

Mandatory Reference Checking (“MRC”) Scheme

Proposed Term Sheet

1. Application of Scheme

- 1.1 All authorized institutions (“AIs”) under the supervision of the Hong Kong Monetary Authority (“HKMA”)

2. Scope of Personnel

2.1 Phase 1

- (i) directors approved under §71 of the Banking Ordinance (“BO”)¹;
- (ii) chief executives (“CEs”) and alternate chief executives (“ACEs”) approved under §71 of the BO;
- (iii) managers notified to the MA under §72B of the BO;
- (iv) executive officers (“EOs”) approved under §71C of the BO;
- (v) responsible officers (“ROs”) approved by the Insurance Authority (“IA”) under §64ZE of the Insurance Ordinance (“IO”); and
- (vi) ROs approved by Mandatory Provident Fund Schemes Authority (“MPFA”) under §34W of the Mandatory Provident Fund Schemes Ordinance (“MPFSO”)

2.2 Phase 2

- (i) staff licensed to carry out securities related regulated activities under the SFO (i.e. Relevant Individuals, or “ReIs”);
- (ii) staff licensed to carry out insurance related regulated activities under the IO (i.e. Technical Representatives licensed by the IA under §64Y or §64ZC of the IO, or “TRs”);
- (iii) staff registered to carry out regulated activities under the MPFSO (i.e. subsidiary intermediaries registered with the MPFA under §34U(4) of the MPFSO); and
- (iv) client facing staff who provide advisory services or receive certain types of performance-based remuneration

¹ For the purpose of the MRC Scheme, appointment of a prospective director will be treated as a “prospective employee”, even if such appointments, especially those involving non-executive directors, may not be an “employment” per se. In other words, the recruiting AIs should also conduct MRC for prospective directors to be appointed, regardless of whether they are executive or non-executive in nature. By the same token, the reference providing AIs should provide MRC information for former directors who have served in their boards, even if they are non-executive directors.

- 2.3 AIs that intend to enter into an employment relationship with a prospective employee for the specified positions as stated above should adopt the MRC requirements as part of their measures in evaluating the fitness and propriety of the prospective employee.
- 2.4 The MRC Scheme will apply to AIs' employees in Hong Kong but not those employed at the head office outside Hong Kong, or those employed at the subsidiaries or branches of AIs outside Hong Kong.
- 2.5 The Scheme covers all employees irrespective of employment terms, i.e. including permanent, contract or other temporary employment relationships so long as they are within the scope of personnel of the Scheme regardless of the duration or terms of the employment.
- 2.6 Employees who are on secondment or assigned by third parties to perform in-scope roles would also be subject to the MRC Scheme.
- 2.7 AIs within the same banking group may use alternative ways other than the MRC Information Template, such as group internal records; common human resources functions; or other means to perform reference check and share relevant information. The onus will be on the recruiting AI within the group to obtain the necessary information to satisfy their obligations and to ensure the prospective employee is fit and proper.
- 2.8 For intragroup transfers or promotions, the employees concerned may have already established a track record after having served in the AI's group for a considerable period of time such that they are selected for the transfer or promotion. In such cases, AIs may consider whether it is useful to conduct MRC on such employees covering their employment prior to joining the group, taking into account their years of experience in the AI's group.
- 2.9 A post-implementation review will be conducted 2 years after the launch of Phase 1 to gather the industry's feedback and experiences gained from the implementation of Phase 1. The outcome of the review will form a basis for further refinements to the Scheme as well as to determine the implementation approach and arrangements for Phase 2 of the Scheme.

3. Scope of MRC Information

- 3.1 The MRC Information Template will cover, apart from general employment information for identification of the prospective employee, conduct-specific information concerning the prospective employee with broad categories as set out below:
- (i) material breach of legal or regulatory requirements relating to the BO, IO, MPFSO and SFO;
 - (ii) incidents which cast serious doubts on the individual's honesty, integrity or matters of similar nature;
 - (iii) misconduct reports filed with the HKMA;
 - (iv) internal or external disciplinary actions arising from conduct matters; and
 - (v) any other additional information relevant to the assessment on the conduct of the individual.
- 3.2 The proposed MRC Information Template is set out in the **Annex** and the Industry Working Group ("IWG") is expected to further fine-tune the template taking into account practical considerations.
- 3.3 In respect of category (iv) of the proposed MRC Information Template, internal disciplinary actions include actions taken by the AI against the employee as a result of misconduct on the part of the employee. Generally speaking, internal disciplinary actions may include internal warnings (either in verbal or written form); reduction or claw-back of remunerations (including salary, commissions, bonuses, etc.); and suspension and dismissal as a result of misconduct. For the purpose of the MRC Scheme, internal disciplinary actions are not expected to include managerial coaching and counselling, and suspensions pending investigations or leaves taken while an investigation is being carried out. External disciplinary actions should be confined to those taken against the individual by regulatory bodies, industry associations and professional bodies for the position that the individual held during his/her employment with the reference providing AI.
- 3.4 In respect of category (v) of the proposed MRC Information Template, the reference providing AI is expected to provide any other information that it reasonably considers to be relevant to recruiting AI's assessment of whether the prospective employee is fit and proper. The disclosure

should be made on the basis that the reference providing AI should only disclose information about incidents or matters that:

- (i) occurred or existed
 - (a) within the specified period before date of request for a reference; or
 - (b) between the date of request for the reference and the date the reference providing AI provides the reference; and
 - (ii) is related to misconduct that is of a material or serious nature.
- 3.5 The IWG is expected to further deliberate and determine whether, and if so, how ongoing investigations are to be disclosed in the MRC Information Template. The MA considers there would be merit in reporting ongoing investigations to the extent that they are relevant, and that such disclosure is feasible and lawful, so as to minimise the chance of any “bad apple” rolling in the industry.
- 3.6 Reportable conduct-specific information should be confined to those which is material or serious in nature, and to employees who committed misconduct or who were accomplices in misconduct activities. For the avoidance of doubt, matters relating to employees who assisted during an investigation process but did not take part in the misconduct himself/herself are not required to be reported.
- 3.7 Misconduct information should be confined to an employee's activities at the reference providing AI but not at other affiliates within the same group, unless such affiliate is also an AI in which case the recruiting AI should also approach the affiliate for MRC directly. For the avoidance of doubt, MRC information on the employee previously received by the reference providing AI from other AIs when he/she came on board the reference providing AI need not be reported under the Scheme.
- 3.8 Taking into account the above principles, the IWG is invited to develop detailed and practical instructions together with examples on what constitutes reportable information for reference by the industry.

4. Duration of MRC Information

- 4.1 The duration of MRC information should cover the prospective employee's employment records in the 7 years prior to the date of application for employment.

- 4.2 Accordingly, for the purpose of the MRC Scheme, all AIs should maintain employment records of their employees who have ceased to be employed by the AIs for a period of at least 7 years counting from the date of the employees' departure from the AIs. The IWG may work out suitable transitional arrangements for AIs which may not have retained records for a 7-year period before the implementation of the MRC Scheme.
- 4.3 The retention period for MRC information received by the recruiting AI should follow the AI's existing practices in respect of retention of other employment or recruitment records.

5. Obligations of Recruiting AIs

- 5.1 During the recruitment process of a prospective employee for an in-scope position, the recruiting AI should approach all former and current employers of the prospective employee which are AIs for employment records in the past 7 years to conduct reference checking in accordance with the MRC Scheme.
- 5.2 With the implementation of the MRC Scheme, AIs should have in place a Personal Information Collection Statement (PICS) for the purpose of collection of personal data under the MRC Scheme. In designing the PICS, all AIs are required to take all practicable steps to ensure that prospective employees are informed of the matters in relation to the collection of their personal data under the MRC Scheme, such as the purpose for which the data is to be used; the details of data that will be collected; how the data collected will be used; and how the data will be transferred to recruiting AIs for reference checking under the MRC Scheme.
- 5.3 Before seeking MRC information from other AIs, written consent should be obtained from the prospective employee to:
- (i) authorise the recruiting AI to conduct reference checking with his/her current and former employer AI(s) in accordance with the MRC Scheme;
 - (ii) authorise the reference providing AIs to disclose his/her employment records to the recruiting AI according to the MRC Scheme; and

- (iii) exempt reference providing AIs from any contractual obligations which may limit their abilities to disclose information regarding the prospective employee as required under the MRC Scheme.
- 5.4 In cases where the prospective employee refuses to provide consent to conduct MRC, the recruiting AI should consider the reasons behind the refusal to provide consent and whether it casts doubt on the fitness and propriety of the individual. If the recruiting AI decides to proceed with employment without conducting MRC, the justifications for such exemption should be documented.
- 5.5 If the prospective employee subsequently withdraws his/her consent during the recruitment exercise, the recruiting AI should inform the reference providing AI to cease providing MRC information as soon as practicable.
- 5.6 The recruiting AI should not use (including disclosure or transfer to any third parties) the prospective employee's personal data for any purpose other than as indicated in the consent form. If the personal data are to be used for a new purpose, a fresh consent shall be obtained from the employee concerned.
- 5.7 The recruiting AI may consult with the prospective employee as to when exactly in the recruitment process the MRC request should be sent. There could be a staggered approach such that the recruiting AI can proceed to conduct MRC with former employers first and to conduct MRC with the current employer later, say after the prospective employee has tendered his/her resignation. The recruiting AI should then extend written MRC information requests to the reference providing AIs, indicating clearly that prospective employee's consent had been obtained to perform reference checking under the MRC Scheme.
- 5.8 Upon receiving the MRC information from the reference providing AIs, the recruiting AI can conduct its internal assessment and, where necessary, follow up with the reference providing AIs for clarifications and further information to facilitate its consideration.
- 5.9 To ensure a transparent and fair treatment to the prospective employee, the recruiting AI should provide the prospective employee with an opportunity to be heard in case there is any negative information received from the reference providing AIs. All MRC information received including

comments and responses made by the prospective employee should be taken into account before an employment decision is made. For clarity, providing an opportunity to be heard does not necessitate a duty for the reference providing AI to re-open any previous investigations.

5.10 Generally speaking, the recruiting AI is strongly encouraged to complete all the MRC processes before on-boarding the prospective employee. In cases where the recruiting AI would like to advance the employment decision before the completion of the MRC process, they may take different approaches when doing so, such as, among others, making a conditional offer, or requiring the prospective employee to provide a self-declaration of not being involved in any material disciplinary actions etc., while pending the completion of the MRC processes.

5.11 For the avoidance of doubt, the recruiting AI will have full discretion in making any employment decision. The recruiting AI may proceed to offer employment to a prospective employee about whom negative MRC information has been received after taking into account factors such as the likelihood of the prospective employee committing misconduct again in the new working environment. The recruiting AIs shall ultimately be responsible for their own employment decisions, notwithstanding that appointment to some senior positions may also require regulatory approvals.

5.12 If the recruiting AI receives negative MRC information updates from the reference providing AI subsequent to on-boarding the employee, it would be up to the recruiting AI to decide how they would make use of such information to evaluate the employee hired and whether any further actions should be taken.

6. Obligations of Reference Providing AIs

6.1 Reference providing AIs should provide the completed MRC Information Template within 20 working days commencing from the date the MRC request is made.

6.2 All information provided under the MRC Scheme should be, to the best knowledge of the reference providing AIs, true, fair, complete, accurate and capable of substantiation. Reference providing AIs should not withhold any information which may otherwise render the reference

process unfair, incomplete or inaccurate. While the reference information provided to recruiting AIs should be confined to factual description of matters, such information should be backed by supporting documents, which are not required to be provided to the recruiting AI but should be maintained by the reference providing AI for audit trail purposes.

- 6.3 Where in exceptional cases a reference providing AI is unable to respond to the MRC request and provide information within 20 working days, it should provide an interim reply to the recruiting AI on the reason(s) of the delay and an estimated timeframe within which the information requested would be available. The recruiting AI may consider whether to wait for the relevant information in its consideration of the employment decision.
- 6.4 For the avoidance of doubt, a recruiting AI is deemed to have discharged its obligations under the MRC Scheme after waiting for a response from the reference providing AIs for 20 working days or a longer period that is mutually agreed by both parties. Reference providing AIs should strive to respond to MRC information request within 20 working days, lest the effectiveness and integrity of the MRC Scheme be adversely affected.
- 6.5 The reference providing AI should provide an update on the reference information to the recruiting AI if it can lead to substantive changes to the reference information previously provided. In determining whether an update is necessary, the reference providing AI should consider factors including the seriousness of the misconduct incident concerned, as well as the role of the former employee in the incident, etc.
- 6.6 To facilitate follow-up by the recruiting AI, when responding to the MRC request, reference providing AIs can also indicate whether they expect an update would be provided later on, with an approximate indication on the time when such an update is expected, such that the recruiting AI can further approach the reference providing AI for update if needed.
- 6.7 In cases where an investigation or proceeding concerning the individual only commenced after the individual has left the reference providing AI, the reference providing AI should provide an update to the recruiting AI on the result of the investigation or proceeding only if: (i) the investigation or proceeding commenced within 7 years after the individual has left the

reference providing AI; and (ii) the investigation or proceeding concluded that the individual was guilty of misconduct or was involved in any misconduct incidents mentioned in 3.1.

- 6.8 Prior to sharing the above updates with the recruiting AI, the reference providing AI should, on a best effort basis, ascertain from the recruiting AI the employment status of the individual concerned. The reference providing AI is not required to provide an update to the recruiting AI if:
- (i) the recruiting AI indicates that it does not intend to enter into any employment relationship with the individual; or
 - (ii) the recruiting AI indicates that it does not have current employment relationship with the individual.
- 6.9 For the avoidance of doubt, the obligation of a reference providing AI to update MRC information provided to a recruiting AI is deemed to have lapsed after 7 years from the date the individual left the AI.

7. Other Operational Requirements

- 7.1 AIs should put in place adequate internal systems and controls, policies and procedures to safeguard the integrity and confidentiality of information obtained and processed during the MRC process.
- 7.2 AIs should implement measures and have policies and procedures in place to ensure that they can comply with a data correction request made by a prospective employee, or a current or former employee.
- 7.3 Adequate security measures should be in place to prevent unauthorized access to MRC data. This would include, but is not limited to, (1) proper access control defining who can access the data, such as access to data by designated staff and for a legitimate purpose only, and proper authentication procedures before data retrieval; and (2) data encryption for transmission storage.
- 7.4 AIs should implement a data retention policy for MRC data.
- 7.5 Regarding the MRC information of an unsuccessful job applicant, generally speaking, all recruiting AIs should not retain the same for a period longer than two years from the date of rejecting the job applicant unless there is a subsisting reason that obliges the recruiting AI to retain the data for a

longer period or that the job applicant has given consent. These special circumstances, if any, should be clearly documented.

- 7.6 AIs should take all practicable steps to maintain the accuracy of personal data retained for MRC purposes that continue after an employee has left the employment.
- 7.7 AIs should publish on their websites contact details in respect of the MRC Scheme for other AIs to make MRC requests. Such information should also be made available on industry platforms such as websites of industry associations.
- 7.8 AIs should uphold the principles of accountability and data ethics when collecting and using personal data obtained under the MRC Scheme. All AIs should explain the purposes and the processes involved to the relevant stakeholders and ensure they are treated in a fair and respectful manner.

Annex MRC Information Template

Date: [Date of request to the Reference Providing Authorized Institution]

To: [Name of officer / Reference Providing Authorized Institution]

Subject: Reference Checking – [Individual’s name]

We have made a conditional offer of employment to the following individual and understand that he/she was/is employed by your institution. Pursuant to the Mandatory Reference Checking (MRC) Scheme, please provide us with the following information within 20 working days from the date of this request. The information to be provided should cover any period falling within 7 years prior to the date of this request when the following individual was employed by your institution. [The written consent of the individual for your institution to disclose his/her information to our institution under the MRC Scheme is appended. / Prior to making this request, we have obtained the consent from the individual, in the form and format as prescribed under the MRC Scheme.]

Individual’s name: _____

Individual’s ID/Passport number: _____

Information of employment record

| Position held | Name of business / function | Department | From (date) | To (date) | Reason for the cessation of appointment |
|---------------|-----------------------------|------------|-------------|-----------|---|
| | | | | | |
| | | | | | |

1. Are you aware of the individual being involved in any of the following during his/her period of employment at your institution?

Yes No (please proceed to question 2)

- (i) Non-compliance with incidents associating with the individual’s material breach of legal or regulatory requirements relating to the Banking Ordinance (Cap. 155), Securities and Futures Ordinance (Cap. 571), Insurance Ordinance (Cap. 41), and the Mandatory Provident Fund Schemes Ordinance (Cap. 485)
- (ii) Incidents which cast serious doubts on the individual’s honesty, integrity or matters of similar nature

- (iii) Misconduct report(s) filed with HKMA
- (iv) Internal or external disciplinary action(s) arising from conduct matters

Please fill in the table below if you are aware of any of the items listed above

| | |
|---|--|
| Background of the matter | |
| Date(s) when the matter occurred | |
| Duration of the matter | |
| Role played by the outgoing employee | |
| (Potential) impact to the market and clients | |
| Assessment of materiality | |
| Status of the investigation | |
| Outcome of the investigation and the basis of conclusion, if the investigation is completed | |

2. Are you aware of any other information that you consider would be relevant to our assessment of the conduct of the individual?

- Yes
- No

If yes, please provide the relevant information below:

For clarification or further information, please contact:
[Name of officer / contact details]

[Disclaimer [Note: to be inserted by reference providing AI upon response]

- (a) the information provided is true, complete and accurate according to the [name of reference providing AI]'s best knowledge; and
- (b) [name of recruiting AI] takes full responsibility in relying on the information provided in the Template in making its recruitment decision, and [name of reference providing AI] is excluded from liability in the absence of negligence and bad faith.]

Thank you for your kind assistance and timely reply to our request. Please do not hesitate to contact us for further clarification.

Yours sincerely

Name of officer

Title / Department

Recruiting Authorized Institution

Contact