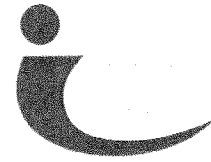




香港存款保障委員會
HONG KONG DEPOSIT
PROTECTION BOARD



Memorandum of Understanding

between

Hong Kong Deposit Protection Board

and

Securities and Futures Commission

and

Investor Compensation Company Limited

Memorandum of Understanding

between

- (1) **Hong Kong Deposit Protection Board** (“**DPB**”) established by section 3 of the Deposit Protection Scheme Ordinance (Chapter 581 of the Laws of Hong Kong) (the “**DPSO**”) whose office is situated at 78/F, Two International Finance Centre, 8 Finance St., Central, Hong Kong;
- (2) **Securities and Futures Commission** (“**SFC**”) established under section 3 of the repealed Securities and Futures Commission Ordinance (Chapter 24 of the Laws of Hong Kong) and continuing in existence by virtue of section 3 of the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) (the “**SFO**”) whose office is situated at 8th Floor, Chater House, 8 Connaught Road Central, Hong Kong; and
- (3) **Investor Compensation Company Limited** (“**ICC**”) a private company incorporated in Hong Kong under the Companies Ordinance (Chapter 32 of the Laws of Hong Kong) (the “**CO**”), recognised as an investor compensation company under section 79 of the SFO whose registered office is situated at 29/F, Li Po Chun Chambers, 189 Des Voeux Road Central, Hong Kong.

I PURPOSES

1 This Memorandum of Understanding (the “**Memorandum**”) aims at:

- (a) fostering co-operation between the parties to avoid any cross-claims between the parties or overlap of compensation payments made by DPB and ICC/ SFC to any eligible depositor who is also a qualifying client;
- (b) setting out the arrangements between the parties for the exchange of information to facilitate the performance of each party’s respective functions; and
- (c) setting out the obligation of each party to keep all non-public information to be received from the other parties under this Memorandum confidential.

II DEFINITION OF TERMS

2.1 In this Memorandum, unless the context otherwise requires:

“**associated person**” shall have the meaning ascribed to it by section 2 of the Claims Rules;

“claimant”	shall have the meaning ascribed to it by paragraph 5.2(a) (Compensation payments by SFC/ ICC to qualifying clients of specified persons) hereof;
“Claims Rules”	means the Securities and Futures (Investor Compensation Claims) Rules (Chapter 571T of the Laws of Hong Kong);
“default”	shall have the meaning ascribed to it by section 2 of the Claims Rules;
“depositor”	shall have the meaning ascribed to it by section 2(1) of the DPSO;
“DPS Fund”	means the Deposit Protection Scheme Fund established by section 14 of the DPSO;
“eligible depositor”	means any depositor other than an excluded person maintaining protected deposit(s) with any Scheme member;
“excluded person”	shall have the meaning ascribed to it by section 3 of Schedule 1 to the DPSO;
“function”	includes a power or duty under the DPSO, the SFO or any subsidiary legislation, codes, guidelines or guidances made or issued thereunder;
“ICF”	means the compensation fund known as the Investor Compensation Fund referred to in section 236 of the SFO;
“informing party”	means the party disclosing any information under Part VI of this Memorandum;
“Limits Rules”	means the Securities and Futures (Investor Compensation – Compensation Limits) Rules (Chapter 571AC of the Laws of Hong Kong);
“Monetary Authority”	means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Chapter 66);
“net amount”	shall have the meaning ascribed to it under section 38(7) of the DPSO;
“protected deposit”	shall have the meaning ascribed to it by section 2(1) of the DPSO;
“qualifying client”	in relation to a specified person, shall have the meaning ascribed to it by section 2 of the Claims Rules;
“quantification date”	shall have the meaning ascribed to it by section 25(1) of the DPSO;
“receiving party”	means the party receiving any information under Part VI of this Memorandum;

“related assets”	shall have the meaning ascribed to it by section 2 of the Claims Rules;
“Scheme”	shall have the meaning ascribed to it by section 2(1) of the DPSO;
“Scheme member”	shall have the meaning ascribed to it by section 2(1) of the DPSO;
“specified event”	in relation to a Scheme member, shall have the meaning ascribed to it by section 22 of the DPSO;
“specified person”	shall have the meaning ascribed to it by section 2 of the Claims Rules;
“Specified securities or futures contracts”	shall have the meaning ascribed to it by section 2 of the Claims Rules;

2.2 In this Memorandum, unless the context otherwise requires:

- (a) headings and titles are for convenience only and do not affect the interpretation of this Memorandum;
- (b) use of either gender includes the other gender, and use of the singular includes the plural and vice versa;
- (c) references to a “party” are to DPB or SFC or ICC (as applicable) and references to “parties” shall be construed accordingly; and
- (d) references to any statute or statutory provision shall be construed as references to the same as they may, from time to time, be amended, modified or re-enacted.

III GENERAL PRINCIPLES

3.1 The parties will use their best endeavours to observe the terms of this Memorandum. To the extent permitted by applicable laws, each party will make reasonable efforts to ensure that the other parties will be provided with all relevant information so that the parties may effectively perform their respective functions.

3.2 The parties recognise the following overriding principles:

- (a) this Memorandum does not modify or supersede any law, regulation, code, guideline, guidance, etc;
- (b) this Memorandum does not prevent any party from performing its respective functions;

- (c) this Memorandum does not amount to delegation of any of the powers, duties and obligations of the parties;
- (d) this Memorandum does not create any rights, obligations or liabilities legally enforceable by the parties or by any third party;
- (e) this Memorandum does not affect any arrangements under any other Memorandum that any party has entered into or may enter into with the other parties or any other person;
- (f) in the interpretation of any of the provisions of this Memorandum, such provisions should receive such fair, large and liberal construction and interpretation to ensure the attainment of the objective of this Memorandum according to its true intent, meaning and spirit,

and this Memorandum shall be construed accordingly.

IV BACKGROUND

4.1 Under the DPSO -

- (a) DPB is a statutory body established in July 2004 to perform the functions specified in section 5 of the DPSO, including establishing and maintaining the Scheme and managing and administering the DPS Fund;
- (b) the DPS Fund comprises principally contributions collected from Scheme members; and
- (c) in the event of the occurrence of a specified event, DPB shall pay compensation to eligible depositors based on a calculation made in accordance with the provisions of Division 2 (Entitlement to compensation) of Part 5 of the DPSO.

4.2 Under the SFO and subsidiary legislation made thereunder -

- (a) SFC is a statutory body established in May 1989 which performs the functions specified in the SFO, including regulating the securities and futures markets, establishing, maintaining, managing and administering the ICF, and determining claims against the ICF;
- (b) the ICF was established to provide a measure of compensation to qualifying clients who sustain a loss due to a default committed by a specified person or any of its associated persons in connection with any specified securities or futures contracts or related assets ;

- (c) the Claims Rules were made by the SFC under section 244(2) of the SFO to prescribe persons who may make a claim for compensation from the ICF, the manner in which such a claim shall be made and how such claims will be assessed and paid;
- (d) the Limits Rules were made by the Chief Executive in Council under section 244(1) of the SFO to prescribe the maximum amount of compensation that may be paid to a person making a claim for compensation from the ICF under the Claims Rules;
- (e) ICC has been recognized by the SFC as an investor compensation company under section 79 of the SFO; and
- (f) under the Securities and Futures (Transfer of Functions – Investor Compensation Company) Order (Chapter 571AD of the Laws of Hong Kong) made by the Chief Executive in Council at the request of the SFC under section 80 of the SFO, various functions relating to the management and administration of the ICF, including the determination of claims against the ICF, were transferred to ICC in 2003 with the reservation that the SFC would perform such functions concurrently with the ICC.

V CO-ORDINATION BETWEEN THE PARTIES TO AVOID ANY CROSS-CLAIMS AND OVERLAPPING PAYMENTS TO ELIGIBLE DEPOSITORS/QUALIFYING CLIENTS

Compensation payments by DPB to eligible depositors

- 5.1
- (a) In the event of the occurrence of a specified event, the Monetary Authority may after consultation with the Financial Secretary, decide that compensation should be paid from the DPS Fund to the eligible depositors of a failed Scheme member; and
 - (b) Division 2 (Entitlement to compensation) of Part 5 of the DPSO, i.e. sections 27-31 thereof, provides the circumstances under which an eligible depositor is entitled to receive compensation and details the manner in which the DPB shall pay compensation to the eligible depositor. Under section 27(1) of the DPSO, an eligible depositor is entitled to a total amount of compensation payment not exceeding HK\$100,000, regardless of the number or amount of deposits. Further, under section 35 of the DPSO, the amount of compensation payable to an eligible depositor shall not exceed the amount in respect of which the eligible depositor would, on the winding up of the failed Scheme member, be entitled to receive in priority under section 265(1)(db) of the CO.

Compensation payments by SFC/ ICC to qualifying clients of specified persons

- 5.2 (a) Where a specified person or any of its associated persons has committed a default, a qualifying client (the “**claimant**”) may lodge a claim with SFC/ ICC for compensation under section 4 of the Claims Rules;
- (b) The SFC/ICC shall determine whether there has been a loss as a result of the default and whether the claimant is entitled to compensation from the ICF under section 7 of the Claims Rules; and
- (c) Any compensation payable to a claimant shall be paid from the ICF under section 9 of the Claims Rules and, under section 3 of the Limits Rules, the total amount of compensation payable to the claimant -
- (i) in relation to any securities, and related assets of such securities, shall not exceed HK\$150,000; and
 - (ii) in relation to any futures contract, and related assets of such futures contract, shall not exceed HK\$150,000.

DPB’s right of subrogation

- 5.3 Where DPB pays any compensation from the DPS Fund to an eligible depositor, section 38 of the DPSO entitles the DPB to be subrogated, to the extent of the net amount (as defined by section 38(7)) of that payment (together with any interest accrued thereon), to all the rights and remedies of the eligible depositor in relation to all his deposits in priority to the depositor’s rights and remedies in relation to those deposits, including the depositor’s right to have a preferential claim against the failed Scheme member in liquidation under section 265(1)(db) of the CO.

SFC’s/ ICC’s right of subrogation

- 5.4 (a) Where ICC or SFC pays any compensation from the ICF to a claimant, sections 87(1)(a) and 243(1)(a) of the SFO entitle ICC and SFC respectively to be subrogated to the extent which that payment bears to the loss sustained by the claimant by reason of the default, to all the rights and remedies of the claimant in relation to the loss.
- (b) The respective rights of the claimant and ICC/ SFC (as the case may be) in the bankruptcy/ winding-up of or any other legal proceedings against the defaulting specified person/ its associated person(s) shall rank equally by virtue of sections 87(1)(b) and 243(1)(b) of the SFO respectively.

No cross-claims by way of subrogation between the parties

- 5.5 Under section 38(2) of the DPSO, DPB shall not be entitled to be subrogated to any rights and remedies of the eligible depositor who is also a qualifying client (the **eligible depositor/ qualifying client** or vice versa) in respect of any compensation payable to him from the ICF. Similarly, under sections 87(1A) and section 243(1A) of the SFO respectively, ICC and SFC shall not be entitled to be subrogated to any rights and remedies of the qualifying client/ eligible depositor in respect of any compensation payable to him from the DPS Fund.

Avoidance of overlapping payments by DPB and ICC/ SFC

- 5.6 No person who has been paid compensation out of the ICF in respect of a protected deposit shall be entitled to be compensated from the DPS Fund in respect of the protected deposit pursuant to section 31 of the DPSO. Similarly, under section 4 of the Claims Rules, no person shall claim compensation from the ICF in respect of any loss in respect of which he has been paid compensation from the DPS Fund.
- 5.7 Where -
- (a) a specified event occurs in respect of a Scheme member which is also a specified person or an associated person; and
 - (b) the specified event is also a default under the Claims Rules,

it is expected that the DPB would normally pay compensation to an eligible depositor/qualifying client in respect of his protected deposit(s), before the ICF would pay compensation under the Claims Rules for loss as a result of the default.

VI EXCHANGE OF INFORMATION

- 6.1 Section 46(2)(f) of the DPSO, section 378(2)(ea) and 378(3)(f)(xvi) of the SFO entitle DPB and SFC/ ICC respectively to exchange information with the other parties, insofar as the disclosing party is of the opinion that such disclosure of information will enable or assist the receiving party to perform its duties and powers relating to the DPS Fund or the ICF (as the case may be). Further, section 378(1) of the SFO also entitles SFC and ICC to disclose information to one another, and persons assisting them, in the performance of their functions.
- 6.2 Without prejudice to the generality of paragraph 6.1, each party will endeavour to notify and provide information (the **“informing party”**) to the other parties (the **“receiving party”**) as soon as practicable in respect of:
- (a) information including but not limited to any change of laws, rules, regulations, codes, guidelines or circulars, etc. issued or published by the informing party,

which will, in the opinion of the informing party, affect how the receiving party performs its functions; and

- (b) any other information which will, in the opinion of the informing party, enable or assist the receiving party in determining the entitlement of and the amount of compensation (if any) payable to an eligible depositor/a qualifying client in the event of the occurrence of a specified event.

6.3 The receiving party will be authorized by the informing party to pass on the information received from the informing party to its appointed agent engaged to assist in processing the claims.

6.4 In the event of the occurrence of a specified event in respect of a Scheme member, the DPB will, as soon as practicable, notify the SFC / ICC of the specified event. Upon request of the other party, each party will provide such information relating to the Scheme member as the party has to facilitate the other party to perform its functions.

6.5 In the event the SFC/ICC receives a claim for compensation from the ICF in respect of a default of a specified person who is also a Scheme member, or an associated person of that specified person, or in the event that the SFC/ICC receives a notice under clause 6.4 in respect of a failed Scheme member then if the SFC/ICC subsequently receives a claim for compensation from the ICF in respect of a default by the Scheme member as a specified person or an associated person, it will as soon as practicable notify and provide information to the DPB concerning the identity of the claimant, the capacity in which the claim is made (e.g. as a trustee or beneficiary of a trust), other persons interested in the account concerned and the claim made. The DPB will as soon as practicable notify the SFC/ICC when any compensation is paid out of the DPS Fund to such a claimant. The SFC/ICC will as soon as practicable notify the DPB when any compensation is paid out of the ICF to such a claimant.

6.6 The parties will each appoint a representative to be the principal point of contact who will co-ordinate the exchange of information processes between the parties. Any party may change such appointed representative at anytime by giving prior written notice to the other parties. Where necessary, the parties will hold meetings to discuss matters of mutual interest relating to the performance of their functions.

VII CONFIDENTIALITY AND USE OF INFORMATION

7.1 Any non-public information exchanged between the parties under this Memorandum will be used by the receiving party for the purposes of performing its functions relating to the claims only and, except as otherwise required or permitted by law, will not be disclosed to any third party (save those assisting the party in the performance of its functions) without the prior consent of the informing party.

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

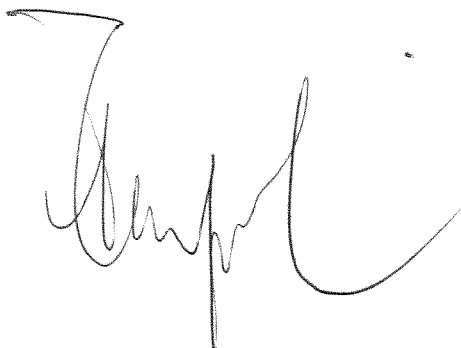
VIII AMENDMENTS

8.1 Any party may at any time request the other party(ies) to agree to make a specific amendment, whether by supplement or otherwise, to this Memorandum, or may invite consultation with the other party(ies) regarding the need for any amendment or supplement to this Memorandum.


8.2 An amendment or supplement to this Memorandum takes effect only by written agreement of the parties.

Dated 9 July 2008

SIGNED for and on behalf of
HONG KONG DEPOSIT PROTECTION BOARD
by Raymond Li, Chief Executive Officer
authorised so to do by its resolution
on 25 June 2008

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SIGNED for and on behalf of
THE SECURITIES AND FUTURES COMMISSION
By Martin Wheatley, Chief Executive Officer
authorised so to do by its resolution
on 19 May 2008

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SIGNED for and on behalf of
INVESTOR COMPENSATION COMPANY LIMITED
by Steve Ang, General Manager
authorised so to do by its resolution
on 7 May 2008

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