

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

Monetary Authority

Insurance Authority

Securities and Futures Commission

and

Mandatory Provident Fund Schemes Authority

Hong Kong

1st January 2004

TABLE OF CONTENTS

Section	Description	Page
1	Status of Parties	2
2	Reasons for Memorandum of Understanding	3
3	Responsibilities of the MPFA	4
4	Responsibilities of the MA	5
5	Responsibilities of the IA	6
6	Responsibilities of the SFC	7

8	Status of Memorandum of Understanding	8
9	Future Policy Development	9
10	Confidentiality and Use of Information	9
11	Contact Persons	10
12	Effective Date and Termination	10

MEMORANDUM OF UNDERSTANDING

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

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

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

Securities and Futures Commission (the "SFC") of 24th Floor, One

House, 8 Connaught Road Central, Hong Kong

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

¹ "MPF Intermediaries" means those persons who are engaged in:

1. STATUS OF PARTIES

- 1.1 The SFC is a body corporate given statutory powers by the Securities and Futures Ordinance (Cap. 571) (the "SF Ordinance"). The functions of the SFC include regulating securities, futures and leveraged foreign exchange trading and other financial products for the protection of investors and maintenance of the integrity of the securities and futures markets; administering all relevant requirements to ensure full disclosure to and fair treatment of public shareholders and investors; regulating persons carrying on regulated activities as

securities; and encouraging the development of securities and futures markets in Hong Kong and the increased use of such markets by investors in Hong Kong and elsewhere.

- 1.2 The MA is appointed and established by the Exchange Fund Ordinance (Cap. 66) and is also responsible for supervising authorized institutions under the Banking Ordinance (Cap. 155). The principal function of the MA under the Banking Ordinance is to promote the general stability and effective working of the banking system. In particular, the MA is responsible for ensuring that

approving pooled investment funds as approved pooled investment funds; approving qualified persons to be approved trustees; granting exemptions to occupational retirement schemes; regulating the affairs and activities of approved trustees including the selling of and/or advising on MPF schemes by MPF intermediaries; ensuring as far as reasonably practicable that approved trustees administer the registered schemes in a prudent manner; making rules or

of registered schemes with respect to those contributions; considering and

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

2.8 PROPOSED TYPES OF INFORMATION

- (h) issuing guidelines, where necessary, to assist MPF intermediaries to comply with the Code of Conduct;

(i) co-operating with and assisting the MA, the IA, the SFC, and the

regulators in Hong Kong or elsewhere on matters concerning MPF intermediaries; and

- (j) reviewing and providing policy advice to the Government of the Hong Kong Special Administrative Region on the system of regulation of MPF intermediaries.

4. RESPONSIBILITIES OF THE MA

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

- (a) monitoring MPF intermediaries who are supervised under the MA regime to ensure their compliance with the Code of Conduct;
- (b) carrying out routine inspection visits to MPF corporate intermediaries that are supervised under the MA regime;
- (c) responding to public complaints referred to the MA by the MPFA, the IA, the SFC, or the public in relation to MPF intermediaries that are supervised under the MA regime, and referring these complaint cases to the relevant authorized institutions for follow-up action;
- (d) monitoring investigatory/enforcement/disciplinary actions taken by authorized institutions in respect of staff of authorized institutions;

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

5. RESPONSIBILITIES OF THE IA

5.1 The responsibilities of the IA under this MOU include administering the provisions of the Insurance Companies Ordinance and the rules and regulations

made thereunder. The IA is responsible for:

- (a) monitoring the activities of MPF intermediaries that fall under the IA's regulatory regime to ensure their compliance with the Code of Conduct;
- (b) carrying out routine inspection visits to MPF corporate intermediaries that fall under the IA's regulatory regime;
- (c) responding to public complaints referred to the IA by the MPFA, the MA, the SEC or the public in relation to MPF intermediaries that fall under

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

6. RESPONSIBILITIES OF THE SFC

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

- (a) licensing MPF intermediaries (apart from authorized institutions) who
-

advise on securities under the SF Ordinance incidental to the marketing of MPF schemes;

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

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

7. MPF INTERMEDIARIES REGULATION CO-ORDINATING COMMITTEE

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

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

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

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

8. STATES OF MEMORANDUM OF UNDERSTANDING

(iii) perform its/his obligations hereunder, fully, in good faith and to the best of its/his ability.

(d) this MOU is a public document and the contents hereof may be disclosed

11. CONTACT PERSONS

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

12. EFFECTIVE DATE AND TERMINATION

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

12.5 This MOU shall remain in full force and effect unless and until it is terminated by written agreement among the parties hereto.

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

)
)
)
)

SIGNED BY
THE ENFORCEMENT AUTHORITY

2. A. 

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

)
)
)
)

SIGNED FOR AND ON BEHALF OF THE
MANDATORY PROVIDENT FUND SCHEMES AUTHORITY
BY Diana CHAN

[illegible]

LIST OF CONTACT PERSONS

Hong Kong Monetary Authority, Hong Kong

Head, Banking Development Department Division B

Alternate:

Senior Manager, Banking Development Department Division B

Insurance Authority, Hong Kong

Assistant Commissioner of Insurance Policy and Development

Alternate:

Senior Insurance Officer, Intermediaries

Securities and Futures Commission, Hong Kong

Director of Licensing

Alternate:

Director of Investment Products

Mandatory Provident Fund Schemes Authority, Hong Kong

Chief Operating Officer (Compliance)

Alternate:

Senior Manager, Intermediaries/Trustees Department