



**THE LAW SOCIETY'S SUBMISSIONS ON
LEGISLATIVE PROPOSALS ON ENHANCED REGULATION OF
MPF INTERMEDIARIES**

The Law Society's Retirement Schemes Committee has considered the legislative proposals put forward by the Financial Services and the Treasury Bureau ("FSTB") and the Mandatory Provident Fund Schemes Authority ("MPFSA") in their 28 March 2011 joint paper to the Legislative Council Panel on Financial Affairs and has the following comments:

The Annex entitled "Detailed legislative proposals for the regulation of intermediaries of Mandatory Provident Fund ("MPF") activities":

Paragraph 1(c): The exemptions here suggest "specified categories of professional sectors such as lawyers, accountants, trust companies who give advice to their clients on MPF matters incidental to their main business" (emphasis added). This is different from the **Exemptions** in Appendix A to the Annex, which do not specify that giving advice needs to be incidental to the main business of the exempted persons. We suggest that it is more reasonable to NOT to limit to "giving advice incidental to the main business".

Paragraph 3(b): "Giving advice to another person" seems too narrow - there may be chances where advice is given by party A to a third party (party B) who then passes the advice to the ultimate recipient (party C) - the proposed provision here does not seem to be able to catch party A but only party B - is this the intention?

Paragraph 5(b)(iii): It is unclear who is covered by the terms "appointed insurance agent" or "responsible officer / technical representative of an appointed long term insurance agent" under this Paragraph. To our understanding, an insurance agent need only be registered with the Insurance Agents Registration Board ("IARB") set up by The Hong Kong Federation of Insurers. Is this Paragraph meant to cover an insurance agent registered with the IARB? Does it include staff of an insurance company not so registered?

Paragraph 8(a): It is unclear what it means by "dual capacities" - are there many such entities and can an example be provided?

Paragraph 9: We disagree with giving discretionary power to the MPFSA to reallocate a PI to a FR. To give certainty to PIs, we suggest that a mechanism be built in in the legislation to ascertain which regulator should be the FR for a PI where the PI's business activities could be subject to more than one FR.

Paragraph 16: A two years' transitional period may frustrate the purpose of regulating the intermediaries. How will the activities of an intermediary (whether new or pre-existing) be regulated during the two years' period? Shouldn't the effective date of this new legislative regime be timed to coincide with the date of introduction of the Employee Choice Arrangement?

Appendix A to the Annex entitled "Proposed definition of "Specified MPF decisions" and "Giving advice", and Exemptions:

"Specified MPF decisions": It is unclear if "participant" simply means employee participant or includes employer participants.

"Giving Advice": It seems that the definition is too narrow in that it only covers situations where the purpose of giving advice is to facilitate the recipient to make a specified MPF decision. Specifically:

- (1) we suggest that the term "Giving Advice" be broadened to include "giving recommendations, expressing opinions or making observations etc" - in this respect, we note that the latter part of the proposed definition seems to cover this aspect but in our view the idea would be less ambiguous if the concept of "giving recommendations, expressing opinions or making observations" is included in the term itself or otherwise covered in the beginning section of the definition;
- (2) we suggest that the word "purpose" seems too narrow - we recommend that this be changed to "effect",
- (3) we suggest that the reference to "facilitate" when it first appears in the definition be amended to read "facilitate or influence" - again, we note that the term "influence" is used at the latter part of the definition but we suggest that it be clearer if it appears at the beginning;
- (4) the term "the recipient" seems too narrow - see our comment on paragraph 3(b) of the Annex (see above).

Exemptions:

- (1) We assume each reference to "giving advice" would have the same meaning as "Giving Advice"; if not, the term "giving advice" in the exemptions provisions should be broadened to cover "giving recommendations, expressing opinions or making observations etc".
- (2) Is the exemption in (b) intended to exclude in-house lawyers who do not hold practicing certificates? We note that the Code of Conduct for MPF Intermediaries does not limit the meaning of "lawyers" (see paragraph 20.1(b) of the Code).
- (3) Are employees of a trust company meant to be included as exempted persons?
- (4) Will actuaries of a consultancy firm be included as exempted persons?

Appendix B to the Annex entitled "Proposed Particulars to be provided in the MPF Intermediaries Register"

Item (f): We suggest that the records covered by the register be extended to cover "any public MPF / FR related disciplinary actions".

Appendix C to the Annex entitled "Proposed Conduct Requirements"

Item (e): It is unclear to what extent and in what circumstances a registered person will be expected to take into consideration his clients' financial situation, investment experience, risk preferences and investment objectives - would the standard be the same as the one imposed by the HKMA?

**The Law Society of Hong Kong
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