

香港特別行政區政府
財經事務及庫務局
財經事務科
香港金鐘添美道二號
政府總部二十四樓



CB(1)1643/11-12(04)
FINANCIAL SERVICES BRANCH
FINANCIAL SERVICES AND
THE TREASURY BUREAU
GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION
24TH FLOOR
CENTRAL GOVERNMENT OFFICES
2 TIM MEI AVENUE
ADMIRALTY
HONG KONG

電話 TEL.:

圖文傳真 FAX.: 2810 3066

本函檔號 OUR REF.: 2529 1663

來函檔號 YOUR REF.:

20 April 2012

Clerk to Bills Committee
(Attn: Ms Anita Sit)
Legislative Council Complex,
1 Legislative Council Road,
Hong Kong

Dear Ms Sit,

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

Follow-up to meeting on 20 March 2012

I refer to your letter of 26 March 2012. The response of the Administration and the Mandatory Provident Fund Schemes Authority to the list of follow-up actions arising from the discussion at the meeting on 20 March 2012 is set out at the Annex.

Yours sincerely,

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

(Frederick Yu)

for Secretary for Financial Services and the Treasury

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

**List of follow-up actions arising from the discussion
at the meeting on 20 March 2012**

Items 1 and 3 – Relationship of “principal intermediary” (“PI”), “subsidiary intermediary” (“SI”) and “responsible officer” (“RO”), and responsibilities of RO in case of misconduct of SIs

There are three types of regulated persons under the Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2011, namely, PIs, SIs and ROs. Generally speaking, PIs are corporations registered under proposed section 34G which carry on a business in regulated MPF activities. In their day-to-day business, PIs employ or engage SIs registered under proposed section 34U to carry on regulated MPF activities for them in the capacity as their employees, agents or representatives. PIs are required to appoint ROs approved under proposed section 34W to supervise their own conduct of regulated activities to ensure that they have established and maintain proper control and procedures, and use their best endeavours to secure observance of the control and procedures by SIs employed or engaged by them.

2. A person cannot be a PI and an SI at the same time, while an RO must be an SI.

3. Proposed section 34ZM sets out the conduct requirements for ROs, namely that an RO must use his best endeavours to carry out the above-mentioned specified responsibilities in relation to his PI. If the misconduct of SIs employed or engaged by the relevant PI is attributable to the failure of the RO concerned to comply with the said conduct requirements under proposed section 34ZM, the Mandatory Provident Fund Schemes Authority (“MPFA”) may impose disciplinary sanctions against the RO under proposed section 34ZW (viz. reprimand, fines, revocation or suspension of approval as RO, and disqualification from being approved as an RO for a specified period).

Item 2 – Criteria that MPFA would adopt in determining compliance with respect to “sufficient authority” and “sufficient resources and support” in proposed section 34W(3)(b) (on approval as responsible officer)

4. For registration of an RO, MPFA will require a PI to certify that the individual to be approved by MPFA as its RO has sufficient authority within the

PI and will be provided with sufficient resources and support for carrying out specified responsibilities in relation to the PI. Examples which suggest the person concerned may not have sufficient authority, resources or support include where the proposed RO is a person of junior rank or without any supporting staff for performing the function when the PI has a large number of SIs. MPFA will promulgate some frequently asked questions on its expectation as regards ROs for reference by the industry.

Item 4 – Processing time for the registration of PIs and SIs and approval of ROs

5. MPFA expects to take about 10 - 15 working days to complete the processing of an application. This has taken into account the time required for MPFA to verify with FRs the relevant registration capacities, including the validity of Type A regulatees or Type B regulatees status, and the relevant disciplinary record, if any, of the applicants.

Items 5 and 7 – Heading of proposed section 34Y (on procedural requirement for processing application etc.) and Division 5 (on change in status or circumstances after registration or approval)

6. In the light of Members' views expressed at the meeting, we will propose a Committee Stage Amendment ("CSA") to amend the heading of proposed section 34Y to set out clearly that the section is about "procedural requirement for rejecting application, imposing or amending condition" for better understanding of the contents of the section. We will also propose a CSA to amend the heading of Division 5 such that it would read "change in circumstances after registration or approval", considering that "circumstances" would cover the meaning of "status". The Chinese text will be amended accordingly.

Item 6 – Means for employers and scheme members to know the FR of a registered MPF intermediary

7. Employers and scheme members, as well as the general public, can check which FR has been assigned to a registered MPF intermediary by calling the MPFA hotline, viewing the register of intermediaries which will be available at MPFA's website, or visiting any MPFA office.

Item 8 – Offence provision under proposed section 34ZI (on other change in relation to SI)

8. We propose under proposed section 34ZI that an SI must send a written notice to MPFA for a change in his name, address, any contact details, as well as any acquisition, cessation or suspension of Type B regulatee status within 7 working days after it occurs. Failure to do so without reasonable excuse is an offence liable to a fine at level 5 (i.e. \$50,000). The above reporting requirements are necessary for MPFA to exercise effective regulation under the proposed regime, to keep an updated register of intermediaries for public inspection and maintain effective communication with an SI directly.

9. We note that section 135 of the Securities and Futures Ordinance (Cap. 571) requires a licensed representative to give notice in writing to the Securities and Futures Commission of any changes specified, including changes in the basic information (e.g. name, contact information), status of authorization to carry on a regulated activity and relevant information in respect of the licensed representative within 7 business days of the change. A person, who, without reasonable excuse, contravenes the provision is subject to the same level of sanction, i.e. on conviction to a fine at level 5.

Item 9 – Record keeping requirements for registered MPF intermediaries

10. The Administration and MPFA would introduce a CSA to the effect that registered MPF intermediaries are required to keep key records regarding their compliance with the statutory conduct requirements. We are preparing the draft CSA. MPFA will provide guidance in this regard to the industry in its Guidelines.

**Financial Services and the Treasury Bureau
Mandatory Provident Fund Schemes Authority
20 April 2012**