



HONG KONG MONETARY AUTHORITY  
香港金融管理局

**AFRC**

Accounting and Financial  
Reporting Council  
會計及財務匯報局

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**MONETARY AUTHORITY**

**AND**

**ACCOUNTING AND FINANCIAL REPORTING COUNCIL**

**17 August 2023**

## **I PURPOSES**

1. This Memorandum of Understanding (“**MoU**”) aims to:
  - (a) replace and supersede the previous MoU, signed on 19 November 2007, between the Monetary Authority (“**MA**”) and the Accounting and Financial Reporting Council (formerly known as the Financial Reporting Council) (“**AFRC**”) (each referred to as a “Party”, together as “Parties”), in view of the new regulatory regime which has been implemented under the Accounting and Financial Reporting Council Ordinance (Cap. 588) (“**AFRCO**”);
  - (b) establish arrangements between the Parties for the exchange of information, referral and notification of relevant matters; and
  - (c) strengthen co-operation between the Parties.

## **II DEFINITION OF TERMS**

2. Unless otherwise specified, terms defined in the Banking Ordinance (Cap. 155) (“**BO**”) and the AFRCO bear the same meaning when used in this MoU.

## **III PRINCIPLES**

3. The Parties will use their best endeavours to meet the terms of this MoU. To the extent permitted by applicable laws, each Party will make reasonable efforts to ensure that the other Party is provided with all relevant information so that the Parties may effectively perform their respective statutory functions.
4. In addition, the Parties recognise the following overriding principles:
  - (a) this MoU operates subject to applicable laws and regulations and does not modify or supersede any law or regulation;
  - (b) this MoU does not detract from the respective statutory functions of the Parties;
  - (c) this MoU does not amount to a delegation of any of the powers, duties and obligations of the Parties;

- (d) this MoU does not create, directly or indirectly, any rights, obligations or liabilities, enforceable by the Parties or by any third party, and is not legally binding; and
- (e) this MoU does not affect any arrangements under any other memorandum of understanding that either Party has entered into or may enter into with any other party,

and this MoU shall be construed accordingly.

#### **IV SCOPE**

- 5. The principal function of the MA under the BO relevant to this MoU is to promote the general stability and effective working of the banking system. The MA is mandated under the BO to take all reasonable steps to ensure that any banking business, any business of taking deposits, or any other business carried on by authorized institutions (“**AIs**”) is carried on with integrity, prudence and the appropriate degree of professional competence and in a manner which is not detrimental or likely to be detrimental to the interests of depositors or potential depositors. In performing his supervisory functions under the BO, the MA may require an AI to appoint auditor(s) to report on the AI’s systems of control and/or specified matters in addition to the submission of the AI’s audited financial statements.
- 6. The AFRC is the independent regulator of the accounting profession in Hong Kong. The statutory functions of the AFRC under the AFRCO relevant to this MoU include:
  - (a) issuing practising certificates to certified public accountants and registration of practice units;
  - (b) registration or recognition of PIE auditors;
  - (c) carrying out inspections of PIE auditors and practice units;
  - (d) carrying out investigations of PIE auditors and professional persons;
  - (e) taking disciplinary actions against PIE auditors, registered responsible persons of registered PIE auditors and professional persons;
  - (f) carrying out enquiries into non-compliance with regulatory requirements for financial reports in relation to listed entities; and

- (g) acting as a regulatory body in respect of accounting professionals under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).
- 7. Both Parties recognise the importance of ensuring the observance of proper standards by auditors in their professional work and by AIs in their financial reporting to maintain investors' confidence in Hong Kong as an international financial centre.
- 8. This MoU sets out the working arrangements between the Parties in order to ensure efficient and effective co-operation and co-ordination of the Parties' respective functions.

## **V ROLES OF AUDITORS IN THE SUPERVISORY PROCESS OF THE MA**

- 9. Under section 59(1) of the BO, every AI and its auditors (including AIs which are incorporated outside Hong Kong) must comply with the Companies Ordinance (Cap. 622) with respect to the audit of a company's accounts.
- 10. The MA may require an AI to appoint an auditor or auditors to (among other things):
  - (a) report on banking returns (sections 50(1)(c) and 63(3) of the BO);
  - (b) report on systems of control over the compilation of banking returns or other information, compliance with certain statutory provisions in the BO and, in the case of a locally incorporated AI, the maintenance of adequate provisions (section 63(3A) of the BO);
  - (c) report on state of affairs or profit and loss or both, or the adequacy of specific systems of control (section 59(2) of the BO); and
  - (d) provide factual findings in respect of the balance sheet, third party deposit liabilities, contingent liabilities and outstanding commitments in relation to voluntary revocation of authorization of the AI.
- 11. The auditor(s) appointed by an AI shall (among other things):
  - (a) provide notice to the MA in case of qualification or adverse statement on the AI's accounts (section 59A(2)(c) of the BO); and
  - (b) report to the MA if they become aware of a matter which, in their opinion, adversely affects the financial position of the AI to a material extent, or constitutes on the part of a registered AI a failure to comply with any

prescribed requirements within the meaning of section 157 made under the Securities and Futures Ordinance (Cap. 571) (sections 63A and 63B of the BO).

## **VI COLLABORATIVE ARRANGEMENTS**

### **Complaint or referral**

#### *Complaint or referral to the AFRC*

12. In the performance of his functions under the BO, if the MA becomes aware of any matter which may fall within the regulatory remit of the AFRC, the MA will make a complaint or otherwise refer the matter to the AFRC for consideration of follow-up actions. In making such complaint or referral, the MA will, subject to applicable laws, use his best endeavours to provide the AFRC with all relevant information in his possession and the rationale for the complaint or referral.

#### *Complaint or referral to the MA*

13. If it comes to the notice of the AFRC, during the performance of its duties, that there is any matter which may fall within the regulatory remit of the MA, the AFRC will make a complaint or otherwise refer the matter to the MA for consideration of follow-up actions. In making such complaint or referral, the AFRC will, subject to applicable laws, use its best endeavours to provide the MA with all relevant information in its possession and the rationale for the complaint or referral.

#### *Follow-up on complaint or referral*

14. Either Party who has received a complaint or referral under paragraph 12 or 13 above will, subject to applicable laws, inform the other Party of his/its decision over the complaint or referral and the reasons therefor.

### **Sharing of information**

15. The MA and the AFRC may disclose information to each other pursuant to the applicable provisions of section 120 of the BO and section 51 of the AFRCO.

16. To the extent permitted by applicable laws, the Parties will exchange information which is conducive to the objectives of this MoU and which may assist the other Party in discharging his/its functions.
17. Each Party, as and when he/it considers appropriate and subject to applicable laws, will, to the extent practicable, notify the other Party of any issue that the notifying Party believes may have a significant implication for the other Party. This may include the development and publication of policies and guidelines, for example:
  - (a) where any of the MA's proposed policies or guidelines are likely to have significant impact on the AFRC's regulatory functions; and
  - (b) where any of the AFRC's proposed policies or guidance are likely to have significant impact on the MA's regulatory functions.
18. Information exchange between the Parties will be made between the designated principal contacts of the Parties as and when necessary or appropriate. The Parties will exchange a list of the designated principal contacts to co-ordinate communication between the Parties under this MoU.

#### **Other assistance**

19. Each Party will, in good faith, consider rendering technical and other assistance to the other Party upon request including providing advice or the expertise of a banking expert or an accounting expert, on a case-by-case basis.

#### **Capacity building**

20. The Parties intend to co-ordinate their training initiatives and organise joint training opportunities to improve the capacity and effectiveness of their staff in performing their respective functions.

### **VII SITUATIONS WHERE AFRC WILL GIVE WRITTEN NOTICE TO OR CONSULT THE MA UNDER THE AFRCO**

#### **21. Initiating an investigation in relation to professional persons**

- 21.1 Pursuant to section 20ZZK of the AFRCO, if the AFRC initiates an investigation in relation to a professional person's provision of services to a person which is an AI, or to AFRC's knowledge, is a controller of an AI, has as its controller an AI, or has a controller that is also a controller of an AI (collectively referred to as "**AI-related**

**entity**”), the AFRC will inform the MA by written notice that an investigation is to be carried out.

21.2 Pursuant to section 20ZZL of the AFRCO, the AFRC will not impose a requirement on a person to produce any document, give any explanation or further particulars in respect of a required document, or give AFRC all other assistance in connection with the investigation if the person is an AI, or to AFRC’s knowledge, is an AI-related entity, without first consulting the MA.

**22. Initiating an investigation in relation to PIE auditors and non-PIE auditors**

22.1 Pursuant to section 24 of the AFRCO, if the AFRC initiates an investigation in relation to a PIE engagement or non-PIE engagement and the listed entity in question is an AI, or to AFRC’s knowledge, is an AI-related entity, the AFRC will inform the MA by written notice that an investigation is to be carried out.

22.2 Pursuant to section 29 of the AFRCO, the AFRC will not impose a requirement on a person to produce records or documents, give an explanation or further particulars in relation to a record or document produced, attend before AFRC and to answer any question relating to any matter under investigation, answer any question relating to any matter under investigation in writing and give AFRC all other assistance in connection with the investigation if the person is an AI, or to AFRC’s knowledge, is an AI-related entity, without first consulting the MA.

**23. Initiating an enquiry concerning non-compliance of a listed entity**

23.1 Pursuant to section 42 of the AFRCO, if the AFRC initiates an enquiry concerning potential relevant non-compliance of a listed entity which is an AI, or to AFRC’s knowledge, is an AI-related entity, the AFRC will give a written notice to the MA.

23.2 Pursuant to section 43 of the AFRCO, the AFRC will not impose a requirement on a person to produce or give any record or document, or any information or explanation if the person is an AI, or to AFRC’s knowledge, is an AI-related entity, without first consulting the MA.

**Notification and consultation**

24. When the AFRC initiates an investigation or enquiry as mentioned in paragraphs 21.1, 22.1 and 23.1 above, it will give written notice to the

designated principal contacts of the MA as soon as practicable. The written notice will identify the AI concerned, provide a brief narrative of the circumstances supporting the initiation of the investigation or enquiry (as the case may be), and specify the powers that are exercisable by the investigator or enquirer (as the case may be).

25. If a CPA investigator, FR investigator or enquirer intends to exercise the relevant powers under paragraphs 21.2, 22.2 and 23.2 above, prior consultation with the MA will be conducted as soon as practicable.
26. The need for consultation will first be conveyed to the designated principal contacts of the MA. Consultation may be conducted by way of a meeting or through correspondence or both. The salient points discussed and any matters agreed will be documented.

## **VIII CONFIDENTIALITY OF INFORMATION**

27. Any information shared by the Parties under this MoU shall only be used for the purpose of performing their statutory functions and shall be subject to obligations of professional secrecy and such statutory duties of confidentiality as may apply thereto.
28. Each Party will only disclose to a third party confidential information obtained from the other Party subject to the provisions of this paragraph. The receiving Party:
  - (a) will not, except as otherwise required or permitted by applicable laws, make any disclosure of information received under this MoU to a third party without the prior written consent of the Party providing the information;
  - (b) will notify the Party providing the information as soon as reasonably practicable in the event that the receiving Party must disclose information received under this MoU pursuant to a legal requirement under applicable laws; and
  - (c) will comply with any restrictions or conditions on the use of information that are imposed by the other Party at the time when the information is provided.
29. Each Party will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of information exchanged pursuant to applicable laws and under this MoU.

## **IX EFFECTIVE DATE AND AMENDMENTS**

30. This MoU will take effect on 17 August 2023.
31. Either Party may at any time request the other Party to agree to amend, whether by supplement or otherwise, this MoU, or may consult the other Party regarding the need for any amendment or supplement to this MoU.
32. An amendment or supplement to this MoU takes effect only by written agreement of the Parties.

For and on behalf of the  
Monetary Authority

For and on behalf of the Accounting and  
Financial Reporting Council

*[Signed]*

*[Signed]*

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Arthur Yuen  
Deputy Chief Executive  
Date: 17 August 2023

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Marek Grabowski  
Chief Executive Officer  
Date: 17 August 2023