
MEMORANDUM OF UNDERSTANDING

BETWEEN

THE HONG KONG POLICE

OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

AND

THE SECURITIES AND FUTURES COMMISSION

1. Background

- 1.1 This Memorandum of Understanding (**MoU**) sets out the framework for cooperation between the Hong Kong Police (**HKP**) and the Securities and Futures Commission (**SFC**) (each referred to as a "**party**", together as "**parties**") in the performance of their respective regulatory and/or enforcement functions ("**Functions**").
- 1.2 This MoU supersedes any previous arrangements between the HKP and the SFC on the same matters.

2. Roles of the Parties

- 2.1 The general duties and powers of the HKP are set out primarily in the Police Force Ordinance, Cap. 232 (**PFO**). The HKP, in the performance of its general functions under the PFO, is responsible for maintaining law and order and preventing and detecting crimes in Hong Kong.
- 2.2 The SFC is an independent statutory body established under the repealed Securities and Futures Commission Ordinance (Cap. 24) and continued in existence by the Securities and Futures Ordinance, Cap. 571 (**SFO**) to regulate Hong Kong's securities and futures markets.
- 2.3 The SFC administers the SFO and certain provisions of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, Cap. 32, the Companies Ordinance, Cap. 622, the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance, Cap. 615 and Financial Institutions (Resolution) Ordinance, Cap. 628 (when it comes into effect).
- 2.4 The SFC's investigative, remedial and disciplinary powers are specified in the SFO. The regulatory objectives of the SFC specified in the SFO include:
- to maintain and promote a fair, efficient, competitive, transparent and orderly securities and futures industry;
 - to provide protection for the investing public; and
 - to minimize crime and misconduct in the securities and futures industry.

3. Purpose and Principles

3.1 The Hong Kong Special Administrative Region is a major international financial center. It is important to maintain the integrity of the Hong Kong securities and futures markets. The parties have a mutual interest and respective duties in combating crimes and/or illicit activities relating to the securities and futures industry in Hong Kong and they recognize the need for the fullest collaboration and cooperation in order to perform their Functions effectively.

3.2 The parties acknowledge the following overriding principles:

- the parties will use their best endeavours to meet the terms of this MoU;
- this MoU does not modify or supersede any laws or regulations;
- this MoU does not amount to a delegation of any of the powers, duties or obligations of the parties;
- this MoU does not create, directly or indirectly, any legal rights, obligations or liabilities, enforceable by the parties or any other person; and
- if a matter is not dealt with explicitly in this MoU, the parties agree to work together to resolve it quickly in accordance with the principles of collaboration and cooperation.

Guidance on Cooperation and Collaboration between the Parties

4. Referral of Cases

4.1 In the discharge of its duties, each party will actively consider whether it should refer matters to the other party for possible action, having regard to the other party's Functions.

4.2 The HKP may make a referral to the SFC for evaluation of possible action where it believes that:

(a) the suspected criminality or misconduct falls outside the Functions of the HKP but may fall within the Functions of the SFC under the laws administered by the SFC (see paragraphs 2.3 and 2.4); or

(b) the suspected criminality or misconduct falls within the Functions of

both the HKP and the SFC but:

- i. the SFC is in a better position to handle the case; and/or
- ii. the SFC is also handling the same case and it would be duplicative for the HKP to conduct a parallel investigation.

4.3 The SFC may make a referral to the HKP for evaluation of possible action where it believes that:

- (a) the suspected criminality falls outside the Functions of the SFC under the laws administered by the SFC (see paragraph 2.3 and 2.4) but may fall within the Functions of the HKP; or
- (b) the suspected criminality falls within the Functions of both the HKP and the SFC but:
 - i. the HKP is in a better position to handle the case; and/or
 - ii. the HKP is also handling the same case and it would be duplicative for the SFC to conduct a parallel investigation.

4.4 Following receipt of sufficient materials to conduct a referral evaluation, the party receiving a referral (**Receiving Party**) will advise the referring party (**Referring Party**) about the evaluation outcome as soon as practicable. If the Receiving Party cannot complete the evaluation within a reasonable period of time, particularly relating to a complicated case, it will provide an update to the Referring Party on the status of the evaluation. If the Receiving Party has communicated to the Referring Party its acceptance of the referral for investigation, the Referring Party will not take any action that may compromise the investigation of the Receiving Party without prior consultation with the latter.

5. **Joint Investigations**

5.1 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.

5.2 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, findings and outcomes of the joint investigation and their respective investigatory efforts.

6. Early Involvement of the Department of Justice

6.1 In a joint investigation by both parties or a parallel investigation by each party on the same subject matter, the parties will consider whether to consult the Department of Justice (**DOJ**) at an early stage about whether only one party should continue with the criminal investigation or each party should focus on particular suspected crimes.

7. Exchange and Use of Information

7.1 The parties will exchange information which is relevant to the objectives of this MoU and which may assist the other party in discharging its Functions.

7.2 Each party will provide the other with information in accordance with applicable laws (particularly the Personal Data (Privacy) Ordinance, Cap. 486). Each party will treat any non-public information the other gives it as confidential and only use it in accordance with applicable laws and this MoU. Except as otherwise required or permitted by law, a party that receives information under this MoU will not disclose it to a third party without the prior written consent of the party providing the information.

7.3 Each party will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.

8. Investigative Assistance

8.1 The SFC does not have the power of arrest. If the SFC has reasonable

grounds to believe that a person has committed an offence under any laws administered by it (see paragraph 2.3) and the SFC has obtained a warrant to arrest from the Magistrates Court, it may request the HKP for help to arrest the person. The HKP will assist the SFC if the SFC has produced to the HKP a warrant to arrest issued by the Magistrates' Court.

- 8.2 If the SFC has obtained a warrant to search, and if it reasonably believes that there will be a credible threat to the safety of the relevant SFC officers, the HKP will, if authorised by the warrant, render reasonable assistance to the SFC in the search operation in accordance with the terms of the warrant and applicable law.
- 8.3 If the HKP reasonably believes that it is necessary to have the opinion of a market expert during the conduct of its investigation, it may request the SFC to assist. The SFC will offer assistance subject to the availability of its in-house market experts or will recommend potential independent experts who may be available to assist the HKP.
- 8.4 Each party will consider requests from the other party for investigative assistance not otherwise specified in this paragraph 8 on a case-by-case basis.

9. Communication and Media Strategy

- 9.1 The Parties will hold liaison meetings every six months or at intervals to be agreed between the parties and ad hoc meetings, where necessary, to discuss cases of mutual interest, any proposed legislative and/or policy changes that may affect the Functions of each party as well as the implementation of this MoU.
- 9.2 Prior to the publication of any information, such as media releases concerning any joint investigations, the parties will consult one another and ensure that the timing and contents of the media releases are consistent.

10. Capacity Building

- 10.1 The parties intend to coordinate their training initiatives and organize joint training opportunities to improve the capacity and effectiveness of their staff

in performing their respective functions.

11. Designated Principal Contacts

- 11.1 Each party will send any request or communication relating to policies or high level inter-organizational relationship matters to one of the designated principal contacts of the other party whose contact details are set out in Appendix A.
- 11.2 Each party will send any request or communication relating to a specific case and any other routine matter to the designated secondary contacts of the other party whose contact details are set out in Appendix B.
- 11.3 The parties may add to and/or change their respective designated principal or secondary contacts from time to time by notifying each other in writing.

12. Effective Date and Termination

- 12.1 This MoU shall take effect on 25 August 2017.
- 12.2 This MoU may be amended or terminated at any time in writing by both parties.

Dated 25th day of August, 2017

Mr CHUNG Siu-yeung
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for and on behalf of the
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