Insurance Intermediaries Quality Assurance Scheme

Mandatory Provident Fund Schemes Examination

Study Notes

Eighth Edition
January 2013

PREFACE

to the

STUDY NOTES

These Study Notes have been prepared to correspond with the various Chapters in the Syllabus for the Mandatory Provident Fund Schemes Examination. The Examination will be based upon these Notes. A few representative examination questions are included at the end of each Chapter, for your further guidance.

Though the Study Notes are primarily prepared for the Mandatory Provident Fund Schemes Examination paper under the Insurance Intermediaries Quality Assurance Scheme conducted by the Vocational Training Council, they are also relevant to the MPF Intermediaries Examination conducted by the Hong Kong Securities Institute. Both examinations are based on the same syllabus and are the qualifying examinations specified by the Mandatory Provident Fund Schemes Authority for the purpose of enabling candidates to meet the examination requirement for registration as an MPF subsidiary intermediary.

We hope that these Study Notes serve as useful reference materials for candidates preparing for the Examination. Whilst every care has been taken in the preparation of the Study Notes, there may still be errors or omissions. You should therefore also refer to the relevant legislation and consult your own professional advisers. As further editions may be published from time to time to update and improve the contents of these Study Notes, we would appreciate your feedback, which will be taken into consideration when we prepare the next edition of the Notes.

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NOTE

For study purposes, it is important to be aware of the relative "weight" of the various Chapters in relation to the Examination. All Chapters should be studied carefully, but the following table indicates areas of particular importance:

Chapter	Relative Weight
1. Introduction to the Mandatory Provident Fund ("MPF") System	1 %
2. Regulatory Framework	6 %
3. Key Features of the MPF System (including Appendices III, IV, V, VI, VII, X)	45 %
4. MPF Trustees	5 %
5. MPF Schemes and Investment (including Appendix VIII)	19 %
6. Interface Arrangements between ORSO Schemes and the MPF System (including Appendix X)	4 %
7. MPF Intermediaries (including the Guidelines on Conduct Requirements for Registered Intermediaries)	20 %
Total	**100%**

1 INTRODUCTION TO THE MANDATORY PROVIDENT FUND ("MPF") SYSTEM

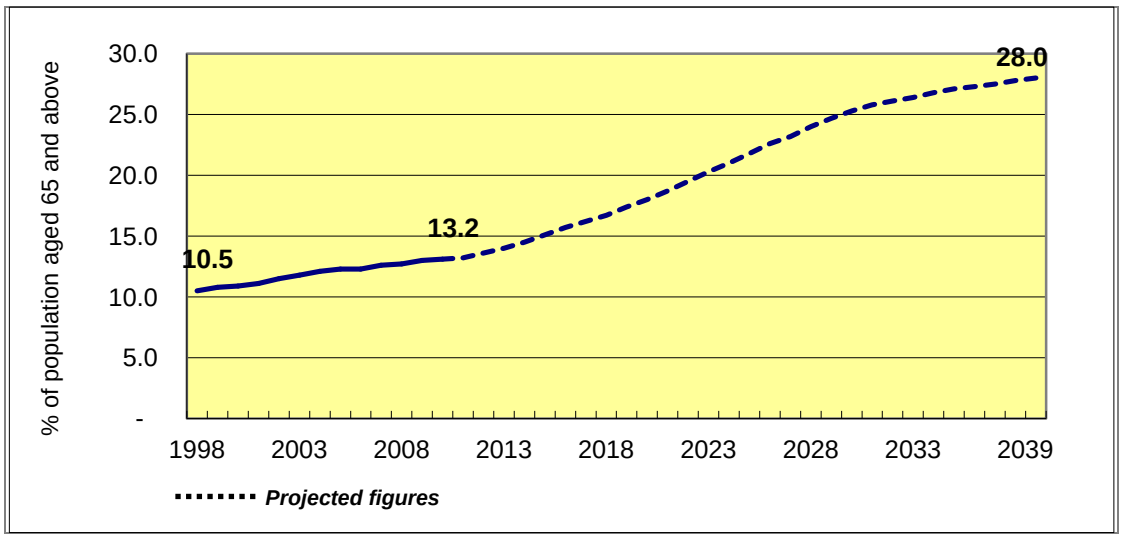
1.1 NEED FOR RETIREMENT PROTECTION

The world today is very different from that say 50 years ago. Nowadays, many places in the world have a rapidly ageing population problem. Saving for your future is not just a wise saying - it is prudent and essential to do so.

1.1.1 Ageing Population

Hong Kong has a rapidly ageing population. From 1998 to 2011, people aged 65 and above grew from 10.5% of the population to 13.2% of the population. This proportion is forecast to increase to 28.0% by 2039.

Fig. 1.1.1 Percentage of Population Aged 65 and above



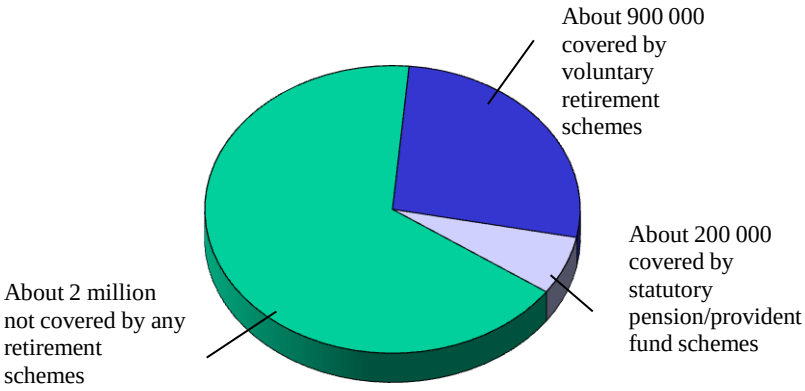
Source: Census and Statistics Department, HKSAR

Financial provision for the aged has become a major concern for many communities. It is clear that the problem has to be addressed; otherwise it will exert an intolerable strain on the public purse in a very short period of time.

1.1.2 Retirement Protection Prior to the Introduction of the MPF System

Prior to the introduction of the MPF System, only about one-third of the over three million workforce in Hong Kong enjoyed some form of retirement protection or provision. Retirement protection generally took the form of statutory pension and provident fund schemes or retirement schemes voluntarily established by employers and registered under the Occupational Retirement Schemes Ordinance (Cap.426).

Fig.1.1.2 Retirement Protection for the Working Population (as at 31.12.1999)



1.2 WHY MPF?

Before addressing this question, perhaps we should define the term, so that the discussion could be understood clearly. Let us look at the words "Mandatory Provident Fund" separately:

"Mandatory" means that the scheme is compulsory (not optional), for all falling within its designated scope, unless specifically exempted;

"Provident" means prudent provision for the future, following the identification of a need;

"Fund" means collection of money or other financial provisions, set aside for a designated purpose.

The MPF is the result of many years of debate. Over many years, much has been discussed in Hong Kong about the best way to provide financial security for elderly people. Proposals on setting up an Old Age Pension System and a Central Provident Fund have been widely discussed and retirement protection systems of different countries have been studied in order to devise a retirement system which could best suit Hong Kong's needs. Finally, MPF found support within the community and was seen to be a practical way forward to help the labour force provide for themselves in their retirement years.

1.2.1 Pillars for Old Age Protection

Ageing is a global phenomenon, not just a Hong Kong issue. In this regard, considerable international research and debate has been conducted to try to develop suitable solutions, particularly on the funding issue. In the World Bank's 1994

report, **"Averting the Old-Age Crisis: Policies to Protect the Old and Promote Growth"**, a three-pillar approach was recommended to protect the aged.

The "Three Pillars for Old Age Protection" as envisioned by the World Bank are:

(a) Pillar One: a publicly managed, tax financed social safety net;

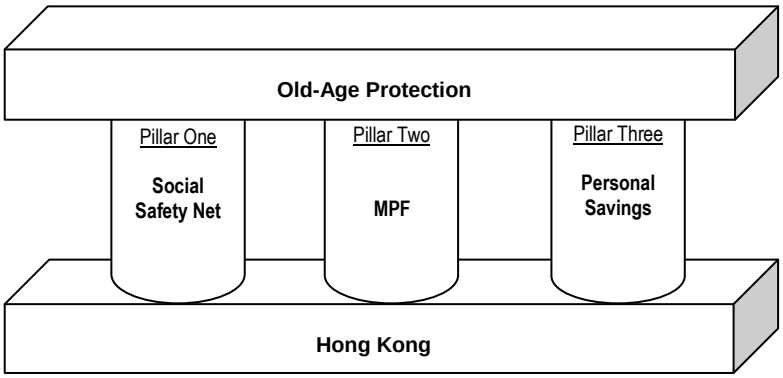
(b) Pillar Two: a mandatory, privately managed, fully funded contribution scheme; and

(c) Pillar Three: voluntary personal savings and insurance.

The MPF System was designed to form the second pillar of this approach: a mandatory, privately managed, fully funded contribution scheme. The MPF System was launched in December 2000.

Hong Kong has for some time operated a Comprehensive Social Security Assistance Scheme, offering basic social security to the needy. Also, personal savings have traditionally been a feature of Hong Kong society. The introduction of MPF to Hong Kong completes the provision of the recommended "**Three Pillars**".

Fig. 1.2.1a Three Pillars for Old Age Protection

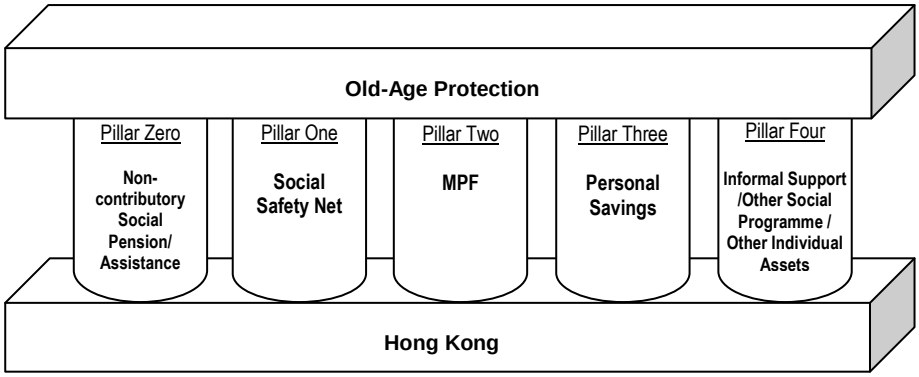


In 2005, the World Bank added two more pillars to its retirement protection framework. These two pillars are:

(a) Pillar Zero: non-contributory social pension/assistance for poverty alleviation (in order to provide a minimal level of protection for the elderly); and

(b) Pillar Four: informal support (e.g. family support), other formal social programmes (e.g. health care), and other individual financial and non-financial assets (e.g. home ownership).

Fig. 1.2.1b Five Pillars for Old Age Protection



1.2.2 Advantages of MPF

Advantages of the MPF System are summarized as follows:

(a) **It is equitable**

MPF is equitable to all scheme members, as the amount of accrued benefits is directly related to the contributions made (as well as the investment horizon of scheme members and net investment return of the fund(s) invested in). This also serves as a positive incentive for scheme members to make additional voluntary contributions so as to accrue more benefits for their retirement.

(b) **It is cost-effective**

MPF schemes are privately managed under a free competition environment. Competition tends to increase efficiency and reduce costs, which will benefit scheme members.

(c) **It is sustainable**

The MPF System is a fully-funded and privately managed retirement protection system with contribution made from both employer and employee. Any mandatory contributions paid for or in respect of an employee are fully and immediately vested in the employee once they are paid to the MPF trustee. Any investment return derived from the investment of the mandatory contributions is also fully and immediately vested in the employee. Therefore, the MPF System will not be subject to the sustainability problem as a result of any changes in demographics or fiscal position of the government.

(d) **It offers a broad coverage**

The MPF System is a mandatory system. All relevant employers, employees and self-employed persons are required to join MPF. This regulatory requirement ensures that retirement protection could be extended to all relevant employees and self-employed persons in Hong Kong, regardless of their occupation or nature of business.

1.3 MPF'S ECONOMIC IMPACT

Whilst the main beneficiaries of the MPF System are members of the workforce, as originally intended, the introduction of the System also has a positive impact on the Hong Kong economy. During the planning stage, it was estimated that annual MPF contributions in the initial years of operation would be more than **$10 billion**. The annual MPF contribution in 2011 was about $42 billion. This figure gives rise to a number of considerations, including:

(a) whilst in one sense not "new money", MPF contributions effectively gather together substantial funds not previously available for investment purposes on such a large scale;

(b) the significant amount of retirement assets adds impetus to the further development of Hong Kong's financial markets;

(c) specially, as MPF is a long-term investment, there is an increased demand for quality bonds meeting minimum investment grade ratings given by recognized rating agencies. Demand will also increase for equities and other investment products;

(d) all MPF scheme assets must be under the custody of qualified institutions. This leads to increased demand for custodial services, investment management and schemes administration; and

(e) all qualified local and overseas service providers are able to participate in the MPF business on a "level playing field".

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Representative Examination Questions

The examination will consist of 80 multiple-choice questions. The majority of the questions will be straightforward, involving a simple choice from four alternatives. These we call ***Type "A" Questions****. A selection of the questions will be slightly more complex, but again involving a choice between four alternatives. These we call* ***Type "B" Questions.*** *Candidates should choose the most appropriate answer for each question. Examples of each are shown below.*

Type "A" Questions

1 In 1998, what was the percentage of the population of Hong Kong that was aged 65 or above?

(a) 10.5%; .....
(b) 12.6%; .....
(c) 18.4%; .....
(d) 26.4%. .....

[Answer is in **1.1.1**]

2 Prior to the implementation of MPF, Hong Kong had a workforce of over three million. Approximately how many of them had some form of retirement protection?

(a) none; .....
(b) all of them; .....
(c) approximately one million; .....
(d) approximately two million. .....

[Answer is in **1.1.2**]

Type "B" Questions

3 MPF belongs to which pillar of the three-pillar approach to retirement protection suggested by the World Bank report in 1994?

(i) pillar zero;
(ii) pillar one;
(iii) pillar two;
(iv) pillar three.

(a) (ii); .....
(b) (iii); .....
(c) (i) and (ii); .....
(d) (iii) and (iv). .....

[Answer is in 1.2.1]

4 Which three of the following are considered to be advantages of the MPF System for Hong Kong?

(i) it is equitable
(ii) it is sustainable
(iii) it is cost-effective
(iv) it is profitable for providers

(a) (i), (ii) and (iii); .....
(b) (i), (ii) and (iv); .....
(c) (i), (iii) and (iv); .....
(d) (ii), (iii) and (iv). .....

[Answer is in **1.2.2**]

Note : *The answers can be found by reference to Chapter 1 of the Study Notes. If required, you can also find them at the end of the Study Notes.*

2 REGULATORY FRAMEWORK

In August 1995, Hong Kong took a major step in enacting the Mandatory Provident Fund Schemes Ordinance ("MPFSO") (Cap.485) to provide a formal system of retirement protection. In 1998, amendments to the MPFSO, together with two major pieces of subsidiary legislation, namely the Mandatory Provident Fund Schemes (General) Regulation (Cap.485A) and the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap.485B) were enacted. In 1999, the Mandatory Provident Fund Schemes (Fees) Regulation (Cap.485C) was enacted. The other pieces of MPF subsidiary legislation were enacted in the following years.

2.1 MANDATORY PROVIDENT FUND SCHEMES AUTHORITY ("MPFA")

Pursuant to the MPFSO, the MPFA was established in September 1998 to ensure compliance with the MPFSO and to regulate, supervise and monitor the operation of the MPF System. It says in its **mission statement**:

"To ensure the provision of retirement protection for Hong Kong's workforce through an effective and efficient system of prudential regulation and supervision of privately managed provident fund schemes."

With the amendment to the Occupational Retirement Schemes Ordinance ("ORSO") in 1998, the MPFA was designated as the Registrar of Occupational Retirement Schemes. On 10 January 2000, the MPFA formally took over the functions of the Registrar of Occupational Retirement Schemes from the Office of the Registrar of Occupational Retirement Schemes.

2.1.1 Functions of the MPFA

As provided under the MPFSO, the functions of the MPFA include:

(a) ensuring compliance with MPF legislation;

(b) registering provident fund schemes as MPF schemes;

(c) approving qualified persons as approved trustees;

(d) regulating the affairs and activities of approved trustees;

(e) regulating sales and marketing activities, and the giving of advice in relation to MPF schemes;

(f) overseeing the administration and management of registered MPF schemes by approved trustees;

(g) making rules or guidelines for the payment of mandatory contributions and for the administration of MPF schemes with respect to those contributions;

(h) proposing legislative reforms relating to occupational retirement schemes or provident fund schemes; and

(i) promoting the development of the retirement schemes industry in Hong Kong.

2.1.2 Organization Structure of the MPFA

The work of the MPFA is overseen by a Management Board consisting of the Chairman of the MPFA, non-executive directors and not fewer than four executive directors. A majority of the directors are non-executive directors. The MPFA is advised by the Mandatory Provident Fund Schemes Advisory Committee, which is established under the MPFSO. There are also a number of supporting committees which give advice and assistance to the MPFA on various aspects of its management and regulatory work.

The MPFA is headed by a Managing Director. There are six major divisions and three major units in the MPFA, namely, the Supervision Division, the Member Protection Division, the Regulation and Policy Division, the Corporate Services Division, the External Affairs Division, the Information Technology Division, the Liaison Unit, the Risk Management Unit and the Business Systems Development Unit. The Supervision Division is responsible for the approval/registration of trustees, MPF schemes and investment funds, intermediaries and ORSO schemes and on-going monitoring of their compliance. The Member Protection Division is responsible for enrolment and member protection issues, inspection, investigation, claims and prosecution.

The Regulation and Policy Division is responsible for policy and legislative matters. The Corporate Services Division is responsible for corporate affairs, general administration, human resources, financial control, and treasury. The External Affairs Division is responsible for publicity, public education, and press/media/community relations. The Information Technology Division is responsible for information systems.

The Liaison Unit is responsible for liaison and networking matters, servicing the MPF Industry Schemes Committee which is established under the MPFSO, handling complaints and enquiries, and providing customer services. The Risk Management Unit is responsible for risk management, internal audit and management reviews. The Business Systems Development Unit is responsible for business system matters and systems development.

2.2 OTHER REGULATORS

Other than the MPFA, the Securities and Futures Commission, the Insurance Authority and the Monetary Authority also have key roles to play in the regulation of MPF products, service providers and registered intermediaries.

2.2.1 Securities and Futures Commission ("SFC")

The main functions of the SFC, in respect of MPF, are to:

(a) authorize MPF schemes (including their constituents funds) and pooled investment funds through vetting/authorizing the disclosure of information in the offering documents and marketing materials relating to MPF products;

(b) license certain service providers, including investment managers responsible for the management of investment portfolios and custodians engaging in securities lending; and

(c) be responsible for supervision and investigation of relevant registered MPF intermediaries whose core business is in securities.

2.2.2 Insurance Authority ("IA")

The main functions of the IA, in relation to MPF, are to:

(a) ensure that insurance companies engaging in MPF services operate properly, with sufficient assets to meet their liabilities as stipulated under the Insurance Companies Ordinance (Cap.41); and

(b) be responsible for supervision and investigation of relevant registered MPF intermediaries whose core business is in insurance.

Note: The Commissioner of Insurance is appointed as the IA for the purposes of the Insurance Companies Ordinance to regulate and supervise the insurance industry.

2.2.3 Monetary Authority ("MA")

The main functions of the MA, in the context of MPF, are to:

(a) regulate banks in Hong Kong which are involved in the MPF System, whether as custodians, guarantors for MPF investment products or providers of continuous financial support to trustees or custodians, and ensure that they maintain financial soundness; and

(b) be responsible for supervision and investigation of relevant registered MPF intermediaries whose core business is in banking.

Note: The Monetary Authority is the Chief Executive of the Hong Kong Monetary Authority.

The MPFA has signed a Memorandum of Understanding Concerning the Regulation of Mandatory Provident Fund Products with the SFC concerning the two regulatory bodies' respective roles in the regulation of MPF products. In addition,

the MPFA has also signed a Memorandum of Understanding Concerning the Regulation of MPF Intermediaries with the MA, the IA and the SFC.

2.3 MPF LEGISLATION, CODES, GUIDELINES AND STANDARDS

The **MPF legislation** includes the MPFSO and the three major pieces of subsidiary legislation, namely, the Mandatory Provident Fund Schemes (General) Regulation, the Mandatory Provident Fund Schemes (Exemption) Regulation (both enacted in April 1998), and the Mandatory Provident Fund Schemes (Fees) Regulation (enacted in May 1999).

2.3.1 Mandatory Provident Fund Schemes Ordinance ("MPFSO")

This is the primary statute and its intentions are to:

(a) provide for the establishment of non-governmental mandatory provident fund schemes for the purpose of funding benefits on retirement;

(b) provide for contributions to such schemes;

(c) provide for the registration of such schemes;

(d) provide for a regulatory regime in respect thereof;

(e) provide for the creation of an authority (MPFA) to oversee the administration and management of MPF schemes;

(f) exempt certain classes of persons from contributing to MPF schemes;

(g) provide for the approval of persons as trustees of MPF schemes;

(h) provide for the control and regulation of approved trustees;

(i) regulate sales and marketing activities and the giving of advice, in relation to MPF schemes; and

(j) make consequential amendments to other ordinances including pension related ordinances, and for connected purposes.

The practical details of many of the above objectives are considered in greater detail in these Study Notes.

2.3.2 MPF Regulations

The following Regulations have been enacted for the detailed operation of the primary statute:

(a) **Mandatory Provident Fund Schemes (General) Regulation ("General**

Regulation")

The General Regulation sets out detailed requirements on the operation of MPF schemes, including requirements on:

(i) trustees and other service providers;

(ii) schemes and investment products;

(iii) enrolment;

(iv) contribution;

(v) portability and withdrawal of accrued benefits arrangements;

(vi) compensation fund; and

(vii) investment of MPF funds.

(b) **Mandatory Provident Fund Schemes (Exemption) Regulation ("Exemption Regulation")**

The Exemption Regulation sets out detailed requirements with regard to:

(i) applications for exemption from MPF requirements in respect of ORSO schemes; and

(ii) ongoing monitoring requirements.

(c) **Mandatory Provident Fund Schemes (Fees) Regulation ("Fees Regulation")**

The Fees Regulation prescribes the types and amount of fees imposed by the MPFA, including fees payable on:

(i) application for approval of trustees;

(ii) registration of provident fund schemes or approval of pooled investment funds;

(iii) application for winding up or restructuring of MPF schemes;

(iv) application for exemption certificates in respect of ORSO exempted/registered schemes; and

(v) annual renewal of registration of MPF schemes.

2.3.3 MPF Codes, Guidelines and Standards

To supplement the MPF legislation, the MPFA has issued a number of codes and guidelines to facilitate compliance with the legislation by service providers and scheme participants, including those relating to the interface arrangements between the MPF System and ORSO schemes. In addition, the MPFA has developed some standards such as the set of Compliance Standards for the guidance of MPF approved trustees in establishing a structured framework for monitoring their compliance with statutory duties and responsibilities.

(a) **MPF Codes**

Two codes have been issued by the MPFA:

(i) Code on MPF Investment Funds;

(ii) Code on Disclosure for MPF Investment Funds.

(b) **MPF Guidelines**

The six parts of the MPF Guidelines issued by the MPFA deal with various matters:

(i) Part I - Guidelines on Licensing;

(ii) Part II - Guidelines on Reporting Requirements;

(iii) Part III - Guidelines on Investment;

(iv) Part IV - Guidelines on Scheme Operations;

(v) Part V - Guidelines on ORSO Interface;

(vi) Part VI - Guidelines on Intermediaries.

(c) **Standards**

(i) Compliance Standards for MPF Approved Trustees

(ii) Performance Presentation Standards

Lists of the MPF legislation, codes, guidelines and standards are set out in **Appendix II**.

2.3.4 Legislation on the Regulation of MPF Intermediaries

The Mandatory Provident Fund Schemes (Amendment) Ordinance 2012 was passed by the Legislative Council on 21 June 2012. With the passage of the Amendment Ordinance, a statutory regulatory regime for MPF intermediaries was set up, and both the statutory regime and the Employee Choice Arrangement (**ECA**) came into effect on 1 November 2012.

The establishment of the statutory regime for MPF intermediaries will enhance the regulation of sales and marketing activities of MPF schemes, thereby further strengthening protection of scheme members' interests.

Details of regulation of MPF intermediaries are discussed in Chapter 7.

2.4 OTHER RELEVANT LEGISLATION

A number of ordinances have a bearing on the MPF System. Whilst it is not expected that you should have a detailed knowledge of these ordinances, you should nevertheless have an appreciation of the general intentions of each.

2.4.1 Occupational Retirement Schemes Ordinance ("ORSO") (Cap.426)

The intentions of this Ordinance are to:

(a) regulate all voluntarily established ORSO schemes operating in or from Hong Kong;
(b) ensure that the ORSO schemes are properly administered and funded; and
(c) provide greater certainty that retirement scheme benefits promised to employees will be paid when they fall due.

The ORSO is supported by subsidiary legislation in the form of rules made by the Registrar of Occupational Retirement Schemes.

2.4.2 Securities and Futures Ordinance (Cap.571)

The intentions of this Ordinance are to:

(a) make provisions in relation to financial products, the securities and futures market and the securities and futures industry;
(b) regulate activities and other matters connected with financial products, the securities and futures market and the securities and futures industry;
(c) provide for the protection of investors; and
(d) provide for matters incidental to or connected therewith, and for connected purposes.

2.4.3 Insurance Companies Ordinance (Cap.41)

The intentions of this Ordinance are to:

(a) regulate the carrying on of insurance business;
(b) regulate insurance intermediaries;
(c) provide for the appointment of the IA;
(d) confer powers of authorization and intervention on the IA, both in respect of insurers and insurance intermediaries;
(e) require insurers and insurance intermediaries to furnish financial statements and other information to the IA; and
(f) provide for matters incidental thereto or connected therewith.

2.4.4 Banking Ordinance (Cap.155)

The intentions of this Ordinance are to:

(a) regulate the banking business;
(b) regulate the business of taking deposits;

(c) make provision for the supervision of authorized institutions;
(d) provide a measure of protection to depositors;
(e) promote the general stability and effective working of the banking system;
(f) make provision for the supervision of money brokers; and
(g) provide for matters incidental thereto or connected therewith.

2.4.5 Employment Ordinance (Cap.57)

Primarily dealing with the protection of wages for employees, regulation of general conditions of employment and employment agencies, this Ordinance has relevance to the MPF System particularly in relation to the definition of employee, unlawful deduction of wages to cover employer's contribution, unreasonable and unilateral variation of employment terms, and long service / severance payments.

2.4.6 Inland Revenue Ordinance (Cap.112)

Primarily dealing with tax on property, earnings and profits, this Ordinance has relevance to MPF in respect of the tax deductions allowable for the mandatory contributions made by employers and employees.

2.4.7 Trustee Ordinance (Cap.29)

Primarily dealing with the duties and statutory requirements of a trustee (see **4.1**).

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Representative Examination Questions

Type "A" Questions

1 The centralized body with special responsibility for the regulation of banks in Hong Kong which are involved in the MPF System is the:

(a) Securities and Futures Commission (SFC); .....
(b) Insurance Authority (IA); .....
(c) Monetary Authority (MA); .....
(d) Mandatory Provident Fund Schemes Authority (MPFA). .....

[Answer is in **2.2.3**]

Type "B" Questions

2 Which **three** of the following areas are covered by the guidelines issued by the MPFA?

(i) Licensing
(ii) Investment
(iii) Reporting requirements
(iv) Tax deductions allowable for MPF contributions

(a) (i), (ii) and (iii); .....
(b) (i), (ii) and (iv); .....
(c) (i), (iii) and (iv); .....
(d) (ii), (iii) and (iv). .....

[Answer is in **2.3.3**]

3 Which of the following are relevant to the MPF System?

(i) Banking Ordinance
(ii) Securities and Futures Ordinance
(iii) Insurance Companies Ordinance
(iv) Consumer Council Ordinance

(a) (i) and (ii) only; .....
(b) (i), (ii) and (iii) only; .....
(c) (ii), (iii) and (iv) only; .....
(d) (i), (ii), (iii) and (iv). .....

[Answer is in **2.4**]

[If required, the answers may be found at the end of the Study Notes.]

3 KEY FEATURES OF THE MPF SYSTEM

The MPF System has a number of key features. This chapter explains in detail the key features of the MPF System.

3.1 SECURITY OF SCHEME ASSETS

All MPF schemes must be governed by the law of Hong Kong. With even the "safest" investments, there will always be an element of risk. Because of the importance of the MPF System to so many people's lives, however, every effort has been made to ensure the security of the scheme's assets. This is achieved through various levels of protection, sometimes collectively termed as the "safety net".

3.1.1 Stringent Authorization Requirements

Trustees and other service providers, as well as MPF schemes, are subject to careful scrutiny as follows:

(a) **Trustees and Other Service Providers**

(i) All trustees must be approved by the MPFA before they can act as trustees for MPF schemes.

(ii) Trustees must meet stringent requirements, including having paid-up share capital and net assets of at least $150 million each (see **4.4**) in order to be approved.

(iii) The application for trustee approval is carefully examined by the MPFA in relation to the trustee, investment manager, custodian and other service providers engaged for the purpose of the scheme.

(iv) The purpose of the scrutiny in (iii) above is to ensure that the persons concerned have the knowledge, qualifications, experience, financial capability and control to administer the scheme, invest the funds and safeguard members' benefits.

(b) **MPF Schemes**

(i) Provident fund schemes must be registered by the MPFA in order to become MPF schemes.

(ii) The schemes must meet stringent requirements (see **Chapter 5**) in order to be registered.

(iii) The MPFA examines the governing rules to ensure that they comply with the legislative requirements.

3.1.2 Professional Indemnity Insurance

Professional indemnity insurance must be arranged to cover losses that MPF schemes might sustain from a number of prescribed risks. These include **fraud** and **negligence** on the part of the trustee, as well as other risks, e.g. loss of scheme assets in transit. This insurance is in fact wider than normal professional indemnity coverage. However, the insurance does not cover losses attributable to investing the scheme's funds in the ordinary course of business.

3.1.3 Compensation Fund

The compensation fund:

(a) is established to compensate scheme members and other persons who have beneficial interests in those schemes for losses of accrued benefits due to **misfeasance** or **illegal conduct** of approved trustees and other service providers;

(b) consists of an initial injection of **$600 million** from the government, supplemented by a **levy** on MPF schemes at a rate of **0.03%** of the net asset value of the scheme assets; and

(c) is a fund of "last resort", intended to be used after utilizing the professional indemnity insurance and upon application to the MPFA.

After a review of the compensation fund, an automatic levy triggering mechanism was introduced in September 2012, under which the resumption and suspension of the compensation fund levy will be triggered at the reserve levels of $1 billion and $1.4 billion respectively.

3.2 FUNCTIONS OF APPOINTED SERVICE PROVIDERS

The approved trustee is the central party responsible for all scheme management functions. It may delegate its scheme administration and custodial duties to other service providers (e.g., scheme administrator) and, subject to exceptions, it must appoint an investment manager. The marketing of the scheme is conducted by MPF intermediaries. The duties and functions of the trustee are covered in Chapter 4 (see **4.3**). Those of the appointed service providers are summarized below:

(a) **Investment Managers**

They must:

(i) be licensed by or registered with the SFC to carry on a business of Type 9 (asset management) regulated activity under Part V of the Securities and Futures Ordinance; and

(ii) comply with their investment contracts and all required MPF guidelines and restrictions;

(iii) continue to meet their own capital and net asset requirements.

(b) **Custodians**

The word means a "guardian" or someone having the care, i.e. "custody", of something or someone, and in this context refers to the person or institution to which the trustee has delegated care of the trust assets. The trustee can act as a custodian of scheme assets if it satisfies the specified criteria. The custodian physically holds the assets and is likely to be an authorized bank or a registered trust company. If it is a registered trust company, it must have paid-up share capital and net assets of at least **$150 million** each.

Where appointed, they must:

(i) take proper care of all scheme assets;

(ii) comply with all requirements in their contract (which is known as the custodial agreement) and all required MPF guidelines and restrictions; and

(iii) continue to meet all financial and other requirements placed upon them.

(c) **MPF Intermediaries**

Details of the role of MPF intermediaries are discussed in **Chapter 7**.

3.3 TYPES OF MPF SCHEMES

There are three types of MPF scheme:

(a) **Employer Sponsored Scheme**

(i) Membership is only open to the employees of a single employer and its associated companies.

(ii) Because of the limited membership, it is only cost effective to run such a scheme if the number of employees is large. It is therefore likely that only large companies will consider setting up their own employer sponsored schemes.

(b) **Master Trust Scheme**

(i) Membership is open to the employees of different employers, self-employed persons, former self-employed persons and persons who, having benefits in another MPF scheme, an ORSO exempted scheme, or an ORSO registered scheme, wish to have those benefits transferred to this scheme.

(ii) By pooling the contributions of small employers together for administration and investment, such schemes can enjoy a high degree of efficiency resulting from economies of scale.

(c) **Industry Scheme**

(i) Such a scheme is specially designed for employees and self-employed persons of industries with high labour mobility and daily wage practice.

(ii) At present, the two designated industries are the catering and construction industries.

(iii) It is optional, not compulsory, for employers in these industries to enrol their employees in such a scheme.

(iv) An employee who is a member of an industry scheme does not need to change scheme if the previous and new employers are participating in the same industry scheme. This minimizes the administrative cost to employers and casual employees entailed by the transfer of accrued benefits from one scheme to another.

3.4 COVERAGE

(a) With certain exceptions (see **3.5** below) an employee or a self-employed person, aged 18 to aged below 65 is required to be enrolled in and contribute to an MPF scheme, to which the employee's employer must also contribute.

(b) Those covered by the MPF System (subject to exemptions) are:

(i) **Employees** (including full-time and part-time employees) who have been employed for **60 days** or more under an employment contract. The location of work and number of hours worked are irrelevant.

Basically, an employee is a person engaged by an employer under an employment contract (which may be in writing or oral and includes express or implied terms).

The 60-day employment rule, however, does not apply to "casual employees" in the catering and construction industries as mentioned below.

(ii) **Casual employees** in designated industries are covered by the MPF System regardless of their duration of employment. At present, only the **catering** and **construction** industries have been designated.

"Casual employee" refers to any person employed in the catering industry or the construction industry by an employer on a day-to-day basis or for a fixed period of less than 60 days.

The coverage of these two industries is as follows:

Coverage for the Catering Industry

For the purpose of the industry schemes, the catering industry covers holders of food business licences or permits under the Food Business Regulation (Cap. 132, Subsidiary Legislation), canteens at schools and workplace and catering establishments inside clubs. The following are examples of catering establishments:

1. Food factories, milk factories, frozen confection factories & bakeries
2. Restaurants
3. Factory canteens
4. Siu mei or lo mei shops
5. Cold stores
6. Fresh provision shops
7. Cooked food stalls operating in a public market
8. Cooked food stalls which are granted hawker licences
9. Chinese herb tea shops

Coverage for the Construction Industry

The construction industry covers the following eight major categories:

1. Foundation and associated works
2. Civil engineering and associated works
3. Demolition and structural alteration works
4. Refurbishment and maintenance works
5. General building construction works
6. Fire services, mechanical, electrical and associated works
7. Gas, plumbing, drainage and associated works
8. Interior fitting out works

The following are examples of establishments and units engaged in construction work:

Registered with the Buildings Department:

1. General building contractors
2. Specialist contractors in the ventilation category

Registered with the Electrical and Mechanical Services Department:

3. Electrical contractors
4. Lift contractors and escalator contractors
5. Builders' lift contractors
6. Gas contractors

Others:

7. Fire service installation contractors registered with the Fire Services Department
8. Holders of a plumber's licence issued by the Water Supplies Department
9. Public works contractors with an approval letter from the Works Branch

Development Bureau

10. All sub-contractors to which projects or works are delegated directly or indirectly from any of the 9 contractors specified above

(iii) **Self-employed person** refers to any person whose relevant income (other than in the capacity as an employee) derives from the person's production (in whole or in part) of goods or services in Hong Kong, or trade in goods or services in or from Hong Kong.

In simple words, a self-employed person is one who works for himself/herself and is not employed as an employee. For example, if a person is a sole proprietor (such as a taxi driver) or a partner of a partnership, that person is regarded as a self-employed person under the MPF System.

Note: Please refer to **Appendix III** for explanations as to why persons of certain types of jobs are included in or excluded from, the MPF System.

3.5 EXEMPT PERSONS

There are certain categories of persons in Hong Kong who are not required to join an MPF scheme. Employers of these exempt persons will also be exempted as far as the employment is concerned. In certain cases, if they cease to be exempted, the enrolment and contribution requirements apply as if the employment or self-employment has begun on the first day they ceased to be exempted.

Such persons include:

(a) employees and self-employed persons who are under 18 or have reached 65;

(b) domestic employees;

(c) self-employed licensed hawkers;

(d) people covered by statutory pension and provident fund schemes (such as civil servants and subsidized or grant school teachers);

(e) people from overseas who enter Hong Kong for employment for 13 months or less;

(f) people from overseas who enter Hong Kong for employment and are covered by overseas retirement schemes;

(g) employees of the European Union Office of the European Commission in Hong Kong; and

(h) members of occupational retirement schemes which are exempted from MPF requirements ("MPF exempted ORSO schemes").

Note: A person under categories (b) to (d) and (g) to (h) above who have income from other employment or self-employment may not be exempted from the relevant provisions of

MPFSO in respect of that other income.

3.6 ENROLMENT

3.6.1 Duties of Employers

(a) Employees (other than casual employees) who have been employed for 60 days or more are covered by the MPF System, unless they are exempt persons. Employers are required to enrol their employees into MPF schemes in which the employers participate before the end of the permitted period, i.e. the first 60 days of employment. However, if the employees are casual employees, their employers are required to enrol such employees in MPF schemes participated in by the employers within the permitted period regardless of the duration of employment. The permitted period in respect of casual employees is the first 10 days of employment.

(b) Employers participating in MPF schemes will be issued with participation certificates by the MPFA. Employers are required to display these certificates at the premises where their employees are employed or, if the work performed by their employees is not at premises in Hong Kong, at the employer's principal place of business in Hong Kong.

(c) After the implementation of Employee Choice Arrangement ("ECA") (see **3.10.1** below), the administrative arrangements for employers to handle MPF matters for their employees will remain unchanged. In other words,

(i) in respect of existing employees - employers should continue making contributions to the existing MPF scheme(s) selected by the employers by the contribution day for each contribution period; and

(ii) in respect of new employees - employers should enroll them as scheme members in the existing scheme selected by the employers and make contributions for them to that scheme by the contribution day for each contribution period.

Same as before the implementation of ECA, employers can change their MPF trustee(s) and scheme(s) at any time as they consider appropriate.

Note: An employer means any person who has entered into a contract of employment to employ another person as his/her employee.

3.6.2 Duties of Self-employed Persons

(a) Self-employed persons are required to enrol themselves to become members of MPF schemes regardless of their level of income, unless they are exempt persons. However, they are only required to contribute if they are earning $6,500 or more a month or $78,000 or more a year.

(b) Self-employed persons have an obligation to enrol in MPF schemes and make

contributions regardless of whether they have filed tax returns or obtained business registration certificates.

3.6.3 Duties of Trustees

(a) Requirements for application for membership of, or participation in, the scheme, the governing rules of the scheme and fees and charges payable under the scheme must be disclosed to a person who is considering to become a scheme member or participating employer.

(b) A notice of acceptance should be issued to the scheme applicant within 30 days after the applicant has submitted all the information required for the application of membership of or participation in, the scheme, or after the applicant agrees to observe and accept the governing rules of the scheme, whichever is the later.

(c) A membership certificate should be issued to the employee within 60 days after the employee has become a scheme member.

Note: Except for exempt persons, all persons covered by the MPF System must join an MPF scheme. To allay any fears that some persons may have difficulty in joining a scheme, the MPF legislation includes a **"non-refusal of scheme applicants"** provision. Under the terms of this, an application must not be refused, provided that the person making it complies with all requirements and agrees in writing that he/she will comply with the governing rules of the scheme.

3.7 CONTRIBUTIONS

The MPFSO spells out the provisions for mandatory contributions, which are set out as follows.

3.7.1 Mandatory Contributions

(a) **In Respect of Employees**

(i) Who must pay?

An employer is required to make employer's mandatory contributions in respect of an employee from the employer's own funds. The employer must deduct the employee's mandatory contribution from the employee's relevant income for each contribution period.

Mandatory contributions are required to be paid on or before the **contribution day** (refer to (vii) below), but there are different implications for:

- an employer: it is required to make mandatory contributions for its employee from the **first day** of employment of the employee;

- an employee (other than a casual employee): the employee is **not**

required to contribute for the **first 30 days of employment** and

a) any incomplete wage period that immediately follows the 30-day period *(if the employee's wage period is monthly or shorter than monthly)*; or
b) the calendar month in which the 30th day of employment falls *(if the employee's wage period is longer than monthly).*

That is, contributions should start from the first complete wage period/calendar month commencing on or after 31st day of employment

The period before the first contribution is payable is commonly known as the contribution holiday. Please also refer to the meaning of "contribution period" in (vi) below.

- a casual employee: the casual employee is required to make mandatory contributions from the **first day** of employment (i.e. no contribution holiday).

(ii) The amount

- Relevant Employees

For "relevant employees (other than casual employees of industry schemes), both the employees and the employers are required to contribute 5% of the employees' relevant income as the employees' and the employers' mandatory contributions respectively for the benefits of the employees, subject to the minimum and maximum relevant income levels.

Contributions are generally made on a monthly basis for monthly-paid employees. The monthly minimum and maximum relevant income levels are:

- Minimum relevant income level : $6,500 per month
- Maximum relevant income level : $25,000 per month

Employees earning less than the minimum relevant income level (i.e. $6,500 a month) do not need to contribute but their employers are still required to contribute 5% of the employees' relevant income. If employees elect to make contributions, these are regarded as voluntary contributions.

For employees earning between the minimum and maximum relevant income levels (i.e. between $6,500 and $25,000 a month), employers' and employees' mandatory contributions are each payable at 5% of the employee's relevant income.

For employees earning more than the maximum relevant income level (i.e. $25,000 a month), the employees' mandatory

contributions and the employers' mandatory contributions are each capped at $1,250 per month. With any amount of relevant income, however, both the employer and the employee can opt to make voluntary contributions. However, the amount of the employer's voluntary contributions does not have to match the employee's amount.

Note: Please refer to **Appendix VI** for a simple guide to the rights and duties of employees and employers under the MPF System.

After the commencement of the ECA, the administrative arrangements for employers to contribute for their employees will remain unchanged. Please refer to **3.6.1(c)** above.

- Casual Employees of Industry Schemes

  In the case of casual employees, both employers' mandatory contributions and employees' mandatory contributions shall be payable from the first day of employment.

  The minimum and maximum relevant income levels are:

  - Minimum relevant income level : $250 per day
  - Maximum relevant income level : $830 per day

- Non Daily-paid Casual Employees

  For casual employees who are members of industry schemes and who are <u>not</u> paid on a daily basis (e.g. on a weekly or bi-weekly basis), both the employees and the employers are required to contribute mandatory contributions in accordance with the scale of contributions as follows (i.e., 5% of the employees' relevant income (capped at $41.5 per day)):

Average daily relevant income of a non-daily-paid casual employee	Employer's mandatory contributions	Employee's mandatory contributions
Less than $250	Relevant income in the relevant contribution period x 5%	Not required
$250 to $830	Relevant income in the relevant contribution period x 5%	Relevant income in the relevant contribution period x 5%
More than $830	$41.5 x the number of calendar days in the relevant contribution period	$41.5 x the number of calendar days in the relevant contribution period

- Daily-paid Casual Employees

  For casual employees who are members of industry schemes and who are paid on a daily basis, employers' and employees' mandatory contributions are made in accordance with the scale of contributions as follows:

Daily relevant income of a daily-paid casual employee	Employer's mandatory contribution	Employee's mandatory contribution	Total mandatory contributions
Less than $250	$7.5	Not required	$7.5
$250 or more but less than $260	$13	$13	$26
$260 or more but less than $390	$15	$15	$30
$390 or more but less than $520	$22.5	$22.5	$45
$520 to $650	$30	$30	$60
More than $650 to $830	$37.5	$37.5	$75
More than $830	$41.5	$41.5	$83

Note: The two contribution scales above do not apply to employers and employees of employer-sponsored schemes and master trust schemes.

(iii) Relevant income

This means, in the case of an employee, any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite or allowance, expressed in monetary terms, paid or payable by an employer to an employee in consideration of his/her employment. However, it does not include any severance or long service payments under the Employment Ordinance(Cap.57).

Note: Please refer to **Appendix IV** for explanations as to why certain types of income are regarded or not regarded as relevant income under the MPF System.

(iv) Permitted period

The permitted period is the period within which an employer must enrol his/her employees in an MPF scheme. For a relevant employee (other than a casual employee), the permitted period is the first 60 days of their employment. However, in respect of a casual employee, the permitted

period is the first 10 days regardless of the type of scheme in which the employee is enrolled.

(v) Wage period

A wage period means each period for which the employer pays or should pay relevant income to the employee.

(vi) Contribution period

- In relation to an employer:

  A contribution period means each period for which the employer pays or should pay relevant income to the employee.

- In relation to an employee (other than a casual employee):

  a) where the wage period is not more than 1 month (e.g. weekly or monthly), a contribution period means each period for which the employer pays or should pay relevant income to the employee, but **does not include** any wage period commencing on or before the 30th day of employment;

  b) where the wage period is more than 1 month (e.g. quarterly), a contribution period means each period for which the employer pays or should pay relevant income to the employee, but **does not include** the period commencing from the date of employment and ending on the last day of the calendar month in which the 30th day of employment falls.

  Note: As explained in (vi) here, the contribution period in relation to an employee (other than a casual employee) excludes certain wage period(s). This effectively exempts the employee from paying employee's mandatory contributions in respect of the excluded wage period(s). This is in fact the contribution holiday mentioned in 3.7.1(a)(i) above.

- In relation to a casual employee:

  A contribution period means each period for which the employer pays or should pay relevant income to the employee.

(vii) Contribution day

Employers are required to pay mandatory contributions to the scheme's trustee on or before the contribution day.

In the case of relevant employees (other than casual employees), the contribution day is defined as the 10th day after the last day of:

a) a calendar month within which the relevant contribution period ends; or

b) the month during which the permitted period ends,

whichever is the later.

In the case of casual employees who are **not** members of an industry scheme, the contribution day is defined as the 10th day after the last day of:

a) the relevant contribution period; or

b) the contribution period during which the permitted period ends,

whichever is the later.

In the case of casual employees who are members of an industry scheme, the contribution day is defined as one of the following days as agreed between the employer and the trustee of the scheme concerned:

a) the next working day (other than Saturday) immediately after the payment of relevant income for the relevant contribution period; or

b) the 10th day after the last day of the relevant contribution period.

If the contribution day is a Saturday, a public holiday, a gale warning day or black rainstorm warning day, then it shall mean the next following day which is not a Saturday, a public holiday, a gale warning day or a black rainstorm warning day.

Note: Please refer to **Appendix V** for a guide on when the contribution is considered paid under different payment methods/channels.

(viii) Remittance statement

An employer must prepare and submit a remittance statement showing the relevant income and the amount of contribution for each of the employees (**not** including casual employees in an industry scheme whose contributions are made on the next working day (other than Saturday) immediately after the relevant income payments) to the trustee when paying contributions.

(ix) Monthly pay-record

An employer must provide each employee (other than casual employees in an industry scheme whose contributions are made on the next working day (other than Saturday) immediately after the relevant income payments) with a monthly pay-record within **7 working days** after the last contribution payment during the month. The pay-record includes:

- the employee's **relevant income**;
- the amount of contributions (both mandatory and voluntary) paid by the employer and deducted from the employee's relevant income;

- the **date** on which the contributions were paid to the trustee.

(b) **In Respect of Self-employed Persons**

(i) Definition and amount

A self-employed person is one whose relevant income (other than in the capacity as an employee) derives from the person's production (in whole or in part) of goods or services in Hong Kong, or trade in goods or services in or from Hong Kong. Such a person is required to contribute **5%** of the person's relevant income as mandatory contributions, subject to the minimum and maximum relevant income levels (refer to (vi) below).

Self-employed persons can make voluntary contributions on top of their mandatory contributions.

Note: There is no additional 5% contributions from an employer.

(ii) Contribution period and contribution day

Payment must be made to the trustee before the end of the contribution period. A contribution period may either be a year or a month, at the self-employed person's option. Such a person must inform the trustee at least **30 days** before the end of each financial period of the scheme:

- the relevant income for the next financial period of the scheme;
- whether the person will contribute **yearly** or **monthly** for the next financial period of the scheme. If the person chooses to contribute on a monthly basis, the contribution period can be specified in writing to the scheme trustee; and the monthly contribution is due on the last day of the contribution period. If the contribution is on a yearly basis, the contribution day is the financial year end of the scheme.

(iii) Relevant income

A self-employed person is required to produce evidence of relevant income to the trustee, but is not required to do so if the **maximum** mandatory contributions of **$1,250** a month or **$15,000** a year are paid.

(iv) Ascertainment of "relevant income"

If evidence of relevant income includes the most recent Inland Revenue notice of assessment, the assessable profits shown will be accepted as the relevant income (proportionally adjusted if the period covered by the notice is shorter or longer than one year), unless that assessment was issued more than 2 years ago.

If the most recent notice of assessment was issued more than 2 years ago,

or the person objects to or appeals against that assessment in accordance with the Inland Revenue Ordinance, or if the evidence produced by the self-employed person does not consist of the most recent notice of assessment, the relevant income for the year will be an amount declared by the person as equal to the previous year's assessable profits. It is a criminal offence knowingly to make an untrue or misleading declaration to the trustee.

If the self-employed person cannot produce evidence of the relevant income (e.g. notice of assessment) to the trustee (and the trustee is satisfied that the person really cannot produce such evidence) and claims to earn less than the maximum level of relevant income (see **3.7.1(b)(vi)** below), then the relevant income will be taken as equivalent to the basic allowance within the meaning of section 28 of the Inland Revenue Ordinance.

If the self-employed person cannot produce any evidence and the trustee is not satisfied with the reason for not being able to do so, the relevant income will be taken to be equal to the maximum level of relevant income ($300,000 a year).

(v) Negative income

If a self-employed person suffers **losses**, a statement may be lodged with the trustee showing the computation of the net loss in respect of the relevant business. The net loss should cover the last financial period of the self-employed business (which will be used to determine the relevant income of the self-employed person for the next financial period of the scheme). Mandatory contributions should be resumed when the self-employed person's relevant income exceeds the minimum level of relevant income (i.e. $78,000 a year).

(vi) Minimum and maximum relevant income levels

For a self-employed person, the **minimum** level of relevant income for mandatory contribution purposes is **$6,500** per month or **$78,000** per year. The **maximum** level of relevant income is **$25,000** per month or **$300,000** per year.

If the person is not a member of an MPF scheme for a complete 12-month financial period, the above minimum and maximum relevant income levels should be adjusted proportionally by dividing the relevant amount by the number of days in the period as follows:

- Minimum relevant income level = $78,000 x DC/365
- Maximum relevant income level = $300,000 x DC/365

Note: DC is the number of days during the financial period of the scheme of which the self-employed person is a member.

Same as employers and employees, voluntary contributions can always be paid by self-employed persons.

(vii) Permitted period

The permitted period is the period within which a self-employed person must become a member of an MPF scheme. The permitted period is 60 days for self-employed persons.

(viii) Monthly contributions

For mandatory contributions to be paid on a monthly basis, the monthly relevant income is calculated by dividing the yearly income by the number of whole months in the financial period.

(ix) Partners

Self-employed persons who are partners should calculate their relevant income by making proportional adjustments according to their share of profits of the business for that financial period.

(x) Cessation of self-employment

A self-employed person should inform the scheme trustee of his/her cessation of self-employment and should make his/her last contribution on or before the end of the contribution period in which he/she ceases to be self-employed.

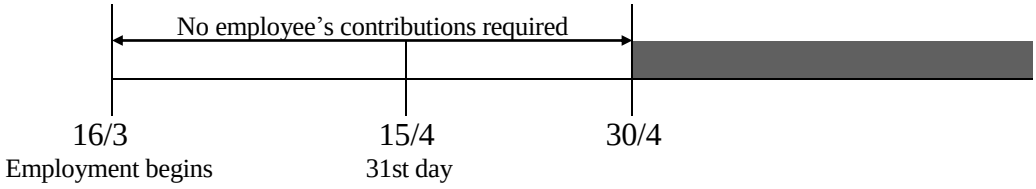
Note: Please refer to **Appendix VII** for a simple guide to the rights and duties of self-employed persons under the MPF System.

(c) **Examples to Demonstrate the Application of the Above Rules**

In order to clarify the application of the above rules, some practical examples are provided below:

(i) Relevant employees (other than casual employees)

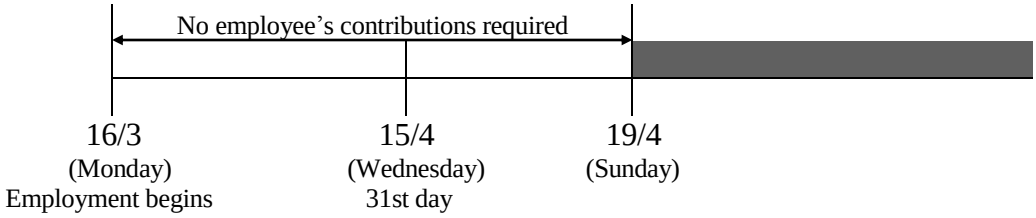
Wage period: On a calendar month basis



Employer's mandatory contributions start from:	**16/3/2009**
Employee's mandatory contributions start from:	**1/5/2009**
61st day of employment:	**15/5/2009**
1st contribution day:	**10/6/2009**
Employer's mandatory contributions	**16/3/2009–31/5/2009**
Employee's mandatory contributions	**1/5/2009-31/5/2009**

(ii) Relevant employees (other than casual employees)

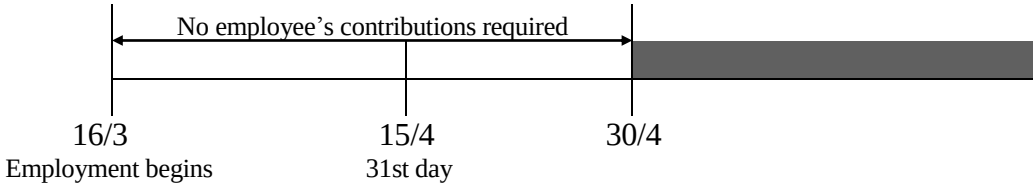
Wage period: On a calendar week (Monday to Sunday) basis



Employer's mandatory contributions start from:	**16/3/2009**
Employee's contributions start from:	**20/4/2009**
61st day of employment:	**15/5/2009**
1st contribution day:	**10/6/2009**
Employer's mandatory contributions	**16/3/2009-31/5/2009**
Employee's mandatory contributions	**20/4/2009-31/5/2009**

(iii) Relevant employees (other than casual employees)

Wage period: On a quarterly basis



Employer's mandatory contribution start from:	**16/3/2009**
Employee's mandatory contribution start from:	**1/5/2009**
61st day of employment:	**15/5/2009**
1st contribution day:	**10/6/2009**
Employer's mandatory contributions	**16/3/2009-31/3/2009**
Employee's mandatory contributions	**Nil**
2nd contribution day:	**10/7/2009**
Employer's mandatory contributions	**1/4/2009-30/6/2009**
Employee's mandatory contributions	**1/5/2009-30/6/2009**

(iv) Relevant income: $2,000 per month

Employee	No mandatory contributions are required to be made by the employee, unless the employee chooses to do so as voluntary contributions, because his/her relevant income is below the minimum relevant income level for contribution purpose. However, the employer must contribute $100 (5% of $2,000) as employer's mandatory contributions for the employee.
Self-employed person	Only makes contributions if the person so chooses as voluntary contributions, because his/her relevant income is below the minimum relevant income level for contribution purpose.

(v) Relevant income: $15,000 per month

Employee	The employee and the employer must each make mandatory contributions of $750 (5% of $15,000)
Self-employed person	Mandatory contributions of $750 (5% of $15,000)

(vi)	Relevant income:	$40,000 per month
	Employee	Mandatory contributions by the employee and the employer limited to $1,250 each (5% of $25,000 maximum level of relevant income for contribution purpose). Additional amounts may be paid by the employee or the employer or both as voluntary contributions.
	Self-employed person	Mandatory contributions of $1,250 (5% of $25,000 maximum level of income for contribution purpose). Additional voluntary contributions may be made.

Note: You are advised to do more practice using your own examples. The examination may include one or more questions on calculations of contributions payable.

3.7.2 Voluntary Contributions

Although voluntary contributions are not required to be made under the MPF legislation, the MPFA encourages employers and scheme members to make such contributions to accumulate additional benefits. A number of matters requiring attention in relation to voluntary contributions are addressed below. These, the MPFA believes, effectively safeguard accrued benefits derived from voluntary contributions.

(a) **MPF Legislative Provisions**

All provisions of the MPF legislation applying to accrued benefits derived from mandatory contributions apply equally to accrued benefits derived from voluntary contributions, **except** those provisions relating to:

(i) vesting;
(ii) preservation;
(iii) portability; and
(iv) withdrawal

which are governed by the governing rules of the relevant MPF scheme.

(b) **Trust Arrangements etc**

Scheme assets derived from voluntary contributions are managed by the same approved trustees, qualified investment managers and custodians responsible for managing the scheme assets derived from mandatory contributions in accordance with MPF legislation. Scheme assets derived from voluntary contributions are also covered by indemnity insurance.

(c) **Investment of Contributions**

Investment of voluntary contributions is subject to the same investment restrictions applicable to mandatory contributions under an MPF scheme.

(d) **Compensation Fund**

The compensation fund covers accrued benefits derived from voluntary contributions in the same way as from mandatory contributions.

(e) **Employers to Contribute**

Subject to the governing rules of the scheme, employers may make voluntary contributions and the relevant trustees have to follow up with employers in the case of any outstanding voluntary contributions.

3.7.3 Tax Allowances

The Government grants certain tax concessions, as follows:

(a) **mandatory** contributions made by an **employee** are tax deductible, but subject to the maximum amount per year as follows:

(i) $14,500 for the year of assessment 2012/13; and
(ii) $15,000 for the year of assessment 2013/14 and each subsequent year of assessment;

(b) **mandatory** contributions by an **employer** are also tax deductible, but there is an annual limit. Total mandatory amounts paid into MPF schemes by the employer, together with the employer's voluntary contributions to MPF schemes or to other registered retirement schemes (ORSO schemes etc, see **Chapter 6**) are deductible up to **15%** of the total annual emoluments of the employees concerned; and

(c) benefits from **mandatory** contributions are **tax exempt**. Benefits received from **voluntary** contributions made by employers may be subject to tax, depending on when and how they are paid.

Note: Tax allowances are subject to the provisions of the Inland Revenue Ordinance.

3.7.4 Default Contributions

A mandatory contribution is in arrears if it is not paid by the contribution day. The defaulter is liable to pay the contribution in arrears and a contribution surcharge. A financial penalty may also be imposed on the defaulter.

(a) **Duties of Approved Trustees**

(i) Upon receipt of a remittance statement, the approved trustee must check the accuracy of the arithmetical calculation of the mandatory contribution in the statement. The trustee should also ensure the mandatory contribution paid tallies with the amount specified in the statement.

(ii) If an employer or a self-employed person fails to pay the mandatory

contribution by the contribution day, the trustee must report to the MPFA within 10 days after the contribution day.

(iii) The trustee concerned must take action as may be reasonably required by the MPFA in connection with the recovery of arrears or surcharges.

(iv) However, in a case where the employer of a casual employee participating in an industry scheme and the trustee of the scheme have agreed that the contribution day should be the next working day (other than a Saturday) immediately after the relevant income payment and the employer fails to pay the mandatory contributions, the trustee is not required to report to the MPFA.

(b) **Actions to be Taken by MPFA**

(i) The MPFA, on receiving a report under (a)(ii) above, will take action to recover the arrears. This may include the issue of a notice chasing the default contribution and imposing a contribution surcharge on the defaulter. The contribution surcharge is imposed at a flat rate of 5% of the amount of mandatory contribution in arrears. In addition, the MPFA may impose a financial penalty (at the higher of $5,000 or 10% of the amount of mandatory contribution in arrears) on the defaulter.

(c) **Offences**

(i) An employer who fails to pay mandatory contributions and is convicted of an offence is liable to a fine of $350,000 and imprisonment for 3 years. An employer who fails to pay the deducted wages as employee mandatory contributions and is convicted of the offence, is liable to a fine of $450,000 and imprisonment for 4 years

(ii) A self-employed person who fails to pay mandatory contributions and is convicted of an offence is liable to a fine of $50,000 and imprisonment for 6 months on the first occasion. For each subsequent occasion, the fine is $100,000 and imprisonment of 12 months.

3.8 VESTING

(a) The meaning of "vesting" in this context is to endow or to give legal rights of possession regarding a particular financial interest. Thus, once both the employee's and the relevant employer's **mandatory** contributions are paid to the approved trustee of an MPF scheme, the contributions are said to be vested fully and immediately in the employee as accrued benefits.

(b) Investment income or profit arising from the investment of mandatory contributions (after taking into account any loss arising from such investment) is also fully and immediately vested in the scheme member.

(c) Voluntary contributions made by an employee or a self-employed person are vested in full as accrued benefits in that employee or self-employed person when they are paid to

the trustee. However, voluntary contributions made by an employer in respect of an employee are vested in the employee as accrued benefits, in accordance with the governing rules of the scheme.

(d) Even if the employee ceases employment after a short while, the employer cannot claw back the accrued benefits derived from the employer's portion of mandatory contributions and the vested portion of the employer's voluntary contributions made previously.

(e) Such vesting, however, is subject to section 12A of the MPFSO where severance payments or long service payments are to be paid from the accrued benefits attributable to the employer's contributions held in MPF schemes (see also **3.13** below).

3.9 PRESERVATION

The primary intention of the MPF System must never be forgotten. That is to provide a sum of money for the employee on retirement. It is therefore extremely important that there should be a strict preservation of any accrued benefits until the time they are to be paid. Accordingly, all benefits derived from mandatory contributions must be preserved until the scheme member reaches the age of 65, except for early withdrawals under specific circumstances described in **3.11** below.

Note: The above only applies to **mandatory** contributions. Voluntary contributions are not necessarily bound by the same rules. Voluntary contributions made by or in respect of a scheme member can be paid to the scheme member as provided by the governing rules of the scheme.

3.10 PORTABILITY

Types of MPF Accounts

To better understand the portability of MPF benefits under different circumstances, you should have a clear concept about the two types of MPF accounts, namely, contribution accounts and personal accounts[1].

(a) "**Contribution account**" refers to an account in an MPF scheme which mainly receives MPF contributions (both employer and employee portions) made by an employer for and in respect of an employee under current employment. Contribution account can also receive MPF contributions made by a self-employed person while self-employed.

(b) "**Personal account**" refers to an account in an MPF scheme which mainly receives the accrued benefits attributable to a member's former employment or self-employment transferred from other MPF account(s). After implementation of the Employee Choice Arrangement ("ECA"), preserved accounts are renamed as personal accounts. Personal accounts can also receive accrued benefits

[1] Before implementation of the ECA, the term "personal account" is known as "preserved account".

attributable to a member's current employment transferred from a contribution account during employment under ECA.

3.10.1 Employee Who Is under Current Employment

The Mandatory Provident Fund Schemes (Amendment) Ordinance 2009 enacted in July 2009 allows employees to transfer part of the accrued benefits from their contribution accounts to the accounts nominated by them in an MPF scheme of his/her own choice during current employment ("Employee Choice Arrangement").

(a) What Is "ECA"?

The ECA aims to increase employees' right to choose MPF trustees/schemes and to encourage employees to actively manage their MPF investment, thereby promoting greater market competition.

Under the MPF System, employers choose MPF trustee(s) and scheme(s) for their employees and enrol them as scheme members, and the employees choose the funds under the scheme in which the employers' and employees' contributions are invested. The employers' and employees' contributions are made to a contribution account under the employer-selected scheme. The accumulated contributions together with the investment returns are generally referred as accrued benefits.

Before the implementation of ECA, if employees consider the services of the trustee or the MPF scheme chosen by their employers do not suit their personal needs, they cannot transfer the accrued benefits from their MPF contribution accounts to trustees/schemes of their own choice until they cease employment with their employers.

After the implementation of ECA, employees can enjoy greater autonomy in MPF trustees and schemes. That is, they can transfer the accrued benefits derived from the employees' mandatory contributions made during current employment held in a contribution account to a personal account in another MPF scheme of their own choice while employed.

The ECA commenced operation on 1 November 2012.

(b) New Rights to Employees after ECA

The table below shows the three sub-accounts keeping the mandatory contributions in a contribution account and the transferability of the accrued benefits from each of these sub-accounts during an employee's current employment before and after the implementation of the ECA.

Type of accrued benefits in contribution account	Before implementation of ECA	After implementation of ECA
<u>Employer's</u> Mandatory Contributions attributable to <u>Current Employment</u>	**× Not transferable**	**× Not transferable**
<u>Employee's</u> Mandatory Contributions attributable to <u>Current Employment</u>	**× Not transferable**	**✓ Transferable in a lump sum to an MPF personal account once per calendar year***
Mandatory Contributions attributable to <u>Former Employment or Self-employment (if any)</u>	**× Not transferable**	**✓ Transferable in a lump sum to an MPF personal account or contribution account anytime**

* Unless the governing rules of the original scheme provide for more frequent transfer out.

The transferability of accrued benefits derived from **voluntary** contributions is subject to the governing rules of the individual schemes. The ECA does not bring changes to the existing arrangement. For the governing rules of individual schemes, members may enquire with the employer or the related trustee(s).

Note: Even if employees effect the transfer of accrued benefits to a personal account in another MPF scheme of their own choice while employed, employers should continue making contributions to the existing MPF scheme(s) selected by the employers by the contribution day for each contribution period.

(c) Destination of Transfer

Employee can elect to transfer the accrued benefits of the sub-accounts such as employee's mandatory contributions attributable to current employment and mandatory contributions attributable to former employment in contribution accounts in a lump sum to the same MPF account. Alternatively, employee can transfer the accrued benefits of the sub-accounts separately to different MPF schemes and MPF accounts on different days.

The table below shows the designated types of MPF accounts for the two types of accrued benefits in contribution account to be transferred out:

Type of accrued benefits in contribution account	Type of MPF accounts
Employee's Mandatory Contributions attributable to **Current Employment**	Can only be transferred to **Personal Account**
Mandatory Contributions attributable to **Former Employment or Self-employment**	Can be transferred to **Personal Account** or **Contribution Account**

3.10.2 Employee Who Ceases Employment with His/Her Employer

The accrued benefits of an employee held in a contribution account can be transferred to another MPF account or scheme when the employee ceases employment with his/her employer.

(a) If an employee participates in a master trust scheme, on change of employment, the employee can elect to transfer the accrued benefits to another MPF scheme which the employee is eligible to join, or retain the benefits within the same master trust scheme in his/her own personal account. If the employee would like to transfer his/her accrued benefits to the scheme of his/her new employer, all he/she needs to do is to submit a form to the trustee of the new scheme either directly or through his/her new employer. The trustees of the original scheme and the new scheme will then arrange the transfer between themselves.

(b) If an employee is a member of an employer sponsored scheme, when the employee changes employment, the employee must transfer the accrued benefits from the previous employer's scheme to another scheme, i.e. to the scheme in which the new employer is participating or a scheme to which the employee is eligible to join.

(c) If an employee is employed in an industry (i.e. catering or construction for the time being) for which an industry scheme has been established, and both the previous and the new employers have joined the same industry scheme, on change of employment within the same industry, the employee may retain the accrued benefits in the industry scheme. However, the employee may also choose to transfer the accrued benefits to a master trust scheme of his/her choice.

3.10.3 Self-employed Person Becomes an Employee of an Employer

If a self-employed person who is a member of a master trust scheme or an industry scheme ceases to be self-employed and becomes an employee of an employer, the person may retain the accrued benefits in the existing account in the master trust scheme or the industry scheme, or transfer the accrued benefits to another master trust scheme or an industry scheme to which the person is eligible to belong. The person may also transfer the accrued benefits to the MPF scheme in which the new employer is

participating.

3.10.4 Notes to Member to Make an Election to Transfer

A member may choose not to exercise the right to transfer the accrued benefits. However, if a member decides to exercise such right, he/she should consider the following factors:

- Trustee/scheme
  - range and quality of services
  - fees and charges
  - choices and suitability of funds

- Personal factors
  - investment objective(s)
  - current life stage
  - risk tolerance level
  - if he/she is currently investing in "guaranteed funds", he/she should note that he/she may fail to fulfill certain qualifying conditions when switching the funds, and therefore may not be able to enjoy the guaranteed returns

- Investment risk due to market fluctuation during the transfer
  - During the process of transfer of accrued benefits, employees' accrued benefits are first cashed out by the original trustee and then transferred to the new trustee for fund re-investment. In other words, there will be a time lag during which their redeemed accrued benefits will not be invested. During this period, fund prices may change due to market fluctuations, possibly resulting in a 'sell low, buy high' situation. Employees should take special note of this risk before transferring their funds.

  - MPF funds are traded on a "forward pricing" mechanism, i.e. the unit price of a fund has to be determined by calculating the fund's asset value when the relevant investment market closes and thus members cannot buy or sell fund units at a specific price.

- Relevant information
  - read the Guide to Transfer Benefits under Employee Choice Arrangement to learn more about the features of the ECA
  - read the MPFA investment education publications "Step-by-Step Investing in MPF Funds", "FAQs on MPF Investment" and "How to Make Investment Decisions"[2] to learn more about MPF investment;

[2] Relevant publications have been posted on the MPFA website (www.mpfa.org.hk) and are available for collection at the MPFA offices, the Public Enquiry Service Centres of the District Offices or the regional offices of Labour Department.

- study thoroughly the information provided by the trustees, such as offering documents, fee tables, fund fact sheets and annual benefit statements (**ABS**).
- make use of the information provided in fund fact sheets and MPF "Fee Comparative Platform" (cplatform.mpfa.org.hk), such as fund expense ratio, fund risk indicator, on-going cost illustrations etc. Employee may also refer to the website of Hong Kong Investment Funds Association (www.hkifa.org.hk) for information concerning fund performance.

3.10.5 Duties of the Trustee on Transfer of Accrued Benefits

(a) **Original Trustee (Also Known as Transferor Trustee)**

In general, the original trustee must ensure that the accrued benefits are transferred within 30 days after being notified by the new trustee of the transfer. Moreover, the original trustee has to give a transfer statement to the scheme member concerned containing particulars of the scheme member and the amount of accrued benefits transferred.

(b) **New Trustee (Also Known as Transferee Trustee)**

Upon receipt of the accrued benefits transferred from another MPF scheme, the new trustee has to give a written notice to the scheme member concerned confirming the amount received.

3.11 WITHDRAWAL OF BENEFITS

Since the MPF System was introduced to assist members of the workforce save for their retirement, scheme members can only claim payment of their accrued benefits derived from mandatory contributions when they reach the retirement age of 65. Scheme members who have attained the age of 65 may withdraw the accrued benefits derived from mandatory contributions in their MPF schemes in a lump sum. However, early withdrawals are permitted under the following specific circumstances:

(a)	**Early retirement**	after reaching the age of 60 (and making a statutory declaration that the scheme member has permanently ceased employment/self-employment).
(b)	**Permanent departure from Hong Kong**	proof of permission to reside permanently elsewhere must be produced (and making a statutory declaration that the scheme member departed or will depart from Hong Kong permanently on a specified date) and such permanent departure can only be used as grounds to withdraw benefits once in a person's lifetime.
(c)	**Death**	which must be duly certified, the benefits are then paid to the legal personal representative.

(d) **Total incapacity** which must be certified by a registered medical practitioner or registered Chinese medicine practitioner. The incapacity needs to relate to the work that the scheme member was last performing before becoming totally incapacitated.

(e) **Small balance account** a total not exceeding $5,000 (the claim must be accompanied by a statutory declaration), **but** such a withdrawal is **also** subject to the following:

(i) the member does not intend to become employed or self-employed within the foreseeable future;

(ii) as at the date of the claim, at least 12 months have lapsed since the contribution day in respect of the latest contribution period for which a mandatory contribution is required to be made to any registered scheme; and

(iii) the member does not have accrued benefits kept in any other MPF schemes.

The trustee must ensure that the accrued benefits are paid to the claimant not later than 30 days (if no contribution or contribution surcharge is outstanding) or 60 days (if there are outstanding contributions or contribution surcharges) after the lodgment of the claim. In addition, the trustee must provide a final benefit statement to the claimant containing the date and the amount of accrued benefits paid.

3.12 UNCLAIMED BENEFITS

(a) The trustee may treat the accrued benefits as unclaimed benefits if:

(i) a scheme member or some other person has become entitled to be paid his/her accrued benefits but no claim has been lodged and the trustee is unable to locate the member or other person, the trustee must, as soon as practicable after becoming so aware, take the steps as specified in (b) below. If the trustee cannot locate the member or other person within 6 months after taking the specified steps, the accrued benefits become unclaimed benefits at the end of that period.

(ii) a scheme member or some other person has lodged a claim with the trustee but the trustee is subsequently unable to locate the claimant before payment of the benefits, the trustee must, as soon as practicable after becoming so aware, take the steps as specified in (b) below. If the trustee cannot locate the claimant within 6 months after taking the specified steps, the accrued benefits become unclaimed benefits at the end of that period.

(iii) a scheme member has reached the retirement age and no claim has been lodged with the trustee, the trustee must give a notice to the member requesting him/her to elect whether he/she will retain his/her accrued benefits with the scheme or not. If no reply is received within 6 months after the notice was given and the trustee is unable to locate the member by any other means, the accrued benefits become

unclaimed benefits at the end of that period. If a reply is received indicating that the member elects to retain the benefits within the scheme or no reply is received but the member can be located, the trustee must serve the member with a benefit statement.

(iv) a scheme member on whom a benefit statement has been served as mentioned in (iii) cannot be located subsequently while his/her accrued benefits are retained in the scheme, the trustee must, as soon as practicable, take the steps specified in (b) below. If the trustee is unable to locate the member within 6 months after taking the specified steps, the accrued benefits become unclaimed benefits.

(v) a cheque for payment of a scheme member's accrued benefits is not presented within 6 months from the issue date of the cheque ("Specified Period") and the trustee is not able to locate the claimant during the period of 6 months after the expiry of the Specified Period, the accrued benefits become unclaimed benefits at the end of the 6-month period. However, if the trustee receives a returned cheque before the expiry of the Specified Period, the trustee should take immediate follow-up action to locate the claimant.

(b) The steps* to be taken by approved trustees before they can classify the accrued benefits of a scheme member as unclaimed benefits are set out as follows:

(i) Send the scheme member/person a notice to the last known residential and correspondence address(es), if available;

(ii) Make 3 attempts (at different times and dates) within 1 month, to locate the scheme member/person via other means of contact, if known (e.g. all contact phone number(s) or fax); and

(iii) Contact the employer concerned to obtain any contact information of the scheme member and if the contact information so obtained is different from that in the records of the trustee, repeat steps (i) and (ii) above (as the case may be).

* Apart from the steps requested above, trustees are encouraged, as far as reasonable, to use any possible communication means to contact the claimant.

(c) The unclaimed benefits retained in the scheme continue to vest in the scheme members concerned.

3.13 OFFSETTING OF LONG SERVICE PAYMENTS/SEVERANCE PAYMENTS

(a) Under the provisions of the Employment Ordinance, an employee may become entitled to a **long service payment** or a **severance payment** from the employer on the occurrence of circumstances specified in that Ordinance. The employer is entitled to offset such payments against the accrued benefits derived from the contributions made by the employer in respect of the employee in the MPF scheme.

(b) The employer can apply to the **trustee** to withdraw a relevant amount of the employee's accrued benefits derived from the employer's contribution as reimbursement of the long

service payment or severance payment made to the employee by the employer. Some examples include:

(i) If the amount of accrued benefits derived from the employer's contributions is **$55,000** and the amount of the long service payment is **$80,000**, the employer can pay the full $80,000 to the employee but he can then apply to the trustee to withdraw **$55,000** from the employee's MPF account as reimbursement of his/her payment of $80,000. In other words, the additional payment to be borne by the employer is **$25,000** (i.e. $80,000 - $55,000). .

(ii) If the long service payment is **$40,000** (with accrued benefits as with (i) above), the employer can only request the trustee to reimburse the **$40,000** paid to the departing employee after the long service payment has been paid. The remaining accrued benefits, namely the balance of **$15,000** derived from the employer's contributions, together with those derived from the contributions made by the employee, have to be transferred to the MPF scheme designated by the employee and preserved until the employee retires. (These rules apply to mandatory contributions. The employee may choose to withdraw his/her voluntary contributions subject to the governing rules of the scheme.)

(c) The employer should note that in offsetting long service payments or severance payments, he/she will need to comply with other requirements set out in the Employment Ordinance concerning such payments.

(d) Under the ECA, as the accrued benefits derived from the employers' mandatory contributions have to be preserved in the original scheme (i.e. the scheme selected by the employer) and cannot be transferred, the employers' administrative arrangement for offsetting of long service payment/severance payment remains unchanged.

3.14 MAJOR OBLIGATIONS OF EMPLOYERS

These may be considered under a number of headings, as follows:

3.14.1 Employers Who Are Not Exempt from MPFSO

An employer is required to arrange for all his/her relevant employees to join an MPF scheme, unless the employees are exempt persons. Duties imposed upon the employer include, for example:

(a) selecting an MPF scheme (or schemes) from those available in the market, or arranging to set up an employer sponsored scheme;

(b) arranging for all employees within the coverage of the MPFSO to join an MPF scheme within the time limit specified;

(c) calculating individual employee's relevant income and amount of contributions for each contribution period;

(d) deducting the relevant mandatory contributions from the employee's income and making the employer's mandatory contribution from his/her own funds;

Note: It is the **employer's** responsibility to ensure that both the employer's and the employee's contributions are made on time.

With effect from 1 December 2008, even if an employer fails to arrange for his/her employees to join an MPF scheme as required under (b) above, the employer is still obliged to ensure that both the employer's and the employee's mandatory contributions are made. Such contributions need to be paid to the MPFA. The MPFA will then pay the contributions to the appropriate MPF scheme for the benefit of the employees concerned.

(e) ensuring the mandatory contributions are paid to the trustee of the scheme on or before the stipulated contribution day as described under paragraph 3.7.1(a)(vii) of this Chapter;

(f) providing the trustee with a remittance statement showing all relevant details of employees (not including casual employees in an industry scheme as described in paragraph 3.7.1(a)(viii) of this Chapter), relevant income and contributions;

(g) providing each employee (other than casual employees in an industry scheme as described in paragraph 3.7.1(a)(ix) of this Chapter) with a monthly pay-record, showing the employee's relevant income and amount of contribution paid within 7 working days after the last contribution payment during a month.

3.14.2 When an (Non-casual) Employee Ceases Employment

(a) When an employee ceases employment, the employer must give a written notice to the trustee of the scheme concerned no later than the 10th day after the month in which the employee concerned ceases employment. The employer may use the remittance statement to inform the trustee of the employee's cessation of employment and the date of cessation.

(b) In cases where the former employer cannot be located or refuses to notify the trustee about the cessation of employment of the employee, the employee may give a written notice to the trustee to declare the employee's cessation of employment and the date of cessation. The notice given by the employee must be in a form approved by the MPFA.

(c) If the employee has not informed the trustee of his/her transfer option within 30 days after the trustee receives his/her termination notice, the trustee should inform the employee, by written notice, of his/her different transfer options and the consequences of not electing any transfer options within the specified time limit. If the trustee has not received his/her election within 3 months after it receives the termination notice, the employee is deemed to elect to transfer his/her accrued benefits to a personal account in the same scheme. Then the trustee will process the transfer accordingly.

3.15 NON-COMPLIANT EMPLOYER AND OFFICER RECORDS

The MPFA has set up the Non-Compliant Employer and Officer Records ("NCEOR") in May 2011 with a view to further enhancing the deterrent effect on non-compliant employers and officers as well as increasing the transparency of the MPFA's enforcement actions. Using the NCEOR, members of the public can view and search for information on employers and officers with MPF non-compliance records resulting from legal proceedings initiated by the MPFA.

The NCEOR comprises two parts. The first part contains records of both criminal convictions and civil awards/judgments in connection with the violation of the MPFSO by employers (including limited companies and individuals such as sole-proprietors or partners) or their officers.

The second part of the NCEOR contains records of repeated offenders. Employers and/or their officers who have been convicted of offence(s) under the MPFSO on two or more dates will be shown under this section.

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Representative Examination Questions

Type "A" Questions

1 The MPF legislation includes a "non-refusal of scheme applicants" provision. The meaning of this is that:

(a) the MPFA cannot refuse to register a scheme; .....
(b) everyone in Hong Kong is included within the scheme; .....
(c) nobody can be rejected on the ground of sex or ethnic origin; .....
(d) a person who complies with all requirements on enrolment/participation cannot be refused by the trustee. .....

[Answer is in **3.6.3**]

2 Which of the following contributions are vested fully and immediately in the scheme member concerned when they are paid to the trustee of the MPF scheme?

(a) voluntary contributions made by the employer only; .....
(b) mandatory contributions made by the employee only; .....
(c) mandatory contributions made by the employer only; .....
(d) mandatory contributions made by both the employee and employer. .....

[Answer is in **3.8**]

3 Under the Employee Choice Arrangement ("ECA"), an employee has a right to transfer which of the following contributions (together with the related investment return) from the contribution account to an account nominated by him/her?

(a) employer's mandatory contributions attributable to current employment; .....
(b) employee's mandatory contributions attributable to current employment; .....
(c) employer's voluntary contributions attributable to current employment; .....
(d) both employer's and employee's mandatory contributions attributable to current employment. .....

[Answer is in **3.10.1**]

Type "B" Questions

4 Which **two** of the following represent the current relevant income levels for the purposes of making mandatory contributions for and in respect of an employee (non-causal) to an MPF scheme?

(i) Minimum relevant income level - $5,000 per month
(ii) Minimum relevant income level - $6,500 per month
(iii) Maximum relevant income level - $25,000 per month
(iv) Maximum relevant income level - $30,000 per month

(a) (i) and (iii); .....
(b) (i) and (iv); .....

(c) (ii) and (iii); .....
(d) (ii) and (iv). .....

[Answer is in **3.7.1**]

5 Which of the following statements is/are **true**, if the relevant income of an employee under an employer sponsored scheme is only $3,000 in a particular month?

(i) the employer has to pay a $150 mandatory contribution
(ii) the employer does not have to pay a mandatory contribution
(iii) the employee does not have to pay a mandatory contribution
(iv) neither the employer nor the employee has to pay a mandatory contribution

(a) (i) only; .....
(b) (i) and (ii) only; .....
(c) (i) and (iii) only; .....
(d) (i), (ii), (iii) and (iv). .....

[Answer is in **3.7.1**]

6 Which **three** of the following statements are correct in relation to the tax situation with MPF contributions and benefits?

(i) all accrued benefits derived from mandatory contributions, when payable, are exempt from tax
(ii) all contributions are not tax deductible
(iii) employee's mandatory contributions are tax deductible (limited to $15,000 per year for the year of assessment 2013/14 and afterwards)
(iv) employer's contributions are tax deductible (limited to 15% of the employees' emoluments paid)

(a) (i), (ii) and (iii); .....
(b) (i), (ii) and (iv); .....
(c) (i), (iii) and (iv); .....
(d) (ii), (iii) and (iv). .....

[Answer is in **3.7.3**]

[If required, answers may be found at the end of the Study Notes.]

4 MPF TRUSTEES

Under the MPF System, all MPF schemes must be managed by a "trustee" who is an "approved trustee".

4.1 TRUST ARRANGEMENT

4.1.1 Concept of Trust

The salient features of a trust are as follows:

(a) A trust is an arrangement whereby the trustee is made the **registered owner** of certain property, which is held for the benefit of others, who are known as "**beneficiaries**".

(b) The term "property" in (a) above is used in its widest legal sense namely, that a trustee holds – or is "entrusted" with – the assets in the trust.

(c) There may be more than one trustee appointed for one trust.

(d) A trustee may be either an individual (natural person) or a corporation (company).

(e) Although the trustee is the registered owner, it is **not** the **beneficial owner**. The trustee therefore cannot give away the property in the trust, nor can the trustee benefit from it, other than as permitted under the terms of the trust.

(f) Any income which the trust property generates belongs to the **beneficiaries** and any profit made from the trust property accrues for the interest of the beneficiaries.

(g) Normally, a trust is established by a legal document generally known as a "**trust deed**".

(h) All the duties, powers and rights of the trustee and the beneficiaries in respect of the trust are clearly stipulated in the trust deed.

(i) If the trustee deals with the trust property in a way that is contrary to the provisions of the trust deed, this constitutes a **breach of trust**, and the trustee is liable to the beneficiaries for all the losses or reduction in trust properties caused by the breach.

(j) From the above, it is obvious that being a trustee is a considerable responsibility, and it is very important that only people of integrity act as trustees.

4.1.2 Fiduciary Duties of Trustees

The word "fiduciary" comes from a root word meaning to have faith or "trust" in someone. It implies that considerable discretion and confidence are expected from the trustee. In general terms, their duties include the following:

(a) to exercise any discretion in the interests of the beneficiaries of the trust as a whole (this is a primary trust law obligation);

(b) to exercise a high degree of diligence and care with the management and security of the fund;

(c) to ensure that money is only paid to those eligible at the time the entitlement arises;

(d) to keep proper and adequate accounts and other records, which must be available to all entitled to see them;

(e) to ensure that assets are wisely and properly invested;

(f) to ensure that the trust is administered in accordance with the laws and the trust deeds; and

(g) to hold the trust properties on behalf of the beneficiaries and to act in the interest of beneficiaries and not in the trustee's own interest.

4.1.3 Recourse against Trustees

The recourse against trustees can be categorized as:

(a) **Restoration**

(i) A trustee is liable for breach of trust if it fails to perform the duties that are required of it as a trustee, or if it does what it is not entitled to do as a trustee. That means, should a breach of trust occurs, and the trust properties become lost or reduced, the beneficiaries are entitled to take legal action against the trustee to recover the loss.

(ii) A defaulting trustee that causes loss or damage to the trust property must, at the trustee's own cost, restore the property. If the property in question cannot be returned or restored, the trustee would be required to pay sufficient compensation. That is, the trustee must not apply the assets of the MPF scheme to indemnify its liabilities as a result of its mistake that causes loss or reduction of scheme assets.

(b) **Accountability**

All profits made by the trustee from the trust properties must be transferred to the beneficiaries.

4.1.4 Advantages of the Trust Arrangement

The advantage of a trust arrangement is that even if the scheme trustee, other service providers or the employer is in financial difficulties, the creditor cannot request the trustee, other service providers or the employer to make use of the assets under trusteeship to repay a debt. In other words, trust arrangement provides basic protection for scheme members' assets.

4.2 CATEGORIES OF TRUSTEES

There are **three** categories of trustees:

(a) local corporate trustee;

(b) offshore (outside Hong Kong) corporate trustee;

(c) individual (natural person) trustee.

All master trust schemes and industry schemes must be managed by corporate trustees. Individuals may act as trustees only in respect of employer sponsored schemes.

4.3 DUTIES AND FUNCTIONS OF TRUSTEES

The approved trustee is the central party responsible for all scheme management functions. Although the trustee may appoint other service providers to perform the scheme functions (see **3.2**), it has the duty to closely monitor the performance of those service providers in order to fulfill its fiduciary duties with respect to the scheme. The MPFSO and General Regulation specify many detailed requirements for trustees, breaches of which could constitute criminal offences, incur penalties or result in suspension of scheme administration, or revocation of approval as approved trustees. In general terms, their duties would include the following:

(a) to secure scheme registration;

(b) to ensure maintenance of adequate capital and professional indemnity insurance;

(c) to maintain investment policy statements, control objectives and internal control procedures;

(d) to exercise a level of care, skill, diligence and prudence;

(e) to ensure that the funds of the scheme are invested in different investments so as to minimize investment risks;

(f) to act in the interest of scheme members and in accordance with the governing rules of the scheme;

(g) to provide information to scheme members, including scheme information, membership certificates and benefit statements;

(h) to receive contributions and verify mandatory contribution calculations;

(i) to process transfer and payment requests;

(j) to keep proper accounting records and members' register; and

(k) to prepare and lodge annual audited financial statements, scheme reports and investment reports of MPF schemes with the MPFA.

4.4 APPROVAL OF TRUSTEES

All persons purporting to be trustees of MPF schemes must apply to the MPFA for approval.

(a) Corporate Trustee

In general terms, the approval requirements in respect of a corporate trustee include:

(i) Capital adequacy and financial soundness

Corporate trustees must have paid-up share capital and net assets of at least $150 million each.

(ii) Suitability

The directors and the chief executive officer of the trustee must be "suitable" persons, i.e. they are of good reputation and character. The chief executive officer and a majority of the directors (which must include an independent director) must possess sufficient skills, knowledge and expertise in administering provident fund schemes.

(iii) Capability

The trustee must be capable of carrying on a business of administering MPF schemes and have proper internal control procedures.

(iv) Presence and control

The trustee must have sufficient presence and control in Hong Kong.

(b) Offshore Corporate Trustee

An offshore corporate trustee must meet additional criteria e.g. it must be supervised by an offshore authority that is acceptable to the MPFA, and the standards of the local trust and company laws are comparable to those in Hong Kong. This ensures that scheme members enjoy the same degree of protection.

(c) Individual Trustee

An individual trustee must ordinarily reside in Hong Kong and be of good reputation

and character. An individual trustee (natural person, as opposed to company) will be required to provide **performance guarantee**, in the form of an insurance policy or a bank guarantee, covering losses from the trustee's failure to perform or other breach of duties. This performance guarantee must be for **10%** of the **net asset value** of the scheme, with a maximum of $10 million. If an individual is to be appointed as a trustee, there must be at least two such trustees.

4.5 ON-GOING MONITORING

It must never be assumed that once a scheme has been launched it will carry on without problems or there is not any need for further supervision. Adequate monitoring of trustee performance and compliance with requirements must therefore be an on-going process. Some ways in which the MPFA performs this on-going monitoring function include:

(a) requiring trustees to have proper internal control and procedures to ensure compliance with requirements;

(b) conducting off-site review of reports and returns and on-site visits;

(c) handling of complaints received from employers or members;

(d) requiring trustees to report to the MPFA significant events, including (suspected) cases of non-compliance;

(e) conducting investigations where it reasonably believes that MPF requirements have or might have been breached;

(f) investigating any other situation where it believes that the interests of scheme members may be adversely affected;

(g) requesting "whistle blowing" reports from other service providers (e.g. auditors) of an MPF scheme in respect of the performance of the trustee; and

(h) requiring trustees' rectification of any deficiencies.

4.6 COMPLIANCE STANDARDS FOR MPF APPROVED TRUSTEES

To enhance the effective operation of the MPF System, the MPFA promotes a positive compliance culture, good corporate governance and proper risk management among the approved trustees. The MPFA has developed a set of Compliance Standards for the guidance of approved trustees in establishing a structured framework for monitoring their compliance with statutory duties and responsibilities. There are eight standards, each accompanied by detailed explanatory notes and examples.

Standard 1 – Compliance Programme to Address Statutory Obligations

(a) An approved trustee should have a compliance programme which provides a framework enabling the approved trustee to monitor and ensure compliance with its obligations, as well as to address any non-compliance issues.

Standard 2 – Compliance Policy

(a) An approved trustee should develop and maintain a compliance policy that drives the organization towards a positive compliance culture and encourages compliance practices.

(b) The compliance policy should be endorsed by the approved trustee's Board of Directors and be readily available to management, staff and service providers.

Standard 3 – Compliance Resources

(a) An approved trustee should have adequate and independent compliance resources to monitor its compliance and ensure that compliance reporting is timely, accurate and complete.

Standard 4 – Compliance Training and Communication

(a) An approved trustee should achieve and sustain a positive compliance culture by ensuring that relevant staff understand their roles in meeting the trustee's statutory obligations.

Standard 5 – Complaints Handling Procedures

(a) An approved trustee should have in place measures that enable the proactive and timely management of complaints from scheme members and participating employers.

Standard 6 – Compliance Programme Maintenance and Review

(a) An approved trustee should monitor the effectiveness of its compliance programme by having measures in place for its maintenance and review.

Standard 7 – Reporting Mechanism to the Board of Directors including the Independent Director

(a) The Board, including the independent directors, should be provided with timely and accurate information so that they are able to take responsibility for monitoring compliance of an approved trustee's operation.

Standard 8 – Compliance Plan to Address Identified Obligations

(a) An approved trustee should have in place compliance measures that enable it to effectively identify, monitor, supervise and report on its statutory obligations.

4.7 SANCTIONS AND PENALTIES

The MPFA investigates cases of suspected non-compliance with these requirements.

(a) For minor cases of non-compliance, the MPFA may issue **warnings** or impose **financial penalties** as empowered under the legislation, while ordering the trustee to take proper remedial actions.

(i) Schedule 4 of the General Regulation prescribes different levels of financial penalties for failures to comply with the legislative requirements (most are requirements on MPF scheme administration). The penalties range from $5,000 to $50,000.

(b) For more serious cases, the MPFA may:

(i) conduct an investigation on the trustee;
(ii) **suspend** the trustee from the administration of an MPF scheme, and appoint another trustee to administer the scheme on a temporary basis;
(iii) depending on the results of the investigation, **terminate** the trustee's administration of the scheme, **prosecute** the trustee for the non-compliance, and/or **revoke** the approval of the trustee.

(c) Certain non-compliance constitutes offences under the MPF legislation. An approved trustee who is convicted of an offence is liable to a fine of up to $200,000 and imprisonment for up to 2 years.

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Representative Examination Questions

Type "A" Questions

1 Under the law of trusts, the trustee is considered to be:

(a) the registered owner of the trust assets; ....
(b) the beneficial owner of the trust assets; ....
(c) totally independent and unconnected with the trust assets; ....
(d) none of the above. ....

[Answer is in **4.1.1**]

2 Which of the following is **not** one of the Compliance Standards for MPF Approved Trustees?

(a) Complaints Handling Procedures; ....
(b) Compliance Plan to Address Identified Obligations; ....
(c) Compliance Policy; ....
(d) Code of Ethics. ....

[Answer is in **4.6**]

Type "B" Questions

3 Which **three** of the following are approval criteria required in the appointment of a trustee for an MPF scheme?

(i) fit and proper person
(ii) must have been a trustee before
(iii) adequate capital and financial soundness
(iv) capable of carrying on a business of administering MPF schemes

(a) (i), (ii) and (iii); ....
(b) (i), (ii) and (iv); ....
(c) (i), (iii) and (iv); ....
(d) (ii), (iii) and (iv). ....

[Answer is in **4.4**]

[If required, answers may be found at the end of the Study Notes.]

5 MPF SCHEMES AND INVESTMENT

5.1 REGISTRATION OF MPF SCHEMES AND APPROVAL OF CONSTITUENT FUNDS

Being collective investment schemes, MPF schemes and constituent funds must be approved by the MPFA and authorized by the SFC. There are complementary regulatory functions between the MPFA and the SFC. Both the MPFA and the SFC have issued codes relating to MPF products, but the codes serve different purposes with each specifying requirements relating to different aspects of MPF products.

(a) Generally speaking, the MPFA is responsible for the overall administration of the MPF System. This involves registering MPF schemes and approving constituent funds and pooled investment funds in accordance with the provisions of the MPF Ordinance and the rules and regulations made thereunder. Therefore, the **Code on MPF Investment Funds** focuses on the operational and investment aspects that MPF products must comply with and specifies requirements additional to those prescribed in the MPF legislation. It also specifies the delineation of work between the MPFA and the SFC concerning the approval/authorization of these products.

(b) On the other hand, the SFC is responsible for authorizing MPF schemes, constituent funds and pooled investment funds, vetting/authorizing the disclosure of information in offering documents, advertisements and marketing materials and licensing investment managers. As such, the **SFC Code on MPF Products** sets out the requirements for the authorization of master trust schemes, industry schemes and pooled investment funds, as well as disclosure requirements on offering documents. Advertisements and other invitations or documents issued to the public in Hong Kong to invest or participate in master trust schemes, industry schemes and pooled investment funds must comply with the Advertising Guidelines issued by the SFC. The SFC Code on MPF Products also specifies the requirements on the qualifications and experience of the investment managers who manage the products.

(c) The Code on MPF Investment Funds and the SFC Code on MPF Products are complementary to each other.

(d) The SFC Code on MPF Products sets out post-authorization requirements for MPF products, which require any proposed changes to the offering document of an MPF product as a result of certain changes must be submitted to the SFC for prior approval. These changes include, without limitation, changes to constitutive documents, key operators and investment objectives.

5.2 MPF SCHEMES

As mentioned in Chapter 3, there are three types of MPF schemes, namely employer sponsored schemes, master trust schemes and industry schemes. Each of these schemes consists of constituent funds into which scheme members invest their contributions and accrued benefits.

5.3 CONSTITUENT FUNDS

5.3.1 Features of Constituent Funds

An MPF scheme, whether employer sponsored, master trust or industry scheme, may consist of a number of constituent funds. Constituent funds are investment funds within an MPF scheme into which scheme members invest their contributions and accrued benefits. Each scheme member is entitled to decide which of the constituent fund(s) of the scheme to invest in.

All constituent funds have to meet the following requirements:

(a) each constituent fund within a scheme must have a **different investment policy**, so that members have a choice in investing their accrued benefits;

(b) all constituent funds within an MPF scheme must be made available to all scheme members;

(c) a constituent fund may maintain a portfolio of direct investment in equities, bonds, etc or invest in approved pooled investment funds;

(d) a constituent fund must be governed by **Hong Kong law** and denominated in **Hong Kong dollars**;

(e) a constituent fund must have at least **one** regular **dealing day per month**;

(f) all constituent funds must be **unitized** except for those which are non-investment linked and provide investment guarantees;

(g) there must be an **MPF Conservative Fund (pursuant to section 37 of General Regulation)** in each scheme;

(h) pricing of unitized constituent funds must be on a forward basis. If constituent funds are non-unitized, the accounts of scheme members must be credited with the investment return at least once a month;

(i) for master trust and industry schemes, prices of unitized constituent funds must be **published** at least **once a month** in at least one leading English and Chinese language daily newspaper in Hong Kong. For employer sponsored scheme, the approved trustee may choose other means to release such information to scheme members.

5.3.2 Types of Constituent Funds

(a) **MPF Conservative Fund**

At least one of the constituent funds of an MPF scheme must be an MPF conservative fund. As suggested by the name of the fund, its intention is to offer members a relatively conservative option of investment. It should be noted that the MPF conservative fund is not a guaranteed fund. In times of

high inflation, it is possible that the rate of return of the MPF conservative fund may not catch up with the rate of inflation.

Certain safeguards have been built into an MPF conservative fund, as follows:

(i) it must be **100%** invested in Hong Kong dollar investments;

(ii) the funds must be placed in short-term bank deposits or invested in short-term debt securities that are issued or guaranteed by the government or an authority of similar standing, or meet the minimum short term credit rating set by the MPFA;

(iii) the average investment period must not exceed **90 days**;

(iv) investments in equities or commodities are strictly prohibited;

(v) must perform **monthly** reporting to the MPFA;

(vi) **administrative expenses** (such as trustee, custodian, investment management and administration fees) for running the fund cannot be deducted from the fund in any particular month, unless the achieved investment earnings of the fund for that month exceed the earnings calculated based on the prescribed savings rate (as declared by the MPFA) for the same month;

(vii) neither initial fees nor redemption charges can be imposed on an MPF conservative fund. Bid and offer spreads are also not allowed.

The two main objectives of an MPF conservative fund are:

(i) to provide a low investment risk product, with minimum exposure to market fluctuations; and

(ii) to produce a net investment return for scheme members comparable to banks' savings rate.

(b) **Guaranteed Fund**

A guaranteed fund operates in a very different style to an MPF conservative fund. Depending on the terms of the guarantee, it can be a conservative fund or a low investment risk fund. However, holders of guaranteed funds are subject to the additional risk that they may not meet the qualifying conditions for the guarantee.

Basically, there are two types of "guaranteed" fund:

(i) The first type provides a "**hard**" guarantee which promises to pay a minimum net return without imposing any qualifying conditions for the guarantee.

(ii) The second type provides a **"soft"** guarantee which promises to pay a

minimum return when the fund holder meets certain qualifying conditions imposed by the guarantor. Usually the guarantee is in the form of a "career average" in which the minimum return is expressed as an average rate compounded over the period of employment for which the guaranteed fund has been held.

In general, most guaranteed funds guarantee one of the following:

(i) capital guarantee i.e. guaranteeing the total amount of MPF contributions; or

(ii) return guarantee i.e. guaranteeing the total amount of MPF contributions plus a rate of return on investment.

Most guaranteed funds available in the market are "soft" guaranteed funds requiring that a minimum period of investment be met and/or that the guarantee will only be provided under specified "qualifying events", such as the attainment of the retirement age of 65, total incapacity or permanent departure from Hong Kong.

If an investor redeems the guaranteed fund prior to the occurrence of a qualifying event, they will receive an amount that reflects the actual investment return. This amount may be higher or lower than the guaranteed return.

Some important features of guaranteed funds include:

(i) Minimum investment period

During this period, if one switches out of the guaranteed fund or if the employer switches to another scheme, the guarantee becomes void.

(ii) Limited guaranteed period

Some guaranteed funds have a fixed guarantee period, e.g. three years. When the guaranteed period expires, the fund automatically becomes a non-guaranteed fund.

(iii) Withdrawal

The investment guarantee may only be applicable to withdrawal of accrued benefits under specific circumstances such as reaching age 65, early retirement, death, total incapacity, etc.

(iv) Cancellation or modification of guarantee

The guarantor may unilaterally change the guaranteed rate by giving advance notice of, say, 3 or 6 months, or even cancel the guarantee in the light of unfavourable market conditions.

(v) Retained investment earnings

The guarantor may have the discretionary power to retain part or all of the investment earnings of the guaranteed fund. The retained

investment earnings may be either taken as profit for the guarantor or used to offset any under performance of the fund at other times.

(vi) Reserve charge

A reserve charge or guarantee fee will be deducted from the fund assets. Some guaranteed funds offer an exemption of the reserve charge.

A minimum return guarantee is often applied to the average return of investment over a long period of time (so that the fund has a sufficiently long period of time to achieve a stable performance above the minimum guarantee level).

The major risk, though usually small, faced by an investor of a guaranteed fund is the default risk of the guarantor, i.e. the inability of the guarantor to fulfill its financial obligations. However, all guarantors are required to maintain sufficient assets as reserves or provisions to support their obligations for the investment guarantees.

(c) **Other Types of Funds**

In addition to the above-mentioned funds, there is a range of different kinds of constituent funds offered by MPF service providers. They vary from conservative funds (such as money market funds, bond funds) to aggressive funds (such as equity funds, growth funds). Regardless of the type of fund, it should be emphasized that investments involve risk and investment returns are affected by prevailing economic and market conditions. Care should be taken in choosing a fund that meets one's financial situation and objectives.

The following funds are also commonly found in an MPF scheme:

(i) Money Market Fund

Money market funds mainly invest in short-term instruments such as treasury bills, certificates of deposit, commercial papers, etc. Given the short life span of the investments (on average, not over 90 days for the fund) and the interest rate sensitivity, the credit risk of money market funds is fairly low. This type of fund is the least risky compared with other types of funds, but its return is usually slightly higher than that earned from savings deposits.

(ii) Bond Fund

A bond fund primarily invests in bonds which are debt securities issued by governments, public utilities, banks, commercial organizations and supranational agencies like the World Bank. A bond issuer promises to pay interest during the life of the bond and repay the principal upon maturity of the bond.

A bond fund may earn its income from interests generated by the bonds held by the fund. The fund may either hold the bonds till

maturity and get back the principal from the issuers, or trade the bonds, taking advantage of market movements. Generally, a bond fund aims to achieve a modest but stable level of income; capital appreciation is of secondary importance.

Bond funds can be categorized by the term to maturity of the bonds in which they invest. Long-term bond funds invest in bonds with at least 10 years to maturity; medium-term bond funds in bonds with 3 to 10 years to maturity and short-term bond funds in bonds of less than 3 years to maturity.

Some bonds offer fixed interest rates while others offer floating rates. In general, the longer the maturity of the bonds, the more susceptible are the bond prices to interest rate movements. Accordingly, long-term bonds will tend to offer a higher yield to compensate investors for the increased exposure to interest rate fluctuations.

Aside from the yield offered by a bond fund, the credit ratings of the bonds that the fund invests in should also be considered as they indicate the degree of risk involved in investing in the fund. The higher the credit rating of the bonds, the lower the risk of the fund that invests in them.

(iii) Mixed Assets (or Balanced) Fund

A mixed assets fund, which is also called a balanced fund, is an investment mix of bonds and equities (stocks). There are many mixed assets funds offered in the MPF market, though they may be called by other names.

A typical mixed assets fund invests in both stock markets and bond markets, either globally or regionally (e.g. Asia or North American), in order to reduce the overall risk as well as to take advantage of investment opportunities in different markets and economies. Therefore, the risk level of this kind of fund is usually somewhere between that of a bond fund and an equity fund.

As a rule of thumb, the higher the proportion invested in equities, the higher the risk. The more countries the fund invests in, the lower the risk.

Due to the investment mix of the fund, the expected return of a mixed assets fund is usually higher than that of a bond fund but below than that of an equity fund.

(iv) Equity Fund

An equity fund primarily invests in equities traded on stock exchanges. Through investment in stocks of companies, an equity fund aims to achieve a high rate of return through capital appreciation over a period of time. However, since stock markets may go up or down quite

substantially in a short period of time, the price of an equity fund could be volatile at times.

There are many different types of equity fund. Some are characterized by the countries they invest in, such as a global fund that invests in global equity markets or an Asia-Pacific regional fund that invests in the Asia-Pacific markets.

In general, the more markets that the fund invests in, the lower the risk and the more stable the expected returns.

(v) Index-tracking Fund

An index-tracking fund is a collective investment scheme with the primary objective of tracking or replicating the investment performance of an index in either equities or debt securities. Such funds aim at producing or achieving investment returns that closely match or correspond to the performance of the index being tracked.

An index-tracking fund may seek to track a particular index by investing all or substantially all of its assets in the constituent securities of the underlying index, either in proportion to their respective weightings or in a representative sample of the constituent securities of that index.

5.4 APPROVED POOLED INVESTMENT FUNDS ("APIFs")

5.4.1 Approval of Pooled Investment Funds

If a constituent fund is structured not to operate as an internal portfolio, it may invest in pooled investment funds that are approved by the MPFA. The MPFA is responsible for approving pooled investment funds in accordance with the requirements set out in the General Regulation and the **Code on MPF Investment Funds**.

For pooled investment funds that are offered to MPF schemes only, the SFC authorizes the funds in accordance with the requirements set out in **SFC Code on MPF Products**.

For pooled investment funds that are unit trusts available to both MPF service providers and retail investors, the SFC authorizes the funds in accordance with the requirements set out in both the **SFC Code on MPF Products** and the **Code on Unit Trusts and Mutual Funds**.

5.4.2 Types of Pooled Investment Funds

A constituent fund may invest in one or more APIFs. An APIF may be an **insurance policy**, a **unit trust** or a **mutual fund** (although under current Hong Kong law, it would not be practical to establish a mutual fund). Similar to constituent

funds, APIFs must be governed by **Hong Kong law**.

(a) **Unit Trusts**

A pooled investment fund, if in the form of unit trust, must be authorized as a collective investment scheme by the SFC under section 104 of the Securities and Futures Ordinance.

(b) **Insurance Policies**

An APIF, if in the form of an insurance policy, must be issued by an authorized insurer as class G insurance business (Class G policies are long term insurance policies for the purpose of providing retirement-related benefits with a guarantee on capital or return). Relevant trustees are required to incorporate additional disclosure of the associated risks in their scheme offering documents. Similar to a unit trust, it must be authorized as a collective investment scheme by the SFC under section 104 of the Securities and Futures Ordinance.

Note: Whether APIFs are in the form of unit trusts or insurance policies, they must be approved by the MPFA subject to the investment standards applicable to MPF investment funds. To ensure that scheme assets are protected under the laws of Hong Kong to the maximum extent practicable, MPFA has also imposed an approval condition of asset localization for these APIFs and required that the condition be complied with as from 31 December 2011 onwards.

5.5 STATEMENT OF INVESTMENT POLICY

The MPF legislation requires a statement of investment policy to be prepared and maintained in respect of each constituent fund and APIF to ensure a high degree of **transparency** in the operation of MPF schemes and APIFs (i.e. members should not be confused or uninformed in relation to the scheme investments). As such, the statement of investment policy for each constituent fund and APIF must clearly indicate:

(a) the investment objectives of the fund;

(b) the kinds of securities and other assets in which the fund may invest;

(c) the balance (proportion) between various kinds of securities and markets;

(d) the risk of the investment strategy of the overall portfolio;

(e) the expected return of the overall portfolio;

(f) the policy regarding the acquisition, holding and disposal of financial futures and option contracts; and

(g) whether the fund will engage in securities lending.

5.6 INVESTMENT STANDARDS AND RESTRICTIONS

To safeguard scheme members against undue investment risk, comprehensive regulations governing the investment of scheme assets have been prescribed in the MPF legislation. In summary, these have the following aims:

(a) to ensure prudent and sound investment management;

(b) to ensure that investment portfolios meet all required standards; and

(c) to ensure that investments are well-diversified.

5.6.1 Investment Management

(a) **Requirements of Investment Manager**

(i) The primary investment manager of an MPF scheme/APIF must be a **locally incorporated** investment management company, with at least **$10 million** paid-up share capital and net assets of at least the same amount.

(ii) The investment manager must be licensed by or registered with, the SFC to carry on a business of Type 9 (asset management) regulated activity.

(iii) The investment manager must be qualified and experienced in the various financial services and products it manages or in which it invests.

(iv) The investment manager must be independent of the trustee and the custodian(s) of the MPF scheme/APIF and of any delegates of the custodian.

(v) The investment management of MPF funds is subject to the **investment restrictions as set out in the law**.

(b) **Delegates of the Investment Manager**

(i) With the approval of the trustee, the investment manager of an MPF scheme/APIF may delegate the investment management functions to a company/corporation that complies with the requirements set out in the General Regulation. It should be authorized by recognized regulatory authorities and are associated with a Hong Kong based investment manager.

(ii) The delegate of the investment manager must be independent of the trustee and custodian of the MPF scheme/APIF and of any delegates of the custodian.

5.6.2 Permissible Investments

A balance must be struck between the desire to safeguard assets and to allow a reasonable degree of flexibility for the investment manager in making investment decisions. A list of permissible investments for MPF schemes/APIFs has therefore been specified by law and includes investments such as:

(a) **Equities and Other Securities**

Including fully-paid up shares listed on approved stock exchanges, index-tracking collective investment schemes approved by the MPFA, securities listed on approved stock exchanges that are approved by the MPFA, such as fully-paid up receipts or certificates listed on approved stock exchanges (with underlying shares also listed on stock exchanges), including American Depository Receipts ("ADR") and Global Depository Receipts ("GDR"), and to a limited extent, authorized unit trusts, and authorized mutual funds. Acquisition of partly paid-up shares and shares of collective investment schemes are not allowed for MPF investment purposes. Investments in equities and other securities are subject to prescribed limits.

(b) **Bank Deposits**

Bank deposits ("pure" deposit) must be placed with authorized financial institutions or eligible banks and are subject to prescribed percentage limits to avoid an unduly large proportion of the funds deposited with one single financial institution.

(c) **Debt Securities and Convertible Debt Securities**

Debt securities must be issued or guaranteed by a government or an organization of similar standing; or meet the credit rating requirements set by the Authority; or be listed on approved stock exchanges (if the debt securities are issued by, or guaranteed by, companies whose shares are so listed). Convertible debt securities listed on approved stock exchanges and convertible to shares that also listed on approved stock exchanges; or meet the credit rating requirements, are also permissible investments.

(d) **Financial Derivatives**

Financial derivatives including financial futures and option contracts and currency forward contracts may be acquired subject to the restrictions as set out in the General Regulation. Warrants, another kind of financial derivatives, may only account for a maximum of 5% of the total funds of a constituent fund or APIF.

5.6.3 Other Investment Restrictions

(a) **Spread of Investment**

Generally, the total amount invested in securities and permissible investments issued by any one person may not exceed 10% of the total assets of an MPF fund.

(b) **Restrictions on Borrowing and Lending of Securities**

(i) No constituent fund of an MPF scheme or APIF may borrow securities.

(ii) Securities held within a constituent fund of an MPF scheme or APIF may be lent provided no more than 10 per cent of the assets of the fund are lent. The lending is also subject to other requirements set out in the General Regulation.

(c) **Restrictions on Borrowing of Money**

Money may be borrowed only if it is borrowed for the purpose of:

(i) enabling accrued benefits to be paid to or in respect of scheme members;

(ii) settling a transaction relating to the acquisition of securities or other investments.

The above is further subject to other requirements set out in the General Regulation.

(d) **Restrictions on Acquiring Securities that Carry an Unlimited Liability**

Securities involving the assumption of potential liabilities that are unlimited must not be acquired.

(e) **Investment Restriction on Employer Sponsored Schemes**

Employer-sponsored schemes may not have more than 10% of their assets in shares or other securities of, or issued by, the participating employer or its associates.

5.6.4 Hong Kong Dollar Currency Exposure

At least 30% of a constituent fund of an MPF scheme must be held in Hong Kong dollar currency investments (i.e. investments that are denominated in Hong Kong dollars and their values are not linked to foreign currencies). Currency forward contracts may be used to meet this requirement.

5.7 FEES AND CHARGES

Broadly speaking, fees charged on MPF schemes can be categorized into three types:

(a) Asset-based fees such as trustee, custodian and investment management fees.

(b) Lump sums charged to scheme members on an annual or one-off basis, such as joining fees or annual membership fees.

(c) Event-based fees such as fees imposed on scheme members for investment directives they submit to the trustees.

The level of fees charged by trustees and service providers are mainly driven by competition and market forces. In general, the MPFA does not regulate the level of fees, however, certain requirements have to be observed by trustees and service providers, including:

(a) The current and maximum levels of fees must be clearly communicated to scheme members.

(b) Any amendments to the maximum level of fees have to be approved by the MPFA and the SFC before they take effect.

(c) No additional initial charge can be imposed in relation to the management of a fund if the manager of the fund, or an associate of that manager, manages the relevant constituent fund.

(d) For an MPF conservative fund, administrative expenses can only be deducted if the returns of the fund exceed the prescribed savings rate declared by the MPFA. Initial fees, redemption charges and bid and offer spreads are not allowed.

Fee Comparative Platform

To help members better understand and compare fees and charges across MPF funds and schemes, the MPFA has developed the Fee Comparative Platform which is available on the MPFA website. The Fee Comparative Platform provides useful information for members' reference, e.g. fund expense ratio and risk level indicator.

5.8 SWITCHING BETWEEN MPF SCHEMES/CONSTITUENT FUNDS

Important features of this include:

(a) Scheme members may choose to invest their contributions in any constituent funds under the MPF scheme in which they participate.

(b) Scheme members are allowed to change the choice of constituent funds at least **once a year**.

(c) Employers may elect to participate in another MPF scheme by transferring the accrued benefits of their employees to the other scheme.

(d) If there is a change in the ownership of a business, the new employer may elect to participate in another MPF scheme by transferring the accrued benefits of its employees to another scheme if the new employer has agreed to recognize the employees' length of employment with the previous employer and has assumed the liability of the previous employer for long service payment or severance payment in respect of the employees.

(e) Upon termination of employment, an employee may choose to have their accrued benefits remain in the scheme or they may transfer them to an MPF scheme of their own choice, or to the MPF scheme of the new employer.

(f) The Mandatory Provident Fund Schemes (Amendment) Ordinance 2009 enacted in July 2009 empowers an employee to transfer during their current employment, at least once per calendar year, any accrued benefits derived from the employee mandatory contributions from the MPF scheme chosen by their relevant employer to an MPF scheme of their own choice ("Employee Choice Arrangement").

(g) Regardless of the frequency and type of transfer of accrued benefits, no fees or financial penalties other than bid/offer spread can be imposed by trustees.

5.9 CODE ON DISCLOSURE FOR MPF INVESTMENT FUNDS

To ensure employers and scheme members are provided with adequate information to enable them to make informed investment decisions, the MPFA has issued a Code on Disclosure for MPF Investment Funds to give guidance to trustees and other service providers about the disclosure of information on MPF schemes and constituent funds and information about fees, charges and performance. In summary, trustees are required to provide the following information to employers and scheme members:

(a) **Fee Table**

In order to facilitate comparison and an "at a glance" understanding of fees and charges, all fees and charges are disclosed in a consistent manner and format in a fee table which includes:

(i) all fees and charges;

(ii) what a particular fee is for;

(iii) the amount of each fee currently charged; and

(iv) from whom each fee is payable.

The Fee Table must be included in the offering documents of the schemes.

(b) **On-going Cost Illustrations ("OCI")**

This provides members and potential members with an OCI that shows in dollar terms, the costs that may be incurred by investing in a fund across defined time horizons based on a set of consistent assumptions. The OCI forms part of or is an accompaniment to the scheme offering document, and must be updated annually using the latest fund expense ratio data.

For those constituent funds that are MPF conservative funds, certain guaranteed funds and newly launched funds, no OCI is required. However, a separate illustrative example is required for MPF conservative funds.

(c) **Fund Fact Sheet**

To ensure that scheme members receive at least a basic level of information about the

scheme, an approved trustee is required to prepare a fund fact sheet that contains the following information for each constituent fund:

(i) The net asset value of each fund;

(ii) The launch date of each fund;

(iii) A brief description of the investment objectives of the fund and any change in the statement of investment policy and objectives since the last fund fact sheet;

(iv) The allocations of assets of each fund;

(v) The largest ten asset holdings as a percentage of fund net asset value;

(vi) The periodic rate of return for the fund;

(vii) A comparison of the fund's performance against the benchmark, if any benchmark is used;

(viii) The latest Fund Expense Ratio;

(ix) A general indication about the level of risk of the fund;

(x) A description of the fund type; and

(xi) A discussion of fund performance, market review and market outlook.

At least two fund fact sheets must be issued for each financial year of a scheme. One fund fact sheet should be provided to members with the annual benefit statement and the other should be provided to members within two months after the reporting date (i.e. a date which is six months after the end of the scheme's financial year).

(d) **Fund Expense Ratio ("FER")**

The FER provides a measure of the total level of expenses of a fund. If the fund invests in an APIF or a number of APIFs, the FER will need to include fees and charges incurred at the APIF level.

The FER is calculated for all constituent funds and APIFs on an annual basis and is disclosed in the fund fact sheet, the OCI for constituent funds and the annual return of a scheme and an APIF.

(e) **Annual Benefit Statement ("ABS")**

The ABS serves to confirm scheme membership and membership details, and the status and number of accounts held by the member. It helps check inflows and outflows including contributions, transfer and transactions, and to identify account balances and accruals, the extent to which they are vested, and the gains and losses associated with the accounts over the relevant financial period. The ABS is a historical record of the member's account at a point in time.

The new content requirements of the ABS are set out in Part F of the Disclosure Code. ABSs issued in respect of financial periods ending after 1 September 2009 will need to comply with the new content requirements.

5.10 ON-GOING MONITORING OF MPF INVESTMENT FUNDS

In order to ensure compliance with MPF requirements on investment compliance and fund governance, the MPFA regularly performs various supervisory activities on and off-site, on MPF products. These include the following:

(i) Examine the governance arrangements, compliance framework and detailed control measures via on and off-site supervision on those trustees and investment managers;

(ii) Collect information on the portfolio holdings of MPF funds and conduct compliance checking of MPF investments;

(iii) Review returns submitted by MPF trustees and follow up on any irregularities identified;

(iv) Perform supervisory activities in relation to MPF custodian arrangements to ensure the safe-keeping of MPF assets;

(v) Monitor individual MPF fund performance, and take necessary follow up action on trustees/investment managers;

(vi) Assess investment breach cases reported by MPF trustees/identified by the MPFA and ensure that all breach cases are properly rectified, appropriate compensation is made to the affected MPF funds and effective preventive measures are implemented by trustees/investment managers to prevent recurrence of similar incidents;

(vii) Conduct regular checking of approved index-tracking collective investment schemes in respect of the approval requirements; and

(viii) Conduct regular sharing sessions for the compliance officers of MPF trustees and investment managers and issue newsletters to MPF trustees to keep them informed and up to date on the MPF legislation.

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Representative Examination Questions

Type "A" Questions

1 At least one of the constituent funds of an MPF scheme must:

(a) be an MPF conservative fund; .....
(b) consist totally of equity holdings; .....
(c) consist only of investment in bonds; .....
(d) be an approved pooled investment fund. .....

[Answer is in **5.3.2**]

2 Which of the following is **not** a type of approved pooled investment funds?

(a) authorized unit trust; .....
(b) authorized mutual fund; .....
(c) investment fund governed by foreign law; .....
(d) insurance policy. .....

[Answer is in **5.4.2**]

Type "B" Questions

3 Which **three** of the following statements regarding constituent funds are **true**?

(i) All constituent funds must be approved by MPFA
(ii) Investment in a constituent fund may be restricted to certain groups of MPF scheme members only
(iii) Each constituent fund has at least one dealing day a month
(iv) Each constituent fund must have its own stated investment policy

(a) (i), (ii) and (iii); .....
(b) (i), (ii) and (iv); .....
(c) (i), (iii) and (iv); .....
(d) (ii), (iii) and (iv). .....

[Answer is in **5.1** and **5.3.1**]

4 In which of the following circumstances will it **not** be permitted for the administrators to charge any administrative expenses to an MPF conservative fund in a particular month?

(i) Fund's investment earnings $3,000, return calculated based on prescribed savings rate $2,000
(ii) Fund's investment earnings $3,000, return calculated based on prescribed savings rate $3,000
(iii) Fund's investment earnings $3,000, return calculated based on prescribed savings rate $4,000
(iv) Fund's investment earnings $6,000, return calculated based on prescribed savings rate $5,000

(a) (i) and (ii); .....
(b) (i) and (iii); .....
(c) (ii) and (iii); .....
(d) (iii) and (iv). .....

[Answer is in **5.3.2**]

5. Which of the following information must be included in the Fee Table?

(i) all fees and charges
(ii) the amount of each fee currently charged
(iii) what a particular fee is for
(iv) from whom each fee is payable

(a) (i) and (iii); .....
(b) (i), (ii) and (iii); .....
(c) (ii), (iii) and (iv); .....
(d) (i), (ii), (iii) and (iv). .....

[Answer is in **5.9**]

[If required, answers may be found at the end of the Study Notes.]

6 INTERFACE ARRANGEMENTS BETWEEN ORSO SCHEMES AND THE MPF SYSTEM

ORSO schemes refer to retirement schemes regulated by the Occupational Retirement Schemes Ordinance ("ORSO"). There are many interactions between ORSO schemes and the MPF System.

Unlike MPF schemes which are established under a compulsory system, an ORSO scheme is a voluntary retirement scheme set up by an employer to provide benefits to employees in the form of pensions, allowances, gratuities or other payments, payable on termination of service, death or retirement. Other than MPF schemes, all retirement schemes operated in and from Hong Kong, with certain exceptions, need to be either registered or exempted under ORSO. Considerable flexibility is allowed in drawing up the rules and provisions of such schemes.

6.1 TYPES OF ORSO SCHEMES

There are various ways of classifying ORSO schemes, for example: by type of benefits provided, by being ORSO registered or exempted or, by having MPF exemption.

6.1.1 Types of Benefits Provided

According to the types of benefits provided, ORSO schemes can be classified into two categories:

(a) **Defined Contribution Schemes**

Both the employer's and employees' contribution rates are defined, and the amount of benefits accrued is based on the accumulated contributions and investment income.

(b) **Defined Benefit Schemes**

The employer's contribution rates are not defined but are recommended by an actuary from time to time after performing actuarial valuations. The amount of benefits a member is entitled to is generally based on a formula with reference to their age, years of service, final average salary etc.

Hybrid schemes incorporating both defined contribution schemes and defined benefit schemes features are also classified as defined benefit schemes.

6.1.2 ORSO Registered or ORSO Exempted

An ORSO scheme can also be classified as either of the following:

(a) **ORSO Registered Schemes**

As mentioned above, all retirement schemes operated in and from Hong Kong need to be registered under ORSO, except those which fall within one of the following categories:

(i) Schemes contained in or established by any ordinance other than the ORSO (for example, an MPF scheme established under the MPFSO);

(ii) Schemes set up by the government of a country or territory outside Hong Kong or its agency not operating for the purpose of gain;

(iii) Schemes that satisfy the criteria for ORSO exemption.

As (i) and (ii) do not fall within the ambit of ORSO, application for ORSO registration or ORSO exemption is not required. For (iii), application for ORSO exemption instead of ORSO registration is required.

(b) **ORSO Exempted Schemes**

This refers to schemes mentioned in (a)(iii) above. These schemes are exempt from ORSO registration, either because they are offshore schemes satisfying certain requirements, or they have a certain number of members who are Hong Kong permanent identity card holders below the prescribed limit.

6.1.3 MPF Exempt or Not

From the perspective of MPF intermediaries, this should be the most pertinent way of classification of ORSO schemes. This classification came about due to the introduction of the MPF System in Hong Kong at which time, ORSO schemes were faced with various options. One of these options was to apply for MPF exemption, so that the employer and employees covered by the scheme were exempt from MPF requirements.

(a) **MPF Exempted ORSO Schemes**

These schemes satisfy the requirements for applying for MPF exemption certificates. They can be ORSO registered schemes or exempt schemes, and can be either closed or open to new members.

(b) **Non-MPF Exempted ORSO Schemes**

Schemes that were not granted MPF exemption certificates, either because they did not qualify or did not apply, fall into this category.

The criteria for granting an MPF exemption certificate is discussed in **6.3**.

6.2 COMPARISON OF FEATURES

It is useful to compare some MPF features with the corresponding features under ORSO schemes.

MPF	**ORSO**[1]		
	Non-MPF exempted ORSO schemes	*MPF exempted ORSO exempted schemes*	*MPF exempted ORSO registered schemes*
(a) Is always a defined contribution scheme	(a) May be a defined contribution scheme or a defined benefit scheme		
(b) Mandatory	(b) Voluntary		
(c) Governed by Hong Kong law	(c) May be governed by a law outside Hong Kong		
(d) Vesting 100% of employer's mandatory contributions immediately	(d) Vesting of employer's contributions is subject to the governing rules of the scheme		
(e) Trustee must be approved	(e) Approval of trustee is not required		(e) Approval for trustee is required
(f) Other features: • All employees being employed for 60 days or more must join unless exempted • Minimum contribution rate • Benefits to be preserved • Benefits portable • Relevant income defined • Minimum relevant income • Maximum relevant income • Eligibility requirements for: - Trustees / Investment Managers / Custodians	(f) No equivalent provisions required		(f) Other features: • "Minimum MPF benefits" to be preserved for new members (see **6.5.3**) • "Minimum MPF benefits" are portable for new members (see **6.5.3**) • Minimum standards for: - Trustees / Investment Managers

[1] For illustration purposes, we have classified ORSO schemes into 3 categories as follows:

- Non-MPF exempted ORSO schemes (i.e. ORSO registered and exempted schemes that have not obtained MPF exemption)
- MPF exempted ORSO exempted schemes (i.e. ORSO exempted schemes that have obtained MPF exemption)
- MPF exempted ORSO registered schemes (i.e. ORSO registered schemes that have obtained MPF exemption)

The above three types of schemes share common features under (a) to (d). Under features (e) to (f), there are disparities between "Non-MPF exempted ORSO schemes and MPF exempted ORSO exempted schemes (which still share common features)" and "MPF exempted ORSO registered schemes".

6.3 EXEMPTION CRITERIA

To qualify for MPF exemption, the scheme must be an "ORSO exempted scheme" or a "relevant ORSO registered scheme" as defined in the Mandatory Provident Fund Schemes (Exemption) Regulation (the "Exemption Regulation"). Other exemption criteria may also need to be satisfied.

The deadline for submission of an application for MPF exemption in respect of an ORSO exempted scheme or a relevant ORSO registered scheme was 3 May 2000. Hence, no MPF exemption will be granted in respect of those MPF exemption applications made after 3 May 2000, except for successor schemes. For successor schemes, MPF exemption may be granted even if the MPF exemption application is made after 3 May 2000, provided that the scheme is the successor scheme of a relevant ORSO registered scheme and is established as a result of a genuine business transaction such as business restructuring etc. For successor schemes that successfully obtain MPF exemption, the existing members[2] of the MPF exempted ORSO schemes transferred to the successor scheme may retain their "existing member" status (i.e. no need to be bound by the "minimum MPF benefits" provisions) under the successor scheme.

An MPF exempted ORSO scheme is still subject to the ORSO requirements; in addition there are other requirements under the Exemption Regulation. Under the Exemption Regulation, the requirements imposed upon an MPF exempted ORSO registered scheme are more onerous than those imposed upon an MPF exempted ORSO exempted scheme (see **6.6**).

6.4 DIFFERENT FORMS OF ORSO SCHEMES FOLLOWING THE INTRODUCTION OF THE MPF SYSTEM

Due to the introduction of the MPF System, an employer who already operated an ORSO scheme had to decide whether and to what extent, they should continue that scheme. Whatever the decision was, the employer of the ORSO scheme had to follow the scheme terms whenever there was/is a change of the scheme or scheme particulars. Some of the factors that influenced their decision included:

(a) whether the current employment contracts stipulated certain retirement protection arrangements; if so, they would have to continue the existing ORSO scheme for existing employees who wished to do so;

(b) the relevant administration and other costs involved in operating ORSO and MPF schemes;

(c) the feasibility of a total transfer of the existing scheme assets into an MPF scheme.

[2] "Existing member" is defined as "a relevant employee who became a member of the scheme before or on 1 December 2000".
A "relevant employee" means an employee of 18 years of age or over and below 65.

If the employer decided to continue their ORSO scheme, the scheme would now be in one of the following forms:

(a) **MPF Exempted ORSO Scheme with Open Membership**

The employer offers the MPF exempted ORSO scheme to new eligible employees[3]. When doing so, the employer is obliged to offer an option to these employees to choose between the ORSO scheme and an MPF scheme. For existing members, the employer should have offered them an option to join an MPF scheme in 2000.

(b) **MPF Exempted ORSO Scheme with Closed Membership**

The scheme is an MPF exempted ORSO scheme, but new employees are not permitted to join this ORSO scheme and need to be covered under an MPF scheme. Existing members could continue to accrue benefits under the ORSO scheme. Again, existing members had to be offered the option to join an MPF scheme.

(c) **"Top-up" ORSO Scheme**

This option implies that **all** employees would be covered under an MPF scheme, but the existing ORSO scheme would be modified to provide extra benefits for existing (and perhaps also new eligible) employees. Effectively this means that contributions to the ORSO scheme would become **supplementary contributions**, over and above the minimum MPF contribution requirements.

(d) **"Frozen" ORSO Scheme**

There will be no future contributions made to the ORSO scheme with respect to future service. The benefits of existing members under the ORSO scheme would continue to accrue investment returns until the members are entitled to receive benefits in accordance with the governing rules of the scheme. The employer would have to enrol all existing members and new employees into an MPF scheme and make mandatory contributions.

On the other hand, the employer may have decided to terminate their ORSO scheme when the MPF System began in 2000, or may have continued to operate their ORSO scheme under one of the above mentioned forms for a while but ultimately decided to terminate the scheme.

Upon terminating an ORSO scheme, the employer can, subject to the terms of the scheme:

(a) close the scheme completely and pay out all liabilities thereunder (with the exception of "minimum MPF benefits" that need to be preserved for new members (see **6.5.3**)); or

(b) close the scheme completely and transfer all scheme assets into an MPF scheme /

[3] "New eligible employee" is defined as "a relevant employee who is, or will become, eligible to be a member of the scheme".

another ORSO scheme, which thereby replaces the ORSO scheme.

Generally, if the employer decides to pay out the liabilities, the portion of accrued benefits attributable to the employer's contributions are taxable to the employees since the benefits have not been received in the prescribed circumstances (i.e. retirement, death, incapacity and termination of service) which enable the benefits to be totally or partially exempt from Hong Kong salaries tax.

Moreover, the employer should be mindful of the charges or losses that may be incurred upon scheme termination, particularly with respect to termination cost and guarantee provisions.

In the event of the winding up of an ORSO scheme, the employer must notify the Registrar of Occupational Retirement Schemes and each scheme member of that fact, within 14 days of the commencement of the winding up.

6.5 IMPLICATIONS FOR EXISTING MEMBERS AND NEW ELIGIBLE EMPLOYEES

Whatever arrangement has been adopted, there are implications for the employees concerned. Where an application has been made for MPF exemption of an ORSO scheme, the following considerations arise:

6.5.1 Existing Members Opting to Remain in an MPF Exempted ORSO Registered Scheme

If the ORSO registered scheme is granted an MPF exemption, an existing member knows that their **existing and future** benefits in the scheme will not be subject to the preservation, portability and withdrawal requirements in respect of their "minimum MPF benefits" (see **6.5.3**).

The non-applicability of the these requirements could be to the member's advantage if they leave the employer before retirement age, since they would (depending on the governing rules of the scheme or trust deed) then be entitled to receive the relevant termination of service benefit in cash at that time.

Moreover, upon dismissal for cause from employment, the trustee cannot forfeit an existing member's "minimum MPF benefits".

6.5.2 Existing Members Opting to Join an MPF Scheme

Existing members who opt to join an MPF scheme are required to make the statutory mandatory contributions to the MPF scheme with their employer. Under the Exemption Regulation, all accrued benefits under the ORSO registered scheme should remain in that scheme until the employee becomes entitled to receive them. However, the member's rights may be treated otherwise if the member's consent has been obtained and it is allowed under the governing rules of the ORSO scheme.

6.5.3 New Eligible Employees Opting to Join an MPF Exempted ORSO Registered Scheme

Unlike existing members, a new eligible employee who opts to join such a scheme and becomes a new member would be subject to the "preservation, portability and withdrawal" requirements in relation to their "minimum MPF benefits". The essence of these requirements is that the "minimum MPF benefits" cannot be paid out until retirement or other eligible time. Moreover, upon change of employment and subject to statutory exceptions, the "minimum MPF benefits" must be transferred to an MPF scheme.

"Minimum MPF benefits" is defined as the lesser of:

(a) the member's benefits accrued under the scheme during the period when the exemption certificate applied to the scheme;

(b) 1.2 x final average monthly relevant income (capped by $20,000 on or before 31 May 2012 or $25,000 on or after 1 June 2012) x years of post-MPF service[4].

Upon dismissal for cause from employment, however, the trustee cannot forfeit the new member's "minimum MPF benefits".

6.6 ON-GOING REQUIREMENTS FOR MPF EXEMPTED ORSO SCHEMES

In accordance with the requirements of the Exemption Regulation, the relevant employer of an ORSO exempted scheme to which an MPF exemption certificate relates is required to:

(a) **Exhibition and Provision of Exemption Certificate**

(i) display the exemption certificate at all times in a conspicuous position at:

- the relevant employer's principal office in Hong Kong;
- if there is no such office, each premise where a member of the ORSO scheme is employed by them.

(ii) provide each member with a copy of the MPF exemption certificate.

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[4] "Years of post-MPF service" is defined as the member's continuous years of service (including part thereof) from the date they joined the scheme or the date of MPF implementation, whichever is the later, to –

(i) the date of termination of their employment;

(ii) in the case of the winding up of the scheme, the date on which the member ceases to be a member of the scheme;

(iii) in the case of the withdrawal (including deemed withdrawal) under the Exemption Regulation of the exemption certificate which applies to the scheme, the date of the coming into effect of the withdrawal.

(b) **Option Offering**

(i) provide an option to new eligible employees to choose between the MPF exempted ORSO scheme and an MPF scheme[5].

For an MPF exempted ORSO registered scheme, in addition to the above requirements, the relevant employer is also required to comply with the following:

(a) **Upon Reduction of Employee's Future Benefits**

(i) to provide an option to affected members again to choose between the ORSO scheme and an MPF scheme whenever the relevant employer decides to reduce any member's future benefits or rights under the ORSO registered scheme.

(b) **Appointment and Retirement of Trustees**

(i) to ensure that the person who has the power to retire or appoint a trustee (be it a corporate trustee or an individual trustee) applies in writing for the MPFA's **prior** approval before retiring or appointing the trustee of the scheme ("prior approval requirements"). In the case of a corporate trustee changing its directors, the former must obtain the MPFA's **prior** approval before retiring and appointing its directors if it is **not**:

- a registered trust company in Hong Kong ("RTC"); or
- an overseas trust company which is comparable to a RTC and has a significant presence and control in Hong Kong.

The MPFA has exercised its power to exempt the person who has the power to retire or appoint a trustee which is a RTC from these prior approval requirements. Instead, the employer of the scheme must notify the MPFA in writing within one month after the date of appointment or retirement of the RTC. However, if the appointee/retiree is not an RTC, the prior approval requirements still apply.

(c) **Appointment of Investment Managers**

(i) when appointing an investment manager for a scheme on or after 1 December 2000, the Exemption Regulation requires that it must be an investment management company that:

- is a corporation licensed to carry on, or an authorized institution registered for carrying on, a business of Type 9 (asset management) regulated activity under Part V of the Securities and Futures Ordinance; or
- is a company authorized by an overseas authority recognized by the MPFA to carry on a business in asset management.

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[5] If the employees are required by an enactment of a place outside Hong Kong to remain as / become a member of the ORSO scheme and make contributions to the scheme, the employer is not required to provide such an option to these employees.

You are reminded that the above list of on-going requirements imposed under the Exemption Regulation on an MPF exempted ORSO scheme includes the major requirements only and is by no means exhaustive.

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Representative Examination Questions

Type "A" Questions

1 An MPF scheme in Hong Kong is:

(a) always a defined benefit scheme; ….
(b) never a defined contribution scheme; ….
(c) always a defined contribution scheme; ….
(d) sometimes a defined contribution scheme. ….

[Answer is in **6.2**]

Type "B" Questions

2 Which of the following statements is/are **true**, if it is decided to wind up an existing ORSO scheme and replace it with an MPF scheme?

(i) the ORSO scheme may be closed and all liabilities paid out
(ii) all assets may be transferred to the MPF scheme
(iii) the ORSO scheme cannot be closed, as liabilities may arise later
(iv) the ORSO scheme may be closed, but members will then lose all their benefits

(a) (i) only; .....
(b) (i) and (ii) only; .....
(c) (ii) and (iii) only; .....
(d) (iii) and (iv) only. .....

[Answer is in **6.4**]

[If required, answers may be found at the end of the Study Notes.]

7 MPF INTERMEDIARIES

This Chapter explains to readers how MPF intermediaries are regulated and what minimum standards of conduct are expected of them. It is therefore important for those who intend to become MPF intermediaries to pay special attention to the notes which follow, especially the part that relates to the Guidelines on Conduct Requirements for Registered Intermediaries.

7.1 REGULATION OF MPF INTERMEDIARIES

With rising public expectation towards investor protection in recent years, the MPFA has reviewed the administrative arrangements for the regulation of intermediaries in place since inception of the MPF System and recommended that this administrative regulatory regime should be strengthened by statute. The Government has agreed that it would be prudent to establish a statutory regulatory framework for MPF intermediaries to better protect scheme members.

As a result, the Mandatory Provident Fund Schemes (Amendment) Ordinance 2012 was enacted by the Legislative Council in June 2012 and came into effect on 1 November 2012. Under the statutory regime, the MPFA is the authority to administer the registration of MPF intermediaries, to issue guidelines on compliance with statutory requirements applicable to registered MPF intermediaries, and to impose disciplinary sanctions. The Monetary Authority ("MA"), Insurance Authority ("IA") and Securities and Futures Commission ("SFC") have been given the statutory role as frontline regulators ("FRs") responsible for the supervision and investigation of registered MPF intermediaries whose core business is in banking, insurance and securities respectively.

The key elements in the statutory regime for the regulation of MPF intermediaries include following aspects:

(a) prohibition against carrying on regulated activities;
(b) registration requirements for MPF intermediaries;
(c) regulatory scope of FRs;
(d) conduct requirements for registered intermediaries;
(e) other requirements for registered intermediaries;
(f) supervisory and disciplinary powers; and
(g) appeals mechanism.

7.2 REGULATORY FRAMEWORK

7.2.1 Prohibition against Carrying on Regulated Activities etc.

(a) Definition of Regulated Activity, Material Decision, Regulated Advice, and Regulated Person

The Mandatory Provident Fund Schemes Ordinance ("MPFSO") prohibits persons from carrying on (or holding themselves out as carrying on) a "regulated activity in the course of their business or employment, or for reward, unless an exception applies (see **7.2.1 (b)** for details).

A person carries on a "**regulated activity**" if that person either:

(i) invites or induces, or attempts to invite or induce, another person to make a "**material decision**"; or

(ii) gives "**regulated advice**".

Despite the above, a person does not carry on a regulated activity if:

(i) the person issues an advertisement, invitation or document; and

(ii) the issue is authorized by the SFC under section 105 of the Securities and Futures Ordinance.

A person makes a "**material decision**" if the person makes a decision in relation to the following matters:

(i) whether, or when, to apply to join or become a member of a particular MPF scheme;

(ii) whether, or when, to apply to participate in a particular MPF scheme as an employer;

(iii) whether, or when, to pay contributions (including voluntary contributions) to a particular MPF scheme, or to invest in a particular constituent fund of an MPF scheme;

(iv) the amount of contributions (including voluntary contributions) to be paid to a particular MPF scheme, or the amount to be invested in a particular constituent fund of an MPF scheme;

(v) whether, or when, to transfer accrued benefits from a particular MPF scheme to another particular MPF scheme, or from a particular constituent fund of an MPF scheme to another particular constituent fund of the MPF scheme;

(vi) the amount of accrued benefits to be transferred from a particular MPF scheme to another particular MPF scheme, or from a particular constituent fund of an MPF scheme to another particular constituent fund of the MPF scheme;

(vii) whether, or when, to transfer benefits from an occupational retirement scheme to a particular MPF scheme;

(viii) the amount of benefits to be transferred from an occupational retirement scheme to a particular MPF scheme;

(ix) whether, or when, to make a claim for the payment of accrued benefits from an MPF scheme; and

(x) the amount of a claim for the payment of accrued benefits from an MPF scheme.

A person gives "**regulated advice**" if the person gives an opinion in relation to any "material decision".

Please note that a "**regulated person**" means (i) a registered intermediary (i.e., a principal intermediary or a subsidiary intermediary); or (ii) a responsible officer of a principal intermediary.

(b) Prohibitions against Carrying on Regulated Activities, and Exceptions

Prohibitions against carrying on regulated activities

(i) Section 34L(1) of the MPFSO prohibits a person from carrying on regulated activities in the course of the person's business or employment; or for reward.

(ii) Section 34L(2) of the MPFSO prohibits a person from holding themselves out as carrying on regulated activities in the course of the person's business or employment; or as carrying on regulated activities for reward.

(iii) Section 34L(3) of the MPFSO prohibits a person from taking or using the title of "principal intermediary" or "subsidiary intermediary", "主事中介人" or "附屬中介人"; or any other title suggesting that the person carries on the regulated activities in the course of the person's business or employment; or for reward.

Exceptions to Prohibitions

Section 34L of the MPFSO does not prohibit:

(i) (1) a principal intermediary from carrying on regulated activities in the course of the principal intermediary's business or holding themselves out as so carrying on regulated activities; or

(2) a subsidiary intermediary attached to a principal intermediary from carrying on regulated activities in the course of acting as an employee, agent or representative of the principal intermediary or holding themselves out as so carrying on regulated activities;

(ii) a principal intermediary from taking or using the title of "principal

intermediary" or "主事中介人" or a subsidiary intermediary from taking or using the title of "subsidiary intermediary" or "附屬中介人"; and

(iii) certain other kinds of persons or corporations from carrying on regulated activities or giving regulated advice or holding out as so doing under certain circumstances which are set out in section 34M(3) to (6) of the MPFSO:

(1) An **approved trustee**, a **participating employer**, or a **service provider** is not prohibited from carrying on regulated activities for the purpose of complying with a requirement under the MPFSO.

(2) The **MPFA** is not prohibited from carrying on regulated activities for the purpose of performing a function under the MPFSO.

(3) A **solicitor**, a **counsel**, or a **certified public accountant** is not prohibited from giving regulated advice wholly incidental to his/her practice.

(4) A **trust company registered under the Trustee Ordinance** (other than an approved trustee) is not prohibited from giving regulated advice wholly incidental to the discharge of its duty.

(5) A person is not prohibited from giving regulated advice through (i) a newspaper, magazine, book or other publication that is made generally available to the public (excluding one that is made available on subscription only); or (ii) a television broadcast or radio broadcast for reception by the public.

(6) A company is not prohibited from giving regulated advice to its wholly owned subsidiary, another company that holds all its issued shares, or a wholly owned subsidiary of the company that holds all its issued shares.

(c) Offence and Penalty Relating to Prohibitions

(i) A person who, without reasonable excuse or otherwise being exempted, carries on regulated activities in the course of the person's business or employment or for reward (or hold himself out as doing so), contravenes the prohibitions against carrying on regulated activities, commits an offence and is liable:

(1) on conviction on indictment to a fine of $5,000,000 and to imprisonment for 7 years and, in the case of a continuing offence, to a further fine of $100,000 for each day on which the offence is continued; or

(2) on summary conviction to a fine of $500,000 and to

imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $10,000 for each day on which the offence is continued.

(ii) If a person contravenes the prohibitions by carrying on regulated activities for another person in the course of acting as an employee, agent or representative of that other person, or for holding themselves out as so carrying on regulated activities, the person is liable:

(1) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years and, in the case of a continuing offence, to a further fine of $20,000 for each day on which the offence is continued; or

(2) on summary conviction to a fine at $100,000 and to imprisonment for 6 months and, in the case of a continuing offence, to a further fine of $2,000 for each day on which the offence is continued.

(iii) A person who, without reasonable excuse, contravenes the prohibition by taking/using the title of principal intermediary or subsidiary intermediary or certain related titles, commits an offence and is liable on conviction to a fine at $100,000 and, in the case of a continuing offence, to a further fine of $2,000 for each day on which the offence is continued.

7.2.2 Registration Requirements for MPF Intermediaries

There are two types of registered intermediaries, namely, principal intermediary and subsidiary intermediary.

(i) **Principal intermediary** refers to a business entity (Type A regulatee) registered by the MPFA as an intermediary to carry on regulated activities.

(ii) **Subsidiary intermediary** refers to a person (Type B regulatee) registered by the MPFA as an intermediary to carry on regulated activities on behalf of the principal intermediary to which the person is attached.

(a) Application for Registration as Principal Intermediary

For application as a principal intermediary for carrying on regulated activities under section 34T(1) of the MPFSO,

(i) the principal applicant[1] must be a Type A regulatee***** of an industry regulator;

[1] Principal applicant means a person who applies under section 34T(1) for registration as an intermediary to carry on regulated activities.

(ii) within 1 year immediately before the date of the application, the principal applicant has not had any qualification as a Type A regulatee revoked on the disciplinary grounds (section 34J(1) of the MPFSO);

(iii) the principal applicant does not have any qualification as a Type A regulatee suspended (section 34J(2) of the MPFSO);

(iv) within 1 year immediately before the date of the application, the principal applicant has not had a registration as a registered intermediary revoked by the MPFA under section 34ZW(3)(a)(i) of the MPFSO; and

(v) the principal applicant is not disqualified by the MPFA under section 34ZW(3)(a)(ii) of the MPFSO from being registered as an intermediary for carrying on regulated activities.

According to section 34T(2) of the MPFSO, there must be accompanying applications for application as a principal intermediary at the same time as follows:

EITHER

If the principal applicant wants to apply for an existing subsidiary intermediary to act as the responsible officer for the principal applicant,

(i)(1) an application made by the principal applicant under section 34V(1) of the MPFSO for approval of attachment of a subsidiary intermediary to the principal applicant for the purpose of carrying on regulated activities; and

(2) an application made by the principal applicant under section 34W(1) of the MPFSO for approval of the subsidiary intermediary as a responsible officer in relation to the principal applicant.

OR

If the applicant wants to apply for an individual who is not yet registered as a subsidiary intermediary to act as the responsible officer for the principal applicant,

(ii)(1) an application made by an individual under section 34U(1) of the MPFSO for registration as an intermediary for carrying on regulated activities for a principal intermediary to which the individual is to be attached;

(2) an application made by the principal applicant under section 34V(1) of the MPFSO for approval of attachment of the individual to the principal applicant for the purpose of carrying on regulated activities; and

(3) an application made by the principal applicant under section 34W(1) of

the MPFSO for approval of the individual as a responsible officer in relation to the principal applicant.

***Type A regulatee means:**

(i) in relation to the IA, means (1) a company that is authorized under section 8 of the Insurance Companies Ordinance ("ICO") to carry on long term business; or (2) an authorized long term insurance broker.

(ii) in relation to the MA, an authorized financial institution[2] that is registered under the Securities and Futures Ordinance ("SFO") for Type 1 or Type 4 regulated activity, or both, within the meaning of that Ordinance.

(iii) in relation to the SFC, means a corporation that is licensed under the Securities and Futures Ordinance to carry on Type 1 or Type 4 regulated activity, or both, within the meaning of that Ordinance.

Please note that the MPFA may only register an applicant as registered intermediary if it is satisfied that, in additional to the criteria set out above, the relevant criteria for approval in relation to the accompanying applications are satisfied.

(b) Application for Registration as Subsidiary Intermediary

An applicant may apply to the Authority for registration as an intermediary for carrying on regulated activities for a principal intermediary to which the applicant is to be attached. Such application must be accompanied by an application made by a principal intermediary for approval of attachment of the applicant to the principal intermediary for the purpose of carrying on regulated activities.

For application for registration as a subsidiary intermediary under section 34U(1) of the MPFSO,

(i) the principal applicant[3] is a Type B regulatee***** of an industry regulator but not a Type A regulatee of any industry regulator;

(ii) within 1 year immediately before the date of the application, the principal applicant has not had any qualification as a Type B regulatee revoked on disciplinary grounds (section 34K(1) of the MPFSO);

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[2] Authorized financial institution means an authorized institution as defined by section 2(1) of the Banking Ordinance. Under the Banking Ordinance, an authorized institution means (a) a bank; (b) a restricted licence bank; or (c) a deposit-taking company.

[3] Principal applicant means a person who applies under section 34U(1) for registration as an intermediary to carry on regulated activities for a principal intermediary to which the person is to be attached.

(iii) the principal applicant does not have any qualification as a Type B regulatee suspended (section 34K(2) of the MPFSO);

(iv) within 1 year immediately before the date of the application, the principal applicant has not had a registration as a registered intermediary revoked by the MPFA under section 34ZW(3)(a)(i) of the MPFSO;

(v) the principal applicant is not disqualified by the MPFA under section 34ZW(3)(a)(ii) of the MPFSO from being registered as an intermediary for carrying on regulated activities for a principal intermediary to which the principal applicant is to be attached; and

(vi) if the principal applicant is an individual, the principal applicant has, within 1 year immediately before the date of the application, passed a qualifying examination[4] specified by the MPFA. This will not be applicable if within 3 years immediately before the date of the application, the principal applicant has been registered as a subsidiary intermediary and that registration has been revoked, and the revocation, or the last revocation (if there is more than one), is not made due to non-compliance with the continuing training requirement.

According to section 34U(2) of the MPFSO, the application for registration as a subsidiary intermediary must be accompanied by an application made by a principal intermediary under section 34V(1) of the MPFSO for approval of attachment of the principal applicant to the principal intermediary for the purpose of carrying on regulated activities.

***Type B regulatee means:**

(i) in relation to the IA,

(1) an appointed long term insurance agent;

(2) a person registered with the Insurance Agents Registration Board as a responsible officer of an appointed long term insurance agent; or

(3) a person registered with the IA, the Insurance Agents Registration Board, or a relevant insurance broker body (1) as a technical representative of an appointed long term insurance agent; or (2) as a technical representative of an authorized long term insurance broker; or

(4) a person registered with the IA, or a relevant insurance broker body, as a chief executive of an authorized long term insurance broker.

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[4] The following examinations are the qualifying examinations specified for section 34U(4)(f) of the MPFSO:
(a) the "Mandatory Provident Fund Schemes Examination" conducted by the Vocational Training Council; and
(b) the "MPF Intermediaries Examination" conducted by the Hong Kong Securities and Investment Institute.

(ii) in relation to the MA,

(1) a relevant individual who is registered under section 20 of the Banking Ordinance ("BO") as engaged in respect of Type 1 or Type 4 regulated activity, or both, within the meaning of the SFO; or

(2) a person who, with the consent of the MA under section 71C of the BO, is an executive officer of a registered institution appointed to be responsible for directly supervising the conduct of each business conducted by the registered institution that constitutes Type 1 or Type 4 regulated activity, or both, within the meaning of the SFO.

(iii) in relation to the SFC, means a person who is licensed under section 120 of the SFO to carry on Type 1 or Type 4 regulated activity, or both, within the meaning of that Ordinance.

(c) Application for Approval of Attachment of a Subsidiary Intermediary to a Principal Intermediary

A person (the applicant) (being a principal intermediary or a person who applies for registration as a principal intermediary) may apply to the MPFA for approval of attachment of another person to the applicant for the purposes of carrying on regulated activities for the applicant.

For application for approval of attachment of a subsidiary intermediary to the applicant for the purposes of carrying on regulated activities under section 34V(1) of the MPFSO,

(i) the applicant consents to the subsidiary intermediary being an intermediary for carrying on regulated activities for the applicant;

(ii) the subsidiary intermediary is employed by, or acts as an agent or representative for, the applicant ; and

(iii) the subsidiary intermediary is a Type B regulatee of an industry regulator that is the frontline regulator of the applicant.

(d) Application for Approval of an Individual as Responsible Officer

An applicant who applies for registration as a principal intermediary or a principal intermediary may apply to the Authority for approval of an individual as an officer with specified responsibilities in relation to the applicant.

For application by a principal intermediary or a corporation applying to be a principal intermediary for approval of an individual as its responsible officer under section 34W(1) of the MPFSO,

(i) the individual is a subsidiary intermediary attached to the applicant;

(ii) the individual has sufficient authority within the applicant, and will be provided with sufficient resources and support, for carrying out specified responsibilities in relation to the applicant;

(iii) within 1 year immediately before the date of the application, the individual has not had an approval as a responsible officer revoked by the MPFA under section 34ZW(4)(a)(i) of the MPFSO; and

(iv) the individual is not disqualified by the MPFA under section 34ZW(4)(a)(ii) of the MPFSO from being approved as a responsible officer in relation to a principal intermediary.

(e) Conditions Imposed on Approval of Application

(i) The MPFA may impose any conditions on registration of a principal or subsidiary intermediary, approval of attachment of a subsidiary intermediary to a principal intermediary or approval of an individual as a responsible officer of a principal intermediary (section 34X(1)&(2) of the MPFSO), as it considers appropriate.

(ii) The MPFA may also impose any conditions on registration and/or approval that it considers appropriate after it has registered or approved a person or individual (section 34X(3) of the MPFSO) and even if it has already imposed a condition (section 34X(4) of the MPFSO).

(iii) The MPFA may amend or revoke any conditions imposed (section 34X(5) of the MPFSO).

(iv) The MPFA will notify in writing to the relevant parties where conditions are imposed, amended or revoked (section 34X(6) of the MPFSO).

(v) If there are conditions imposed or amended, the MPFA will include a statement of reasons (section 34X(7) of the MPFSO).

(f) Public Register of Registered Intermediaries

The MPFA maintains a register of all registered MPF intermediaries which can be accessed by the public through the internet (www.mpfa.org.hk). The public may also check an MPF intermediary's registration status by:

(i) calling the MPFA hotline on 2918 0102;
(ii) visiting the following MPFA offices:

- Level 16, International Commerce Centre, 1 Austin Road West, Kowloon, Hong Kong;
- Level 36, Tower 1, Metroplaza, 223 Hing Fong Road, Kwai Fong, New Territories, Hong Kong;
- 23/F, Nexxus Building, 41 Connaught Road Central, Hong Kong; or
- 25/F, Tower 1, Millennium City 1, 388 Kwun Tong Road, Kwun Tong, Kowloon, Hong Kong.

7.2.3 Regulatory Scope of Frontline Regulators

All registered MPF intermediaries are subject to supervisory oversight by frontline regulators ("FRs") in accordance with the following criteria which is set out in the relevant legislation :

(a) MA to be the FR of all principal intermediaries who are its regulatees, including those who have dual capacities and are concurrently also regulatees in the insurance and/or securities sectors;

(b) IA to be the FR of the other principal intermediaries who are its regulatees, including those who are concurrently also regulatees in the securities sector; and

(c) SFC to be the FR of the remaining principal intermediaries who are regulatees in the securities sector only.

The MPFA will assign all principal intermediaries to the appropriate FR based on these assignment criteria.

Where the MPFA is satisfied that the principal intermediary carries on a majority of its business activities as a regulatee of another industry regulator, it may assign that other industry regulator to be the FR of the principal intermediary.

As a subsidiary intermediary will carry out regulated activities on behalf of his/her principal intermediary, the same FR will regulate the principal intermediary and their subsidiary intermediaries.

The FR of a regulated person will be guided by the Guidelines on Conduct Requirements for Registered Intermediaries (Conduct Guidelines) (see 7.4 for details) in performing their supervisory and investigatory functions relating to regulated persons under the MPFSO.

Where a FR has information which suggests that a regulated person has not complied with any conduct requirements under the MPFSO, it may conduct an investigation and provide the relevant information obtained to the MPFA for the latter's consideration of taking disciplinary action.

7.2.4 Conduct Requirements for Registered Intermediaries

The MPFSO sets out broad conduct standards with which registered intermediaries are obliged to comply. When carrying on a regulated activity, a **principal intermediary** or a **subsidiary intermediary** attached to a principal intermediary must:

(a) act honestly, fairly, in the best interests of the client, and with integrity;

(b) 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) advise only on matters for which the principal or subsidiary intermediary is competent to advise;

(d) have such regard to the client's particular circumstances as is necessary for ensuring that the regulated activity is appropriate to the client;

(e) 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) use best endeavours to avoid a conflict between the interests of the principal or subsidiary intermediary and the interests of the client and, in the case of such a conflict, must disclose the conflict to the client;

(g) ensure that client assets are promptly and properly accounted for; and

(h) comply with other requirements that are prescribed by the rules.

A **principal intermediary** must:

(a) keep such records of transactions, and 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 FR of the principal intermediary, to ascertain whether or not the principal intermediary and every subsidiary intermediary attached to the principal intermediary have complied with the conduct requirements in relation to the regulated activities;

(b) 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 Part IVA of the MPFSO;

(c) use the principal intermediary's best endeavours to secure observance by subsidiary intermediaries attached to the principal intermediary of the controls and procedures established by the principal intermediary;

(d) ensure that the responsible officer has sufficient authority within the principal intermediary for carrying out specified responsibilities in relation to the principal intermediary; and

(e) provide the responsible officer with sufficient resources and support for carrying out specified responsibilities in relation to the principal intermediary.

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.

MPFA has issued Conduct Guidelines to provide guidance to registered intermediaries on compliance with the above statutory conduct requirements. Non-compliance with the conduct requirements may render an intermediary liable to disciplinary sanction(s).

For more information on conduct requirements, please refer to the Conduct Guidelines reproduced at the end of this chapter.

7.2.5 Other Requirements for Registered Intermediaries

(a) Reporting of Changes in Relation to Principal Intermediaries

A principal intermediary must give the MPFA a notice in writing of the changes mentioned below within 7 working days after they occur:

(i) a principal intermediary ceases to carry on any regulated activity;
(ii) there is a change in the address or any contact details of a principal intermediary;
(iii) a principal intermediary:
    (1) acquires any qualification as a Type A regulatee;
    (2) ceases to be a Type A regulatee of any industry regulator; or
    (3) has any qualification as a Type A regulatee of an industry regulator suspended; or
(iv) a responsible officer of a principal intermediary ceases to be an officer with specified responsibilities in relation to the principal intermediary.

A person who, contravenes the above requirements without reasonable excuse, commits an offence and is liable to a fine at $50,000.

In addition, a principal intermediary is responsible for giving notice to the MPFA if the principal intermediary intends to withdraw the consent to a subsidiary intermediary to be attached to and carry on regulated activities for the principal intermediary.

(b) Reporting of Changes in Relation to Subsidiary Intermediaries

A subsidiary intermediary must give the MPFA a notice in writing of the changes mentioned below within 7 working days after they occur:

(i) there is a change in the name of a subsidiary intermediary;
(ii) there is a change in the address or any contact details of a subsidiary intermediary;
(iii) a subsidiary intermediary:
    (1) acquires any qualification as a Type B regulatee;
    (2) ceases to be a Type B regulatee of any industry regulator; or

(3) has any qualification as a Type B regulatee of an industry regulator suspended; or

(iv) a subsidiary intermediary ceases to be the responsible officer of a principal intermediary.

A person who, without reasonable excuse, contravenes the above requirements, commits an offence and is liable to a fine at$50,000.

(c) Payment of Annual Fees

A person who is a registered intermediary must pay to the MPFA for every chargeable period (i.e., yearly) an annual fee of the amount prescribed by the regulations. The fee for a chargeable period must be paid within 1 month after the first day of the chargeable period.

If a person fails to pay the annual fee on time, the person must pay to the MPFA an additional fee of an amount equal to 10% of the annual fee that was unpaid.

The MPFA may suspend the registration of a registered intermediary if the person fails to pay to the MPFA the annual fee or any additional fee payable.

Where the MPFA suspends the registration of a person as a registered intermediary for failing to pay an annual fee or additional fee, the MPFA may revoke that registration if the person fails to pay to the MPFA the annual fee or additional fee within 30 days (or any longer period specified by the MPFA) after the suspension takes effect.

(d) Submission of an Annual Return

A person who is a registered intermediary (whether principal intermediary or subsidiary intermediary) must deliver to the MPFA an annual return. The return for a reporting period must be delivered within 1 month after the last day of the reporting period.

The MPFA may suspend the registration of the person for a period determined by the MPFA if the person fails to deliver to the MPFA, the annual return for a reporting period.

Where the MPFA suspends the registration of a registered intermediary for failing to deliver an annual return, the MPFA may revoke that registration if the person has not delivered the annual return within 30 days (or any longer period specified by the MPFA) after the suspension takes effect.

(e) Continuing Training Requirements

The MPFA may specify the training that is to be undertaken and the time within which the training is to be completed by individuals who are subsidiary

intermediaries, as it considers necessary for ensuring that those individuals will be able to comply with the performance requirements[5].

If the MPFA is satisfied that an individual subsidiary intermediary has failed to complete the training specified within the time specified by it, it may give the individual a notice in writing requiring the individual to complete the training within 30 days or any longer period specified in the notice.

The MPFA may suspend the registration of an individual as a subsidiary intermediary, if it is satisfied that the individual has failed to comply with the notice given by it.

If, within 30 days after the suspension takes effect, the individual has not complied with the requirement set out in the notice give by the MPFA, the MPFA may revoke the registration of the person as a subsidiary intermediary.

7.2.6 Supervisory and Disciplinary Powers of MPFA and FRs

The MPFSO empowers the FRs to supervise and investigate registered intermediaries assigned to them in relation to non-compliance with performance requirements. On the other hand, the MPFA will be the sole authority to impose disciplinary sanctions on registered intermediaries for failure to comply with the performance requirements. When making decisions relating to disciplinary sanctions, the MPFA will take into account information obtained by the FRs during their investigations and any representations submitted by the relevant registered intermediaries.

(a) Investigation by Frontline Regulators of Suspected Non-compliance

If the FR of a regulated person (or a former regulated person) has reasonable cause to believe that the regulated person (or former regulated person) may have failed to comply with a "**performance requirement**", the FR may appoint an investigator to carry out an investigation.

The investigator may, in writing, require a specified person:

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[5] Performance requirement:

- in relation to a registered intermediary, means (i) a requirement under section 34ZL of the MPFSO (i.e., conduct requirements for registered intermediary); or (ii) a condition to which the registration as a principal or subsidiary intermediary, or the approval of the attachment to a principal intermediary, is subject by virtue of section 34X of the MPFSO (i.e., the conditions imposed by the MPFA on registration or approval); or

- in relation to a responsible officer, means (i) a requirement under section 34ZM (i.e., conduct requirements for responsible officer); or (ii) a condition to which the approval as such responsible officer is subject by virtue of section 34X of the MPFSO (i.e., the conditions imposed by the MPFA on approval).

(i) to produce and give explanation or further particulars in respect of any record or document that is or may be relevant to any matter under investigation;
(ii) to attend before the investigator and answer any question relating to any matter under investigation;
(iii) to respond to any written question relating to any matter under investigation; or
(iv) to give the investigator any assistance in connection with the investigation.

The above specified person is:

(i) a person whom the FR has reasonable cause to believe may have failed to comply with a performance requirement; or
(ii) a person whom the investigator has reasonable cause to believe:
    (1) to be in possession of any record or document that contains, or that is like to contain, information relevant to any matter under investigation; or
    (2) to be otherwise in possession of such information.

(b) Consequence of Non-compliance with Investigation Requirements

A person commits an offence under the following circumstances:

(i) without reasonable excuse, fails to comply with an investigation requirement imposed on him/her and is liable:
    (1) on conviction on indictment to a fine of $200,000 and to imprisonment for 1 year; or
    (2) on summary conviction to a fine at $50,000 and to imprisonment for 6 months.

(ii) with intent to defraud, fails to comply with an investigation requirement imposed on him/her.

(iii) (1) in purported compliance with an investigation requirement imposed on the person, the person produces any record or document, or gives an answer or response, or gives any explanation or particulars, that are false or misleading in a material respect; and
    (2) the person knows that, or is reckless as to whether, the record or document, or the answer or response, or the explanation or particulars, are false or misleading in a material respect.

(iv) in purported compliance with an investigation requirement imposed on the person, the person, with intent to defraud, produces any record or document, or gives an answer or response, or gives any explanation or particulars, that are false or misleading in a material respect.

(v) being an officer or employee of a company, the person, with intent to defraud:

(1) causes or allows the company to fail to comply with an investigation requirement imposed on the company; or
(2) causes or allows the company, in purported compliance with an investigation requirement imposed on the company, to produce any record or document, or give an answer or response, or give any explanation or particulars, that are false or misleading in a material respect.

A person who commits an offence under item (ii), (iv), (v) above is liable:
(1) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 7 years; or
(2) on summary conviction to a fine at $100,000 and to imprisonment for 6 months.

A person who commits an offence under item (iii) above is liable:
(1) on conviction on indictment to a fine of $1,000,000 and to imprisonment for 2 years; or
(2) on summary conviction to a fine at $100,000 and to imprisonment for 6 months.

(c) Disciplinary Orders for Non-compliance

The MPFA may make any disciplinary order against a regulated person if the MPFA is satisfied that the regulated person has failed to comply with a performance requirement or is convicted of an offence under the MPFSO or any subsidiary legislation under the MPFSO.

If the regulated person is a **registered intermediary**, the MPFA may:
(i) order that the registration of the person as an MPF registered intermediary be revoked; and
(ii) order that the person be disqualified from being registered as an MPF intermediary for carrying on regulated activities, or as an MPF intermediary for carrying on regulated activities for a principal intermediary to which the person is to be attached, for a period it determines; or
(iii) order that the registration of the person as an MPF registered intermediary be suspended for a period it determines.

If the regulated person is a **responsible officer** of a principal intermediary, the MPFA may:

(i) order that the approval of the individual as such responsible officer be revoked; and
(ii) order that the person be disqualified from being approved as an officer with specified responsibilities in relation to a principal intermediary for a period it determines; or
(iii) order that the approval of the individual as such responsible officer be suspended for a period it determines.

In addition, the MPFA may order that the regulated person—

(i) be publicly reprimanded;
(ii) be privately reprimanded; or
(iii) pay a pecuniary penalty not exceeding whichever is the greater amount of (a) $10,000,000 or (b) 3 times the amount of the profit gained or loss avoided by the regulated person as a result of the failure.

(d) Procedural Requirements before Making a Disciplinary Order

If the MPFA forms a preliminary view that it should make a disciplinary order against, or take further action in respect of a regulated person, it must:

(i) give the regulated person a notice in writing with particulars of the proposed disciplinary order(s), including the right of and the way for the regulated person to make representations; and
(ii) must give the regulated person an opportunity to make oral or written representations, relating to the proposed disciplinary order(s).

7.2.7 Appeals Mechanism

There is a Mandatory Provident Fund Schemes Appeal Board ("**MPF Appeal Board**") under the MPFSO for dealing with appeals against certain regulatory decisions of MPFA. The MPF Appeal Board is responsible for handling independently all appeals against MPFA's decisions on registration and disciplinary sanctions made pursuant to the powers under the MPFSO. An appeal against MPFA's decision may be submitted to the Mandatory Provident Fund Schemes Appeal Board within 2 months after the date on which the MPFA gives written notice of its decision.

Subject to section 39 (where the Appeal Board may refer any question of law arising in an appeal to the Court of Appeal for determination by way of case stated), the decision of the MPF Appeal Board is final.

7.2.8 Public Disclosure of Disciplinary Decisions Made against Registered Intermediaries

The MPFA is empowered to disclose to the public details of disciplinary decisions made against registered intermediaries (except for private reprimand), the reasons for which the disciplinary decision was made, and any material facts relating to the case. In practice, the MPFA will disclose information to the public through the issue of a press release. The MPFA is also required to include in the Register of Intermediaries, a record of disciplinary orders it has made against registered MPF intermediaries within the last five years.

7.3 HANDLING OF COMPLAINTS AGAINST MPF INTERMEDIARIES

MPFA will receive complaints in relation to MPF sales and marketing activities.

It will conduct initial processing of the complaints. If the information provided suggests a possible breach of the conduct requirements, it will refer the complaints to the relevant FRs for consideration of initiating investigation.

FRs will be responsible for the investigation of relevant registered MPF intermediaries. In misconduct cases, MPFA will be the sole authority to impose disciplinary sanctions, taking into account the information obtained by FRs in the course of their investigation and the representation of the intermediaries concerned.

7.4 GUIDELINES OF CONDUCT FOR MPF INTERMEDIARIES

Intermediaries must be fully aware of the guidelines issued by the MPFA and other codes of conduct issued by the respective regimes under which they are supervised.

7.4.1 Guidelines on Conduct Requirements for Registered Intermediaries ("Conduct Guidelines")

The Conduct Guidelines, issued under the MPFSO, provide guidance in respect of the minimum standards of conduct expected of regulated persons who engage in the conduct of sales and marketing activities and giving advice in relation to registered schemes.

In particular, they provide guidance about the circumstances in which the MPFA will be satisfied that a regulated person has, or has not, complied with a performance requirement under 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.

The full text of the Conduct Guidelines is reproduced at the end of this Chapter. Readers who intend to become MPF intermediaries are advised to study the Conduct Guidelines carefully.

7.5 SANCTIONS AND PENALTIES

Should MPF intermediaries fail in their duties or otherwise be in breach of expected requirements, a number of sanctions and/or penalties may arise. We may consider them under a number of headings, as follows:

(a) Imposed by their Principals

These will be within the terms of the agency or other contract which exists between the principal and the intermediary, and will be as mutually agreed.

Obviously, the range of sanctions and penalties will include internal disciplinary action such as forfeiture of commission and/or reprimands etc.

(b) Imposed by Statute (Ordinance) other than the MPFSO

A complete summary of all statutory provisions in this area is not required, but some important specific areas should be noted, as follows:

(i) Securities and Futures Ordinance

Section 103 of the Securities and Futures Ordinance makes it an offence to issue to the public any advertisements on MPF schemes and approved pooled investment funds unless they are authorized by the SFC or are exempt under the Securities and Futures Ordinance. A breach of section 103 carries a maximum fine of $500,000 and 3 years of imprisonment (plus a further fine for each day the offence continues).

Section 107 of the Securities and Futures Ordinance makes it an offence to induce another person to participate in an MPF scheme or invest in pooled investment funds by making fraudulent or reckless misrepresentations. A breach of section 107 carries a maximum fine of $1,000,000 and 7 years of imprisonment.

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Representative Examination Questions

Type "A" Questions

1 To give some proof of qualification for registered MPF intermediaries, the MPFA will:

(a) provide a special marking on their I.D. card; .....
(b) maintain a public register of all registered MPF intermediaries through the internet; .....
(c) provide an identity card issued by their employer; .....
(d) provide a special licence, similar to a driving licence. .....

[Answer is in **7.2.2**]

2 A registered intermediary should have a good understanding, of any registered scheme and constituent fund which it promotes and/or on which it gives regulated advice, including:

(a) the level of fees and charges relating to the scheme and the various constituent funds in the scheme; .....
(b) the investment policies, types and levels of risks and terms and conditions of the various constituent funds in the scheme; .....
(c) general scheme operational issues such as those relating to transfers and withdrawals; .....
(d) all of the above .....

[Answer is in the **Guidelines on Conduct Requirements for Registered Intermediaries]**

Type "B" Questions

3 Which of the following are among the registration requirements for a subsidiary intermediary?

(i) applicant is a Type A regulatee
(ii) applicant is a Type B regulatee
(iii) applicant is being attached to a principal intermediary
(iv) new applicant passes the qualifying examination within 1 year before the date of the application

(a) (ii) and (iii) only; .....
(b) (ii) and (iv) only; .....
(c) (i), (iii) and (iv) only; .....
(d) (ii), (iii) and (iv) only. .....

[Answer is in **7.2.2**]

4 Which of the following are among the conduct requirements specified under the Guidelines on Conduct Requirements for Registered Intermediaries?

(i) acting honestly and fairly, in the best interests of the client, and with integrity
(ii) disclosure of conflict of interest
(iii) disclosure of necessary information to the client
(iv) care, skill and diligence

(a) (i) only; .....
(b) (i) and (ii) only; .....
(c) (i), (ii) and (iii) only; .....
(d) (i), (ii), (iii) and (iv). .....

[Answer is in the **Guidelines on Conduct Requirements for Registered Intermediaries**]

[If required, answers may be found at the end of the Study Notes.]

強制性公積金計劃管理局
MANDATORY PROVIDENT FUND
SCHEMES AUTHORITY

VI.2 GUIDELINES ON CONDUCT REQUIREMENTS FOR REGISTERED INTERMEDIARIES

Version 1

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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[1] (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.

[1] 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)[2]; 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.

[2] 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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APPENDIX I

ABBREVIATIONS

APIF	Approved Pooled Investment Fund
ABS	Annual Benefit Statement
Conduct Guidelines	Guidelines on Conduct Requirements for Registered Intermediaries
Disclosure Code	Code on Disclosure for MPF Investment Funds
ECA	Employee Choice Arrangement
Exemption Regulation	Mandatory Provident Fund Schemes (Exemption) Regulation
Fees Regulation	Mandatory Provident Fund Schemes (Fees) Regulation
FER	Fund Expense Ratio
FR	Frontline Regulator
General Regulation	Mandatory Provident Fund Schemes (General) Regulation
IA	Insurance Authority
MA	Monetary Authority
MPF	Mandatory Provident Fund
MPFA	Mandatory Provident Fund Schemes Authority
MPFSO	Mandatory Provident Fund Schemes Ordinance
MPF legislation	MPFSO and its subsidiary legislation
NAV	Net Asset Value
NCEOR	Non-Compliant Employer and Officer Records
ORSO	Occupational Retirement Schemes Ordinance
OCI	On-going Cost Illustration
RTC	Registered trust company in Hong Kong
SEP	Self-employed person
SFC	Securities and Futures Commission

APPENDIX II

MPF LEGISLATION, CODES, GUIDELINES AND STANDARDS

(As at 31 December 2012)

A. MPF Legislation

Mandatory Provident Fund Schemes Ordinance (Cap.485)

Mandatory Provident Fund Schemes (General) Regulation (Cap.485A)

Mandatory Provident Fund Schemes (Exemption) Regulation (Cap.485B)

Mandatory Provident Fund Schemes (Fees) Regulation (Cap.485C)

Mandatory Provident Fund Schemes (Exemption) Regulation (Specification of Date Under Sections 5 and 16) Notice (Cap.485D)

Mandatory Provident Fund Schemes (Contributions for Casual Employees) Order (Cap.485E)

Mandatory Provident Fund Schemes (Specification of Permitted Periods) Notice (Cap.485F)

Mandatory Provident Fund Schemes Rules (Cap.485G)

Mandatory Provident Fund Schemes (Compensation Claims) Rules (Cap.485H)

Mandatory Provident Fund Schemes (Winding Up) Rules (Cap.485I)

B. MPF Codes

Code on MPF Investment Funds

Erratum to the Code on MPF Investment Funds

Code on Disclosure for MPF Investment Funds

C. MPF Guidelines

Part I Guidelines on Licensing

I.1 Guidelines on Application for Approval as Trustees and Application for Approval as Controllers of Approved Trustees

I.2 Guidelines on Application for Registration of Provident Fund Schemes

I.3 Guidelines on Custodians

I.4 Guidelines on Eligible Insurers

I.5 Guidelines on Application for Approval of Constituent Funds

I.6 Guidelines on Application for Approval of Pooled Investment Funds

I.7 Guidelines on Central Securities Depositories

I.8 Guidelines on Custodial / Subcustodial Agreement

I.9 Guidelines on Approved Credit Rating Agencies

I.10 Guidelines on Application for Cancellation of Approval of Constituent Funds

I.11 Guidelines on Application for Cancellation of Approval of Pooled Investment Funds

Part II Guidelines on Reporting Requirements

II.1 Guidelines on Monthly Returns of Registered Schemes

II.2 Guidelines on Monthly Returns of Approved Pooled Investment Funds being Capital Preservation Funds

II.3 Guidelines on Quarterly Returns of Registered Schemes

II.4 Guidelines on Annual Statements of Registered Schemes

II.5 Guidelines on Annual Statements of Approved Pooled Investment Funds

II.6 Guidelines on Internal Control Report for Each Registered Scheme

II.7 Guidelines on Quarterly Returns of Approved Pooled Investment Funds

II.8 Guidelines on Monthly Statistical Returns of Registered Schemes

II.9 Guidelines on Notification of Events of Significant Nature

Part III Guidelines on Investment

III.1 Guidelines on Debt Securities

III.2 Guidelines on Equities and Other Securities

III.3 Guidelines on Eligible Overseas Banks and Authorized Financial Institutions

III.4 Guidelines on Approved Exchanges

III.5 Guidelines on Investment Managers

III.6 Guidelines on Capital Preservation Funds

III.7 Guidelines on Securities Lending

III.8 Guidelines on Repurchase Agreements

III.9 Guidelines on Reserving Standards for Investment Guarantees

III.10 Guidelines on Index-Tracking Collective Investment Schemes

III.11 Guidelines on Spread Requirements

III.12 Guidelines on Deposit

III.13 Guidelines on Requirements for Securities to be Considered as "to be Listed"

Part IV Guidelines on Scheme Operations

IV.1 Guidelines on Disclosure of Annual Fees (Repealed with effect from June 2004)

IV.2 Guidelines on Reports Relating to Payment of Mandatory Contributions

IV.3 Guidelines on Election Forms for Transfer of Accrued Benefits

IV.4 Guidelines on Payment of Accrued Benefits – Documents to be Submitted to Approved Trustees

IV.5 Guidelines on Payment of Accrued Benefits – Permanent Departure from Hong Kong

IV.6 Guidelines on Notice for Unclaimed Benefits (Repealed with effect from November 2008)

IV.7 Guidelines on Fees and Charges for Transfer of Accrued Benefits

IV.8 Guidelines on Enrolment and Contribution Arrangements for Relevant Employees Other Than Casual Employees

IV.9 Guidelines on Enrolment and Contribution Arrangements for Casual Employees

IV.10 Guidelines on Enrolment and Contribution Arrangements for Self-employed Persons

IV.11 Guidelines on Contribution Period in Respect of a Relevant Employee

IV.12 Guidelines on Relevant Income in Respect of a Relevant Employee

IV.13 Guidelines on Compensation Fund

IV.14 Guidelines on Remittance Statement

IV.15 Guidelines on Person Exempt under Section 4(3) of the Mandatory Provident Fund Schemes Ordinance

IV.16 Guidelines on MPF Coverage on Employees Working Outside Hong Kong

IV.17 Guidelines on Contribution Arrangement of a Self-employed Person

IV.18 Guidelines on Contribution Arrangement of a Self-employed Person Who Sustains a Loss

IV.19 Guidelines on Minimum and Maximum Levels of Relevant Income of a Self-employed Person

IV.20 Guidelines on Prepayment of Contributions

IV.21 Guidelines on Unclaimed Benefits

IV.22 Guidelines on Statement Required under Section 7AB of the Mandatory Provident Fund Schemes Ordinance

IV.23 Guidelines on Transfer Statement and Confirmation

IV.24 Guidelines on Transfer Process under Sections 148A and 148B of the Mandatory Provident Fund Schemes (General) Regulation

IV.25 Guidelines on Electronic System for Transmission of Data on Transfer of Accrued Benefits

Part V Guidelines on ORSO Interface

V.1 Guidelines on MPF Exempted ORSO Schemes – Application for Exemption of ORSO Exempted Schemes

V.2 Guidelines on MPF Exempted ORSO Schemes – Application for Exemption of ORSO Registered Schemes

V.3 Guidelines on MPF Exempted ORSO Schemes – Treatment of Accrued Rights of Existing Members who Join MPF Schemes

V.4 Guidelines on MPF Exempted ORSO Schemes – Preservation of Benefits

V.5 Guidelines on MPF Exempted ORSO Schemes – Illustrative Examples

V.6 Guidelines on MPF Exempted ORSO Schemes – Application for Approval of Appointment of Trustees

V.7 Guidelines on MPF Exempted ORSO Schemes – Application for Approval of Appointment of Directors of Trustees

V.8 Guidelines on MPF Exempted ORSO Schemes – Application for Withdrawal of Exemption Certificate of an ORSO Exempted Scheme

V.9 Guidelines on MPF Exempted ORSO Schemes – Application for Withdrawal of Exemption Certificate of an ORSO Registered Scheme

V.10 Guidelines on MPF Exempted ORSO Schemes – Filing of Annual Report

V.11 Guidelines on MPF Exempted ORSO Schemes – Withdrawal of Minimum MPF Benefits

V.12 Guidelines on MPF Exempted ORSO Schemes – Investment Managers

Part VI Guidelines on Intermediaries

VI.1 Guidelines on MPF Intermediary Registration and Notification of Changes

VI.2 Guidelines on Conduct Requirements for Registered Intermediaries

VI.3 Guidelines on Annual Returns to be Delivered by Registered Intermediaries

VI.4 Guidelines on Continuing Training for Subsidiary Intermediaries

D. Standards

Compliance Standards for MPF Approved Trustees

Performance Presentation Standards for MPF Investment Funds

APPENDIX III

COVERAGE

The following is a list showing examples of different types of jobs with explanations as to why the persons engaged in these jobs are generally included in or excluded from the MPF System.

Job Characteristics	Covered by MPF(Y/N)?	Remarks
1. Domestic Employees[1]		
Baby sitters, domestic servants and gardeners who render their services at the employer's household	N	Services rendered in a residential premises
Baby sitters, domestic servants and gardeners whose services are not rendered at the employer's household	Y	Services not rendered in a residential premises
Chauffeurs, bodyguards and boatboys employed by an individual	Y	Services not rendered in a residential premises
Licensed caretakers employed by Owners Incorporation	Y	Services not rendered in a residential premises
Security guards employed by an individual to provide security services for his/her residential premises	N	Services are substantially rendered in the residential premises of the employer
2. Short-term Employees		
Employees, part-time workers and summer job workers whose employment is terminated within 60 days but are re-employed by the same employer. The employment is considered a continuous contract (as defined in the Employment Ordinance) for more than 60 days	Y	Please seek advice from the Labour Department if you are in doubt of what constitutes a continuous contract

[1] "Domestic employee" is defined as one whose contract of employment is wholly or substantially for the provision of domestic services in the residential premises of the employer. "Domestic" means "of or relating to a home or family affairs or relations". Whether services are domestic in nature is a matter of fact.

Job Characteristics	Covered by MPF(Y/N)?	Remarks
3. Overseas Employees		
Employees entering Hong Kong under a dependent visa	Y	Permission is given to the employee to enter Hong Kong for purposes other than of employment
Employees entering Hong Kong under an employment visa with permission to stay for a period not exceeding 13 months which is extended such that the total period of stay exceeds 13 months	N – for the first 13 months in Hong Kong;	---
	Y - After the first 13 months in Hong Kong	---
Employees employed in or from Hong Kong by companies engaging in business in Hong Kong, working in Hong Kong but are residing outside Hong Kong	Y	For example, employees living in Shenzhen but commute to Hong Kong on a daily basis
Employees employed outside Hong Kong by foreign companies and are working outside Hong Kong	N	Whether the employees are residents of Hong Kong is irrelevant
4. Self-employed Persons		
Overseas partners of a partnership engaging in business in Hong Kong	N	---
Farmers, fishermen	Y	Usually they are self-employed persons unless employed by another farmer or fisherman
Hawkers who are not self-employed	Y	---
Drivers of taxis, public light buses and vans who are not owners of the vehicles	Y	Usually they are self-employed persons
Owners of taxis, public light buses and vans whose income is derived from both driving the vehicles and renting the vehicles to other drivers	Y	Usually they are self-employed persons
A taxi owner who derives his/her income from renting his/her taxi	Y	Usually they are self-employed persons
Private tutors and piano teachers giving private lessons	Y	Usually they are self-employed persons

Job Characteristics	Covered by MPF(Y/N)?	Remarks
5. Industry Schemes		
Recruiters in the catering industry	Y	Usually they are self-employed agents responsible for recruiting casual workers for banquets in large catering establishments such as hotels
Recruiters in the construction industry	Y	Usually they are employees of the specialist contractors (bar-bending & electrical works) responsible for recruiting workers on site
Substitute workers in the catering and construction industries	Y	Usually they are casual workers doing another person's job for a few days and are paid by that person in cash for their services
Summer job workers in the catering or construction industries	Y	---
6. Others		
Civil servants who are not entitled to pension benefit	Y	---
Local staff of Consulate General	Y	---
Teachers and other staff members of a private school	Y	---
Shareholders whose only source of income is the dividend received	N	Neither an employee nor a self-employed person
Landlords whose only source of income is the rent of their properties but they are not carrying on a business of renting out properties.	N	Neither an employee nor a self-employed person

APPENDIX IV

RELEVANT INCOME

The following is a list of examples of different types of "incomes" with explanations as to why these incomes are generally regarded or not regarded as "relevant income" under the MPF System.

Income Types	"Relevant income" (Y/N)	Remarks
1. Wages and Salaries		
13th month pay	Y	The number of months may vary according to the employment contract
Bonus - at employer's discretion - performance linked	Y	A performance-linked bonus may be related to full or partial completion of a project or projects
End-of-contract gratuity	Y	---
2. Reimbursement/Allowance		
Payment of reimbursement nature - self-improvement education expenses - uniform laundry expenses - meals provided or obtained during office hours - mobile phone service charges - professional organization membership fee - entertainment expenses - mileage duty expenses	N	Reimbursement of expenses incurred by the employee for employment related goods and services which are necessary in the performance of an employment duty
Cash allowances	Y	Allowance provided by the employer in cash which the employee may spend as he/she sees fit
Internship allowance	Y	Allowances provided by the employer in cash, in connection with a vocational training programme
Leave allowance - annual leave - compassionate leave - examination leave - marriage leave - sick leave	Y	---

Income Types	"Relevant income" (Y/N)	Remarks
3. Transportation and Car Subsidy		
Transportation subsidy - free ticket / pass for use of public transport - parking coupons	N	Non-monetary benefits
Car subsidy - free use of car	N	Non-monetary benefits
- fuel and oil - maintenance expenses - payment of car registration and licence fees for car owned by an employee	Y	Employer provides cash payment for the benefit of employee
4. Commission		
- based on amount of transaction - based on number of transaction - on project basis irrespective of the amount or the number of transactions	Y	---
5. Tips		
Tips collected by the employer	Y	Tips collected via the employer and service charges included in the bill (including amounts inserted by customers on credit card bills) which are subsequently distributed partly or fully to the employees
Tips not collected by the employer	N	Money paid by customers directly to an employee, put in tin box or left by the customers on the table, and which is retained by the employee or shared among the employees without any intervention by the employer
"Pickle charges" (peanuts, snacks, pickle provided on table) shared by employees	Y	Restaurant owners usually give the pickle charges collected to employees. An implied term of the contract of employment

Income Types	"Relevant income" (Y/N)	Remarks
6. Employees' Benefits		
Marriage gifts	N	Payment made to an employee on a significant personal event
Holiday tour package	N	Non-monetary benefits. Expenses paid by the employer in respect of a completed holiday to cover expenses included in the package, such as transportation, accommodation, food, etc
Meals consumed on the spot	N	Non-monetary benefits
Meals provided in the form of vouchers	N	Non-monetary benefits
7. Court award / termination payment		
Award determined by a court or tribunal representing "wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite or allowance"	Y	---
Payment in lieu of notice	N	Payment does not fall within any of the nine heads (i.e. wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite or allowance) of relevant income
Severance payment	N	Specifically excluded from the definition of "relevant income"
Long service payment	N	Specifically excluded from the definition of "relevant income"
8. Others		
Dividend income	N	Return on investment received by shareholders
Share options	N	Non-monetary benefits
Gains realized from share options	N	---
Medical claims reimbursement	N	Payments that are made by third parties, rather than the employer, to the employee pursuant to an insurance contract purchased by the employer covering that employee
Employment-related medical expenses incurred by employee but paid directly by employer	N	---

APPENDIX V

DATE OF PAYMENT OF CONTRIBUTION

On 1 November 2008, the legislative amendment removing the 30-day Settlement Period for the payment of mandatory contributions came into operation. According to the MPFSO, employers must pay contributions for their employees on or before the 10th day of each month (i.e. on or before the contribution day). Meanwhile, self-employed persons (SEPs) must pay contributions by the specified day in each month if contributions are paid on a monthly basis or at or before the end of the scheme financial year if contributions are paid on a yearly basis.

Employers and SEPs may choose to pay mandatory contributions through various methods/channels as provided by the trustees. Payment by different methods/channels will have implications on the date on which the contribution is considered paid. Please refer to the table below for details.

Payment methods/channels	Points to note
By post	➢ Contribution is considered paid on the date on which the payment cheque would normally be delivered by post. Therefore, sufficient mailing time should be allowed. ➢ Ensure sufficient funds in the bank account for cheque clearance (if the cheque is bounced, the contribution will be considered as not having been paid).
In person (through bank branches/customer service counters)	➢ Contribution is considered paid on the date payment cheque is deposited at the bank branch/customer service counter. ➢ Ensure sufficient funds in the bank account for cheque clearance (if the cheque is bounced, the contribution will be considered as not having been paid).
Direct debit	➢ Contribution is considered paid on the date on which the employer's remittance statement is received by the trustee*. ➢ For a SEP who does not need to submit remittance statement, contribution is considered paid on the

	date on which the trustee issues direct debit instruction. ➢ Ensure sufficient funds in the bank account for debiting (if the debit is unsuccessful, the contribution will be considered as not having been paid).
Direct credit	➢ Contribution is considered paid on the date on which the MPF scheme's bank account is credited. ➢ Ensure the funds are credited to the MPF scheme's bank account on or before the 10th day of each month.
Deduction of reserve in the employer's account to settle future contribution (subject to the scheme rules)	➢ Contribution is considered paid on the date on which the employer's remittance statement is received by the trustee*. ➢ Ensure sufficient funds in the employer's account for offsetting; otherwise, the employer should make up the difference in amount on or before the 10th day of each month (underpayment will be treated as default contribution).

*Please see "Remittance statement" section with respect to when a remittance statement is considered received.

Remittance statement

Employers must also submit to trustees a duly completed remittance statement accompanying the contribution on or before the 10th day of each month. If employers send their payment and the remittance statement to the trustees separately, the receipt date of the remittance statement shall be:

(a) the date the remittance statement would normally be delivered if it is sent by post;
(b) the date the remittance statement is deposited at a bank branch/customer service counter; or
(c) the date the remittance statement is faxed to the trustee.

Employers are recommended to keep a copy of the payment cheque and remittance statement as record before sending to trustees. If the remittance statement is sent by fax, employers are recommended to print and keep a journal recording the document sent date to support the submission by the employers to the trustees.

Avoid payment by cash and through intermediaries

Payment of contributions by cash should be avoided. Moreover, payments through MPF intermediaries, whether by cash or otherwise, should be avoided. Instead, payments should be made directly to the trustees or their designated bank branches/ customer service counters.

Consequences of late payment

Employers and SEPs must make mandatory contributions on time. With the legislative amendments of removing the 30-day Settlement Period coming into operation on 1 November 2008, trustees are no longer required to send notices to employers and SEPs when contributions have not been made on time, and will directly report such cases to the MPFA. Employers or SEPs who fail to pay mandatory contributions on time will have to pay a contribution surcharge. Offenders may also be liable to a financial penalty or prosecution.

APPENDIX VI

MPF GUIDE FOR (NON-CASUAL) EMPLOYEES AND THEIR EMPLOYERS

Under the MPF System, employers have to enrol those employees who have been in their employ for not less than 60 days in an MPF scheme and make mandatory contributions for them on time. Failure to enrol an employee may result in a maximum of 3 years' imprisonment and a maximum fine of $350,000, while failure to make mandatory contributions may result in a maximum of 4 years' imprisonment and a maximum fine of $450,000.

Notes for Employees

- An employer has to enrol an employee in an MPF scheme within 60 days after the date of his/her employment. This 60-day period is known as the permitted period.

- Once the employee has been enrolled in an MPF scheme, the employee has the right to choose the constituent funds offered by the scheme. The employee should complete an enrolment form and return it to the trustee through his/her employer for processing.

- The trustee must give the employee a **membership certificate** within 60 days after he/she becomes a member of the scheme. The employee should check carefully the information contained in his/her certificate such as his/her personal particulars and the name of the scheme. He/she should inform the trustee immediately of any discrepancies.

- Where the wage period of an employee is not more than 1 month (e.g. weekly or monthly), the employee is **not** required to contribute for the first 30 days and any wage period commencing on or before the 30th day of employment. This means that his/her mandatory contributions start from the first complete wage period commencing on or after 31st day of his/her employment.

- Where the wage period of an employee is more than 1 month (e.g. quarterly), the employee is **not** required to contribute for the period from the date of employment to the last day of the calendar month in which the 30th day of employment falls.

- Employers are required to make mandatory contributions for their employees from the first day of the employees' employment.

- For monthly-paid employees, their employers have to deduct 5% of the employees' "relevant income"*, together with the employers' 5% portion, for remitting to the employees' MPF account not later than the 10th day of the following month.

- All mandatory contributions paid to the trustee will be immediately vested as the employee's accrued benefits. Not later than 7 working days after the contributions are made, the employer has to provide the employee with a **monthly pay-record**. The employee should check whether the amount of contributions is correct.

- As for the performance of the MPF funds, the employees may refer to the prices quoted by the service providers in newspapers. The employees may also call their service provider for enquiries.

- Trustees have to provide the employees with an ABS setting out the total contributions amount and the value of accrued benefits over the course of the year.

- The employees should regularly review their MPF account status and portfolio performance as set out in the ABS and fund fact sheet issued by the trustees.

- After implementation of the ECA, employees can elect to transfer the accrued benefits from employee mandatory contributions made by them during current employment and held in a contribution account under an MPF scheme to a trustee and a scheme of their choice. They can only make such transfer election once every calendar year, unless the governing rules of the scheme allow for more frequent transfers. Moreover, the transfer must be on a lump sum basis comprising all the accrued benefits derived from employee mandatory contributions made during current employment held in that contribution account. The request for transfer should be made by employees via the new trustee selected by them and does not need to be arranged through their employers.

- When employees change job, they can arrange for transfer of their MPF benefits by notifying the MPF trustees of their new employers or the MPF trustees of the schemes they have chosen. The original trustees have to complete the transfer of benefits within 30 days after being notified of the employees' transfer option.

Notes for Employers

- After choosing an MPF scheme, the employers have to fill out an application form for participation. The MPFA will issue a **participation certificate** to the employers through the trustees. The employers are required to display it in a conspicuous location at the premise where their employees are employed.

- If there is any change of the employers' name, the employers have to report to the trustees within 30 days after such change for the MPFA to issue a new participation certificate showing the employers' new name to the employers concerned.

- The employers should arrange with the trustees to conduct briefing sessions for their employees on details of the MPF schemes they have joined and the fund options offered by the schemes.

- The employers should complete all the necessary administrative work to prepare for calculation of their employees' "relevant income" and payment of MPF contributions.

- The employers should calculate the "relevant income" of their employees and the amount of employers' and employees' mandatory contributions to be made (each of which amounts to 5% of the employees' relevant income) each month. For monthly-paid employees, the employers have to make contributions within 10 days after the last day of each calendar month within which the relevant contribution period ends.

- Together with the contributions, the employers have to submit a **remittance statement** to the trustee setting out clearly the "relevant income" of their employees and the contribution amounts. The employers can approach their trustee for format and details of their remittance statement**.

- The employers should provide each of their employees with a **monthly pay-record** within 7 working days after the contributions are made. The pay-record should contain, among other things, information such as the amount of relevant income payable during the month, the amount of contributions (mandatory and voluntary) made by the employers, the amount of contributions (mandatory and voluntary) made by its employees and the date on which the contributions were paid. An employer who provides false pay-records to his/her employee is liable to a maximum fine of $100,000 and 12 months' imprisonment on the first occasion on which the person is convicted of the offence and $200,000 and 2 years imprisonment on each subsequent occasion.

- The employers should keep a proper record of all documents related to MPF participation including payment records (e.g. total amount and date of contributions), the employment date of employees and their particulars (e.g. names of the employees, correspondence addresses and their voluntary contributions made) and monthly remittance statements.

- When an employee ceases to be employed by the company, the employer should notify the trustee within 10 days after the last day of the calendar month in which the employee ceases employment and state the exact date on which the employment ceased. The employer may use the remittance statement to inform the trustee of the employee's

cessation of employment and the date of cessation.

- After implementation of ECA, the MPF administrative arrangements handled by employers in respect of their employees will remain unchanged. In other words, employers still need to choose MPF trustees and schemes, enrol new employees in the MPF schemes chosen, and make contributions to the schemes for their employees.

* *"Relevant income" of an employee includes wages, salaries, leave pay, fee, commission, bonus, gratuity, perquisite or allowance, but excludes severance payments and long service payments.*

Mandatory contributions are subject to the minimum and maximum levels of relevant income. Employees earning less than $6,500 a month do not need to contribute but their employers still have to contribute 5% of the employees' income. For employees earning between $6,500 to $25,000 a month, employers and employees are each required to contribute 5% of the employees' income as employers' and employees' mandatory contributions respectively. For employees earning more than $25,000 a month, employers' and employees' mandatory contributions are both capped at $1,250 per month. In addition to mandatory contributions, employers and employees can make contributions on a voluntary basis.

** *With effect from 1 December 2008, even if an employer fails to enrol his/her employee in an MPF scheme, the employer is still obliged to make mandatory contributions for the employee. Such contributions to be accompanied by a statement (which is similar to a remittance statement) must be paid to the MPFA on or before the contribution day.*

The MPFA will deposit the contributions to an MPF scheme in accordance with the MPF legislation for the benefits of the employee concerned. An employer who fails to make mandatory contributions for a non-enrolled employee is liable on conviction to a maximum of 4 years' imprisonment and a maximum fine of $450,000.

APPENDIX VII

MPF GUIDE FOR THE SELF-EMPLOYED

Under the MPF System, self-employed persons (SEPs)* must join an MPF scheme within 60 days from the day they become self-employed.

- The SEP must choose an MPF scheme. The SEP also has the right to choose constituent funds offered by the scheme. The SEP needs to complete an enrolment form and return it to the trustee for processing.

- The trustee should give the SEP a **notice of acceptance** within 30 days from the date on which he/she submits all the required information or from the date he/she agrees to observe and accept the governing rules of the scheme, whichever is the later.

- The SEP needs to prepare for calculation of his/her "relevant income" and payment of MPF contributions. The mandatory contribution amount is 5% of the SEP's relevant income. The maximum level of relevant income is $25,000 per month (or $300,000 per year) while the minimum level of relevant income is $6,500 per month (or $78,000 per year).

- Depending on the circumstances of an SEP, the relevant income of the SEP is determined by the following means:
  - use the "assessable profits" stated in his/her most recent notice of assessment;
  - use the basic personal allowance;
  - contribute the maximum amount of $1,250 per month or $15,000 per year; or
  - make an income declaration to the trustee that it is equal to the assessable profits for the preceding year of assessment.

- The SEP may elect to contribute on a monthly or yearly basis.
  - **Monthly contributions:**
    The SEP must specify in writing to the scheme trustee his/her monthly contribution day.
  - **Yearly contributions:**
    The contribution day should be the last day of the financial period of the MPF scheme. If the financial year of the MPF scheme starts from 1 January, the SEP has to make contributions by 31 December (i.e. the end of that financial year). In case the SEP joins the scheme in the middle of the year, say on 1 December, he/she has to make the first contributions by 31 December for the period between 1 December (joining date) and 31 December.

- The SEP must inform the trustee at least 30 days before the end of each financial period of the scheme:
  - the relevant income for the next financial period of the scheme;
  - whether he/she will contribute monthly or yearly in the next financial period of the scheme.

- As for the performance of the MPF funds, the SEP may refer to the prices quoted by the service providers in newspapers. The SEP may also call his/her service provider for enquiries. Each year, the trustee has to provide the SEP with an **ABS** setting out the total contribution amount and the value of accrued benefits over the course of the year. SEP should regularly review his/her MPF account status and portfolio performance as set out in the ABS and fund fact sheet issued by the trustee.

- The ECA does not have any impact on the contribution arrangements or the procedures for transfer of accrued benefits of SEPs. The obligations of SEPs under the MPF System will remain unchanged.

- **Suspension of contributions:**
  If the SEP's business sustains a net loss during **a financial period**, he/she may discontinue payment of mandatory contributions until the "relevant income" derived from his/her business exceeds the minimum level of $6,500 per month or $78,000 per year. Or if he/she ceases to be self-employed (e.g. he/she becomes an employee), he/she should inform the trustee of his/her cessation and make the last contribution to the scheme on or before the last day of the contribution period in which he/she ceases to be self-employed.

* *An SEP refers to a person whose income is derived from his/her provision of services or goods other than in the capacity as an employee, such as a sole proprietor or partner of a partnership.*

APPENDIX VIII

BASIC CONCEPTS OF INVESTMENT

DIFFERENT TYPES OF INVESTMENT INSTRUMENTS

(a) Money Market Instruments

Money market instruments refer to interest-bearing financial instruments that usually have short-term maturity periods. Their yields are usually slightly more attractive when compared with deposit rates offered by banks to retail customers. The major types of money market instruments are:

(i) Treasury Bills

They are short-term debt securities issued by the government to the public for the purpose of raising money. Investors buy the bills at a discount. At the bill's maturity, the holder receives from the government a lump sum equal to the face value of the bill. The difference between the purchase price and the face value represents the investment return on the bill. For example, the Hong Kong Government issues Exchange Fund Bills.

(ii) Certificates of Deposit

These are certificates issued by a bank indicating that a depositor has placed a sum of money with it for a period of time at a specified rate of interest. The deposits may not be withdrawn on demand. Interest rates are usually higher than those on government bills of comparable maturity.

(iii) Commercial Paper

These are short-term unsecured debt securities issued by large corporations. Interest rates on commercial paper are higher than those on treasury bills of comparable maturity, reflecting its lower liquidity and higher default risk.

(b) Bonds

Also known as debt securities, bonds are issued by a wide variety of organizations, such as governments, government agencies, organizations such as the World Bank, and a range of companies. When you buy a bond, you are in effect lending money to the corporation that issues the bond, which promises to pay interests at regular intervals during the life of the bond and to repay you the principal or face value of the bond together with interests (if any) on a specific date. Certain features to note are:

(i) Each bond has a face value (or par value) which is the amount to be repaid when the bond is redeemed.

(ii) A bond usually has a maturity date which is the date the bond is to be redeemed, although some have no maturity dates and are called perpetual bonds.

(iii) A bond usually has an annual interest rate (or a "coupon rate"), as a percentage of the par value, payable to the bondholder at regular intervals until the maturity date. The periodic interest payments made to holders are usually in the form of "coupons". Some, however, pay no interest and are called zero coupon bonds.

(iv) Bonds of different issuers (organizations) may be awarded different investment ratings by international credit rating agencies e.g. Standard and Poor's, Moody's, etc. The credit rating reflects to some extent the level of risk attached to the bond.

(v) The price of a bond moves up and down, but in an opposite direction to interest rates. So if interest rate falls, the higher coupon rate of a bond looks comparatively more attractive and the price of the bond goes up. At times of high inflation, the yield of a bond may lag behind the inflation rate.

(vi) Unlike equities, bonds do not give the bondholder an ownership interest in the issuing corporation. If the issuer goes bankrupt, the stockholder's money may be lost. But if there is any money left in the company, the bondholder will be paid before stockholders.

(c) **Equities**

Equities, also known as ordinary shares, are perhaps the widest known type of financial instruments. They are called "shares" because they represent ownership in a corporation. Each share is entitled to a proportion of financial profits of the corporation. Some basic features of equities are:

(i) If a company makes profits, it may pay dividends and the price of its shares is also likely to rise. The investment return comprises both dividend income and capital appreciation.

(ii) If a company is unsuccessful, then the value of its shares is likely to decline and the company may cut or terminate dividend payout.

(iii) Share prices on stock markets can change rapidly depending on the prevailing stock market condition and the financial performance of the company.

(iv) In general, equities are considered riskier than money market instruments and bonds.

(d) **Derivatives**

These are financial instruments which derive their values from their underlying investments such as bonds or equities. They include options, warrants, futures, etc. The features to be noted are:

(i) They may be used to reduce investment risk, i.e. to reduce investment loss when the price or value of the primary/underlying asset falls. They are intended to have an "offset effect", so that profits or losses as a result of price changes in the derivative will offset losses or gains on the primary/underlying asset. The process is very common and is known as **hedging**.

(ii) They may be used for speculation, i.e. buying or selling derivatives on a "**forward**" or "**future**" basis (deal arranged now, to take place at a designated future time at a pre-determined rate).

(iii) They are much more speculative in nature than some of the other types of investment. Due to the risk nature, they are only suitable for sophisticated or professional investors.

(e) **Unit Trusts & Mutual Funds**

(i) A unit trust is an investment vehicle set up under a trust for different investors to pool their monies together for investment.

(ii) A unit trust may invest in a portfolio of investments such as bonds and equities.

(iii) It is managed by professional fund managers and sub-divided into "units" based on the market value of the portfolio.

(iv) Hong Kong law requires that a fund's assets be held by an independent trustee, responsible for ensuring that the terms of the trust deed are complied with.

(v) A mutual fund is set up as a company with the objective of investing in shares of other companies. They are essentially the same as unit trusts from an investment point of view, except for their legal structure.

(f) **Insurance Policies**

(i) Whilst most insurance contracts provide for death, disability or medical benefits with little investment element, certain insurance policies issued to retirement schemes may be linked to investment with little or no insurance element. The latter form of insurance policy may be regarded as an investment vehicle.

(ii) An insurance policy will be underpinned by an insurance fund consisting of an investment portfolio of securities, including bonds, equities, etc.

(iii) The insurance fund is managed either by the insurance company issuing the insurance policy or by a professional investment manager appointed by the insurance company.

(iv) These insurance policies are classified as class G or H insurance business as stipulated in the Insurance Companies Ordinance. To enhance the protection of scheme members' MPF assets invested through insurance policies, MPFA reached a consensus with the industry on the removal of non-guaranteed (Class H) insurance policy APIFs or their conversion into unit trust structures. The removal/conversion of these APIFs was completed in 2011.

(v) A class G insurance policy is a policy with guarantees on capital or return. It must be backed up by a guarantor which can be the insurance company itself or a financial institution authorized by the MA as a third party guarantor.

DIFFERENT TYPES OF INVESTMENT FUND

There are many types of investment funds, ranging from conservative funds (e.g. money market funds) to high risk funds (e.g. equity funds). Their classification is usually based on the stated investment objectives and underlying investments of the funds. The table on the next page lists the four common types of investment funds.

Different Types of Investment Fund

Type / Characteristics	Equity Fund			Balanced Fund (Mixed Assets Fund)	Bond Fund			Money Market Fund
Other commonly used names	Aggressive Fund, Growth Fund			Stable Fund, Conservative Fund, Growth Fund, Long-term Accumulation Fund	Fixed Income Fund			Cash Fund, Hong Kong Dollar Saving Fund
Primary investment objective	To "beat" market performance with long-term capital gains (i.e. to achieve a relatively high capital growth)			To "beat" inflation rate with some capital growth (i.e. to achieve modest growth in income and capital)	To earn returns slightly higher than savings/deposit interest income (i.e. to maximize interest income)			Capital preservation and to earn a relatively high interest that can be generated from large deposits
Major underlying investment vehicles	Shares			Shares + Bonds	Bonds			Short-term interest bearing securities, such as certificates of deposits and treasury bills
Geographical region	Single Country/ Area (e.g. Hong Kong)	Regional (e.g. Asia, Europe, North America)	Global	Usually global	Single Country/ Area (e.g. Hong Kong, Japan)	Regional (e.g. Asia, Europe, North America)	Global	Usually invests in a single money market only
Frequency of quotation	Usually on every trading day			Usually on every trading day	Usually on every trading day			Either at month end or on every trading day
Major risk factors*	Stock market volatility and performance of individual industry			Stock market volatility, interest rates fluctuations and credit ratings	Interest rates and credit ratings			Interest rates fluctuations
Volatility	High ⟷ Low							
Expected rate of total returns	High ⟷ Low							
Management and transaction fees	High ⟷ Low							

* All funds are subject to risks arising from the social, political, economic and currency changes of the country in which investments are made.

Calculation of the Net Asset Value ("NAV") Per Unit of a Fund

The NAV per unit of a fund is determined by dividing the aggregate market value and the cash holding of the underlying investments of the fund by the number of units issued. All administrative and management fees payable (accrued to date) are to be deducted before the derivation of the NAV of the fund.

$$NAV\ per\ unit = \frac{Total\ market\ value\ of\ underlying\ investments + Cash - Administrative\ \&\ management\ expenses\ payable}{Number\ of\ units\ issued}$$

APPENDIX IX

MPF PUBLICATIONS
(As at 31 December 2012)

Name of Publication in English	Name of Publication in Chinese
MPF System	**強積金制度**
• Employee Choice Arrangement - MPF Boss Tactics	• 「僱員自選安排」之話事人絕招
• Learn more about MPF intermediaries	• 認識強積金中介人
• How to check the registration information on MPF intermediaries	• 如何查閱強積金中介人的註冊資料？
• Learn about MPF Employee Choice Arrangement	• 認識強積金「僱員自選安排」
• Learn more about MPF Regulations	• 強積金法規知多D
• Amendment of Maximum Level of Relevant Income for MPF Contributions	• 強積金供款最高有關入息水平修訂
• Your Right to Choose an MPF Scheme When Changing Jobs	• 轉工一族有權選擇強積金計劃
• What Employees Should Know about MPF?	• 強積金僱員精明貼士
• MPF 7 Smart Tips for Smart Employers	• 強積金精明僱主七大要訣
• MPF Scheme - Increasing Choices for Your Employees	• 強積金計劃-為僱員提供更多選擇
• Guide on MPF Rights and Obligations for Self-employed Persons	• 自僱人士強積金權責須知
• MPF Industry Schemes - Catering Industry and Construction Industry	• 強積金行業計劃-建造業及飲食業
• MPF Rights of PART-TIME employees	• 兼職僱員如何保障強積金權益
• Understanding MPF Schemes and ORSO Schemes	• 認識強積金與職業退休計劃
MPF Investment	**強積金投資**
• Step-by-Step Investing in MPF Funds	• 積金投資基本步
• FAQs on MPF Investment	• 積金投資問與答
• Making Informed Decisions for Your MPF Life	• 積金投資怎決定

MPF Investment	**強積金投資**
• Get to know MPF Investment	• 積金投資你要知
• Learn More about the Operation and Transaction of MPF Funds	• 解構強積金基金運作及投資流程
• "JJ Five" Composing the Future with You - MPF Investment Leaflet	• 「積積樂隊」與你譜出未來 - 強積金基金簡介
• "JJ Five" Composing the Future with You - MPF Investment Booklet	• 「積積樂隊」與你譜出未來 - 強積金基金資料冊
• Getting Information about Your MPF	• 積金資訊由你掌握
• Fee Comparative Platform	• 收費比較平台
• Summary of Fee Comparative Platform on MPF Funds	• 強積金基金收費比較平台摘要
• Get to Know the Fees and Charges of Your MPF Funds	• 了解你的強積金基金收費
• Trustee Service Comparative Platform	• 受託人服務比較平台
• Summary of Trustee Service Comparative Platform	• 受託人服務比較平台摘要
• Fund Fact Sheet	• 基金便覽
• Annual Benefit Statement	• 周年權益報表
• My MPF Blog	• 我的積金日誌
• Embarking on My MPF Journey	• 積金初體驗
Rule Changes	**條例修訂**
• New Penalties for the MPF Offences - The MPF Schemes (Amendment) (No.2) Ordinance 2008	• 積金新罰則 – 2008年強制性公積金計劃(修訂)(第2號)條例
• Amendments Relating to MPF Schemes Ordinance	• 有關《強制性公積金計劃條例》的修訂
• Date of Payment of Contribution	• 支付供款的日期

Note:

- Soft copies of these publications are available on the MPFA website (www.mpfa.org.hk).
- The above publications are for general reference only and do not purport to any legal guidance or professional advice.

APPENDIX X

FREQUENTLY ASKED QUESTIONS AND ANSWERS ON MPF SYSTEM

By MPF Employee

Coverage and Enrolment

Q.1 *I am employed in Hong Kong by a local employer, but they have sent me to work in the Mainland on a temporary basis. Am I covered by the MPF System?*

A.1 If you are a Hong Kong resident employed by a Hong Kong company, your employer is required to enrol you in an MPF scheme regardless of where you are deployed to work.

Q.2 *I am an expatriate employed by a Hong Kong company to work here in Hong Kong. Am I covered by the MPF System?*

A.2 If you are a member of an overseas retirement scheme, or if your employment visa allows you to remain in Hong Kong for 13 months or less, then you are exempt from joining an MPF scheme.

In the event that your employment visa is subsequently renewed, bringing your total continuous period of stay in Hong Kong to over 13 months, you would cease to be exempt starting the first day after the end of the 13-month period. Your employer will then be required to enrol you in an MPF scheme and make mandatory contributions accordingly.

Q.3 *I am a part-time employee of a trading company working for less than 18 hours a week. Am I covered by the MPF System?*

A.3 If you have been employed for a continuous period of 60 days or more, you are covered by the MPF System regardless of the number of days and hours you work in a week. Your employer is required to enrol you in an MPF scheme.

Q.4 *I am a director of a limited company. Am I covered by the MPF System?*

A.4 If you are an executive director involved in the daily operation of the company and receive remuneration (e.g. director's fee) as an employee, the company is required to enrol you in an MPF scheme. However, if you are a non-executive director who is not involved in the daily operation of the company, MPF enrolment is not required.

Q.5 *If I have more than one job at the same time, do each of my employers have to enrol me in an MPF scheme?*

A.5 Yes. No matter how many jobs you are doing at the same time, for each job, as long as you have been employed for a continuous period of 60 days or more, your employer must enrol you in an MPF scheme.

Q.6 *Can I choose an MPF scheme and request my employer to enrol me in that scheme?*

A.6 Your employer is responsible for selecting an MPF scheme and enrolling you in that scheme. You may give your views to your employer but the final decision on which MPF scheme to join rests with your employer.

Q.7 *How do I know whether my employer has enrolled me in an MPF scheme?*

A.7 After your employer has enrolled you in an MPF scheme, the scheme trustee is required to provide you with an acceptance notice within 30 days and a membership certificate within 60 days. The membership certificate will state the name of the scheme, the name and address of the trustee of the scheme, your name and the issue date of the certificate.

Q.8 *Apart from the membership certificate, what other documents will I receive from the scheme trustee after I become a scheme member?*

A.8 You will receive the following documents from the trustee:

- a general description of the scheme, including:
  - the fees and charges payable under the scheme;
  - the particulars of the constituent funds of the scheme; and
  - the name and contact details of the person to whom enquiries about contributions and related matters may be made;

- an Annual Benefit Statement containing information about:
  - the income and expenditure of your account (including contributions, transfers and transactions);
  - the account balance and accruals; and
  - the extent to which the contributions are vested as well as the gains and losses associated with your account over the relevant financial period; and

- Fund Fact Sheets, which must be issued at least twice per each financial year, summarizing key information including particulars and performance of the related funds.

Contribution

Q.9 *I received a bonus after terminating service with my employer. Would the bonus be counted as relevant income? If yes, how should I make contributions in respect of the bonus?*

A.9 Bonuses expressed in monetary terms are considered relevant income in the contribution period in which they are ascertainable and fall due. If you receive the bonus after terminating service with your employer by the due day, your employer should include the bonus as relevant income for the contribution period in which the bonus is paid, and calculate contributions based on the maximum and minimum levels of relevant income.

Q.10 *Can my employer withhold my accrued benefits derived from the employer's portion of the mandatory contributions if I am dismissed due to misconduct, fraud or dishonesty?*

A.10 No. Your employer's mandatory contributions are fully vested as your accrued benefits in the scheme once they are paid to your scheme trustee. Your employer cannot withhold your benefits derived from mandatory contributions, except for the purpose of offsetting severance or long service payments that have been made to you. However, forfeiture of benefits derived from voluntary contributions made by your employer is subject to the governing rules of your scheme.

Investment

Q.11 *Do I have the right to choose the investment funds available under my MPF scheme?*

A.11 As an employee, you have the right to choose the constituent funds offered by your MPF scheme for both the employer and employee portions of the contributions. You may choose one or more of the funds under your scheme to invest your contributions.

You can make your own choice according to your investment objectives, personal circumstances and future plans. For example, a scheme member approaching retirement age may consider choosing fund(s) with lower risks, while a younger member may consider more aggressive fund(s) with potentially higher investment returns.

Q.12 *After I have selected my initial investment portfolio, can I change my mind later?*

A.12 You have the right to modify your investment portfolio. There may be a limit imposed by the governing rules of your scheme on the number of fund switchings you can make for free each year. Please contact your trustee for details.

Q.13 *How do I know if the investment managers of my MPF scheme have properly invested my contributions?*

A.13 As a scheme member, you may check through your Annual Benefit Statements to ensure your contributions are invested in the funds you have chosen.

In addition, there are several layers of oversight built into the MPF System to ensure that trustees and investment managers are complying with the requirements of the MPF Schemes Ordinance:

- MPF trustees are required to closely monitor their appointed investment managers, and to file regular returns with MPFA;
- All investment managers must be properly licensed by and registered with the Securities and Futures Commission; and
- MPFA conducts regular on-site inspections to prevent non-compliance and educates employers and trustees about their obligations under the law.

Managing Accounts

Q.14 *How do I handle my accrued benefits when changing jobs?*

A.14 You may handle your accrued benefits in one of three ways:

- transfer them to the personal account of an MPF scheme of your own choice;
- retain them in your original MPF scheme but under a personal account; or
- transfer them to the contribution account under your new employer's MPF scheme.

Q.15 *If I have not given any instructions to the MPF trustee on how to handle my accrued benefits since the cessation of my previous job, how would they handle the accrued benefits in my account?*

A.15 If the trustee of your scheme does not receive instructions on how to handle your accrued benefits within three months after receiving the notice of your cessation of employment from your former employer, the accrued benefits will automatically be transferred from the contribution account to a personal account under the scheme. They will continue to be invested in the same funds you chose in the original contribution account.

You may subsequently change your fund choice or investment portfolio by giving new instructions to the trustee. Please contact your trustee for details.

Q.16 *Should I consolidate my MPF personal accounts if I have too many?*

A.16 If you have multiple personal accounts, you may consider consolidating them for easier management. Before doing so, you should look into whether the trustee, MPF scheme, and constituent funds that you want to invest in suit your personal

needs. You should also be aware that consolidating accounts involves redemption and subscription of funds.

Transfer

Q.17 *Can I transfer my accrued benefits if there is a default contribution to be settled by my former employer?*

A.17 Yes, a scheme member can transfer his / her accrued benefits to an MPF account even if there is default contribution in the account. If the default amount is received after the transfer has been made, the original trustee is required to ensure that the amount is transferred to the member's MPF account within 30 days upon receipt.

Withdrawal

Q.18 *If I withdraw my accrued benefits at the age of 62 because of early retirement, am I allowed to enter the workforce again?*

A.18 A scheme member aged 60 to below 65 who has retired and who wishes to withdraw his accrued benefits must statutorily declare that he has permanently ceased employment. If he re-joins the workforce subsequently and falls within the definition of "relevant employee", his employer is still required to enrol him in an MPF scheme.

Q.19 *If I withdraw my accrued benefits due to total incapacity, can I re-enter the workforce by engaging in a different type of employment?*

A.19 Yes.

Q.20 *If I withdraw my accrued benefits because I am leaving Hong Kong permanently, can I come back to work in Hong Kong again in the future?*

A.20 Yes. If you come back to work in Hong Kong, so long as you are aged 18 to below 65, are not an exempt person and have been employed for a continuous period of 60 days or more, your employer is still required to enrol you in an MPF scheme. You should also note that early withdrawal of accrued benefits on ground of permanent departure can only be made once in your lifetime.

By Industry Schemes Employee

Q.1 *I am a construction worker and was employed to work at a construction site for two weeks only. Am I covered under the MPF System?*

A.1 Yes, casual employees in the construction and catering industries are covered by

the MPF System. Even if you work for just one day at a construction site, your employer is still required to make contributions for you.

Q.2 *I am a casual employee working in a restaurant. My employer has participated in an Industry Scheme and tells me my contribution should not be 5% of my income. It is true?*

A.2 This is true. Using 5% of relevant income to calculate mandatory contributions does not apply to casual employees in the Industry Schemes. There are designated contribution scales to calculate contributions for casual employees.

By MPF Employer

<u>Coverage and Enrolment</u>

Q.1 *My sons and daughters are helping me run my family business. Do I need to enrol them in an MPF scheme?*

A.1 If the family members you have employed to run a family business live with you, then you are not required to enrol them in an MPF scheme. However, if they do not live at the same address as you, enrolment is required unless they are exempt persons.

Q.2 *I am running a business in the Mainland. Do I need to enrol my employees who are employed and work in the Mainland in an MPF scheme?*

A.2 You are not required to enrol your Mainland employees in an MPF scheme. The MPF System is intended to provide retirement benefits only to members of the workforce in Hong Kong.

Q.3 *I employ a maid to undertake domestic work for me. Do I need to enrol her in an MPF scheme?*

A.3 Employees who provide domestic services in the residences of their employer are exempt persons and are not required to join an MPF scheme.

Q.4 *My expatriate employee is a member of an overseas retirement scheme. Does that scheme have to be approved or recognized by MPFA?*

A.4 No. There is no requirement for an overseas scheme to be approved by, recognized by, or registered with MPFA. As long as the scheme is a scheme registered or domiciled outside Hong Kong, your employee who is a member of the scheme is automatically exempt from joining any MPF scheme.

Q.5 *I am a hawker and have a few employees working for me. How does the MPF System apply to me?*

A.5 "Self-employed" hawkers, as defined by the Public Health and Municipal Services Ordinance (Chapter 132, Laws of Hong Kong), are exempt from joining any MPF scheme.

However, if you hire employees, then you are an employer. You must, in your capacity as an employer, enrol your employees in an MPF scheme and make contributions accordingly.

Joining a Scheme

Q.6 *As an employer, do I have the right to choose an MPF scheme?*

A.6 Yes. Under the MPF System, employers are required to enrol their relevant employees in an MPF scheme, and the final decision on choosing which MPF scheme rests with you.

You are encouraged, however, to consult your employees when selecting an MPF scheme for them. You may also join more than one MPF scheme so that your employees can choose the scheme and funds that best suit their needs.

Q.7 *What should I consider when choosing an MPF scheme?*

A.7 There are many schemes available on the market, and you may wish to consult your employees on their priorities, so as to select an MPF scheme that is most suitable to all.

Some factors to consider as you look over schemes include:

- types of constituent funds available under each scheme;
- fees and charges payable under the scheme; and
- quality of customer service offered by the trustee of the scheme.

Q.8 *If I am not satisfied with the performance of the MPF scheme in which I have enrolled my employees, can I change schemes? What should I do?*

A.8 Yes. You have the right to switch to another MPF scheme and transfer the accrued benefits of your employees to that scheme. To start the transfer process, you should apply in writing to the trustee of the new scheme. Upon receipt of your application, the new trustee will arrange with your existing trustee to complete the transfer.

Before switching to another MPF scheme, you are encouraged to communicate with your employees on the proposed arrangements well in advance.

Administrative Duties

Q.9 *What should I receive after I have enrolled my employees in an MPF scheme?*

A.9 You will be given a notice of acceptance within 30 days from the latter of these :

- the date you submitted all the information required for the application for participation in the scheme; or
- the date you agreed to observe and accept the governing rules of the scheme.

After receiving your scheme trustee's report on your participation, MPFA will issue a participation certificate which you must display at the premises where your employees are employed or (if your employees do not work at your premises) at your principal place of business in Hong Kong. The displayed certificate may either be the original certificate or a certified copy issued by MPFA.

Q.10 *What should I do if my employee ceases employment?*

A.10 Within 10 days after the last day of the calendar month in which the employee ceases employment, you must send a written notice to your MPF scheme trustee stating the date on which the employment ceased. Alternatively, you may inform the trustee of the employee's cessation of employment in the remittance statement.

If you are an employer in the construction or catering industries and have enrolled your casual employees into an Industry Scheme, the above procedures of notifying the trustee are not required.

Making Contributions

Q.11 *I provide some non-monetary benefits, such as airline tickets, to my employees. Do such benefits form part of the "relevant income" of my employees?*

A.11 No. Non-monetary benefits are not regarded as "relevant income".

Q.12 *Should compensation for a work-related injury (paid according to the Employees' Compensation Ordinance (Chapter 282, Laws of Hong Kong)) be included as "relevant income"?*

A.12 No. Periodic payment under the Employees' Compensation Ordinance is not regarded as "relevant income".

Q.13 *The law only requires me to pay a mandatory contribution of 5% of my employees' income. Can I make extra contributions for my employees?*

A.13 Yes. You are free to make voluntary contributions for your employees. You may contact your trustee regarding the rules governing voluntary contribution amounts,

payment method, vesting and withdrawal of benefits derived from voluntary contributions.

Q.14 *I am required to provide a remittance statement when I pay mandatory contributions to my scheme trustee. What should be included in the remittance statement?*

A.14 The remittance statement should include the following information in respect of each employee:

- the employee's relevant income for the contribution period;
- the employer's mandatory contribution;
- the employee's mandatory contribution;
- the employer's voluntary contribution, if any; and
- the employee's voluntary contribution, if any.

Q.15 *What happens if I fail to settle the payment of mandatory contributions for my employees?*

A.15 An employer who fails to make mandatory contributions for his employees on time is liable to:

- a surcharge calculated at 5% of the amount of default contributions; and/or
- a financial penalty of $5,000 or 10% of the amount of default contributions (whichever is greater).

Defaulting employers may also be prosecuted with a maximum penalty of four years' imprisonment and a fine of $450,000.

<u>Industry Schemes</u>

Q.16 *I am the owner of a construction company. Some of my employees are construction workers who are employed on a short-term basis while the rest are permanent clerical and managerial staff. I intend to enrol the short-term employees in an Industry Scheme. To save the trouble of having to make MPF contributions to an Industry Scheme and a Master Trust Scheme for the short-term employees and the permanent staff respectively, can I enrol my permanent employees in an Industry Scheme as well?*

A.16 Yes, employers in the construction and catering industries can enrol both casual employees and regular employees, such as clerical and managerial staff, in an Industry Scheme.

Alternatively, they can enrol both casual and regular employees in a Master Trust Scheme. Employers should note that the method for calculating casual employees' contributions under a Master Trust Scheme differs from the method used in an Industry Scheme.

Q.17 *I am the employer of a holding company which owns a number of subsidiary companies. One of the subsidiary companies is engaged in the catering business; the rest are engaged in other industries. Can I enrol the employees of all the subsidiary companies in an Industry Scheme?*

A.17 No. Industry Schemes are only open to employers and employees in the construction and catering industries. Only those employees who work for the subsidiary company in the catering business may be enrolled in an Industry Scheme.

Q.18 *My company is in the catering business. Am I required by law to participate in an Industry Scheme?*

A.18 No. Although Industry Schemes are specially designed for the construction and catering industries to cater for their unique nature and operational practices and may be more cost-effective to companies in these industries, participation is voluntary. An employer who is engaged in the construction industry or the catering industry may choose to enrol his employees in an Industry Scheme or a Master Trust Scheme.

Q.19 *How should I calculate mandatory contributions for casual employees enrolled in an Industry Scheme?*

A.19 You should calculate contributions for casual employees enrolled in an Industry Scheme using the designated contribution scales.

Q.20 *If I have enrolled a casual employee in an Industry Scheme, do I need to inform the scheme trustee when I cease to employ him?*

A.20 No. An employer is not required to inform the trustee when a casual employee who is a member of an Industry Scheme ceases employment.

By Self-employed Persons

<u>Coverage and Enrolment</u>

Q.1 *I have recently become self-employed. If my relevant income is less than $6,500 a month or $78,000 a year, do I need to enrol myself in an MPF scheme?*

A.1 Yes. Enrolment is mandatory for a self-employed person who is aged 18 to below 65, regardless of his/her relevant income, unless he/she is an exempt person. You must enrol in an MPF scheme within 60 days from the day you have become a self-employed person.

Q.2 *I am a tutor or consultant. Do I need to enrol myself in an MPF scheme?*

A.2 If you have entered into a contract for service but are not an employee of that company, you may be regarded as a self-employed person. You are therefore required to enrol yourself into an MPF scheme as a self-employed person and make contributions.

If you have entered into a contract of employment with the company and have been employed as an employee for 60 days, the employer is required to enrol you into an MPF scheme and make contributions for you accordingly.

Q.3 *Can my application for membership of an MPF scheme be rejected?*

A.3 There is a "Non-refusal" provision in the law stating that the scheme trustee cannot refuse an application for membership of the scheme if the applicant provides the information required by the trustee, and agrees in writing to comply with the governing rules of the scheme.

Making Contributions

Q.4 *How should my relevant income be calculated if I earn income from more than one business?*

A.4 Your relevant income is the combined incomes from all of your businesses for that period, including profits and losses.

Q.5 *When should I pay the mandatory contribution?*

A.5 You may choose to contribute on a monthly or a yearly basis. You should inform your scheme trustee of your choice when you first enrol in an MPF scheme, and at least 30 days before the end of each financial year of the scheme.

If you choose a monthly basis, you should specify a day to your scheme trustee, and make your monthly mandatory contributions by that day each month.

If you choose a yearly basis, you should pay your mandatory contribution to your scheme trustee by the end of each financial year of the scheme.

Q.6 *I am a partner of a partnership company. How should I calculate my relevant income?*

A.6 Your relevant income for the scheme's financial year should be calculated by making proportional adjustments according to your share of the profits of the partnership business for that period.

Q.7 *What should I do if I cease to be self-employed during a scheme's financial year?*

A.7 Your mandatory contribution should be recalculated, adjusting the amount you would have paid for the whole contribution period by the number of days you were self-employed during the period. You should also notify your scheme trustee of the cessation of self-employment status before the next contribution period.

Q.8 *What should I do with my accrued benefits when I cease to be self-employed and become employed by an employer?*

A.8 You may select one of three options –

- keep your accrued benefits in your existing scheme;
- transfer the benefits to another scheme of your own choice; or
- transfer the benefits to your new employer's scheme.

Q.9 *What should I do if my business sustains a loss?*

A.9 You may report the loss to your scheme trustee and discontinue payment of mandatory contributions from the current contribution period until your relevant income is not less than the minimum level of relevant income ($6,500 per month or $78,000 a year).

MPF Investments

<u>In a Volatile Market</u>

Q.1 *How can I manage my MPF investments in a volatile market?*

A.1 You should bear in mind that MPF investments are long-term investments. You should not be over-concerned about short-term market volatility if you are still some time from retirement. The only time that the price actually impacts on you is when you take the money out of the System either at retirement or upon early withdrawal under special circumstances allowed. Therefore you should think clearly about whether you really need to switch out of/into an MPF fund just because of the short-term price drop/rise of the MPF fund concerned.

Moreover, MPF investments follow the dollar cost averaging mechanism, which allows scheme members to spend a fixed amount of contribution to buy an MPF fund on a regular basis regardless of the fund price. This means more units can be purchased when prices are low, and fewer units when prices are high. When the market improves, you can have a better return with more units of MPF fund purchased.

Q.2 *Have MPF investments been affected by the financial tsunami?*

A.2 All investments, including MPF funds, carry risks. Like other investments, the performance of MPF funds (of which 60% of the total assets are invested in equities as at 30 September 2011) has inevitably been affected by the financial tsunami. Nevertheless, the stringent investment restrictions under the MPF System have mitigated the adverse impact.

Q.3 *How does the current regime regulate the underlying investments of MPF funds?*

A.3 All MPF funds are required to comply with the stringent investment restrictions under the MPF legislation. The use of high-risk structured products and leveraging is prohibited. The total amount invested in securities and permissible investments issued by a single issuer must not exceed 10% of the total assets of an MPF fund. The purpose is to achieve diversification in order to minimize risk.

Q.4 *How can I safeguard my own MPF investments?*

A.4 Different MPF schemes offer different funds for members to select. You should understand the features and risks of an MPF fund by reading the Offering Document and Fund Fact Sheet before investing in it, and choose the MPF funds that best match your investment objectives and risk tolerance level.

If the investment climate is unfavorable when you reach the age of 65, you may consider keeping the accrued benefits in the MPF System for continuous investment, to make the best of market conditions and suit your personal needs. You may then consider withdrawing your accrued benefits later, when the prices of MPF funds rebound.

<u>On MPF Funds and Investment</u>

Q.5 *Why did I suffer a loss despite investing in Growth Funds?*

A.5 Growth Funds are MPF funds which normally have a heavy holding of equity in their asset mix. Due to the volatility of the underlying stocks and markets, Growth Funds may exhibit large price fluctuations, and therefore scheme members may make a gain or suffer a loss. In fact, all investments carry a certain degree of risk. As higher potential return comes with a higher risk, the higher the return you expect from a fund, the higher the risk you have to prepare to take.

Q.6 *Why can't an MPF Conservative Fund fully preserve my contribution capital?*

A.6 An MPF Conservative Fund is a conservative investment in low-risk Hong Kong dollar assets, including short-term bank deposits and bonds. Although the risk level of an MPF Conservative Fund is relatively low, it does not mean there is no risk at

all. Its performance may be affected by interest rate fluctuations. Its return may not beat inflation, or may even be negative.

Q.7 *What is the difference between Index Tracking Funds and actively managed funds?*

A.7 Index Funds are passively managed funds. Their investment objectives are to track the performance of the reference indices. Investment managers of these funds passively make reference to the change in the constituent stocks and markets exposure of the respective indices, to closely replicate the performance of these indices.

In contrast, for actively managed funds, investment managers have the discretion to adjust the mix of fund assets subject to compliance with the investment objectives and investment restrictions of the funds.

Q.8 *Why does the performance of Hang Seng Index tracking funds not follow the movement of the Hang Seng Index ("HSI")?*

A.8 Although the investment objective of HSI tracking funds is to match as closely as practicable the performance of the HSI, there can be no assurance that their performance will on each valuation day track or be identical to the HSI. Some of the reasons are set out below:

- Fees and expenses are payable out of the assets of the HSI tracking funds, but the HSI does not reflect such fees and expenses;
- Transaction fees and stamp duty will be incurred in adjusting the composition of the investment portfolio of the HSI tracking fund following changes in the composition and weighting of the constituent stocks of HSI; and
- When there are changes in the composition or weighting of the constituent stocks of the HSI, there may be timing differences between the changes in the HSI and the corresponding adjustment to the investment portfolio of the HSI fund.

Q.9 *Why does MPF offer only limited choices of investment products or funds with high growth potential?*

A.9 In order to protect the interests of scheme members, there are stringent investment restrictions on MPF funds. A range of MPF funds with differing risk profiles have been made available as MPF fund choices. The major types of MPF funds are Equity Funds, Mixed Assets Funds, Bond Funds, Guaranteed Funds, MPF Conservative Funds and Money Market Funds, with risk levels ranging from low to high for members to choose.

On Fund Fees and Performance

Q.10 *If no further contributions are made to an MPF account but management fees are still collected, will the balance drop to zero?*

A.10 The management fee is deducted on a percentage basis rather than as a fixed fee, so it is impossible for this to reduce the balance of the account to zero. For the majority of MPF funds, management fees are deducted from the fund assets and will be reflected in the fund price.

Q.11 *Why has my trustee not been able to provide information regarding fees and expenses of the constituent funds in my account?*

A.11 Generally speaking, there are two ways in which fees and expenses are deducted, namely:

- deducting fees and expenses from the assets of the fund ("Fund Level Deduction"); and
- deducting fees and expenses from the members' accounts by way of unit deduction ("Member Level Deduction").

Currently, most MPF funds adopt the Fund Level Deduction method for deducting fees and expenses.

For Fund Level Deduction, the fees charged mainly comprise administrative expenses (such as investment management fee, trustee fee, scheme administration fee and custodian fee) charged on an annualized rate basis. The exact amount of administrative expenses levied entails complicated calculation on the basis of the net asset value of the fund as a whole. As the expenses are deducted from the assets of the fund and not directly from individual scheme members' accounts, the exact amount payable by you is not available.

The fees and charges of a constituent fund as a percentage of fund size is expressed in terms of the Fund Expense Ratio and is set out in the Fund Fact Sheet made available for each scheme member twice yearly. It is also available on the "Fee Comparative Platform" on the MPFA's website (cplatform.mpfa.org.hk).

Q.12 *Should I take as reference a fund's cumulative return rate or annualized return rate when reviewing the performance of a fund?*

A.12 You can take as reference both the cumulative return rate and the annualized return rate when reviewing the performance of a fund. The cumulative return rate reflects the return of a fund accumulated over the period concerned. The annualized return rate indicates the average yearly return of a fund over the same period concerned.

Employee Choice Arrangement - Impact on different persons

Employees

Q.1 *Do employees need to arrange the transfer of their accrued benefits via their employers?*

A.1 No. Employees should send a written notice, i.e. Employee Choice Arrangement ("ECA") – Transfer Election Form (Form MPF(S) – P(P)) to the new trustee(s) they have chosen.

Employers

Q.2 *Is there any impact on employers after implementation of ECA?*

A.2 There is no impact on employers, for the following reasons:

- Employers do not need to be involved in the process of transferring accrued benefits. Employees should contact the new trustee directly if they wish to transfer their accrued benefits.
- After implementation of ECA, the MPF administrative arrangements handled by employers in respect of their employees remain unchanged. In other words, employers continue to choose MPF trustees and schemes, enrol new employees in the scheme they have chosen (i.e. original scheme), and make contributions to that scheme for their employees (including both employer and employee contributions).
- ECA does not affect the employers' administrative arrangements on offsetting of severance payments or long-service payments. The accrued benefits derived from employer mandatory contributions during their employees' current employment cannot be transferred out.

Q.3 *After employees have transferred their accrued benefits, do their employers need to make subsequent contributions to the new MPF accounts chosen by the employees?*

A.3 No. After employees have made a transfer of their accrued benefits, their employers will continue to arrange MPF contributions to the trustees and schemes chosen by the employers (i.e. the original trustees and original schemes) for both the employer and employee portions at each wage period, and not to the new trustees and schemes chosen by the employees.

Q.4 *Can employees request their employers to make the mandatory contributions for each wage period to the MPF accounts they have with the new trustees they have chosen?*

A.4 No. After ECA is implemented, there is no change in the contribution arrangements handled by employers. In other words, the employers continue to

make contributions (including both employer and employee contributions) to the trustees and schemes the employers chose.

Self-employed Persons

Q.5 *Is there any impact on self-employed persons as ECA is implemented?*

A.5 There is no impact on self-employed persons. They can still enrol themselves in an MPF trustee and scheme of their own choice. ECA does not have any impact on the contribution arrangements or the procedures for transferring their accrued benefits. Their rights and obligations under the MPF System remain unchanged.

Employee Choice Arrangement - Transfer Arrangements

What can be transferred

Q.1 *Are employees allowed to transfer only part of the accrued benefits derived from their mandatory contributions?*

A.1 No. The accrued benefits in the contribution account have to be transferred on a lump–sum basis whether they are derived from the employee mandatory contributions made during current employment or mandatory contributions from former employment or self-employment.

Q.2 *Can employees choose to transfer only the accrued benefits derived from mandatory contributions made during former employment or self-employment, and not the accrued benefits derived from employee mandatory contributions?*

A.2 Yes. According to the ECA transfer arrangements, employees can transfer accrued benefits in the following two sub-accounts of their contribution account:

- Employee mandatory contributions; and/or
- Mandatory contributions from former employment or self-employment (if any).

Employees can choose to transfer simultaneously all the accrued benefits in both sub-accounts to the same trustee and scheme they have chosen; or they can also choose to transfer all the benefits in one of the two sub-accounts only. The benefits from the two sub-accounts do not have to be transferred at the same time.

Note that the accrued benefits derived from the employee mandatory contributions can only be transferred to the personal account, while those derived from the mandatory contributions during former employment or self-employment can be transferred to either the personal account or another contribution account.

Q.3 *Can employees transfer the accrued benefits derived from voluntary contributions*

they have made in their contribution account after ECA is implemented?

A.3 The transfer arrangements for the benefits derived from voluntary contributions depend on the governing rules of the original scheme. ECA does not change any of these existing arrangements. Contact your employer and the original trustee to find out more about the governing rules of individual schemes.

Q.4 Can ORSO scheme members transfer their accrued benefits under ECA?

A.4 ECA does not apply to ORSO schemes. Transfer arrangements are subject to the governing rules of the individual ORSO schemes.

Frequency of transfer

Q.5 If an employee has not exercised the transfer right under ECA this year, can that right be accumulated and carried forward to the next year? In other words, in this case can the employee make a transfer twice next year?

A.5 No. Employees can only exercise their transfer right under ECA once every calendar year. This right cannot be accumulated.

Q.6 Can employees make a one-off request to the new trustee to set up an auto-transfer arrangement, so that the employee's portion of the accrued benefits is transferred to the new trustee's scheme on a regular basis (say, once every year)?

A.6 No. Employees must submit an Employee Choice Arrangement ("ECA") – Transfer Election Form (Form MPF (S) – P(P)) to the new trustee every time they wish to make a transfer.

Q.7 Suppose an employee exercised the transfer right under ECA in January, and then changed job later in the same year. Is he or she allowed to transfer the employee's portion of contributions and investment returns accrued in the contribution account under his or her new employment in the same year?

A.7 Yes. ECA allows employees to transfer the mandatory contributions and investment returns ("accrued benefits") in their contribution accounts during current employment in a lump sum once every calendar year. This right works on a per account basis. In other words, after changing jobs, employees can transfer the accrued benefits in their new contribution account in the same year.

Q.8 If employees work for more than one employer and thus have two or more contribution accounts, are they limited to making a transfer of their accrued benefits only once a year?

A.8 Employees holding two or more contribution accounts can make a transfer of accrued benefits in each account once a calendar year. The transfers do not need to be done at the same time.

Q.9 After making a transfer, do employees need to wait 12 months before making another transfer?

A.9 No. Employees have the right to make a transfer of all the accrued benefits derived from employee mandatory contributions at any time once every calendar year (i.e. the period from 1 January to 31 December in any given year). In other words, if an employee has made a transfer during the current calendar year, he or she can apply for another transfer at any time on or after 1 January in the following calendar year.

Q.10 If an employee has made a transfer of the accrued benefits in his or her contribution account to the personal account of the trustee/scheme he or she has chosen, can he or she transfer the accrued benefits in the personal account again to another trustee/scheme?

A.10 As usual, the accrued benefits in a personal account can be transferred at any time to any MPF trustee and scheme. In other words, the accrued benefits transferred from the contribution account to the personal account can be transferred again at any time to any MPF trustee and scheme.

<u>Factors to consider in transferring accrued benefits</u>

Q.11 If an employee holds a guaranteed fund in his or her investment portfolio, will the transfer of accrued benefits affect the guaranteed return?

A.11 If an employee is currently investing in a guaranteed fund, he or she should check whether the transfer would violate certain guarantee conditions, such as the minimum lock-in period, thus disqualifying him or her from entitlement to the relevant guarantee. The employee should check the offering document of the original scheme or consult the original trustee for details.

Q.12 How can employees obtain service information about the different MPF schemes?

A.12 Employees can directly approach the trustees of the schemes to obtain the relevant information. They can also make use of the "Trustee Service Comparative Platform" in the MPFA website to compare the key service attributes of all MPF trustees.

Q.13 How can employees compare the fees and charges of different MPF schemes?

A.13 Employees can make use of the "Fee Comparative Platform" on the MPFA website

to compare the fees and charges of MPF funds. They should also check the most recent information available from the trustees or sponsors before making their final investment decision.

Q.14 *When employees transfer their accrued benefits to another MPF schemes, do the trustees levy an administration fee, service charge, or transaction fee?*

A.14 When employees transfer their accrued benefits to another MPF schemes, the trustees should not levy any charge (including administration fee, service charge, etc.).

Q.15 *After employees have transferred their accrued benefits to a new scheme, will they need to pay double the amount of fund management fees since they are simultaneously enrolled in the original scheme and new scheme?*

A.15 No. Fund management fees are usually calculated as a percentage of the net asset value of a fund, not as a specific amount. Even if an employee is simultaneously enrolled in the original scheme and a new scheme, the management fees charged will still be calculated as a percentage of the net asset value of the funds that he or she holds.

Employee Choice Arrangement - Statutory Regulatory Regime for MPF Intermediaries

Q.1 *Can intermediaries charge scheme member a fee for the services they provide? If yes, are they required to disclose the actual amount of commission received?*

A.1 MPF intermediaries can receive benefits directly or indirectly (such as commission or salary bonus) for services rendered. Nevertheless, according to trade practice, intermediaries normally do not charge fees or receive commission directly from scheme members.

When marketing an MPF product to a client, an MPF intermediary shall follow the "Guidelines on Conduct Requirements for Registered Intermediaries" to disclose whether he/she will charge the client any direct fees or whether he/she will be compensated (e.g. with commission) in respect of the services to be provided either directly or indirectly.

The intermediary shall also inform the client whether the benefits receivable would be different depending on the choice of the scheme(s) or fund(s) made by the client, e.g. whether the intermediary will receive different amount of commission if the client selects Scheme A instead of Scheme B. However, the guidelines do not require intermediaries to disclose the actual amount of commission and the difference in commission.

Q.2 *Can intermediaries offer incentives (such as gifts) for promoting their service?*

A.2 According to the "Guidelines on Conduct Requirements for Registered Intermediaries" , intermediaries cannot directly or indirectly offer any rebate, gift or incentive to induce their clients to enrol in, or make contribution to, or transfer any benefits to, or retain membership in, a particular scheme. However, the above restrictions do not apply where the incentive offered takes the form of bonus units, bonus credits or rebates credited to the MPF account of the recipient of the offer, a non-monetary benefit (such as access to the premium service of a particular bank) associated with membership privilege programs offered by or approved by the approved trustee or sponsor of the registered scheme.

Q.3 *Is it illegal for intermediaries to use telemarketing or other channels to market the schemes they represent to "new customers"?*

A.3 Under the new regulatory regime for intermediaries, all companies or individuals, except as specified in the legislation, have to be registered as MPF intermediaries before they can engage in the regulated activities, such as marketing of MPF schemes. It is an offence for anyone who is not a registered MPF intermediary to engage in such regulated activities. The maximum penalty is a $5 million fine and seven years' imprisonment.

Inducing or inviting a scheme member to transfer his/her benefits to another MPF scheme is one of the regulated activities.

The MPFA calls on scheme members to take caution when any person claiming to be an MPF trustee or intermediary approaches them. Do not disclose any personal information to any other persons if in doubt.

The MPFS Ordinance does not restrict intermediaries to use any particular channel to promote MPF schemes to scheme members. However, under the statutory regulatory regime for intermediaries, intermediaries must comply with the relevant laws and statutory conduct requirements, including conducting a "suitability assessment" for clients before promoting any particular fund, when selling or promoting MPF products or giving related advice to clients.

Q.4 *Can intermediaries promote other non-MPF investment products to scheme members together with MPF?*

A.4 MPF intermediaries shall comply with the MPFS Ordinance and the "Guidelines on Conduct Requirements for Registered Intermediaries" when promoting MPF products.

The above ordinance and guidelines, however, only regulate the sale of MPF products, without prohibiting MPF intermediaries from selling other products at the same time. The sale of non-MPF investment products must be in compliance with other relevant regulations.

MPF intermediaries shall comply with the Personal Data (Privacy) Ordinance in the collection and use of the clients' personal data.

Members of the public can lodge their complaints with the MPFA, which will then refer the complaint cases to relevant regulators for follow-up.

Q.5 *Can "suitability assessment" be waived for those scheme members who have completed a "suitability assessment" in purchasing other investment products?*

A.5 Whether an intermediary can make use of the "suitability assessment" a scheme member has completed earlier in purchasing other investment products to recommend a suitable MPF fund depends on various factors, such as whether the information required by the guidelines has been collected through the "suitability assessment", whether the "suitability assessment" is completed recently, and whether there is any reason to believe that the personal circumstances of the client have been changed during the period.

If an intermediary makes use of personal data obtained from other channels, the intermediary should note whether the Personal Data (Privacy) Ordinance and other relevant confidentiality clauses have been complied with.

Q.6 *If an investigation by the MPFA confirms that an intermediary has not complied with the statutory requirements during marketing and sales, what disciplinary action will MPFA take? Will MPFA ask the intermediary to compensate his/her clients?*

A.6 If an intermediary has violated the conduct requirements, MPFA can take disciplinary actions, including:

- A public reprimand or reprimand;
- Suspension of registration;
- Revocation of registration;
- Disqualification from re-registration within a specified period;
- Fine (up to a maximum of $10 million or three times the profit gained or loss avoided due to conduct violation, whichever is higher).

The MPFA does not have statutory power to request an intermediary to compensate a scheme member for his/her MPF investment loss.

Please refer to "FAQ" section of MPFA website for the detailed and updated version of frequently asked questions and answers on MPF system.

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APPENDIX XI

GLOSSARY

60-day employment rule This does not apply to a casual employee in the construction and catering industries. For any other full-time or part-time employee who has been employed for 60 days or more under an employment contract, coverage under the MPF system applies. **3.4(b)(i)**

Accrued benefits The member's beneficial interest in an MPF scheme at any time. The amount is derived from contributions made by or on behalf of the member, together with any accumulated income or profits from any investments thereof (adjusted for any sustained losses). **1.2.2(a)**

Annual benefit statement (ABS) General Regulation requires trustees to provide scheme members with ABS. The ABS serves to confirm scheme membership and membership details, the status and the number of accounts held by the member, to check inflows and outflows including contributions, transfer and transactions, and to identify account balances and accruals, the extent to which they are vested, and the gains and losses associated with the accounts over the relevant financial period. The ABS is a historical record of the member's account at a point in time. **5.9(e)**

Approved Pooled Investment Fund (APIF) An investment fund approved by the MPFA in accordance with the requirements set out in the General Regulation and the Code on MPF Investment Funds. An APIF may be in the form of an insurance policy or a unit trust, either of which has to be authorized by the SFC. Theoretically, it could also be in the form of an authorized mutual fund, but this is not practical under current Hong Kong law. **5.4**

Balanced fund (See **Mixed assets fund**) **5.3.2(c)(iii)**

Bond fund A bond fund is a pool of money primarily invested in bonds which are debt instruments issued by governments, public utilities, corporations, banks etc. Generally a bond fund aims to achieve a level of stable income, with capital appreciation being a secondary consideration. The higher the credit ratings of the bonds held by the fund, the lower the risk of the fund. **5.3.2(c)(ii)**

Casual employee Under the MPF legislation, a casual employee is a person employed in the selected industries (currently catering and construction) on a day-to-day basis or for a fixed period of less than 60 days. Such an employee is covered by the MPF system. **3.4(b)(ii)**

Compensation fund A fund intended to compensate members of MPF schemes (and others with a beneficial interest in those schemes) for loss of accrued benefits attributable to misfeasance or illegal conduct of trustees or other persons administering those schemes. The fund consists of "seed money" injected by the government and levies collected by the MPFA from trustees. **3.1.3**

Conduct Requirements Requirements set out in the MPFSO on conduct requirements for MPF intermediaries or responsible officer. **7.2.4**

Constituent fund An investment fund offered by an MPF scheme into which a scheme member invests his contributions and accrued benefits. All constituent funds must be approved by the MPFA. **5.3**

Contribution account An account in an MPF scheme which mainly receives MPF contributions (both employer and employee portions) made by an employer for and in respect of an employee under current employment. Contribution account can also receive MPF contributions made by a self-employed person while self-employed. **3.10**

Contribution day – Casual employee Depending on what is agreed by the participating employer and the approved trustee of the scheme concerned, the contribution day could be (i) the next working day (other than Saturday) immediately after the relevant income is paid to the casual employee; or (ii) the 10th day after the last day of the relevant contribution period. **3.7.1(a)(vii)**

Contribution day – (Non-casual) employee The 10th day after the last day of a calendar month within which the relevant contribution period ends, or the month during which the permitted period ends, whichever is the later. **3.7.1(a)(vii)**

Contribution period – Casual employee A contribution period means each period for which the employer pays or should pay relevant income to the employee. **3.7.1(a)(vi)**

Contribution period – (Non-casual) employee Where the wage period is not more than 1 month (e.g. weekly or monthly), a contribution period means each period for which the employer pays or should pay relevant income to the employee, but does not include any wage period commencing on or before the 30th day of employment. Where the wage period is more than 1 month (e.g. quarterly), a contribution period means each period for which the employer pays or should pay relevant income to the employee, but does not include the period commencing from the date of employment and ending on the last day of the calendar month in which the 30th day of employment falls. **3.7.1(a)(vi)**

Contribution period - Employer A contribution period means each period for which the employer pays or should pay relevant income to the employee. **3.7.1(a)(vi)**

Defined benefit scheme (DBS) A scheme where the employer's contribution rates are not defined and the benefit to a member is generally based on a formula involving a number of factors, e.g. the member's age, years of service and final average salary. **6.1.1(b)**

Defined contribution scheme (DCS) A scheme where both the employer's and employees' contribution rates are defined and the accrued benefits are based upon the accumulated contributions and investment income. **6.1.1(a)**

Early retirement One of the permitted grounds for early withdrawal of accrued benefits. The person concerned must have reached the age of 60 and must make a statutory declaration that he has permanently ceased employment. **3.11(a)**

Employee Any full-time and part-time employee who is employed under an employment contract for a continuous period of not less than 60 days. **3.4(b)(i)**

Employee Choice Arrangement (ECA) Allows employees to transfer the accrued

benefits (i.e. the accumulated contributions and investment returns) arising from their mandatory contributions (not their employer's portion) in their MPF contribution accounts during the period they are working for their current employer. Such benefits can be transferred to a trustee and a scheme of their own choice on a lump sum basis once every calendar year. **3.10.1**

Employer Any person who has entered into a contract of employment to employ another person as his employee. **3.6.1**

Employer sponsored scheme A registered scheme where membership is only open to the relevant employees of a single employer and its associated companies. **3.3(a)**

Employment contract An employment contract is an agreement on the employment conditions made between an employer and an employee. The agreement can be made orally or in writing and it includes both express and implied terms. **3.4(b)(i)**

Equity fund A pool of money primarily invested in equities or shares of companies. Some of such funds are characterized by the countries they invest in, and some by the type of stocks invested in e.g. blue chips. Intended to achieve a high rate of return through capital appreciation, equity funds may prove volatile, especially over a short period of time, but diversification across a number of markets will lower the risk level of the fund. **5.3.2(c)(iv)**

Exempt person An employed person such as a domestic employee, a self-employed hawker etc who is not required to join an MPF scheme. The employer of such a person is also exempt as far as such employment is concerned. **3.5**

Existing member An employee who has become a member of the ORSO scheme on or before the commencement date of the MPF. **6.4**

Frontline regulator Under new regulatory regime, MPFA can assign an industry regulator as the frontline regulator for each MPF intermediary. Frontline regulators are responsible for the supervision and investigation of MPF intermediaries according to their core business, specifically (i) MA, for those in banking; (ii) IA, for those in insurance; and (iii) SFC, for those in securities. **7.1**

Fund expense ratio ("FER") A ratio that measures the expenses of an MPF fund as a percentage of fund size. Whilst scheme members do not directly pay fund expenses, such expenses do impact directly on the investment returns of the fund. Fees and charges are generally the main component of fund expenses. The FER is calculated for each financial period of a constituent fund based on data from the previous financial period. The published FER will not reflect any increases or decreases in fees, charges or expenses in the current financial period. The FER is provided in the Fund Fact Sheet of a scheme. It is not necessary for funds with less than two years of history to show an FER. **5.9(d)**

Fund Fact Sheet The report card of an MPF fund, reporting on how the fund is doing. It provides key summary information on a constituent fund, such as fund size, investment objectives, portfolio allocation, main holdings in the portfolio, fund performance, fund expense ratio, fund risk indicator and future outlook for each constituent fund in a scheme. Fund Fact Sheet is issued on a half-yearly basis. **5.9(c)**

Guaranteed fund In the context of the MPF scheme, a guaranteed fund promises the fund holders that they will get back either the net total amount of MPF contributions (capital guarantee) or a specified rate of return on investment (return guarantee). The guarantee may be provided without any qualifying conditions, or when the fund holder meets certain qualifying conditions. The guarantee mechanism must be clearly stated in the marketing documents of such funds. **5.3.2 (b)**

Guaranteed fund – Hard guarantee A minimum net return is guaranteed, without imposing any qualifying conditions. **5.3.2(b)**

Guaranteed fund – Soft guarantee A minimum return is promised subject to certain qualifying conditions. The minimum return is usually applied to the average rate compounded over the period of employment for which the fund has been held. In such a case the guarantee is said to be based on a "career average". **5.3.2(b)**

Index-tracking fund An index-tracking fund is a collective investment scheme which has the sole investment objective of tracking a particular market index. **5.3.2(c)(v)**

Industry scheme A registered scheme designed especially for industries with high labour mobility and daily wage practice, at present for catering and construction industries only. **3.3(c)**

Mandatory contributions Compulsory contributions of both the employee and employer, as per the current provisions of the MPF system. At present, other than for a casual employee who is a member of an industry scheme (for whom special provisions apply), mandatory contributions amount to 10% of the employee's relevant income, with the employee and employer each paying 5%. The contributions are subject to minimum and maximum criteria (see minimum relevant income and maximum relevant income). **3.7.1**

Master trust scheme A registered scheme where membership is open to the relevant employees of different employers, self-employed persons and personal account holders. **3.3(b)**

Maximum relevant income – Casual employee The maximum level of relevant income for the purpose of mandatory contributions is, in the case of a casual employee who is a member of an industry scheme, $830 per day. **3.7.1(a)(ii)**

Maximum relevant income – (Non-casual) employee The maximum level of relevant income for the purpose of mandatory contributions is, in the case of a non-casual employee, $25,000 per month or, if the employee is not remunerated on a monthly basis, that amount as prorated. **3.7.1(a)(ii)**

Maximum relevant income – Self-employed person The maximum level of relevant income for the purpose of mandatory contributions is, in the case of a self-employed person, $25,000 per month or $300,000 per year. **3.7.1(b)(vi)**

Membership certificate It is the duty of the scheme trustee to ensure that an employee is issued with a membership certificate. This must be done within 60 days of the employee becoming a scheme member. **3.6.3(c)**

Minimum MPF benefits A new member of an exempted ORSO registered scheme is subject to the "minimum MPF benefits" rule, whereby certain MPF requirements (e.g. preservation and portability) will apply up to the minimum sum. The "minimum MPF benefits" is defined as the lesser of (a) the member's benefits accrued under the scheme during the period when the exemption certificate applied to the scheme; or (b) 1.2 x final average monthly relevant income (capped at $25,000) x years of post-MPF service. **6.5.3**

Minimum relevant income – Casual employee The minimum level of relevant income for the purpose of mandatory contributions is, in the case of a casual employee who is a member of an industry scheme, $250 per day. **3.7.1(a)(ii)**

Minimum relevant income – (Non-casual) employee The minimum level of relevant income for the purpose of mandatory contributions is, in the case of a non-casual employee, $6,500 per month or, if the employee is not remunerated on a monthly basis, that amount as prorated. **3.7.1(a)(ii)**

Minimum relevant income – Self-employed person The minimum level of relevant income for the purpose of mandatory contributions is, in the case of a self-employed person, $6,500 per month or $78,000 per year. **3.7.1(b)(vi)**

Mixed assets fund (also known as balanced fund) An investment mix of bonds and equities (shares). The risk level for this type of fund is usually somewhere between those of a bond fund and an equity fund. **5.3.2(c)(iii)**

Monthly pay-record Each employee (other than a casual employee in an industry scheme whose contribution is made on the next working day (other than Saturday) immediately after the relevant income is paid) must be provided with a monthly pay record by the employer. This must be provided within 7 working days after the last contribution payment during the month and is to include the employee's relevant income, the amount of mandatory and voluntary contributions deducted and the date on which contributions were paid to the trustee. **3.7.1(a)(ix)**

MPF conservative fund It is a statutory requirement that at least one of the constituent funds of an MPF scheme must be an MPF conservative fund. As the name suggests, the purpose of such a fund is to minimize the risk to the capital invested therein. Whilst not guaranteed, there are safeguards to achieve this primary objective. The investments of and deduction of fees from the fund is subject to s.37 of the General Regulation. **5.3.2(a)**

MPF principal intermediary / principal intermediary A business entity (Type A regulatee) registered by the MPFA as an intermediary to carry on regulated activities. **7.2.2**

MPF registered intermediary / registered intermediary An MPF principal intermediary; or an MPF subsidiary intermediary. The MPFA keeps a Register of registered intermediaries. The Register enables a member of the public to, by inspecting the Register or, upon payment of a fee, by obtaining a copy of an entry in or extract of the Register, ascertain whether he/she is dealing with a registered intermediary in any regulated activity, or to ascertain the particulars of the registration of a person as a principal or subsidiary intermediary. **7.2.2**

MPF scheme/registered scheme A provident fund scheme registered as an employer

sponsored scheme, a master trust scheme or an industry scheme. **3.3**

MPF subsidiary intermediary / subsidiary intermediary A person (Type B regulatee) registered by the MPFA as an intermediary to carry on regulated activities on behalf of the principal intermediary to which the person is attached. **7.2.2**

Negative income A self-employed person who suffers losses will not be required to make mandatory contribution (since relevant income will be less than the specified minimum). Proof of such losses may be lodged with the trustee showing the computation of the net loss, which should cover the latest financial period of the business. **3.7.1(b)(v)**

Non-refusal of scheme applicants provision No MPF application may be refused if the person making it complies with all requirements and agrees in writing that he will comply with the governing rules of the scheme. **3.6.3**

Offering document A document inviting participation in the registered scheme by prospective participating employers or prospective members of the scheme and containing information relating to the establishment or administration of the scheme. **3.10.4**

On-going cost illustration ("OCI") An illustration of the total effect of fees and charges payable in dollar terms by converting the latest Fund Expense Ratio figure into dollars and adding that to any direct charges that a scheme member might pay, such as a contribution charge or offer spread. It shows the dollar costs of investing HK$1,000 in different funds over periods of one, three and five years under an assumed annual rate of investment return of 5%. **5.9(b)**

ORSO scheme A scheme regulated by the Occupational Retirement Schemes Ordinance, set up by an employer for his employees, providing employee benefits in the form of pensions, allowances, gratuities or other payments, payable on termination of service, death or retirement. **6**

Performance guarantee A requirement upon individual (non-corporate) MPF trustees. It may be in the form of an insurance policy or a bank guarantee, covering losses from the trustee's failure to perform or other breach of duties. It must be for 10% of the net asset value of the scheme, with a maximum of $10 million. **4.4(c)**

Permitted period – Casual employee The period within which an employer must enrol a casual employee in an MPF scheme. The permitted period is 10 days for a casual employee. **3.7.1(a)(iv)**

Permitted period – (Non-casual) employee The period within which an employer must enrol a non-casual employee in an MPF scheme. The permitted period is 60 days for a non-casual employee. **3.7.1(a)(iv)**

Permitted period – Self-employed person The period within which the self-employed person must become a member of an MPF scheme. The permitted period is 60 days for a self-employed person. **3.7.1(b)(vii)**

Personal account An account in an MPF scheme which mainly receives the accrued benefits attributable to a member's former employment or self-employment transferred from other MPF account(s). Personal accounts can also receive accrued benefits attributable to a

member's current employment transferred from a contribution account during employment under ECA. **3.10**

Portability Under the MPF system, an employer or a self-employed person can change his participation from one MPF scheme to another. An employee can also transfer his accrued benefits from the original MPF scheme to another when he changes jobs. With the implementation of the ECA, an employee may also transfer the part of the accrued benefits from his mandatory contributions during employment to an MPF scheme of his own choice. **3.10**

Preservation Benefits accrued from mandatory contributions must stay within the MPF system until the scheme member attains the age of 65, although provisions exist for earlier withdrawals under certain specified circumstances. **3.9**

Professional indemnity insurance Insurance must be arranged to cover losses that MPF schemes might sustain from certain prescribed risks. This makes the cover wider than the customary professional indemnity insurance, and includes fraud and negligence on the part of the trustee. **3.1.2**

Qualifying examination An examination designed for applicants for MPF intermediaries and specified by MPFA. **7.2.2(b)(vi)**

Relevant income – Employee Any wages, salary, leave pay, fee, commission, bonus, gratuity, perquisite or allowance, expressed in monetary terms, paid or payable by an employer (directly or indirectly) to that relevant employee in consideration of his employment under that contract, but does not include severance payments or long service payments under the Employment Ordinance. **3.7.1(a)(iii)**

Relevant income – Partner A partner within a partnership is considered a self-employed person, who should calculate his relevant income by making proportional adjustments according to his share of profits for the partnership for that period. **3.7.1(b)(ix)**

Relevant income – Self-employed person The calculation of relevant income is basically linked to the assessable profits of the self-employed person that are calculated in accordance with the Inland Revenue Ordinance. **3.7.1(b)(iii)**

Remittance statement A statement showing the relevant income and amount of contribution per employee (other than a casual employee in an industry scheme whose contribution is made on the next working day (other than Saturday) immediately after the relevant income is paid). This statement should accompany the payment to the trustee. **3.7.1(a)(viii)**

Retirement age In relation to a relevant employee or self-employed person, means 65 years of age or, if the regulations prescribe an earlier age, that earlier age. **3.11**

Self-employed person A person whose relevant income (other than in the capacity as an employee) derives from the person's production (in whole or in part) of goods or services in Hong Kong, or trade in goods or services in or from Hong Kong. **3.4(b)(iii)**

Service provider A service provider can be an investment manager, a custodian of MPF

scheme assets or any other person appointed or engaged by the scheme trustee to provide services for the purpose of the scheme. This includes any person delegated by such manager, custodian etc but does not include a person appointed or so engaged as an auditor, solicitor or actuary. **3.2**

Small balance account One of the permitted grounds for early withdrawal of accrued benefits. "Small" implies an amount not exceeding $5,000, and withdrawal is subject to certain stipulations (e.g. the member does not intend to be employed or self-employed in the foreseeable future). **3.11(e)**

"Top-Up" One of the options available to employers with an existing ORSO scheme. Under this option, the contributions to the existing scheme would become supplementary MPF contributions, over and above MPF requirements, and all employees would be covered under an MPF scheme. **6.4**

Total incapacity One of the permitted grounds for early withdrawal of accrued benefits. The total incapacity must be certified by a registered medical practitioner and relates to the kind of work that the scheme member was last performing before becoming totally incapacitated. **3.11(d)**

Vesting Vesting means to endow or to give legal rights of possession regarding a particular financial interest. In the context of MPF, this refers to the immediate vesting in the employee of all mandatory contributions (employee's and employer's) and voluntary contributions by an employee or a self-employed person. **3.8**

Voluntary contribution Non-compulsory contribution over and above mandatory contribution. This is perfectly permissible, indeed encouraged, and where made is subject to MPF legislation applicable to mandatory contribution, except for provisions relating to portability, preservation, vesting and withdrawal. **3.7.2**

Wage period A wage period means each period for which the employer pays or should pay relevant income to the employee. **3.7.1(a)(v)**

Withdrawal of benefits Benefits accrued from mandatory contributions have to be preserved until the scheme member attains the retirement age of 65. Earlier withdrawal of benefits is permissible, in a number of specified circumstances, i.e. death, early retirement, permanent departure from Hong Kong, total incapacity and small balance account. Each may be subject to specified requirements or qualifications. **3.11**

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