

**MEMORANDUM OF UNDERSTANDING
CONCERNING THE REGULATION OF
MPF INTERMEDIARIES**

Monetary Authority

Insurance Authority

Securities and Futures Commission

and

Mandatory Provident Fund Schemes Authority

Hong Kong

1st January 2004

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MEMORANDUM OF UNDERSTANDING

This quadri-partite Memorandum of Understanding (“MOU”), in respect of the regulation of MPF intermediaries¹, is signed among the following parties (“the four regulators”):

Monetary Authority (the “MA”) of 55th Floor, Two International Finance Centre, 8 Finance Street, Central, Hong Kong

Insurance Authority (the “IA”) of 21st Floor, Queensway Government Offices, 66 Queensway, Hong Kong

Securities and Futures Commission (the “SFC”) of 8th Floor, Chater House, 8 Connaught Road Central, Hong Kong

Mandatory Provident Fund Schemes Authority (the “MPFA”) of 21st Floor, One International Finance Centre, 1 Harbour View Street, Central, Hong Kong

¹ “MPF intermediaries” means those persons who are engaged in:

- (a) selling MPF schemes; or
- (b) advising clients on constituent funds or underlying approved pooled investment funds of MPF schemes.

The term “MPF intermediary” is used in the most expansive sense, including an individual (employee/agent/representative), a sole proprietor, a partnership, or a corporation and its directors who are responsible for the supervision of the selling/advising activities of MPF schemes. Unless otherwise specified, the term “MPF intermediary” refers to individual, firm, partnership, corporation and its directors.

The term “MPF intermediary” does not include certain professionals (such as lawyers, professional accountants or actuaries) whose act of giving advice is wholly incidental to the practice of their profession.

“MPF intermediaries” includes those supervised by one or more of the following regimes:

- (a) SFC regime - as licensed corporations or licensed representatives licensed/deemed to have been licensed to carry on Type 1 (dealing in securities) and/or Type 4 (advising on securities) regulated activities;
- (b) IA regime - as authorized insurers eligible to carry on long term business or their employees, authorized insurance brokers or appointed insurance agents eligible to engage in long term business, or their registered Chief Executives/registered Responsible Officers/Technical Representatives; and
- (c) MA regime - as authorized institutions or their staff,

who are involved in selling MPF schemes or advising clients on constituent funds or underlying approved pooled investment funds of MPF schemes.

1. STATUS OF PARTIES

- 1.1 The SFC is a body corporate given statutory powers by the Securities and Futures Ordinance (Cap. 571) (the "SF Ordinance"). The functions of the SFC include regulating securities, futures and leveraged foreign exchange trading and other financial products for the protection of investors and maintenance of the integrity of the securities and futures markets; administering all relevant requirements to ensure full disclosure to and fair treatment of public shareholders and investors; regulating persons carrying on regulated activities as defined in the SF Ordinance such as dealing in securities and advising on securities; and encouraging the development of securities and futures markets in Hong Kong and the increased use of such markets by investors in Hong Kong and elsewhere.
- 1.2 The MA is appointed and established by the Exchange Fund Ordinance (Cap. 66) and is also responsible for supervising authorized institutions under the Banking Ordinance (Cap. 155). The principal function of the MA under the Banking Ordinance is to promote the general stability and effective working of the banking system. In particular, the MA is responsible for ensuring that authorized institutions operate in a responsible, honest and business-like manner; promoting and encouraging proper standards of conduct and sound and prudent business practices among authorized institutions; suppressing illegal, dishonourable business practices; co-operating with and assisting other supervisory authorities within and outside Hong Kong; and considering and preparing reforms of the laws relating to banking business. The MA may issue guidelines in relation to his functions for the guidance of authorized institutions.
- 1.3 The IA is appointed pursuant to the Insurance Companies Ordinance (Cap. 41). The principal function of the IA is to regulate and supervise the insurance industry for the promotion of the general stability of the insurance industry and for the protection of existing and potential policy holders and includes supervising an insurer's and an insurance intermediary's compliance with the provisions of the Insurance Companies Ordinance; considering and proposing reforms of the law relating to insurance business; promoting and encouraging proper standards of conduct and sound and prudent business practices amongst insurers; promoting and encouraging proper standards of conduct of insurance intermediaries and, where necessary, reviewing and revising the regulatory system for the same; promoting and developing self-regulation by market and professional bodies of the insurance industry; and co-operating with and assisting the financial services supervisory authorities of Hong Kong or of any place outside Hong Kong, whenever appropriate, preparing and publishing guidelines for the guidance of authorized insurers, insurance intermediaries, and the auditors and actuaries of such insurers and intermediaries.
- 1.4 The MPFA is established by the Mandatory Provident Fund Schemes Ordinance (Cap. 485). Its functions include ensuring compliance with the Mandatory Provident Fund Schemes Ordinance and its subsidiary legislation (the "MPF Ordinance"); registering provident fund schemes as registered schemes;

approving pooled investment funds as approved pooled investment funds; approving qualified persons to be approved trustees; granting exemptions to occupational retirement schemes; regulating the affairs and activities of approved trustees including the selling of and/or advising on MPF schemes by MPF intermediaries; ensuring as far as reasonably practicable that approved trustees administer the registered schemes in a prudent manner; making rules or guidelines for the payment of mandatory contributions and for the administration of registered schemes with respect to those contributions; considering and proposing reforms of the law relating to occupational retirement schemes or provident fund schemes; promoting and encouraging the development of the retirement scheme industry in Hong Kong, including the adoption of a high standard of conduct and sound prudent business practices by trustees and other service providers; and exercising such other functions as are conferred or imposed on the MPFA by or under the MPF Ordinance or any other ordinances.

2. REASONS FOR MEMORANDUM OF UNDERSTANDING

- 2.1 This MOU aims to replace and supersede the previous MOU, signed on 30th October 1999, among the MA, the IA, the SFC and the MPFA, in light of the commencement of the SF Ordinance, which repeals and replaces, *inter alia*, the Securities and Futures Commission Ordinance (Cap. 24), the Securities Ordinance (Cap. 333) and the Protection of Investors Ordinance (Cap. 335).
- 2.2 Under the existing legal framework, the SFC, the IA (including the three self-regulatory organizations of the insurance industry² (“SROs”)) and the MA regulate the securities and futures, insurance and banking industries respectively. Insofar as the regulation of MPF intermediaries is concerned, the MA, the IA and the SFC each supervises its/his industry sector, including conducting routine inspections and taking enforcement/disciplinary actions on MPF intermediaries under its/his supervision.
- 2.3 To ensure consistency in regulatory approach, it has been agreed among the four regulators that the MPFA acts as the lead regulator and co-ordinator, leading and co-ordinating the regulatory functions of the four regulators in respect of MPF intermediaries.
- 2.4 This MOU is to ensure conformity in regulatory approach, minimize duplication of regulatory efforts, close gaps in regulatory boundaries, minimize mis-selling by MPF intermediaries and maximize protection of MPF scheme participants.
- 2.5 The four regulators desire to achieve, as far as reasonably practicable, the objectives stated in 2.4 above, by specifying in this MOU their respective responsibilities regarding the regulation of MPF intermediaries.

² The self-regulatory organizations of the insurance industry that are approved by the Insurance Authority at present include the Insurance Agents Registration Board under The Hong Kong Federation of Insurers, The Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association Limited.

- 2.6 The four regulators also desire to promote mutual assistance and the exchange of information so that they may effectively perform their respective responsibilities.
- 2.7 The four regulators will use their best endeavours to meet the arrangements set out in this MOU. This MOU does not modify or replace any laws, rules or regulatory requirements and does not create any rights enforceable by third parties.

3. RESPONSIBILITIES OF THE MPFA

- 3.1 The MPFA is responsible for the overall administration of the MPF system. This involves the due and proper discharge of all statutory obligations under the MPF Ordinance. As the lead regulator of MPF intermediaries, its responsibilities include:
- (a) registering MPF intermediaries and issuing MPF cards to qualified MPF intermediaries and maintaining a list of qualified MPF intermediaries which will be open to public for inspection;
 - (b) ensuring trustees obtain undertakings³ from promoters of MPF schemes under their trusteeship;
 - (c) monitoring MPF intermediaries' compliance with the Code of Conduct for MPF Intermediaries ("Code of Conduct");
 - (d) receiving and registering public complaints relating to MPF intermediaries, conducting initial review of these complaint cases, and where appropriate, referring prima facie cases to the regulators concerned as soon as practicable for follow-up action;
 - (e) informing the regulators concerned as soon as practicable on issues of concern relating to the fitness and propriety/suitability of MPF intermediaries that come to the MPFA's notice;
 - (f) carrying out enforcement and disciplinary actions on those trustees failing to supervise and exercise proper control over the promoters appointed or engaged for the purposes of selling or advising on MPF schemes;
 - (g) co-ordinating the functions of the MPF Intermediaries Regulation Co-ordinating Committee;

³ The promoter of an MPF scheme is to undertake to the trustee that it will, as far as reasonably practicable, ensure that MPF intermediaries selling/advising on the MPF scheme will comply with the Code of Conduct for MPF Intermediaries.

- (h) issuing guidelines, where necessary, to assist MPF intermediaries to comply with the Code of Conduct;
- (i) co-operating with and assisting the MA, the IA, the SFC and other regulators in Hong Kong or elsewhere on matters concerning MPF intermediaries; and
- (j) reviewing and providing policy advice to the Government of the Hong Kong Special Administrative Region on the system of regulation of MPF intermediaries.

4. RESPONSIBILITIES OF THE MA

4.1 The responsibilities of the MA under this MOU include administering the provisions of the Banking Ordinance, the objectives of which include taking reasonable steps to ensure responsible, honest and business-like operation of authorized institutions including those which are MPF intermediaries. The MA is responsible for:

- (a) monitoring MPF intermediaries who are supervised under the MA regime to ensure their compliance with the Code of Conduct;
- (b) carrying out routine inspection visits to MPF corporate intermediaries that are supervised under the MA regime;
- (c) responding to public complaints referred to the MA by the MPFA, the IA, the SFC, or the public in relation to MPF intermediaries that are supervised under the MA regime, and referring these complaint cases to the relevant authorized institutions for follow-up action;
- (d) monitoring investigatory/enforcement/disciplinary actions taken by authorized institutions in respect of staff of authorized institutions;
- (e) in respect of MPF intermediaries that are registered institutions or their relevant individuals as defined in the Banking Ordinance who advise on securities under the SF Ordinance incidental to the marketing of MPF schemes, performing the MA's supervisory role regarding their conduct of regulated activities as set out in the Memorandum of Understanding between the MA and the SFC;
- (f) informing the MPFA and the regulators concerned as soon as practicable on issues of concern relating to the fitness and propriety/suitability of MPF intermediaries that are authorized institutions and their staff that come to the MA's notice;

- (g) issuing guidelines, where necessary, to assist MPF intermediaries that are authorized institutions and their staff to comply with the Code of Conduct;
- (h) participating in and carrying out the functions of the MPF Intermediaries Regulation Co-ordinating Committee; and
- (i) co-operating with and assisting the IA, the SFC, the MPFA and other regulators in Hong Kong or elsewhere on matters concerning MPF intermediaries.

5. RESPONSIBILITIES OF THE IA

- 5.1 The responsibilities of the IA under this MOU include administering the provisions of the Insurance Companies Ordinance and the rules and regulations made thereunder. The IA is responsible for:
- (a) monitoring the activities of MPF intermediaries that fall under the IA's regulatory regime to ensure their compliance with the Code of Conduct;
 - (b) carrying out routine inspection visits to MPF corporate intermediaries that fall under the IA's regulatory regime;
 - (c) responding to public complaints referred to the IA by the MPFA, the MA, the SFC, or the public in relation to MPF intermediaries that fall under the IA's regulatory regime, and referring these complaint cases to the SROs for follow-up action where appropriate;
 - (d) monitoring investigatory/enforcement/disciplinary actions relating to breaches of provisions of the Code of Conduct taken by the SROs in respect of MPF intermediaries that are under their supervision;
 - (e) informing the MPFA and the regulators concerned as soon as practicable on issues of concern relating to the fitness and propriety/suitability of MPF intermediaries that fall under the IA's regulatory regime that come to the IA's notice;
 - (f) issuing guidelines, where necessary, to assist MPF intermediaries to comply with the Insurance Companies Ordinances and the rules and regulations made thereunder and the Code of Conduct;
 - (g) overseeing the monitoring/enforcement/disciplinary functions carried out by the SROs to ensure the functions are carried out satisfactorily;
 - (h) participating in and carrying out the functions of the MPF Intermediaries Regulation Co-ordinating Committee; and

- (i) co-operating with and assisting the MA, the SFC, the MPFA and other regulators in Hong Kong or elsewhere on matters concerning MPF intermediaries.

6. RESPONSIBILITIES OF THE SFC

6.1 The responsibilities of the SFC under this MOU include administering the provisions of the SF Ordinance and the rules and regulations made thereunder, to ensure fair treatment of members of the public who participate in MPF schemes. The SFC is responsible for:

- (a) licensing MPF intermediaries (apart from authorized institutions) who advise on securities under the SF Ordinance incidental to the marketing of MPF schemes;
- (b) monitoring MPF intermediaries who are licensed/deemed to have been licensed by the SFC to ensure their compliance with the Code of Conduct, the SF Ordinance and the rules and regulations made thereunder;
- (c) carrying out routine inspection visits to MPF corporate intermediaries that are supervised under the SFC regime;
- (d) responding to public complaints referred to the SFC by the MPFA, the MA, the IA, or the public in relation to MPF intermediaries that are supervised under the SFC regime;
- (e) investigating alleged breaches of the provisions of the Code of Conduct, the SF Ordinance and the rules and regulations made thereunder, and taking appropriate enforcement/disciplinary actions on MPF intermediaries that are supervised under the SFC regime;
- (f) informing the MPFA and the regulators concerned as far as the law permits and as soon as practicable on issues of concern relating to the fitness and propriety/suitability of MPF intermediaries who are licensed/deemed to have been licensed by the SFC that come to the SFC's notice;
- (g) issuing guidelines, where necessary, to assist MPF intermediaries to comply with the SF Ordinance and the rules and regulations made thereunder and the Code of Conduct;
- (h) participating in and carrying out the functions of the MPF Intermediaries Regulation Co-ordinating Committee; and

- (i) co-operating with and assisting the MA, the IA, the MPFA and other regulators in Hong Kong or elsewhere on matters concerning MPF intermediaries.

7. MPF INTERMEDIARIES REGULATION CO-ORDINATING COMMITTEE

7.1 An MPF Intermediaries Regulation Co-ordinating Committee (“the Committee”) has been established to co-ordinate the regulation of MPF intermediaries among the four regulators. Specifically, the Committee’s functions are to:

- (a) delineate the respective jurisdictions and responsibilities of the four regulators in the regulation of MPF intermediaries with a view to avoiding “regulatory arbitrage” and bridging “regulatory gaps”;
- (b) help co-ordinate the enforcement actions of the four regulators;
- (c) discuss risk issues and appropriate regulatory response;
- (d) advise on follow-up or disciplinary action, where appropriate; and
- (e) generally keep the regulatory framework under constant review.

7.2 The Committee is chaired by an Executive Director of the MPFA and consists of representatives from the four regulators and the Financial Services Bureau.

7.3 The Committee is to hold meetings as and when necessary.

8. STATUS OF MEMORANDUM OF UNDERSTANDING

8.1 The parties hereto acknowledge and agree that:

- (a) this MOU is entered into by the parties hereto in good faith and for the purpose of facilitating a co-operative working relationship among the parties hereto in accordance with their respective responsibilities as set out in sections 3 to 7;
- (b) in the interpretation of any of the provisions of this MOU such provisions shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of this MOU according to its true intent, meaning and spirit;
- (c) each of the parties hereto shall:
 - (i) maintain a good working relationship with the other with respect to matters relating to MPF intermediaries;
 - (ii) co-operate with the others in complying with the provisions hereof; and

- (iii) perform its/his obligations hereunder, fully, in good faith and to the best of its/his ability.
- (d) this MOU is a public document and the contents hereof may be disclosed and copies may be furnished by the parties hereto to any third party without the consent of the others hereto;
- (e) this MOU shall not give rise to any rights, direct or indirect, on the part of third parties, nor shall such parties be entitled to require compliance by either the MA, the IA, the SFC or the MPFA with any of their respective obligations arising hereunder; and
- (f) nothing in this MOU shall affect the rights of the MA, the IA, the SFC or the MPFA to exercise any of their respective powers or perform any of their respective functions under the Exchange Fund Ordinance, the Banking Ordinance, the Insurance Companies Ordinance, the SF Ordinance, the MPF Ordinance or any other relevant Ordinances.

9. FUTURE POLICY DEVELOPMENT

9.1 The parties hereto each agrees:

- (a) to consult in the preparation and the issue of further guidelines in relation to the regulation of MPF intermediaries, where necessary;
- (b) to consider a policy of introducing measures, statutory or otherwise, designed to set minimum standards and encourage enhanced professional standards and practices for MPF intermediaries.

10. CONFIDENTIALITY AND USE OF INFORMATION

- 10.1 Assistance or information will be provided by each party to any other party hereto in accordance with the law and for the purposes of assisting the other party in the performance of its/his regulatory functions.
- 10.2 Any assistance or information provided under this MOU will be used by the recipient only for the purposes of performing its/his regulatory functions, and, except otherwise required by the relevant laws, will not be disclosed to any third party without the prior consent of the provider of the assistance or information.
- 10.3 Each party will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.

11. CONTACT PERSONS


- 11.1 All communications among the parties will be between the principal points of contact as set out in the Annex unless otherwise decided.
- 11.2 The Annex may be amended by written notice from any party without the need for re-signature of this MOU.

12. EFFECTIVE DATE AND TERMINATION

- 12.1 This MOU replaces and supersedes the previous MOU signed on 30th October 1999.
- 12.2 The parties hereto agree to keep the operation of this MOU under review and to consult with a view to improving its operation and resolving any matters.
- 12.3 This MOU may be amended at any time by written agreement among the parties hereto.
- 12.4 This MOU sets out the basis upon which the MA, the IA, the SFC and the MPFA intend to work together and is not intended to be legally binding on any of the parties.
- 12.5 This MOU shall remain in full force and effect unless and until the parties hereto mutually agree in writing to terminate the whole or any part hereof.

DATED this 1st day of January, 2004

SIGNED BY
THE MONETARY AUTHORITY
Joseph C.K. YAM
on 3 DEC 2003

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SIGNED BY
THE INSURANCE AUTHORITY
Richard YUEN
on 15 DEC 2003

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SIGNED FOR AND ON BEHALF OF THE
SECURITIES AND FUTURES COMMISSION
BY Andrew SHENG
on 29 DEC 2003

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SIGNED FOR AND ON BEHALF OF THE
MANDATORY PROVIDENT FUND SCHEMES AUTHORITY
BY Diana CHAN
on 31 DEC 2003

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LIST OF CONTACT PERSONS

Hong Kong Monetary Authority, Hong Kong

Head, Banking Development Department Division B

Alternate:

Senior Manager, Banking Development Department Division B

Insurance Authority, Hong Kong

Assistant Commissioner of Insurance, Policy and Development

Alternate:

Senior Insurance Officer, Intermediaries

Securities and Futures Commission, Hong Kong

Director of Licensing

Alternate:

Director of Investment Products

Mandatory Provident Fund Schemes Authority, Hong Kong

Chief Operating Officer (Compliance)

Alternate:

Senior Manager, Intermediaries/Trustees Department