

MEMORANDUM OF UNDERSTANDING
CONCERNING THE REGULATION OF MANDATORY
PROVIDENT FUND PRODUCTS

Securities and Futures Commission

and

Mandatory Provident Fund Schemes Authority

Hong Kong

23rd April 2003

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MEMORANDUM OF UNDERSTANDING

- BETWEEN:** Securities and Futures Commission (the “SFC”) of 12th Floor, Edinburgh Tower, The Landmark, Central, Hong Kong
- AND:** Mandatory Provident Fund Schemes Authority (the “MPFA”) of 21st and 22nd Floors, One International Finance Centre, 1 Harbour View Street, Central, Hong Kong

1. STATUS OF PARTIES

- 1.1 The SFC is a body corporate given statutory powers by the Securities and Futures Ordinance (Cap. 571) (the “SF Ordinance”). The functions of the SFC include regulating securities, futures and leveraged foreign exchange trading and other financial products for the protection of investors and maintenance of the integrity of the securities and futures markets; administering all relevant requirements to ensure full disclosure to and fair treatment of public shareholders and investors; regulating persons carrying on regulated activities such as dealing in securities and advising on securities; and encouraging the development of securities and futures markets in Hong Kong and the increased use of such markets by investors in Hong Kong and elsewhere.
- 1.2 The MPFA is established by the Mandatory Provident Fund Schemes Ordinance (Cap. 485). Its functions include ensuring compliance with the Mandatory Provident Fund Schemes Ordinance and its subsidiary legislation (the “MPF Ordinance”); registering provident fund schemes; approving pooled investment funds; approving trustees; regulating the affairs and activities of approved trustees; granting MPF exemption to ORSO schemes; overseeing the administration and management of registered schemes and pooled investment funds; making rules or guidelines for the administration of registered schemes and pooled investment funds.

2. REASONS FOR MEMORANDUM OF UNDERSTANDING

- 2.1 This Memorandum of Understanding (“MOU”) aims to replace and supersede the previous MOU, signed on 30th June 1999, between the SFC and the MPFA in light of the commencement of the SF Ordinance, which repeals and replaces, *inter alia*, the Securities and Futures Commission Ordinance (Cap. 24), the Securities Ordinance (Cap. 333) and the Protection of Investors Ordinance (Cap. 335).
- 2.2 The MPFA is the regulatory organization primarily responsible for oversight

of the Mandatory Provident Fund system established under the MPF Ordinance.

- 2.3 The SFC has responsibilities under the SF Ordinance and the rules and regulations made thereunder, to ensure proper disclosure to and fair treatment of members of the public who participate or invest in master trust schemes, industry schemes and pooled investment funds ("MPF products") and is responsible for the licensing and supervision of their operators who are SFC licensed persons engaged in the investment management of these products.
- 2.4 Both parties desire to reduce, as far as is reasonably practicable, duplication of efforts between them by specifying in this MOU their respective responsibilities regarding the regulation of MPF products and their operators. The parties also desire to promote mutual assistance and the exchange of information so that they may effectively perform their respective responsibilities.
- 2.5 Both parties will use their best endeavours to meet the arrangements set out in the MOU. The MOU does not modify or replace any laws, rules or regulatory requirements and does not create any rights enforceable by third parties.

3. RESPONSIBILITIES OF THE MPFA

- 3.1 The MPFA is responsible for the overall administration of the Mandatory Provident Fund system. This involves the due and proper discharge of all statutory obligations under the MPF Ordinance as well as the rules and regulations made thereunder. Its responsibilities include:
 - (a) registering and approving MPF products in accordance with the provisions of the MPF Ordinance and the rules and regulations made thereunder;
 - (b) approving trustees of MPF products and ensuring, as far as reasonably practicable, the due and proper observance by such persons of the provisions of the MPF Ordinance and the rules and regulations made thereunder;
 - (c) issuing guidelines to assist service providers seeking registration and approval of MPF products;
 - (d) on-going monitoring of MPF products' compliance with the MPF Ordinance;
 - (e) reviewing and providing policy advice to the Government of the Hong

Kong Special Administrative Region on the system of regulation of MPF products;

- (f) investigating alleged breaches of the provisions of the MPF Ordinance referred to paragraphs (a) and (b) above and take appropriate enforcement actions where necessary;
- (g) receiving and investigating all public complaints on approved trustees and other matters related to MPF products and refer them to the appropriate regulators including the SFC for further actions, where appropriate;
- (h) co-operating with and assisting the SFC and other regulators in Hong Kong or elsewhere for matters concerning MPF products and their service providers; and
- (i) maintaining proper files, records and systems of all transactions and other matters processed by the MPFA.

4. RESPONSIBILITIES OF THE SFC

4.1 The SFC's responsibilities relating to MPF products include administering certain statutory provisions under the SF Ordinance and the rules and regulations made thereunder, to ensure proper disclosure to and fair treatment of members of the public who participate or invest in MPF products. The SFC is responsible for:

- (a) vetting and authorizing MPF products and related marketing materials in accordance with the provisions in the SFC Code on MPF Products and the SF Ordinance;
- (b) licensing and approving investment managers and continued monitoring of their conduct in the investment management of MPF products;
- (c) through a program of surveillance and inspection, supervising the activities of SFC licensed persons in the provision of services with respect to MPF products;
- (d) investigating alleged breaches of the provisions of the Code referred to in 4.1(a) and the SF Ordinance, and taking appropriate enforcement actions where necessary;
- (e) responding to all complaints referred to the SFC by the MPFA or the

public in relation to MPF products authorized by the SFC or the conduct of SFC licensed persons engaged in the investment management of these products; and

- (f) co-operating with and assisting the MPFA and other regulators in Hong Kong or elsewhere that are concerned with MPF products and their operators.

5. STATUS OF MEMORANDUM OF UNDERSTANDING

5.1 The MPFA and the SFC acknowledge and agree that:

- (a) this MOU is entered into by the parties hereto in good faith and for the purpose of facilitating a cooperative working relationship between the parties hereto in accordance with their respective responsibilities as set out in sections 3 and 4;
- (b) in the interpretation of any of the provisions of this MOU such provisions shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of this MOU according to its true intent, meaning and spirit;
- (c) each of the parties hereto shall:
 - (i) maintain a good working relationship with the other with respect to all Mandatory Provident Fund matters;
 - (ii) co-operate with the other in complying with the provisions hereof; and
 - (iii) perform its obligations hereunder, fully, in good faith and to the best of its ability;
- (d) this MOU is a public document and the contents hereof may be disclosed and copies may be furnished by either party hereto to any third party without the consent of the other hereto;
- (e) this MOU shall not give rise to any rights, direct or indirect, on the part of third parties, nor shall such parties be entitled to require compliance by either the MPFA or the SFC with any of their respective obligations arising hereunder; and
- (f) nothing in this MOU shall affect the rights of the MPFA or the SFC to exercise any of their respective powers or perform any of their

respective functions under the MPF Ordinance or the SF Ordinance.

6. FUTURE POLICY DEVELOPMENT

6.1 The MPFA and the SFC each agree:

- (a) to consult in the preparation and the issue of further guidelines in relation to the regulation of MPF products and their operators, where necessary; and
- (b) to consider a policy of introducing measures, statutory or otherwise, designed to set minimum standards and encourage enhanced professional standards and practices for SFC licensed persons engaged in the investment management of MPF products in Hong Kong.

7. WORK FLOW

- 7.1 The responsibilities of the MPFA and the SFC described in paragraphs 3.1(a) and 4.1(a) above require these parties to receive and consider applications relating to the same MPF products.
- 7.2 To promote the efficient consideration of these applications and to minimize costs and delay to the applicant, the MPFA and the SFC have agreed that as a matter of routine working practice, applications should first be considered and preliminarily approved by the MPFA before being considered by the SFC.
- 7.3 The MPFA and the SFC have agreed that upon the MPFA giving its preliminary approval to an application and the documentation in support, the MPFA will inform the SFC in writing and the SFC will thereupon undertake its detailed consideration of the application.

8. CONFIDENTIALITY AND USE OF INFORMATION

- 8.1 Assistance or information will only be provided by either the MPFA or the SFC to the other party in accordance with the law and for the purposes of assisting the other in the performance of its regulatory functions. Any assistance or information provided under this MOU will be used by the recipient only for the purposes of performing its regulatory functions, and, except otherwise required by the relevant laws, will not be disclosed to any third party without the prior consent of the provider of the assistance or information. Each party will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.

9. CONTACT PERSONS

- 9.1 All communications between the MPFA and the SFC will be between the principal points of contact as set out in Annex A unless otherwise decided. Annex A may be amended by written notice from either party without the need for re-signature of this MOU.

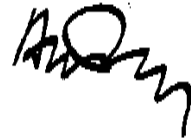
10. EFFECTIVE DATE AND TERMINATION

- 10.1 This MOU replaces and supersedes the previous MOU signed on 30th June 1999.
- 10.2 The parties hereto agree to keep the operation of this MOU under review and to consult with a view to improving its operation and resolving any matters.
- 10.3 This MOU may be amended at any time by written agreement between the parties hereto.
- 10.4 This MOU sets out the basis upon which the SFC and the MPFA intend to work together and is not intended to be legally binding on either party.

DATED this 23rd day of April, 2003.

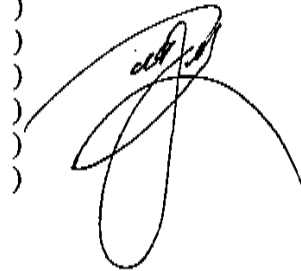
**SIGNED FOR AND ON BEHALF OF THE
SECURITIES AND FUTURES COMMISSION
BY ANDREW SHENG** authorized so to do by
resolution of the Securities and Futures
Commission on 18th March 2003.

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**SIGNED FOR AND ON BEHALF OF THE
MANDATORY PROVIDENT FUND
SCHEMES AUTHORITY
BY RAFAEL HUI** authorized so to do by
resolution of the management board of the
Mandatory Provident Fund Schemes Authority
on 7th April 2003.

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LIST OF CONTACT PERSONS

Securities and Futures Commission, Hong Kong

Director, Investment Products

Alternate:

Senior Manager, Investment Products

Mandatory Provident Fund Schemes Authority, Hong Kong

Chief Operating Officer (Compliance)

Alternate:

Senior Manager, Trustees/Intermediaries