

Memorandum of Understanding
between
the Monetary Authority and the Insurance Authority

19 July 2019



HONG KONG MONETARY AUTHORITY
香港金融管理局



保險業監管局
Insurance Authority

**Memorandum of Understanding
between
the Monetary Authority and the Insurance Authority**

I. PURPOSES

1. This Memorandum of Understanding (“MoU”) aims to set out the framework 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 regulation and supervision of entities or financial groups in which the Parties have a mutual regulatory interest.
2. Pursuant to section 4G of the Insurance Ordinance (Cap. 41) (“IO”), the IA has delegated its powers under sections 64ZZF(6) and 64ZZH(1) of the IO to the MA in relation to a business of a regulated activity carried on by an authorized institution (“AI”). This MoU also sets out the mutual understanding between the Parties on their respective roles and responsibilities and collaborative arrangements with respect to the regulation and supervision of AIs that carry on a regulated activity in the course of their business.
3. This MoU replaces and supersedes the MoU signed on 19 September 2003 between the Parties in view of the implementation of the new regulatory regime for insurance intermediaries under the IO, as amended by the Insurance Companies (Amendment) Ordinance 2015.

II. PRINCIPLES

4. The Parties recognise the following principles:
 - (a) the Parties will use their best endeavours to meet the terms of this MoU;
 - (b) for entities or financial groups in which both Parties have a mutual regulatory interest, the Parties will use their best endeavours to ensure that there are no gaps in regulatory supervision and to eliminate unnecessary duplication of supervisory effort; and
 - (c) 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.

5. The Parties also recognise the following overriding principles:
- (a) this MoU operates subject to the applicable laws and regulations and does not modify or supersede any law or regulation;
 - (b) this MoU does not detract from the respective functions of the Parties under the relevant Ordinances including the Banking Ordinance (Cap. 155) (“BO”) and the IO;
 - (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.

III. DEFINITION OF TERMS

6. Unless otherwise specified, terms defined in the BO and the IO bear the same meaning when used in this MoU.

IV. ROLES AND RESPONSIBILITIES

7. Section 7 of the BO sets out the functions of the MA. The principal function of the MA under the BO 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 other business (apart from banking business or business of taking deposits) carried on by 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.
8. Section 4A of the IO sets out the functions of the IA. The principal function of the IA under the IO is to regulate and supervise the insurance industry for the promotion of the general stability of the insurance industry and for the protection of existing and potential policy holders. The IA is responsible for supervising authorized insurers’ and licensed insurance intermediaries’ compliance with the provisions of the IO, and regulating the conduct of insurance intermediaries through a licensing regime.

V. ENTITIES IN WHICH THE PARTIES HAVE MUTUAL REGULATORY INTEREST

9. There are circumstances where an AI, an authorized insurer, a licensed insurance intermediary or a financial group may be of regulatory interest to both Parties. For instance:
 - (a) where an AI is a licensed insurance intermediary;
 - (b) where an AI has a subsidiary that is an authorized insurer or a licensed insurance intermediary;
 - (c) where an authorized insurer or a licensed insurance intermediary has a subsidiary that is an AI; and
 - (d) where a financial group has both an AI and an entity that is an authorized insurer or a licensed insurance intermediary.
10. The Parties will periodically co-ordinate with each other to exchange information to facilitate the supervision of relevant financial groups with AIs, and authorized insurers or licensed insurance intermediaries. As a general rule, the co-ordinator for supervisory exchange on such financial groups will be determined as follows:
 - (a) where an AI has a subsidiary that is an authorized insurer or a licensed insurance intermediary, the MA will act as the co-ordinator;
 - (b) where an authorized insurer or a licensed insurance intermediary has a subsidiary that is an AI, the IA will act as the co-ordinator; and
 - (c) where an AI and an entity that is an authorized insurer or a licensed insurance intermediary are fellow members of the financial group, the co-ordinator will be mutually agreed upon by the Parties.
11. Determination of a co-ordinator for the relevant financial groups and the corresponding role are to be agreed between the Parties from time to time through ongoing supervisory exchanges. A list of the relevant financial groups with AIs, and authorized insurers or licensed insurance intermediaries will be mutually agreed upon by the Parties, and reviewed, revised or updated periodically by the Parties in consultation with each other.

VI. COLLABORATIVE ARRANGEMENTS ON REGULATED ACTIVITIES RELATING TO AIs

Licensing

12. Under Part X of the IO, the IA is responsible for granting licences to persons to become licensed insurance intermediaries, renewing such licences and granting

approvals in relation to regulated activities. These include granting an insurance agency licence or an insurance broker company licence to an AI, and a technical representative (agent) (“TR(A)”) licence or a technical representative (broker) (“TR(B)”) licence to a representative of an AI, and renewing such licences; granting approval to an individual as a responsible officer (“RO”) of an AI; and granting approval of variation of lines of business specified in the aforesaid licences. The IA will discuss with the MA, where permitted under section 53A of the IO, before it (i) grants a licence to an AI to carry on regulated activities as a licensed insurance intermediary, or (ii) approves a variation of a line of business specified in the AI’s licence as a licensed insurance intermediary.

13. Under sections 64ZG and 64ZW of the IO, the IA may impose, amend or revoke any conditions as it considers appropriate, on granting or renewing licences or licences granted for licensed insurance intermediaries; or on granting approvals or approvals granted, in relation to regulated activities. The IA will consult the MA before it imposes, amends or revokes any such conditions on a licence of an AI as a licensed insurance intermediary or the approval of an RO of an AI.
14. The IA will inform the MA of the following as soon as reasonably practicable:
 - (a) change of appointment of an AI by an authorized insurer;
 - (b) intended rejection of an AI’s application for a licence or renewal of a licence as a licensed insurance intermediary;
 - (c) intended rejection of an AI’s application for variation of a line of business specified in the licence as a licensed insurance intermediary;
 - (d) intended suspension or intended revocation of the licence of an AI as an licensed insurance intermediary under section 64ZN, section 64ZO or section 64ZQ of the IO;
 - (e) expiration of the licence of an AI as a licensed insurance intermediary;
 - (f) rejection of an application for approval of an individual as an RO of an AI; and
 - (g) change of RO(s) of an AI.
15. The IA will consult the MA before renewing an AI’s licence as a licensed insurance intermediary in respect of whom (i) the MA has exercised his powers under section 52 of the BO; or (ii) a direction under section 22 of the Financial Institutions (Resolution) Ordinance (Cap. 628) (“FIRO”) has been given; or (iii) a power under section 24 of FIRO has been exercised, if the IA is reasonably aware of such matter.

Register of Licensed Insurance Intermediaries

16. The IA is responsible for maintaining a register of licensed insurance intermediaries. The IA will, on a regular basis, provide the MA with information of licensed insurance intermediaries who are AIs, ROs of AIs, and TR(A)s or TR(B)s appointed by AIs in a format as mutually agreed by the Parties.

Making of Rules and Regulations, Publication of Codes and Guidelines, and Amendment to the IO, etc.

17. The IA will consult the MA:
 - (a) before the IA makes, publishes or amends any rules, regulations, codes, guidelines or other regulatory instruments under the IO, in so far as they relate or apply to AIs, persons employed by AIs or persons appointed as agents by AIs, in relation to any regulated activity of AIs; or
 - (b) when the IA provides recommendations on any rules or regulations or amendments to any rules or regulations to be made by the Chief Executive in Council or the Chief Justice under the IO, but only in so far as such rules, regulations or amendments relate or apply to AIs, persons employed by AIs or persons appointed as agents by AIs, in relation to any regulated activity of AIs.
18. The IA will also consult the MA when the IA makes any proposal or provides recommendations on any proposal to amend the IO, but only in so far as such amendments relate or apply to AIs, persons employed by AIs or persons appointed as agents by AIs, in relation to any regulated activity of AIs.
19. The MA will consult the IA before making, publishing or amending any guidelines or other regulatory instruments under the BO, in so far as they relate or apply to AIs, persons employed by or persons appointed as agents by AIs, in relation to any regulated activity of AIs.

Complaint Handling

20. As a general principle, the MA will handle complaints relating to an AI that the MA receives, whether referred by the IA or not. Upon receipt by the IA of a complaint relating to an AI, the IA will refer the complaint to the MA for handling as soon as reasonably practicable.
21. Upon receipt by the MA of a complaint, whether referred by the IA or not, which includes an allegation or element that is considered by the MA to be relevant to an authorized insurer or a licenced insurance intermediary that is not an AI and therefore outside the purview of the MA, the MA will refer such matter(s) to the IA as soon as reasonably practicable for the IA's handling.

22. If the Parties are in doubt as to who should be the Party to handle a complaint received, the Parties will discuss as soon as reasonably practicable how best to handle such complaint.
23. The MA will inform the IA as soon as reasonably practicable of any complaints the MA receives, except for those referred to the MA by the IA, relating to a regulated activity carried on by an AI. The MA will update the IA on a regular basis on the progress of handling all complaints received by the MA, whether referred by the IA or not, relating to a regulated activity carried on by an AI.

Delegation of Inspection and Investigation Powers under the IO

24. The delegation of powers under section 64ZZF(6) and section 64ZZH(1) of the IO by the IA to the MA in relation to a business of a regulated activity carried on by an AI is made pursuant to section 4G(1) of the IO. Such delegation does not prevent the IA from concurrently performing the functions delegated.
25. In relation to a delegation of powers by the IA to the MA, the IA will consult the MA if:
 - (a) the IA is minded to propose to the Chief Executive in Council to impose any conditions on the approval of a delegation under section 4G(2)(a) of the IO or to vary any of the conditions of the approval of a delegation under section 4G(2)(b) of the IO;
 - (b) the IA is minded to propose to the Chief Executive in Council to withdraw the approval of a delegation under section 4G(2)(c) of the IO; or
 - (c) the IA is minded to propose, or as soon as the IA is involved in proposals on, the making of any amendments to the IO or any other Ordinances which may have an impact on (i) the delegation; (ii) powers delegated to the MA; or (iii) the exercise by the MA of any of the delegated powers.
26. In relation to a delegation of powers by the IA to the MA, the MA will consult the IA if:
 - (a) the MA is minded to propose to the Chief Executive in Council to impose any conditions on the approval of a delegation under section 4G(2)(a) of the IO or to vary any of the conditions of the approval of a delegation under section 4G(2)(b) of the IO;
 - (b) the MA is minded to propose to the Chief Executive in Council to withdraw the approval of a delegation under section 4G(2)(c) of the IO; or
 - (c) the MA is invited to comment on any proposed amendments to the IO or any other Ordinances which may have an impact on (i) the delegation; (ii) powers delegated to the MA; or (iii) the exercise by the MA of any of the delegated powers.

Inspections

27. As a general principle, inspection under section 64ZZF of the IO in relation to a business of a regulated activity carried on by an AI will be conducted by the MA.
28. In respect of the inspection as mentioned in paragraph 27 above, the MA will share with the IA such annual inspection plans of the MA and inform the IA of any material changes to the plans as soon as reasonably practicable.
29. The IA may carry out inspection under the IO in relation to a business of a regulated activity carried on by an AI, when the IA considers it necessary to do so. Should these circumstances arise, the IA will consult the MA before exercising the inspection powers on its own or invite the MA to carry out the inspection jointly with the IA.
30. The IA will inform the MA before entering the premises of an AI to conduct any inspection under the IO.
31. If a Party decides to exercise the following powers under the IO, it will inform the other Party in advance, namely, before:
 - (a) applying to a magistrate for a warrant for the purpose of section 64ZZP of the IO concerning the premises of an AI or in relation to any matter concerning an AI covered by that section; or
 - (b) applying to the Court of First Instance under section 64ZZK of the IO for an inquiry into the failure of an AI, an employee of an AI or a person appointed as an agent by an AI to comply with a requirement under section 64ZZF or section 64ZZG of the IO.
32. The Parties will share with each other from time to time major findings from inspections of regulated activities carried on by AIs.

Investigations

33. As a general principle, investigation under section 64ZZH of the IO in relation to a business of a regulated activity carried on by an AI will be conducted by the MA.
34. The IA will refer to the MA as soon as reasonably practicable any matter concerning a business of a regulated activity carried on by an AI which the MA may be able to investigate under the IO. Should the MA decide not to exercise the investigation powers under the IO, the MA will inform the IA of such decision with reasons as soon as reasonably practicable.
35. In the event that the MA decides to exercise the investigation powers under the IO, regardless of whether the matter was referred to the MA by the IA or not, the MA will inform the IA of such decision as soon as reasonably practicable so that

the IA is given the opportunity to consider whether it is necessary for the IA to either carry out the investigation on its own or jointly with the MA.

36. Following the commencement of an investigation under the IO carried out by the MA, the MA will keep the IA informed of the progress of the investigation on a regular basis.
37. The MA will inform the IA of the completion and conclusions of all investigations under the IO carried out by the MA and provide the IA with the MA's findings.
38. Should the IA decide to carry out investigation on its own or jointly with the MA, the IA will consult the MA before the IA directs any of its employees or appoints a person under the IO to exercise its investigation powers under the IO to investigate a matter in respect of (a) an AI; (b) a person who is, or was employed by an AI; or (c) a person who is, or was, appointed as an agent by an AI, in relation to any regulated activity carried on by the AI.
39. Following the commencement of an investigation referred to in paragraph 38 that is carried out by the IA on its own, the IA will keep the MA informed of the progress of the investigation on a regular basis, inform the MA of the completion and conclusions of the investigation and, provide the MA with the IA's findings.
40. The IA will inform the MA before entering the premises of an AI to conduct any investigation under the IO.
41. If a Party decides to exercise the following powers under the IO, it will inform the other Party in advance, namely, before:
 - (a) applying to a magistrate for a warrant for the purpose of section 64ZZP of the IO concerning the premises of an AI or in relation to any matter concerning an AI covered by that section; or
 - (b) applying to the Court of First Instance under section 64ZZK of the IO for an inquiry into the failure of an AI, an employee of an AI or a person appointed as an agent by an AI to comply with a requirement under section 64ZZH or section 64ZZI of the IO.

Disciplinary Actions

42. The IA, after reviewing all information or material in its possession, will decide whether to exercise its disciplinary powers pursuant to section 81 of the IO.
43. The IA may seek further clarification from the MA following a review of the information disclosed by the MA to the IA pursuant to paragraph 37 above. The MA will use his best efforts to clarify the information so provided. Before exercising a power under section 81 of the IO in respect of (a) an AI; (b) a person who is, or was, a regulated person and is, or was, employed by an AI; or (c) a person who is, or was, a regulated person and is, or was, appointed as an agent by

an AI, in relation to any regulated activity carried on by the AI, the IA will consult the MA.

44. The MA being the frontline regulator of AIs in respect of regulated activities under the IO, will be responsible for monitoring the implementation of any remedial actions in relation to an AI's internal control and management systems arising from any disciplinary decisions and actions, and will keep the IA informed of the progress and outcome of the remedial action from time to time.

Resolution of Contemplated Disciplinary Action

45. The IA will be responsible for negotiating any resolution of a contemplated disciplinary action by way of agreement under section 84(1) of the IO ("section 84(1) agreement") in respect of (a) an AI; or (b) a person who is, or was, a regulated person and is, or was, employed by an AI; or (c) a person who is, or was, a regulated person and is, or was, appointed as an agent by an AI, in relation to any regulated activity carried on by the AI. Before the IA exercises its power under section 84(1) of the IO, the IA will consult the MA as soon as reasonably practicable.
46. The MA being the frontline regulator of AIs in respect of regulated activities under the IO, will be responsible for monitoring the implementation of any remedial action in relation to an AI's internal control and management systems in accordance with any section 84(1) agreement that has been reached between the IA and the party concerned, and will keep the IA informed of the progress and outcome of the remedial action from time to time.

Reviews

47. If the IA becomes aware that an application has been made to the Insurance Appeals Tribunal for a review of a disciplinary decision made by the IA under section 81 of the IO against (a) an AI; (b) a person who is, or was, a regulated person and is, or was, employed by an AI; or (c) a person who is, or was, a regulated person and is, or was, appointed as an agent by an AI, in relation to any regulated activity carried on by the AI, the IA will inform the MA as soon as reasonably practicable.
48. If the application for review concerns a case investigated by the MA, the IA may request the MA to assist the IA in the review on matters related to the investigation. On receiving such a request from the IA, the MA will use his best efforts to provide such assistance as may be reasonably required.
49. The IA will keep the MA informed of the progress and the outcome of a review referred to in paragraph 47 above on a regular basis.

Others

50. The IA, where permitted under section 53A of the IO, will inform the MA before the IA presents a petition for a person to be declared bankrupt under section 76 of

the IO, if the person is a person who is employed by an AI or appointed as an agent by an AI.

51. In respect of an application for exemption from any provision of Part X under section 79 of the IO in relation to any regulated activity of an AI, the IA will discuss with the MA, where permitted under section 53A of the IO, before approving an application and granting an exemption, and inform the MA, where permitted under section 53A of the IO, as soon as reasonably practicable of any intended rejection of an application for exemption, any intended revocation of an exemption granted, or any condition to be varied, revoked or added subject to which an exemption is granted under that section.

VII. COOPERATION AND INFORMATION SHARING

52. The MA and the IA may disclose information to each other pursuant to the applicable provisions of section 120 of the BO and section 53A of the IO.
53. The Parties agree that they will without prejudicing their own functions, consult one another as soon as reasonably practicable on any issues which might have significant implications for the other Party, and endeavour to share with the other Party information that may affect the functions of the other Party. Such information may include, but is not limited to, the following:-
 - (a) information concerning the safety and soundness of the relevant financial groups;
 - (b) information provided by home supervisors of the financial groups;
 - (c) any material concern about the financial groups;
 - (d) any co-ordinated supervisory action which may be necessary by more than one relevant supervisor in relation to the financial groups; and
 - (e) relevant data and information to facilitate high-level, off-site monitoring of activities that are of mutual regulatory interest to the Parties.
54. 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 such entity is a part, the Party noting the change will endeavour to notify the other Party of the relevant details immediately. Where necessary, the Parties shall meet as soon as reasonably practicable to discuss a co-ordinated supervisory response.

Ad Hoc Information Requests

55. 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.

56. The requesting Party shall request the information 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 Parties.
57. The providing Party will notify the requesting Party as soon as reasonably practicable if it is not able to provide the requested information as well as the rationale behind the refusal to provide the requested information.

Confidentiality and Use of Information

58. Information is to be provided by each Party in accordance with the law and only for the purposes of assisting the other Party in the performance of 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.
59. A Party will inform the other Party, where reasonably practicable in the circumstances, before the first-mentioned Party discloses any information of supervisory concern in relation to a regulated activity carried on by an AI to an authority in a place outside Hong Kong pursuant to the applicable provisions of the BO or the IO.
60. Each Party will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of information exchanged pursuant to applicable law and under this MoU.

VIII. LIAISON BETWEEN THE PARTIES

61. Each Party will appoint a person or persons to be its principal point of contact to ensure the smooth co-ordination and information exchange between the Parties pursuant to this MoU. Either Party may change its principal point(s) of contact by giving written notice to the other Party.
62. The Parties will conduct meetings to discuss matters of mutual interest relating to the performance of their regulatory and supervisory functions involving licensing, complaints handling, inspections, investigations, and disciplinary actions on an on-going basis. Such meetings will be chaired alternately by the Parties and will be suitably documented.
63. Ad hoc meetings to deal with specific supervisory concerns, such as regulatory or disciplinary action, may be called by either Party and will be chaired by the Party who convenes the meeting. These meetings will be suitably documented.

IX. STAFF TRAINING AND DEVELOPMENT

- 64. Subject to practical needs and availability of resources, the Parties agree to assist in providing training for staff of the other Party on relevant topics and consider staff secondment as and when appropriate.

X. EFFECTIVE DATE AND AMENDMENTS

- 65. This MoU will take effect on 23 September 2019.
- 66. Either Party may at any time request for a specific amendment, whether by supplement or otherwise, to this MoU, or may consult the other Party regarding the need for any amendment or supplement to this MoU.
- 67. An amendment or supplement to this MoU takes effect only by written agreement of the Parties.

THE MONETARY AUTHORITY

FOR AND ON BEHALF OF
THE INSURANCE AUTHORITY

Norman T. L. Chan

Clement Cheung
Chief Executive Officer

Date:

Date: