

MEMORANDUM OF UNDERSTANDING

CONCERNING

THE REGULATION OF REGULATED PERSONS WITH

RESPECT TO REGISTERED SCHEMES UNDER THE

MANDATORY PROVIDENT FUND SCHEMES ORDINANCE

Between the

Insurance Authority

Monetary Authority

Securities and Futures Commission

And

Mandatory Provident Fund Schemes Authority

28 May 2013

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“**MOU**”), in respect of the regulation of regulated persons, is signed by the following parties (each referred to as a ‘party’ together as ‘parties’ in this MOU).

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

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

Securities and Futures Commission (the “**SFC**”) of 35th Floor, Cheung Kong Center, 2 Queen’s Road Central, Hong Kong

Mandatory Provident Fund Schemes Authority (the “**MPFA**”) of Level 16, International Commerce Centre, 1 Austin Road West, Kowloon, Hong Kong

1. INTRODUCTION

- 1.1 The Mandatory Provident Fund Schemes (Amendment) Ordinance 2012 establishes a statutory regime for the regulation of regulated persons in Part IVA of the Mandatory Provident Fund Schemes Ordinance (“**Ordinance**”).
- 1.2 This MOU applies in connection with the statutory regime in Part IVA of the Ordinance which took effect on 1 November 2012.
- 1.3 The MOU signed on 1 January 2004 by the IA, SFC, MA and MPFA continues to apply only to the handling of complaints (including referral, investigation, enforcement, and monitoring the investigation and enforcement thereof) concerning the conduct of MPF intermediaries prior to 1 November 2012, and ceased to apply to all other matters with effect from 1 November 2012.

2. PRINCIPLES AND INTERPRETATION

- 2.1 This MOU sets out certain administrative and operational arrangements among the four regulators regarding the exercise of their respective functions under the Ordinance concerning the regulation of regulated persons.
- 2.2 Subject to applicable laws and the FRs’ respective regulatory regimes, this MOU is one of various measures for ensuring, as far as possible, regulatory consistency and a level playing field in the regulation of regulated persons by the four regulators.
- 2.3 The FRs will use their best endeavours to follow the arrangements set out in this MOU in a manner consistent with their respective regulatory regimes, in recognition of the institution-based approach which has been adopted for the regulation of regulated persons.
- 2.4 This MOU is subject to, and does not modify or replace, any applicable laws, rules and regulatory requirements and does not create any rights enforceable by the parties or by any third party.
- 2.5 Unless otherwise specified, the following abbreviations are used in this MOU:

“**FR**”: frontline regulator;

“**IR**”: industry regulator;

- “PI”: principal intermediary;
“RO”: responsible officer;
“SI”: subsidiary intermediary.

2.6 Unless otherwise specified, terms defined in the Ordinance bear the same meaning when used in this MOU.

3. THE FUNCTIONS OF EACH REGULATOR UNDER THE ORDINANCE

3.1 The MPFA is responsible for ensuring compliance with the Ordinance and for regulating sales and marketing activities, and the giving of advice, in relation to registered schemes. Under Part IVA of the Ordinance, the MPFA has authority to register regulated persons and to approve ROs, to specify continuing training requirements for SIs who are individuals, and to take enforcement action. Under section 6H of the Ordinance, the MPFA may issue guidelines for the guidance of regulated persons and other persons concerned with the Ordinance. In addition, the MPFA will handle, co-ordinate or monitor (as the case may be) the receipt and handling of complaints relating to sales and marketing activities, and the giving of advice, as regulated under Part IVA of the Ordinance.

Performance requirements for regulated persons and former regulated persons

3.2 For the purpose of monitoring compliance with the performance requirements, the powers of inspection of regulated persons or former regulated persons under the Ordinance are vested in the FRs (or the relevant IRs in the case of former regulated persons). The FRs (or the relevant IRs in the case of former regulated persons) are also vested with investigation powers under the Ordinance in respect of suspected non-compliance with the performance requirements by regulated persons or former regulated persons whereas the MPFA has the power to impose disciplinary orders for breaches of the performance requirements under Part IVA of the Ordinance.

Section 34L prohibition

3.3 For the purpose of ensuring compliance with the prohibition in section 34L, the MPFA is vested with investigation powers, and may also nominate an IR to assist the MPFA in the investigation.

4. REGISTRATION AND APPROVAL

4.1 The MPFA may register a person as a PI or SI pursuant to section 34T or 34U of the Ordinance if it is satisfied, inter alia, that the person, within one year immediately before the date of application, has not had any qualification as a Type A / B regulatee revoked on disciplinary grounds. The MPFA also has to be satisfied that the person does not have any qualification as a Type A / B regulatee suspended. In addition, the registration of a PI may be revoked or suspended if the person ceases to be a Type A regulatee or has any qualification as a Type A regulatee suspended pursuant to section 34ZC of the Ordinance. The approval of the attachment of an SI to a PI may be revoked or suspended if the person ceases to be a Type B regulatee or has any qualification as Type B regulatee suspended pursuant to section 34ZF of the Ordinance. For these purposes and subject to applicable laws and their respective regulatory regimes, the IRs will submit a list of their regulatees who have had their qualification as Type A / B regulatees revoked on disciplinary grounds and / or suspended within the meaning of sections 34J and 34K of the Ordinance, to the MPFA as soon as practicable whenever such event occurs.

4.2 The MPFA may impose conditions on registration of a person as PI or SI, on approval of the attachment of a person to a PI, and on approval of an individual as an RO of a PI, and amend or revoke any such conditions imposed, pursuant to section 34X of the Ordinance. The MPFA will consult the FR, or the IR to be assigned as the FR of the PI, SI or RO, as the case may be, before imposing any such conditions, or amending or revoking any such conditions imposed. The MPFA will also notify the relevant FR or IR, as the case may be, of the conditions imposed, amended or revoked.

4.3 The MPFA will as soon as practicable inform the relevant FRs of (i) any revocation or suspension of registration of a PI, (ii) any revocation or suspension of approval of attachment of a person to a PI, (iii) any revocation or suspension of registration of an SI, and (iv) any revocation or suspension of approval of an individual as an RO of a PI, under Part IVA of the Ordinance.

5. ASSIGNMENT OF FRs

5.1 As soon as practicable after the MPFA registers a person as a PI, the MPFA is required to assign an IR as the FR of that person in accordance with section 34Z of the Ordinance. The MPFA must assign the FR of a PI as the FR of (i) the SIs attached to that PI, and (ii) the RO of that PI in accordance with sections 34ZA and 34ZB of the

Ordinance.

- 5.2 Where applicable, for complying with sections 34Z(5)(b) or 34Z(6)(b), the MPFA will discuss with the relevant IRs of a PI the business activities carried on by the PI as a Type A regulatee before exercising its power to assign (or if applicable, replace) a particular IR as the FR of the PI.
- 5.3 The MPFA will provide the FRs with the relevant information on the PIs, SIs and ROs assigned to them on a regular basis after an assignment, and also of any replacement or cessation of the assignment.

6. CONTINUING TRAINING REQUIREMENTS

- 6.1 The MPFA is responsible for reviewing and monitoring the compliance by individuals who are SIs with the continuing training requirements specified under section 34ZP of the Ordinance.
- 6.2 The MPFA will share with the relevant FRs on a regular basis information relating to non-compliance with the continuing training requirements by SIs for their information.

7. INSPECTION

- 7.1 An FR (or the relevant IR in the case of a former regulated person) may exercise the inspection powers in relation to compliance with the performance requirements pursuant to Division 7 of Part IVA of the Ordinance in ascertaining whether or not a regulated person (or if applicable, a former regulated person) has or has not complied, is or is not complying, or is likely or unlikely to be able to comply, with the performance requirements.
- 7.2 The MPFA will identify any trends or other issues of common interest regarding compliance by regulated persons or former regulated persons with the performance requirements from sources such as the register of complaints and enforcement cases. The MPFA will inform the FRs (or the relevant IRs in the case of former regulated persons) of these issues on a regular basis for the purpose of the exercise of their inspection powers.

- 7.3 The parties accept that each has its own internal practices and procedures in their inspection activities which will be followed in performing their roles under the Ordinance. Notwithstanding this, the parties agree to follow the principles contained in paragraph 2 of this MOU. Subject to applicable laws and their respective regulatory regimes and where appropriate, the parties will share with the MPFA information on their inspection practices and experiences under the Ordinance.
- 7.4 For the purpose of ensuring regulatory consistency and a level playing field, the MPFA may share with the FRs general matters of common interest regarding compliance by regulated persons with the performance requirements.

8. COMPLAINT HANDLING

Register of complaints

- 8.1 The MPFA will maintain a register of all complaints lodged with the MPFA and the IRs relating to contravention of the prohibition in section 34L of the Ordinance and non-compliance with the performance requirements. The MPFA will log on the register all such complaints received by the MPFA and the IRs. The IRs will inform the MPFA of any such complaints they receive for the MPFA to log on the register.

Performance requirements for regulated persons and former regulated persons

- 8.2 An FR (or the relevant IR in the case of a former regulated person) will handle all complaints related to alleged non-compliance with the performance requirements by a regulated person of which it is the FR (or by a former regulated person of which it was formerly the FR). Upon receipt of such a complaint by the MPFA, the MPFA will refer the complaint to the FR of the regulated person, or the IR of the former regulated person, to consider initiating an investigation under section 34ZT or 34ZV of the Ordinance respectively. For the avoidance of doubt, the MPFA will, where appropriate, handle communication with complainants making complaints against SFC's intermediaries (who are or were MPF regulated persons) on the intermediaries' alleged non-compliance with the performance requirements.
- 8.3 If the FR or IR decides not to initiate an investigation under section 34ZT or 34ZV of the Ordinance respectively, it will inform the MPFA in accordance with paragraph 9.2.

- 8.4 If the FR or IR decides to initiate an investigation under section 34ZT or 34ZV of the Ordinance respectively, it will inform the MPFA in accordance with paragraph 9.3.

Section 34L prohibition

- 8.5 The MPFA will handle all complaints related to alleged contravention of the prohibitions in section 34L subject to paragraphs 9.7 and 9.8. Upon receipt of such a complaint by an IR, the IR will refer it to the MPFA for the latter to handle and consider initiating an investigation under the Ordinance.

9. INVESTIGATION

Performance requirements for regulated persons and former regulated persons

- 9.1 If an FR of a regulated person has reasonable cause to believe that the regulated person may have failed to comply with a performance requirement, the FR may investigate the failure, or whether there has been such a failure, pursuant to section 34ZT of the Ordinance. Where the person was a regulated person of which an IR was formerly its FR, the IR may investigate a failure occurring at any time during the period when the IR was the FR of the person, or whether or not there has been such a failure, pursuant to section 34ZV of the Ordinance.
- 9.2 If an FR (which in paragraphs 9.2 to 9.6 also refers to an IR where section 34ZV of the Ordinance applies) decides not to exercise its investigation powers under the Ordinance to investigate, nor to direct a prescribed person to investigate with investigation powers under the Ordinance, a case referred to the FR by the MPFA, the FR will inform the MPFA in writing of its decision as soon as practicable after making the decision.
- 9.3 If an FR decides to exercise its investigation powers under the Ordinance, regardless of whether the case is referred to the FR by the MPFA or not, the FR will inform the MPFA in writing of its decision to investigate as soon as practicable after making the decision. The FR will also inform the MPFA of the completion of an investigation under the Ordinance.
- 9.4 Following commencement of an investigation under the Ordinance, the FR will update the MPFA on the progress of the investigation on a regular basis.

- 9.5 As and when information is disclosed to the MPFA by an FR after completion of an investigation, the information to be disclosed should, subject to applicable laws and the FR's regulatory regime, include information obtained from the investigation by the FR.
- 9.6 Pursuant to section 34ZT(3) of the Ordinance, before an FR, or a prescribed person directed by an FR, imposes a requirement under section 34ZU on another person who is a Type A or Type B regulatee of an IR that is not the FR, the FR or the prescribed person so directed must consult the IR. For this purpose, the FR or the prescribed person so directed will provide sufficient information to the IR to be consulted to enable the latter to form an informed view. The IR being consulted will provide any comments on the proposed imposition of the requirement as soon as practicable after receiving the information.

Section 34L prohibition

- 9.7 If the MPFA has reasonable cause to believe that a person may have contravened the prohibition in section 34L of the Ordinance, the MPFA may exercise its investigation power in section 34O of the Ordinance for the purpose of investigating the contravention, or whether or not there has been such a contravention, or direct a person employed by the MPFA to do so. The MPFA may also nominate an IR to assist the MPFA in the investigation pursuant to section 34O(1)(b) of the Ordinance.
- 9.8 If the subject of a complaint related to alleged contravention of the prohibition in section 34L is a regulatee of one IR only, the MPFA will, in general, nominate that IR to assist in the investigation. The MPFA will consult the IR before the nomination. If the MPFA nominates an IR, the IR will assist in the investigation.
- 9.9 The nominated IR will update the MPFA on the progress of its assistance in the investigation on a regular basis.
- 9.10 Pursuant to section 34O(4) of the Ordinance, before the MPFA, or a person directed by the MPFA, imposes a requirement under section 34P on another person who is a Type A or Type B regulatee of an IR, the MPFA or the person so directed must consult the IR. For this purpose, before the MPFA or a person directed by it exercises an investigation power, with or without an IR being nominated to assist in investigation, the MPFA or the person so directed will provide sufficient information to the IR to be consulted to enable the latter to form an informed view. The IR being

consulted will provide any comments on the proposed imposition of the requirement as soon as practicable after receiving the information.

- 9.11 Pursuant to section 34O(5) of the Ordinance, before an IR, or a prescribed person directed by an IR, imposes a requirement under section 34P on another person who is a Type A or Type B regulatee of another IR, the IR or the prescribed person so directed must consult the other IR. For this purpose, the nominated IR or the prescribed person so directed will provide sufficient information to the other IR to be consulted to enable the latter to form an informed view. The IR being consulted will provide any comments on the proposed imposition of the requirement as soon as practicable after receiving the information.
- 9.12 Upon completion of its assistance in the investigation by the nominated IR, the nominated IR will, subject to applicable laws and its regulatory regime, disclose to the MPFA information obtained from the assistance in the investigation by it or by a prescribed person directed by it to assist in the investigation under the Ordinance.

10. DISCIPLINARY ORDERS AND / OR PROSECUTION ACTION

Performance requirements for regulated persons and former regulated persons

- 10.1 Where the MPFA is satisfied that a regulated person (or, if applicable, a former regulated person) has failed to comply with a performance requirement, it has the power to make a disciplinary order under section 34ZW of the Ordinance and / or take further action under section 34ZY of the Ordinance if it intends to make a disciplinary order against a regulated person (or, if applicable, a former regulated person) upon, inter alia, an FR (or the relevant IR in the case of a former regulated person) disclosing to the MPFA information obtained by the FR (or the relevant IR in the case of a former regulated person) from its investigation in accordance with paragraph 9.5 above.
- 10.2 The MPFA will review information obtained by an FR (or the relevant IR in the case of a former regulated person) from its investigation and disclosed to the MPFA pursuant to paragraph 9.5 above in determining whether a regulated person (or, if applicable, a former regulated person) has failed to comply with the performance requirements, what disciplinary order to make against that person and whether to take any further action in respect of that person in place of or in addition to, any disciplinary order.

- 10.3 The MPFA may seek further clarification from the FRs (or the relevant IRs in the case of former regulated persons) following a review of the information disclosed by the FRs (or the relevant IRs in the case of former regulated persons) to the MPFA pursuant to paragraph 9.5 above. The FRs (or the relevant IRs in the case of former regulated persons) will use their best efforts to clarify the information so provided.
- 10.4 The MPFA will inform the relevant FR (or the relevant IR in the case of a former regulated person) after it has determined whether a regulated person (or, if applicable, a former regulated person) has failed to comply with the performance requirements and, where it has determined that a regulated person (or, if applicable, a former regulated person) has failed to comply with the performance requirements, what disciplinary order to make against that person and any further action in respect of that person in place of or in addition to any disciplinary order.

Section 34L prohibition

- 10.5 Where an IR has assisted the MPFA in an investigation of an alleged contravention of section 34L, the MPFA will review the information disclosed by the IR pursuant to paragraph 9.12 above. The MPFA may seek further clarification from the IR following a review of the information disclosed by the IR pursuant to paragraph 9.12 above. The IR will use its best efforts to clarify the information so provided.
- 10.6 The MPFA will inform the IR, which has assisted in the investigation, whether the MPFA will take enforcement action under the Ordinance.

11. APPEALS

- 11.1 A decision of the MPFA related to the exercise of its powers under Part IVA of the Ordinance and as set out in item 15 of Schedule 6 to the Ordinance may be the subject of an appeal to the Mandatory Provident Fund Schemes Appeal Board. This includes a decision of the MPFA under section 34ZW, to make a disciplinary order.
- 11.2 Where the MPFA becomes aware that an appeal has been lodged with the Mandatory Provident Fund Schemes Appeal Board against a disciplinary order made by the MPFA under section 34ZW, the MPFA will inform the FR or the IR involved in the investigation (referred to as the “investigating FR or IR” in this paragraph 11) in writing as soon as possible.

11.3 The MPFA may request the investigating FR or IR to assist the MPFA in the appeal on matters related to the investigation. On receiving such a request from the MPFA, the investigating FR or IR will, subject to applicable laws and its regulatory regimes, use its best efforts to provide the requested assistance as may be reasonably required.

11.4 The MPFA will keep the investigating FR or IR informed of the progress and the outcome of the appeal.

12. TRANSITIONAL ARRANGEMENTS FOR PART IVA OF THE ORDINANCE

12.1 Where a particular case involves application of Part IVA of the Ordinance to persons who are regarded as regulated persons pursuant to the transitional provisions under Schedule 5B of the Ordinance, the relevant provisions of the MOU would similarly apply subject to modifications, if any, required by Schedule 5B.

13. REGULAR LIAISON BETWEEN THE PARTIES

13.1 The MPF Intermediaries Regulation Committee (the “Committee”) comprising representatives from the MPFA and the FRs has been formed to enhance communication amongst the parties. The Committee will hold meetings at regular intervals, which will be chaired by an Executive Director of the MPFA. Subject to applicable laws and the FRs’ respective regulatory regimes, the Committee provides a confidential forum for:

- (a) discussion on issues of common interest relating to the regulation of regulated persons under the Ordinance including but not limited to complaint handling, inspection, investigation and enforcement matters;
- (b) consideration and discussion of the procedures relating to complaint handling and referral and co-operation on investigation and enforcement matters under the Ordinance;
- (c) the sharing of views and observations regarding developments in the practices of carrying on regulated activities under the Ordinance by regulated persons including industry structure, operating practices and any emerging risks;
- (d) consideration and discussion of changes to the regulatory framework for the

regulation of regulated persons having regard to developments in the MPF and the FRs' industries, operating environment, and supervisory / enforcement experiences under the Ordinance;

- (e) discussion to facilitate consistency in the interpretation of regulatory requirements applicable to regulated activities under the Ordinance in relation to the regulated persons under different FRs' industries; and
- (f) consideration and discussion of any changes of the MOU proposed by the MPFA or FRs.

13.2 Subject to applicable laws and the FRs' respective regulatory regimes, the MPFA will maintain a regular dialogue with the IRs to ensure, as far as possible, that regulatory consistency and a level playing field is achieved in the regulation of regulated persons by the four regulators.

13.3 Having due regard to the relevant internal procedures of each FR to facilitate the handling of complaints and co-operation on investigation in a coordinated manner, the MPFA and the FRs will use their best efforts, following discussions by their respective representatives on the Committee to agree on the procedures relating to complaint handling and referral and to co-operation on investigation and enforcement matters under the Ordinance, and will review and amend such procedures where appropriate.

14. ISSUANCE OF GUIDELINES

14.1 Section 6H(8) of the Ordinance specifies that the MPFA must consult the IRs regarding the issue of any guidelines under section 6H of the Ordinance or any amendment or revocation that it proposes to make, in relation to these guidelines, in so far as these guidelines apply, or the amendment or revocation applies, to regulated persons. In compliance with this requirement, the MPFA will consult the IRs regarding proposals for any such guidelines, or amendments or revocation thereof.

14.2 Upon the issuance of any such guidelines, the MPFA will inform the IRs accordingly.

14.3 Where applicable, the IRs will consult the MPFA regarding any guidelines / guidance they propose to issue under their individual regulatory regimes to their regulatees which will apply to regulated activities conducted under the Ordinance by regulated

persons.

15. REIMBURSEMENT OF COSTS

- 15.1 Under section 34ZZJ(1) of the Ordinance, the MPFA may pay to an IR an amount that in the MPFA's opinion represents the expenditure or cost incurred or likely to be incurred by the IR in providing the services or performing its functions under Part IVA of the Ordinance. The IRs will use their best efforts to provide the necessary information to facilitate the MPFA to form such an opinion.
- 15.2 The MPFA will rely on such information provided by each IR to determine the expenditure or cost incurred or likely to be incurred by the IR in providing the services or performing its functions under Part IVA of the Ordinance. Upon determination of the amount, the MPFA will inform the IR of the proposed amount in writing with a view to reaching an agreement with the IR on the amount, as well as the frequency and method, of payment.
- 15.3 Upon reaching such an agreement, the MPFA will document it in writing and make payment to the IR in accordance with the agreement.

16. CONTACT PERSONS

- 16.1 All communication between the parties will be between the principal points of contact as communicated by each party to other parties from time to time.

17. STATUS OF THIS MEMORANDUM OF UNDERSTANDING

- 17.1 The parties acknowledge and agree that:
- (a) this MOU is entered into by the parties in good faith and for the purpose of facilitating a cooperative working relationship among the parties in accordance with their respective functions as set out in the Ordinance;
 - (b) this MOU represents the general intent of the parties and is not intended to create any binding legal obligations;
 - (c) each of the parties shall:
 - (i) maintain a good working relationship with the other with respect to matters

- relating to regulated persons;
- (ii) co-operate with the others in complying with the provisions of the Ordinance;
 - and
 - (iii) perform its obligations, fully, in good faith and to the best of its ability.
- (d) this MOU is a public document and the contents may be disclosed and copies furnished by the parties to any third party without the consent of the other parties;
- (e) this MOU shall not give rise to any rights, direct or indirect, on the part of any third party, nor shall any third party be entitled to require performance by any of the parties to this MOU under any of the arrangements set out in this MOU; and
- (f) nothing in this MOU shall affect the rights of the parties to this MOU to exercise any of their respective powers or perform any of their respective functions under the Ordinance, the Insurance Companies Ordinance, the Exchange Fund Ordinance, the Banking Ordinance, the Securities and Futures Ordinance, the Companies Ordinance or any other Ordinance.

18. EFFECTIVE DATE AND TERMINATION

- 18.1 This MOU takes effect on 28 May 2013.
- 18.2 This MOU may be amended at any time by written agreement amongst the parties.
- 18.3 This MOU shall remain in force and effect unless and until the parties mutually agree in writing to terminate the whole or any part.

19. CONFIDENTIALITY AND USE OF INFORMATION

- 19.1 Any non-public information exchanged between the parties will be treated as confidential and used by the recipient only in accordance with applicable laws and this MOU. Except as otherwise required or permitted by law, the information so exchanged shall not be disclosed to any third party without the prior consent of the party providing the information.
- 19.2 Each party will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.

SIGNED BY)
THE INSURANCE AUTHORITY) *[Signed]*
Annie CHOI)
on)

SIGNED BY)
THE MONETARY AUTHORITY) *[Signed]*
Norman T. L. CHAN)
on)

SIGNED FOR AND ON BEHALF OF)
THE SECURITIES AND FUTURES COMMISSION)
Ashley ALDER) *[Signed]*
Chief Executive Officer)
on)

SIGNED FOR AND ON BEHALF OF)
THE MANDATORY PROVIDENT FUND)
SCHEMES AUTHORITY) *[Signed]*
Diana CHAN)
Managing Director)
on)