

**Process Review Panel for the  
Mandatory Provident Fund Schemes Authority**

**2023 Annual Report**

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### *Abbreviations used in this Report*

<b>APIF</b>	Approved Pooled Investment Fund
<b>CAL</b>	Compliance Advice Letter
<b>CPD</b>	Continuing Professional Development
<b>Disclosure Code</b>	Code on Disclosure for MPF Investment Funds
<b>DC</b>	Default contribution
<b>FR</b>	Frontline regulator
<b>FP</b>	Financial penalty
<b>Investment Code</b>	Code on MPF Investment Funds
<b>KPIs</b>	Key Performance Indicators
<b>MPF</b>	Mandatory Provident Fund
<b>MPFA</b>	Mandatory Provident Fund Schemes Authority
<b>MPFSAB</b>	Mandatory Provident Fund Schemes Appeal Board
<b>MPFS(E)R</b>	Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485B)
<b>MPFS(G)R</b>	Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A)
<b>MPFSO</b>	Mandatory Provident Fund Schemes Ordinance (Cap. 485)
<b>ORSAB</b>	Occupational Retirement Schemes Appeal Board
<b>ORSO</b>	Occupational Retirement Schemes Ordinance (Cap. 426)
<b>PI</b>	Principal intermediary
<b>PRP</b>	Process Review Panel for the Mandatory Provident Fund Schemes Authority
<b>SFC</b>	Securities and Futures Commission
<b>SI</b>	Subsidiary intermediary

## **Message from the Chairman**

The PRP is tasked with reviewing and advising on the adequacy and consistency of the MPFA internal procedures and operational guidelines in respect of its core regulatory activities. I am pleased to note that the PRP has settled into its new, expanded role for the 2022-2023 review cycle, and is taking important strides towards strengthening the checks and balances in the MPF regulatory regime.

In this year's case review, much of the PRP's attention was drawn to the MPFA's consistency and transparency in its case management decisions, which the PRP considers to be of great importance to maintain public accountability in MPFA's regulatory actions. We also note an apparent trend in suspected criminal misconduct among MPF intermediaries. On this front, we have conveyed our concerns and made relevant recommendations to the MPFA in hopes of further promoting due process and to better safeguard the interests of scheme members.

At the case level, we note with appreciation the MPFA's continued efforts to enhance its case handling efficiency, as manifest in the overall higher rate of meeting applicable KPIs across all categories of cases. We also appreciate the MPFA's response to the PRP's recommendations, such as the ongoing holistic review of the limitations of the MPFA's regulatory toolbox as identified by the PRP.

As always, I am grateful to PRP Members for their valuable contributions. Their wealth of experience in their respective fields enable the PRP to formulate sound recommendations and give pragmatic advice. In particular, I express my gratitude to the two outgoing members, Miss Grace Chan and Dr James Lin, whose observations during case review sessions in the past six years have enriched the comprehensiveness of PRP's review work. With new members joining the PRP, I look forward to their insight into issues that remain a challenge to the MPFA. Finally, I also thank the Financial Services and the Treasury Bureau for their secretarial support to the PRP throughout the review exercise.

**Mr Eugene FUNG, S.C.**

**Chairman**

**January 2024**

## **Chapter 1: Background**

### **Overview**

- 1.1 The PRP is an independent panel established by the Chief Executive to review and advise the MPFA on the adequacy and consistency of the internal procedures and operational guidelines in respect of all core regulatory activities of the MPFA, including registration and approval of MPF schemes, trustees and products; regulation of MPF investment; regulation of MPF intermediaries; and matters relating to registration of ORSO schemes.
  
- 1.2 The PRP was formerly known as the Process Review Panel in relation to the Regulation of Mandatory Provident Fund Intermediaries, which was established in November 2013 to review the MPFA's internal procedures only in respect of the regulation of MPF intermediaries. The renaming and current scope of the PRP's work took effect from 1 November 2021 with the agreement of the Chief Executive.

## Terms of Reference

1.3 The terms of reference of the PRP are as follows –

- (a) to review and advise the MPFA on the adequacy and consistency of its internal procedures and operational guidelines governing the actions taken and operational decisions made by the MPFA and its staff in the performance of the regulatory functions in relation to the following areas –
  - (i) registration of MPF schemes and approval of MPF funds;
  - (ii) approval and inspection of MPF trustees and associated matters;
  - (iii) registration of MPF intermediaries and associated matters;
  - (iv) co-ordination and follow-up with the FRs<sup>1</sup> in relation to inspection and investigation of registered MPF intermediaries;
  - (v) registration and exemption of ORSO schemes and associated matters;
  - (vi) exercise of statutory powers of investigation, inquiry, disciplinary actions and prosecution relating to the regulation of the above areas; and
  - (vii) receipt and handling of complaints relating to the above;

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<sup>1</sup> The Hong Kong Monetary Authority, the Insurance Authority, and the Securities and Futures Commission are the FRs responsible for the supervision and investigation of complaints against registered MPF intermediaries whose core business is in banking, insurance, and securities respectively.

- (b) to receive and consider periodic reports from the MPFA on all completed or discontinued cases in the above-mentioned areas, including reports on investigation cases which are not completed within one year and on any appeals;
- (c) to receive and consider periodic reports from the MPFA in respect of the manner in which complaints against the MPFA or its staff have been considered and dealt with, including periodic reports on complaints that have not been concluded within one year;
- (d) to call for and review the files of the MPFA relating to any case or complaint referred to in the periodic reports mentioned in paragraphs (b) and (c) above for the purpose of verifying that the actions taken and decisions made in relation to that case or complaint adhered to and are consistent with the relevant internal procedures and operational guidelines, and to advise the MPFA accordingly;
- (e) to advise the MPFA on such other relevant matters as the MPFA may refer to the PRP or on which the PRP may wish to advise; and
- (f) to submit annual reports and, if appropriate, special reports (including reports on problems encountered by the PRP) to the Financial Secretary which, subject to applicable statutory secrecy provisions and other confidentiality requirements, should be published.

1.4 The PRP does not review the merits of the MPFA's decisions and actions. Rather, it focuses on the procedural propriety in the regulatory regime.

## **Membership**

- 1.5 The PRP comprises the Chairman and Members coming from a wide spectrum of professions and industry sectors. The Chairman of the MPFA and the Secretary for Justice (or his representative) are ex officio members of the PRP.
- 1.6 The membership of the PRP for the 2022-23 review cycle is as follows –

### Chairman

Mr Eugene FUNG Ting-sek, SC

### Members

Mr Abraham CHAN Lok-shung, SC

Miss Grace CHAN Man-yee

Mrs Agnes KOON WOO Kam-oi

Mr Allen LAU Kai-hung

Dr James LIN

Mr Jeff WONG Kwan-kit

Ms Grace YU Ho-wun

### Ex officio Members

Mrs Ayesha MACPHERSON LAU

*(in her capacity as the Chairman of the MPFA)*

Mr YUNG Lap-yan

*(in his capacity as the representative of the Secretary for Justice)*

### Secretariat

Financial Services and the Treasury Bureau



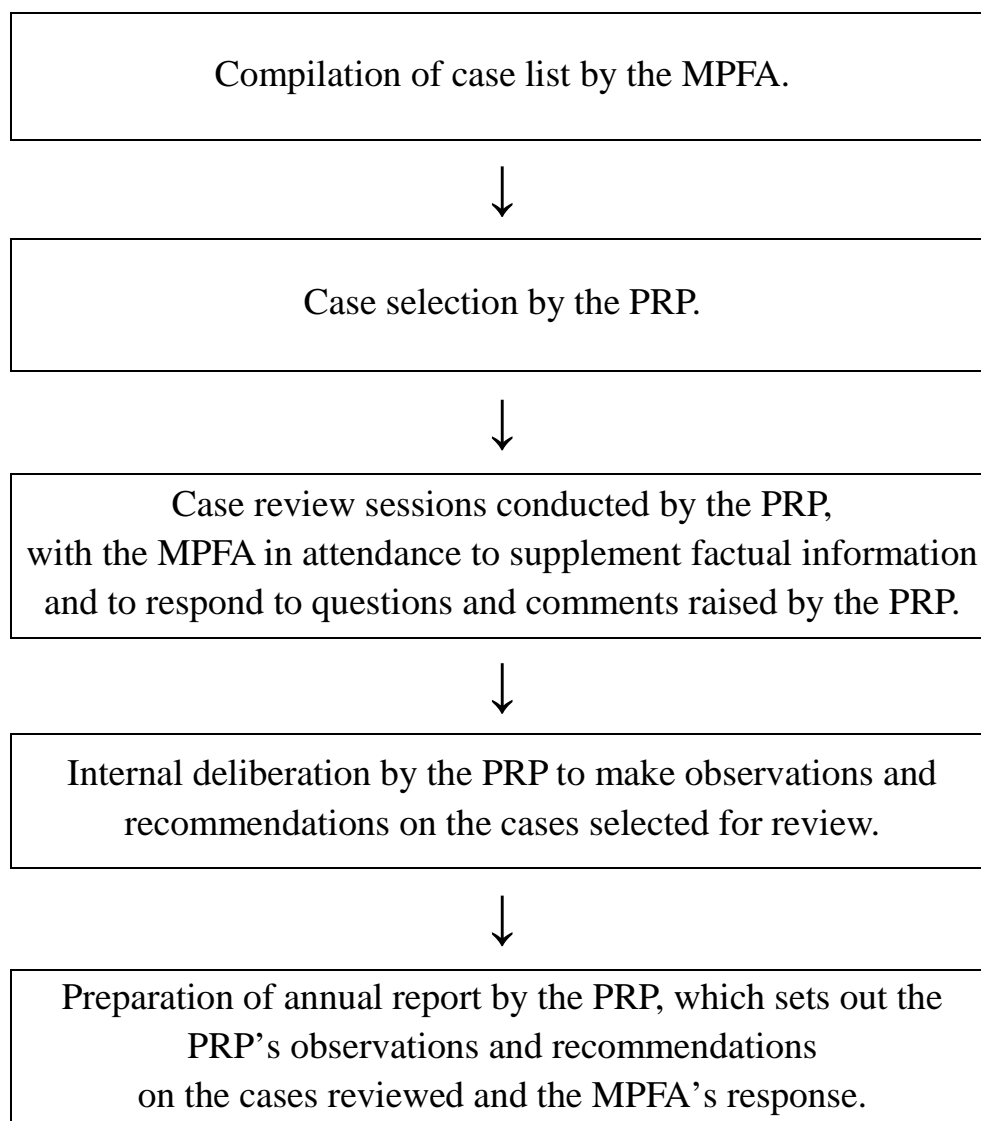
## **Chapter 2: Work of the PRP**

### **Modus Operandi**

- 2.1 To facilitate the PRP's review work, the MPFA provides the PRP with a list of cases completed or discontinued during the review cycle, from which the PRP selects cases for detailed review.
- 2.2 With the aid of case summaries and supplementary information provided by the MPFA, the PRP holds case review sessions with the MPFA to understand the processes through which MPFA officers made various decisions in the cases selected for review.
- 2.3 The PRP deliberates on each case being reviewed, with a view to making observations and recommendations for the MPFA to respond and follow up on. The PRP's views and the MPFA's response are compiled into an annual report to be submitted to the Financial Secretary and for publication in due course.
- 2.4 PRP Members are obliged to keep confidential the information furnished to them in the course of the PRP's work. To maintain the independence and impartiality of the PRP, all Members are required to make declaration of interests upon commencement of their terms of appointment and again before they engage in each case review and relevant discussions, as appropriate.

## Case Review Workflow

2.5 The workflow of the PRP is summarised as follows –



2.6 When concluding the annual review exercise, the PRP will also take note of the MPFA's follow-up actions on those observations and recommendations made by the PRP in previous review cycle.

## **MPFA's Follow-up on the PRP's Recommendations in the 2022 Annual Report**

2.7 In its 2022 Annual Report, the PRP made a number of recommendations to the MPFA. In response, the MPFA had taken the following actions –

<p><b>A. Range of Follow-up Options or Powers of the MPFA</b> <i>(paragraphs 3.10-3.15)</i></p>
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### ***PRP's Recommendations***

- (1) To review the existing regulatory framework and legislation to ensure that it would continue to regulate effectively the MPF industry, including MPF trustees and intermediaries, with a view to better serving the needs and interest of scheme members;
- (2) To consider including more options for sanctions on non-compliances or suspected misconduct, so as to fill the gaps between issuance of supervisory letters or CALs (the mildest form) and triggering prosecution (the highest threshold), and the void in respect of non-regulated activities;
- (3) To explore adjustment to the current fixed rates, or inclusion of sub-categories within each type of breach with a sliding scale of FP, and consider applying a heavier penalty to those cases of a more severe nature within the same category of breach;
- (4) That the MPFA as a regulatory authority should be given a power to file a report to relevant law enforcement agencies, regardless of whether the complainant has withdrawn their complaint, or would lodge a case directly with the police, or give consent for the MPFA's referral. This power should cover the passing of information of all relevant persons in potential breach of conduct, regardless of whether they were the original targets of a complaint or investigation;

- (5) To review whether legislative amendments are necessary to enable it to better discharge its regulatory role; and
- (6) To make reference to PRP's previous recommendation (and the MPFA's current practice) on the promulgation of guidelines to MPF intermediaries that set out the type and range of penalty that can be imposed on non-compliant intermediaries and the factors to be taken into consideration by the MPFA in determining the penalty, and consider to promulgate similar guidelines for all other MPF regulatees.

### ***MPFA's Follow-up Actions***

- (1) The MPFA has been conducting a holistic review of the regulatory and enforcement powers of the MPFA. Review of the (i) sufficiency and appropriateness of the MPFA's regulatory tools and powers in respect of misconduct of MPF intermediaries and breaches of non-statutory requirements relating to investment by trustees, (ii) disclosure of specific information about regulatory and enforcement actions against MPF trustees, and (iii) the FP mechanism to better reflect the severity of breaches by trustees in the amount of FP imposed, all form part of the broader holistic review programme.
- (2) Meanwhile, the MPFA will continue to apply the overarching principles of fairness, reasonableness and proportionality, consider case precedents, and weigh all relevant factors and circumstances of the particular case in determining the FP to be imposed on MPF trustees.
- (3) To enhance the industry's understanding of how the MPFA approaches enforcement cases, the MPFA also promulgated an "Explanatory Note on MPFA's Enforcement Approach in relation to Approved Trustees" to the industry in September 2022, setting out its general approach towards enforcement in relation to MPF trustees.

- (4) Concerning the regulation of MPF intermediaries, apart from conducting a holistic review of its regulatory and enforcement powers as mentioned above, the MPFA has also taken the following actions to enhance its performance of regulatory functions:
- (i) Consulted the Police on the handling of criminal matters outside the scope of the MPFA's regulatory regime and explored further collaboration between the MPFA and the Police to enhance public awareness on MPF-related fraudulent and improper acts. It is understood that the complainant's consent for the MPFA's referral and cooperation with the relevant law enforcement agencies is of vital importance in a criminal case;
  - (ii) Further developed the application of the interpretation of regulated activity (which is a statutory prerequisite for enforcing the intermediary's compliance with conduct requirements under the MPF regime) with case experience accumulated and legal advice obtained;
  - (iii) Continued to collaborate with the FRs to raise industry standards and explore further possible actions under FRs' own regulatory regimes, and recent collaborations include conducting with the Insurance Authority and Hong Kong Monetary Authority a joint mystery shopping programme on the selling practices of intermediaries in respect of, *inter alia*, MPF tax deductible voluntary contributions, and sharing the findings and related guidance with the industry and the public; and
  - (iv) Continued to issue circulars to all MPF intermediaries, as well as posts via social media, to provide guidance on the standards of conduct of intermediaries and alert against dishonest and criminal activities.

<p><b>B. Transparency in the Performance of MPF Regulatees</b> <i>(paragraphs 3.23-3.24)</i></p>
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***PRP's Recommendations***

- (1) To publish information on the number, frequency and type of serious non-compliances committed by each MPF trustee who had been subject to the MPFA's regulatory or disciplinary actions; and
- (2) To raise public awareness of the existing public register of SIs with prior breaches of a severe nature, so as to enhance transparency of and access to such information on the MPFA's website and increase deterrence against similar misconduct.

***MPFA's Follow-up Actions***

- (1) The MPFA has all along been exploring enhancement of the transparency of regulatory or disciplinary actions against MPF trustees proactively and has recently completed a review in relation to disclosure of specific information about regulatory and enforcement actions against MPF trustees. This is the first part of the broader programme for the ongoing holistic review of regulatory and enforcement powers of the MPFA as mentioned above, and would likely lead to legislative proposals.
- (2) Concerning enhancement of transparency of the MPFA's enforcement action against MPF intermediaries, press releases (with statements of disciplinary action attached) setting out the details of the breaches involved, the disciplinary orders made and the factors considered by the MPFA in determining the orders, as well as decisions of appeal cases made by the MPFSAB, are available on the MPFA's website. The disciplinary records with details of breaches of SIs are also available in the public register on the MPFA's website, and the MPFA has promoted to the public via different platforms of social media the availability of such information on the public register.

<p><b>C. Training for MPF Practitioners</b> <i>(paragraphs 3.29-3.30)</i></p>
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***PRP's Recommendations***

- (1) To enhance the standard of training for MPF practitioners by setting or increasing the CPD requirements;
- (2) To include regular courses on regulatory compliance and ethics for MPF intermediaries;
- (3) To be more actively involved in the monitoring of training provided by MPF trustees to fund or investment managers; and
- (4) To provide more information to the PRP in future review cycles for cases involving SIs in breach of regulatory requirements regarding how the PI concerned followed up with the SI, including whether the SI was required to attend further training.

***MPFA's Follow-up Actions***

- (1) The MPFA has formulated proposals to enhance the standard of training for MPF intermediaries by revising the current CPD Guidelines as follows:
  - (i) to increase the minimum required CPD hours from 10 hours to 15 hours for each reporting year;
  - (ii) to increase the number of core CPD hours from 2 hours to 4 hours; and
  - (iii) to expand the definition of core subjects to include the topics relating to “ethics” and “regulatory compliance”.

- (2) The revised CPD Guidelines will take effect from the reporting year of 2024. In addition, new topics on ethics and regulatory compliance for MPF intermediaries will be provided by the MPFA regularly.
  - (3) The MPFA recognises that MPF trustees provide regular training and regulatory updates to the investment managers they appoint. The trustees also conduct annual due diligence on these managers to ensure that they provide sufficient training to their staff on an ongoing basis. The MPFA will continue to maintain close liaison with MPF trustees in this area and monitor their provision of trainings to investment managers.
  - (4) For cases involving SIs in breach of regulatory requirements, the MPFA will continue to require the PI concerned in appropriate cases to report back its follow-up work and remedial measures (including training requirements). The MPFA has been providing to the PRP (as during the PRP's review in the 2022-2023 cycle) details of how the PI followed up with the SI including any further training requirements, and will continue to do so provide to the PRP.
- 2.8 The PRP welcomes the above follow-up actions taken by the MPFA, and looks forward to the MPFA's legislative proposals to enhance the efficacy of the MPF regulatory regime.



## 2022-23 Case Review Cycle

2.9 Cases handled by the MPFA can be classified into five categories with reference to the MPFA's core regulatory functions. During the 2022-23 review cycle from 1 May 2022 to 30 April 2023, a total of 6,303 cases were closed or discontinued. From these cases, the PRP selected 30 cases for detailed review, with distribution of cases and cases selected as follows –

	Category of Cases	No. of Cases Closed or Discontinued	No. of Cases Selected for Review
I.	Approval / Registration of MPF Trustees, Schemes and Funds	23	2
II.	Regulation of MPF Trustees	652	14
III.	Registration and Regulation of MPF Intermediaries	5,540	7
IV.	Registration, Exemption and Regulation of ORSO Schemes	83	5
V.	Complaints against the MPFA and its Staff	5	2
<b>Total:</b>		<b>6,303</b>	<b>30</b>

2.10 The MPFA provided case summaries, relevant correspondence and internal procedural manuals relating to the 30 selected cases for the PRP's perusal. The PRP held a case review session in July 2023 to scrutinise the MPFA's internal and operational processes in detail.

2.11 During the case review session, the MPFA briefed the PRP on the work of the MPFA in respect of the 30 selected cases and responded to questions raised by the PRP.

2.12 Case summaries and the PRP's major observations in respect of the selected cases, and the PRP's recommendations to the MPFA for 2022-23 review cycle, are set out in Chapter 3 below.

## **Chapter 3: Observations and Recommendations**

### **Introduction**

- 3.1 Out of the cases completed or discontinued by the MPFA during the 2022-23 review cycle, the PRP selected at least one case from each of the five categories as mentioned in paragraph 2.9 for detailed review. The majority of cases reviewed (14 cases) were relevant to the MPFA's regulation of MPF trustees. The rest (16 cases) concerned the MPFA's regulation of MPF products, MPF intermediaries, ORSO schemes, and a complaint against MPFA staff. Cases were reviewed on a case-by-case basis. The case summaries and the PRP's observations specific to individual cases are set out at paragraph 3.3 below.
  
- 3.2 Apart from the case-specific observations, the PRP has identified some general areas for enhancement and made a number of recommendations on the consistency of the MPFA's internal procedures and adequacy of disciplinary orders to deter misconduct. These general observations and recommendations are summarised in paragraphs 3.4-3.5, 3.7-3.13, 3.21-3.25 and 3.31-3.34 below.

## Case Summaries and PRP's Case-specific Observations

<b>Category I – Approval / Registration of MPF Trustees, Schemes and Funds</b>
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### ***A. Applications for Registration / Approval of MPF Schemes and Funds***

#### **Case 1**

3.3.1.1 Case 1 concerns an application for approval of a new constituent fund. The procedure for the approval of constituent funds involves a sequential approval process:

- (i) applicant to lodge an application with the MPFA first to seek approval-in-principle;
- (ii) with the MPFA's approval-in-principle, applicant to submit application to the SFC for authorisation; and
- (iii) with the SFC's authorisation, the MPFA would grant approval to the constituent fund.

3.3.1.2 The new constituent fund would be invested solely in a new pooled investment fund (*see Case 2 below*). The applicant submitted applications for approval of both the new constituent fund and new pooled investment fund to the MPFA together. As the two applications were related, the MPFA had handled them concurrently and issued approval-in-principle for both on the same day.

3.3.1.3 The applicants then submitted applications to the SFC for authorisation of the two new funds. In this case, the SFC took slightly longer than usual to vet the applications, with rounds of comments to the applicant mainly on disclosures relating to naming of the fund, investment objective and policy, and associated risk factors in light of the new constituent fund's

investment theme. The applicant also took time to revise their application documents to address the SFC's comments.

3.3.1.4 Approval was ultimately granted by the MPFA which considered that the new constituent fund had met the relevant regulatory requirements as set out in the MPFSO, the MPFS(G)R, the Investment Code and the Disclosure Code.

3.3.1.5 The total handling time for this case was 7 months: 1 month for the MPFA to grant approval-in-principle, 3.5 months for the SFC to grant authorisation, and 1.5 months for the MPFA to grant final approval. The handling time for this case was within the relevant timeframe as set out in the applicable KPI.

## Case 2

3.3.2.1 Case 2 concerns an application for approval of a new pooled investment fund to be invested solely by the new constituent fund mentioned in Case 1 above.

3.3.2.2 As with Case 1 above, the applicant took time to revise their application documents to address the SFC's comments on disclosures relating to naming of the fund, investment objective and policy, and associated risk factors in light of the new pooled investment fund's investment theme, leading to a longer authorisation process. Approval was ultimately granted by the MPFA which considered that the new pooled investment fund had met the relevant regulatory requirements as set out in the MPFSO, the MPFS(G)R, the Investment Code and the Disclosure Code.

3.3.2.3 The total handling time for this case was 7 months: 1 month for the MPFA to grant approval-in-principle, 3.5 months for the SFC to grant authorisation, and 1.5 months for the MPFA to grant final approval. The handling time for this case was within the relevant timeframe as set out in the applicable KPI.

***B. Applications for Approval of MPF Trustees***

3.3.2.4 No cases in this category were closed or discontinued during the reporting period. Hence, no relevant cases were chosen for review.

<b>Category II – Regulation of MPF Trustees</b>
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**A. *Supervisory Work***

**(a) *Supervisory Work (investment-related non-compliance)***

**Case 3**

3.3.3.1 Case 3 concerns a borrowing of money by an APIF in breach of the Investment Code, resulting in an overdraft interest of US\$582.33. The case was reported by a trustee to the MPFA in accordance with the regulatory requirement.

3.3.3.2 The trustee was required by the MPFA to submit an assessment report of the incident, covering the cause of the non-compliance, analysis of the trustee's and its service providers' internal control mechanism, assessment of the financial impact on the APIF, and rectification and preventive measures taken by the relevant parties. The MPFA also reviewed precedent cases of similar nature reported by the same trustee to assess whether the incident revealed any systemic weaknesses or failure of the management and internal controls of the trustee or its service providers.

3.3.3.3 Upon review of the trustee's information provided, the MPFA confirmed that the incident was not recurring in nature, and was satisfied that proper internal mechanism was put in place to monitor the compliance of the APIF, and that compensation was duly made to the APIF. As the case only concerned an operational error, the MPFA was of the view that no enforcement action was required, but that supervisory action was warranted given the seriousness of the control failure and magnitude of the financial impact. As such, the MPFA issued a supervisory letter to the trustee requiring it to conduct regular assessments on the effectiveness and adequacy of preventive measures adopted by the relevant parties to avoid future recurrence of similar incidents. The trustee confirmed that it would comply.

- 3.3.3.4 The total handling time for this case was 4 months, which was within the relevant timeframe as set out in the applicable KPIs.

*PRP's Case-specific Observations*

- 3.3.3.5 The PRP noted that the MPFA had followed-up with the trustee after issuing the supervisory letter, and ensured that they had properly rectified the operational error and implemented adequate preventive measures to avoid recurrence of similar issue.

**Case 4**

- 3.3.4.1 Case 4 concerns the selling of unavailable shares of a security by an APIF in breach of the Investment Code, resulting in an investment loss of HK\$161,115.83 to the APIF. The case was reported by the trustee to the MPFA in accordance with the regulatory requirement.
- 3.3.4.2 Similar to Case 3 above, the trustee was required by the MPFA to submit an assessment report of the incident, covering the cause of the non-compliance, analysis of the trustee's and its service providers' internal control mechanism, assessment of the financial impact on the APIF, and rectification and preventive measures taken by the relevant parties. The MPFA also reviewed precedent cases of similar nature reported by the same trustee to assess whether the incident revealed any systemic weaknesses or failure of the management and internal controls of the trustee or its service providers.
- 3.3.4.3 Upon review of the trustee's information provided, the MPFA confirmed that the incident was not recurring in nature, and was satisfied that proper internal mechanism was put in place to monitor the compliance of the APIF, and that compensation was duly made to the APIF. Nevertheless, as in Case 3, the MPFA was of the view that this case warranted supervisory action. As

such, the MPFA issued a supervisory letter to the trustee requiring it to conduct regular assessments on the effectiveness and adequacy of preventive measures adopted by the relevant parties to avoid future recurrence of similar incidents. The trustee confirmed that it would comply.

- 3.3.4.4 The total handling time for this case was 4 months, which was within the relevant timeframe as set out in the applicable KPIs.

### Case 5

- 3.3.5.1 Case 5 concerns a borrowing of money by an APIF in breach of the Investment Code, resulting in an overdraft interest of EUR€16.66 to the APIF. The case was reported by the trustee to the MPFA in accordance with the regulatory requirement.

- 3.3.5.2 Similar to Cases 3 and 4 above, the trustee was required by the MPFA to submit an assessment report of the incident, covering the cause of the non-compliance, analysis of the trustee's and its service providers' internal control mechanism, assessment of the financial impact on the APIF, and rectification and preventive measures taken by the relevant parties. The MPFA also reviewed precedent cases of similar nature reported by the same trustee to assess whether the incident revealed any systemic weaknesses or failure of the management and internal controls of the trustee or its service providers.

- 3.3.5.3 Upon review of the trustee's information provided, the MPFA confirmed that the incident was not recurring in nature, and was satisfied that proper internal mechanism was put in place to monitor the compliance of the APIF, and that compensation was duly made to the APIF. Nevertheless, the MPFA was of the view that the case warranted supervisory action. As such, the MPFA issued a supervisory letter to the trustee requiring it to conduct regular assessments on the effectiveness and adequacy of preventive measures adopted by the relevant parties to avoid



future recurrence of similar incidents. The trustee confirmed that it would comply, and additionally submitted an action plan to the MPFA setting out measures taken to strengthen its current monitoring framework.

- 3.3.5.4 The total handling time for this case was 4.5 months, which was within the relevant timeframe as set out in the applicable KPIs.

*PRP's Case-specific Observations*

- 3.3.5.5 The PRP noted that in the event where preventive measures were not effective, leading to a repeated breach by the trustee, the MPFA would require the trustee to enhance the measures and be subject to an audit by an external party to identify systematic deficiencies. The PRP was concerned that this procedure may not be sufficient to effectively deter trustees from repeated breaches.

*MPFA's Response*

- 3.3.5.6 In response to the PRP's recommendations in the 2022 Annual Report, the MPFA is conducting a holistic review of its regulatory and enforcement powers, as mentioned in paragraph (1) under the heading of "MPFA's Follow-up Actions" of item A (Range of Follow-up Options or Powers of the MPFA) on page 11 of this Report. The review would look into, *inter alia*, the sufficiency and appropriateness of the MPFA's regulatory tools and powers.

**(b) Supervisory Work (suspected breach and non-compliance cases)**

**Case 6**

- 3.3.6.1 Case 6 concerns a trustee's failure to (i) maintain correct member records/ balances and (ii) invest members' accrued benefits correctly, affecting 3,720 of its scheme members. The transaction errors occurred after the launch of new administration system in October 2020 and were identified during the preparation of annual benefit statements for the financial year ended 31 December 2020 by the trustee's scheme administrator. The matter was reported by the trustee to the MPFA in accordance with the regulatory requirement.
- 3.3.6.2 Upon evaluation of the trustee's provided information, the MPFA found that the trustee had taken remedial actions to rectify the issues and implemented preventive measures to avoid the recurrence of the incident in future. In cases where there was a financial loss in members' accounts, the trustee had made compensations to the members affected.
- 3.3.6.3 Given the severity of the control failure and number of scheme members affected, the MPFA directed the trustee to conduct an internal health check to ascertain if there were any further issues which had not been previously identified after the launch of the new administration system (*see Case 7 below*). The MPFA also considered that the case warranted further investigation to determine if any enforcement action should be taken on the non-compliance with relevant sections under the legislation and referred the case to the MPFA's Enforcement Division for further investigation (*see Case 15 below*).
- 3.3.6.4 The total handling time for this case was 12 months: 1 months for referral to Case Discussion Session, 5 months for the trustee to provide further information to the MPFA, and 6 months for supervisory action. The handling time for this case was within the relevant timeframe as set out in the applicable KPI.

### PRP's Case-specific Observations

- 3.3.6.5 The PRP noted that Cases 6-8 all concerned the same trustee and its administration system revamp, which caused systematic errors in the trustee's operations affecting a large number of scheme members.

### MPFA's Response

- 3.3.6.6 Upon the discovery of the scheme administration issues arising from the system revamp, the MPFA has immediately taken a series of regulatory actions to follow up with the trustee concerned and demanded it to rectify the issues. At the MPFA's request, the trustee had taken remedial actions to rectify the issues, including enhancing its system, making compensation to the scheme members concerned and engaging an external auditor to conduct an independent review of its key scheme administration functions and issues arising from the system revamp. The MPFA has investigated into the incident and sanctioned the trustee by imposing FP on it.

### Case 7

- 3.3.7.1 In connection with Case 6 above, Case 7 concerns the same trustee's non-compliance with various statutory requirements due to system defects in the trustee's new administration system, which were identified when conducting an internal health check as requested by the MPFA. There were 6,751 scheme members affected by the errors, which included the following:

- (i) Incorrect execution of certain dealing transactions which caused negative balances in member records;
- (ii) Failure to invest members' accrued benefits in Default Investment Strategy in accordance with the governing

rules when the investment options on the member enrolment form was not equal to 100%;

- (iii) Failure to timely issue notice of participation to members upon the completion of enrolment;
- (iv) Failure to timely issue transfer request letters to transferor trustees for transfer-in cases and transfer confirmations to members for transfer-in/ out cases;
- (v) Failure to timely issue notification on transfer option to terminated members;
- (vi) Failure to timely issue annual benefit statements to certain members; and
- (vii) Late process withdrawal of accrued benefits.

3.3.7.2 As requested by the MPFA, the trustee provided an incident report which identified the root causes of the incident, including administration system defects, insufficient control measures for monitoring the processing time, and human errors (e.g. oversight of staff to timely process pending cases in the administration system). The trustee had taken remedial actions to rectify the issues and implemented preventive measures to avoid the recurrence of the incident in future. In cases where there was a financial loss in members' accounts, the trustee had made compensations to the members affected.

3.3.7.3 Nevertheless, given the scale of impact of the non-compliance, the MPFA considered that the case warranted further investigation to determine if any enforcement action should be taken on the non-compliance with relevant sections under the legislation. This case was therefore referred to the Enforcement Division for further investigation (*see Case 15 below*). The MPFA also requested the trustee to engage an external auditor to conduct an independent review on the administration system to assess the system reliability (*see Case 8 below*).

- 3.3.7.4 The total handling time for this case was 9 months: 6.5 months for referral to Case Discussion Session, and 2.5 months for supervisory action. While the referral process exceeded the relevant timeframe as set out in the applicable KPIs, the applicable KPI is met overall for this category of cases.

*PRP's Case-specific Observations*

- 3.3.7.5 The PRP noted that the trustee requested a 2-week extension for submission of the incident report which was approved by the MPFA. The extension was sought as the trustee had limited resources in handling the multitude of issues identified in the internal health check. As the issues in Case 6 were relatively more complex, that case was prioritised.

*Case 8*

- 3.3.8.1 Case 8 concerns the same trustee's failure to timely report of certain DC records to the MPFA in breach of statutory requirements. This issue was identified by the external auditor during its review of the accuracy of DC records, and reported by the trustee to the MPFA.
- 3.3.8.2 Upon review of the trustee's incident report, the MPFA found that the trustee's failure to timely report DC records stemmed from system errors in the automated process built into the trustee's administration system, which should have automatically generated and reported DC records. Due to incorrect extraction logic, the generation of DC records failed to capture 1,339 DC records in the correct reporting months. In addition, the Quality Assurance Team of the trustee's scheme administrator could not identify that the DC records generated and reported during the period had omitted certain DC records or included DC records which should have been reported in previous months.

- 3.3.8.3 Considering Cases 6-8 in totality, the MPFA again considered that the case warranted further investigation to determine if any enforcement action should be taken on the non-compliance with relevant sections under the legislation. This case was also referred to the Enforcement Division for further investigation (*see Case 15 below*).
- 3.3.8.4 The total handling time for this case was 6 months, which was within the relevant timeframe as set out in the applicable KPIs.

*PRP's Case-specific Observations*

- 3.3.8.5 The PRP noted the large number of cases stemming from this one trustee's system revamp. While such incidents were rare and one-off, the PRP considered that given the scale of impact, the MPFA could consider issuing guidance to the industry on how to prevent such incidents.
- 3.3.8.6 The PRP also noted that only the affected scheme members of the relevant trustee was notified regarding system revamp issues. The PRP considered that more industry stakeholders should be made aware of the incident.

*MPFA's Response*

- 3.3.8.7 The MPFA has from time to time issued directives and guidance to ensure that trustees have effective procedures and control measures in place for various processes.
- 3.3.8.8 In relation to incidents like the system revamp which were rare and one-off, the MPFA has also taken various actions such as issuing a newsletter in September 2023 to the industry drawing attention to scheme administration errors resulting from system revamp and providing guidance to prevent similar incidents from happening.

3.3.8.9 Furthermore, in response to the PRP’s recommendations in the 2022 Annual Report, the MPFA is conducting a holistic review of its regulatory and enforcement powers which includes the power for disclosure of specific information about regulatory and enforcement actions against trustees as mentioned in paragraph (1) under the heading of “MPFA’s Follow-up Actions” of item B (Transparency in the Performance of MPF Regulatees) on page 13 of this Report.

*(c) Supervisory Work (operational issues arising from complaints)*

**Case 9**

3.3.9.1 Case 9 concerns the MPFA’s follow-up actions regarding a trustee’s operational issues as revealed by a separate complaint.

3.3.9.2 According to the trustee’s internal procedures, its MPF specialist staff are required to put all MPF documents received each business day in a drop-in box. Those MPF documents would then be collected by the trustee’s mailing service provider by the end of the business day.

3.3.9.3 In the course of the MPFA’s enquiry regarding that complaint case, it was revealed that the trustee did not put in place any measures to reconcile the total number of MPF documents received by its staff against the total number of MPF documents collected by the mailing service provider. The MPFA followed up with the trustee regarding its enhanced control measures. Upon the MPFA’s request, the trustee enhanced its internal control procedures for handling MPF procedures and implemented within 7 working days of the MPFA’s request. The trustee also provided the updated procedural manual to the MPFA setting out the details of enhanced internal control procedures.

3.3.9.4 The total handling time for this case was 1.2 months, which was within the relevant timeframe as set out in the applicable KPIs.

***B. Inspection of MPF Trustees***

3.3.9.5 No cases in this category were closed or discontinued during the reporting period. Hence, no relevant cases were chosen for review.



## *C. Complaints Handling (MPF Trustees)*

### **Case 10**

- 3.3.10.1 Case 10 concerns a complaint lodged with the MPFA against a trustee for refunding the complainant's MPF contributions to their ex-employer without the complainant's consent.
- 3.3.10.2 Upon review of the information provided by the trustee and the complainant, the MPFA found the allegation substantiated. The trustee had refunded the MPF benefits of the complainant by sending a cheque to the ex-employer solely based on the ex-employer's written instructions, without making further enquiry or verification with either the ex-employer or the complainant. After the MPFA's follow-up, it was revealed that the ex-employer did not intend to ask for a refund. The trustee therefore reinstated the complainant's MPF account balance.
- 3.3.10.3 The MPFA followed-up with the trustee and demanded that it should review and revise the relevant operation procedures so as to avoid similar incidents from happening in future. The trustee has since revised its operation procedures such that when an employer requests for refund of any wrongly paid MPF contributions made for its employee(s), the handling staff of the trustee would follow up with the employer about the reason and would request the employer to provide the consent from the relevant employee(s) before further processing the request.
- 3.3.10.4 The total handling time for this case was 3 months, which was within the relevant timeframe as set out in the applicable KPIs.

## Case 11

- 3.3.11.1 Case 11 concerns a complaint lodged with the MPFA against a trustee for failing to transfer the complainant's accrued benefits from the contribution account to a personal account in a timely manner.
- 3.3.11.2 Upon review of the information provided by the trustee and the complainant, the MPFA found the allegation substantiated. The trustee had failed to set up a personal account for the complainant and transfer her MPF benefits into the personal account within the statutory timeframe<sup>2</sup>. Only when the complainant personally followed-up with the trustee 3 years after the ex-employer's notification did the trustee take remedial action to set up the personal account and transfer the concerned benefits into the personal account for the complainant.
- 3.3.11.3 The complainant did not suffer any financial loss despite the delay of transfer, as it only involved the transfer of units between accounts. However, the MPFA considered that the trustee's conduct may constitute non-compliance with legislative requirements, hence the case was referred to the MPFA Investigation Section for follow-up.
- 3.3.11.4 The total handling time for this case was 2 months, which was within the relevant timeframe as set out in the applicable KPIs.

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<sup>2</sup> If a member does not make any transfer election within three months after an MPF trustee is notified of his/her cessation of employment, the MPF benefits in the contribution account should then be transferred to a personal account under the same scheme within 30 days.

***D. Enforcement Actions against MPF Trustees***

**Case 12**

- 3.3.12.1 Case 12 concerns a trustee's delay in paying accrued benefits a scheme member for 2 months, contrary to the 30-day statutory timeframe as stipulated under section 166 of the MPFS(G)R. This case was reported by the relevant trustee to the MPFA upon the trustee's receipt of a complaint from the relevant scheme member concerning their claim for payment of accrued benefits.
- 3.3.12.2 The MPFA found the breach to be substantiated upon investigation, including making enquiries with the trustee and reviewing the case materials received. The MPFA also looked into possible internal control deficiencies as it took a few days for the scheme administrator to report the matter to the trustee, although no issues were found. The trustee rectified the incident, implemented preventive measures, and provided refresher training to relevant staff to avoid similar incidents from happening again.
- 3.3.12.3 Having considered all facts and circumstances of the case, including but not limited to the trustee's breach history, aggravating and mitigating factors, the MPFA imposed an FP of HK\$20,000 on the trustee for its second breach of section 166 of the MPFS(G)R, as prescribed by Schedule 4 to the MPFS(G)R.
- 3.3.12.4 The total handling time for this case was 20 months: 18 months to complete investigation and issue Notice of Intention to Impose Financial Penalty, and 2 months to complete regulatory action. The case was closed with the Notice of Intention to Impose Financial Penalty issued within the relevant timeframe as set out in the applicable KPIs.

### Case 13

- 3.3.13.1 Case 13 concerns a trustee's delay in reporting an employer's DC records relating to an employee to the MPFA for 5 months, contrary to the 10-day statutory timeframe as stipulated under section 135(1) of the MPFS(G)R. This case was reported by the relevant trustee to the MPFA upon the MPFA's enquiry about the DC record of the relevant employer.
- 3.3.13.2 The MPFA found the breach to be substantiated upon investigation, including making enquiries with the trustee and reviewing the case materials received. The trustee had rectified the incident and fixed the limitations of its electronic administration system which was the cause of delay in this case.
- 3.3.13.3 Having considered all facts and circumstances of the case, including but not limited to the trustee's breach history, aggravating and mitigating factors, the MPFA imposed an FP of HK\$50,000 on the trustee for its third breach of section 135(1) of the MPFS(G)R, as prescribed by Schedule 4 to the MPFS(G)R.
- 3.3.13.4 The total handling time for this case was 20 months: 18 months to complete investigation and issue Notice of Intention to Impose Financial Penalty, and 2 months to complete regulatory action. The case was closed with the Notice of Intention to Impose Financial Penalty issued within the relevant timeframe as set out in the applicable KPIs.

#### PRP's Case-specific Observations

- 3.3.13.5 The PRP noted that for trustee breach cases, the MPFA would take into account all factors to evaluate the proportionate amount of FP in relation to severity of breach. On rare occasions where a new type of breach was committed, the MPFA would consider issuing guidance to all MPF trustees on the matter.

## Case 14

- 3.3.14.1 Case 14 concerns a trustee's delay in giving a Notice of Participation to a scheme member for 69 days, contrary to the 30-day statutory timeframe as stipulated under section 31(4) of the MPFS(G)R. This case was reported by the relevant trustee to the MPFA upon the trustee's receipt of an enquiry about the enrolment status of the relevant scheme member.
- 3.3.14.2 This non-compliance case was connected to the trustee's system revamp and new electronic administration system. As there were a surge of non-compliance cases relevant to this trustee's system revamp, and similar issues were involved in each of the cases as identified in an independent auditor's report (*see Cases 7-8 above*), the MPFA handled this case together with 23 other non-compliance cases holistically.
- 3.3.14.3 The MPFA found the breach to be substantiated upon investigation, including making enquiries with the trustee and reviewing the case materials received. The trustee had rectified the incident and enhanced its relevant procedures to avoid similar incident from happening again. Having considered all facts and circumstances of the case, including but not limited to the trustee's breach history, aggravating and mitigating factors, and the views of the Enforcement Panel, the MPFA imposed an FP of HK\$10,000 on the trustee for this case for its first breach of section 31(4) of the MPFS(G)R, as prescribed by Schedule 4 to the MPFS(G)R.
- 3.3.14.4 The total handling time for this case was 19 months: 16 months to complete investigation and issue Notice of Intention to Impose Financial Penalty, and 3 months to complete regulatory action. The case was closed with the Notice of Intention to Impose Financial Penalty issued within the relevant timeframe as set out in the applicable KPIs.

### PRP's Case-specific Observations

3.3.14.5 The PRP noted that while the MPFA had established guidelines to handle related cases together, it was unprecedented for 24 separate cases to be related. To ensure good governance, the MPFA handling team escalated all 24 cases to the then-Chief Operating Officer of the MPFA for decision on whether to holistically handle all 24 cases together, and for consideration of consulting the Enforcement Panel<sup>3</sup>. This handling method is now a precedent for similar situations in the future.

### Case 15

3.3.15.1 Case 15 concerns a trustee's delay in allocating MPF benefits under the default investment strategy for 3,336 scheme members, contrary to section 34DB(1)(c) of the MPFSO. This case was reported by the relevant trustee to the MPFA.

3.3.15.2 As with Case 14 above, this non-compliance case was also connected to the trustee's new electronic administration system, hence it was handled together with Case 14 and 22 other similar cases. The trustee had rectified the incident and fixed the system defect that caused this incident.

3.3.15.3 The MPFA found the breach to be substantiated upon investigation, including making enquiries with the trustee and reviewing the case materials received. As regards the FP, the MPFA took into account all facts and circumstances of the case, including but not limited to the trustee's breach history, aggravating and mitigating factors, and the views of the Enforcement Panel. Further, to ensure that the amount of FP imposed was proportionate and not excessive, the MPFA decided

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<sup>3</sup> The Enforcement Panel is an internal forum which is convened when the MPFA's Director (Enforcement) has escalated an enforcement case to the Chief Operating Officer for decision, who considers it appropriate to seek a spectrum of views having regards to broader policy and/or strategic consideration before deciding an appropriate action to be taken.

to sample 10% of the 3,336 breaches with the highest non-compliant transaction amount to derive the FP amount. The MPFA therefore imposed an FP of HK\$3,340,000 on the trustee for this case – a HK\$10,000 penalty per breach of section 34DB(1)(c) of the MPFSO as prescribed by Schedule 4 to the MPFS(G)R, multiplied by 334 for the 334 breaches sampled.

3.3.15.4 The total handling time for this case was 15 months: 12 months to complete investigation and issue Notice of Intention to Impose Financial Penalty, and 3 months to complete regulatory action. The case was closed with the Notice of Intention to Impose Financial Penalty issued within the relevant timeframe as set out in the applicable KPIs.

*PRP's Case-specific Observations*<sup>4</sup>

3.3.15.5 The PRP took note that the 10% sampling mechanism adopted in this case to calculate the FP was intended to ensure that the amount of FP imposed was proportionate and not excessive in relation to the severity of the breach.

3.3.15.6 Nevertheless, the PRP observed that the 10% figure appeared arbitrary, and a major exercise of discretion on the MPFA's part. While the MPFA had sought both internal and external legal advice when deciding on adopting the sampling mechanism, the PRP considered that the MPFA could not ensure consistency between cases when imposing FP if the 10% sampling mechanism was not adopted in all cases.

*MPFA's Response*

3.3.15.7 The MPFA's sampling mechanism used in determining the FP in Case 15 is based on rational grounds in accordance with

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<sup>4</sup> MPFA provided PRP with supplementary information and additional comments concerning the case after the Case Review Session and requested PRP to reconsider its observations and recommendations. On an exceptional basis, PRP has taken into account the materials submitted by MPFA and decided to retain its original observations and recommendations.

well-established guidelines, procedures and governance with statutory backing. External senior legal counsel supported the sampling method as appropriate and justified. The sample size adopted in Case 15 is by no means arbitrary but derived objectively after thorough consideration of all relevant factors and external legal advice.

- 3.3.15.8 Where sampling is warranted in a case involving multiple breaches of the same statutory provision, it is the MPFA's statutory duty to exercise its judgment to select a suitable sample size on a case-by-case basis (subject to the nature and seriousness of each case) to ensure that the amount of FP is proportionate. The MPFA considers that it is not appropriate to apply the same fixed percentage (e.g. 10%) for sampling in all cases as this might result in an FP amount that is too low or too high, and disproportionate to the seriousness of the breaches in the cases.
- 3.3.15.9 The MPFA will continue to review and refine its existing procedures to ensure that any FP imposed is fair, reasonable and proportional to the magnitude of the breaches and is consistent with applicable case precedents.

### **Case 16**

- 3.3.16.1 Case 16 concerns a trustee's delay in transferring a scheme member's MPF benefits by 51 days beyond the 30-day statutory timeframe as stipulated under section 153 of the MPFS(G)R. This case was reported by the relevant trustee to the MPFA upon its receipt of an enquiry from the relevant scheme member concerning the status of their MPF benefits transfer request.
- 3.3.16.2 The MPFA found the breach to be substantiated upon investigation, including making enquiries with the trustee and reviewing the case materials received. The MPFA also looked into the trustee's controls over the transfer process in identifying outstanding transfer requests and found that although the trustee



had controls in place, the relevant staff had overlooked this outstanding case identified in the control log. The trustee rectified the incident, enhanced its relevant procedures and controls, and provided training to the relevant team to avoid similar incidents from happening again.

3.3.16.3 Having considered all facts and circumstances of the case, including but not limited to the trustee's breach history, aggravating and mitigating factors, MPFA imposed an FP of HK\$10,000 on the trustee for this case for its first breach of section 153 of the MPFS(G)R, as prescribed by Schedule 4 to the MPFS(G)R.

3.3.16.4 The total handling time for this case was 19 months: 17 months to complete investigation and issue Notice of Intention to Impose Financial Penalty, and 2 months to complete regulatory action. The case was closed with the Notice of Intention to Impose Financial Penalty issued within the relevant timeframe as set out in the applicable KPIs.

<b>Category III – Registration and Regulation of MPF Intermediaries</b>
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**A. *Applications for Registration of MPF Intermediaries***

**Case 17**

- 3.3.17.1 Case 17 concerns an application for registration as an SI and the accompanying application for approval of attachment by the SI to a PI. Requirements for registration as an SI include (i) being a regulatee of the FRs, and (ii) passing an MPF qualifying examination within one year immediately before the date of application unless the applicant was registered as an SI within three years immediately before the date of application.
- 3.3.17.2 In accordance with established procedures, the MPFA checked the applicant’s copy of “Notification of Result” of MPF Schemes Examination, which was purported to be issued by Vocational Training Council and showed that the applicant attended and passed the qualifying examination on 15 June 2022, against the pass list of qualifying examination provided by Council. As the MPFA could not find the applicant in the list, the MPFA made enquiries with the Council. In response, the Council confirmed that the applicant had failed the qualifying examination on 15 June 2022, and provided the MPFA with a copy of “Notification of Result” with the applicant’s examination result being “不合格 FAIL”.
- 3.3.17.3 The application was rejected by the MPFA. Neither the applicant nor the PI responded to the MPFA’s invitation to make representations as to why the applications should not be rejected. The MPFA also referred the case to Commercial Crime Bureau of the Police for investigation of any forgery related offence(s) under the Crimes Ordinance (Cap. 200).

3.3.17.4 The total handling time for this case was 58 working days, which exceeded the relevant timeframe as set out in the applicable KPIs by 38 days. However, the applicable KPI is met overall for this category of cases.

*PRP's Case-specific Observations*

3.3.17.5 The PRP noted that the MPFA would refer cases to the Police Commercial Crime Bureau when appropriate, and would publicise disciplinary charges and criminal convictions on its website, and issue circulars to the MPF industry with details of the case to remind them not to commit such misconduct.

***B. Complaints Handling and Enforcement Actions against MPF Intermediaries***

*Case 18*

3.3.18.1 Case 18 concerned a complaint lodged with the PI against an SI, alleging that the SI had acted without the complainant's authorisation as follows –

- (i) transferred the complainant's MPF benefits from one trustee to another without the complainant's authorisation (Breach 1); and
- (ii) forged the complainant's signature on the relevant MPF forms (Breach 2).

3.3.18.2 The case was reported by the PI to the relevant FR, which investigated the case. It was found that the complainant and the SI named as the handling agent on the MPF forms had conflicting accounts of whether they met for signing the necessary forms to effect the MPF transfer in 2018. However, the complainant declined to provide further information to the FR to assist in the investigation.

3.3.18.3 After considering all the circumstances of the case, the MPFA found that both Breaches 1 and 2 were unsubstantiated due to insufficient evidence. The MPFA decided to issue a CAL to the SI to remind him of the importance of compliance with the MPFSO and to close the case.

3.3.18.4 The total handling time for this case was 54 months: 44 months for the FR's investigation and 10 months for the MPFA's case assessment and issuance of CAL. The case was closed with the CAL issued by the MPFA within the relevant timeframe as set out in the applicable KPIs.

### **Case 19**

3.3.19.1 Case 19 concerned 18 scheme members' complaints lodged with the PI against the same SI, alleging that the SI had –

- (i) failed to disclose that personal accounts charged higher fund management fees than contribution accounts and/ or provided inaccurate/ misleading/ unclear information to 14 complainants (Breach 1);
- (ii) misled 14 complainants to believe that it was a must to open personal accounts before transferring MPF benefits of other schemes to the relevant trustee (Breach 2);
- (iii) failed to disclose to two complainants whether the relevant trustee and/or SI would receive benefit for the transfers of the 2 complainants' MPF benefits and failed to avoid and disclose the conflict of interest (actual or potential) in conducting the transfers for them (Breach 3);
- (iv) gave instructions to the relevant trustee to change 1 complainant's specimen signature without authorisation (Breach 4);

- (v) failed to ensure that relevant MPF forms were duly completed in all material respects before asking 5 complainants to sign on them (Breach 5);
- (vi) failed to provide copies of signed forms to 17 complainants respectively (Breach 6); and
- (vii) failed to carry out two complainants' instructions for scheme enrolment promptly (Breach 7).

The case was reported by the PI to the relevant FR, which investigated the case.

3.3.19.2 During the MPFA's subsequent case assessment on the FR's investigation, it was found that all seven breaches were substantiated with regard to 17 of the 18 complainants. Having considered all circumstances of the case, including but not limited to seriousness of the breaches, aggravating and mitigating factors, and precedent cases of similar nature, the MPFA decided to impose a disciplinary order against SI by way of a 32-month suspension of registration. After confirming that no appeal was lodged by the SI against the decision, a press release with a statement of disciplinary action containing details of the case and decision was made available on the MPFA's website.

3.3.19.3 The MPFA also issued a CAL to the PI. Under the CAL, PI was required to take enhancement actions to prevent recurrence of similar incidents, including enhancing trainings to its subsidiary intermediaries, and reporting back to the MPFA. PI reported back to the MPFA on the enhancement actions taken, including the introduction of an acknowledgement form to ensure clients understand that a personal account has no association with a contribution account, and the fees level of personal accounts are higher than that of contribution accounts.

3.3.19.4 The total handling time for this case was 49 months: 36 months for the FR's investigation, 9 months for the MPFA's case assessment and issuance of Notice of Proposed Disciplinary Action, and 4 months to complete regulatory action. The case was closed with Notice of Proposed Disciplinary Action issued by the MPFA within the relevant timeframe as set out in the applicable KPIs.

### Case 20

3.3.20.1 Case 20 concerned a complaint lodged with the PI against an SI, alleging that the SI had acted without the complainant's authorisation as follows –

- (i) transferred the complainant's MPF benefits from 2 accounts of another trustee to the relevant trustee (Breach 1);
- (ii) impersonated the complainant when calling 2 MPF trustees to enquire about the complainant's MPF account information (Breach 2);
- (iii) failed to carry out the complainant's instructions promptly (Breach 3); and
- (iv) asked the complainant to sign on incomplete forms and failed to provide copies of signed forms to the complainant (Breach 4).

The case was reported by the PI to the relevant FR, which investigated the case.

3.3.20.2 During the MPFA's subsequent case assessment on the FR's investigation, the MPFA found that Breaches 1 to 3 were substantiated, while Breach 4 was unsubstantiated. Having considered all the circumstances of the case including seriousness of the breaches, aggravating and mitigating factors, and precedent

cases of similar nature, the MPFA decided to impose a disciplinary order against SI by way of a 28-month suspension of registration.

3.3.20.3 The SI appealed against the MPFA's decision to the MPFSAB on Breach 1 and the sanction of 28 months, while admitting Breaches 2 and 3. After the appeal hearing, the MPFSAB affirmed the MPFA's findings that Breaches 1 to 3 were substantiated. However, having regard to case precedents and the facts of the case, including that Breach 3 was a case of forgetfulness and no serious prejudice was occasioned to the complainant, MPFSAB varied the sanction to 20-month suspension of registration for Breaches 1 and 2 and a public reprimand for Breach 3. A press release with a statement of disciplinary action containing details of the case and decision, as well as a link to the appeal decision made by MPFSAB, was made available on the MPFA's website.

3.3.20.4 The total handling time for this case was 50 months: 28 months for the FR's investigation, 6 months for the MPFA's case assessment and issuance of Notice of Proposed Disciplinary Action, 12 months for the MPFSAB to consider the appeal, and 4 months to complete regulatory action. The case was closed with Notice of Proposed Disciplinary Action issued by the MPFA within the relevant timeframe as set out in the applicable KPIs.

*PRP's Case-specific Observations*

3.3.20.5 The PRP noted that the MPFA could not file a police report regarding impersonation as it was not the victim of impersonation in this case. While the MPFA had advised the complainant of their right to report, whether the police would pursue the case would depend on whether the victim themselves chose to make a report, and whether the police could collect sufficient evidence to establish a case.

## Case 21

3.3.21.1 Case 21 concerned a complaint lodged with the MPFA against an SI, alleging that the SI had acted without the complainant's authorisation as follows –

- (i) transferred the MPF benefits under one of the complainant's MPF accounts from another trustee to the relevant trustee without the complainant's authorisation (Breach 1);
- (ii) impersonated the complainant when calling the relevant MPF trustee to enquire about the complainant's MPF account information (Breach 2);
- (iii) asked the complainant to sign on incomplete forms (Breach 3);
- (iv) failed to provide copies of signed forms to the complainant (Breach 4);
- (v) failed to obtain the complainant's initials or authentication for the alterations to the completed forms before submitting to PI (Breach 5); and
- (vi) failed to carry out the complainant's instructions promptly (Breach 6).

The MPFA referred the case to the relevant FR, which investigated the case.

3.3.21.2 During the MPFA's subsequent case assessment on the FR's investigation, the MPFA found that Breaches 2 to 5 were substantiated, while Breaches 1 and 6 were unsubstantiated due to insufficient evidence. The SI also admitted Breaches 2 to 5. Having considered all the circumstances of the case including seriousness of the breaches, aggravating and mitigating factors, and precedent cases of similar nature, the MPFA decided to



impose a disciplinary order against the SI by way of a 6-month suspension of registration. After confirming that no appeal was lodged by the SI against the decision, a press release with a statement of disciplinary action containing details of the case and decision was made available on the MPFA's website. The MPFA also issued a letter to the complainant notifying them of the effective date of the disciplinary order against the SI.

- 3.3.21.3 The total handling time for this case was 35 months: 1 month for the MPFA's preliminary assessment, 25 months for the FR's investigation, 6 months for the MPFA's case assessment and issuance of Notice of Proposed Disciplinary Action, and 3 months to complete regulatory action. The case was closed with Notice of Proposed Disciplinary Action issued by the MPFA within the relevant timeframe as set out in the applicable KPIs.

### Case 22

- 3.3.22.1 Case 22 concerned a complaint lodged with the PI against an SI, alleging that the SI had acted without the complainant's authorisation as follows –
- (i) disclosed the complainant's personal information to a third party with the same gender as the complainant and arranged such third party to impersonate the complainant to obtain her MPF account information with an MPF trustee (Breach 1);
  - (ii) failed to explain the purposes of the forms to the complainant (Breach 2);
  - (iii) failed to ensure that the forms were duly completed before the complainant signed on them (Breach 3); and
  - (iv) failed to provide copies of the signed forms to the complainant as soon as reasonably practicable (Breach 4).

The case was reported by the PI to the relevant FR, which investigated the case. However, the complainant declined to attend any interview with the FR to provide further information regarding their complaint.

3.3.22.2 During the MPFA's subsequent case assessment on the FR's investigation, the MPFA found that Breaches 1, 3, and 4 were substantiated, while Breach 2 was unsubstantiated. Having considered all the circumstances of the case including seriousness of the breaches, aggravating and mitigating factors, and precedent cases of similar nature, the MPFA decided to impose a disciplinary order against SI by way of a 7-month suspension of registration. After confirming that no appeal was lodged by the SI against the decision, a press release with a statement of disciplinary action containing details of the case and decision was made available on the MPFA's website.

3.3.22.3 The total handling time for this case was 39 months: 32 months for the FR's investigation, 5 months for the MPFA's case assessment and issuance of Notice of Proposed Disciplinary Action, and 2 months to complete regulatory action. The case was closed with Notice of Proposed Disciplinary Action issued by the MPFA within the relevant timeframe as set out in the applicable KPIs.

*PRP's Case-specific Observations*

3.3.22.4 The PRP noted that impersonation would always lead to a disciplinary order of suspension of registration, with the starting point at 6 months. Nevertheless, the PRP considered that more deterrent effect was needed to curb criminal behaviour among SIs, especially given the frequent reoccurrence of impersonation and forgery cases.

3.3.22.5 As for safeguards against impersonation, the PRP noted that the MPFA had asked trustees to strengthen their verification procedures. Apart from doing basic verification such as asking

for date of birth and Hong Kong Identification Card number, trustees would now ask for more personal details, such as the name of former employer.

### Case 23

- 3.3.23.1 Case 23 concerned a complaint lodged with the MPFA, alleging that a post issued under a Facebook account was offering HK\$100 supermarket cash coupons to induce scheme members to consolidate their MPF accounts to a certain trustee's MPF scheme. Three SIs were involved in the case: SI1 was suspected to be the operator of the Facebook account, while the names and portrait photos of SI2 and SI3 were found in a website referred by the relevant Facebook post.
- 3.3.23.2 The MPFA referred the case to the relevant FR for investigation. However, the FR decided not to initiate any investigation, as during the information collection stage, the FR found that there was no evidence to suggest that any scheme member had been induced by the Promotion Message, and as PI had already taken internal disciplinary action against SI1. Having considered all the circumstances of the case including the FR's decision not to initiate investigation, the MPFA decided to issue a CAL to SI1, with no action taken against SI2 and SI3. The MPFA also issued a substantive reply letter to the complainant and closed the case.
- 3.3.23.3 The total handling time for this case was 13 months: 1 month for the MPFA's preliminary assessment, 11 months for the FR's investigation, and 1 month for the MPFA's case assessment. The case was closed with the CAL issued by the MPFA within the relevant timeframe as set out in the applicable KPIs.

<b>Category IV – Registration, Exemption and Regulation of ORSO Schemes</b>
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**A.      *Applications for Registration / Exemption of ORSO Schemes***

**Case 24**

- 3.3.24.1 Case 24 concerns two applications for registration of an ORSO scheme and application for MPF exemption for said ORSO scheme under section 15 of the ORSO and section 16 of the MPFS(E)R respectively.
- 3.3.24.2 As the applicant submitted both applications together, the MPFA vetted and processed both applications concurrently in accordance with existing internal procedures. This included scrutinising the major terms and rules of the trust deed, covering issues such as the arrangements for the making of contributions, the payment of benefits and the vesting scale, and examining whether the provisions in the trust deed were in compliance with the statutory requirement and sufficiently clear.
- 3.3.24.3 Since the applying employer had an existing individual ORSO registered scheme, the MPFA also reviewed and confirmed that the terms and conditions of the new ORSO scheme were generally as favourable as the existing ORSO scheme, as required under section 14(2)(c) of the MPFS(E)R. Eventually, the MPFA was satisfied that all requirements under the ORSO and the MPFS(E)R were met. Accordingly, the MPFA granted approval for registration of the ORSO scheme and MPF exemption of the ORSO scheme and issued the certificate of registration and MPF exemption.
- 3.3.24.4 The total handling time for this case was less than 1 working day, which was within the relevant timeframe as set out in the applicable KPIs.

## Case 25

- 3.3.25.1 Case 25 concerns an application for registration of an ORSO scheme under section 15 of ORSO. The applicant, as the employer of the relevant ORSO scheme, intended to re-register its ORSO scheme to (1) terminate the original pooling agreement for the ORSO scheme and (2) enrol the ORSO scheme in a new pooling agreement administered by the same trustee instead.
- 3.3.25.2 In submitting the application, the applicant applied to waive the submission for one of the supporting documents (the auditor's statement) under section 17 of the ORSO. The applicant had submitted the auditor's statement as part of the annual statutory reporting which provided assurance on certain aspects of the Scheme under the original pooling agreement. The MPFA considered that the re-registration under the new pooling agreement would not give rise to any change in the stance of the auditor and would not prejudice the interests of the members, hence the criteria for waiver under section 17 of the ORSO was met. Approval of waiver was granted.
- 3.3.25.3 After reviewing the terms and nature of the two pooling agreements, the MPFA was satisfied that they contained similar terms and conditions in terms of contribution, vesting scale, retirement age and benefits. The MPFA was satisfied that all requirements under the ORSO was met. Accordingly, the MPFA granted approval for registration of the ORSO scheme and issued the certificate of registration.
- 3.3.25.4 The total handling time for this case was 17 working days, which was within the relevant timeframe as set out in the applicable KPIs.

### **Case 26**

- 3.3.26.1 Case 26 concerns an application for registration of an ORSO scheme under section 15 of ORSO.
- 3.3.26.2 During the course of vetting, the MPFA issued requisitions to the applicant for clarification of certain points/issues, including the membership of the Scheme, to ensure that the members of the Scheme have an employment relationship with the employer. After clarifying with the applicant on the application form and certain clauses of the governing rules, the MPFA was satisfied that all requirements under the ORSO was met. Accordingly, the MPFA granted approval for registration of the ORSO scheme and issued the certificate of registration.
- 3.3.26.3 The total handling time for this case was 17 working days, which was within the relevant timeframe as set out in the applicable KPIs.

### ***B. Complaints Handling (ORSO Schemes)***

### **Case 27**

- 3.3.27.1 Case 27 concerns a complaint against an MPF trustee regarding its alleged delay in processing ORSO benefits payment and Minimum MPF Benefits transfer of the complainant, such that the complainant's ORSO funds were redeemed at a lower price. The complainant requested compensation.
- 3.3.27.2 The MPFA made enquiries with the trustee and the complainant's employer. The employer admitted to the MPFA that it had overlooked the documents submitted by the complainant, resulting in a delay in forwarding the said documents to the trustee. 3 weeks later, the employer informed the MPFA that they had reached a settlement with the complainant.

- 3.3.27.3 The MPFA concluded that the allegations against the trustee were unsubstantiated, as it had duly processed the ORSO benefits payment and Minimum MPF Benefits transfer within the specified timeframe as stipulated in their internal procedures upon receipt of the documents from the complainant's employer. No non-compliance with any legislative requirement was found. The MPFA also considered that the trustee had also provided detailed replies to the complainant to address their allegations, so no further supervisory action was required.
- 3.3.27.4 After informing the complainant of the MPFA's assessment results, the complainant then expressed dissatisfaction that the trustee did not handle their case in a timely manner. Upon request by the MPFA, the trustee issued a written reply to the complainant directly. As the complainant remained dissatisfied and demanded an apology, the trustee issued a further written reply to the complainant upon the MPFA's request. The MPFA also issued a substantive written reply to the complainant to conclude the case.
- 3.3.27.5 The total handling time for this case was 3 months and 19 days, which was within the relevant timeframe as set out in the applicable KPIs.

### *C. Enforcement Actions against ORSO Administrators*

#### **Case 28**

- 3.3.28.1 Case 28 concerns an investigation into a registered ORSO scheme regarding an alleged breach of scheme membership requirements, resulting in cancellation of registration of the scheme.

- 3.3.28.2 After obtaining information suggesting that not all members of the ORSO scheme were employees of the relevant company, the MPFA conducted an investigation which confirmed that all scheme members were not employees, but rather investors of the ORSO scheme. The MPFA concluded that there was a breach of membership requirements by the ORSO scheme and issued a Notice of Cancellation of Registration of the ORSO scheme to the company.
- 3.3.28.3 The Liquidator of the company subsequently lodged an out-of-time appeal against the MPFA's decision to the ORSAB seeking to defer the cancellation of registration. The application for leave to appeal out-of-time was eventually denied by the ORSAB upon reviewing both the Liquidator and the MPFA's written submissions. The cancellation of registration therefore took effect with a Notice on Coming into Effect of Cancellation of Registration of the ORSO scheme published on the MPFA's website.
- 3.3.28.4 The total handling time for this case was 26 months, including 9.5 months for investigation, 8 months for the ORSAB to consider the appeal, and 8.5 months in total to complete regulatory action and close the case.

*PRP's Case-specific Observations*

- 3.3.28.5 The PRP noted that this was the first case of enforcement action taken against ORSO administrators since the introduction of the new investigation power under the amended ORSO legislation in 2020, hence there is no KPI set for this category of case. The MPFA will set up an appropriate KPI when more case experience is acquired.
- 3.3.28.6 The PRP also noted the potential criminal nature of this case, such as falsification of documents, and that there were a number of ongoing lawsuits involving the relevant ORSO scheme.



<b>Category V – Complaints against the MPFA and its Staff</b>
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**Case 29**

- 3.3.29.1 Case 29 concerns a complainant’s dissatisfaction about the MPFA’s findings in relation to their complaint against a trustee for failing to properly allocate MPF contributions made by their ex-employer to their MPF account (Complaint 1).
- 3.3.29.2 After the relevant MPFA case officer had explained the case findings, the complainant lodged a complaint with the MPFA alleging that –
- (i) the MPFA failed to supervise the relevant trustee regarding its handling of MPF contributions;
  - (ii) the case officer failed to properly and fairly handle the Trustee Complaint;
  - (iii) the MPFA failed to supervise the case officer in handling the Trustee Complaint; and
  - (iv) the case officer was apprehensive of having a face-to-face meeting. (together Complaint 2)
- 3.3.29.3 The MPFA launched an internal investigation according to the established procedures, and found that that the relevant trustee had properly allocated relevant contributions to the complainant’s MPF account. The MPFA also found that the relevant case officer and their supervisor had acted in accordance with the established procedures, including the anti-pandemic measures of the MPFA at the material time, to handle and review Complaint 1.
- 3.3.29.4 The MPFA therefore concluded that the complainant’s allegations were unsubstantiated. To conclude the case, the MPFA had

invited the complainant to attend a face-to-face meeting by discretion despite the anti-pandemic measures, but the complainant refused to attend. The MPFA therefore issued a substantive reply to the complainant to explain the findings of Complaint 2 to close the case.

- 3.3.29.5 The total handling time for this case was 37 working days, which was within the relevant timeframe as set out in the applicable KPIs.

### **Case 30**

- 3.3.30.1 Case 30 concerns a complainant's dissatisfaction about the MPFA's handling of their separate and earlier complaint (Complaint 1) against an MPF trustee.

- 3.3.30.2 After the relevant MPFA case officer had explained the case findings for Complaint 1 to the complainant, they sent a follow-up email to the MPFA. Subsequently, the complainant lodged a complaint with the MPFA to –

(i) complain that the MPFA allowed the case officer to handle their assertion regarding the same case officer's failure to timely acknowledge the complainant's follow-up email (Complaint 2); and

(ii) request that the MPFA review Complaint 1.

- 3.3.30.3 The MPFA launched an internal investigation according to the established procedures and found that –

(i) the relevant case officers reply to the complainant's follow-up email was sent within 3 working days upon receipt, as per the MPFA's internal target timeframe; and

- (ii) the initial findings for Complaint 1 should be maintained as the trustee concerned had made payment to the complainant within the statutory timeframe.

The MPFA therefore concluded that the complainant's allegation was unsubstantiated and issued a substantive reply to the complainant to explain the findings of both Complaint 1 and Complaint 2.

- 3.3.30.4 The total handling time for this case was 25 working days, which was within the relevant timeframe as set out in the applicable KPIs.

*PRP's Case-specific Observations*

- 3.3.30.5 The PRP noted that the MPFA would acknowledge receipt of a complaint within 7 days of receipt, and send another interim reply to the complainant within 2 months of receipt if the MPFA anticipated that a substantive reply could not be made yet.

## **PRP's General Observations and Recommendations**

<b>A. Handling Time</b>
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### ***Observations***

- 3.4 The PRP is pleased to note the MPFA's noticeable efforts to expedite its case handling process in comparison to previous years. Over 90% of cases selected during this review cycle were handled within the timeframes as set out in their KPIs. For the two cases that did not meet the KPIs, the PRP considers that the MPFA has provided reasonable explanations for the time lag.

### ***Recommendations***

- 3.5 The MPFA is encouraged to continue to enhance the efficiency of its case handling process. The MPFA may also consider reviewing its current KPIs for each category of cases in due course, and adjust downwards the target timeframes with reference to the latest average case handling times.

### ***MPFA's Response***

- 3.6 The MPFA thanks the PRP for its recognition of the efforts made in expediting the case handling process. The MPFA will continue to enhance the efficiency of various processes and review regularly the applicable KPIs for each category of cases and strive for further enhancements.

## **B. Consistency and Transparency in Imposing Sanctions**

### ***Observations***

- 3.7 The PRP observes that the 10% sampling mechanism used in Case 15 above was not consistently adopted across cases resulting in the imposition of FP. It remains unclear to the PRP the considerations which the MPFA took into account in deciding to adopt sampling in Case 15 but not in other cases (*see Cases 12-16 above*), and how the MPFA arrived at “10%” as the proportionate amount of cases for sampling and calculating FP.
- 3.8 Especially given the large number of scheme members affected by the breaches captured in Case 15, more cogent reasons are required to defend the MPFA’s major exercise of discretion to calculate FP with reference to only 10% of the breaches (334), instead of imposing punishment for each and every breach committed (3,336).
- 3.9 Similarly, for disciplinary orders against intermediaries, the PRP observes that different durations of suspension orders were imposed for cases which appear to be of similar nature and level of severity (*see Cases 21-22 above*).

### ***Recommendations***

- 3.10 The PRP considers of utmost importance for the MPFA to demonstrate consistent and rational basis in determining sanctions. The MPFA may wish to consider conducting cross-comparison between cases of similar nature, and elaborate on the key differences between cases leading to different amounts of FP imposed or different durations of suspension.
- 3.11 While the PRP notes the current FP regime prescribed in Schedule 4 of the MPFS(G)R, the MPFA is suggested to consider implementing a banding system to categorise cases as minor,

moderate or severe according to the aggravating and mitigating factors of the case, with each category corresponding to a range of FP.

- 3.12 Specifically regarding the 10% sampling mechanism, the MPFA may wish to consider setting out fixed principles in its internal guidelines to strictly govern the circumstances under which sampling is used during the case handling process, as sampling would necessarily heavily discount the amount of FP that would originally have been imposed.
- 3.13 To facilitate the PRP's review of the consistency of sanctions imposed, the MPFA is recommended to provide the PRP with details of the considerations taken into account for arriving at the specific sanctions imposed, including the weight given on each aggravating and mitigating factor in assessing the proportionality of FP *vis-à-vis* severity of breach. The MPFA may also provide the PRP with the Notice of Intention to Impose Financial Penalty, which shows the detailed reasoning for the intended amount of FP to be imposed.

### ***MPFA's Response***

- 3.14 The MPFA is committed to following well-established principles of fairness, reasonableness and proportionality and maintaining consistency in the determination of sanctions against regulatees. Over the years, it has developed and continuously refined relevant guidelines and procedures with the accumulation of case experience.
- 3.15 The MPFA has consistently conducted cross-comparison between cases of similar nature and considered key differences in cases in accordance with established procedures when deriving the appropriate amount of FP or disciplinary sanction in each case.

### Trustee regulatory regime

- 3.16 In response to PRP's comments on the 10% sampling size adopted in Case 15 (as mentioned in paragraph 3.12), the MPFA repeats its response in paragraph 3.3.15.7. It is the MPFA's statutory duty to exercise its judgment to select a meaningful and representative portion of breaches to maintain fairness and consistency with regard to the seriousness of the case, instead of adopting a blanket factor such as a fixed percentage in all cases for imposing FP which could result in an FP amount that might be unreasonable and disproportionate to the seriousness of the case. For instance, Cases 12, 13, 14 and 16, which involved only one single breach in each case where sampling is not applicable, are not comparable to Case 15 which involved a large number of breaches of the same statutory provision due to the same root cause where the FP amount would be disproportionate without sampling.
- 3.17 The issues involved in Case 15 were complex and it was in fact assessed in totality with related cases holistically rather than in isolation. The MPFA had used its best endeavours during the PRP review session (and supplemented information afterwards) to assist the PRP in its review and understanding of the MPFA's handling of this complex case.
- 3.18 The MPFA welcomes and will duly explore the PRP's suggestion in paragraph 3.11 of a banding system to categorize seriousness of cases and will continue to refine procedures to ensure that any FP imposed on MPF trustees is fair, reasonable and proportional to the magnitude of the breach and consistent with applicable case precedents.

### Intermediary regulatory regime

- 3.19 Under the regulatory regime for MPF intermediaries, the MPFA imposed different durations of suspension orders in Case 21 and in Case 22 (as mentioned in paragraph 3.9) because the nature of misconduct involved in the latter is more serious which warranted

a longer period of suspension. As stated in paragraphs 3.3.21.1(ii) and 3.3.22.1(i), the SI of Case 21 conducted the impersonation on his/her own, while the SI of Case 22 leaked the personal information of the scheme member concerned to a third party and arranged such third party to conduct the impersonation.

- 3.20 Regarding the PRP's comments in paragraph 3.13, the MPFA is committed to facilitating the PRP's review of the MPFA's procedural propriety in handling cases with provision of all relevant documents and information.



## C. Efficacy of MPFA's Regulatory Actions

### *Observations*

- 3.21 The PRP notes the MPFA's efforts in enhancing its performance of regulatory functions, including consulting with the police on the handling of criminal matters outside the scope of the MPFA's regulatory regime (*see page 12 above*). Nevertheless, the PRP observes that criminal misconduct cases seemed to be increasingly common. A number of cases chosen for review this year contained elements of impersonation, and there were also a few forgery cases reviewed last year. As these incidents have significant impact on the reputation of MPF intermediaries, the MPFA should step up its prevention and deterrence work.
- 3.22 The PRP also notes that a number of cases chosen for review stemmed from the same trustee system revamp incident, which affected a large number of scheme members. The MPFA should be alert to the potential for recurrence of similar incident for other MPF trustees. Separately, despite the large scale of impact of the incident, the PRP notes that the incident was not made known to the wider MPF industry, but among affected scheme members only.

### *Recommendations*

- 3.23 The PRP considers that the deterrent effect of the MPFA's current enforcement actions against SIs may not be strong enough at the moment. The MPFA may wish to consider more severe repercussions for all types of misconduct, such as raising the minimum duration of suspension order across the board to increase the deterrence effect.
- 3.24 The MPFA, being a financial regulator, should also be more proactive in escalating impersonation and forgery cases to the police, instead of passively relying on the victim's willingness to

file a police report. Echoing its recommendation made in the 2022 Annual Report, the PRP considers that the MPFA should be empowered to file a report to relevant law enforcement agencies in cases where there is reasonable suspicion that an MPFA regulatee has committed potential criminal conduct, despite not being the victim of impersonation or forgery.

- 3.25 As for the trustee system revamp incident, the PRP suggests that the MPFA should provide guidance to the industry on how to prevent similar incidents from happening to other trustees. Further, the MPFA should inform relevant industry stakeholders about the ripple effect caused by the defective administration system, and the various types of breaches, delays, and errors subsequently caused, to further the industry's understanding of the potential scale of impact on trustee operations and scheme members.

### ***MPFA's Response***

- 3.26 The MPFA has been consistently devoting tremendous efforts in raising the overall standards of the industry. Notwithstanding that cases involving serious misconduct mentioned in paragraph 3.21 were isolated incidents, the MPFA would not tolerate any single incident of such misconduct. The MPFA issues guidance and reminders to the industry on a regular basis and had stepped up enforcement actions in order to achieve a stronger deterrent effect, especially in cases involving serious misconduct.
- 3.27 Apart from continuing to review and step up its enforcement actions against non-compliant intermediaries where appropriate as recommended by the PRP in paragraph 3.23, the MPFA has recently issued to the industry a series of circulars and guidance to raise the standards of intermediaries, including (i) increasing CPD requirements, in particular those on integrity and compliance; (ii) guidance on telemarketing to strengthen the controls of PIs over SIs to help combat scam calls; and (iii) enhancing the transparency of benefits receivable by intermediaries.

- 3.28 The MPFA noted the PRP's recommendations in paragraph 3.24 and will further discuss with the Police on referring to them appropriate cases involving suspected crimes.
- 3.29 The MPFA regularly shares with trustees the lessons learnt from significant operational incidents so as to avoid similar incidents from happening to other trustees. In relation to incidents like the system revamp which were rare and one-off as mentioned in paragraphs 3.22 and 3.25, the MPFA issued a newsletter in September 2023 to MPF trustees drawing their attention to scheme administration errors resulting from the incident and providing guidance to prevent similar incidents from happening.
- 3.30 Furthermore, in response to the PRP's recommendations in the 2022 Annual Report, the MPFA has been conducting a holistic review of regulatory and enforcement powers including a power for disclosure of specific information about regulatory and enforcement actions against trustees.

<b>D. Disclosure of Case Information in Case Review Session</b>
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***Observations***

3.31 The PRP was not provided with sufficient information in certain cases to scrutinise the consistency of the MPFA's internal procedures. Specifically, the PRP finds that the case summaries provided by the MPFA are too succinct to encapsulate the complexity of the case-handling process in some cases.

***Recommendations***

3.32 The PRP is of the view that sufficient disclosure of information in the case summaries would facilitate the PRP in reviewing the internal procedures of and the sanctions imposed by the MPFA. It is important for the MPFA to provide concise case summaries without compromising the PRP's comprehension and transparency of internal procedures involved.

3.33 For future review cycles, the MPFA may wish to beef up case summaries by including details on the investigation process, such as steps taken and particular difficulties faced by the MPFA, and other useful materials that could facilitate the PRP's understanding of the MPFA's actions taken.

3.34 Where there are multiple cases chosen for review stemming from the same incident (*see Cases 6-8, 14-15*), the MPFA is recommended to include the conclusion of other related cases in case summaries or to present the cases altogether, in order to give the PRP a comprehensive understanding of the entire incident and allow full assessment of the impact.

### ***MPFA's Response***

- 3.35 The MPFA always uses its best endeavours to assist in the PRP's review of cases and discharge of obligation to scrutinise the consistency of the MPFA's internal procedures. The MPFA stands ready to address any questions and supplement additional information any time as necessary.
- 3.36 In the current review exercise, 30 selected cases across a wide spectrum of the MPFA's regulatory functions were reviewed by the PRP. Some of the cases being reviewed are complex. Nevertheless, the MPFA has made tremendous efforts in explaining relevant issues and considerations taken into account by the MPFA and offered to supplement additional information to facilitate understanding by the PRP of the issues and rationale of the MPFA's decisions.
- 3.37 To facilitate the PRP's future reviews, the MPFA will enhance the case summaries with useful materials that could facilitate the PRP's understanding of the MPFA's actions taken. The MPFA will present any related cases together in order to give the PRP a comprehensive understanding of the entire incident and allow full assessment of the impact.

## Chapter 4: Way Forward

- 4.1 The PRP is pleased to note the MPFA's positive response to the PRP's recommendations in past years and the current report. The PRP will continue to render advice and recommendations to the MPFA to enhance the adequacy and efficiency of the MPFA's internal procedures and guidelines concerning all areas of its regulatory work.
- 4.2 The PRP welcomes and attaches great importance to the views of the public and market participants on the work of the PRP. Comments relating to the PRP's work can be referred to the Secretariat of the PRP via the following channels<sup>5</sup> –

By post: Secretariat of the Process Review Panel for the  
Mandatory Provident Fund Schemes Authority

24<sup>th</sup> Floor, Central Government Offices  
2 Tim Mei Avenue  
Admiralty, Hong Kong

By email: [prpmpf@fstb.gov.hk](mailto:prpmpf@fstb.gov.hk)

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<sup>5</sup> Enquiries or comments not relating to the process review work of the PRP should be made to the MPFA direct –

By post: Level 12, Tower 1, The Millennity, 98 How Ming Street, Kwun  
Tong, Hong Kong

By telephone: (852) 2918 0102

By fax: (852) 2259 8806

By email: [mpfa@mpfa.org.hk](mailto:mpfa@mpfa.org.hk)

## **Chapter 5: Acknowledgement**

5.1 The PRP would like to express its gratitude to the MPFA for its assistance in facilitating the review process, and the MPFA's co-operation in responding to the PRP's enquiries and recommendations.

**Process Review Panel for the  
Mandatory Provident Fund Schemes Authority  
January 2024**