



# MPFA reprimands and suspends the registration of MAK Ka Chai as an MPF intermediary for 20 months

The MPFA has reprimanded and suspended the registration of MAK Ka Chai (MAK) as an MPF intermediary for 20 months from 11 January 2023 to 10 September 2024<sup>1</sup>.

The MPFA's disciplinary action against MAK follows the determination of the Mandatory Provident Fund Schemes Appeal Board (MPFSAB) of 11 January 2023, which affirmed the MPFA's findings that between January and August 2018 when MAK invited an MPF scheme member to join or become a member of a particular MPF scheme, he had contravened the conduct requirements under the Mandatory Provident Fund Schemes Ordinance (MPFSO)<sup>2</sup>, including that when carrying on a regulated activity, a subsidiary intermediary must act honestly, fairly, in the best interests of the client and with integrity, and exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity. He had also contravened the Guidelines on Conduct Requirements for Registered Intermediaries<sup>3</sup>. The key facts of MAK's misconduct are summarized **as follows:**

**(1) effected two transfers without the scheme member's authorization (Breach 1);**

**(2) impersonated the scheme member in calling two MPF trustees to obtain the scheme member's MPF account information (Breach 2); and**

**(3) failed to carry out the scheme member's instructions promptly (Breach 3).**

The MPFSAB was of the view that MAK's misconduct was very serious and determined that MAK's registration should be suspended for 20 months for Breaches 1 and 2 and publicly reprimanded for Breach 3<sup>4</sup>.

The case was referred to the MPFA following an investigation by the Insurance Authority.

A copy of the Statement of Disciplinary Action is available [here](#).

- Ends -

12 January 2023

1. MAK (MPF Registration No. 109955) has been attached to Manulife (International) Limited as a subsidiary intermediary\* since 24 July 2014.

2. Section 34ZL(1)(a) and (b) of the MPFSO.

3. The Guidelines provides that an MPF intermediary should:

(a) take all reasonable steps to carry out client instructions promptly and accurately, notify the client after the instructions have been carried out and alert the client within a reasonable time in case of any delay or failure to execute the client's instruction by the registered intermediary (paragraph III.17); and

(b) comply with the controls, procedures and standards of conduct as required by his principal intermediary\* (paragraph III.20).

\* A principal intermediary is a business entity registered by the MPFA to engage in conducting MPF sales and marketing activities and giving regulated advice. A subsidiary intermediary is a person registered by the MPFA to carry out MPF sales and marketing activities and to give regulated advice on behalf of a principal intermediary to which the person is attached.

4. The MPFSAB has varied the suspension period imposed by the MPFA for the three breaches having regard to the facts of the case and case precedents, including that Breach 3 was a case of forgetfulness resulting in the failure to carry out the scheme member's instructions promptly and though the delay of 6 months was significant, no serious prejudice was occasioned to the member.

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## STATEMENT OF DISCIPLINARY ACTION

### The disciplinary action

1. The Mandatory Provident Fund Schemes Authority (MPFA) has publicly reprimanded and suspended the registration of MAK Ka Chai (MAK) as a Mandatory Provident Fund (MPF) intermediary for 20 months from 11 January 2023 to 10 September 2024 following the determination of the Mandatory Provident Fund Schemes Appeal Board (MPFSAB) of 11 January 2023.
2. The MPFSAB affirmed the MPFA's findings that MAK had:
  - (a) transferred a scheme member's MPF accrued benefits from two MPF schemes to another (Subject Transfers) without the scheme member's authorization (Breach 1);
  - (b) impersonated the scheme member in calling two MPF trustees to obtain the scheme member's MPF account information (Breach 2); and
  - (c) failed to carry out the scheme member's MPF benefits transfer instructions from two other MPF schemes to the scheme of Manulife (International) Limited (Manulife) promptly (Breach 3).
3. MAK's conduct was in breach of the conduct requirements under sections 34ZL(1)(a) and (b) of the Mandatory Provident Fund Schemes Ordinance, Cap 485 (MPFSO), paragraphs III.17 and III.20 of the Guidelines on Conduct Requirements for Registered Intermediaries (Conduct Guidelines), as well as the internal policy/guideline of the principal intermediary<sup>1</sup>.

### Summary of case

4. MAK has been a subsidiary intermediary<sup>2</sup> attached to Manulife since 24 July 2014.
5. In late January 2018, a scheme member passed by and was attracted to a roadshow held in the name of Manulife (Roadshow). The scheme member then approached MAK and expressed his interest in consolidating his MPF accounts to Manulife. He provided two benefit statements of the two MPF accounts he then held to MAK who agreed to help the scheme member in effecting the consolidation.
6. However, MAK did not follow up the scheme member's instructions on account consolidation after the Roadshow. Subsequently in March 2018, the scheme member consolidated his two MPF accounts to another trustee which is not Manulife (Trustee A) with the help of another agent.

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<sup>1</sup> Manulife, a principal intermediary registered by the MPFA to engage in conducting MPF sales and marketing activities and giving regulated advice.

<sup>2</sup> A subsidiary intermediary is a person registered by the MPFA to carry out MPF sales and marketing activities and to give regulated advice on behalf of a principal intermediary to which the person is attached.

7. From July to August 2018, MAK found out that the scheme member had transferred his MPF benefits to Trustee A and, without the scheme member's knowledge and authorization, transferred the scheme member's MPF benefits held under Trustee A to Manulife by using the personal information of the scheme member obtained during the Roadshow in January 2018. The scheme member only became aware of the Subject Transfers upon receipt of a confirmation letter from Manulife in late August 2018.
8. In the course of investigation, MAK also admitted the following:
  - (a) he assumed the scheme member's identity to call two trustees to obtain the scheme member's latest MPF account information; and
  - (b) he had forgotten to take timely action on the scheme member's consolidation instructions given at the Roadshow in January 2018.
9. Although MAK claimed that the scheme member had confirmed his authorization to conduct the Subject Transfers in a phone call in July 2018, his evidence was not cogent and contrary to the evidence given by the scheme member. The scheme member's authorization given to MAK at the Roadshow, if any, would have lapsed by the time that his accrued benefits were transferred to Trustee A. The Subject Transfers were conducted only four months after the scheme member had transferred his MPF benefits to Trustee A via another agent. The scheme member also gave evidence that he did not authorize the Subject Transfers.

#### **Breaches and reasons for action**

10. Section 34ZL(1)(a) of the MPFSO states that, when carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must act honestly, fairly, in the best interests of the client, and with integrity.
11. Section 34ZL(1)(b) of the MPFSO states that, when carrying on a regulated activity, a principal intermediary or a subsidiary intermediary attached to a principal intermediary must exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity.
12. Paragraph III.17 of the Conduct Guidelines states that a registered intermediary should take all reasonable steps to carry out client instructions promptly and accurately, notify the client after the instructions have been carried out and alert the client within a reasonable time in case of any delay or failure to execute the client's instruction by the registered intermediary.
13. Paragraph III.20 of the Conduct Guidelines states that a subsidiary intermediary should comply with the controls, procedures and standards of conduct as required by his principal intermediary.
14. Manulife also has internal guidelines prohibiting its subsidiary intermediaries from any misconduct, including unauthorized transfer, impersonation and failing to carry out client's instruction promptly.

15. Having considered all the circumstances of the case, the MPFA is of the view that when carrying on a regulated activity, MAK had failed to (i) act honestly, fairly, in the best interests of the client, and with integrity; and (ii) exercise a level of care, skill and diligence that may reasonably be expected of a prudent person who is carrying on the regulated activity by:
  - (a) transferring the scheme member's MPF accrued benefits from two MPF schemes to the Manulife scheme without the scheme member's authorization;
  - (b) impersonating the scheme member in calling two trustees to obtain the scheme member's MPF account information; and
  - (c) failing to carry out the scheme member's accrued benefits transfer instructions from the schemes of two trustees to the Manulife scheme promptly.
16. In doing so, MAK had not only breached the regulatory requirements under the MPFSO and the Conduct Guidelines, he also failed to comply with Manulife's internal guidelines.

### **Conclusion**

17. The MPFA's view is that MAK's conduct had breached the conduct requirements under sections 34ZL(1)(a) and (b) of the MPFSO, and paragraphs III.17 and III.20 of the Conduct Guidelines.
18. The MPFSAB was of the view that MAK's misconduct was very serious and affirmed the MPFA's findings. The MPFSAB determined that MAK's registration should be suspended for 20 months for Breaches 1 and 2 and publicly reprimanded for Breach 3<sup>3</sup>.

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<sup>3</sup> The MPFSAB has varied the suspension period imposed by the MPFA for the three breaches having regard to the facts of the case and case precedents, including that Breach 3 was a case of forgetfulness resulting in the failure to carry out the scheme member's instructions promptly and though the delay of 6 months was significant, no serious prejudice was occasioned to the member.

**IN THE MANDATORY PROVIDENT FUND SCHEMES  
APPEAL BOARD**

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IN THE MATTER OF a Decision made by the  
Mandatory Provident Fund Schemes Authority  
under section 34ZW of the Mandatory  
Provident Fund Schemes Ordinance, Cap. 485

AND IN THE MATTER OF section 35(1) of  
the Mandatory Provident Fund Schemes  
Ordinance, Cap. 485

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BETWEEN

MAK KA CHAI

Appellant

And

MANDATORY PROVIDENT FUND SCHEMES AUTHORITY

Respondent

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Appeal Board : Ms Eva Sit Yat-wah, SC, Chairman  
Mr Dennis Ho Chiu-ping, Member  
Ms Lily Wong, Member

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Date of hearing : 6 October 2022

Date of decision : 11 January 2023

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**DECISION ON APPEAL**

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A 1. This is the appeal by Mr Mak Ka Chai (“**Appellant**”) against  
B the decision of the Mandatory Provident Fund Schemes Authority  
C (“**Authority**”) made on 26 November 2021 (“**Decision**”):-

- D (1) finding that the Appellant has failed to comply with various  
E conduct requirements in respect of (i) his arranging the  
F transfer of the MPF accounts of Mr Kong Wing Yin (“**Kong**”)  
G from Principal Trust Company (Asia) Limited (“**Principal**”)  
H to Manulife (International) Limited (“**Manulife**”) in August  
I 2018 (“**Transfer**”) without Kong’s authorization; (ii) his  
J impersonation of Kong to obtain Kong’s MPF account  
K information from his previous MPF trustees; and (iii) his  
L failure to carry out Kong’s instructions given on 25 January  
M 2018 promptly (“**Breach 1**”, “**Breach 2**” and “**Breach 3**”  
N respectively, “**Breaches**” collectively); and  
O  
P (2) imposing a disciplinary order to suspend the Appellant’s  
Q registration as a registered intermediary for 28 months with  
R respect to the Breaches.  
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N 2. The Appellant’s appeal is limited to challenging (i) Breach 1  
O and (ii) penalty. He admits to Breach 2 and Breach 3.

P ***The Facts***

Q 3. The relevant facts fall within a narrow compass, and are  
R largely taken from the Admitted Facts dated 11 July 2022 and the  
S Authority’s chronology submitted for the appeal (which counsel for the  
T Appellant confirmed agreement with).  
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A 4. The Appellant was in 2018 (and still is) a subsidiary  
B intermediary attached to Manulife, a principal intermediary, within the  
C meaning of sections 34G and 34H of the Mandatory Provident Fund  
D Schemes Ordinance (Cap.485) (“**Cap.485**”).

E 5. On 25 January 2018, the Appellant performed duties for  
F Manulife at a roadshow promotion booth with a pull-up banner with the  
G words “Manulife MPF Consolidation” in Fu Shin Shopping Centre, Tai Po,  
H New Territories.

I 6. During that roadshow, at which it is common ground that the  
J Appellant was carrying on a regulated activity within the meaning of  
K section 34F of Cap.485, Kong approached the Appellant.

L 7. According to Kong, who gave evidence at the appeal hearing,  
M he wanted to consolidate his MPF accounts, as he had other jobs previously  
N and as a result he had more than one MPF account. He claimed that when  
O he saw the Manulife booth, he went home to retrieve his MPF statements  
P so that he could give them to the Manulife staff at the booth to arrange for  
Q consolidation of his accounts to Manulife.

R 8. It is common ground that on 25 January 2018:-

S (1) Kong provided 2 benefit statements of his MPF accounts with  
T (i) Bank of East Asia (Trustees) Limited (“**BEA**”) and (ii)  
U HSBC Provident Fund Trustee (Hong Kong) Limited  
V (“**HSBC**”); and

(2) at the Appellant’s request, Kong allowed the Appellant to use  
his mobile phone to take a photograph of Kong’s HKID card.



A 9. During his oral evidence, Kong also confirmed that on that  
B occasion he had appended his signature to (i) the signature page of  
C Manulife’s form to request the original trustee to process the fund transfer  
D application; (ii) the signature page of Manulife’s “Employee Choice  
E Arrangement – Transfer Election Form”; (iii) the signature page of  
F Manulife’s “MPF Intermediary Fulfillment Form”; and (iv) Manulife’s  
G “Application for Participation in Manulife Global Select (MPF) Scheme  
(Personal Account)”. He claimed that when he appended his signatures,  
those forms were blank.

H 10. It is not disputed that on 30 January 2018 a “Personal Account  
I Information Enquiry” form was lodged by the Appellant, purportedly on  
J behalf of Kong and bearing a signature purported to be Kong’s, to the  
K Authority, following which a “Report of Personal Account” relating to  
L Kong was issued by the Authority to the Appellant on 8 February 2018.  
M Kong said the signature on this “Personal Account Information Enquiry”  
form – which is visibly different from Kong’s admitted signatures – was  
not his, and he was not cross-examined on the same.

N 11. Nothing happened thereafter on the Manulife front, and in  
O March 2018 Kong saw another roadshow booth, this time by Principal, and  
P he reached out to Principal and eventually arranged to consolidate his BEA  
and HSBC MPF accounts with Principal on 5 March 2018.

Q 12. It is common ground that in around mid July 2018, Kong  
R received a telephone call from the Appellant. The content of that exchange  
S is disputed and will be addressed below.

T 13. Thereafter, on 17 July 2018, the Appellant admits to  
U impersonating Kong in making telephone calls, firstly to HSBC  
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(at 11:33am) and later to Principal (11:56am), to obtain Kong's MPF account information.

14. Then on 14 August 2018, the Appellant:-

(1) filled in and purported to sign as Kong a Manulife consolidation form (in Chinese);

(2) filled in the "Employee Choice Arrangement – Transfer Election Form", the "MPF Intermediary Fulfillment Form" and the "Application for Participation in Manulife Global Select (MPF) Scheme (Personal Account)" referred to in § 9 above,

to effect transfer of Kong's MPF accounts from Principal to Manulife.

15. In late August 2018, Kong received 2 "Transfer Confirmations" from Manulife confirming the transfer of Kong's MPF accounts from Principal to Manulife, in each case stating the MPF intermediary to be the Appellant.

16. On 23 August 2018, Kong emailed the Authority to complain about Manulife and the Appellant for setting up his Manulife MPF account without his knowledge or consent, and asked to terminate his Manulife account. This was followed by (i) a telephone complaint he lodged with Manulife on 30 August 2018; and (ii) a report to the Hong Kong Police Force on 13 September 2018 (no charges were laid against the Appellant in the end).

A *The Authority’s Investigation and the Decision* A

B 17. Following Kong’s complaint the Authority carried out  
C investigation into the same. Among other things the Appellant was  
D interviewed by the Insurance Authority (being the relevant frontline  
E regulator under section 34ZA of Cap.485) on 7 August 2019.

F 18. On 15 September 2021 the Authority gave notice to the  
G Appellant, as required under section 34ZZ of Cap.485:-

H (1) setting out its preliminary view that the Appellant has  
I committed the Breaches in failing to comply with (i) section  
J 34ZL(1)(a) and (b) of Cap.485; (ii) §III.17 and §III.20 of the  
K Guidelines on Conduct Requirements for Registered  
L Intermediaries (“**Conduct Guidelines**”); and (iii) Manulife’s  
internal guidelines (namely, “Golden Rules” clauses B20 and  
B27), and the reasons and bases therefor;

M (2) indicating that the Authority proposed to make a disciplinary  
N order against him to suspend his registration as a registered  
intermediary for 28 months; and

O (3) notifying him of his right to make written representations on  
P the above.

Q 19. The Appellant submitted his written representations through  
R his solicitors on 15 October 2021. Although a copy of the same was not  
S before the Appeal Board, they have been summarized in the Authority’s  
T Decision §10. For present purpose the following are relevant:-  
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(1) The Appellant admitted to impersonating Kong to obtain his MPF account information from HSBC (Breach 2) and failing to execute Kong’s instructions promptly (Breach 3).

(2) The Appellant claimed that (i) Kong requested to consolidate his MPF accounts and agreed to transfer his accrued benefits to Manulife on 25 January 2018; (ii) he called Kong in mid July 2018 to inform Kong that he knew about the transfer to Principal and asked if Kong wanted to transfer to Manulife, and (iii) Kong agreed to proceed with the Transfer, and he was under the impression that Kong had “confirmed his previous instruction for the [Transfer]”.

20. After considering the Appellant’s representations, the Authority concluded (inter alia) that:-

(1) the Appellant’s evidence was considered to be not cogent, and the Transfer was found to have been carried out without Kong’s authorization and knowledge;

(2) the Authority did not find sufficient evidence to show that the Appellant had forged or asked another person to forge Kong’s signature on the Transfer forms, and did not base its decision on this;

(3) Breach 1, Breach 2 and Breach 3 were all established; and

(4) a disciplinary order would be imposed on the Appellant suspending his registration as a registered intermediary for 28 months.

(ie the Decision)

21. The Appellant lodged an appeal against the Decision on 25 January 2022. In his grounds of appeal:-

(1) He stated that (i) in mid July 2018 he found out that Kong had already transferred his accrued benefits from BEA and HSBC to Principal; (ii) he then called Kong to ask whether he wanted the same to be transferred to Manulife; (iii) Kong “agreed and expected [him] to make the call to HSBC”; and (iv) he was “under the impression that [Kong] had confirmed his previous instruction [on 25 January 2018]”.

(2) He claimed that it is unsafe to uphold the finding on Breach 1 because there is serious doubt as to Kong’s credibility, by reason of the fact that Kong claimed he never signed any document but those documents revealed the signatures of 2 different persons. In other words, he claims that Kong was not telling the truth and his evidence should not be believed.

*Approach to this Appeal*

22. First, the jurisdiction of the Appeal Board is prescribed by section 35(1) and Schedule 6 to Cap.485. Since the Decision is a decision by the Authority to make a disciplinary order under section 34ZW, that falls within paragraph 16 of Schedule 6, and the Appeal Board has jurisdiction to entertain this appeal.

23. Second, the Appeal Board has power, after hearing an appeal, to uphold, vary or quash the decision under appeal: section 36(4) of Cap.485. In other words, the appeal operates as a hearing *de novo*, and the

A Appeal Board can come to its own conclusion after considering the  
B materials before it.

C 24. Mr Andy Chan, counsel for the Appellant, submits that the  
D findings of a professional disciplinary committee (in this case, the  
E Authority) should only be disturbed when there is sufficient evidence  
F indicating the disciplinary body has misread the evidence, citing *Preiss v*  
G *General Dental Council* [2001] 1 WLR 1926, 1935G-1936A, which  
H passage was cited with approval in *A Solicitor v The Law Society of Hong*  
I *Kong* (2008) 11 HKCFAR 117, §§119-120.

J 25. We consider that Mr Chan's concession has gone beyond  
K what was actually stated in the passages he cites. Rather, the correct  
L position should be that while respect should be accorded to the opinion of  
M a professional tribunal on *technical* matters and on matters such as  
N *weighing the seriousness* of professional misconduct, the appropriate  
O degree of deference will depend on the circumstances.

P 26. Third, as to the burden of proof, Mr Tony Li SC, counsel for  
Q the Authority, fairly accepts that as this is a hearing *de novo*, the Authority  
R bears the legal (or persuasive) burden of showing that Breach 1 has been  
S established. However he goes on to submit, which we accept, that to the  
T extent that the Appellant asserts a positive case, he bears the evidential  
U burden to prove the same.

V 27. Fourth, on the standard of proof, both parties are *ad idem* that  
it should be a preponderance of probability under the *Re H* approach; in  
other words, the more serious the act alleged, the more inherently  
improbable must it be regarded, and the more compelling the evidence  
need to prove it on a preponderance of probability: *A Solicitor* §115.

A 28. Fifth, in the fact-finding exercise, the credibility of a witness  
B should be assessed by reference to contemporaneous documentation where  
C it exists, or to its absence where one would expect it to be created, as well  
D as inherent probabilities having regard to all the facts that are known:  
E *Esquire (Electronics) Ltd v Hong Kong and Shanghai Banking  
Corporation Ltd* [2007] 3 HKLRD 439, §135.

F 29. Sixth, where it can be demonstrated that (i) a *prima facie* case  
G has already been raised by the evidence adduced; and (ii) the party against  
H whom the case is established has evidence (including witness testimony)  
I available which could displace the *prima facie* case and which it omits to  
J call, an adverse inference can be drawn against the party who omits to call  
K that such available evidence, even if adduced, would not displace the *prima  
L facie* case: *Nina Kung v Wang Din Shin* (2005) 8 HKCFAR 387, §§367-  
M 369; *Ip Man Shan Henry v Ching Hing Construction Co Ltd (No 2)* [2003]  
N 1 HKC 256, §155.

O 30. Bear the above in mind, we proceed to consider the evidence  
P and the issues raised in this appeal below.

### Q *The Witnesses*

R 31. The Authority calls one witness, Kong, who was cross-  
S examined by Mr Chan.

- T (1) Mr Chan submits that Kong is an unreliable witness, on the  
U basis that though he denied having signed any document in his  
V witness statement made on 17 June 2022 for the purpose of  
this appeal, he retracted somewhat from that evidence in oral

A testimony and accepted that he appended his signature to 4  
B documents (§9 above).

C (2) Kong was cross-examined on this discrepancy, and his answer  
D was that when he prepared his witness statement, he was under  
E the impression that he did not sign anything and he was not  
F taken to each of the document bearing a signature to verify;  
G since then and in the course of preparing for trial, he was  
H shown the relevant signed pages and he realized that he had  
I signed 4 of them.

J (3) We do not consider Kong's explanation to be inherently  
K incredible. It is not inherently incredible that a witness  
L statement is prepared for the witness based on available  
M documents, and unless care is taken to ensure that each  
N document referred to or underlying the same is shown to the  
O witness to refresh the witness' memory and to verify the  
P statements set out there, the witness would rely on his general  
Q impression or recollection and approve the statement on that  
R basis. Moreover, the admission by Kong that his signature  
S appears on some of the documents is inconsistent with his  
T previous assertion and may be said to be against his interest,  
U nevertheless he volunteered that information in his oral  
V evidence. As such, we do not consider the mere fact that he  
now admits he has appended his signature to 4 documents is  
sufficient to undermine his credibility.

(4) Moreover, as will be explained below, Kong's evidence is  
consistent with the undisputed facts revealed by the  
contemporaneous documents and inherent probabilities.



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(5) Accordingly, we consider Kong to be a credible witness, and will accept his evidence in full.

32. The Appellant calls 2 witnesses, Mr Ng Tsz Ho and Mr Leung Yue, both colleagues of the Appellant at Manulife. These witnesses do not have any personal knowledge on the events concerning Kong and the Transfer; they were called by the Appellant as witnesses of good character. Although the Appeal Board may consider any material, whether or not it would be admissible in a court of law (section 36(3)(a) of Cap.485), and we consider these witnesses to be credible witnesses, their testimony is wholly irrelevant to the factual issues in dispute, and we will accordingly place no weight on their testimony.

33. Finally, it follows from §32 above that the Appellant has chosen not to give evidence himself.

(1) While the Appellant is at liberty to do so and to insist that the Authority should discharge its burden of proof up to the appropriate standard (which is what Mr Chan submits on behalf of the Appellant), such a course would mean that, as explained in §29 above, if the Authority is able to establish a *prima facie* case (eg on the content of the telephone conversation in mid July 2018, see §12 above), the Appellant’s failure to testify would mean that an adverse inference can be drawn against him that even if he had given evidence, his evidence would not be able to displace that *prima facie* case.

A (2) In fairness to the Appellant, this point was not relied on by the  
B Authority; the Authority did comment on the Appellant's  
C failure to testify, but submitted that it only goes to weight.

D (3) In light of the above, we would not draw an adverse inference  
E against the Appellant.

F (4) However, this does not mean that his failure to testify has no  
G impact. As explained above, each party bears the evidential  
H burden to establish the positive fact he seeks to advance. Take  
I the example of the telephone conversation in mid July 2018 –  
J the Authority has adduced evidence on its content (Kong's  
K evidence) but there is no evidence on content from the  
L Appellant. Even if we reject the Authority's evidence, there  
M would still be no evidence for us to find what in fact was  
N discussed during that conversation. This question was  
O specifically raised with Mr Chan in his oral closing. We will  
P return to that below.

M ***Breach 1***

N 34. Under this head, 2 issues fall to be considered:-

O (1) Whether, as a matter of fact, the Transfer was authorized by  
P Kong. This in turn depends on the content of the telephone  
Q conversation between the Appellant and Kong, which it is  
R common ground to have taken place, in mid July 2018.<sup>1</sup>

S  
T <sup>1</sup> In his written opening, Mr Chan submitted on behalf of the Appellant that this was the  
U "crux of the case": §16.

A (2) If the Transfer was found not to be authorized by Kong,  
B whether the Appellant's conduct in question fails to comply  
C with the relevant sections in Cap.485, and the relevant  
D provisions in the Conduct Guideline and Manulife's internal  
E guidelines.

E 35. On the first issue, we find that the telephone conversation  
F between the Appellant and Kong in mid July 2018 was a very short one, in  
G which the Appellant only identified himself and Kong said he was busy  
H and then hung up, and the Appellant did not ask, and Kong did not agree,  
I to transferring his MPF benefits from Principal to Manulife.

I 36. In considering this first issue, even though the Appellant has  
J not given evidence, we have taken into account the representations he made  
K in (i) his written representations on 15 October 2021 as summarized in the  
L Decision (§19 above), and (ii) his written representations in the grounds of  
M appeal (§21 above), which Mr Chan has drawn to our attention in his  
N written opening.

N 37. First, when one examines the facts as admitted by the  
O Appellant, chronologically this telephone call took place *before* the calls  
P made by the Appellant on 17 July 2018 to HSBC, and for the calls on 17  
Q July 2018, the first call was made to HSBC, and the one to Principal only  
R followed thereafter. These are significant in that:-

R (1) They completely undermine the Appellant's assertions in his  
S written representations that he found out about Kong's own  
T transfer to Principal, so he called Kong to seek the latter's  
U authorization to transfer the benefits from Principal to  
V Manulife. On the timeline admitted by the Appellant, there

A was simply no occasion prior to his telephoning Kong in mid  
B July 2018 for him to find out about the transfer to Principal.

C (2) We have already held that we find Kong to be a credible  
D witness. Kong's evidence is that the content of that  
E conversation was as per §35 above.

F (3) This chronology is consistent with, and bolsters, the  
G credibility of Kong's evidence. In addition to (1) above, if the  
H Appellant had already known about Principal and had  
I specifically asked Kong about Principal, there would have  
J been no reason at all for the Appellant to call HSBC *first* on  
K 17 July 2018; one would expect the Appellant to call Principal  
L direct to process the transfer. The fact that the Appellant called  
M HSBC first *after* his call to Kong is only consistent with his  
N getting no information whatsoever from Kong during his  
O telephone call with him, so that he had to call HSBC – being  
P the last trustee known to him – to get information.

Q (4) Thus, looking at the timeline since January 2018 to 17 July  
R 2018 objectively, it is wholly consistent with the position that  
S the Appellant had forgotten about Kong's case (as the  
T Appellant admits); when he discovered that he called Kong  
U with a view to taking the matter forward but Kong hung up on  
V him; he then called HSBC (which he knew to be Kong's  
previous trustee) to try to effect the transfer and found out  
from HSBC that Kong had transferred to Principal,  
whereupon he called Principal in order to progress the  
Transfer.

A 38. Second, Kong’s evidence is consistent with, whereas the  
B Appellant’s contention is inconsistent with, the inherent probabilities that  
C having just transferred and consolidated his benefits from HSBC and BEA  
D to Principal, why would Kong want to transfer again, to Manulife. The  
E purpose of the transfer was to consolidate; that purpose had already been  
achieved by transferring to Principal.

F 39. Third, Kong’s objective conduct in making a series of  
G complaints to the Authority, Manulife and the Police immediately after he  
H received the Transfer Confirmations from Manulife is also consistent with  
I the inherent probabilities that he never authorized the Appellant to transfer  
J from Principal to Manulife, hence his strong reaction. There being no  
K suggestion or evidence that the Appellant and Kong were otherwise  
L acquainted in any way, there can be no suggestion (and none was suggested)  
M that Kong would have complained deliberately to “frame” the Appellant or  
cause him trouble. In the circumstances Kong’s reaction is only consistent  
with and explicable by his shock in discovering the Transfer which he did  
not authorize.

N 40. In light of our finding in §35 above, Kong did not authorize  
O the Appellant to carry out the Transfer from Principal to Manulife.

P 41. Mr Chan seeks to impress upon us the inherent improbabilities  
Q of the Appellant, an experienced MPF agent with a good track record,  
R would have proceeded with the Transfer knowing he did not have Kong’s  
S authorization, when the commission he received only amounted to  
T HK\$819.30. However, that submission cannot translate into positive  
U evidence as to what took place in the telephone conversation in mid July  
V 2018 (which on the basis of the materials available we find as per §35

A above). In any event, in the absence of oral evidence from, and cross-  
B examination of, the Appellant, we have no factual basis to infer one way  
C or the other whether the Appellant's conduct was or was not consistent with  
D the inherent probabilities.

E 42. Mr Chan further argues that the Appellant was entitled to rely  
F on the authorization given by Kong on 25 January 2018 to carry out the  
G Transfer. We do not accept that. Even if what transpired on 25 January  
H 2018 was sufficient to amount to authorization on Kong's part (in respect  
I of which we make no finding since it is not necessary for the purpose of  
J this appeal), that authorization was for transfer of Kong's accrued MPF  
K benefits from HSBC/BEA to Manulife, not from Principal to Manulife.  
L Circumstances had materially changed by July 2018, when Kong had  
M already transferred and consolidated in MPF accounts with Principal and  
N the purpose of his initial approach to Manulife and the Appellant had  
O become spent. The Appellant cannot rely on any authorization given on 25  
P January 2018 to justify the Transfer.

Q 43. In the premises, we find that the Transfer was arranged by the  
R Appellant without authorization from Kong.

S 44. As to the **second** issue:-

- T (1) The Authority relies on (i) section 34ZL(1)(a) and (b) of  
U Cap.485; (ii) §III.17 and §III.20 of the Conduct Guidelines;  
V and (iii) clauses B20 and B27 of Manulife's "Golden Rules".
- (2) Only section 34ZL(1)(a) and (b) are relevant to Breach 1.
- (3) Section 34ZL(1)(a) and (b) provide that when carrying on regulated activity, a subsidiary intermediary must act honestly,

A fairly, in the best interests of the client, and with integrity, and  
B exercise a level of care, skill and diligence that may  
C reasonably be expected of a prudent person who is carrying on  
D the regulated activity.

E (4) In light of our findings of fact above, we consider that the  
F Appellant has failed to comply with that in the Transfer.

G 45. In the premises, we find that Breach 1 is established.

H ***Penalty***

I 46. In the Decision, the Authority imposed a total of 28 months  
J of suspension of registration in respect of all of the Breaches.

K 47. At the hearing, Mr Li informed us that the Authority  
L proceeded on the basis that there should be suspension of 20 months for  
M Breach 1, 6 for Breach 2, and 2 for Breach 3.

N 48. Mr Chan accepts that 6 months of suspension for Breach 2  
O (impersonation) and 2 months of suspension for Breach 3 (failure to carry  
P out instructions promptly) was appropriate.

Q (1) Notwithstanding Mr Chan's stance, we have serious  
R reservations on whether a 2-month suspension of registration  
S for failure to promptly carrying out instructions may be  
T disproportionate.

U (2) We have not been provided with any precedent concerning  
V penalty for Breach 3.

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(3) For the purpose of evaluating penalty, we consider that one must start with looking at Breach 3 on its own, without being coloured by the other circumstances pertaining to it (although in an appropriate case, the circumstances may act as an aggravating or mitigating factor, as the case may be).

(4) If one looks at Breach 3, it was a case of forgetfulness resulting in failure to carry out the instructions promptly. Even taking into account the need to maintain public confidence in the operation of the MPF scheme and in the MPF industry in Hong Kong as a whole, it seems to us that it would be disproportionate for failure to carry out instructions due to forgetfulness – which given human frailties is something that happen to any person – to *ipso facto* attract suspension of registration, which has serious consequences and may impact the livelihood of the registered intermediary. In our view, where the failure to carry out instructions promptly was due to forgetfulness, the starting point of any penalty imposed should be a reprimand.

(5) That is not to say that no penalty other than a reprimand may ever be appropriate. As indicated above, the particular circumstances of the case may act as aggravating or mitigating factors affecting penalty. If the consequences of the failure to carry out instructions are very serious, or the delay is very substantial, that may justify a decision to suspend. But that depends on the particular circumstances of the case and the Authority should be required to justify it.

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A (6) In this case, looking at Breach 3 it was a case of forgetfulness,  
B the delay was significant (almost 6 months on the Appellant's  
C own account), and no serious prejudice was occasioned to  
D Kong since he arranged for transfer to Principal in March 2018.  
E In these circumstances, and notwithstanding Mr Chan's  
position, we would vary the penalty to one of public reprimand.

F 49. As to Breach 1:-

G (1) We have provided with different precedents by the Appellant  
H and the Authority, in the former case ranging between 6 to 20  
I months of suspension, and in the latter case ranging from 20  
to 40 months.

J (2) We bear in mind that the facts of each case are different, and  
K that in many cases the suspension in these precedents cover a  
number of breaches and not a single one.

L (3) We consider that the Appellant's conduct, on the facts as  
M found by us in §35 above, to be very serious.

N (4) Having regard to the facts, as well as the flavour of the  
O precedents shown to us, we consider that (i) Breaches 1 and 2  
P should be considered together; and (ii) the appropriate penalty  
Q for Breaches 1 and 2 should be 20 months of suspension of  
registration.

R ***Conclusion***

S 50. In the premises:-

T (1) We dismiss the Appellant's appeal on Breach 1.  
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- (2) We vary the penalty imposed on the Appellant, and order that
- (i) the Appellant's registration be suspended for a period of 20 months for Breaches 1 and 2; and (ii) the Appellant be publicly reprimanded for Breach 3.

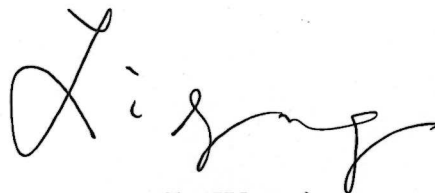


(Ms Eva Sit Yat-wah, SC)  
Chairman

Mandatory Provident Fund Schemes Appeal board



(Mr Dennis Ho Chiu-ping)  
Member



(Ms Lily Wong)  
Member

Mr Andy Chan, Counsel, instructed by Messrs Gary Mak, Dennis Wong  
and Chang, Solicitors  
for the Appellant

Mr Tony Li, SC, instructed by MPFA  
for the Respondent