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From : Clerk to the Legislative Council

To : All Members of the Legislative Council

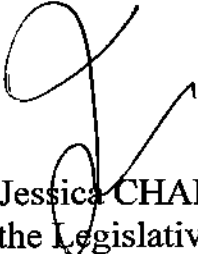
Council meeting of 6 June 2012

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

Committee stage amendments

The Second Reading debate on the above Bill will be resumed at the Council meeting of 6 June 2012. Subject to the Bill receiving a Second Reading, the President has given permission for the Secretary for Financial Services and the Treasury, Hon WONG Sing-chi and Hon KAM Nai-wai to move their proposed amendments to the Bill, as set out in **Appendices I to III**, at its Committee stage.

2. As directed by the President, the proposed amendments are attached for Members' consideration.


(Ms Jessica CHAN)
for Clerk to the Legislative Council

Encl.

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

Committee Stage

Amendments to be moved by the Secretary for Financial Services and the Treasury

<u>Clause</u>	<u>Amendment Proposed</u>
7(2)	In the proposed section 6H(8), by deleting “the Securities and Futures Commission, the Monetary Authority, and the Insurance Authority,” and substituting “the Insurance Authority, the Monetary Authority, and the Securities and Futures Commission,”.
8	In the proposed section 6KA(5), in the Chinese text, by deleting “為該條文的施行而使用該電子系統” and substituting “該電子系統為該條文的施行而被使用”.
8	In the proposed section 6KA(6), in the Chinese text, by deleting “使用指定電子系統” and substituting “指定電子系統被使用”.
9(2)	By deleting “Part IVA)” and substituting “sections 34L, 34ZL and 34ZM), the requirements imposed under this Ordinance, or the conditions imposed under this Ordinance (except section 34X),”.
10	By deleting “Part IVA)” and substituting “sections 34L, 34ZL and 34ZM), the requirements imposed under this Ordinance, or the conditions imposed under this Ordinance (except section 34X),”.
11	By deleting “Part IVA)” and substituting “sections 34L, 34ZL and

34ZM), the requirements imposed under this Ordinance, or the conditions imposed under this Ordinance (except section 34X).”.

12 By deleting “Part IVA)” and substituting “sections 34L, 34ZL and 34ZM), a requirement imposed under this Ordinance, or a condition imposed under this Ordinance (except section 34X).”.

13 In the proposed section 34E, in the definition of *industry regulator*, by deleting paragraphs (a), (b) and (c) and substituting—

- “(a) the Insurance Authority;
- (b) the Monetary Authority; or
- (c) the Securities and Futures Commission;”.

13 In the proposed section 34E, in the definition of *prescribed person*, by deleting paragraph (a) and substituting—

- “(a) in relation to the Insurance Authority, means a public officer employed in the Office of the Commissioner of Insurance;”.

13 In the proposed section 34E, in the definition of *prescribed person*, by deleting paragraph (c) and substituting—

- “(c) in relation to the Securities and Futures Commission, means an employee of the Commission;”.

13 In the proposed section 34E, in the definition of *relevant insurance body*, by deleting “*body* (有關保險業)” and substituting “*broker body* (有關保險經紀)”.

13 In the proposed section 34E, in the definition of *Type B regulatee*, in paragraph (a)(iii) and (iv), by adding “broker” after “relevant insurance”.

- 13 In the proposed section 34F(5)(c), in the English text, by deleting “particular registered scheme;” and substituting “registered scheme;”.
- 13 By deleting the proposed section 34F(5)(d), (e) and (f) and substituting—
- “(d) the amount of contributions (including voluntary contributions) to be paid to a particular registered scheme, or the amount to be invested in a particular constituent fund of a registered scheme;
 - (e) whether, or when, to transfer accrued benefits from a particular registered scheme to another particular registered scheme, or from a particular constituent fund of a registered scheme to another particular constituent fund of the registered scheme;
 - (f) the amount of accrued benefits to be transferred from a particular registered scheme to another particular registered scheme, or from a particular constituent fund of a registered scheme to another particular constituent fund of the registered scheme;”.
- 13 In the proposed section 34F(5)(g), in the Chinese text, by adding “如此” after “何時”.
- 13 By deleting the proposed section 34F(5)(h) and substituting—
- “(h) the amount of benefits to be transferred from an occupational retirement scheme to a particular registered scheme;”.
- 13 In the proposed section 34F(5)(j), by deleting “such a claim” and substituting “a claim mentioned in paragraph (i)”.
- 13 In the proposed section 34G(1)(b), by deleting “except in section 34M(1)” and substituting “subject to section 34M(9)(a)”.
- 13 In the proposed section 34G(2)(b), by deleting “except in section

34M(1),”.

13 In the proposed section 34H(1)(a), by deleting “34T(5)(b)(i) or”.

13 In the proposed section 34H(1)(b), by deleting “except in sections 34T(2)(a) and 34V(1)” and substituting “subject to section 34V(6)”.

13 In the proposed section 34H(2)(a), by deleting “34T(5)(b)(i) or”.

13 In the proposed section 34H(2)(b), by deleting “except in sections 34T(2)(a) and 34V(1),”.

13 In the proposed section 34H(3)(a), by deleting “34T(5)(a)(i) or (b)(ii), 34U(7) or”.

13 In the proposed section 34H(3)(b), by deleting “except in sections 34M(1)(b) and 34W(3)(a)” and substituting “subject to sections 34M(9)(b) and 34W(6)”.

13 In the proposed section 34H(4)(a), by deleting “34T(5)(a)(i) or (b)(ii), 34U(7) or”.

13 In the proposed section 34H(4)(b), by deleting “except in sections 34M(1)(b) and 34W(3)(a),”.

13 In the proposed section 34I(1)(a), by deleting “34T(5)(a)(ii) or (b)(iii) or”.

13 In the proposed section 34I(1)(b), by deleting “except in section 34ZD(1)” and substituting “subject to section 34ZD(5)”.

- 13 In the proposed section 34I(2)(a), by deleting “34T(5)(a)(ii) or (b)(iii) or”.
- 13 In the proposed section 34I(2)(b), by deleting “except in section 34ZD(1),”.
- 13 In the proposed section 34I(3)(b), in the English text, by adding “principal” after “uses the”.
- 13 In the proposed section 34J(2)(b)(i), by deleting “of the Securities and Futures Ordinance (Cap. 571)” and substituting “or 197(1) of the Securities and Futures Ordinance (Cap. 571), or is deemed to be suspended under section 197(4) of that Ordinance,”.
- 13 In the proposed section 34J(2)(b)(ii), by deleting “that section” and substituting “that section 196(1)(i)(B) or 197(1), or is deemed to be suspended under that section 197(4),”.
- 13 In the proposed section 34J(2)(c)(i), by deleting “of the Securities and Futures Ordinance (Cap. 571)” and substituting “or 195(1) of the Securities and Futures Ordinance (Cap. 571), or is deemed to be suspended under section 195(4) of that Ordinance,”.
- 13 In the proposed section 34J(2)(c)(ii), by deleting “that section” and substituting “that section 194(1)(i)(B) or 195(1), or is deemed to be suspended under that section 195(4),”.
- 13 In the proposed section 34K(1)(a) and (b), in the Chinese text, by deleting “中止” and substituting “終止”.

- 13 In the proposed section 34K(2)(f)(i), by deleting “of the Securities and Futures Ordinance (Cap. 571)” and substituting “or 195(1) of the Securities and Futures Ordinance (Cap. 571), or is deemed to be suspended under section 195(4) of that Ordinance,”.
- 13 In the proposed section 34K(2)(f)(ii), by deleting “that section” and substituting “that section 194(1)(i)(B) or 195(1), or is deemed to be suspended under that section 195(4),”.
- 13 In the proposed section 34M(5)(a)(i), by deleting “otherwise than on subscription” and substituting “(excluding one that is made available on subscription only)”.
- 13 In the proposed section 34M, by adding—
- “(9) In subsection (1)—
 - (a) a reference to a principal intermediary does not include a person whose registration as a principal intermediary is suspended under this Part; and
 - (b) a reference to a subsidiary intermediary attached to a principal intermediary does not include a person—
 - (i) whose registration as a subsidiary intermediary is suspended under this Part; or
 - (ii) the approval of whose attachment to the principal intermediary is suspended under this Part.”.
- 13 In the proposed section 34N(1), by deleting everything after “an offence” and substituting a full stop.
- 13 In the proposed section 34N, by adding—
- “(1A) Subject to subsection (1B), a person who commits an offence under subsection (1) is liable—
 - (a) on conviction on indictment to a fine of \$5,000,000 and

to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of \$100,000 for each day on which the offence is continued; or

(b) on summary conviction to a fine of \$500,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$10,000 for each day on which the offence is continued.

(1B) If a person contravenes section 34L(1) or (2) by carrying on regulated activities for another person in the course of acting as an employee, agent or representative of that other person, or for holding themselves out as so carrying on regulated activities, the person is liable—

(a) on conviction on indictment to a fine of \$1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of \$20,000 for each day on which the offence is continued; or

(b) on summary conviction to a fine at level 6 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of \$2,000 for each day on which the offence is continued.”.

13 In the proposed section 34Q(5)(a), by deleting “registered intermediary” and substituting “regulated person”.

13 In the proposed section 34Q(5)(b), by deleting everything after “particulars of” and substituting—

“—

(i) the registration of a person as a principal or subsidiary intermediary; or

(ii) the approval of an individual as a responsible officer.”.

13 In the proposed section 34Q(6)(b), in the Chinese text, by adding “獲” before “接納”.

13 In the proposed section 34Q(6)(b)(i) and (ii), in the Chinese text, by deleting “視” and substituting “推定”.

- 13 In the proposed section 34Q(6)(b)(iii), in the Chinese text, by deleting “證據” and substituting “證明”.
- 13 In the proposed section 34R, in the heading, by deleting “as on-line record” and substituting “through internet”.
- 13 In the proposed section 34R, by deleting “in the form of an on-line record” and substituting “through the internet”.
- 13 In the proposed section 34S(1)(e), by deleting “Division 5 or 6” and substituting “this Part”.
- 13 In the proposed section 34S(2)(b)(ii), by deleting “and”.
- 13 In the proposed section 34S(2)(b), by adding—
 “(iia) if the registration of the principal intermediary as such is suspended under this Part—
 (A) a note to that effect; and
 (B) a note to the effect that section 34M(1)(b) does not apply to the subsidiary intermediary; and”.
- 13 In the proposed section 34S(2)(b)(iii)(C), by deleting “Division 5 or 6” and substituting “this Part”.
- 13 In the proposed section 34T(2)(a)(i), by deleting “to the Authority” and substituting “under section 34V(1)”.
- 13 In the proposed section 34T(2)(a)(ii), by deleting “to the Authority” and substituting “under section 34W(1)”.
- 13 In the proposed section 34T(2)(b)(i), by deleting “to the Authority” and substituting “under section 34U(1)”.

- 13 In the proposed section 34T(2)(b)(ii), by deleting “to the Authority” and substituting “under section 34V(1)”.
- 13 In the proposed section 34T(2)(b)(iii), by deleting “to the Authority” and substituting “under section 34W(1)”.
- 13 In the proposed section 34T(3), by deleting “or (2)(a) or (b)”.
- 13 By deleting the proposed section 34T(4)(b)(i)(A), (B) and (C) and substituting—
- “(A) an accompanying application is made for the purposes of subsection (2)(a)(i), and the criteria for approval under section 34V(3) are satisfied; and
 - (B) an accompanying application is made for the purposes of subsection (2)(a)(ii), and the criteria for approval under section 34W(3)(b), (c) and (d) are satisfied; or”.
- 13 By deleting the proposed section 34T(4)(b)(ii)(A), (B) and (C) and substituting—
- “(A) an accompanying application is made for the purposes of subsection (2)(b)(i), and the criteria for approval under section 34U(4) (except paragraph (g)) are satisfied;
 - (B) an accompanying application is made for the purposes of subsection (2)(b)(ii), and the criteria for approval under section 34V(3)(a), (b) and (c) are satisfied; and
 - (C) an accompanying application is made for the purposes of subsection (2)(b)(iii), and the criteria for approval under section 34W(3)(b), (c) and (d) are satisfied.”.
- 13 In the proposed section 34T(5), by deleting everything after “, the Authority” and substituting “must also grant the accompanying applications made for the purposes of subsection (2)(a) or (b).”.
- 13 In the proposed section 34T(6), by deleting “under subsection (2)(a)” and

substituting “for the purposes of subsection (2)(a)”.

13 In the proposed section 34T(7), by deleting everything after “Authority” and substituting “must give the principal applicant a notice in writing of the results of the application made under subsection (1).”.

13 In the proposed section 34T(8), by deleting “(a) or (b)”.

13 In the proposed section 34T(8), by deleting “or accompanying applications”.

13 In the proposed section 34U(2), by deleting “to the Authority” and substituting “under section 34V(1)”.

13 In the proposed section 34U(3), by deleting “or (2)”.

13 In the proposed section 34U(4)(g)(i), by deleting “under” and substituting “for the purposes of”.

13 In the proposed section 34U(4)(g)(ii), by deleting “subsection (6)” and substituting “section 34V(3)(a), (b) and (c)”.

13 In the proposed section 34U(5), by deleting everything after “if” and substituting—

“—

- (a) within 3 years immediately before the date of the application, the principal applicant has been registered as a subsidiary intermediary and that registration has been revoked; and
- (b) the revocation, or the last revocation (if there is more than one), is not made under section 34ZP(4).”.

- 13 By deleting the proposed section 34U(6).
- 13 In the proposed section 34U(7), by deleting everything after “also” and substituting “grant the accompanying application made for the purposes of subsection (2).”.
- 13 In the proposed section 34U(8), by deleting “under subsection (2)” and substituting “for the purposes of subsection (2)”.
- 13 In the proposed section 34U(9), by deleting everything after “results of” and substituting “the application made under subsection (1).”.
- 13 By deleting the proposed section 34U(10).
- 13 In the proposed section 34U(11), by deleting “or (10)”.
- 13 In the proposed section 34U(11), by deleting “or accompanying application (as may be applicable)”.
- 13 By deleting the proposed section 34V(1) and substituting—
 “(1) A person specified in subsection (1A) may apply to the Authority for approval of attachment of another person to the specified person for the purpose of carrying on regulated activities.
 (1A) The person is—
 (a) a principal intermediary; or
 (b) a person who applies under section 34T(1) for registration as an intermediary for carrying on regulated activities.”.
- 13 In the proposed section 34V(3), in the Chinese text, by deleting “附屬中介人隸屬有關主事中介人，但前提是” and substituting “的另一人隸

屬申請人，但前提是它信納”。

- 13 In the proposed section 34V(3), by adding before paragraph (a)—
“(aa) that the other person is a subsidiary intermediary;”.
- 13 In the proposed section 34V(3)(a), (b) and (c), by deleting “subsidiary intermediary” and substituting “other person”.
- 13 In the proposed section 34V(3)(a), by deleting “principal intermediary” and substituting “applicant”.
- 13 In the proposed section 34V(4), by deleting “subsidiary intermediary” and substituting “other person”.
- 13 In the proposed section 34V, by adding—
“(6) In subsection (3)(aa), a reference to a subsidiary intermediary does not include a person whose registration as a subsidiary intermediary is suspended under this Part.”.
- 13 By deleting the proposed section 34W(1) and substituting—
“(1) A person specified in subsection (1A) may apply to the Authority for approval of an individual as an officer with specified responsibilities in relation to the specified person.
(1A) The person is—
(a) a principal intermediary; or
(b) a person who applies under section 34T(1) for registration as an intermediary for carrying on regulated activities.”.
- 13 In the proposed section 34W(3), by deleting “principal intermediary if” and substituting “applicant if”.

- 13 In the proposed section 34W(3)(a) and (b), by deleting “principal intermediary” (wherever appearing) and substituting “applicant”.
- 13 In the proposed section 34W(3)(b), in the Chinese text, by deleting “支持” and substituting “支援”.
- 13 In the proposed section 34W, by adding—
- “(6) In subsection (3)(a), a reference to a subsidiary intermediary attached to the applicant does not include a person—
 - (a) whose registration as a subsidiary intermediary is suspended under this Part; or
 - (b) the approval of whose attachment to the applicant is suspended under this Part.”.
- 13 In the proposed section 34Y, in the heading, by deleting “**processing application etc.**” and substituting “**rejecting application, or imposing or amending conditions**”.
- 13 In the proposed Division 5, in the heading, by deleting “**Status or**”.
- 13 In the Chinese text, by deleting the proposed section 34ZC(1)(b)(ii) and substituting—
- “(ii) 有任何作為某行業監督的甲類受規管者的資格被暫時撤銷；及”。
- 13 In the proposed section 34ZD, by adding—
- “(5) In subsection (1), a reference to a responsible officer does not include an individual whose approval as a responsible officer of the principal intermediary is suspended under this Part.”.
- 13 By deleting the proposed section 34ZE(1)(d) and substituting—
- “(d) a responsible officer of a principal intermediary ceases to be an officer with specified responsibilities in relation to the

principal intermediary.”.

13 In the proposed section 34ZE, by adding—

“(3A) The Authority may revoke the approval of an individual as a responsible officer of a principal intermediary if the Authority is given a notice under subsection (2) that the individual ceases to be an officer with specified responsibilities in relation to the principal intermediary.”.

13 By deleting the proposed section 34ZF(2), (3) and (4) and substituting—

“(2) The approval of the attachment of the person to the principal intermediary—

(a) in the case of subsection (1)(b)(i), is revoked at the time the person ceases to be such a Type B regulatee; or

(b) in the case of subsection (1)(b)(ii), is suspended for the period during which that suspension is in force.

(3) Where the person is not approved as being attached to any principal intermediary after a revocation under subsection (2)(a), the Authority may revoke the registration of the person as a subsidiary intermediary if—

(a) no application has been made under section 34V(1) for approval of attachment of the person to a principal intermediary within 90 days after the date on which the revocation under subsection (2)(a) takes effect; or

(b) such an application has been made within 90 days after the date on which the revocation under subsection (2)(a) takes effect, and the Authority has rejected the application.”.

13 In the proposed section 34ZG(4)(a) and (b), in the Chinese text, by deleting “的生效” and substituting “生效的”.

13 In the proposed section 34ZG(4)(a), in the Chinese text, by deleting “提出” and substituting “提出的”.

13 In the proposed section 34ZH(3)(a) and (b), in the Chinese text, by

deleting “的生效” and substituting “生效的”.

- 13 In the proposed section 34ZH(3)(a), in the Chinese text, by deleting “提出” and substituting “提出的”.
- 13 In the proposed section 34ZK(2), in the Chinese text, by deleting “和支持” and substituting “或支援”.
- 13 In the proposed section 34ZK, by adding—
- “(3) The power under subsection (2) is not exercisable unless, before exercising the power, the Authority—
 - (a) has given the individual a notice in writing of its intention to do so and the reasons for doing so; and
 - (b) has given the individual an opportunity to make oral or written representations, or both, on those reasons.
 - (4) A notice under subsection (3)(a) must also include a statement describing—
 - (a) the right of the individual to make representations; and
 - (b) how and when the individual may make representations.”.
- 13 In the proposed section 34ZL(1)(c) and (f), by adding “(as the case may be)” after “subsidiary intermediary”.
- 13 In the proposed section 34ZL, by adding—
- “(1A) A principal intermediary must keep such records of activities carried out by the principal intermediary, and of those carried out by every subsidiary intermediary attached to the principal intermediary, as may be necessary for enabling the frontline regulator of the principal intermediary to ascertain—
 - (a) whether or not the principal intermediary has complied with subsection (1); and
 - (b) whether or not every subsidiary intermediary attached to the principal intermediary has complied with

subsection (1).”.

- 13 By deleting the proposed section 34ZN(2).
- 13 In the proposed section 34ZN(5), by deleting “10” and substituting “15 working”.
- 13 In the proposed section 34ZN(8), by deleting the definition of *chargeable period* and substituting—
- “*chargeable period* (收費期), in relation to a person who is a registered intermediary, means—
- (a) the period beginning on the date of the registration of the person as such registered intermediary and ending immediately before the specified date next following;
or
- (b) each successive period of 12 months;”.
- 13 In the proposed section 34ZN(8), by adding—
- “*specified date* (指明日期) means the date specified by the Authority under subsection (7)(a).”.
- 13 In the proposed section 34ZO(4), by deleting “10” and substituting “15 working”.
- 13 In the proposed section 34ZR(1)(c), in the Chinese text, by adding “可” before “複製”.
- 13 In the proposed section 34ZR(3)(a) and (b), by deleting “frontline regulator” and substituting “inspector”.
- 13 In the proposed section 34ZR(4), in the Chinese text, by deleting “不可”

and substituting “不得”.

- 13 In the proposed section 34ZU(2)(a), in the Chinese text, by adding “可能” before “沒有”.
- 13 In the proposed section 34ZV(1), in the Chinese text, by deleting “該人沒有” and substituting “該人可能沒有”.
- 13 In the proposed section 34ZW(7)(b)(i), by adding “or such a person” after “regulator”.
- 13 In the proposed section 34ZW(8), by adding “specified for the purposes of subsection (7)(b)” after “The matters”.
- 13 In the proposed section 34ZW, by adding—
 “(8A) If the Authority exercises a power under subsection (1) or (2) to make a disciplinary order against a regulated person, the Authority may disclose to the public details of the decision, including the reasons for it and any material facts of the case.”.
- 13 In the proposed section 34ZX(4)(c), in the Chinese text, by adding “經更改的” after “有關”.
- 13 In the proposed section 34ZY(2)(b)(i), by adding “or such a person” after “regulator”.
- 13 In the proposed section 34ZY(3), by adding “specified for the purposes of subsection (2)(b)” after “The matters”.

- 13 In the proposed section 34ZZ(4)(a), by deleting “(a)(i) or (ii) or (b)” (wherever appearing).
- 13 In the proposed section 34ZZC(6), by deleting “specified requirement imposed” and substituting “requirement imposed under section 34P or 34ZU”.
- 13 In the proposed section 34ZZC(7)(b), in the Chinese text, by deleting “等” (wherever appearing).
- 13 In the proposed section 34ZZD(5), by deleting “(2)(b)” and substituting “(3)(b)”.
- 13 In the proposed section 34ZZE(1), by deleting “inspector or” (wherever appearing).
- 13 In the proposed section 34ZZE(1), by deleting “, 34ZR”.
- 13 In the proposed section 34ZZE(2)(a), by deleting “inspector or”.
- 13 In the proposed section 34ZZE(2)(a), by deleting “, 34ZR”.
- 13 In the proposed section 34ZZF(1)(b), in the Chinese text, by deleting everything after “移走” and substituting “下述紀錄或文件：該手令所列明的人有合理因由相信是根據第34P、34ZR或34ZU條(視屬何情況而定)可被要求交出的紀錄或文件。”.
- 13 By deleting the proposed section 34ZZF(3), (4) and (5).

- 13 In the proposed section 34ZZF(6), by deleting “an authorized” and substituting “a relevant”.
- 13 In the proposed section 34ZZF(6), by deleting “the authorized” (wherever appearing) and substituting “the relevant”.
- 13 In the proposed section 34ZZF(7), by deleting “An authorized” and substituting “A relevant”.
- 13 In the proposed section 34ZZF(7)(b), by deleting “the authorized” and substituting “the relevant”.
- 13 In the proposed section 34ZZF(8)(b), in the Chinese text, by deleting “等”.
- 13 In the proposed section 34ZZF(9), by deleting “an authorized” and substituting “a relevant”.
- 13 In the proposed section 34ZZF(9), by deleting “the authorized” and substituting “the relevant”.
- 13 In the proposed section 34ZZF(11)(b), by deleting “an authorized” and substituting “a relevant”.
- 13 In the proposed section 34ZZF(13), in the definition of *authorized person*, by deleting “*authorized person* (獲授權人)” and substituting “*relevant person* (有關人士)”.
- 13 In the proposed section 34ZZF(13), in the Chinese text, in the definition

of *relevant person*, by deleting “執行” and substituting “進行”.

- 13 In the proposed section 34ZZJ, in the heading, by deleting “Fees sharing” and substituting “**Payment by Authority to industry regulator in relation to expenditure or cost for services**”.
- 15 By deleting the proposed section 42AA(1) and substituting—
- “(1) Section 41 does not prevent the Authority or an entity specified in subsection (4) from disclosing the information to another entity so specified if, in the opinion of the Authority or the entity disclosing the information—
 - (a) the disclosure will enable or assist the recipient of the information to perform the recipient’s functions under Part IVA;
 - (b) the disclosure will enable or assist the recipient of the information to perform the recipient’s functions (other than those under Part IVA) and it is not contrary to the interest of the investing public or to the public interest that the information should be so disclosed; or
 - (c) it is desirable or expedient that the information should be disclosed in the interest of the investing public or in the public interest.
 - (1A) Section 41 does not prevent an entity specified in subsection (4) from disclosing the information to the Authority if, in the opinion of the entity, the disclosure will enable or assist the Authority to perform its functions.”.
- 15 In the proposed section 42AA(2)(d), in the Chinese text, by deleting everything after “下被披露” and substituting “，以致可被公眾人士取得，或第41條不禁止為某目的披露資料，而有關資料已為該目的而可被公眾人士取得；”.
- 15 In the proposed section 42AA(2)(e), by deleting “a liquidator appointed under the Companies Ordinance (Cap. 32), the Authority or another entity specified in subsection (4), but only if the entity disclosing the

information” and substituting “or a liquidator appointed under the Companies Ordinance (Cap. 32), but only if the entity”.

15 By deleting the proposed section 42AA(4)(a), (b) and (c) and substituting—

- “(a) the Insurance Authority;
- (b) the Monetary Authority; or
- (c) the Securities and Futures Commission.”.

15 In the proposed section 42AB, in the heading, by deleting “or investigation” and substituting “, investigation or disciplinary action”.

15 By deleting the proposed section 42AB(1) and (2) and substituting—

- “(1) This section applies to—
 - (a) a person on whom a requirement under section 34P, 34ZR or 34ZU has been imposed by—
 - (i) the Authority or a person directed by the Authority under section 34O(1)(a)(ii); or
 - (ii) an industry regulator or a person directed by an industry regulator under section 34O(2)(b), 34ZQ(1)(b) or 34ZT(1)(b); or
 - (b) a person who has been given a notice under section 34ZZ(2)(a) or 34ZZH(2).
- (2) The person specified in subsection (1)(a) must not disclose any information obtained in the course of the requirement being imposed, or in the course of a compliance or purported compliance with the requirement, to any other person unless—
 - (a) the following consents to the disclosure—
 - (i) in the case of subsection (1)(a)(i), the Authority;
 - (ii) in the case of subsection (1)(a)(ii), the industry regulator; or
 - (b) any of the conditions specified in subsection (2B) is satisfied.
- (2A) The person specified in subsection (1)(b) must not disclose any information obtained from the notice, or from any communication with the Authority in relation to the subject

matter of the notice, unless—

- (a) the Authority consents to the disclosure; or
 - (b) any of the conditions specified in subsection (2B) is satisfied.
- (2B) The conditions specified for the purposes of subsections (2)(b) and (2A)(b) are—
- (a) the information has already been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by section 41;
 - (b) the disclosure is for the purpose of seeking advice from, or giving advice by counsel, a solicitor, or any other professional advisor, acting or proposing to act in a professional capacity in connection with any matter arising under a provision of Part IVA;
 - (c) the disclosure is in connection with any judicial or other proceedings to which the person is a party; and
 - (d) the disclosure is in accordance with an order of a court, or in accordance with a law or a requirement made under a law.”.

15 In the proposed section 42AB(3), by adding “by it” after “given”.

15 In the proposed section 42AB(3), by adding “or (2A)(a)” after “(2)(a)”.

15 In the proposed section 42AB(4), by adding “or (2A)” after “(2)”.

16(2) By deleting the proposed section 42B(3)(a), (b) and (c) and substituting—

- “(a) the Insurance Authority;
- (b) the Monetary Authority; or
- (c) the Securities and Futures Commission.”.

19 In the proposed section 44A(1)(b)(iii), (2)(b)(iii), (3)(b)(ii), (4)(b)(ii) and (5)(b)(ii), in the Chinese text, by deleting “證據” and substituting “證明”.

19 In the proposed section 44A(2)(a), in the Chinese text, by deleting “或(8)” and substituting “及(8)”.

- 21 In the proposed Schedule 5B, in the Chinese text, in section 1(2), by deleting “該詞的” and substituting “該詞句的”.
- 21 In the proposed Schedule 5B, in section 2(4)(b)(ii)(A), by deleting “196(1)(i)(B) of that Ordinance” and substituting “196(1)(i)(B) or 197(1) of that Ordinance, or is deemed to be suspended under section 197(4) of that Ordinance,”.
- 21 In the proposed Schedule 5B, in section 2(4)(b)(ii)(B), by adding “or 197(1), or is deemed to be suspended under that section 197(4),” after “196(1)(i)(B)”.
- 21 In the proposed Schedule 5B, in section 2(4)(c)(i), by deleting “of the Securities and Futures Ordinance (Cap. 571)” and substituting “or 195(1) of the Securities and Futures Ordinance (Cap. 571), or is deemed to be suspended under section 195(4) of that Ordinance,”.
- 21 In the proposed Schedule 5B, in section 2(4)(c)(ii), by deleting “that section” and substituting “that section 194(1)(i)(B) or 195(1), or is deemed to be suspended under that section 195(4),”.
- 21 In the proposed Schedule 5B, in section 3(1)(c) and (d), by adding “broker” before “body”.
- 21 In the proposed Schedule 5B, in the Chinese text, in section 3(2)(a)(i) and (ii), by deleting “中止” and substituting “終止”.
- 21 In the proposed Schedule 5B, in section 3(4)(d)(i), by deleting “of the Securities and Futures Ordinance (Cap. 571)” and substituting “or 195(1)

of the Securities and Futures Ordinance (Cap. 571), or is deemed to be suspended under section 195(4) of that Ordinance,”.

21 In the proposed Schedule 5B, in section 3(4)(d)(ii), by deleting “that section” and substituting “that section 194(1)(i)(B) or 195(1), or is deemed to be suspended under that section 195(4),”.

21 In the proposed Schedule 5B, in the Chinese text, in section 4, in the heading, by deleting “法團” and substituting “公司”.

21 In the proposed Schedule 5B, in the Chinese text, in section 4(1)(a), by deleting “法團” and substituting “公司”.

21 In the proposed Schedule 5B, in section 4(1)(b), by deleting “an authorized financial institution” and substituting “a holder of a Type A qualifying capacity”.

21 In the proposed Schedule 5B, in the Chinese text, in section 5, in the heading, by deleting “法團” and substituting “公司”.

21 In the proposed Schedule 5B, in the Chinese text, in section 5(1)(a), by deleting “法團” and substituting “公司”.

21 In the proposed Schedule 5B, in section 5(1)(b), by deleting “an authorized financial institution” and substituting “a holder of a Type A qualifying capacity”.

21 In the proposed Schedule 5B, in section 5(2)(b), by deleting “34U(7)” and substituting “34V(3)”.

- 21 In the proposed Schedule 5B, in section 6(1), by deleting “specified in subsection (2)”.
- 21 In the proposed Schedule 5B, by deleting section 6(2).
- 21 In the proposed Schedule 5B, in section 6(3)(b), by deleting “34U(7)” and substituting “34V(3)”.
- 21 In the proposed Schedule 5B, in the Chinese text, in section 7(2)(a), by deleting “法團” and substituting “公司”.
- 21 In the proposed Schedule 5B, in section 7(2)(b), by deleting “an authorized financial institution” and substituting “a holder of a Type A qualifying capacity”.
- 21 In the proposed Schedule 5B, in section 9(3), by deleting subsection (1) of the replacement section 34ZF and substituting—
- “(1) This section applies—
 - (a) if a person is a subsidiary intermediary attached to a principal intermediary; and
 - (b) if—
 - (i) the person—
 - (A) ceases to hold the relevant Type B qualifying capacity; or
 - (B) ceases to hold a Type B qualifying capacity (other than the relevant Type B qualifying capacity), and on the cessation no longer holds any Type B qualifying capacity; or
 - (ii) the person—
 - (A) has the relevant Type B qualifying capacity suspended; or
 - (B) has a Type B qualifying capacity (other than the relevant Type B qualifying capacity)

suspended, and on the suspension no longer holds any Type B qualifying capacity that is not under suspension.”.

21 In the proposed Schedule 5B, in section 9(3), by deleting subsection (2) of the replacement section 34ZF.

21 In the proposed Schedule 5B, in section 9(3), by deleting subsections (3), (4) and (5) of the replacement section 34ZF and substituting—

“(3) The approval of the attachment of the person to the principal intermediary—

- (a) in the case of subsection (1)(b)(i), is revoked at the time the person ceases to hold the relevant Type B qualifying capacity or the Type B qualifying capacity; or
- (b) in the case of subsection (1)(b)(ii), is suspended for the period during which that suspension is in force.

(4) Where the person is not approved as being attached to any principal intermediary after a revocation under subsection (3)(a), the registration of the person as a subsidiary intermediary is revoked if—

- (a) no application has been made under section 34V(1) for approval of attachment of the person to a principal intermediary within 90 days after the date on which the revocation under subsection (3)(a) takes effect; or
- (b) such an application has been made within 90 days after the date on which the revocation under subsection (3)(a) takes effect, and the Authority has rejected the application.”.

21 In the proposed Schedule 5B, in section 9(4), by deleting everything after “following” and substituting—

“—

“(c) a subsidiary intermediary—

- (i) acquires any qualification as a Type B regulatee;
- (ii) ceases to hold any Type B qualifying capacity; or
- (iii) has any Type B qualifying capacity suspended; or”.

- 22 In the proposed item 15(f), in the Chinese text, by deleting “等”.
- New By adding immediately before clause 24—
- “23A. Section 2 amended (interpretation)**
- Section 2—
- Repeal the definition of *authorized financial institution*.”**
- 27(1) In the proposed item 6A(a) and (b), by deleting “or extract of the Register” and substituting “the Register or of an extract of such an entry”.
- 27(2) By deleting the proposed item 8 and substituting—
- “8. 34T Fee payable when an application is lodged Nil”.
with the Authority for registration as an
intermediary for carrying on regulated
activities
- 27(2) By deleting the proposed item 9 and substituting—
- “9. 34U Fee payable when an application is lodged Nil”.
with the Authority for registration as an
intermediary for carrying on regulated
activities for a principal intermediary

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

Committee Stage

Amendments to be moved by the Honourable WONG Sing-chi

<u>Clause</u>	<u>Amendment Proposed</u>
13	In the proposed section 34ZZ(2)(a), by deleting “; and” and substituting a semicolon.
13	In the proposed section 34ZZ(2), by adding — “(ab) must give a copy of the notice to any person who has lodged a complaint to the Authority against the regulated person in relation to the matter that the Authority forms the preliminary view; and”.

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

Committee Stage

Amendment to be moved by the Honourable KAM Nai-wai, MH

Clause

Amendment Proposed

20 By deleting the clause and substituting —

“20. Section 45G amended (right to bring civil proceedings to recover financial loss)

After section 45G(1) —

Add

“(1A) Despite subsection (1), if a person who has sustained financial loss that is attributable to the failure of another person to perform a duty, or to comply with a requirement or standard, imposed on that other person by or under Part IVA, the Authority may allow the person to bring proceedings before the Authority to recover from that other person the amount of that loss as damages and make awards as if the proceedings were brought in a court of competent jurisdiction.”.”.

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

Committee Stage

Amendments to be moved by the Honourable KAM Nai-wai, MH

<u>Clause</u>	<u>Amendment Proposed</u>
20	(a) By renumbering the clause as clause 20(1).
	(b) By adding — “(2) After section 45G(1) — Add “(1A) A person who has sustained financial loss that is attributable to the failure of another person to perform a duty, or to comply with a requirement or standard, imposed on that other person by or under Part IVA is entitled, by proceedings brought in a court of competent jurisdiction, to recover from that other person the amount of that loss as damages.”.”.