

Memorandum of Understanding
Between
the Monetary Authority and the Insurance Authority

19 September 2003



Hong Kong Monetary Authority



**Office of the Commissioner
of Insurance**

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INTRODUCTION

1. This Memorandum of Understanding (“MoU”) sets out the framework agreed between the Monetary Authority (“MA”) and the Insurance Authority (“IA”) (each referred to as a “party”, together as “parties”), for strengthening co-operation in respect of supervision of entities or financial groups in which the parties have a mutual regulatory interest.

PRINCIPLES

2. This MoU recognises the following principles:
 - the parties will use their best endeavours to meet the terms of this MoU;
 - for institutions or groups where both the MA and the IA have an interest, the parties will use their best endeavours to ensure that there are no gaps in regulatory supervision and to eliminate the unnecessary duplication of supervisory effort;
 - to the extent permitted by applicable laws, each party will use reasonable efforts to ensure that the other party is provided with all relevant information so that the other party may effectively perform its statutory functions;
 - this MoU does not modify or supersede any law or regulation;
 - this MoU does not detract from the respective statutory functions of the parties under the relevant Ordinances (including the Banking Ordinance (Cap. 155) (“BO”) and the Insurance Companies Ordinance (Cap. 41) (“ICO”));
 - this MoU does not amount to a delegation of any of the powers, duties and obligations of the parties;
 - this MoU does not create, directly or indirectly, any rights, obligations or liabilities, enforceable by the parties or by any third party; and
 - this MoU does not affect any arrangements under any other MoU that either party has entered into or may enter into with any other party.

CO-ORDINATION

3. There are circumstances where an authorized institution ("AI") or an insurance company may be of supervisory concern to both parties :
 - where an AI engages its staff or other persons to act as insurance agents or brokers to sell insurance products of an authorized insurer under the ICO;
 - where an AI has an insurance subsidiary that is an authorized insurer under the ICO;
 - where an authorized insurer under the ICO has a banking subsidiary that is an AI; and
 - where a financial group has both a banking subsidiary and an insurance subsidiary.
4. In respect of the insurance agency or brokerage business of AIs, the IA, directly or through the Hong Kong Federation of Insurers ("HKFI"), the Insurance Agents Registration Board ("IARB") and other delegated agencies, will continue to be responsible for regulating the licensing, compliance and conduct of such insurance agency and brokerage business carried out by AIs. In addition, the MA will, where appropriate, monitor through its off-site reviews and on-site examinations such issues as whether AIs have adequate internal control systems, procedures and guidelines to ensure that their staff members engaged in insurance agency or brokerage business are fit and proper and whether the conduct of such staff members complies with the code of conduct and other conduct requirements imposed by the IA, the HKFI, the IARB and/or other delegated agencies of the IA.
5. The IA will continue to be responsible for regulating and supervising authorized insurers. The MA will include the insurance subsidiaries of AIs in its consolidated supervision of the AIs concerned to ensure that the AIs have adequate internal controls, risk management systems and corporate governance structure to identify, measure, monitor and mitigate the risks arising from the business operations of their insurance subsidiaries. The MA will not however require insurance subsidiaries to be consolidated for the purposes of calculating the capital adequacy ratio of a banking group.
6. To ensure that financial groups with both banking and insurance entities are properly supervised, the parties will appoint one of themselves in each case to co-ordinate and to minimise any overlap of their supervisory effort. As a general rule, for local financial groups, where an AI has a subsidiary that is an authorized insurer, the MA will act as the co-ordinator. Where an AI has a holding company that is an

authorized insurer, the IA will act as the co-ordinator. Where an AI and an authorized insurer are fellow subsidiaries, the choice of co-ordinator will depend on whether the volume of business of the financial group is primarily related to banking or insurance. For overseas financial groups, the choice of co-ordinator will depend on the nature of the home supervisor responsible for exercising consolidated supervision on the particular group. Annex A identifies the respective co-ordinator for the different groups that fall under this paragraph. It will be reviewed and updated at the regular meetings mentioned in paragraph 22 below to reflect changing market situations.

7. The role of the co-ordinator includes :

- collecting, analysing and disseminating information to the other party concerning the safety and soundness of the financial groups;
- in the case of overseas incorporated groups, acting as the conduit of information provided by home supervisors and ensuring that relevant regulatory information about the group is shared promptly between the parties;
- notifying the other party of any serious concern about the group so that such concerns arising on the part of different regulators are brought together, evaluated on an overall basis and, to the extent permitted by applicable laws, passed to other regulators with an interest in the group; and
- co-ordinating any regulatory action which may be necessary by more than one regulator in relation to the groups.

8. The parties will share any regulatory concerns or adverse findings discovered during their respective on-going supervisory processes following the information sharing mechanism set out in the next section. If either party notes a change in the condition of an entity under its supervision that could threaten the financial stability of the financial groups of which it is a part, the party noting the change will notify the other party of the relevant details immediately. Where necessary, the parties shall meet as soon as practicable to discuss a co-ordinated supervisory response.

INFORMATION SHARING

9. By virtue of section 120(5)(f) of the BO and section 53A(3)(e) of the ICO, the MA and the IA, respectively, may disclose information to the other where to do so will enable or assist the other to exercise its functions and it is not contrary to the interest of the depositors/policy holders or the public interest to make such disclosure.

Regular Information Sharing

10. Both parties shall make available to the other party the relevant data and information to facilitate high-level, off-site monitoring of activities that are of mutual supervisory interest to the parties.
11. Occasionally either party may take disciplinary action or other supervisory enforcement action against a regulated entity or its staff in which the other party has a supervisory interest. In these situations, the enforcing party shall provide prompt notification to the other party as soon as the enforcement or disciplinary action becomes probable.
12. As customer complaints can often provide insight into the effectiveness of various management controls, the parties shall periodically exchange the details of relevant complaints received, e.g. complaints in relation to the insurance activities of AIs received by the MA or complaints against the conduct of the insurance staff of AIs received by the IA. In the event that either party receives a complaint that requires the input of the other party or the other party's handling, the receiving party shall forward the complaint immediately to the other party for necessary action. In these situations, both parties shall exchange information and keep the other party apprised of the progress in handling the complaint.

Ad Hoc Information Requests

13. During the course of normal activities, either party may, from time to time, need information on a particular entity (or entities) under the other party's primary supervision. In these situations, a party may request specific information on a specific entity (or specific entities) from the other party.
14. The requesting party shall request the information in writing conveyed by the most appropriate means having regard to the urgency of the matter in question. The request should be routed through the designated contact points of the two parties referred to in paragraph 21 below and shall include:
 - the name(s) of the relevant entity (entities);
 - the date or period for which the information is requested; and
 - a detailed description of the information requested.
15. Upon receipt of a request for information, the providing party will acknowledge receipt of the request, consider the request in the light of paragraph 9 above, and estimate any delivery date for the information.
16. The providing party will notify the requesting party as soon as possible if it is not able to provide the requested information as well as the rationale behind the refusal to provide the requested information. If

possible, the providing party should suggest similar information available or other sources for the requested information.

17. If the providing party is unable to fulfil an information request, the requesting party may seek the necessary information from its regulated institution.

Confidentiality and Use of Information

18. Information is to be provided by each party in accordance with the law and for the purposes of assisting the other party in the performance of its regulatory functions.
19. Information so provided is to be used by the recipient only for the purposes of performing its regulatory and supervisory functions, and except as otherwise required by the relevant laws, should not be disclosed to any third party without the prior written consent of the party providing the information.
20. Each party will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.

OTHER AREAS OF LIAISON

21. The parties will each appoint a person or persons to be the principal point of contact between the parties who will ensure the efficiency and effectiveness of the co-ordination and exchange of information processes between the parties. Annex B identifies the principal points of contact of each party. Either party may change its principal points of contact by giving written notice to the other.
22. There will be regular meetings at intervals to be agreed between the parties to discuss current or evolving supervisory issues. These meetings will be chaired alternately by the parties and will be formally minuted.
23. Ad hoc meetings to deal with specific supervisory concerns, such as regulatory or disciplinary action, may be called by either of the parties and will be chaired by the one who initiates the meeting. These meetings will be formally minuted.
24. The parties will liaise, consult each other and co-operate as far as possible on the form and content of guidelines, codes, etc. which cover topics of mutual concern (e.g. insurance selling/advising activities of AIs and their staff, policies or guidelines on acceptance of insurance policies for mortgage purposes) to ensure consistency.

25. Subject to practical needs and availability of resources, both parties agree to assist in providing training for staff of the other party on relevant topics.

INSURANCE AUTHORITY

MONETARY AUTHORITY

[Signed]

[Signed]

Benjamin Tang

Joseph Yam

Dated : 19 September 2003