

**MEMORANDUM  
OF  
UNDERSTANDING**

**The Panel on  
Takeovers and Mergers**

**Securities and  
Futures Commission**

*1 February* 2017

**Memorandum of Understanding (“MOU”) between the Securities and Futures Commission (the “SFC”) and The Panel on Takeovers and Mergers (the “Panel”) (each referred to as an “Authority” and together as the “Authorities”)**

**Introduction**

1. The SFC’s functions include responsibility for administering the Codes on Takeovers and Mergers and Share Buy-backs (the “HK Codes”) in the Hong Kong Special Administrative Region of the People’s Republic of China and supervising and regulating takeovers and other matters to which the HK Codes apply in accordance with the rules set out in the HK Codes. The functions and powers of the SFC extend to assisting regulators from other jurisdictions that exercise similar supervisory and regulatory powers over takeovers in their jurisdictions.
2. The main functions of the Panel are to issue and administer the City Code on Takeovers and Mergers (the “City Code”) in the United Kingdom, the Isle of Man, Jersey and Guernsey and to supervise and regulate takeovers and other matters to which the City Code applies in accordance with the rules set out in the City Code and the provisions of applicable law<sup>1</sup>. The functions and powers of the Panel extend to co-operating, by way of taking such steps as it considers appropriate, with persons or bodies that exercise functions of a public nature, under legislation in any country or territory outside the United Kingdom, the Isle of Man, Jersey or Guernsey, that appear to the Panel to be similar to its own functions or, among others, those of the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England in the United Kingdom, including by sharing information that it is not prevented from disclosing. The day-to-day work of takeover supervision and regulation is carried out by the

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<sup>1</sup> (i) *In the United Kingdom, Chapter 1 of Part 28 of the Companies Act 2006 (as amended).*  
(ii) *In the Isle of Man, Chapter 1 of Part 28 of the Companies Act 2006 (subject to certain modifications) by virtue of The Companies Act 2006 (Extension of Takeover Panel Provisions)(Isle of Man) Order 2008 (as amended).*  
(iii) *In Jersey, the Companies (Appointment of Takeovers and Mergers Panel)(Jersey) Order 2009, made under Article 2 of the Companies (Takeovers and Mergers Panel)(Jersey) Law 2009.*  
(iv) *In Guernsey, the Companies (Guernsey) Law, 2008.*

Takeover Panel Executive (the "Executive"). In carrying out these functions, the Executive operates independently of the Panel, is solely responsible for any decision making and does not consult the Panel or its members in connection with the relevant decisions. References in this MOU to the Panel and to it as an Authority include the Executive.

### **Purpose of this MOU**

3. The purpose of this MOU is to facilitate co-operation between the Authorities, including, where appropriate, the sharing of information that the Authorities are not prevented from disclosing, for the purpose of enabling and assisting each Authority in the supervision and regulation of takeovers and other matters under the HK Codes or the City Code (as applicable) and in accordance with applicable laws ("Regulatory Functions").
4. Accordingly, subject always to any limitations on its powers and to any other considerations to which it must have regard whether under the written or common laws of its jurisdiction or otherwise, each of the Authorities agrees to provide the other (the "Requesting Authority") with such co-operation in the discharge of the Requesting Authority's Regulatory Functions as the Authority receiving the request for assistance (the "Requested Authority") considers appropriate in the circumstances. Such co-operation may extend to obtaining documents or information from third persons and providing such documents to the Requesting Authority for use in the discharge of its Regulatory Functions, where the Requested Authority is not prevented from obtaining or disclosing such documents or information.
5. The provisions of this MOU are not intended to create legally binding obligations or supersede domestic laws. In the event that a Requested Authority determines that it cannot or should not provide the requested co-operation, it may provide such explanation to the Requesting Authority as it thinks fit, but shall be under no obligation to do so.

## **Requests For Assistance**

6. Requests for assistance will be made in writing. In the case of requests to the SFC they shall be addressed to the Executive Director, Corporate Finance for the time being, and in the case of the Panel they shall be addressed to the Director General for the time being. Requests for assistance may be sent by email, provided the original version shall be sent as soon as reasonably practicable by courier.
7. Requests for assistance should include the following save as expressly agreed otherwise by the Authorities:
  - (a) a description of the facts underlying the investigation that are the subject of the request, and the purpose for which the assistance is sought;
  - (b) a description of the assistance sought by the Requesting Authority and why the information sought will be of assistance;
  - (c) any information known to, or in the possession of, the Requesting Authority that might assist the Requested Authority in identifying the persons believed to possess the information or documents sought;
  - (d) an indication of any special precautions that should be taken in collecting the information due to investigatory considerations, including the sensitivity of the information; and
  - (e) the provisions of the HK Codes or the City Code (as applicable) that may have been breached and that relate to the subject matter of the request.

## **Permissible use of information**

8. Each of the Authorities agrees that any information obtained under this MOU is to be used solely in the discharge of its Regulatory Functions.

## **Confidentiality**

9. The Requesting Authority will not transfer or otherwise disclose to any third party any of the shared confidential information unless:
  - (a) the Requesting Authority has obtained the prior consent of the Requested Authority to disclose that information (which consent will not be withheld unreasonably); or
  - (b) the Requesting Authority needs to disclose that information for the purposes of making any decision at first instance under the HK Codes or the City Code (as applicable) or in relation to an appeal from any such decision.
  
10. If the Requesting Authority is required by law to disclose any of the shared confidential information or receives a legally enforceable demand for disclosure of such information, the Requesting Authority will notify the Requested Authority of such proposed disclosure as soon as reasonably practicable and, if the Requested Authority is not able to give its prior consent, the Requesting Authority will use all reasonable endeavours to exercise any legal rights available to the Requesting Authority so as to avoid such disclosure. If, having done so, the Requesting Authority is required to disclose any of the shared information, the Requesting Authority will, where reasonably practicable, notify the Requested Authority prior to disclosure and will only disclose the shared confidential information to the minimum extent required.

## **Effective date**

11. This MOU will come into effect on the date specified below.

## **Termination**

12. Each Authority may withdraw from this MOU at any time by giving 30 days prior written notice to the other Authority.

**In witness whereof** the authorised representatives of the Authorities signify their understanding by signing below.

Dated this 1 day of February 2017

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On behalf of the Panel

Name: C. W. V. WRIGHT

Position: DIRECTOR GENERAL

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On behalf of the SFC

Name: BRIAN Y. T. HO

Position: EXECUTIVE DIRECTOR