

**Bills Committee on Insurance Companies (Amendment) Bill 2014**

**The Administration's Response to Members' Requests and Questions  
Raised at the Meeting of 27 May 2014**

**Purpose**

This paper sets out the Administration's response to issues raised in relation to the Insurance Companies (Amendment) Bill 2014 ("the Bill") at the meeting of 27 May 2014.

**(a) Codes and guidelines for conduct regulation of insurance intermediaries**

2. The general principles of the conduct requirements for licensed insurance intermediaries are set out in the primary legislation (see the new section 89 added by Clause 84 of the Bill (**Annex A**)). If necessary, the independent Insurance Authority ("IIA") may set out the practices and standards relating to the conduct requirements in rules which are subsidiary legislation subject to the scrutiny of the Legislative Council (see new section 92 added by Clause 84 of the Bill). Before making any rule, the IIA is required to publish a draft of the proposed rule for public consultation (see new section 130 added by Clause 84 of the Bill).

3. The IIA may also issue<sup>1</sup> codes of conduct, which are not subsidiary legislation, to provide the industry with guidance on compliance with the practices and standards relating to the conduct requirements (see new section 93 added by Clause 84 of the Bill). Without pre-empting the decisions of the IIA, we are consolidating the existing codes and guidelines issued by the three Self-regulatory Organizations ("SROs") for insurance intermediaries for IIA's reference once it is established. The consolidated set of codes and guidelines is meant to facilitate the IIA to prepare the draft codes of conduct deemed necessary and should not be regarded as the draft code of conduct to be adopted by the IIA.

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<sup>1</sup> Under new section 93(1), the codes may be published in the Gazette and in any other manner the IIA considers appropriate.

**(b) Operation of the two Industry Advisory Committees (“IACs”) and their communication with stakeholders**

4. There will be two statutory IACs, one for long term business and the other for general business, to advise the IIA on industry-related issues and policies that are referred to the IACs by the IIA. The constitution and proceedings of the IACs are set out in the new Schedule 1C added by Clause 86 of the Bill (see **Annex B**).

5. Section 1 of the new Schedule 1C prescribes that members of an IAC include the chairperson and chief executive officer of the IIA, not more than two executive directors of the IIA, as well as persons with knowledge of or experience in the insurance industry, the conduct of insurance intermediary activities and consumer affairs. The composition of the IACs makes them effective regular communication platforms between the highest echelon of the IIA and stakeholders, including the insurance industry. According to section 3 of new Schedule 1C, an IAC is required to meet at least once every three months.

6. The Bill provides the IIA with flexibility to establish more IACs to advise it on any matters with which the IIA is concerned (see new section 4D added by Clause 13 of the Bill). The IIA may also establish consultative committees on topical issues to engage stakeholders including the industry.

**(c) Composition of the IIA – to ensure that the majority of members of the IIA are lay persons and specify the proportion of members of the IIA from the industry to ensure balanced representation of interests**

7. According to the Insurance Core Principle 2 promulgated by the International Association of Insurance Supervisors, an insurance regulator should be independent of the industry and the government. Members of the IIA should have expertise relevant to the regulatory functions of the IIA. As specified in new section 4AA added by Clause 11 of the Bill, apart from at least two non-executive directors with knowledge of and experience in the insurance industry, the IIA should comprise persons with knowledge in actuarial science, accountancy, law, consumer affairs, or other suitable professional experience. We consider it unnecessary to specify the proportion of members of the IIA from the industry so as to maintain flexibility in appointing the most suitable persons to the IIA to perform its statutory functions. Moreover, we are not aware of such specification in the statutory provisions on the

composition of the relevant financial services regulators in other international financial centres.

**(d) Conduct requirement for insurance intermediaries – acting honestly, fairly, in the best interests of policy holders, and with integrity**

8. One of the general principles of conduct requirements in new section 89 added by Clause 84 of the Bill is that an insurance intermediary must “act honestly, fairly, in the best interests of the policy holder concerned or the potential policy holder concerned, and with integrity”. Specifically, the conduct requirement requires an insurance intermediary to accord priority to a policy holder’s interest in carrying out regulated activities, and when a conflict of interest arises, the insurance intermediary should disclose such a conflict to the policy holder so that the policy holder can make an informed decision. For an insurance agent, he should also prioritize his client’s interest over the interest of his appointing insurer in case there is any conflict.<sup>2</sup>

9. The principle of “acting in the best interests of clients” is not a new concept to the insurance industry. It has been included as one of the general principles of conduct requirements in the regulatory regime for Mandatory Provident Fund (“MPF”) intermediaries since November 2012 (most of the MPF intermediaries are insurance intermediaries). The principle is also embedded in the existing guideline on replacement of insurance policy issued by the Hong Kong Federation of Insurers in 2010<sup>3</sup>. Thus, we believe that the insurance industry has sufficient

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<sup>2</sup> During the public consultation on the key legislative proposals on the IIA, insurance agents raised that being appointed by the insurers, they should act in the best interests of the insurers. If they act in the best interests of policy holders or potential policy holders, insurers might revoke their agency agreements. To address the concerns of the insurance agents, we propose in the Bill that any term in an agency agreement between an insurer and an insurance agent contravening the statutory “acting in the best interests of policy holders” principle is void (see new section 68A added by Clause 74 of the Bill).

<sup>3</sup> “The following Process is intended to prevent the activity of those insurance agents/brokers who misinform or mislead clients into changing existing individual life insurances in a way which at the time of the change creates disadvantage to the clients. The assessment of the disadvantage may at times be subjective and therefore the success of the Process in completely achieving its objective will depend on those involve acting in good faith and at all times in the best interests of the clients.” – extracted from “THE HONG KONG FEDERATION OF INSURERS – CODE OF PRACTICE FOR LIFE INSURANCE REPLACEMENT” available at [http://www.hkfi.org.hk/pdf/en/download/e\\_ReplacementCode\\_20100201.pdf](http://www.hkfi.org.hk/pdf/en/download/e_ReplacementCode_20100201.pdf).

experience in adhering to this principle because it has put the principle into practice since 2010, albeit in a lesser scope.

10. We envisage that the IIA will issue a code of conduct similar to the guidelines on conduct requirements for MPF intermediaries issued by the Mandatory Provident Fund Authority (“MPFA”) at **Annex C**. However, the content of the code to be issued by the IIA will not be the same as that in the MPFA guidelines because the IIA will need to take into account the circumstances in the distribution of insurance policies and practice of the insurance industry. Moreover, a representative of the Hong Kong Federation of Insurers is a member of the MPFA Guidelines Committee which scrutinizes draft MPF guidelines, and reviews and updates existing MPF guidelines. We also envisage that the IIA will involve the industry in developing the relevant code of conduct or guidelines.

#### **(e) The disciplinary process and appellate mechanism**

11. If we understand it correctly, the suggestion of a Member of the Bills Committee is to establish an independent committee (“the proposed review committee”) comprising members from the insurance industry to review the IIA’s disciplinary decisions; and the decisions of the proposed review committee can be appealed to the quasi-judicial Insurance Appeals Tribunal (“IAT”). The Member’s suggestion aims to address the industry’s concerns about the potential considerable legal costs which may be involved in the IAT proceedings and to enable the system to tap the experience and expertise accumulated by the three SROs in handling appeals.

12. It is doubtful if the Member’s suggestion would serve the intended purpose of saving legal costs. It is uncertain that a decision reviewed by the proposed review committee is less likely to be appealed to the IAT. On the contrary, it is certain that the proposed additional review mechanism would prolong the whole review or appeal process in relation to a disciplinary decision. Any legal costs to be involved in the process with the addition of the proposed review committee would more likely increase than decrease.

13. On transfer of the experience and expertise accumulated by the three SROs in handling appeals, we consider that this can be achieved by appointing people with relevant expertise to the panel of ordinary members from which two members will be appointed to assist the

Chairman of the IAT to review a case<sup>4</sup>.

**(f) Factors to be taken into consideration in determining the quantum of a disciplinary fine**

14. New section 82 added by Clause 84 of the Bill requires that the IIA must publish a fining guideline before exercising its power to impose a disciplinary fine. The guideline will set out the factors of consideration that the IIA will be taking into account when determining the quantum of a disciplinary fine. The factors of consideration that are included in existing relevant guidelines in the financial services regulatory regime include the following –

- (a) the disciplinary fine should not have the likely effect of putting the regulatee in financial jeopardy;
- (b) the nature, seriousness and impact of the contravention;
- (c) the conduct of the regulatee after the contravention (e.g. whether the regulatee attempted to conceal the contravention); and
- (d) the previous disciplinary record and compliance history of the regulatee.

We envisage that the IIA will make reference to existing relevant guidelines when drawing up its own fining guideline. A copy of the guideline issued by the Insurance Authority pursuant to section 23(1) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap 615) is attached at **Annex D**.

**(g) Restrictions in relation to personnel of licensed insurance agencies and licensed insurance broker companies**

15. At present, section 65 of the Insurance Companies Ordinance (“ICO”) sets out the restrictions on the personnel of insurance agencies and insurance brokers. The objectives of the restrictions are to prevent (i) a person from being an insurance agent and an insurance broker at the

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<sup>4</sup> The IAT consists of the Chairman and two members drawn from a panel of ordinary members. Both the Chairman and panel of ordinary members are appointed by the Chief Executive. The Chairman, appointed by the Chief Executive, must be a former Justice of Appeal of the Court of Appeal, a former judge or a former deputy judge of the Court of First Instance, or a person eligible for appointment as a judge of the High Court. When there is a case to be reviewed, the Chairman and two members appointed by the Secretary for Financial Services and the Treasury on the recommendation of the Chairman will form the IAT.

same time; and (ii) an insurance agent from circumventing the requirement that he can only be appointed by the defined maximum number of insurers (i.e. currently, the maximum is four including no more than two insurers carrying out long term business).

16. We intend to maintain the same restrictions in new sections 64J and 64K added by Clause 71 of the Bill, which replace the existing section 65(4) to 65(11) of the ICO, with necessary modifications to reflect the restrictions when applicable to a person who is a licensed insurance intermediary under the new regulatory regime. The Bureau is ascertaining with the industry if any drafting refinements are warranted to avoid ambiguity.

Financial Services and the Treasury Bureau  
June 2014

**第4分部——操守規定等****89. 持牌保險中介人的操守規定**

持牌保險中介人在進行受規管活動時——

- (a) 其行事須誠實、公平、符合有關保單持有人或有關潛在的保單持有人(持有人)的最佳利益，並處事持正；

**Division 4—Conduct Requirements, etc.****89. Conduct requirements for licensed insurance intermediaries**

When carrying on a regulated activity, a licensed insurance intermediary—

- (a) must act honestly, fairly, in the best interests of the policy holder concerned or the potential policy holder concerned, and with integrity;

- (b) 須以可合理地預期一個審慎的人在進行該活動時會有的謹慎、技巧和努力行事；
- (c) 只可就該中介人勝任提供意見的事宜，提供意見；
- (d) 如為確保該活動對持有人屬適當而有需要顧及該持有人的特定情況，須顧及該等情況；
- (e) 須將持有人在作出任何關鍵決定時有需要充分掌握的資料，向該持有人披露；
- (f) 須盡其最大努力，避免該中介人的利益與持有人的利益出現衝突；
- (g) 須向持有人披露 (f) 段所述的任何利益衝突；
- (h) 須確保有關保單持有人的資產，獲迅速妥善地入帳；及
- (i) 須遵守根據第 92 及 127 條訂立的規則所訂明的其他規定。

- (b) must exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity;
- (c) may advise only on matters for which the intermediary is competent to advise;
- (d) must have regard to the particular circumstances of the policy holder or the potential policy holder that are necessary for ensuring that the regulated activity is appropriate to the policy holder or the potential policy holder;
- (e) must make the disclosure of information to the policy holder or the potential policy holder that is necessary for the policy holder or the potential policy holder to be sufficiently informed for the purpose of making any material decision;
- (f) must use its best endeavours to avoid a conflict between the interests of the intermediary and the interests of the policy holder or the potential policy holder;
- (g) must disclose any conflict mentioned in paragraph (f) to the policy holder or the potential policy holder;
- (h) must ensure that the policy holder's assets are promptly and properly accounted for; and
- (i) must comply with other requirements that are prescribed by rules made under sections 92 and 127.



## 附表 1C

[第 4C 條]

## 業界諮詢委員會的組成及處事程序

1. 業界諮詢委員會由以下成員組成——
  - (a) 保監局主席；
  - (b) 保監局行政總監；

## Schedule 1C

[s. 4C]

## Constitution and Proceedings of Industry Advisory Committees

1. An industry advisory committee consists of the following members—
  - (a) the chairperson of the Authority;
  - (b) the chief executive officer of the Authority;

- (c) 不超過兩名保監局執行董事，由保監局委任；
  - (d) 8 至 12 名其他成員，由財政司司長在諮詢保監局後委任。
2. 財政司司長在根據本附表第 1(d) 條委任某人為成員時，須已信納該人屬保監局認為對保險業、進行受規管活動及處理消費者事務方面，具有知識或經驗者。
  3. 業界諮詢委員會須最少每 3 個月舉行一次會議，以向保監局提供意見。
  4. 業界諮詢委員會的會議，可由以下人士召開——
    - (a) 保監局主席；
    - (b) 保監局行政總監；或
    - (c) 任何 3 名業界諮詢委員會其他成員。
  5. 在業界諮詢委員會的會議中——
    - (a) 保監局主席如有出席，則須擔任會議主席；或
    - (b) 如保監局主席缺席，則須由出席會議的該委員會成員互選一人，擔任會議主席。
  6. 業界諮詢委員會的會議的法定人數，是委員會成員人數的過半數。

- (c) not more than 2 other executive directors of the Authority who must be appointed by the Authority;
  - (d) not less than 8 but not more than 12 other members who must be appointed by the Financial Secretary after consultation with the Authority.
2. In appointing a person as a member under section 1(d) of this Schedule, the Financial Secretary must have been satisfied that in the opinion of the Authority, the person has knowledge of, or experience in, the insurance industry, and the conduct of regulated activities and consumer affairs.
  3. An industry advisory committee must meet at least once every 3 months to advise the Authority.
  4. A meeting of an industry advisory committee may be convened by—
    - (a) the chairperson of the Authority;
    - (b) the chief executive officer of the Authority; or
    - (c) any 3 other members of the industry advisory committee.
  5. At a meeting of an industry advisory committee—
    - (a) if the chairperson of the Authority is present—he or she is to be the chairperson of the meeting; or
    - (b) if the chairperson of the Authority is not present—the members of the industry advisory committee present must choose one of their number to be the chairperson of the meeting.
  6. The quorum for a meeting of an industry advisory committee is a majority of its members.

7. 根據本附表第 1(c) 條委任的業界諮詢委員會成員，在停任保監局執行董事時，即停任業界諮詢委員會成員。
  8. 業界諮詢委員會成員——
    - (a) 如根據本附表第 1(c) 條委任，可隨時藉向保監局發出書面通知而辭職；或
    - (b) 如根據本附表第 1(d) 條委任，可隨時藉向財政司司長發出書面通知而辭職。
  9. 財政司司長可藉書面通知，將任何根據本附表第 1(d) 條委任的業界諮詢委員會成員免任。
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7. If a member of an industry advisory committee appointed under section 1(c) of this Schedule ceases to be an executive director of the Authority, he or she ceases to be a member of the industry advisory committee.
  8. A member of an industry advisory committee appointed under section 1(c) or (d) of this Schedule may at any time resign from office by notice in writing to the following persons—
    - (a) if the member has been appointed under section 1(c)—the Authority;
    - (b) if the member has been appointed under section 1(d)—the Financial Secretary.
  9. The Financial Secretary may by notice in writing remove from office a member of an industry advisory committee appointed under section 1(d) of this Schedule.
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# MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

## VI.2 Guidelines on Conduct Requirements for Registered Intermediaries

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## **I. INTRODUCTION, INTERPRETATION AND APPLICATION**

### **Introduction**

- I.1 The Guidelines on Conduct Requirements for Registered Intermediaries (“Guidelines”), issued under section 6H of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (“MPFSO”), provide guidance for persons concerned with the MPFSO. They provide guidance in respect of the minimum standards of conduct expected of regulated persons who engage in conducting sales and marketing activities and giving advice in relation to registered schemes. In particular, they provide guidance about the circumstances in which the Mandatory Provident Fund Schemes Authority (“MPFA”) will be satisfied that a regulated person has, or has not, complied with a performance requirement under sections 34ZL and 34ZM for the purposes of section 34ZW of the MPFSO. Whilst the Guidelines are intended to assist regulated persons in understanding how to comply with the performance requirements, they are not intended to be an exhaustive description of how they should comply. Acts or omissions not mentioned in the Guidelines may also constitute a breach of the performance requirements.
- I.2 The three industry regulators (the Insurance Authority, Monetary Authority and Securities and Futures Commission), one or more of which will be the frontline regulator of a regulated person, will also be guided by the Guidelines in performing their supervisory and investigatory functions relating to regulated persons under the MPFSO.
- I.3 Where a frontline regulator has information which suggests a regulated person has not been in compliance with a performance requirement under section 34ZL or 34ZM of the MPFSO, it may conduct an investigation and provide the relevant information it obtained from such investigation to the MPFA for the latter’s consideration of making a disciplinary order.
- I.4 For the purposes of the Guidelines, unless otherwise specified, a registered intermediary includes a responsible officer (who is necessarily a subsidiary intermediary).
- I.5 The Guidelines do not have the force of law. They should not be interpreted in a way that would override the provision of any law.
- I.6 The Guidelines are complementary to, and do not replace, any legislative provisions applicable to, or codes or guidelines issued by industry/frontline regulators in respect of regulated persons.
- I.7 The Guidelines shall become effective on 1 November 2012, the date of commencement of the operation of the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012.

## Interpretation

- I.8 Where a term in the Guidelines is used or defined in the MPFSO or the Mandatory Provident Fund Schemes (General) Regulation (“MPFSGR”), except where specified in the Guidelines, that term carries the same meaning as used or defined in the MPFSO or MPFSGR. Relevant references are given for those terms that are used or defined in the MPFSO or MPFSGR.
- (a) “accrued benefits” - section 2 of the MPFSO;
  - (b) “approved trustee” - section 2 of the MPFSO;
  - (c) “client” - section 34ZL of the MPFSO;
  - (d) “constituent fund” - section 2 of the MPFSGR;
  - (e) “employee choice arrangement” means the arrangement whereby employees are allowed to transfer, on a lump sum basis, accrued benefits derived from their own mandatory contributions, from a contribution account under a registered scheme chosen by their employers to a registered scheme of their own choice at least once per calendar year;
  - (f) “fund” means constituent fund as defined in section 2 of the MPFSGR;
  - (g) “frontline regulator” - section 34E of the MPFSO;
  - (h) “industry regulator” - section 34E of the MPFSO;
  - (i) “material decision” - section 34F of the MPFSO;
  - (j) “Part” means Part IVA of the MPFSO;
  - (k) “performance requirement” - section 34E of the MPFSO;
  - (l) “principal intermediary” - section 34G of the MPFSO;
  - (m) “registered intermediary” - section 2 of the MPFSO;
  - (n) “registered scheme” - section 2 of the MPFSO;
  - (o) “regulated activity” - section 34F of the MPFSO;
  - (p) “regulated advice” - section 34F of the MPFSO;
  - (q) “regulated person” - section 2 of the MPFSO;
  - (r) “responsible officer” - section 34I of the MPFSO;
  - (s) “rules” means rules made under section 47 of the MPFSO;
  - (t) “scheme” means registered scheme as defined in section 2 of the MPFSO;
  - (u) “service provider” - section 2 of the MPFSO;
  - (v) “subsidiary intermediary” - section 34H of the MPFSO;
  - (w) “working day” - section 2 of the MPFSO.
- I.9 A reference in the Guidelines to “it” or “its” in relation to a registered intermediary shall, except where the context otherwise specifies, be construed as including a reference to “he” or “his”, “she” or “her”, as the case may be.

- I.10      A reference in the Guidelines to a “section” shall mean a reference to a section in the MPFSO or MPFSGR.
- I.11      References to legislation, regulations, rules, codes or guidelines shall include such legislation, regulations, rules, codes or guidelines as they are replaced, amended or supplemented from time to time.



## II. STATUTORY REQUIREMENTS

II.1 The conduct requirements are set out in sections 34ZL and 34ZM of Part IVA of the MPFSO. Those sections read as follows:

**“34ZL. Conduct requirements for registered intermediary**

- (1) When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary—
  - (a) must act honestly, fairly, in the best interests of the client, and with integrity;
  - (b) must exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity;
  - (c) may advise only on matters for which the principal or subsidiary intermediary (as the case may be) is competent to advise;
  - (d) must have such regard to the client’s particular circumstances as is necessary for ensuring that the regulated activity is appropriate to the client;
  - (e) must make such disclosure of information to the client as is necessary for the client to be sufficiently informed for the purpose of making any material decision;
  - (f) must use best endeavours to avoid a conflict between the interests of the principal or subsidiary intermediary (as the case may be) and the interests of the client and, in the case of such a conflict, must disclose the conflict to the client;
  - (g) must ensure that client assets are promptly and properly accounted for; and
  - (h) must comply with other requirements that are prescribed by the rules.
- (2) 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).
- (3) A principal intermediary—
  - (a) must establish and maintain proper controls and procedures for securing compliance by the principal intermediary, and by each subsidiary intermediary attached to the principal intermediary, with this Part;

- (b) must use the principal intermediary's best endeavours to secure observance by subsidiary intermediaries attached to the principal intermediary of the controls and procedures established under paragraph (a);
  - (c) must ensure that the responsible officer has sufficient authority within the principal intermediary for carrying out specified responsibilities in relation to the principal intermediary; and
  - (d) must provide the responsible officer with sufficient resources and support for carrying out specified responsibilities in relation to the principal intermediary.
- (4) In this section, a reference to a client of a principal intermediary, or a subsidiary intermediary attached to a principal intermediary, when carrying on a regulated activity, is a reference to —
  - (a) a person whom the principal or subsidiary intermediary invites or induces, or attempts to invite or induce, to make a material decision; or
  - (b) a person to whom the principal or subsidiary intermediary gives regulated advice.

**34ZM. Conduct requirements for responsible officer**

A responsible officer of a principal intermediary must use his or her best endeavours to carry out specified responsibilities in relation to the principal intermediary.”

*Note: Under section 34I(3) of the MPFSO, a reference to specified responsibilities in relation to a principal intermediary, is a reference to—*

- (a) *the responsibility to ensure that the principal intermediary has established and maintains proper controls and procedures for securing compliance by the principal intermediary, and by each subsidiary intermediary attached to the principal intermediary, with this Part; and*
- (b) *the responsibility to ensure that the principal intermediary uses the principal intermediary's best endeavours to secure observance by subsidiary intermediaries attached to the principal intermediary of the controls and procedures mentioned in paragraph (a).*

### **III. GUIDANCE ABOUT STATUTORY REQUIREMENTS**

- III.1 In determining whether it is satisfied that a regulated person has, or has not, complied with a performance requirement under section 34ZL or 34ZM for the purposes of section 34ZW, subject to I.1, the MPFA will have regard to the matters set out below.

#### **ACTING HONESTLY, FAIRLY, IN THE BEST INTERESTS OF THE CLIENT AND WITH INTEGRITY**

##### **Section 34ZL(1)(a)**

**When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must act honestly, fairly, in the best interests of the client, and with integrity.**

##### **Accurate Representations**

- III.2 A registered intermediary should not make inaccurate or misleading statements about itself, other registered intermediaries, any other party connected with the operation or distribution of registered schemes and/or constituent funds, any registered scheme or constituent fund, whether knowingly or recklessly.
- III.3 A registered intermediary should ensure that any form to be signed by a client is duly completed in all material respects before asking the client to sign on it. Any alterations to the completed form must be initialed by the client or, where it is not practical to do so, otherwise authenticated as representing the client's instruction. A copy of the form should be provided to the client as soon as reasonably practicable and another copy should be kept by the principal intermediary for a minimum period of seven years. The record of the form may be kept in electronic form but should be readily accessible by the frontline regulators for supervisory and inspection purposes.

##### **Advertising and Marketing Material**

- III.4 A principal intermediary should ensure that any advertisement or marketing material issued by it does not contain information that is false, misleading or deceptive. It should ensure that the information relating to registered schemes and constituent funds is clear, fair and timely, presents a balanced picture of the registered schemes/constituent funds with adequate risk disclosure.
- III.5 A subsidiary intermediary should only distribute or give out marketing material approved by his principal intermediary.

### **Rebates, Gifts and Incentives**

- III.6 A registered intermediary should not, directly or indirectly, offer any rebates, gifts or incentives (including, without limitation, commissions or other monetary/non-monetary benefits) to any person for the purpose of encouraging a client to:
- (a) become a member of; or
  - (b) make a contribution to; or
  - (c) transfer any benefits to; or
  - (d) retain membership until a certain date or expiry of a certain period in one or more registered schemes/constituent funds.
- III.7 The above restriction does not apply where the rebate, gift or incentive takes the form of any of the following:
- (a) a discount of fees and charges by way of bonus units, bonus credit or rebates credited to the MPF account of the recipient of the offer;
  - (b) a non-monetary benefit (such as access to additional services) associated with a membership privilege program offered by or approved by the approved trustee or sponsor of the registered scheme;
  - (c) a discount of the registered intermediary's own fees and charges by way of a reduction in the amount directly payable by the client; or
  - (d) a commission or other monetary/non-monetary benefits paid to a registered intermediary for performing services as a registered intermediary.

### **Best Interests of the Client**

- III.8 A registered intermediary should act in the best interests of the client in conducting sales and marketing activities and in giving regulated advice in relation to registered schemes/constituent funds.

### **Confidentiality of Client Information**

- III.9 A registered intermediary should treat all information supplied by a client as confidential, must not disclose or use such information except as permitted at law, and avoid any misuse of the personal information obtained in the course of its business activities.

*Note: Special attention should be paid to section 41 of the MPFSO and the Personal Data (Privacy) Ordinance (Cap. 486) in handling client information.*

### **Assistance to Regulators**

- III.10 A registered intermediary should co-operate with the MPFA and the relevant frontline regulator at all times, including, but not limited to, establishing the facts in the event of a complaint concerning itself, its subsidiary intermediaries or other intermediaries.

### **Handling of Client Complaints**

- III.11 A registered intermediary should ensure that any complaint arising from regulated activities is promptly and fairly handled.

## **CARE, SKILL AND DILIGENCE**

### **Section 34ZL(1)(b)**

**When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity.**

### **Understanding of MPF System, MPF Products and Relevant Concepts**

- III.12 A registered intermediary should have a general understanding of:
- (a) the mandatory provident fund (“MPF”) System and keep abreast of developments relevant to the MPF System;
  - (b) the various types of registered schemes and constituent funds available in the market; and
  - (c) basic investment and related concepts such as the relationship between risk and return, the importance of diversification of assets, the impact of fees on return, and the effect of compounding and dollar cost averaging.
- III.13 In order to achieve the understanding referred to in III.12, a registered intermediary should, at a minimum, familiarize itself with the reference materials for intermediaries issued by the MPFA and the various tools (such as the Fee Comparative Platform, calculator on retirement needs, calculator for projecting your MPF accrued benefits and Trustee Service Comparative Platform) that would assist a client in making material decisions.

*Note: Reference materials and various tools are available under “Industry Practitioner – Intermediary” on the MPFA website.*

## **Understanding of Promoted Registered Schemes and Constituent Funds**

- III.14 A registered intermediary should have a good understanding, such that may reasonably be expected of a prudent person carrying on the regulated activity, of any registered scheme and constituent fund which it promotes and/or on which it gives regulated advice, including:
- (a) the identity of key parties concerned in the operation or distribution of the scheme (including the approved trustee, investment manager, promoter, sponsor, administrator, custodian and guarantor);
  - (b) the level of fees and charges relating to the scheme and the various constituent funds in the scheme;
  - (c) the investment policies, types and levels of risks and terms and conditions of the various constituent funds in the scheme;
  - (d) the range of services offered by the approved trustee of the scheme and its service providers in relation to the operation or distribution of the scheme; and
  - (e) general scheme operational issues such as those relating to transfers and withdrawals.
- III.15 A principal intermediary should conduct product due diligence on any registered scheme and constituent fund which it promotes and/or on which it gives regulated advice prior to the selling and marketing of such registered scheme and/or constituent fund and on an on-going basis at appropriate interval in order to ensure that its subsidiary intermediaries keep up-to-date on the issues mentioned in III.14.

## **Keeping Record of Orders**

- III.16 A registered intermediary should record the particulars of any order instructions relating to material decisions received from a client (including the date and time of receipt and details of the order). The records of orders should be kept by the principal intermediary for a minimum period of seven years.

## **Prompt Execution**

- III.17 A registered intermediary should take all reasonable steps to carry out client instructions promptly and accurately, notify the client after the instructions have been carried out and alert the client within a reasonable time in case of any delay or failure to execute the client's instruction by the registered intermediary. Client instructions refer to instructions to the registered intermediary (e.g. passing an enrolment form to the approved trustee) and not instructions to the approved trustee (e.g. processing of the enrolment by the approved trustee).

## **Care for Clients with Special Needs**

- III.18 In the course of conducting a regulated activity, a registered intermediary should provide extra care of, and support for, clients with special needs ("vulnerable

clients”) during the sales and marketing process relating to the making of a key decision. A vulnerable client for this purpose is a person who is not, or may not be, able to fully understand the type of information to be provided and discussed or who is not, or may not be, able to make that key decision. Such clients may include, for example, those who are illiterate, with low level (primary level or below) of education, visually or otherwise impaired in a manner that affects their ability to make the relevant key decision independently. A key decision for this purpose refers to one of the following decisions:

- (a) choosing a particular constituent fund;
- (b) making a transfer that would involve a transfer out of a guaranteed fund;
- (c) making an early withdrawal of accrued benefits from the MPF System; or
- (d) making how much voluntary contributions into a particular registered scheme or a particular constituent fund.

III.19 Having assessed a client as a vulnerable client, a registered intermediary should exercise extra care, and where necessary, provide additional support during the sales and marketing process relating to that key decision. What would constitute “extra care” will depend on the particular vulnerability of the client and the nature and circumstances of the regulated activity being undertaken. It should, however, include:

- (a) offering the client the opportunity:
  - (i) to be accompanied by a companion to witness the relevant sales process and constituent fund selection process; and/or
  - (ii) to have an additional member of staff to witness the relevant sales process and constituent fund selection process.

The registered intermediary should document that the above choices were offered to the client, the choice that has been made by the client and ask the client to acknowledge the choice he has made by signing the document. A copy of the signed document should be provided to the client and the original should be kept by the principal intermediary for a minimum period of seven years;

or

- (b) conducting post-sale call to:
  - (i) confirm that the intermediary has provided the client with the offering document, explained the key features of the relevant registered scheme and constituent funds and advised the client to read carefully and understand the information contained in the offering document prior to making the key decision;
  - (ii) verify the key decision (as mentioned in III.18) that the client has made; and
  - (iii) confirm the client’s understanding of the key decision he has made.

The post-sale call, to be made within seven working days and audio recorded, should be conducted by an authorized person (not the subsidiary intermediary who conducted the regulated activity) of the principal intermediary.

Processing of the client's instruction need not wait for completion of the post-sale call process. In case the principal intermediary does not have an audio recording system, it should make arrangement with the approved trustee/sponsor/promoter for an authorized person of one of these parties to conduct the post-sale call. The arrangement should include allowing the frontline regulators access to the relevant audio record where necessary.

The authorized person should use reasonable efforts to contact the client and if the client cannot be contacted after several attempts, the principal intermediary should send a document to the client to confirm that the intermediary has provided the client with the offering document, explained the key features of the relevant registered scheme and constituent funds, and advised the client to read carefully and understand the information contained in the offering document prior to making the key decision and the key decision that the client had made.

The authorized person should document the attempts made to contact the client and the principal intermediary should keep copies of the relevant correspondence. The audio record and/or written documentation should be kept by the principal intermediary or the approved trustee/sponsor/promoter (as the case may be) for a minimum period of seven years.

### **Compliance with Requirements of Principal Intermediary**

- III.20 A subsidiary intermediary should comply with the controls, procedures and standards of conduct as required by his principal intermediary.

## **ADVICE ON MATTERS WITHIN COMPETENCE**

### **Section 34ZL(1)(c)**

**When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary may advise only on matters for which the principal or subsidiary intermediary (as the case may be) is competent to advise.**

### **Adequate Training, Skills and Knowledge**

- III.21 A subsidiary intermediary should not give advice on matters in relation to which he is not adequately trained or otherwise lacks the specific skills or knowledge necessary to assist a client.
- III.22 A principal intermediary should have in place arrangements to assess whether its subsidiary intermediaries possess the relevant qualification, skills and/or knowledge.
- III.23 A principal intermediary should provide sufficient training to ensure that its subsidiary intermediaries engaging in regulated activities, among other things:



- (a) have adequate knowledge and skills to provide explanations, recommendations or advice to a client about registered schemes/constituent funds;
- (b) are conversant with the selling procedures and relevant controls; and
- (c) are aware of the relevant statutory and regulatory requirements that they need to comply with.

## **HAVING REGARD TO CLIENT'S PARTICULARS AS IS NECESSARY**

### **Section 34ZL(1)(d)**

**When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must have such regard to the client's particular circumstances as is necessary for ensuring that the regulated activity is appropriate to the client.**

### **Know Your Client**

- III.24 In assisting an employer/self-employed person/employee/personal account holder to participate/enrol in a registered scheme, a registered intermediary should take all reasonable steps to establish the identity of its client by checking the client's identity document (e.g. business registration certificate, identity card or passport) to verify the client's identity, and to acquire a basic understanding of its client (such as the employer's nature of business and the client's education level).

### **Suitability Assessment**

- III.25 A registered intermediary should have regard to a client's particular circumstances by conducting "suitability assessment" (set out in III.27 below) in the following circumstances:
- (a) extending an invitation or inducement to a specific client<sup>1</sup> (being a self-employed person, an employee or a personal account holder) that involves the choice of a particular constituent fund; or
  - (b) giving regulated advice to a specific client (being a self-employed person, an employee or a personal account holder) that involves the choice of a particular constituent fund.

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<sup>1</sup> The term "specific client" is used to denote that the invitation/inducement/advice is extended/given specifically to a particular client/clients. This is to distinguish the situation where the invitation/inducement/advice is extended/given in a group setting (e.g. in a seminar) where the invitation/inducement/advice is not directed to a specific person/persons and without taking into account individual circumstances.

*Examples of an invitation, inducement or advice that involves the choice of a particular constituent fund include an invitation/inducement/advice to:*

- *join a particular registered scheme and invest in a particular constituent fund within that registered scheme;*
- *transfer accrued benefits from one registered scheme to another registered scheme and invest in a particular constituent fund within that registered scheme;*
- *invest future contributions (mandatory or voluntary contributions) in a particular constituent fund; or*
- *transfer accrued benefits from one particular constituent fund to another particular constituent fund within a registered scheme.*

III.26 Beyond these circumstances, there may be other occasions where some assessment of a client's particular circumstances is appropriate. In assessing this, the registered intermediary should have regard to the extent to which a decision by a client might have materially adverse consequences for that client and the extent to which the client may be placing reliance on the registered intermediary. This may arise particularly where detailed advice directed to a specific client is being given in relation to:

- (a) a decision on early withdrawal of accrued benefits from the MPF System; or
- (b) a decision as to the amount of any voluntary contributions to be paid into the MPF System.

III.27 When conducting suitability assessment connected with the choice of a particular constituent fund, a registered intermediary should:

- (a) assess the client's risk profile by acquiring an understanding of the client's personal circumstances, such as the client's existing investment portfolio (including MPF portfolio if any), age, intended retirement age, financial situation, investment objective, investment knowledge, investment experience, risk tolerance and the level of risk the client is prepared to accept;
- (b) match the client's risk profile with the risk level of the constituent funds to select a constituent fund/constituent funds suitable for the client;
- (c) explain to the client why a particular constituent fund/constituent funds are suitable for the client; and
- (d) provide the client with a copy of a document containing the client's risk profile and the explanations given (including response to questions raised in relation to the choice of fund) and obtain the client's signature on the document to confirm the client's agreement on the accuracy of the information thereon. A copy of the so signed document should be provided to the client and the original to be kept by the principal intermediary for a minimum period of seven years.

## Lack of Necessary Information

- III.28 In the case where a registered intermediary might not be able to obtain necessary information from the client to assess the client's risk profile in order to complete a necessary suitability assessment, it should explain to the client that it is not able to make a proper assessment of the client's risk profile. The registered intermediary should not invite or induce the client to consider a particular constituent fund and should not provide any regulated advice to the client in relation to a particular constituent fund.

## Risk Matching

- III.29 Where, after conducting the suitability assessment, a client insists on choosing to invest his contribution in, or transfer his accrued benefits to, a constituent fund for which the risk level is higher than the client's risk profile as assessed by the registered intermediary ("risk mismatch"), the intermediary should:
- (a) tell the client that there is a risk mismatch between the constituent fund choice and the client's risk profile;
  - (b) explain to the client the risk of the fund selection and that the constituent fund may not be suitable for the client (illustrating this by providing clear explanation of the features and risk of the constituent fund to the client);
  - (c) confirm with the client that the constituent fund choice is the client's own decision and ask the client to provide the reasons for choosing that fund;
  - (d) document the following:
    - (i) the risk mismatch between the constituent fund choice and the client's risk profile;
    - (ii) the explanations given to the client;
    - (iii) that the constituent fund choice is the client's own decision; and
    - (iv) the reasons given by the client in respect of that choice;
  - (e) ask the client to acknowledge the content (as mentioned in (d)) of the document by signing the document; and
  - (f) give a copy of the signed document as mentioned in (e) to the client and the original to the principal intermediary to be kept for a minimum period of seven years.
- III.30 When the client insists on choosing a constituent fund for which the risk level is higher than the client's risk profile as assessed by the registered intermediary, the conversation regarding the risk mismatch (as set out in III.29 (a) to (c)) between the registered intermediary and the client should be audio recorded (if audio recording system is available) to provide an audit trail. If the processes are not audio-recorded, then **either** a post-sale call **or** post-sale confirmation should be implemented.

**(a) Post-sale Call**

- (i) The post-sale call, to be made within seven working days and audio recorded, should be conducted by an authorized person (not the subsidiary intermediary who conducted the regulated activity) of the principal intermediary. Processing of the client's instruction need not wait for completion of the post-sale call process. The post-sale call should confirm the client's fund choice and remind the client that there is a risk mismatch between the client's constituent fund choice and the client's risk profile as assessed by the intermediary and confirm that the fund choice was the client's own decision.
- (ii) In case the principal intermediary does not have an audio recording system, it should make arrangement with the approved trustee/sponsor/promoter for an authorized person of one of these parties to conduct the post-sale call. The arrangement should include allowing the frontline regulators access to the relevant audio record where necessary.
- (iii) The authorized person should use reasonable efforts to contact the client and if the client cannot be contacted after several attempts, the principal intermediary should send a document to the client to confirm the fund choice made by the client, remind the client that there is a risk mismatch between the client's constituent fund choice and the client's risk profile and confirm that the fund choice was the client's own decision.
- (iv) The authorized person should document the attempts made to contact the client and the principal intermediary should keep copies of the relevant correspondence. The audio record and/or written documentation should be kept by the principal intermediary or the approved trustee/sponsor/promoter (as the case may be) for a minimum period of seven years.

**(b) Post-sale Confirmation**

- (i) To reinforce the matters set out in III.29, the registered intermediary should advise the client that instructions to process the fund selection cannot be completed by the intermediary until the client has had further time to consider the matter and confirm instructions in writing no sooner than the next working day.
- (ii) The registered intermediary should not take any steps to process the fund selection of the client until he receives a signed document from the client confirming the fund choice made by the client, and acknowledging that there is a risk mismatch between the client's constituent fund choice and the client's risk profile as assessed by the intermediary (such written confirmation not being received before the start of the next working day). The registered intermediary should record the date and time of receipt of such document. Such record and the original of the document should be kept by the principal intermediary for a minimum period of seven years.

## **DISCLOSURE OF NECESSARY INFORMATION TO THE CLIENT**

### **Section 34ZL(1)(e)**

**When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must make such disclosure of information to the client as is necessary for the client to be sufficiently informed for the purpose of making any material decision.**

### **Clear, Accurate and Relevant Information**

III.31 A registered intermediary should provide its client with information that is clear, accurate and relevant to the material decision being made.

### **Information about the Principal Intermediary**

III.32 A registered intermediary, in the initial contact with a client, should provide its client with adequate information about the principal intermediary including:

- (a) the name, principal place of business and nature of business of the principal intermediary and any relevant conditions which apply to its registration as a principal intermediary;
- (b) the capacity in which the principal intermediary is acting and in case it is distributing a registered scheme for a sponsor, promoter or approved trustee, a statement to this effect; and
- (c) the affiliation of the principal intermediary, if any, with the key parties (including the approved trustee, investment manager, promoter, sponsor, administrator, custodian and guarantor) connected with the operation or distribution of the registered scheme and/or any constituent funds of the registered scheme concerned.

III.33 A subsidiary intermediary, who acts for more than one principal intermediary, should make clear to his client which one of the principal intermediaries he is acting on behalf of on that occasion.

### **Information about the Subsidiary Intermediary**

III.34 A subsidiary intermediary, in the initial contact with a client, should:

- (a) identify himself with his business card bearing the name used in his registration as a registered intermediary and his MPF registration number;
- (b) disclose:
  - (i) the capacity in which he is acting and in case he is distributing a registered scheme for a sponsor, promoter or approved trustee, a statement to this effect;

- (ii) his affiliation, if any, with the key parties (including the approved trustee, investment manager, promoter, sponsor, administrator, custodian and guarantor) connected with the operation or distribution of the registered scheme and/or constituent funds of the registered scheme concerned; and
- (iii) what types of regulated activities (whether making invitation, inducement or giving regulated advice) he is conducting/will conduct and any relevant conditions which apply to his registration as a subsidiary intermediary.

### **Information about Monetary and Non-monetary Benefits of Intermediaries**

- III.35 A registered intermediary should also provide the client with a statement (at the time of the invitation, inducement or advice) on whether the principal intermediary and/or any of its subsidiary intermediaries will charge the client any direct fees for the services to be provided or will be compensated (either directly or indirectly) in some other manner (such as commission or salary bonus) in respect of the invitation, inducement or advice. The statement should also set out whether the benefits receivable would be different depending on the choice of the registered scheme(s) or constituent fund(s) made by the client. The statement can be a generic disclosure of the nature of monetary and non-monetary benefits receivable by the principal and/or the subsidiary intermediary.

### **Documentation on Information Provided about the Principal/Subsidiary Intermediary**

- III.36 The disclosure in III.32 to III.35 should be made in a document in hard copy or electronic form, in Chinese or English (according to the preference of the client) or both languages. Should circumstances render it not reasonably practicable to provide the disclosure in writing at the time of the invitation, inducement or advice, the subsidiary intermediary should make the disclosure verbally at the time of the invitation, inducement or advice, to be followed by the document as soon as reasonably practicable thereafter. A copy of the document should be kept by the principal intermediary for a minimum period of seven years.

### **Information about Scheme/Fund**

- III.37 A registered intermediary should provide to its client information materials that would assist the client in understanding the promoted registered scheme and constituent funds relevant to a material decision being made. At a minimum, the registered intermediary should provide a copy of the latest version of the offering document of the registered scheme to the client to assist him in making material decisions.
- III.38 In providing the information materials, a registered intermediary should explain to the client:
- (a) the key features of the registered scheme such as the level of fees and charges, the fund choices available in the scheme and the range of services offered by the approved trustee and its service providers in relation to the operation and distribution of the scheme;

- (b) the key features of the constituent funds within the relevant registered scheme such as investment policies, types and levels of risk, fees and charges and relevant terms and conditions; and
  - (c) in the case of a registered scheme with a guaranteed fund, the guarantee features, the guarantor, the risks associated with the failure of a guarantor, the period of the guarantee (if it is only for a limited period), the cost of the guarantee, the dilution of performance due to the guarantee structure in place as well as the material conditions that may affect the scope or validity of the guarantee,
- to enable the client to be sufficiently informed for the purpose of making material decisions.

III.39 A registered intermediary, when inviting/inducing/advising a client to join or transfer to a registered scheme, should inform the client that if no constituent fund is selected, the contribution will be invested in the default fund of the registered scheme. The key features of the default fund, such as its investment policy, the type and level of risk, fees and charges and relevant terms and conditions, should be explained to the client.

### **Information about Investment Performance**

III.40 A registered intermediary should not invite/induce/advise a client to make a registered scheme/constituent fund selection based primarily on past investment performance. If discussing past performance with the client, it should explain to the client that:

- (a) the mere fact that a constituent fund performed better than another constituent fund, whether of the same type or not, over any given period in the past, is not necessarily a reliable indicator that it will do so over any period into the future; and
- (b) special care should be taken in comparing the past performance of MPF conservative funds as some MPF conservative funds have a pricing mechanism that does not reflect the impact of fees.

III.41 Where a comparison is made, the registered intermediary should:

- (a) compare a constituent fund's performance with the performance of constituent funds of the same type and over a long term period (at least five years where practicable);
- (b) make "like with like" comparisons in terms of risk levels, investment strategies and objectives; and
- (c) where practicable, compare the net performance of one constituent fund with the net performance (and not the gross performance) of another constituent fund.

*Note: Information about a constituent fund's past performance is set out in the Fund Fact Sheet of a registered scheme, which is available on the website of the approved trustees and can be downloaded from the Fee Comparative Platform on the MPFA website.*

- III.42 Whilst it may be appropriate to make reference to general market outlook, a registered intermediary should avoid predicting, projecting or forecasting a constituent fund's future or likely performance.

### **Information about Transfer of Schemes/Funds**

- III.43 Before inviting, inducing or advising a client on transfers of registered schemes/constituent funds, a registered intermediary should enquire if the client has any existing investment in a guaranteed fund.

- III.44 A registered intermediary, in inviting, inducing or advising a client on transfers under employee choice arrangement, should provide a copy of the "Guide to Transfer Benefits under Employee Choice Arrangement" to the client. The content of the Guide should be duly explained to the client.

*Note: The "Guide to Transfer Benefits under Employee Choice Arrangement" is available on the MPFA website. A registered intermediary may refer to the "Flow Chart of Benefits Transfer Process" in that Guide in explaining to the client the processes involved in transfers and the timeframe for processing transfers.*

- III.45 A registered intermediary, if in the process of inviting, inducing or advising a client to consider transferring to another registered scheme or investing in another constituent fund, claims that the promoted registered scheme/constituent fund is to be preferred over the scheme/fund participated in/invested by the client, should explain:

- (a) the differences (in relation to the key features set out in III.38(a) and (b)) between the promoted scheme/fund and the scheme/fund participated in/invested by the client; and
- (b) the benefits, or potential benefits, of conducting the transfer.

The registered intermediary should make reference to the relevant product brochures, fund fact sheets, approved trustees' websites, and the MPFA website, etc. to obtain information about the registered schemes participated in or constituent funds invested by the client.

- III.46 A registered intermediary should explain the timeframe involved in the transfer process and that as the accrued benefits are generally first cashed out by the original approved trustee and then transferred to the new approved trustee for re-investment, there will be a time lag during which the accrued benefits will not be invested.

### **Information about Transfer into or out of Guaranteed Funds**

- III.47 A registered intermediary, when inviting, inducing or advising a specific client in relation to a transfer into a guaranteed fund, should:



- (a) explain the terms and conditions of the guaranteed fund with a particular focus on the qualifying conditions;
  - (b) explain to the client the circumstances when the client will or will not meet the qualifying conditions; and
  - (c) where the guaranteed fund is based on an insurance policy, explain the greater counterparty or credit risks associated with guarantees based on an insurance policy as compared to those based on a unit trust.
- III.48 A registered intermediary, when inviting, inducing or advising a specific client in relation to a transfer should find out from the client whether that transfer would result in a transfer out of a guaranteed fund. If the transfer would result in a transfer out of a guaranteed fund, the registered intermediary should:
  - (a) warn the client that a transfer of the accrued benefits out of that guaranteed fund may cause some or all of the guarantee conditions not being satisfied, thus resulting in the loss of the guarantee. The registered intermediary should advise the client to check the offering document of his original scheme or consult his approved trustee for details before transferring out of the guaranteed fund;
  - (b) document the warning and advice given in (a) and ask the client to sign the document to acknowledge the content of the document. A copy of the document should be given to the client and the original should be kept by the principal intermediary for a minimum period of seven years.
- III.49 In inviting, inducing or advising a specific client in relation to a transfer that would result in a transfer out of a guaranteed fund under III.48, the registered intermediary should:
  - (a) only process the client's instruction to transfer upon the client's confirmation that he understands the consequences of termination of the investment in the guaranteed fund; and
  - (b) document the client's confirmation provided in (a) and ask the client to acknowledge the content by signing the document. A copy of the document should be given to the client and the original should be kept by the principal intermediary for a minimum period of seven years.

### **Information about Fees and Charges**

- III.50 A registered intermediary should provide information on fees and charges of registered schemes/constituent funds to the client and communicate any terms and conditions of the discount of fees and charges, where applicable, to the client.
- III.51 Where comparison of fees and charges of constituent funds between schemes is made, the registered intermediary should:
  - (a) highlight the long-term impact of fees and charges on potential returns, illustrating with examples; and
  - (b) compare the fees and charges of similar fund types only.

*Note: Illustrations on the long-term impact of fees and charges on potential returns can be found under the section “Fees and Charges” in Chapter 2 (Which MPF Scheme Should I Choose?) of the publication “Making Informed Decisions for your MPF Life” which is available on the MPFA website. Information relating to fees and charges is available on the Fee Comparative Platform on the MPFA website. A registered intermediary can make use of the Fee Comparative Platform to search, sort and compare the fund expense ratio of any number of funds.*

- III.52 When highlighting information about fees and charges, a registered intermediary should refer the client to other key disclosure information like the fee table, the fund expense ratio and the ongoing cost illustration of the constituent funds being compared.

*Note: Explanations of the fee table, fund expense ratio and ongoing cost illustration can be found in the “Code on Disclosure for MPF Investment Funds” which is available on the MPFA website.*

## **DISCLOSURE OF CONFLICT OF INTEREST**

### **Section 34ZL(1)(f)**

**When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must use best endeavours to avoid a conflict between the interests of the principal or subsidiary intermediary (as the case may be) and the interests of the client and, in the case of such a conflict, must disclose the conflict to the client.**

### **Conflict of Interest**

- III.53 A registered intermediary should avoid any conflict of interest and if it has a material interest which gives rise to an actual or potential conflict of interest, should disclose that material interest or conflict to the client and take all reasonable steps to ensure fair treatment of the client. An example of such a conflict of interest may be where the registered intermediary receives a benefit (monetary or non-monetary) upon completing a sale or upon giving regulated advice (see III.35).

## **PROMPT AND PROPER ACCOUNTING FOR CLIENT ASSETS**

### **Section 34ZL(1)(g)**

**When carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must ensure that client assets are promptly and properly accounted for.**

### **Segregation of Client Assets**

- III.54 A registered intermediary is generally not expected to handle client assets. In the event that a registered intermediary is asked by its client to forward a cheque payment to the approved trustee of a registered scheme, it should do so promptly.
- III.55 A registered intermediary should at all times keep client assets separate from its own assets and should not use client assets for any purpose other than for the purposes of the client.

### **Cash/Cheque Payment**

- III.56 A registered intermediary must not receive cash payments and must ensure that all cheques received are crossed and made payable to the approved trustee of the registered scheme or to the registered scheme only.

## **KEEPING RECORDS OF REGULATED ACTIVITIES**

### **Section 34ZL(2)**

**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)<sup>2</sup>; and**
- (b) whether or not every subsidiary intermediary attached to the principal intermediary has complied with subsection (1).**

### **Keeping of Records**

- III.57 A registered intermediary should document the information and/or documents disclosed/provided to the client. It should also document any regulated advice given, including the rationale underlying the advice and obtain the client's signature on the document to acknowledge the above. A copy of the document should be provided to the client and the original should be kept by the principal intermediary for a minimum period of seven years.
- III.58 A principal intermediary should ensure that all audio and written records required under the Guidelines are kept for a minimum period of seven years. Such records may be kept in electronic form (where applicable) but should be readily accessible by the frontline regulators for supervisory and inspection purposes.

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<sup>2</sup> Subsection (1) of section 34ZL of the MPFSO.

## **PRINCIPAL INTERMEDIARY CONTROLS AND PROCEDURES FOR COMPLIANCE**

### **Section 34ZL(3)**

**A principal intermediary—**

- (a) must establish and maintain proper controls and procedures for securing compliance by the principal intermediary, and by each subsidiary intermediary attached to the principal intermediary, with this Part;**
- (b) must use the principal intermediary's best endeavours to secure observance by subsidiary intermediaries attached to the principal intermediary of the controls and procedures established under paragraph (a);**
- (c) must ensure that the responsible officer has sufficient authority within the principal intermediary for carrying out specified responsibilities in relation to the principal intermediary; and**
- (d) must provide the responsible officer with sufficient resources and support for carrying out specified responsibilities in relation to the principal intermediary.**

### **Section 34ZL(4)**

**In this section, a reference to a client of a principal intermediary, or a subsidiary intermediary attached to a principal intermediary, when carrying on a regulated activity, is a reference to—**

- (a) a person whom the principal or subsidiary intermediary invites or induces, or attempts to invite or induce, to make a material decision; or**
- (b) a person to whom the principal or subsidiary intermediary gives regulated advice.**

### **Minimum Procedures and Controls to Ensure Compliance**

**III.59** At a minimum, a principal intermediary should have in place a rigorous framework that can:

- (a) identify those matters that require compliance by itself and its subsidiary intermediaries; and**
- (b) put in place controls, procedures and other arrangements that are designed to ensure that compliance.**

**III.60** The controls and procedures that are appropriate for any given principal intermediary would depend on a range of factors including the scale of its operations, the number of attached subsidiary intermediaries and the range and type of regulated activities undertaken. At a minimum, however, a principal intermediary should:

- (a) have adequate resources and satisfactory internal control procedures at all times for compliance with relevant legal and regulatory requirements by itself and by its subsidiary intermediaries;**

- (b) supervise adequately and monitor subsidiary intermediaries' compliance with any manuals, guidelines and checklists for the conduct of the regulated activities;
- (c) have in place arrangements, procedures and controls to ensure that only registered intermediaries are used in undertaking regulated activities on its behalf;
- (d) have in place arrangements, procedures and controls to ensure that it maintains an up-to-date list of subsidiary intermediaries acting on its behalf and notifies the MPFA as soon as practicable if it intends to withdraw the consent for a subsidiary intermediary to act on its behalf in accordance with section 34ZG of the MPFSO;
- (e) have in place arrangements, procedures and controls to ensure that the MPFA is notified of changes relating to the registered intermediaries in accordance with sections 34ZE and 34ZI of the MPFSO;
- (f) have in place arrangements, procedures and controls to ensure that it notifies the MPFA if it becomes aware of any circumstances where the responsible officer no longer satisfies the requirements of section 34W(4)(b) of the MPFSO;
- (g) have in place arrangements, procedures and controls to ensure that the offering documents and marketing materials used by itself or its subsidiary intermediaries to promote any registered schemes/constituent funds have been authorized by the SFC or are otherwise exempted from authorization;
- (h) have in place procedures and controls for handling client complaints;
- (i) have in place arrangements, procedures and controls that require a subsidiary intermediary to report to the principal intermediary all complaints against himself;
- (j) have in place arrangements to assess whether its subsidiary intermediaries possess the relevant qualification for giving regulated advice;
- (k) provide sufficient training to its subsidiary intermediaries to ensure that they keep abreast of developments in the MPF System and upgrade their professional knowledge on a continuing basis, and maintain a record of training undertaken by its subsidiary intermediaries. Such records and the documentary evidence sufficient to support their attendance or completion of the continuing training activities mentioned in (l) such as certificates of attendance issued by the course providers and examination results should be kept for a minimum period of three years;
- (l) have in place procedures and controls to ensure their subsidiary intermediaries comply with the continuing training requirement specified by the MPFA;
- (m) have in place procedures and controls to ensure annual returns are lodged by itself and its subsidiary intermediaries with the MPFA within the stipulated timeframe;
- (n) where telephone marketing campaigns are to be undertaken, provide compliance guidelines before embarking on such campaigns and maintain a call log for monitoring purposes;

- (o) have in place risk matching procedures and controls for determining whether a constituent fund matches a client's risk profile;
- (p) have in place procedures and controls to ensure that all audio and written records required under the Guidelines are kept for a minimum period of seven years;
- (q) have in place procedures and controls to ensure that its subsidiary intermediaries are aware of the requirements relating to disclosure of conflict of interest and that if any of its subsidiary intermediaries acts for more than one principal intermediary, the subsidiary intermediary should make clear to the client for which one of the principal intermediaries he is acting;
- (r) have in place procedures and controls to ensure that client assets are promptly and properly accounted for. To minimize the scope for any fraud or defalcation, a principal intermediary should have in place arrangements to prevent a subsidiary intermediary from receiving cash payments or receiving cheques that are not crossed and not made payable to the approved trustee of the registered scheme or to the registered scheme;
- (s) have in place arrangements, procedures and controls to identify any failure of the principal intermediary or its subsidiary intermediaries to comply with the provisions in relation to regulated activities in the MPFSO or any subsidiary legislation under the MPFSO, the Guidelines, and other guidelines relating to regulated activities and to report such failure to the frontline regulator and also the industry regulator (where the industry regulator is not the frontline regulator) within 14 working days of the principal intermediary identifying the failure;
- (t) have in place arrangements, procedures and controls to ensure that sufficient information is recorded and retained about its business relating to the conduct of regulated activities concerning registered schemes and constituent funds. Such records should be kept for a minimum period of seven years;
- (u) provide senior management (including the responsible officer) with management information system reports and access to all relevant information about its business on a timely basis. The reports and relevant information must also be available to the frontline regulators upon request; and
- (v) have in place compliance review and internal audit procedures as an integral part of the control procedures to regularly review and assess the effectiveness and efficiency of the principal intermediary's controls and procedures.

## **Complaint Handling**

III.61 One of the key aspects of proper controls and procedures relates to having in place adequate procedures for dealing with complaints from a client. The procedures that should be put in place by a principal intermediary depend on the scale and nature of the regulated activities undertaken. At a minimum, a principal intermediary should maintain procedures and controls to ensure:

- (a) any complaint from a client is handled in a timely and appropriate manner and that remedial action is taken as soon as possible;

- (b) steps are taken to investigate and respond promptly to the complaint;
- (c) if the complaint is not satisfactorily resolved, that steps are taken to investigate and handle the complaint by the senior officer of the subsidiary intermediary, or by the principal intermediary's designated compliance officer in a timely and reasonable manner;
- (d) if a complaint is not resolved promptly to the client's satisfaction, the client is advised of any further steps which may be available to the client under the regulatory system;
- (e) the frontline regulator as well as its respective industry regulator (if the industry regulator is not the frontline regulator) are informed immediately of any complaints of a criminal nature (such as misappropriation of client funds or forgery of client documents) or other serious nature (such as unauthorized transfer of client's accrued benefits);
- (f) all complaints are fully documented (including resolution if any) and that a summary of the complaint cases be provided to the MPFA on a quarterly basis; and
- (g) a register of complaints, containing information including but not limited to the name of the complainant, the target of the complaint, the date of submission of the complaint, the nature of the complaint and the date the complaint is remedied/addressed, whether the complaint is substantiated, a summary of the investigation results and action taken and whether there is any breach of legislation, guidelines or regulations administered by the MPFA is maintained. The register should be made available as soon as practicable to the MPFA and frontline regulators upon their request.

## **ROLE OF RESPONSIBLE OFFICER**

### **Section 34ZM**

**A responsible officer of a principal intermediary must use his or her best endeavours to carry out specified responsibilities in relation to the principal intermediary.**

*Note: Under section 34I(3) of the MPFSO, a reference to specified responsibilities in relation to a principal intermediary, is a reference to—*

- (a) the responsibility to ensure that the principal intermediary has established and maintains proper controls and procedures for securing compliance by the principal intermediary, and by each subsidiary intermediary attached to the principal intermediary, with this Part; and*
- (b) the responsibility to ensure that the principal intermediary uses the principal intermediary's best endeavours to secure observance by subsidiary intermediaries attached to the principal intermediary of the controls and procedures mentioned in paragraph (a).*

## **Responsible Officer**

- III.62 One of the specified responsibilities of a responsible officer is to ensure that the principal intermediary has established and maintains proper controls and procedures for securing compliance by the principal intermediary and its subsidiary intermediaries with the requirements of Part IVA of the MPFSO. Items III.60 and III.61 are relevant to the question of what those proper controls and procedures are.

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G.N. 4418

# **Guideline on Exercising Power to Impose Pecuniary Penalty**

**(For authorized insurers, reinsurers,  
appointed insurance agents and  
authorized insurance brokers carrying  
on or advising on long term business)**

**June 2012**

**Office of the Commissioner of Insurance**

## **Guideline on Exercising Power to Impose Pecuniary Penalty**

### **Introduction**

This Guideline is issued by the Insurance Authority ("IA") pursuant to section 23(1) of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Chapter 615) (the "Ordinance"). Under section 21 of the Ordinance, the IA may impose a pecuniary penalty either on its own or together with other disciplinary sanctions on an authorized insurer, appointed insurance agent or authorized insurance broker carrying on or advising on long term business ("insurance institution") if the insurance institution contravenes a specified provision as defined by section 5(11) of the Ordinance.

In exercising the power to impose pecuniary penalty referred to in section 21(2)(c) of the Ordinance, the IA shall have regard to this Guideline which indicates the manner in which it proposes to exercise that power.

### **Considerations in exercising the IA's power to impose pecuniary penalty**

1. As a matter of policy, the IA will usually publicize all his decisions to impose pecuniary penalty.
2. When considering whether to impose a pecuniary penalty and the amount of the penalty, the IA will consider all of the circumstances of the particular case, including the relevant factors described below.
3. A pecuniary penalty imposed by the IA should act as a deterrent to the insurance institution concerned from contravening a specified provision as defined by section 5(11) of the Ordinance. It should also act as a general deterrent to other insurance institutions from contravening the same or similar specified provisions.
4. Although section 21(2)(c)(ii) of the Ordinance states that one alternative maximum level of the pecuniary penalty that can be imposed is three times the amount of the profit gained, or costs avoided, the IA will not automatically link the penalty imposed in any particular case with the profit gained, or costs avoided.
5. A pecuniary penalty should not have the likely effect of putting the insurance institution concerned in financial jeopardy. In considering this

factor, the IA will take into account the size and financial resources of the insurance institution.

6. The more serious the contravention, the greater the likelihood that the IA will impose a pecuniary penalty and that the size of the penalty will be larger. In determining the seriousness of a contravention, the IA will consider all of the circumstances of the case and take into account but not limited to the factors set out below.

(a) *The nature, seriousness and impact of the contravention, including:*

- (i) whether the contravention is intentional or reckless or negligent – a contravention caused merely by negligence or conduct which only results in a technical breach is generally regarded as less serious;
- (ii) the duration and frequency of the contraventions;
- (iii) whether the contravention is potentially damaging or detrimental to the integrity and stability of the insurance industry, and/or the reputation of Hong Kong as an international financial centre;
- (iv) whether the contravention caused or potentially caused loss to, or imposed costs on, any other person;
- (v) whether the contravention was committed by the insurance institution alone or whether as part of a group and the role the insurance institution played in that group;
- (vi) whether the contravention reveals serious or systemic weaknesses of the management systems or internal controls in respect of the customer due diligence and record-keeping procedures relating to all or part of that insurance institution's business;
- (vii) whether the contravention was indicative of a pattern of contraventions;
- (viii) whether there are a number of smaller issues, which individually may not justify a pecuniary penalty, but which do so when taken collectively; and
- (ix) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the contravention.

(b) *The conduct of the insurance institution after the contravention,*

*including:*

- (i) whether the insurance institution attempted to conceal its contravention;
- (ii) any remedial steps taken since the contravention or the possible contravention was identified, and any action taken by the insurance institution against those involved and any steps taken to ensure that similar contraventions will not occur in future;
- (iii) the degree of cooperation with the IA, other relevant authorities and/or law enforcement agencies during the investigation of the contravention; and
- (iv) the likelihood that the insurance institution will commit the same type of contravention in the future if no or a lighter penalty is imposed.

(c) *The previous disciplinary record and compliance history of the insurance institution, including:*

- (i) the relevant previous disciplinary record of the insurance institution, including its previous similar contraventions particularly that for which it has been disciplined before;
- (ii) whether the insurance institution has previously undertaken not to engage in that particular conduct that results in the contravention; and
- (iii) any punishment imposed or regulatory action taken or likely to be taken by other relevant authorities on the same incident.

(d) *Other factors, including:*

- (i) whether the IA has issued any guidance in relation to the conduct in question – generally the IA will not take disciplinary action against an insurance institution for conduct that is in line with the guidance which was current at the time of the conduct in question;
- (ii) what action the IA and/or other relevant authorities have taken in previous similar cases – in general similar cases should be treated consistently;
- (iii) the amount of any benefit gained or costs avoided by the insurance institution or any of its directors or employees as a result of the contravention; and
- (iv) as a mitigating factor, whether the insurance institution has promptly, effectively and completely brought the

contravention or possible contravention to the attention of the IA.

June 2012  
Insurance Authority