

**For information**

**Legislative Council Panel on Financial Affairs**

**Enhanced Regulation of Mandatory Provident Fund Intermediaries –  
Consultation Conclusions and Detailed Proposals**

**Purpose**

This paper briefs Members on the consultation feedback and conclusions on the legislative proposals to enhance the regulation of Mandatory Provident Fund (“MPF”) intermediaries, establish an electronic platform (“E-platform”) to facilitate transfer of MPF benefits by scheme members between different approved trustees, and enhance the deterrent against default contributions by employers, and sets out the detailed proposals in respect of the key areas of focus identified in the consultation feedback.

**Background**

2. The Administration and the Mandatory Provident Fund Schemes Authority (“MPFA”) jointly issued a Panel Paper (CB(1)1748/10-11(03)) entitled “Enhanced Regulation of Mandatory Provident Fund Intermediaries” (“Consultation Paper”) (**Annex A**) on 28 March 2011 to commence a consultation exercise on the above-mentioned legislative proposals. To recapitulate, currently, the MPFA operates an administrative registration regime for MPF intermediaries and relies, as far as practicable, on the regulatory efforts made by the Hong Kong Monetary Authority (“HKMA”), the Insurance Authority (“IA”) and the Securities and Futures Commission (“SFC”) (thereunder collectively referred to as the frontline regulators (“FRs”)) for the supervision of MPF intermediaries who are their own regulatees under the Banking Ordinance (Cap. 155), the Insurance Companies Ordinance (Cap. 41) and the Securities and Futures Ordinance (Cap. 571) (“SFO”) respectively. With rising public expectation towards investor protection and in anticipation of more proactive sales and marketing activities targeting at over 2.5 million MPF scheme members upon the implementation of the Employee Choice Arrangement (“ECA”), the Administration agrees with the MPFA that it would be prudent to introduce a statutory prohibition against conduct of regulated MPF sales and marketing activities other than by registered MPF intermediaries and put in place a statutory framework for the regulation of registered MPF intermediaries, which is modelled on the existing administrative registration regime, before implementation of the ECA to better protect scheme members.

3. Prior to the release of the Consultation Paper, the MPFA has conducted soft consultation with the industry and conducted six briefing sessions for industry bodies. Industry feedback has been incorporated into the legislative proposals set out in the Consultation Paper as appropriate. After release of the Consultation Paper and the meeting of the Legislative Council (“LegCo”) Panel on Financial Affairs on 4 April 2011 to consult Members on the proposals, we have proactively invited further comments from the industry and stakeholder groups, reached out to the Consumer Council, and increased publicity of the consultation exercise through the District Offices. Three additional briefing sessions have been arranged. The Consultation Paper was posted on the websites of the Financial Services and the Treasury Bureau and the MPFA respectively inviting public comments.

### **Outcome of Consultation**

4. As at 28 July 2011, we have received a total of 13 written submissions from various organizations. The list of respondents is at **Annex B**. The consultation findings together with the response of the Administration and the MPFA are set out in the consultation conclusions at **Annex C**.

5. We note that there is general support for enhancing the regulation of MPF intermediaries before implementation of the ECA and the majority of respondents did not indicate disagreement with the proposal that the statutory regulatory regime be modelled on the existing administrative regulatory arrangements. We also received comments on how to ensure regulatory consistency and level playing field under the proposed regulatory model, the scope of regulated activities that would require MPF registration, the conduct requirements to be imposed on registered MPF intermediaries and the transitional arrangements for the pre-existing MPF intermediaries. Those written submissions which commented on the proposals to establish an E-platform and to enhance the deterrent against default contributions by employers are supportive of these proposals. In response to these comments, we set out in paragraphs 8 to 23 below the relevant detailed proposals and also highlight the modifications we would propose to enhance the proposed statutory regulatory regime for MPF intermediaries.

### **Regulatory Approach for MPF Intermediaries**

6. Under the existing administrative arrangement, the MPFA serves as the registration authority for MPF intermediaries and sets the relevant standards,

while frontline regulatory efforts (including inspection, investigation and disciplinary action) are generally carried out, where practicable, by the FRs for MPF intermediaries who are their regulatees in the respective sectors. We have proposed in the Consultation Paper the continuation of the existing regulatory approach taking into account the general industry profile of MPF intermediaries carrying out MPF sales and marketing activities as incidental to their core business in banking, insurance or securities, as the case may be. The continuation of the existing regulatory approach would minimize disruption to the existing regulatory arrangements which MPF intermediaries are familiar with, make more efficient use of regulatory resources and facilitate early implementation of the ECA.

7. The majority of respondents did not indicate disagreement with the proposal that the statutory regulatory regime be modelled on the existing administrative arrangements, while they stressed the importance of ensuring regulatory consistency and a level playing field under such regulatory model. One respondent proposed the model of direct regulation of MPF intermediaries by the MPFA.

#### Proposed measures to ensure regulatory consistency and level playing field

8. We have proposed in the Consultation Paper various measures to ensure regulatory consistency and level playing field. These include -

- (a) the MPFA will be the authority to register MPF intermediaries;
- (b) the MPFA will be the sole standard-setter and be empowered to make rules, after consultation with FRs, on statutory conduct requirements. It will also be empowered to issue codes/guidelines for the purpose of giving guidance on compliance with the statutory conduct requirements;
- (c) the legislation will delineate clearly the respective powers and functions of the MPFA and the FRs, and arrangements will be agreed between the MPFA and the FRs on this basis through, for example, the signing of a Memorandum of Understanding among them;
- (d) the legislation will provide that, in case of misconduct, the MPFA will be the authority to make disciplinary decisions on suspension or revocation of registration of an MPF intermediary under specified circumstances, taking into account the investigation results of the FRs, whereas the FRs will be empowered to issue reprimands or impose

finer;

- (e) all appeals against registration and disciplinary decisions with regard to MPF intermediaries will be handled by a single independent appellate body;
- (f) the MPFA will establish a regular liaison mechanism with participation of all FRs to enhance communication and exchange of views on the making of codes, guidelines and rules on conduct requirements, enforcement principles and other issues of mutual concern over the regulation of MPF intermediaries; and
- (g) an independent Process Review Panel will be established to review the enforcement procedures of MPFA and FRs to ensure, among other things, consistent internal process on MPF enforcement among the FRs and within the MPFA.

9. In addition, to facilitate the handling of complaints of MPF scheme members, the MPFA will be the central point for receiving all complaints on MPF sales and marketing activities and will conduct initial processing of them. It will assign the complaints for follow-up by the relevant FRs as appropriate and maintain an oversight of the outcome.

#### Enhanced proposals

10. Taking into account the views expressed by respondents, we propose to strengthen the role of the MPFA as the lead regulator of all MPF intermediaries. In particular, on account of the comments raised by some respondents about consistency in enforcement and the perceived complications with splitting power to impose disciplinary sanctions between the MPFA (for suspension and revocation of registration) and the FRs (for reprimand and fines), we propose to modify the proposed measure at paragraph 8(d) above such that disciplinary powers would be vested with the MPFA (including reprimand, fines, suspension and revocation of registration and prohibition from applying for registration<sup>1</sup>) with active participation of FRs in the disciplinary process. In actual operation, the MPFA will be assisted by the HKMA, IA and SFC, which, in recognition of their distinct role as the primary and lead regulator for their own sectors, will perform the role of the FRs for MPF intermediaries from their own sectors. Before making any disciplinary decision, the MPFA will take into account the investigation results and recommendations of the FRs and institute process for

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<sup>1</sup> Please refer to the proposal in paragraph 11.

ensuring procedural fairness for the intermediaries concerned, including the opportunity of being heard before imposing any disciplinary action. We believe this modified proposal will further ensure fairness and consistency in disciplinary decisions and create a level playing field.

11. To enable the MPFA to take disciplinary sanctions proportionate to the seriousness of the relevant misconduct and in the interest of scheme members and the MPF industry, and with reference to the existing arrangement for the SFC under the SFO (section 201), we propose that the MPFA should be empowered to impose a prohibition against application by a person, whose registration as an MPF intermediary has been revoked, for re-registration for a specified period in justified cases. We would also examine the merits of empowering the MPFA to negotiate an alternative arrangement with the MPF intermediaries concerned and take action in lieu of, or in addition to, the disciplinary sanctions where appropriate having regard to the public interest or the interest of maintaining public confidence in the operation of the MPF schemes. Given their roles, the FRs would take part in this process with the MPFA.

12. We have proposed in the Consultation Paper to allow the MPFA to allocate MPF intermediaries to FRs according to a fixed set of criteria to be specified in legislation. During consultation, we have received a comment that this proposed mechanism may, in odd cases, result in a principal intermediary not being subject to frontline supervision of the regulator of its core business. We propose that in such circumstances, which should be rare, the MPFA should be empowered to assign the principal intermediary to a FR having regard to the core business of the intermediary concerned.

### **Scope of the Regulated Activities of MPF Intermediaries**

13. We have proposed in the Consultation Paper that the regulated activities should cover “invite or induce, or attempt to invite or induce, another person to make an MPF decision as defined; or give advice to another person for assisting that other person to make such decision”. Any unregistered person who engages in such regulated activities will be committing a criminal offence. Industry members have shown keen interest in the coverage of the regulated activities and made enquires on whether certain acts would fall within the above definition or would be exempted from the requirement for regulation under the new regime.

14. Our legislative intent is to regulate MPF sales and marketing activities carried out in the course of business or employment or for reward.

Administrative functions will not be subject to the proposed regulatory regime. The proposed legislation will provide exemptions for those activities wholly incidental to a core business which is already subject to an existing regulatory regime. These will include advisory service given by certain professionals (e.g. lawyers and accountants), which is an existing class of exemption under the SFO. The details will be set out clearly in the legislative provisions. The MPFA will seek to facilitate compliance by the industry by say, promulgating guidelines and frequently-asked-questions to provide practical guidance to MPF intermediaries.

### **Conduct Requirements for MPF Intermediaries**

15. In preparation for the implementation of the ECA and the statutory regulatory regime for MPF intermediaries, the MPFA is preparing a new code on conduct standards. As in the case of other regulatory regimes in the financial sector, the proposed legislation will set out the core principles and areas which MPF intermediaries are required to observe in conducting the sales and marketing of MPF products. The MPFA will be empowered to issue a Code of Conduct (“Code”) under the proposed legislation, providing guidance to MPF intermediaries about compliance with the core principles that should be adopted in conducting MPF sales and marketing activities. The MPFA may, after consultation with the FRs, include additional requirements that are applicable under specific operating environments.

16. The MPFA will take into account the comments received in preparing the Code in consultation with the FRs. It plans to release a draft of the Code in Q4 2011 for further consultation with the industry.

### **Transitional Arrangements for Pre-existing MPF Intermediaries**

17. We have proposed in the Consultation Paper a transitional period of two years for pre-existing MPF intermediaries to minimize any potential impact on them. Most respondents welcome the proposal. A few respondents suggested that the Government and the MPFA should publish details on the arrangement as soon as possible.

18. To elaborate on this proposal, all MPF intermediaries already validly registered with the MPFA before commencement of the new regulatory regime will be automatically transferred to the new regime. If they wish to continue to carry on MPF sales and marketing activities after the transitional period, they will need to complete application procedures with the MPFA before the expiry

of the transition period. The MPFA envisages that according to the mechanism to be set out in the legislation, in general, the pre-existing intermediaries will be assigned to the same FR as under the current administrative regime.

19. For protection of scheme members' interests, during the transitional period, the pre-existing MPF intermediaries will be, as will be the case for the newly registered MPF intermediaries, subject to the statutory conduct requirements, such that non-compliance may result in disciplinary sanctions. The MPFA and the FRs may exercise their inspection, investigation and disciplinary powers under the legislation to ensure compliance by all MPF intermediaries. For better management of applications, the MPFA will encourage intermediaries to apply early during the transitional period and liaise with the principal intermediaries on the timing of their application and those by their sponsored intermediaries such that the applications can be more evenly staggered.

20. Such transition for pre-existing intermediaries will be subject to specified conditions e.g. they will have to continue to fulfill the on-going Continuing Professional Development requirements and comply with the conduct requirements and relevant obligations as provided in the legislation during the transitional period.

### **Establishment of an E-platform for Transfer of MPF Benefits**

21. In the Consultation Paper, we have put forward legislative proposals for the MPFA to establish and operate an electronic transfer system (i.e. the E-platform) and mandate the use of the E-platform by trustees in processing scheme members' election for transfer of accrued benefits in light of the possible increase in the number of elections upon the implementation of ECA. The MPFA will bear the costs of developing and establishing the E-platform. The proposed legislation will provide for the charging of a fee to be payable by the relevant trustees to the MPFA. The fee will be determined with reference to the costs likely to be incurred by the MPFA in the transfer process. The legislation will also provide for the charging of other fees on relevant trustees to recover the costs incurred by the MPFA for payment to any third party in relation to the operation of the system.

22. To elaborate, we propose that the MPFA be empowered to establish and designate an electronic system as the E-platform for the transfer of accrued benefits. The MPFA will also be empowered to –

- (a) prescribe, by subsidiary legislation subject to vetting by LegCo, the

terms and conditions of use of a designated electronic system, including mandating trustees to use the designated electronic system when processing relevant transfers;

- (b) suspend the use of E-platform should circumstances so warrant, e.g. in case of a major system failure;
- (c) require persons involved in the use of the E-platform for processing transfer, to whom the Mandatory Provident Fund Schemes Ordinance (“MPFSO”) (Cap. 485) applies, to take such action as the MPFA considers necessary for the purpose of ensuring the proper administration and operation of the electronic system;
- (d) collect fees from the relevant trustees for the use of E-platform for processing transfer elections. The MPFA will initially provide the E-platform service at no cost to the industry and will continue to liaise with trustees on when and how much to charge per transaction after implementation;
- (e) collect other fees from the relevant trustees to recover costs paid by the MPFA to any relevant third party in relation to the operation of the system on a cost recovery basis; and
- (f) bring proceedings in a court of competent jurisdiction for the recovery of any unpaid fees.

### **Enhancement of Deterrent against Default Contributions by Employers**

23. The Consultation Paper has also set out in broad terms the legislative proposals to enhance deterrent against default contributions by employers. The following sets out further details of the proposals–

- (a) subject employers who fail to rectify their failure to make MPF mandatory contributions to their employees to a daily fine (say, \$500). Currently, under section 43B of the MPFSO, an employer commits an offence if he failed to make MPF mandatory contributions for his employees. This legislative proposal will subject the employer to a continuing offence until he has settled all outstanding default contributions. This will provide incentive for employers to settle their outstanding default contributions as soon as possible and to promote compliance; and



- (b) create a new offence for the failure by employers to comply with a court order, made in civil proceedings for the payment of arrears of MPF mandatory contributions and contribution surcharges. Currently, where the MPFA has made a civil claim on behalf of an employee against his employer for default contributions, the employer is required to pay to the MPFA the outstanding MPF mandatory contributions and contribution surcharge in accordance with a court judgment. To deter employers from non-payment even after a court judgment, we propose to make such non-payment a criminal offence. It is relevant to note that a similar offence was introduced in 2010 to the Employment Ordinance to criminalize the non-payment by employers of certain wages and entitlements awarded by the Labour Tribunal or the Minor Employment Claims Adjudication Board.

The above legislative proposals will enhance the protection of scheme members' interests.

### **Next steps**

24. The Administration and the MPFA are preparing the Bill taking into account the comments received. We will continue to listen to views from the industry and stakeholders in the process. We aim to introduce the Bill into LegCo in Q4 this year with a view to completing the legislative process within the current LegCo term such that the ECA may commence in the second half of 2012.

**Financial Services and the Treasury Bureau**  
**Mandatory Provident Fund Schemes Authority**  
**29 July 2011**

For discussion on  
4 April 2011

## **Legislative Council Panel on Financial Affairs Enhanced Regulation of Mandatory Provident Fund Intermediaries**

### **INTRODUCTION**

This paper sets out legislative proposals to (a) enhance the regulation of the sales and marketing activities of Mandatory Provident Fund (“MPF”) intermediaries; (b) provide for the establishment and operation of a platform by the Mandatory Provident Fund Schemes Authority (“MPFA”) to ensure accuracy and enhance efficiency of transfers of benefits among approved trustees through electronic means (“E-platform”); and (c) enhance the deterrent against default contributions by employers.

### **BACKGROUND**

2. Since completion of the legislative amendment exercise to implement the Employee Choice Arrangement (“ECA”), through which more than 2.5 million MPF scheme members may be subject to more aggressive and direct sales activities of MPF intermediaries, MPFA has been making preparation for its implementation, including –

- (a) ensuring the various systems of MPFA and trustees can handle the implementation of the ECA;
- (b) stepping up MPF investment education to assist employees to make informed choices that suit their own needs; and
- (c) strengthening MPF intermediaries regulation and training to better protect scheme members’ interest.

With rising public expectation towards investor protection in recent years, MPFA has reviewed the existing regulatory regime of MPF intermediaries and recommended that the existing administrative arrangement be

strengthened by statute. This is to ensure the availability of effective deterrent against MPF sales and marketing activities by unregistered persons, and of a range of proportionate disciplinary tools to the Hong Kong Monetary Authority (“HKMA”), the Insurance Authority (“IA”) and the Securities and Futures Commission (“SFC”) (collectively referred to as Frontline Regulators (“FRs”)) to promote compliance with the conduct requirements governing the sales and marketing of MPF products. The Government agrees with MPFA that it would be prudent to establish a statutory regulatory framework for MPF intermediaries before the implementation of the ECA to better protect more than 2.5 million scheme members.

3. In the context of this legislative exercise, in anticipation of substantial increase in the volume of transfers of benefits after implementation of the ECA, MPFA also proposes to introduce an E-platform by statute to facilitate trustees to exchange data for more efficient and effective transfer of benefits and to ensure data accuracy. Opportunity is also taken to introduce legislative amendments to enhance the deterrent against default contributions by employers as proposed by MPFA.

## **REGULATION OF MPF INTERMEDIARIES**

### **An Overview**

4. At present, MPFA implements an administrative regulatory regime for MPF intermediaries through its Code of Conduct for MPF Intermediaries. Under this regime, MPFA is the standard-setter and the registration authority. It relies, as far as practicable, on the regulatory efforts made by HKMA, IA and SFC for the supervision of registered MPF intermediaries who are also their own regulatees under the Banking Ordinance, the Insurance Companies Ordinance and the Securities and Futures Ordinance. There has been liaison mechanism between MPFA and FRs since inception of the MPF System in 2000.

5. As at end February 2011, there were 475 registered MPF corporate intermediaries and 28,635 registered MPF individual intermediaries. As a pre-requisite for registration with MPFA, they have to be a regulatee in the banking sector, insurance sector and / or the securities sector. Of them, about 28% have their principal line of business in banking, 70% in insurance and 2% in securities. Noting that in most if not all cases, MPF activities are incidental to the main lines of business of MPF intermediaries, the existing regulatory arrangements provide for efficient use of regulatory resources and

experience. Based on detailed discussions with MPFA and the FRs, the proposed statutory regulatory regime is modelled on the existing administrative arrangements, with modifications and enhancement as appropriate. This approach would minimize disruption to the existing regulatory arrangements and facilitate early implementation of the ECA.

## **Legislative Proposals**

6. The legislation will cover the major aspects of the MPF intermediaries regulatory regime that are essential to protect scheme members' interest, including, among others -

- (a) prohibitions against engaging in regulated MPF sales and marketing activities other than by registered MPF intermediaries;
- (b) registration of MPF intermediaries;
- (c) regulatory scope of FRs ;
- (d) conduct requirements for MPF intermediaries and relevant guidelines;
- (e) supervisory and disciplinary powers of MPFA and FRs;
- (f) appeals mechanism; and
- (g) transitional arrangements for pre-existing registered MPF intermediaries.

Detailed proposals are set out at [Annex](#).

## **ESTABLISHMENT OF AN E-PLATFORM FOR TRANSFER OF MPF BENEFITS**

### **Need for an E-platform**

7. MPFA anticipates that upon the implementation of the ECA, there will be a substantial increase in the number of elections by scheme members for transfer of benefits among MPF schemes. Having consulted the trustees, and with the aim to ensure accuracy of transfers, shorten the processing time and minimize the costs associated with transfers, MPFA proposes to establish and operate an electronic transfer system (i.e. E-platform). This is to facilitate the trustees in processing scheme members' elections for transfer of benefits through electronic means.

## **Legislative Proposals**

8. To ensure effectiveness and efficiency of the E-platform, MPFA proposes that -

- (a) all trustees should be required to participate in the system subject to certain exemptions specified by MPFA, for example, a trustee who does not administer any MPF schemes and hence is not involved in the processing of elections for transfer of benefits; and
- (b) all transfers of benefits made under the ECA between MPF schemes administered by different trustees should be required to be processed by the E-platform.

9. MPFA will bear the costs of developing and establishing the E-platform. The legislation should provide for a fee to be payable by the relevant trustees to MPFA, at a level determined with reference to the costs likely to be incurred and the number of elections likely to be processed in the daily operation of the system. MPFA proposes to recover from the trustees on a cost recovery basis any fees paid by MPFA to any third party in relation to the operation of the system. MPFA also proposes that the Mandatory Provident Fund Schemes Ordinance be amended to provide for the procedural requirements and other details necessary for the smooth operation of the E-platform.

## **ENHANCEMENT OF DETERRENT AGAINST DEFAULT CONTRIBUTIONS BY EMPLOYERS**

### **Legislative Proposals**

10. In addition, MPFA would like to take the opportunity to further enhance deterrent against employers' default contributions. Key proposals include: making it a continuous offence for failure of employers to rectify non-payment of mandatory contributions after contribution day; and creating an offence against failure of employers to pay any sum awarded by a tribunal or court, similar to the arrangement introduced under the Employment (Amendment) Ordinance 2010. We will also consider including other miscellaneous technical amendments in this legislative exercise.

## **NEXT STEPS**

11. In conjunction with MPFA, we have been engaging key industry bodies and relevant stakeholders, and will invite comments on the legislative proposals in the coming month. We also welcome views from the Panel and members of the public on the proposals.

12. We will take into account the views and comments received in preparing the Bill. Our target is to introduce the Bill into the Legislative Council within this year.

**Financial Services and the Treasury Bureau**  
**Mandatory Provident Fund Schemes Authority**  
**28 March 2011**

## Detailed legislative proposals for the regulation of intermediaries of Mandatory Provident Fund (“MPF”) activities

### Key elements of the legislative proposals

#### I. Prohibitions against engaging in regulated MPF sales and marketing activities other than by registered MPF intermediaries

1. The legislation will stipulate that no person shall, in the course of carrying on a business or in the course of his employment, engage in any regulated MPF sales and marketing activities or holding himself out as doing so unless the person is –

- (a) registered with the Mandatory Provident Fund Schemes Authority (“MPFA”) and the registration is not suspended;
- (b) in the case of an intermediary registered to perform for or on behalf of a principal intermediary (“PI”), engaging in the activities in such capacity; or
- (c) exempted from registration as an MPF intermediary (c.f. similar exemption provision in Securities and Futures Ordinance (“SFO”)) – e.g. specified categories of professional sectors such as lawyers, accountants, trust companies who give advice to their clients on MPF matters incidental to their main business;

2. A person commits an offence if he, without reasonable excuse, contravenes the restrictions.

3. A person is required to be registered with MPFA as a MPF intermediary<sup>1</sup> before he can engage in MPF sales and marketing activities that may influence a prospective/existing participant of an MPF scheme in making a decision that affects the latter’s benefits in an MPF scheme. Similar to the SFO, the proposed legislation will stipulate that registration is required for a person who engages in any of the following sales and marketing activities (i.e. “regulated MPF sales and marketing activity”) in the course of carrying on a business –

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<sup>1</sup> An intermediary means a principal intermediary or a sponsored intermediary, as the case may be.

- (a) inviting or inducing, or attempting to invite or induce, another person to make a specified MPF decision; or
- (b) giving advice to another person concerning a specified MPF decision.

4. To enhance certainty and clarity, the proposed legislation will define clearly what constitute “specified MPF decision” and “giving advice”. Please refer to **Appendix A**.

## II. Registration of MPF intermediaries

5. Similar to the existing administrative regulatory regime, there will be two classes of MPF intermediaries viz. PI and sponsored intermediary (“SI”). The legislation will provide that MPFA may, upon receipt of an application and payment of the prescribed fee, –

- (a) register the following persons as a PI, permitted to engage in regulated MPF sales and marketing activities -
  - (i) an authorized financial institution registered under the SFO to deal in or advise on securities;
  - (ii) a corporation licensed under the SFO to carry on dealing in securities or advising on securities;
  - (iii) an insurer authorized under the Insurance Companies Ordinance (“ICO”) to carry on long term insurance business; and
  - (iv) an insurance broker eligible to engage in long term insurance business under the ICO (“authorized long term insurance broker”); and
- (b) register the following persons as a SI sponsored by the afore-mentioned PI to carry out regulated MPF sales and marketing activities on their behalf (provided the individual also fulfills other relevant requirements including passing the relevant MPF intermediaries examination / meeting the continued professional development requirement, and not being disciplined



by the relevant regulators (see paragraph 6 below)) –

- (i) an individual licensed under the SFO to carry out dealing in securities or advising on securities;
- (ii) an individual registered under the Banking Ordinance to carry out dealing in securities or advising on securities;
- (iii) an appointed insurance agent eligible to engage in long term business in accordance with the ICO (“appointed long term insurance agent”), including the responsible officer / technical representative of an appointed long term insurance agent; and
- (iv) a chief executive / technical representative of an authorized long term insurance broker.

6. To maintain reasonable professional and conduct standards of an intermediary, the legislation will specify that a person is not eligible for registration as a PI or SI if he –

- (a) has within one year prior to the application had any of the capacities specified in paragraph 5 (a) or (b) revoked on disciplinary grounds; or
- (b) has within one year prior to the application had his registration as MPF intermediary under the proposed legislation revoked (see paragraph 13 below).

7. The proposal will empower MPFA to impose conditions on approving a registration application, and amend / revoke the conditions or impose new conditions. MPFA will maintain a list of registered MPF intermediaries for public inspection. Please see **Appendix B**.

### III. Regulatory scope of FRs

8. Each registered MPF intermediary is to be subject to daily supervision by Hong Kong Monetary Authority (“HKMA”), Insurance Authority (“IA”) or Securities and Futures Commission (“SFC”) (collectively referred as frontline regulators (“FRs”)) in accordance with the following criteria which will be set out in legislation -

- (a) HKMA to be the FR of all PIs who are its regulatees, including those who have dual capacities and are concurrently also regulatees in the insurance and / or securities sectors;
- (b) IA to be the FR of the other PIs who are its regulatees, including those who are concurrently also regulatees in the securities sector; and
- (c) SFC to be the FR of the remaining PIs who are regulatees of SFC only.

9. SI will carry out MPF intermediaries activities on behalf of his PI, as such the same FR will regulate the PI and the SI<sup>2</sup>.

#### IV. Conduct requirements for MPF intermediaries and MPF guidelines

10. Taking reference from the existing conduct standards stipulated in the Code of Conduct for MPF Intermediaries, the legislation will set out broad conduct standards with which MPF intermediaries are obliged to comply. There will be requirements on competence and integrity. In addition, PIs will be required to have a responsible officer available to supervise the conduct of regulated MPF sales and marketing activities carried out by SIs. PIs will also be required to establish and maintain proper controls and procedures for compliance with the legislation by themselves and by any SI, to provide their responsible officer with sufficient resources and support to effectively supervise regulated MPF sales and marketing activities, and to be responsible for ensuring the maintenance of appropriate standards of conduct and adherence to proper procedures by their SIs. Please refer to Appendix C for the conduct requirements proposed to be stipulated in legislation.

11. MPFA will be empowered to make rules, and/or issue codes/guidelines in consultation with FRs for the purpose of giving guidance on compliance with the statutory conduct requirements. Non-compliance with the statutory conduct requirements will render an intermediary liable to disciplinary sanction. Non-compliance with codes/guidelines which are administrative in nature will not, in itself, attract any sanction but will be of

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<sup>2</sup> In case where the above allocation methodology results in a PI being allocated to a FR which supervises only a small proportion of the PI's business activities, MPFA should be given discretionary power to re-allocate the PI to a FR which will supervise the main business activities of the PI concerned.

evidential value in the determination of any breach of the conduct requirements.

#### V. Supervisory and disciplinary powers of MPFA and FRs

12. MPFA and FRs should be given requisite powers to discharge their statutory functions. It is proposed that they be given similar supervision and investigation powers to those provided for SFC, and subject to similar safeguards, as under the SFO. On disciplinary sanctions, MPFA and the FRs should have available a range of disciplinary sanctions to deal with misconduct of varying nature and severity. In this regard, it is proposed that FRs be empowered to issue a verbal or written reprimand or impose fines for a registered intermediary who has failed to comply with the standards for MPF sales and marketing, and that MPFA be empowered to suspend or revoke the registration of an intermediary under specified circumstances, e.g. on the recommendation of a FR on the ground that a registered intermediary has failed to comply with the standards for MPF sales and marketing, or is in breach of any condition imposed by MPFA in relation to registration as an intermediary.

13. Before exercising any such disciplinary power, MPFA / FR shall inform the person concerned in writing of its intention and give the person a reasonable opportunity of being heard.

#### VI. Appeals mechanism

14. There is an appeal board under section 35 of the Mandatory Provident Fund Schemes Ordinance (“MPFSO”) for dealing with appeals against certain regulatory decisions of MPFA under the MPFSO. The same mechanism will be used to handle appeals against MPFA’s decisions on registration and suspension / revocation of registration, as well as disciplinary decisions of FRs made pursuant to the powers under the proposed legislation.

15. To further enhance consistency among regulators in enforcement, we propose to put in place the following additional arrangements -

- (a) a forum for regular communication among MPFA and FRs on the setting of standards, codes and guidelines, enforcement principles, and other issues of mutual concern over the supervision; and

- (b) an independent Process Review Panel to be appointed by the Chief Executive to help maintain parity / consistency of enforcement procedures and sanctions among the FRs.

## VII. Transitional Arrangements for Pre-existing MPF Intermediaries

16. Since MPFA already has relevant information on the eligibility of existing registered MPF intermediaries, and in order not to cause undue burden on registered intermediaries by requiring them to submit fresh applications when the statutory registration regime commence, we propose to include in the legislation a transitional arrangement to allow all pre-existing registered MPF intermediaries to conduct regulated MPF sales and marketing activities for a period of two years upon commencement of the new statutory registration regime.

**Proposed definition of “Specified MPF decisions” and  
“Giving advice”, and Exemptions**

**Specified MPF Decisions** are –

- (a) a decision by a prospective/existing participant of an MPF scheme as to whether –
  - (i) to participate in a specific MPF scheme;
  - (ii) to transfer benefits –
    - (A) to an MPF scheme;
    - (B) from an MPF scheme; or
    - (C) between MPF funds within an MPF scheme;
  - (iii) to withdraw accrued benefits from an MPF scheme; or
  - (iv) to make voluntary contributions;
- (b) in respect of any of the acts mentioned in paragraph (a)(i) to (iv) above, a decision as to –
  - (i) when to perform the act; or
  - (ii) how much money or benefits should be involved; or
- (c) any other decision by a prospective/existing participant of an MPF scheme which may affect or alter that person’s accrued benefits.

**Giving Advice** to another person concerning a specified MPF decision means giving advice the purpose of which is to facilitate the recipient to make a specified MPF decision, and covers comparing, recommending, or expressing an opinion on any MPF scheme or MPF fund with a view to influencing a prospective/existing participant in making a specified MPF decision, including any such comparison, recommendation or opinion made in an analysis or report the purpose of which is to facilitate the recipient to make a specified MPF decision.

**Exemptions** from the scope of Regulated MPF sales and marketing activities include -

- (a) the issuance of an advertisement or document (e.g. offering document, fund fact sheet) authorized by the Securities and Futures Commission under section 105 of the Securities and Futures Ordinance;
- (b) a legal practitioner giving advice incidental to his practice as a legal practitioner within the meaning of the Legal Practitioners Ordinance (Cap 159);
- (c) a certified public accountant giving advice incidental to his practice as a certified public accountant in a practice unit within the meaning of the Professional Accountants Ordinance (Cap 50); or
- (d) a trust company registered under Part VIII of the Trustee Ordinance (Cap 29) giving advice incidental to the discharge of its duty.

**Proposed Particulars to be provided  
in the MPF Intermediaries Register**

MPFA will establish and maintain a register of MPF intermediaries (i.e. “MPF Intermediaries Register”), containing in relation to each registration of an intermediary -

- (a) his name, business address and MPF registration number;
- (b) any conditions imposed by MPFA in relation to the registration;
- (c) if a sponsored intermediary (“SI”), the name of his sponsoring principal intermediary (“PI”);
- (d) if a PI, the name and business address of each of its responsible officers;
- (e) the Frontline Regulator (“FR”) of the intermediary;
- (f) a record of any public MPF-related disciplinary actions taken against him by MPFA/FRs within a period of 5 years;
- (g) details of any notification received from a frontline regulator of disciplinary proceedings taken against an MPF intermediary or responsible officer under the frontline regulator’s own regulatory regime, including any suspension or revocation of the registration / licence / authorization of an MPF intermediary in his capacity as a regulatee of that frontline regulator; and
- (h) such other particulars in relation to the registration of an intermediary as the MPFA considers appropriate.

MPFA shall make available the register to the public in the form of an on-line record and for inspection at MPFA’s offices during normal business hours.

**Proposed Conduct Requirements**

The legislation will reflect where appropriate the conduct requirements under the existing Code of Conduct for MPF Intermediaries. A registered person will be expected, when undertaking any regulated MPF sales and marketing activity to -

- (a) act honestly, fairly, in good faith and with integrity at all times;
- (b) act with due skill, care and diligence;
- (c) give advice only on those matters he is competent to advise on or in respect of which he has obtained advice from a superior qualified to advise on that matter;
- (d) employ effectively the resources and procedures which are needed for the proper performance of his business activities;
- (e) when advising clients on the selection of MPF schemes or funds, objectively take into consideration his clients' interests, where practicable, his clients' financial situation, investment experience, risk preferences and investment objectives;
- (f) make adequate disclosure of relevant material information in his dealings with his clients;
- (g) avoid conflicts of interest as far as possible, and when they cannot be avoided, disclose such conflicts to his clients and ensure that his clients are fairly treated;
- (h) ensure that client assets are promptly and properly accounted for;
- (i) in the case of a PI, establish and maintain proper controls and procedures so as to enable the PI and any SI to meet their obligations under the legislation;
- (j) in the case of a PI, have a responsible officer available at all times to supervise regulated MPF sales and marketing activities, and provide the responsible officer with sufficient resources and



support to effectively conduct that supervision;

- (k) in the case of a SI, not act as an intermediary in the sale and marketing of MPF schemes except as an employee, agent or representative of his sponsoring PI(s); and
- (l) avoid conduct likely to affect adversely public confidence in the operation of MPF schemes or the retirement schemes industry generally, or to be prejudicial to the public interest generally.

**List of bodies which submitted written submission on the legislative proposals on Enhanced Regulation of MPF Intermediaries**

1. The Consumer Council
2. The Federation of Hong Kong and Kowloon Labour Unions
3. The General Agents and Managers Association of Hong Kong
4. The Hong Kong Association of Banks
5. The Hong Kong Confederation of Insurance Brokers
6. The Hong Kong Federation of Insurers
7. The Hong Kong Investment Funds Association
8. The Hong Kong Trustees' Association
9. The Institute of Financial Planners of Hong Kong
10. The Insurance Agents Registration Board
11. The Law Society of Hong Kong
12. The Life Underwriters Association of Hong Kong
13. The Professional Insurance Brokers Association

**Summary of Major Comments Received<sup>1</sup> and the Response of  
the Administration and the Mandatory Provident Fund Schemes Authority (“MPFA”)**

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
Proposed establishment of a statutory regulatory regime for MPF intermediaries before implementation of the Employee Choice Arrangement (“ECA”)	<ul style="list-style-type: none"><li>■ There is general support for the proposal to establish a statutory regulatory regime for Mandatory Provident Fund (“MPF”) intermediaries before implementation of the ECA for better protection of scheme members’ interest. One respondent considers that the ECA may commence ahead of the new intermediary regulatory arrangement.</li></ul>	We welcome the general support for the proposal to ensure better protection of scheme members’ interest before implementation of the ECA.
Proposed regulatory approach	<ul style="list-style-type: none"><li>■ The majority of respondents did not indicate disagreement with the proposal that the statutory regulatory regime be modelled on the existing administrative arrangements, while they stressed the</li></ul>	We note there is no disagreement with the proposal that the statutory regulatory regime be modelled on the existing administrative regulatory arrangements  The continuation of the existing approach reflects the

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<sup>1</sup> We are processing the 13<sup>th</sup> submission received on 26 July 2011 and our response has therefore not been reflected in this document.

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
	<p>importance of ensuring regulatory consistency and a level playing field under such regulatory model. One respondent proposed the model of direct regulation of MPF intermediaries by the MPFA.</p>	<p>general industry profile of MPF intermediaries carrying out MPF sales and marketing activities as incidental to their core business in banking, insurance or securities, as the case may be. The continuation of the existing regulatory approach would minimize disruption to the existing regulatory arrangements which MPF intermediaries are familiar with, make more efficient use of regulatory resources and facilitate early implementation of the Employee Choice Arrangement (“ECA”). We have taken into account the views expressed by respondents on the need to ensure regulatory consistency and level playing field and modified the proposals to address their concerns, in particular to strengthen the role of the MPFA as the lead regulator of MPF intermediaries. We have proposed in the Consultation Paper various measures to ensure regulatory consistency and level playing field. To recap, these measures are -</p> <ul style="list-style-type: none"> <li>(a) the MPFA will be the authority to register MPF intermediaries;</li> <li>(b) the MPFA will be the sole standard-setter and be</li> </ul>

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
		<p>empowered to make rules, after consultation with FRs, on statutory conduct requirements. It will also be empowered to issue codes/guidelines for the purpose of giving guidance on compliance with the statutory conduct requirements;</p> <p>(c) the legislation will delineate clearly the respective powers and functions of the MPFA and the FRs, and arrangements will be agreed between the MPFA and the FRs on this basis through, for example, the signing of a Memorandum of Understanding among them;</p> <p>(d) the legislation will provide that, in case of misconduct, the MPFA will be the authority to make disciplinary decisions on suspension or revocation of registration of an MPF intermediary under specified circumstances, taking into account the investigation results of the FRs, whereas the FRs will be empowered to issue reprimands or impose fines;</p> <p>(e) all appeals against registration and disciplinary decisions with regard to MPF intermediaries will be handled by a single independent appellate</p>

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
		<p>body;</p> <p>(f) the MPFA will establish a regular liaison mechanism with participation of all FRs to enhance communication and exchange of views on the making of codes, guidelines and rules on conduct requirements, enforcement principles and other issues of mutual concern over the regulation of MPF intermediaries; and</p> <p>(g) an independent Process Review Panel will be established to review the enforcement procedures of MPFA and FRs to ensure, among other things, consistent internal process on MPF enforcement among the FRs and within the MPFA.</p> <p>In addition, to facilitate the handling of complaints of MPF scheme members, the MPFA will be the central point for receiving all complaints on MPF sales and marketing activities and will conduct initial processing of them. It will assign the complaints for follow-up by the relevant FRs as appropriate and maintain an oversight of the outcome.</p> <p>We propose to strengthen the role of the MPFA as the lead</p>

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
		<p>regulator of all MPF intermediaries. In particular, on account of the comments raised by some respondents about consistency in enforcement and the perceived complications with splitting power to impose disciplinary sanctions between the MPFA (for suspension and revocation of registration) and the FRs (for reprimand and fines), we propose to modify the proposed measure at paragraph 8(d) above such that disciplinary powers would be vested with the MPFA (including reprimand, fines, suspension and revocation of registration and prohibition from applying for registration) with active participation of FRs in the disciplinary process. In actual operation, the MPFA will be assisted by the HKMA, IA and SFC, which, in recognition of their distinct role as the primary and lead regulator for their own sectors, will perform the role of the FRs for MPF intermediaries from their own sectors. Before making any disciplinary decision, the MPFA will take into account the investigation results and recommendations of the FRs and institute process for ensuring procedural fairness for the intermediaries concerned, including the opportunity of being heard before imposing any disciplinary action.</p> <p>We believe this modified proposal will further ensure fairness and consistency in disciplinary decisions and create a level playing field.</p>

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
<p>Coverage of “Regulated Activities” [“invite or induce, or attempt to invite or induce, another person to make an MPF decision as defined; or gives advice to another person for assisting that other person to make such decision”]</p>	<ul style="list-style-type: none"> <li>■ Some respondents asked for clarifications on the coverage and requested that guidelines on what constitute “giving advice” should be provided.</li> <li>■ A few respondents suggested that the legislation should catch advice on “fund selection” and should not cover staff performing administrative functions nor mere provision of published information.</li> </ul>	<p>The legislative intent is to regulate MPF sales and marketing activities carried out in the course of business or employment or for reward. The legislation will not regulate the conduct of administrative functions or the mere act of distributing MPF scheme related materials already authorized under s.105 of the Securities and Futures Ordinance (“SFO”).</p> <p>The MPFA will seek to facilitate compliance by the industry by say, promulgating guidelines and frequently-asked-questions to provide practical guidance to MPF intermediaries.</p>
<p>Exemption from registration requirement</p>	<ul style="list-style-type: none"> <li>■ A few respondents considered that –               <ul style="list-style-type: none"> <li>(a) the exemption should cover delegates (administration and call centre staff) of trustees and institutions wholly/ partially owned by them;</li> </ul> </li> </ul>	<p>The prohibition will not relate to the administrative functions of trustees. On the other hand, for better protection of scheme member’s interest, MPF sales and marketing activities of approved trustees (other than those incidental to their trustee function) would not be exempted.</p>



<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
	<p>(b) the exemption should be available only to those giving advice to corporate clients but not individuals;</p> <p>(c) lawyers and accountants etc. who are not subject to any FR should not be exempted; and</p> <p>(d) provision of advice to an employer who is a “professional investor” should be exempted.</p>	<p>The proposed exemptions are intended to cover those who give advice on MPF products wholly incidental to their ordinary course of business. This is in line with similar practice in other financial sectors, for example, under the SFO.</p> <p>The proposed exemption to cover lawyers and accountants models on a similar arrangement in the SFO whereby these professionals would not require a licence under the SFO if the advice one gives is wholly incidental to his practice as a lawyer or an accountant. This is on consideration that these professionals are already subject to an existing regulatory regime for their practice including the giving of advice.</p> <p>Currently, employers choose for their employees the MPF schemes for the mandatory contributions required under the Mandatory Provident Fund Schemes Ordinance (“MPFSO”). After implementation of the ECA, employees may transfer the benefits accrued from their own mandatory contribution during current employment to another scheme of their choice. Under these circumstances, for protection of scheme members’</p>

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
		<p>interest, it would not be appropriate to extend the exemption to the sales and marketing activities targeted at the employer level or at particular categories of employers, which may unnecessarily complicate the regulatory regime.</p>
<p>Conduct Requirements</p>	<ul style="list-style-type: none"> <li>■ Some respondents commented that the conduct requirements should be objective and measurable and the MPFA should engage the market in formulating the details. Specific comments include: <ul style="list-style-type: none"> <li>(a) risk profiling should apply to fund selection but not scheme selection and with exemptions for online switching, etc.;</li> <li>(b) the consideration of avoiding conflict of interests should apply only to intermediaries marketing MPF schemes by different sponsors;</li> </ul> </li> </ul>	<p>In preparation for the implementation of the ECA and the statutory regulatory regime for MPF intermediaries, the MPFA is preparing a new code on conduct standards. As in the case of other regulatory regimes in the financial sector, the proposed legislation will set out the core principles and areas which MPF intermediaries are required to observe in conducting the sales and marketing of MPF products. The MPFA will be empowered to issue a Code of Conduct under the proposed legislation, providing guidance to MPF intermediaries about compliance with the core principles that should be adopted in conducting MPF sales and marketing activities. The MPFA may, after consultation with the FRs, include additional requirements that are applicable under specific operating environments.</p> <p>The MPFA will take into account the comments received in preparing the Code in consultation with the FRs. It</p>

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
	<p>(c) intermediaries receiving benefits for services/advice provided should not be considered as having a “conflict of interest”;</p> <p>(d) the MPFA should provide more details on the requirements on internal control; and</p> <p>(e) a requirement for MPF intermediaries to disclose to prospective clients when carrying out MPF sales and marketing activities the level of commission (or benefits) receivable for the sale of the relevant MPF products should be added to mitigate any potential conflicts of interest.</p>	<p>plans to release a draft of the Code in Q4 2011 for further consultation with the industry.</p>

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
Admission and Registration Criteria	<ul style="list-style-type: none"> <li>■ A few respondents suggested that there should be more details on the registration criteria and the ongoing monitoring mechanisms. In particular, whether a licence issued by the SFC under the SFO is required for giving advice on MPF products.</li> </ul>	<p>The legislation will set out clearly who may be admitted (see Appendix to Annex A) for conducting sales and marketing activities involving MPF schemes and funds under MPF schemes, including inter alia the requirement for an applicant to be holding a valid licence / registration / authorization in the securities / banking / insurance regulatory regime, as appropriate.</p> <p>Under the proposal, in applying for registration for conducting MPF sales and marketing activities, an applicant could, depending on his core business, rely on his status as a SFC licensee, an individual registered under the Banking Ordinance to carry out dealing in securities or advising on securities, or an insurance intermediary eligible to engage in long term business in accordance with the ICO under the insurance regulatory regime.</p>
	<ul style="list-style-type: none"> <li>■ A respondent considers that only those authorized insurance brokers or appointed insurance agents eligible to engage in linked long term insurance business should be admitted for the sales</li> </ul>	<p>The MPFA reviews the professional and conduct requirements for the MPF industry from time to time. The Authority will further discuss with the IA and the industry this view as reference for its future updating of the regulatory requirements.</p>

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
	<p>and marketing of MPF products to MPF scheme members.</p> <ul style="list-style-type: none"> <li>■ Some respondents consider that there should be no additional examination or CPD requirements to facilitate the transition of existing intermediaries into the new regime, while there is a suggestion that “Fund Fact Sheet” should be covered in the MPF intermediaries examination.</li> </ul>	<p>The current sets of entry examination and CPD requirements for MPF intermediaries were last updated by the MPFA in October 2009 and October 2005 respectively, and “Fund Fact Sheet” is already covered in the MPF intermediaries examination syllabus. The MPFA has no plan at present to introduce new requirements. Whilst the examination and CPD requirements would require regular review in light of market development, and public expectation, it is not MPFA’s intention to introduce any new requirements as a result of implementation of the proposed regime.</p>
Regulatory scope of frontline regulators	<ul style="list-style-type: none"> <li>■ Most respondents did not raise any issue with the proposed mechanism for assigning individual MPF intermediaries to the relevant FRs. A few respondents expressed concern that assigning MPF intermediaries to FRs strictly in accordance with a fixed set of statutory</li> </ul>	<p>To enable proper handling of possible odd cases as mentioned in the comment received, we propose that in such rare circumstances, the MPFA should be empowered to assign the MPF intermediary to a FR having regard to the core business of the principal intermediary concerned.</p>

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
	<p>criteria may risk, in a small number of cases, resulting in an MPF principal intermediary not being subject to frontline supervision by the regulator of his core business.</p>	
Disciplinary process	<ul style="list-style-type: none"> <li>■ Some respondents consider that it is important to ensure consistency in disciplinary decisions by different regulators.</li> <li>■ A few respondents consider the proposed arrangement whereby the MPFA may decide to suspend or revoke the registration of an MPF intermediary while the FRs may order fine and reprimand is complicated and needs further justifications.</li> </ul>	<p>As explained under “Proposed regulatory approach” above, we shall modify our original proposal such that disciplinary powers would be vested with the MPFA with FRs active participation in the disciplinary process. We believe the modified proposal will further ensure fairness and consistency in disciplinary decisions.</p> <p>With reference to the range of disciplinary sanctions available to SFC, we propose that the MPFA should also be empowered to prohibit a non-complying MPF intermediary from reapplying for registration within a specified period. This will allow the MPFA to protect the scheme members more effectively.</p>

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
	<ul style="list-style-type: none"> <li>■ One respondent commented that the power to order disciplinary fines may render the regime of criminal nature and the consequent higher standard of proof and procedural safeguards may detract the objective of speedy and efficient handling of complaints.</li> </ul>	<p>The level of disciplinary fines will be proportionate to the seriousness of the misconduct committed. We propose the maximum level of fine at \$10,000,000, similar to the maximum level of fine under the SFO (sections 194 and 196). These fines are regulatory in nature and targeted at a clearly defined regulated class.</p> <p>The legislation will set out clearly the procedural safeguards to ensure a fair and just process, including the requirement for the MPFA to (a) inform the intermediary concerned in writing the disciplinary action being considered, the reasons therefor and the facts involved; (b) allow the intermediary concerned an opportunity of being heard before making any disciplinary decision; and (c) remind the intermediary concerned of his right to lodge an appeal against the relevant disciplinary decision to an independent appellate body, i.e. the Mandatory Provident Fund Schemes Appeal Board (“MPFSAB”).</p> <p>In the interest of justice, the above procedural safeguards will apply to all disciplinary decisions (viz. fine, reprimand, suspension and revocation of registration).</p>

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
<p>Process Review Committee and appeal mechanism</p>	<ul style="list-style-type: none"> <li>■ A few respondents suggested that there should be industry representatives in the proposed Process Review Panel and appellate body to provide the requisite industry expertise and facilitate understanding of the operation of the MPF sector.</li> <li>■ One respondent commented that the operation of the appeal mechanism should be clearly set out.</li> </ul>	<p>We intend to invite, inter alia, individuals from the industry to join the proposed Process Review Panel, whose membership should be broadly based and feature relevant experience and expertise.</p> <p>As for the appeal mechanism, the statutory functions of the existing appellate body, MPFSAB, under the MPFSO will be extended to cover registration and disciplinary decisions made in respect of MPF intermediaries. Members familiar with the operation of the MPF market will be considered for inclusion into the appellate body to adjudicate relevant cases.</p>
<p>Interface with the on-going regulatory reform for the insurance sector</p>	<ul style="list-style-type: none"> <li>■ A number of respondents from the insurance sector suggested that the proposed establishment of an independent Insurance Authority (“IIA”) should be taken into account and the future role of insurance self-regulatory organizations (“SROs”) in the regulation of MPF intermediaries should be clarified.</li> </ul>	<p>In light of wide public expectation and general support from the Legislative Council (“LegCo”) for implementation of the ECA as soon as possible, we have pledged to introduce the Bill on the regulation of MPF intermediaries in Q4 2011 with a view to completing the legislative process within the current LegCo term in mid - 2012, such that the MPFA can implement the ECA as soon as possible thereafter. The proposal to establish an IIA is a separate legislative exercise. We aim to make available draft key legislative provisions on IIA for</p>



<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
		<p>engaging the general public and stakeholders in early 2012.</p> <p>Under the proposed statutory regulatory regime for MPF intermediaries, IIA will be the FR for the regulation of MPF intermediaries from the insurance sector in future consistent with the planned migration of the self-regulatory approach in the insurance sector into direct regulation of insurance intermediaries by the proposed IIA. Pending establishment of the IIA, the existing IA will take up that FR role in the interim. The MPFA and the Office of the Commissioner of Insurance (“OCI”) will engage the three SROs in formulating detailed transitional arrangements.</p>
Dispute Resolutions/ compensation	<ul style="list-style-type: none"> <li>■ One respondent commented that scheme members should be empowered to seek compensation direct from the parties concerned.</li> </ul>	<p>Section 108 of the SFO covers misrepresentations made in respect of collective investment arrangements including MPF schemes. Scheme members who suffer loss due to fraudulent, reckless or negligent misrepresentation by an MPF intermediary may seek compensation from the intermediary under this provision.</p>

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
	<ul style="list-style-type: none"> <li>■ Some respondents suggest that the purview of the Financial Dispute Resolution Centre (“FDRC”) should be extended to cover MPF sales and marketing activities.</li> </ul>	<p>The FDRC is scheduled to commence operation in the first half of 2012. Its scope will initially cover activities conducted by banks and securities firms, including their MPF intermediary activities. We will review the extension of its scope to cover the insurance sector and related MPF intermediary activities having regard to its actual operation.</p>
MPF Register	<ul style="list-style-type: none"> <li>■ Some respondents are concerned about the proposed inclusion of disciplinary proceedings of FRs in respect of their own sectors in the MPF Register in view of the nature of the enforcement procedures and practice of different FRs.</li> </ul>	<p>We agree that only MPF-related disciplinary sanctions imposed on an intermediary should be included in his entry in the MPF Register. The original proposal will be modified accordingly.</p>
	<ul style="list-style-type: none"> <li>■ One respondent suggested that there should be a mechanism to delete the references to old disciplinary records.</li> </ul>	<p>The proposal in the Consultation Paper is to retain in the Register disciplinary records for a period of 5 years.</p>
	<ul style="list-style-type: none"> <li>■ A few respondents sought clarification as to what “other particulars” may be included in the Register.</li> </ul>	<p>The legislation will set out clearly the types of information that may be included in the Register, viz. those set out in items (a) to (g) of Appendix B to the</p>

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
		Annex to the Consultation Paper. If in future the MPFA decides that other types of information should be added to the Register, the proposed additions will be prescribed by way of subsidiary legislation subject to vetting by LegCo.
Registration fees	<ul style="list-style-type: none"> <li>■ Some respondents request details on the fee level.</li> <li>■ A few respondents do not support the charging of registration fee as intermediaries are already paying registration and/or licence fees to their respective FRs and the registration fees may add to the fund expense charged on scheme members.</li> </ul>	As proposed in the Consultation Paper, while the legislation will include an enabling provision for the MPFA to charge a registration fee, it is the MPFA's intention to waive the fees in the initial years of operation of the new regime. The MPFA's plan is that the fee, if to be charged in future, would be set based on a cost recovery principle. It will be prescribed by way of subsidiary legislation subject to vetting by LegCo.
Transitional arrangements	<ul style="list-style-type: none"> <li>■ Most respondents welcome the proposal to provide for a two-year transitional period for pre-existing MPF intermediaries.</li> <li>■ A few respondents consider that the</li> </ul>	To minimize the impact on pre-existing MPF intermediaries, we propose that all MPF intermediaries already validly registered with the MPFA before commencement of the new regulatory regime will be automatically transferred to the new regime. If they wish to continue to carry on MPF sales and marketing activities after the transitional period, they will need to complete application procedures with the MPFA before

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
	<p>Government and the MPFA should publish details on the transitional arrangements as soon as possible.</p>	<p>the expiry of the transition period. The MPFA envisages that according to the mechanism to be set out in the legislation, in general, the pre-existing intermediaries will be assigned to the same FR as under the current administrative regime.</p> <p>For protection of scheme members' interests, during the transitional period, the pre-existing MPF intermediaries will be, as will be the case for the newly registered MPF intermediaries, subject to the statutory conduct requirements, such that non-compliance may result in disciplinary sanctions. The MPFA and the FRs may exercise their inspection, investigation and disciplinary powers under the legislation to ensure compliance by all MPF intermediaries. For better management of applications, the MPFA will encourage intermediaries to apply early during the transitional period and liaise with the principal intermediaries on the timing of their application and those by their sponsored intermediaries such that the applications can be more evenly staggered.</p> <p>Such transition for pre-existing intermediaries will be subject to specified conditions e.g. they will have to continue to fulfill the on-going Continuing Professional Development requirements and comply with the conduct requirements and relevant obligations as provided in the</p>

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
		legislation during the transitional period.
Consultation and industry engagement	<ul style="list-style-type: none"> <li>■ A few respondents consider that there should be a longer consultation period with more details on the draft legislation and the transitional arrangements etc.</li> </ul>	<p>The proposed legislation seeks to provide statutory backing to the existing administrative arrangements which have been put in place upon the commencement of the MPF system since 2000 and with which the industry is familiar. The statutory supervision, investigation and disciplinary powers and safeguards follow closely those set out in the SFO (sections 180, 182 - 183 and 194 - 198). Prior to the formal consultation exercise, the Administration and the MPFA have proactively engaged the industry and briefed them on the proposed arrangements in a soft consultation. Their views have been taken into account in preparing the consultation proposals. We have also contacted the relevant organizations again in end June / early July 2011 to remind them to submit their written comments to us as soon as possible.</p> <p>The Administration and the MPFA will continue to engage the industry and listen to their views in preparing the legislation, with a view to introducing the Bill into the LegCo in Q4/2011. The MPFA has advised that if the</p>

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
		Bill is enacted within the current LegCo term, the ECA could be implemented in the 2 <sup>nd</sup> half of 2012.
Miscellaneous	<ul style="list-style-type: none"> <li>■ A respondent considers that there should be a liaison mechanism with the industry during the early stage of implementation of the new regime to ensure smooth transition.</li> </ul>	The MPFA will liaise with the industry for this purpose.
	<ul style="list-style-type: none"> <li>■ A few respondents consider that the MPFA should continue with the existing practice of issuing identification cards to registered MPF intermediaries.</li> </ul>	We have proposed that the requirement for regular renewal of registration be dispensed with in future. There are operational issues with the suggestion to continue with the issue of identification cards under this proposal. In future, registered MPF intermediaries should continue to print their registration number on their business cards for easy identification.
	<ul style="list-style-type: none"> <li>■ A respondent suggests a prohibition against sponsored intermediaries taking personal information of scheme members when they cease to work for the sponsors concerned. There should</li> </ul>	Intermediaries are required to abide by the Personal Data (Privacy) Ordinance which prohibits, among other things, the use of personal data for purposes other than the intended use at the time of the collection of the information. The MPFA will consider including in its

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
	<p>be a standard declaration form for client transfer to protect clients' interest and privacy.</p>	<p>Code further requirements or procedural steps to better protect data privacy. (see "Conduct Requirement" above).</p>
	<ul style="list-style-type: none"> <li>■ A respondent considers that there should be a comprehensive investor education programme with industry involvement.</li> </ul>	<p>Educating MPF scheme members has always been high on the agenda of the MPFA since the commencement of the MPF system in 2000. Over the last couple of years, the MPFA has intensified its educational efforts through extensive briefings and publication of booklets and articles in newspapers for the industry and the general public. Moreover, prior to the implementation of the ECA, the MPFA will provide training to MPF intermediaries to help them prepare for the new regime and facilitate their compliance with the conduct requirements.</p> <p>The MPFA will continue with its efforts to assist scheme members in making informed decisions.</p>
	<ul style="list-style-type: none"> <li>■ A respondent is of the view that consideration should be given to introduce cooling-off period where</li> </ul>	<p>The existing Cooling-off Period imposed by HKMA and SFC offers additional protection to customers in respect of financial products like derivatives that are not listed on</p>

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
	<p>appropriate to protect scheme members, on the ground that a cooling-off period can minimize subsequent complaints as a result of improper sales practices.</p>	<p>an exchange in Hong Kong and investment-linked long term insurance policies which have impediments to reversing an investment decision therein. The nature of MPF products is different from those to which the Cooling-off Period is applicable. MPF products are generally of a lower risk and members who wish to change their minds can readily join another scheme or switch to another MPF fund, most of which are traded on daily basis.</p>
E-platform	<ul style="list-style-type: none"> <li>■ A respondent takes the view that the cost-sharing among trustees should be based on their respective volumes of transactions instead of equal sharing.</li> <li>■ A respondent is concerned about the cost-effectiveness of the proposed e-platform, the ongoing operation and maintenance costs of which will eventually be passed onto scheme members.</li> </ul>	<p>In the Consultation Paper, we have put forward legislative proposals for the MPFA to establish and operate an electronic transfer system (i.e. the E-platform) and mandate the use of the E-platform by trustees in processing scheme members' election for transfer of accrued benefits in light of the possible increase in the number of elections upon the implementation of ECA. The MPFA will bear the costs of developing and establishing the E-platform. The proposed legislation will provide for the charging of a fee for each transaction to be payable by the relevant trustees to the MPFA. The fee will be determined with reference to the costs likely to be incurred by the MPFA in the transfer process. The</p>



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		<p>legislation will also provide for the charging of other fees on relevant trustees to recover the costs incurred by the MPFA for payment to any third party in relation to the operation of the system.</p> <p>To facilitate smooth transition at the early stage of the implementation of the ECA, the MPFA will initially provide the E-platform service at no cost to the industry and will continue to liaise with trustees on when and how much to charge per transaction after implementation.</p>
	<ul style="list-style-type: none"> <li>■ A respondent opined that, as a value-added feature, scheme members should be allowed to access the e-platform to keep track of their fund transfer status and if possible to view a consolidated record of their various fund accounts.</li> </ul>	<p>The MPFA has been working with the trustees on system development for the E-platform for some time. The possibility of developing another platform to facilitate enquiries from members is under consideration by the MPFA, as an exercise separate from the proposed E-platform.</p>
<p>Enhancement of deterrent against default contributions</p>	<ul style="list-style-type: none"> <li>■ Those respondents who have commented on this proposal have indicated support.</li> </ul>	<p>We welcome the support for this proposal for better protection of employees' interests.</p>

<b>Issues</b>	<b>Comments Received</b>	<b>Response from the Administration and the MPFA</b>
by employers		

**Financial Services and the Treasury Bureau  
Mandatory Provident Fund Schemes Authority  
29 July 2011**