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CB(1)1643/11-12(06)
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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 26 March 2012

I refer to your letter of 28 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 26 March 2012 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

**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 26 March 2012**

Item 1 – Requiring Mandatory Provident Fund Schemes Authority (“MPFA”) to give a longer notification period under proposed sections 34ZN(5) (Annual Fees) and 34ZO(4) (Annual Return)

Taking into account Members views expressed at the meeting, we will propose a Committee Stage Amendment (“CSA”) to extend the notice period from “at least 10 days” to “at least 15 working days”. Following this amendment, MPFA’s power to suspend registration due to non-payment of annual fees under proposed section 34ZN(1) and non-submission of annual returns under proposed section 34ZO(1) would not be exercisable unless MPFA has given written notice to the registered Mandatory Provident Fund (“MPF”) intermediaries at least 15 working days before the suspension is to take effect.

Items 2 and 3 – Drafting of the proposed section 34ZQ(2)(a) and 34ZQ(2)(b); and 34ZS(1) and 34ZS(2)

2. Under proposed section 34ZQ(1), a frontline regulator (“FR”) may exercise certain powers to ascertain the matters specified in proposed section 34ZQ(2). The purpose of proposed section 34ZQ(2) is to set out the matters. The matters that the FR wants to ascertain can be very specific. Take section 34ZQ(2)(a) as an example, the matter can be:

- (i) whether or not the regulated person has complied with the performance requirement; or
- (ii) whether or not the regulated person has failed to comply with the performance requirement.

Section 34ZQ(2)(a) and (b) seeks to include all these matters in the provision to avoid any challenge from regulatees as regards the coverage of the power. The drafting has taken into account the enforcement experience of the FRs.

3. The reference to “某” in proposed section 34ZS(1) and 34ZS(2) is part of the term “某行業監督” or “某身爲受規管者的人”, as the case may be.

Thus, there should not be any confusion as regards the meaning of “某” in the relevant context. Such drafting is in line with DoJ’s usual drafting convention and can achieve the policy intent. We therefore do not propose to make any amendment thereto.

Item 4 – Information on the authorization of MPF Schemes and Products

4. Pursuant to the Mandatory Provident Fund Schemes Ordinance ("MPFSO"), MPFA is responsible for registering MPF schemes (c.f. sections 21 and 21A of MPFSO) and approving constituent funds of MPF schemes (c.f. section 36 of the Mandatory Provident Fund Schemes (General) Regulation ("the Regulation")) as well as pooled investment funds (c.f. section 6 of the Regulation"). Schedule 1 of the Regulation sets out comprehensive requirements applicable to investment of MPF funds, including the spread of investments; the types of permissible investments as regards debt securities, equities and other securities, and convertible debt securities, etc. Currency exposure; as well as restrictions for investments in unit trusts and mutual funds and in insurance policies, etc.

5. In addition, the Securities and Futures Commission (“SFC”) authorized MPF schemes (other than employer-sponsored schemes) and pooled investment funds which are collective investment schemes offered to the public pursuant to section 104 of the Securities and Futures Ordinance. An applicant seeking registration of schemes or approval of funds from MPFA and the relevant authorization from SFC are required to submit the application concurrently to both regulators. Registration / approval from MPFA and authorization from SFC will be granted to an applicant concurrently by the two regulators.

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