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23 May 2012

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

Dear Ms Sit,

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

Follow-up to meeting on 15 May 2012

The response of the Administration and the Mandatory Provident Fund Schemes Authority to the list of follow-up actions arising from the discussion at the meeting on 15 May 2012 is set out at the Annex.

Yours sincerely,

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

(Frederick Yu)
for Secretary for Financial Services and the Treasury

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

**List of follow-up actions arising from the discussion
at the meeting on 15 May 2012**

Item 1 – policy intent of section 45G of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) and whether it obviates the need for a plaintiff to prove contravention/non-compliance in legal proceedings

The policy intent of section 45G of the Mandatory Provident Fund Schemes Ordinance (“MPFSO”) is to provide a statutory route for scheme members to obtain damages resulting from a breach of the relevant provisions of the MPFSO or governing rules of a registered scheme. This provision suggests that such a breach could give rise to damages. In other words, in the absence of section 45G, the plaintiff would have to spend more effort on convincing the Court that the breach in question may cause losses to them.

2. Under section 45G(1) of the MPFSO, the plaintiff needs to show that the defendant has contravened the governing rules or failed to comply with the relevant requirements or standards in the MPFSO. In cases where MPFA has taken action in respect of the plaintiff’s case (e.g. imposition of a financial penalty, or taking out criminal or civil proceedings), evidence of such action will likely assist the plaintiff in establishing his cause of action under section 45G(1) of the MPFSO. Where no such action has been taken by MPFA, the plaintiff will need to use other means to show the breach.

Item 2 –written explanations for the Committee Stage Amendments (CSAs) proposed by the Administration

3. A table which sets out the purpose of the CSAs proposed by the Administration is at **Appendix**.

**Financial Services and the Treasury Bureau
Mandatory Provident Fund Schemes Authority
23 May 2012**

**Proposed Committee Stage Amendments to the
Mandatory Provident Fund Schemes (Amendment) (No.2) Bill 2011**

Item	Clause in the Bill	Section in the MPFSO	Purposes of the Proposed Committee Stage Amendments (CSA)
1.	7, 13 and 16	6H(8), 34E (definition of “industry regulator” and “prescribed person”), 42AA(4) and 42B(3)	Technical amendments for drafting consistency.
2.	8	6KA(5) and (6)	Textual amendments.
3.	9,10,11 and 12	19, 19A, 30A and 32	To extend the application of the existing inspection and investigation powers to certain provisions in Part IVA.
4.	13 and 21	34E (definition of “relevant insurance body” and “Type B regulatee”), 3(1) to Sch 5B	Change in terminology to improve reader-friendliness.
5.	13	34F(5)	Technical amendments to improve drafting.
6.	13	34G, 34H and 34I	Amendments to cross references consequential to the amendments to the various provisions on applications (sections 34T and 34U), etc.
7.	13	34K(1) and 3(2) to Sch 5B	Textual amendments for drafting consistency.
8.	13 and 21	34J(2)(b) and (c), 34K(2)(f), 2(4)(b), 2(4)(c) and 3(4)(d) to Sch 5B	To rectify an omission in the cross-references to the Securities and Futures Ordinance (SFO) so as to cover all relevant cases of suspension of the status as “licensed corporations”, “licensed representatives” and “registered institutions” under the SFO.
9.	13	34M(5)(a)	To better reflect the policy intent that newspapers, magazines, books or other publications available to the public through subscription only will not be exempted, while those available through both subscription and other means will be exempted.
10.	13	34M(9)	Drafting amendment to improve reader-friendliness.
11.	13	34N	To reduce the maximum level of penalties applicable to persons acting as employees, agents or representatives of Principal Intermediaries (PIs); and to align the maximum fines applicable to persons carrying on regulated activities in the course of business on summary conviction to that in the SFO.

Item	Clause in the Bill	Section in the MPFSO	Purposes of the Proposed Committee Stage Amendments (CSA)
12.	13	34Q	To state explicitly that a member of the public can also ascertain the particulars of “the approval of an individual as a responsible officer (RO)”.
13.	13	34R	Change in terminology to improve reader-friendliness.
14.	13	34S	34S(1)(e) and 34S(2)(b)(iii)(C) – to replace “Division 5 or 6” with “this Part” as the original reference does not cover all cases of suspension. 34S(2)(b)(ia) – to include in the register of intermediaries information regarding the suspension of the PI of an Subsidiary Intermediary (SI), such that the public can know whether they are dealing with an SI with lawful authority.
15.	13	34T, 34U, 34V and 34W	Technical amendments to simplify the drafting and reader-friendliness of the provisions on application for registration as a PI, SI, and RO, as well as for approval of attachment.
16.	13	34U(5)	The Bill provides that if a person has been an SI within 3 years immediately before the application, he can apply for registration as an SI again without taking a qualifying examination provided that his revocation of registration was not due to failure to comply with continued training requirements. As an SI applicant may have his SI registration revoked more than once during the 3-year period, we propose to specify more clearly that an applicant would be exempted from taking a qualifying examination provided that his <u>last</u> revocation was not due to failure to comply with continued training requirement.
17.	13	34Y	Drafting amendment to improve reader-friendliness.
18.	13	Division 5	Textual amendments.
19.	13	34ZC	Textual amendments.
20.	13	34ZD	Drafting amendment to improve reader-friendliness.
21.	13	34ZE	Technical amendments to improve drafting.
22.	13 and 21	34ZF and 9(3) to Sch 5B	The Bill provides that if an SI loses his Type B regulatee status, he would have to re-apply for registration. As an insurance intermediary would lose his Type B regulatee status on changing of jobs, the said requirement would require the affected person to re-apply for registration whenever he changes his job. We hence propose amendment such that only his attachment to the relevant PI would be revoked in the above circumstance. His SI registration would be revoked only if he is not attached to any PI for 90 days.
23.	13	34ZG and 34ZH	Textual amendments.
24.	13	34ZK	To add a procedural requirement before Mandatory Provident Fund Schemes Authority (MPFA) may revoke the approval of an RO.

Item	Clause in the Bill	Section in the MPFSO	Purposes of the Proposed Committee Stage Amendments (CSA)
25.	13	34ZL	34ZL(1) - Drafting amendment for greater clarity. 34ZL(1A) - To make clear that PIs have to keep records of activities carried out by themselves and their SIs.
26.	13	34ZN(5) and 34ZO(4)	To extend the notice period that MPFA has to observe before exercising the suspension power on account of non-payment of annual fees or failure to submit annual returns by the intermediary concerned from 10 days to 15 working days.
27.	13	34ZN(2) (deleted) and 34ZN(8)	To provide for pro-rata payment of fee.
28.	13	34ZR	Technical and textual amendments.
29.	13	34ZU(2)(a) and 34ZV(1)	Textual amendments.
30.	13	34ZW(7)(b) and 34ZY(2)(b) (i)	Technical amendments to rectify an omission in reference.
31.	13	34ZW(8) and 34ZY(3)	Drafting amendments to improve clarity.
32.	13	34ZW(8A)	To provide a clear statutory basis for MPFA to disclose to the public the details of a disciplinary sanction, its rationale and relevant facts.
33.	13	34ZZ	Technical amendments to improve drafting.
34.	13	34ZZC(6) and 34ZZE	To remove the requirement that regulatees must respond to the regulator in the course of the latter conducting supervision under section 34ZR notwithstanding the information might incriminate them, taking into account the arrangement under the SFO and the operation.
35.	13	34ZZC(7)	Textual amendments.
36.	13	34ZZD	Technical amendments to correct an inaccurate cross-reference.
37.	13	34ZZF(5)	To remove the requirement for consultation among regulators before seeking a magistrate warrant, as such may not be practical in all cases and to align with the SFO.
38.	13	34ZZF(1), (6)-(9) and (11)	Textual amendments.
39.	13	34ZZJ	Technical amendments to the heading to reflect the situation that payment to FRs may be made by MPFA whether or not fees are imposed on MPF intermediaries.
40.	15	42AA(1),	To align the threshold for disclosure of information among MPFA, Insurance

Item	Clause in the Bill	Section in the MPFSO	Purposes of the Proposed Committee Stage Amendments (CSA)
		(1A) and (2)(e)	Authority, Monetary Authority and Securities and Futures Commission for purposes other than MPF intermediary regulation, with that adopted in the SFO.
41.	15	42AB	To reflect the policy intent that persons who obtain information in the course of the disciplinary process should observe specified restrictions governing disclosure of such information.
42.	19	44A	Technical amendments to correct a typo.
43.	21	1(2) to Sch 5B	Textual amendments.
44.	21	4, 5 and 7(2)(a) to Sch 5B	Change in terminology to reflect the name of the term currently used.
45.	21	4(1)(b), 5(1)(b) and 7(2)(b) to Sch 5B	Technical amendments.
46.	21	6(1)-(2) to Sch 5B	Technical amendments to remove a redundant condition.
47.	21	5(2)(b), 6(3)(b) to Schedule 5B	Consequential amendments pursuant to the amendments to the provisions on applications (sections 34T and 34U).
48.	21	9 to Sch 5B	Consequential amendments primarily to reflect the amendments made to section 34ZF.
49.	22	Item 15 of Sch 6	Textual amendments.
50.	23A	2 to Cap. 485A	Technical amendments to repeal the definition of “authorized financial institution” which is redundant.
51.	27(1)	Sch 1 to Cap. 485C	Technical amendments to make clear the meaning of “an extract” for the purpose of fee calculation.
52.	27(2)	Sch 1 to Cap. 485C	Consequential amendments pursuant to the amendments to the provisions on applications (sections 34T and 34U).

Financial Services and the Treasury Bureau
23 May 2012