

MEMORANDUM OF UNDERSTANDING
CONCERNING
THE REGULATION OF REGULATED PERSONS WITH
RESPECT TO REGISTERED SCHEMES UNDER THE
MANDATORY PROVIDENT FUND SCHEMES ORDINANCE

Between the
Insurance Authority
Monetary Authority
Securities and Futures Commission
And
Mandatory Provident Fund Schemes Authority

28 May 2013

MEMORANDUM OF UNDERSTANDING

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

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

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

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

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

1. INTRODUCTION

1.1 The Mandatory Provident Fund Schemes (Amendment) Ordinance 2012 establishes a

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

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

3. THE FUNCTIONS OF EACH REGULATOR UNDER THE ORDINANCE

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

Performance requirements for regulated persons and former regulated persons

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

Section 34L prohibition

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

4. REGISTRATION AND APPROVAL

- 4.1 The MPFA may register a person as a PI or SI pursuant to section 34T or 34U of the Ordinance if it is satisfied, inter alia, that the person, within one year immediately before the date of application, has not had any qualification as a Type A / B regulatee revoked on disciplinary grounds. The MPFA also has to be satisfied that the person does not have any qualification as a Type A / B regulatee suspended. In addition, the registration of a PI may be revoked or suspended if the person ceases to be a Type A regulatee or has any qualification as a Type A regulatee suspended pursuant to section 34ZC of the Ordinance. The approval of the attachment of an SI to a PI may be revoked or suspended if the person ceases to be a Type B regulatee or has any qualification as Type B regulatee suspended pursuant to section 34ZF of the Ordinance. For these purposes and subject to applicable laws and their respective

Ordinance.

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

6. CONTINUING TRAINING REQUIREMENTS

- 6.1 The MPFA is responsible for reviewing and monitoring the continuing training of the FRs of the PIs, SIs and ROs assigned to them on a regular basis after an assignment, and also of any replacement or cessation of the assignment.

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

Section 34L prohibition

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

9. INVESTIGATION

Performance requirements for regulated persons and former regulated persons

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

9.5 As and when information is disclosed to the MPFA by an FR after completion of an investigation, the information to be disclosed should, subject to applicable laws and

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

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

10. DISCIPLINARY ORDERS AND / OR PROSECUTION ACTION

Performance requirements for regulated persons and former regulated persons

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

10.3 The MPFA may seek further clarification from the FRs

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

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

12. TRANSITIONAL ARRANGEMENTS FOR PART IVA OF THE ORDINANCE

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

13. REGULAR LIAISON BETWEEN THE PARTIES

13.1 The MPF Intermediaries Regulation Committee (the “Committee”) comprising representatives from the MPFA and the FRs has been formed to enhance communication amongst the parties. The Committee will hold meetings at regular

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

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persons.

15. REIMBURSEMENT OF COSTS

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

16. CONTACT PERSONS

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

17. STATUS OF THIS MEMORANDUM OF UNDERSTANDING

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

- relating to regulated persons;
 - (ii) co-operate with the others in complying with the provisions of the Ordinance;
and
 - (iii) perform its obligations, fully, in good faith and to the best of its ability.
- (d) this MOU is a public document and the contents may be disclosed and copies
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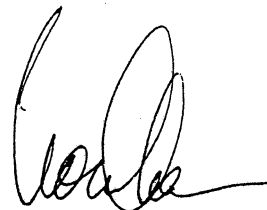
SIGNED BY
THE INSURANCE AUTHORITY
Annie CHOI
on 13 MAY 2013

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SIGNED BY
THE MONETARY AUTHORITY
Norman T. L. CHAN
on 16 MAY 2013

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SIGNED FOR AND ON BEHALF OF
THE SECURITIES AND FUTURES COMMISSION
Ashley ALDER
Chief Executive Officer
on 13 MAY 2013

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SIGNED FOR AND ON BEHALF OF
THE MANDATORY PROVIDENT FUND
SCHEMES AUTHORITY
Diana CHAN
Managing Director
on 28 MAY 2013

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