section 34ZK (Responsible officer ceasing to have sufficient authority within principal intermediary etc.) (para. 22 of ALA's letter)

24. We will propose CSA to amend “和” to “或” in the proposed section 34ZK(2).

Section 34ZR (Inspection powers) (paras. 22 - 25 of ALA's letter)

25. We will propose CSA to add “可” to the proposed section 34ZR(1)(c).

26. We will review the use of the phrase “不可....行使” in the proposed section 34ZR(4).

27. In proposed section 34ZR(6), an answer is given in response to a question and we are satisfied that “回答問題” means exactly the same thing. When a person is answering a question, he or she is giving an “answer”. Therefore we propose no change to the rendition in the proposed section 34ZR(6).

28. The above explanation also applies to the proposed sections 34P(4) and (5), 34ZU(4) and (5) and 34ZZE(1) and (2)(a). In addition, taking the proposed section 34P(4) as an example, it mentions a person “gives an answer... in compliance with a requirement imposed under subsection (1) or (3)”. In that subsection (1)(b), the requirement is to “回答.....問題”. The rendition of the proposed section 34P(4) echoes subsection (1)(b).

29. As for the proposed section 34ZZC(3)(a) and (b), (4), (5)(b), the context in which “gives an answer” is used is different from the provisions mentioned above, hence we have used “給予答案” here. Otherwise the wording will become, for example in the proposed section 34ZZC(3)(a), “回答在要項上屬虛假或具誤導性的答案”, which does not read well.

Section 34ZU (Investigation powers) (para. 26 of ALA's letter)

30. We will introduce CSAs to amend the proposed sections 34ZU(2) and 34ZV(1) to reflect the element of “may have failed”.

31. The words “遵守” is used for compliance with legislation and “遵從” is used for compliance with other matters. In the proposed section 34ZU(1), the matter to be complied with is a performance requirement and hence “遵從” is adopted. In the proposed section 34I(3)(a), the requirement is to comply with legislation and hence “遵守” is adopted. In

the proposed section 34I(3)(b), the requirement is to comply with “controls and procedures” and hence “遵從” is adopted.

Section 34ZW (Authority may make disciplinary order) (para. 27 of ALA’s letter)

32. The term “該人” in the proposed sections 34ZW(3)(a) and (b) means the person mentioned in the preceding part of the relevant provision. It should be noted that only one person is mentioned in the subsection before the term “該人” appears, and hence “該人” means that person, viz. a person who is a regulated person and a registered intermediary. We consider there is no ambiguity on this point. The same applies to the proposed section 34ZX(2).

Section 34ZX (When disciplinary order takes effect) (para. 28 of ALA’s letter)

33. We will review the drafting of the proposed section 34ZX(4)(c).

Section 35 (Appeal Board) (para. 29 of ALA’s letter)

34. We adopt “委任” for the appointment of a person and “委出” for the appointment of a board.

Section 42AB (Person not to disclose information obtained in the course of inspection or investigation) (paras. 30 and 31 of ALA’s letter)

35. The reference to “a person” in the English text of the proposed sections 42AB(1)(a) and (b) is rendered as “的人” in the Chinese text. We consider that there is no omission of any element. The word “對象” is added to describe that “person” only and does not change the nature of that “person”.

36. In the proposed section 42AB(2), we consider the language flows better with the word “如”.

37. There is no difference in legal effect whether “行事” is used once or twice in the proposed section 42AB(2)(c). We will however review the drafting for the sake of consistency.

Section 44A(6)(b) (Proof of certain matters in proceedings for offence under section 42B(3A)) (para. 33 of ALA's letter)

38. There is no difference in legal effect whether “those proceedings” are rendered as “該” or “該等” in the proposed section 44A(6)(b). We will however review the drafting of the proposed sections 44A(6)(b), 42B(3A), 34ZZC(7)(b) and 34ZZF(8)(b) for the sake of consistency.

Schedule 5B (transitional and saving provisions for Part IV) (paras. 34 and 35 of ALA's letter)

Section 1(2)

39. We will review the Chinese rendition of “expression”.

Section 9(3)(a)

40. We are reviewing the English text of section 9(3)(a) and will take into account your comments in proposing CSA to both the English and the Chinese texts.

Schedule 6 (Decisions which may be the subject of an appeal) (para. 36 of ALA's letter)

41. We will review the Chinese rendition of “such a condition” in respect of item 15(f) under the proposed Schedule 6.

Part 3 (Consequential and related amendments) (para. 37 of ALA's letter)

42. The phrase “any other Ordinance” is used in the amendments to section 4A(2)(g) and (3) of the Insurance Companies Ordinance (Cap. 41) in a general sense such that the Insurance Authority may exercise functions imposed or conferred on it by the Insurance Companies Ordinance or any other Ordinance. One example would be the Mandatory Provident Fund Schemes Ordinance upon the enactment of the Bill, as the Insurance Authority will have supervision and investigation functions in respect of MPF intermediaries.

**Financial Services and the Treasury Bureau
Department of Justice
22 February 2012**