

Mandatory Provident Fund Schemes (Amendment) (No.2) Bill
Enhanced Regulation of Mandatory Provident Fund Intermediaries

PART 2 - AMENDMENTS TO MANDATORY PROVIDENT FUND SCHEMES ORDINANCE (CAP.485)	
Provision	Comment
Section 2(1) – definition of “authorised financial institution”	MPF (General) Regulation (Cap.485A) also contains a definition for “authorised financial institution” but it is not the same as the one in the new section 2(1). Is there any reason for a different definition here?
Section 2(1) – definition of “electronic system”	[Why not call it an “Information System” as in the other Ordinance?]
Section 2(1) – definition of “regulated person”	Suggest set out the definition of “responsible officer” in one of the Schedules (or a new Schedule) to the MPFSO for ease of reference.
Section 4 – heading	[Exemptions]
Section 6E - heading	[(Functions of Authority)]
Section 6H(8)	<ul style="list-style-type: none"> • Suggest replace the words “Despite anything in this Ordinance” with the words “Notwithstanding any other provisions of this Ordinance”. • What will the Authority be expected to do in “consulting” the Securities and Futures Commission, the Monetary Authority and the Insurance Authority? The word “consult” could

	simply be construed to mean “notify”.
Section 6KA	<ul style="list-style-type: none"> • Section 6KA(7) [Should this be constrained or more narrowly specified in some way?] • Section 6KA(8) [Why not include this definition in S.2(1)?]
Section 19 – heading	<ul style="list-style-type: none"> • There is no Chinese word in the heading of the English version of section 19. • 9. Section 19 amended (Powers of Authority in relation to mandatory contributions) ... • 9. (1) Section 19, Chinese text, heading
Part IVA - Division 1 – Preliminary	
Provision	Comment
Section 34E – definition of “Inspector”	Suggest replace (b) of this definition with “a prescribed person directed by that frontline regulator under section 34ZQ(1)(b).”
Section 34E – definition of “Investigator”	<ul style="list-style-type: none"> • Suggest replace (a)(iii) of this definition with: <i>“a person directed by the Authority under section 34O(1)(a)(ii), or a prescribed person directed by an industry regulator as referred to in (a)(ii) above under section 34O(2)(b), in relation to the investigation; or”.</i> • Suggest replace (b)(ii) of this definition with: <i>“a prescribed person directed by the frontline regulator as referred to in (b)(i) above under section 34ZT(1)(b) in relation to the investigation;”.</i>
Section 34E – definition of “performance requirement”	Suggest replace each of the words “a requirement” and “a condition” with the words “any requirement” and “any condition” respectively.
Section 34E – definition of “prescribed person”	<ul style="list-style-type: none"> • Suggest consider including a general provision so that person who does not fall within (a), (b) or (c) may still be treated as “prescribed person” for the purposes of the MPFSO if need be.

	<ul style="list-style-type: none"> • (a) in relation to the Securities and Futures Commission, means an employee [should this be made broader – eg. to also include consultants, etc. as determined by the SFC?] of the Commission;
Section 34E – definition of “relevant insurance body”	Suggest replace the definition with “relevant insurance broker body” - as the bodies in (a) and (b) of this definition are brokers related bodies,
Section 34E – definition of “Type A regulatee”	Suggest remove the word “or” appearing at the end of (b) of this definition.
Section 34F	<ul style="list-style-type: none"> • 34F(2)(b) the issuance is authorized by the Securities • Suggest replace the word “Despite” appearing in section 34F(2) with the word “Notwithstanding”. • The word “opinion” in section 34F(4) may give rise to ambiguity as to what constitutes an “opinion” and what does not – say, will a person be treated as giving an opinion if that person is simply citing other people’s opinions without any personal input? Also, what if a person is simply giving certain recommendation and specifically qualifying that he / she is not advising?
Section 34G	<ul style="list-style-type: none"> • Suggest replace the words “except in section 34M(1)” appearing in section 34G(1)(b) and (2)(b) with the words “except for the purposes of section 34M(1)”. • 34G(1)(a) - Please consider using a more descriptive and user-friendly definition of “principal intermediary”
Section 34H	<ul style="list-style-type: none"> • Suggest replace the words “except in section 34T(2)(a) and 34V(1)” appearing in section 34H(1)(b) and 2(b) with the words “except for the purposes of sections 34T(2)(a) and 34V(1)”. • Suggest replace the words “except in sections 34M(1)(b) and 34W(3)(a)” appearing in sections 34H(3)(b) and 34H(4)(b) with the words “except for the purposes of sections 34M(1)(b) and 34W(3)(a)”. • 34H(1)(a) - Please consider using a more descriptive and user-friendly definition of “subsidiary intermediary”. • Please consider deleting 34H(2)(b) – this carve-out does not appear to make sense here, as

	<p>compared to the other, similar ones.</p> <ul style="list-style-type: none"> • 34H(3)(b)(ii) the approval [the approval of what?] is suspended under this Part. • 34H(4)(a) this is an example of how the draft amending legislation appears to use many cross-reference which we recommend to be reduced and simplified. • 34H(4)(b) - we are not sure this paragraph is necessary given that those referred clauses do not refer to “approval”.
Section 34I	<ul style="list-style-type: none"> • Why do sections 34I(1)(b) and (2)(b) commence with “except in section 34ZD(1)”? Section 34ZD(1) is more related to the principal intermediaries than responsible officers. • Suggest to replace the words “the intermediary’s” in section 34I(3)(b) with the words “the principal intermediary’s”. • Suggest replace the words “paragraph (a)” in section 34I(3)(b) with the words “subsection (3)(a)”.
Section 34J	<ul style="list-style-type: none"> • The term “proper conduct” (as referred to in section 34J(1)(a)) is not a defined term under the Insurance Companies Ordinance and the grounds on which the Insurance Authority may withdraw an authorisation under section 75(1) of the Insurance Companies Ordinance do not specify breach of proper conduct as one of the grounds. Please consider amending section 34J(1)(a) to add clarity. • 34J(1)(b) ... the membership is terminated [“in compliance with”][suggest replacing with “pursuant to”] the system of disciplinary ...
Section 34K	<ul style="list-style-type: none"> • Suggest replace the word “agent” appearing in sections 34K(1)(a) and 34K(2)(a) with the words “appointed long term insurance agent” • 34K(1)(a) [(other than a failure to complete continuing professional training);] [why is this carved out?] • 34K(1)(b) [(other than a failure to complete continuing professional training);] [same question] • 34K(1)(c) technical representative or chief executive, respectively of an authorized • 34K(1)(c)(i) technical representative or chief executive, respectively in a register maintained

	<p>..... is removed from that register [delete “and”] [seemingly there is no need for 2 separate paragraphs]</p> <ul style="list-style-type: none"> • 34K(1)(c)(ii) [remove “(ii) the name is removed”] on the grounds of breach technical representative or chief executive, respectively (other than a failure to complete continuing professional training);] • 34K(1)(d)technical representative or chief executive, respectively of an authorized long term ... • 34K(1)(d)(ii) technical representative or chief executive (as appropriate) [(other than a failure to complete continuing professional training)]; • 34K(2)(c)(i) technical representative or chief executive (as applicable); and
<p>Part IVA - Division 2 – Prohibitions</p>	
Provision	Comment
Section 34L	What would constitute “reward” for the purposes of the MPFSO? If it is meant to include non-monetary reward, suggest specify.
Section 34M	<ul style="list-style-type: none"> • What does the term “counsel” as referred to in section 34M(4)(b) purport to mean? • On section 34M(5)(a) – would a person (not being a solicitor, counsel, certified public accountant or trust company, principal intermediary or subsidiary intermediary) be treated as carrying on regulated activities if he / she gives a presentation to a group of people in relation to the matters specified in section 34F(5)? • Suggest include the words “to a specified company” immediately after the words “regulated advice” in section 43M(6)(b). • Suggest replace the words “paragraph (b)” in section 34M(7)(c) with the words “subsection 7(b)”. • Suggest insert the words “as defined in section 28 of the Companies Ordinance (Cap.32)” immediately after the words “as members” in section 34M(8).

	<ul style="list-style-type: none"> • 34M(2)(a) and (b) [There should also be a carve-out in respect of S.34L(3)(b), ie. using any other title suggesting ...] • 34M(3)(a) [what about employees of these entities (or employees of entities within the same group)?] • 34M(4)(a) [what about an in-house solicitor?] • 34M(4)(a)(ii) [Shouldn't this be more narrowly restricted to where incidental to giving advice as a solicitor] • 34M(5)(a)(i) [are the carve-outs in (i) and (ii) too wide?] • 34M(5)(a)(ii) [what about others – seminars, etc?] • 34M(7)(a) a wholly [majority owned? or, control test?] owned subsidiary of the company; • 34M(7)(b) another company that holds all the issued shares of the company [what about a parent of a parent? Shouldn't the definition here be by reference to a grouping of companies?]; or
<p>Part IVA - Division 3 – Investigation concerning Contravention of Prohibition</p>	
<p>Provision</p>	<p>Comment</p>
<p>Section 34O</p>	<ul style="list-style-type: none"> • Suggest replace the words “those powers” in sections 34O(1)(a)(ii) and 34O(2)(b) with the words “the powers under section 34P”. • Suggest add the word “respectively” after the words “(2)(b)” in section 34O(3). • Section 34O(4) refers to consultation with the industry regulator where the person in question is a Type A or Type B regulatee, and section 34O(5) refers to consultation with “that other industry regulatory” where the person in question is a Type A or Type B regulatee of that other industry regulator. What if the person is subject to more than one industry regulator? • Suggest replace the words “an industry regulator” in sections 34O(5) and 34O(6) with the words “an industry regulator as referred to in section 34O(1)(b)” • Heading - Initiating investigations [Query: why are these details included in the MPFSO rather than the General Regulation?]

	<ul style="list-style-type: none"> • Section 34O(3) If the Authority of an industry regulator (as applicable) directs a person ... • Section 34O(3)(a) the Authority or industry regulator (as applicable) must provide ... • Section 34O(4) [What does “consult” involve? Should more detail be added to make clear what this obligation “to consult” consists of?] • 34O(5) the person so directed must [consult][same comment as under (4)] that other industry regulator. • 34O(6) Even though the authority or an industry regulator (as applicable) has directed a person
Section 34P	Sections 34P(4) and (5) each refers to “statutory declaration” – suggest broaden the means of providing information under these provisions to cover “such other manner as the investigator may consider appropriate”.
Section 34S	Suggest insert wording along the lines of “immediately before the date of inspection of the Register” after the words “last 5 years” in section 34S(1)(d).
Part IVA - Division 4 – Registration of Intermediaries and Approval of Responsible Officers	
Provision	Comment
Nil	Nil
Section 34T	<ul style="list-style-type: none"> • Section 34T. Registration as principal intermediary and related matters [this section is confusing and we suggest it be simplified] • Section 34T(1) A person may apply to the Authority for registration as an [why not state – as a “principal intermediary”?] intermediary for carrying on regulated activities. • Section 34T(3) An application under subsection (1) or (2)(a) or (b) [delete “(1) or (2)(a) or (b)” - this is redundant] • Section 34T(4)((b)(i)(B) ... to the principal applicant as a principal [subsidiary?] intermediary, [it seems these last 4 words may modify “principal applicant”, but this is confusing] the criteria for approval under section 34V(3) would be satisfied [please explain what this

	<p>paragraph is trying to accomplish!]; and</p> <ul style="list-style-type: none"> • Section 34T(4)(b)(i)(C) ... by the principal applicant [as a principal intermediary], the criteria for approval under section 34W(c)(b), (c) and (d) would be satisfied; or [we believe there may be a simpler way of drafting what is intended under S.34T(4)(b), and similar clauses] • Section 34T(4)(b)(ii)(B) [we don't quite understand why seemingly the same applications need to be covered under 2 sections] • Section 34T(5)(a)(ii) [is the individual in (ii) the same as the individual in (i)? The clause appears to read in this way but is confusing.] • Section 34T(5)(b)(i) carrying on regulated activities for that principal intermediary to which the individual is to be attached; [what is the difference between (i) and (ii)? Can they be combined?]
Section 34U	<ul style="list-style-type: none"> • Section 34U(1) A person may apply to the Authority for registration as an intermediary [why not state – as a “subsidiary intermediary?”] for carrying on regulated activities ... • Section 34U(12) [What is the purpose of this sub-section?]
Section 34V	Section 34V(3)(a) [what is the purpose of this paragraph, given that the application in S.34V(1) is by the applicant?]
Section 34ZA	Section 34ZA. Assignment of frontline regulator for subsidiary intermediary [Could this section be simplified – to simply state that the frontline regulator of a subsidiary intermediary will be the same as that person's principal intermediary's frontline regulator?]
Section 34ZB	Assignment of frontline regulator for responsible officer [Same comments as S.34ZA above]
Part IVA - Division 5 – Change in Status or Circumstances after Registration or Approval	
Provision	Comment
Nil	Nil

Section 34ZF	Section 34ZF.(1)(c) the person in the person’s capacity as such intermediary.
Section 34ZG	Section 34ZG(1)(b) to withdraw the consent to the person referred to in paragraph (a) being an intermediary ...
Section 34ZK	Section 34ZK(2) [Are these, and other similar circumstances or grounds for revocation, subject to a requirement that the Authority give reasons, and a right of appeal?]
Part IVA - Division 6 – Conduct and Other Requirements for Intermediaries and Responsible Officers	
Provision	Comment
Nil	Nil
Section 34ZL	<ul style="list-style-type: none"> • Heading - [Conduct requirements][“Performance requirement”(?) – see definition in S.34E] • Section 34ZL(1)(h) must comply with other requirements that are prescribed by the [rules][what “rules”?] • Section 34ZL(3)(b) a person to whom the principal or subsidiary intermediary gives [regulated advice]. [suggest that this term should be included within the definitions]
Section 34ZN	<ul style="list-style-type: none"> • Section 34ZN(2) [Is there pro-ration where someone is a RI for only part of a chargeable period?] • Section 34ZN(8) <i>chargeable period</i> (收費期) means any of --- • Section 34ZN(8)(a) a period of 12 months beginning on the date specified by the Authority under subsection (7)(a); and
Section 34ZO	<ul style="list-style-type: none"> • Section 34ZO(7) reporting period (報告期) means any of --- • Section 34ZO(7)(a) a period of 12 months beginning on the date specified by the Authority under subsection (6)(a); and
Section 34ZP	Section 34ZP(2) If the Authority is reasonably satisfied that an individual may have failed to complete
Part IVA - Division 7	

– Inspection and Investigation Concerning Failure to comply with Performance Requirement

Provision	Comment
Section 34ZQ	<ul style="list-style-type: none"> • Suggest replace the words “those powers” in section 34ZQ(1)(b) with the words “the powers under section 34ZR. • Suggest consider defining the term “specified matter”.
Section 34ZR	<ul style="list-style-type: none"> • Suggest replace the words “the specified person” in section 34ZR(3) with the words “a person specified in subsection (5)” • Suggest replace the words “a specified person” in section 34ZR(4) with the words “a person specified in subsection (5)”. • Suggest replace the words “that subsection” in section 34ZR(4) with the words “these respective subsections”. • Sections 34ZR(6) and (7) each refers to “statutory declaration” – suggest broaden the means of providing information under this provision to cover “such other manner as the investigator may consider appropriate”. • Section 34ZR(8) This section is subject to section 34ZZB(1). [General comment - why is the numbering and labelling of section numbers under this bill so unusual – is this approach pursuant to any generally accepted numbering protocol?]
Section 34ZS	<ul style="list-style-type: none"> • Suggest replace the words “those powers” in section 34ZS(2) with the words “the powers under section 34Z”. • Suggest clarify the effect of the words “This Part is to be construed accordingly” in section 34ZS(3).
Section 34ZT	<ul style="list-style-type: none"> • Suggest replace the words “those powers” in section 34ZT(1)(b) with the words “the powers under section 34U”. • Section 34ZT(3) Before a frontline regulator, or a person directed by a frontline regulator under subsection (1)[delete “(b)”], imposes a • Section 34ZT(4) the frontline regulator may[delete comma] still exercise the powers ...

Section 34ZU	<ul style="list-style-type: none"> Sections 34ZU(4) and (5) each refers to “statutory declaration” – suggest broaden the means of providing information under this provision to include “or such other manner as the investigator may consider appropriate”.
Section 34ZV	<ul style="list-style-type: none"> Suggest replace the words ‘those powers’ in section 34ZV(1)(b) with the words “the powers under section 34U”. Suggest clarify the effect of the words “This Part is to be construed accordingly” in section 34ZV(2).
Part IVA - Division 8 – Disciplinary Order for Failure to comply with Performance Requirements	
Provision	Comment
Section 34ZW	<ul style="list-style-type: none"> How will the “profit gained or loss avoided”, as referred to in section 34ZW(6)(b) be ascertained and who is to ascertain? Suggest replace the words “a person” in section 34ZW(7)(a)(ii) with the words “a prescribed person”. Suggest insert “and/or a prescribed person directed by the frontline regulator under section 34ZT(1)(b)” after the words “by the frontline regulator” in section 34ZW(7)(b)(ii). Suggest replace the words “the performance requirement” in section 34ZW(8)(a) with “a performance requirement”. Section 34ZW(4)(b) [is it necessary to include something here similar to clause 34ZW.(4)(a)(ii)?] Section 34ZW(7)(b) [The structure, and intended meaning, of this paragraph is not clear.] in considering the matters specified in subsection(8), the authority must have regard to the information - ... Section 34ZW(7)(c) the Authority must comply with section 34ZZ, [separate paragraph?] before making the disciplinary order.

Section 34ZY	<ul style="list-style-type: none"> • Section 34ZY(1) refers to the Authority taking further action “with the agreement with the regulated person” – is there any reason why this was drafted this way? Would it be more flexible if it is merely “in consultation with the regulated person”? • Suggest replace the words “a person” in section 34ZY(2)(a)(ii) with the words “a prescribed person”. • Suggest insert “and/or a prescribed person directed by the frontline regulator under section 34ZT(1)(b)” after the words “by the frontline regulator” in section 34ZY(2)(b)(ii). • Suggest replace the words “the performance requirement” in section 34ZY(3)(a) with “a performance requirement”. • Section 34ZY(2)(a)(ii) ... with those powers mentioned under sub-paragraph (i), the failure or ... • Section 34ZY(4) [suggest to delete – why is this paragraph (4) necessary? The individual should be given the opportunity to have a hearing, notwithstanding that the person may not exercise that right.]
Section 34ZZ	<ul style="list-style-type: none"> • Suggest insert the words “under section 34ZW” after the words “a disciplinary order” in section 34ZZ(1). • Sections 34ZZ(3) and (4) do not describe in great length what matters a notice re further action under section 34ZY should cover – is this intentional? • Section 34ZZ(4)(a) for a disciplinary order under section 34ZW(3)(a) [delete (i) or (ii) or (b) or (4)(a)(i) or (ii) – all this additional detail seems unnecessary] or (b), ...
Part IVA - Division 9 - Miscellaneous	
Provision	Comment
Section 34ZZB	<ul style="list-style-type: none"> • The inspection powers under section 34ZR are wider than requiring an entity to disclose information or produce records or documents (for instance, under section 34ZR, an inspector may enter the place of business of the regulated person in question. But section 34ZZB only refers to “disclose any information, or to produce any record or document, relating to the affairs

	<p>of a customer of the entity”. Is section 34ZZB meant to not cover the inspection powers other than those specified in section 34ZZB(1)?</p> <ul style="list-style-type: none"> • Section 34ZZB(1)(b) and (2)(b) refers to an inspector or investigator “certifying” in writing – what does “certification” entail in this context? Would it be more flexible if an inspector or investigator will only be required to “confirm” in writing? • Suggest replace the words “a person” in each of section 34ZZB(4)(a)(ii), (b)(ii) and (c)(ii) with the words “a prescribed person”.
Section 34ZZC	<ul style="list-style-type: none"> • Suggest replace the words “Despite anything in this Ordinance” in section 34ZZC(7) with the words “Notwithstanding any other provisions of this Ordinance. • Section 34ZZC(10)(a) [given the maximum length of sentence is higher than under (9), should the maximum fine be set higher?] • Section 34ZZC(11) <i>specified requirement</i> - [Please consider putting all definitions under one section, for ease of use and understanding of the legislation]
Section 34ZZE	<p>Suggest replace the words “Despite anything in this Ordinance” in section 34ZZE(2) with the words “Notwithstanding any other provisions of this Ordinance.</p>
Section 34ZZF	<ul style="list-style-type: none"> • Suggest replace the words “a person” in each of sections 34ZZF(4) and (5) with the words “a prescribed person”. • Sections 34ZZF(3), (4) and (5) do not seem to relate to a Magistrate’s warrant. Is there any reason why these provisions are placed under this section? • Section 34ZZF(9)(a) refers to an “authorised person” giving a receipt for the record or document removed – to whom should the receipt be given? Is there any form that the receipt should follow? • Section 34ZZF(1) to be produced under section 34P, 34ZR or 34ZU, and which in the absence of application of this section is not likely to be produced, [and/or – consider stating that there must have been a reasonable period or a period of [X] days already elapsed during which it has been requested but it has not been produced] the magistrate may ... • Section 34ZZF(6) [A similar comment to that under S.34ZZF(1) can be applied to this section.]

Subdivision 2 – Other Miscellaneous Provisions	
Provision	Comment
Section 34ZZH	Section 34ZZH (2) The Authority must [consider whether a time period should be specified] give the
Section 34ZZI	Section 34ZZI (1) [Please be careful to consider what is the intention, and what will be the actual effect, of this paragraph and this section.]
Section 42AR	Suggest replace the words “a person” in section 42AR(1)(b) with the words “a prescribed person”.
Section 42AB	<ul style="list-style-type: none"> • The term “counsel” in section 42AB(2)(c) is not defined. • Section 42AB(2)(a) the following entity consents to the disclosure – • Section 42AB(3) The Authority or industry regulator (as applicable) may impose any conditions
Section 42B	Suggest replace the words “a person” in section 42B(2) with the words “a prescribed person”.
Section 44	<ul style="list-style-type: none"> • Section 44(4) a person ([delete “other than”] who is not an officer) concerned in the management ... • Section 44(6) [It is not clear how this can work in practice, how can there be a rebuttal under a charge under one section which has effect in respect of potential charges under another section? Please reconsider.] • Section 44(6)(a) there is sufficient evidence to raise a doubt whether(?) the offence was committed ...
Section 45G	Section 45G(1)(b), after “Ordinance” – Add “(except part IVA)” [it is not clear why this Part is carved-out]
Schedule 5B	
Provision	Comment

Nil	Nil
Schedule 5B	<ul style="list-style-type: none"> • [We find these transitional rules, together with the rules re: PIs, SIs etc. difficult to understand and encourage the Government to consider how they could be further simplified or clarified.] [Further, as a general comment, we would like to have more time to consider further all of the PI, SI and transitional rules.] • Schedule 5B.2.(2)(c) ... the registration is revoked under [delete “that”] section 196(1)(i)(A) ... • Schedule 5B.2.(4)(b)(ii)(B) ... the registration is suspended under [delete “that”] section 196(1)(i)(B) ... • Schedule 5B.2.(4)(c)(ii) ... the licence is suspended under [delete “that”] section 194(1)(i)(B) of ... [to maintain consistency of terminology with other paragraphs of this Clause] in relation to ...
PART 3 - CONSEQUENTIAL AND RELATED AMENDMENTS	
Division 1 - Amendments to Insurance Companies Ordinance (Cap.41)	
Nil	Nil
Division 2 - Amendments to Mandatory Provident Fund Schemes (General) Regulation (Cap.485 sub. leg.A)	
Section 206A	Should each reference to “electronic system” in section 206A(2) and (3) be replaced with the words “designated electronic system”?
Division 3 - Amendments to Mandatory Provident Fund Schemes (Fees) Regulation (Cap.485 sub. leg. C)	
Nil	Nil

Division 4

- Amendments to Mandatory Provident Fund Schemes (Amendment) Ordinance 2009 (11 of 2009)

Nil

Nil

**The Law Society of Hong Kong
Retirement Schemes Committee
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740953**