



**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**SECURITIES AND FUTURES COMMISSION**

**AND**

**INSURANCE AUTHORITY**

**HONG KONG**

**28 September 2020**

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## **MEMORANDUM OF UNDERSTANDING (“MoU”)**

**BETWEEN:** Securities and Futures Commission (the “**SFC**”)

**AND:** Insurance Authority (the “**IA**”)

### **1 INTRODUCTION**

1.1 This Memorandum of Understanding:

- (a) replaces the MoU signed on 20<sup>th</sup> December 2005 between the SFC and the IA (which is superseded), and reflects the implementation of the new regulatory regime under the Insurance Companies Ordinance (Cap. 41) as amended by the Insurance Companies (Amendment) Ordinance 2015 and renamed as the Insurance Ordinance (Cap. 41) (“**IO**”); and
- (b) aims to further strengthen the co-operation between the SFC and the IA in order to facilitate the performance of their respective regulatory functions.

1.2 The SFC has responsibilities under the Securities and Futures Ordinance (Cap. 571) (“**SFO**”), and the rules and regulations made thereunder, to set standards for the authorization of collective investment schemes and structured products that are offered to the public and is responsible for the licensing and supervision of persons who are engaged in a regulated activity as defined under the SFO.

1.3 The IA has responsibilities under the IO, and the rules and regulations made thereunder, to regulate and supervise the insurance industry for the promotion of the general stability of the insurance industry and for the protection of existing and potential policy holders. The IA is responsible for supervising authorized insurers’ and licensed insurance intermediaries’ compliance with the provisions of the IO, and regulating the conduct of insurance intermediaries through a licensing regime.

1.4 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 insurance-related investment products and the sharing of information in respect of persons who are regulated under their respective supervisory regimes, including authorized insurers and licensed insurance intermediaries under the regulation of the IA, and persons licensed by the SFC (“**SFC-licensed persons**”). The parties also desire to further promote mutual assistance and the exchange of information so that they may effectively perform their respective responsibilities.

1.5 There are circumstances where an authorized insurer, a licensed insurance intermediary, an SFC-licensed person or a financial group may be of regulatory interest to both parties. For instance:

- (a) where an authorized insurer or a licensed insurance intermediary is (or is not but may be required to be) an SFC-licensed person;
- (b) where an authorized insurer or a licensed insurance intermediary has a subsidiary that is an SFC-licensed person;
- (c) where an SFC-licensed person has a subsidiary that is an authorized insurer or a licensed insurance intermediary;
- (d) where an authorized insurer or a licensed insurance intermediary has involvement in the management, operation or administration or issuance or distribution of any financial products;
- (e) where an SFC-licensed person (which is in a group of companies that has insurance business) has involvement in the management, operation or administration or issuance or distribution of any SFC-authorized investment products;
- (f) where a financial group has both an SFC-licensed person and an entity that is an authorized insurer or a licensed insurance intermediary; and
- (g) where an authorized insurer is seeking to obtain or maintains an authorization by the SFC of a collective investment scheme that is an insurance-related investment product.

The parties will co-ordinate with each other and exchange information to facilitate the supervision of relevant financial groups with SFC-licensed persons, authorized insurers or licensed insurance intermediaries as well as the regulation of SFC-authorized investment products and their operations and distributors.

## **2 DEFINITIONS**

- 2.1 Unless otherwise specified, terms defined in the IO, the SFO, the Code on Investment-Linked Assurance Schemes, the Code on Pooled Retirement Funds and the SFC Code on MPF Products issued by the SFC (together, the Codes are referred to as the “**SFC Codes**”) bear the same meaning when used in this MoU.
- 2.2 The reference to “insurance-related investment products” in this MoU means any contracts of insurance that are also financial products, including investment-linked assurance schemes (“**ILAS**”), approved pooled investment funds (“**APIF**”) under the mandatory provident funds regime and pooled retirement funds (“**PRF**”) under the occupational retirement schemes regime.
- 2.3 The reference to “financial products” in this MoU means any securities, futures contract, collective investment scheme, leveraged foreign exchange contract and structured product as defined under the SFO, including any SFC-authorized investment products.

- 2.4 The reference to “rules and regulations” in this MoU means any relevant rules, codes, guidelines or guidance made or published by the SFC under the SFO or the IA under the IO (as the case may be) from time to time.
- 2.5 The reference to “SFC-authorized investment products” in this MoU means any collective investment schemes and structured products authorized by the SFC from time to time.

### **3 RELEVANT RESPONSIBILITIES OF THE IA UNDER THE MOU**

- 3.1 The IA is responsible for the overall regulation of insurance business in or from Hong Kong including regulation over authorized insurers and licensed insurance intermediaries. This involves the due and proper discharge of all statutory obligations under the IO as well as the rules and regulations made thereunder. The responsibilities of the IA insofar as relevant for the purposes of this MoU include:
- (a) authorizing insurers to carry on particular class(es) of insurance business in or from Hong Kong and supervising an authorized insurer’s compliance with the provisions of the IO;
  - (b) promoting and encouraging the adoption of proper standards of conduct and sound and prudent business practices by authorized insurers;
  - (c) granting licences to insurance intermediaries to carry on regulated activities as defined under the IO and supervising a licensed insurance intermediary’s compliance with the provisions of the IO;
  - (d) promoting and encouraging the adoption of proper standards of conduct by licensed insurance intermediaries;
  - (e) reviewing and, if necessary, proposing reforms of the systems for regulating authorized insurers and licensed insurance intermediaries;
  - (f) setting regulatory requirements for the guidance of authorized insurers and licensed insurance intermediaries;
  - (g) ongoing supervision and monitoring of the authorized insurers’ compliance with the rules and regulations relating to insurance-related investment products;
  - (h) investigating alleged breaches of the provisions of the IO and any rules and regulations administered by the IA, and taking appropriate enforcement actions where necessary;
  - (i) handling complaints referred by the SFC or made by the public relating to authorized insurers and licensed insurance intermediaries, or other matters

relating to any insurance-related investment products that fall under the IA's regulatory regime and, where appropriate, referring cases to other regulator(s) concerned (subject to compliance with applicable confidentiality requirements and conditions) as soon as practicable for follow-up action;

- (j) receiving confidential information from the SFC regarding any insurance-related investment products, or any authorized insurer or licensed insurance intermediary that is also licensed by the SFC, or any person that is of regulatory interest to the IA (e.g. a person who applies for a licence from the IA or approval to be controller of an authorized insurer or a licensed insurance intermediary, or is a director of a corporation applying for a licence with the IA etc.);
- (k) providing the SFC with, on a regular basis, information of authorized insurers or licensed insurance intermediaries who are also SFC-licensed persons in a format as mutually agreed by the parties;
- (l) providing the SFC with information regarding any insurance-related investment products, or any authorized insurer or licensed insurance intermediary that is also licensed by the SFC, or any person that is of regulatory interest to the SFC (e.g. a person who applies for a licence from the SFC or approval to be substantial shareholder of an SFC-licensed corporation, or is a director of a corporation applying for a licence with the SFC, or has involvement in the operation or administration or management or issuance or distribution of an SFC-authorized investment product or in managing the business of any SFC-licensed corporation);
- (m) informing the SFC as soon as practicable upon becoming aware of any material issues which may adversely impact any insurance-related investment products, or the fitness and properness of an authorized insurer or a licensed insurance intermediary that is also licensed by the SFC, or has involvement in the operation or administration or management or issuance or distribution of any SFC-authorized investment products, or any issues concerning potential breaches of the SFO or the rules and regulations made thereunder;
- (n) informing the SFC, as soon as practicable, of any rejection of (i) an SFC-licensed corporation's application for licence as an authorized insurer or a licensed insurance intermediary, or renewal of licence as a licensed insurance intermediary; (ii) an authorized insurer or a licensed insurance intermediary which is an SFC-licensed corporation's application to vary its line of business as specified in the licence of the authorized insurer or the licensed insurance intermediary; (iii) an SFC-licensed person's application to be controller of an authorized insurer or a licensed insurance intermediary; and (iv) an SFC-licensed individual's application for licence;
- (o) exchanging information with the SFC regarding any complaint, disciplinary action or material inspection findings involving any financial products, or any authorized insurer or licensed insurance intermediary that is also licensed by the SFC, or any person that is of regulatory interest to the SFC;

- (p) providing the SFC with such assistance to obtain information not otherwise available to the SFC and/or such assistance to enable the SFC to assess the fitness and properness and/or compliance with the SFO and the rules and regulations made thereunder where such assistance concerns any insurance-related investment products, or any authorized insurer or licensed insurance intermediary that is also licensed by the SFC or any person that is of regulatory interest to the SFC; for the avoidance of doubt, the assistance provided under this paragraph refers only to supervisory assistance; and
- (q) co-operating with and assisting the SFC on matters concerning any insurance-related investment products, or any authorized insurer or licensed insurance intermediary that is also licensed by the SFC, or any approved substantial shareholder of an SFC licensed corporation who is also authorised or licensed by the IA, or any person that is of regulatory interest to the SFC. This may include the provision on a voluntary basis of information which will assist or enable the SFC in the performance of its functions and in such case the terms and conditions of this MoU will apply if the IA specifies that the information is provided under this MoU.

#### **4 RELEVANT RESPONSIBILITIES OF THE SFC UNDER THE MOU**

- 4.1 The SFC's responsibilities relating to insurance products include administering certain statutory provisions under the SFO, and the rules and regulations made thereunder, for the authorization of insurance-related investment products that are offered to the public.
- 4.2 The SFC is also responsible under the SFO for the licensing and supervision of persons who are engaged in a regulated activity as defined under the SFO, including dealing in securities and advising on securities. The parties acknowledge that certain authorized insurers and licensed insurance intermediaries subject to the IA's regulatory regime also carry on business in a regulated activity as defined under the SFO and are licensed by the SFC.
- 4.3 Insofar as relevant for the purposes of this MoU, the SFC is responsible for:
  - (a) vetting and authorizing ILAS, APIF and PRF and related marketing materials in accordance with the SFO and the provisions in the respective SFC Codes;
  - (b) licensing persons who carry on business in a regulated activity as defined under the SFO;
  - (c) ongoing supervision through monitoring and inspection, of the activities of SFC-licensed persons in the provision of services with respect to the regulated activity as defined under the SFO carried on by them;

- (d) investigating alleged breaches of the provisions of the SFO and any rules and regulations administered by the SFC, and taking appropriate enforcement actions where necessary;
- (e) handling complaints referred by the IA or made by the public relating to SFC-licensed persons, or other matters relating to any insurance-related investment products that fall under the SFC's regulatory regime, and, where appropriate, referring cases to other regulator(s) concerned (subject to compliance with applicable confidentiality requirements and conditions) as soon as practicable for follow-up action;
- (f) receiving confidential information from the IA regarding any insurance-related investment products, or any authorized insurer or licensed insurance intermediary that is also licensed by the SFC, or any person that is of regulatory interest to the SFC (e.g. a person who applies for a licence from the SFC or approval to be substantial shareholder of an SFC-licensed corporation, or is a director of a corporation applying for a licence with the SFC, or has involvement in the operation or administration or management or issuance or distribution of an SFC-authorized investment product or in managing the business of any SFC-licensed corporation);
- (g) providing the IA with, on a regular basis, information of SFC-licensed persons who are also authorized insurers or licensed insurance intermediaries in a format as mutually agreed by the parties;
- (h) providing the IA with information regarding any insurance-related investment products (to the extent such information is within the SFC's regulatory purview), or any authorized insurer or licensed insurance intermediary that is also licensed by the SFC, or any person that is of regulatory interest to the IA (e.g. a person who applies for a licence from the IA or approval to be controller of an authorized insurer or a licensed insurance intermediary, or is a director of a corporation applying for a licence with the IA etc.);
- (i) informing the IA as soon as practicable upon becoming aware of any material issues which may adversely impact any insurance-related investment products (to the extent such information to be informed is within the SFC's regulatory purview), or the fitness and properness of an authorized insurer or a licensed insurance intermediary that is also licensed by the SFC, or any issues concerning potential breaches of the IO or the rules and regulations made thereunder;
- (j) informing the IA, as soon as practicable, of any refusal of (i) an authorized insurer or a licensed insurance intermediary's application to be licensed to carry on a business in a regulated activity under the SFO; (ii) an SFC-licensed corporation which is an authorized insurer or a licensed insurance intermediary's application to vary the type of regulated activity as specified in the licence of the SFC-licensed corporation; (iii) an authorized insurer or a licensed insurance intermediary's application for approval to be a substantial



shareholder of an SFC-licensed corporation; and (iv) an individual insurance intermediary's application for licence;

- (k) exchanging information with the IA regarding any complaint, disciplinary action or material inspection findings involving any insurance-related investment products, or any authorized insurer or licensed insurance intermediary that is also licensed by the SFC, or any person that is of regulatory interest to the IA;
- (l) providing the IA with such assistance to obtain information not otherwise available to the IA and/or such assistance to enable the IA to assess the fitness and properness and/or compliance with the IO and the rules and regulations made thereunder where such assistance concerns any insurance-related investment products (to the extent such information is within the SFC's regulatory purview), or any authorized insurer or licensed insurance intermediary that is also licensed by the SFC or any person that is of regulatory interest to the IA; for the avoidance of doubt, the assistance provided under this paragraph refers only to supervisory assistance; and
- (m) co-operating with and assisting the IA on matters concerning any insurance-related investment products, or any authorized insurer or licensed insurance intermediary that is also licensed by the SFC, or any person that is of regulatory interest to the IA. This may include the provision on a voluntary basis of information which will assist or enable the IA in the performance of its functions and in such case the terms and conditions of this MoU will apply if the SFC specifies that the information is provided under this MoU.

## **5 REFERRALS OF ENFORCEMENT CASES**

- 5.1 In the discharge of its duties, each party will actively consider whether it should refer matters to the other party for possible action.
- 5.2 A party may refer a case to the other party where the suspected offence or misconduct falls entirely outside of its own functions but within the functions of the other party.
- 5.3 Where the suspected offence or misconduct potentially falls within both parties' functions, a party may refer a case to the other party having regard to:
  - (a) whether the other party is in a better position to handle the case; and/or
  - (b) whether the other party is also handling the same case and it would be duplicative to conduct a parallel investigation.

## **6 JOINT INVESTIGATIONS**

- 6.1 If a case falls within the functions of both parties, the parties may agree to commence a joint investigation in order to minimize the duplication of effort, and enhance the efficient use of their respective resources as well as the effectiveness of the investigation.
- 6.2 Once the parties have commenced a joint investigation, they will set up a joint task force and decide on its membership to ensure efficient and timely exchange of information and coordination. The joint investigation task force will convene an initial coordination meeting as soon as practicable to formulate investigation plans, determine investigatory responsibilities and coordinate the collection of evidence. The joint investigation task force will also convene meetings at agreed regular intervals to review the progress of the joint investigation and discuss the action to be taken during or at the conclusion of the joint investigation.
- 6.3 Prior to the publication of any information concerning joint investigations, such as press releases, the parties will consult each other to ensure that the timing and contents of the releases are coordinated.

## **7 JOINT INSPECTIONS**

- 7.1 In order to enhance the efficient use of their respective resources, the parties may agree to conduct a joint inspection on an authorized insurer, licensed insurance intermediary or SFC-licensed corporation regulated under their respective supervisory regimes.
- 7.2 Once the parties have agreed to conduct a joint inspection, they will set up a joint task force and decide on its membership to ensure efficient and timely exchange of information and coordination. The joint task force will convene meetings at agreed regular intervals to share major inspection findings and discuss the action to be taken by respective parties during or at the conclusion of the joint inspection.

## **8 STATUS OF THE MOU**

- 8.1 The IA 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 this MoU;
  - (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;
  - (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 is a statement of intent that the parties will, on the basis of mutual trust, understanding and respect, perform their obligations under this MoU, provided that any performance of this MoU (including but not limited to the provision of information or assistance) is subject to applicable laws, rules and regulations and may not violate the public interest;
- (f) this MoU is not legally binding and 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 IA or the SFC with any of their respective obligations arising hereunder; and
- (g) nothing in this MoU modifies the provisions of the IO or the SFO or rules and regulations made thereunder or affects the rights of the IA or the SFC to exercise any of their respective powers or perform any of their respective functions under the IO or the SFO.

8.2 Subject to the provisions of this MoU, and to the extent permitted by law and where appropriate, the provision of information may be at a party's own volition or upon the other party's request. Such requests shall be made in writing, whilst verbal request may also be acceptable under urgent circumstances.

## **9 FUTURE POLICY DEVELOPMENT**

9.1 The IA and the SFC each agrees to consult the other in the preparation and the issue of further guidelines in relation to the regulation of insurance-related investment products, authorized insurers, licensed insurance intermediaries or SFC-licensed persons, where necessary.

9.2 The IA and the SFC each agrees to consult the other in considering a policy of introducing measures, statutory or otherwise, designed to set minimum standards and encourage enhanced professional standards and practices for persons engaged in the issue or offering of insurance-related investment products in Hong Kong, where necessary.

## **10 IMPLEMENTATION, LICENSING, SUPERVISION AND ENFORCEMENT MATTERS / MATTERS OF MUTUAL CONCERN**

- 10.1 Recognizing the different regulatory remit of each party, both parties acknowledge the importance of closer co-operation and mutual assistance in matters concerning insurance-related investment products, licensing, supervision and enforcement matters of mutual concern (including, without limitation, enabling a party to understand and assist the other party to assess the compliance by its regulated persons with all applicable regulatory requirements as set out in the rules and regulations made or published from time to time by each party; and enabling a party to assess the fitness and properness of persons licensed or regulated by either party).
- 10.2 In view of paragraph 10.1 above, the IA and the SFC each agrees (subject to applicable provisions of any laws, regulations or requirements to which a party is subject and provided that this would not prejudice a party's performance of its statutory functions) to consult, coordinate with the other and use its best efforts to render assistance to each other to:
- (a) perform regulatory functions in respect of supervision (including, without limitation, on-going oversight and inspection) and enforcement matters; and
  - (b) facilitate consistency in approach, standards, requirements, and effectiveness in the implementation and operation of their respective regulatory regimes.

## **11 CONFIDENTIALITY AND USE OF INFORMATION**

- 11.1 Any non-public information exchanged between the parties under this MoU (including requests made under this MoU, and the contents of such requests) will be treated as confidential and used by the recipient only in accordance with applicable laws and this MoU for the purposes stated in any written requests for information or assistance. Except as otherwise required or permitted by law, the information so exchanged shall not be disclosed to any third party without the prior consent of the party providing the information.
- 11.2 Each party will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of information exchanged pursuant to applicable law and under this MoU.

## **12 LIAISON BETWEEN THE PARTIES**

- 12.1 Each party will appoint a person or persons to be its principal point(s) of contact to ensure the smooth co-ordination and information exchange between the parties pursuant to this MoU. Either party may change its principal point(s) of contact by giving written notice to the other party. The initial contact persons are set out in Annex A, and it may be amended by written notice from either party.

- 12.2 The parties will conduct meetings to discuss matters of mutual interest relating to the performance of their regulatory and supervisory functions on an on-going basis. Such meetings will be chaired alternately by the parties and will be suitably documented.
- 12.3 Ad hoc meetings to deal with specific supervisory concerns may be called by either party and will be chaired by the party who convenes the meeting. These meetings will be suitably documented.

### **13 STAFF TRAINING AND DEVELOPMENT**

- 13.1 Subject to practical needs and availability of resources, the parties agree to assist in providing training for staff of the other party and joint training opportunities for the staff of both parties on relevant topics and consider staff secondment as and when appropriate.

### **14 EFFECTIVE DATE AND TERMINATION**

- 14.1 The parties hereto agree to keep the operation of this MoU under review and to consult each other with a view to improving its operation and resolving any matters.
- 14.2 This MoU may be amended at any time by written agreement between the parties hereto.
- 14.3 This MoU shall take effect from the date of execution by both the IA and the SFC and shall remain in full force and effect unless and until the parties hereto mutually agree in writing to terminate the whole or any part hereof.
- 14.4 In the event of termination of this MoU, paragraph 11 of this MoU shall continue to apply in relation to non-public information exchanged between the parties before such termination.

DATED: 28<sup>th</sup> day of September, 2020

Signed for and on behalf of  
The Securities and Futures Commission

Signed for and on behalf of  
The Insurance Authority

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Mr. Ashley Alder  
Chief Executive Officer

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Mr. Clement Cheung  
Chief Executive Officer

## ANNEX A - LIST OF CONTACT PERSONS

### Securities and Futures Commission, Hong Kong

*On matters concerning enforcement or disciplinary action:*

Executive Director, Enforcement Division

*On matters concerning licensing and supervision of intermediaries:*

Executive Director, Intermediaries Division

*On matters concerning listings and takeovers:*

Executive Director, Corporate Finance Division

*On any other matters under this MoU:*

Executive Director, Investment Products Division

Alternate:

Senior Director, Investment Products Division

### Insurance Authority, Hong Kong

*On matters concerning long term insurers and insurance products*

Executive Director, Long Term Business Division

Alternate:

Associate Director, Long Term Business Division

*On any other matters under this MoU*

Executive Director, Market Conduct Division

Alternate:

Associate Director, Market Conduct Division