

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE INSURANCE AUTHORITY OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

AND

THE OFFICE OF INSURANCE COMMISSION
OF THAILAND

REGARDING INSURANCE REGULATORY COOPERATION

12 December 2018

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE INSURANCE AUTHORITY OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION OF THE PEOPLE’S REPUBLIC OF CHINA
AND
THE OFFICE OF INSURANCE COMMISSION OF THAILAND

1. The Insurance Authority of the Hong Kong Special Administrative Region of the People’s Republic of China and the Office of Insurance Commission of Thailand, recognizing the increasing international activity in insurance markets and the corresponding need for mutual co-operation between the authorities as a means for improving their effectiveness in administering and enforcing the insurance laws of their respective jurisdictions, have reached the following understanding:

I. Definitions

2. For the purposes of this Memorandum, the terms set out below have the assigned meanings unless the context requires otherwise:

(a) **“Authority”** means:

- (i) For the Hong Kong Special Administrative Region, the Insurance Authority (IA)
- (ii) For Thailand, the Office of Insurance Commission (OIC);

(b) **“Confidential Information”** means all information, documents, materials and data (including any personal particulars records and personal data), in whatever form or media, which one Authority has supplied, made available or communicated to the other Authority pursuant to this Memorandum, regardless of whether such information is marked, labelled or specified as “confidential” or “secret”, but excludes information that (i) is already in the public domain at the time of disclosure to the receiving Authority; or (ii) has become public after disclosure to the receiving Authority other than by reason of any breach by the receiving Authority of any obligations under this Memorandum; or (iii) was in the receiving Authority’s possession prior to

disclosure to it (provided that such information is not under any confidentiality requirements).

- (c) **“Hong Kong Special Administrative Region”** means the Hong Kong Special Administrative Region of the People’s Republic of China;
- (d) **“laws, regulations and requirements”** means any laws, regulations or requirements applicable in the Hong Kong Special Administrative Region and/or Thailand;
- (e) **“Memorandum”** means this Memorandum of Understanding;
- (f) **“Person”** means a natural person, unincorporated association, partnership or body corporate, government, agency, or instrumentality of a government;
- (g) **“Regulated Entity”**, in relation to an Authority, means any company or other person engaging in insurance activities that are subject to the supervision of the Authority or applying for a licence, authorization or approval to participate in such activities;
- (h) **“Requested Authority”** means an Authority to whom a request under this Memorandum is addressed;
- (i) **“Requesting Authority”** means an Authority making a request under this Memorandum.

II. Objectives

3. This Memorandum sets forth the basis upon which the IA and the OIC propose to provide mutual assistance and exchange information for the purpose of facilitating the performance of insurance regulatory functions under the respective laws, regulations and requirements. The purpose of the Memorandum is to facilitate the Authorities maintain efficient, fair, safe and stable insurance markets in the Hong Kong Special Administrative Region and Thailand for the benefit and protection of existing and potential policyholders, by providing a framework for co-operation, increased mutual understanding, the exchange of information and technical assistance to the extent permitted by the laws, regulations and requirements.

4. The Authorities intend to:

- (a) use their best endeavors to ensure that the fullest mutual assistance is provided under the Memorandum; and
- (b) engage in consultations, as appropriate, on mutually agreeable approaches designed to enhance the integrity and efficiency of their respective insurance markets and the exercise of insurance market supervisory functions.

5. This Memorandum does not modify or supersede any laws, regulations and requirements, nor does it create directly or indirectly any enforceable rights.

III. Scope

6. The IA and the OIC propose to ensure that mutual assistance is provided to each other, subject to the laws, regulations and requirements, in the areas of administration and enforcement of the laws, regulations and requirements relating to the business of insurance.

7. The IA and the OIC recognize the need and desirability of providing mutual assistance and exchanging information to assist each other in better understanding and

coordinating compliance with the laws, regulations and requirements relating to the business of insurance. However, assistance may be denied on the grounds of public interest.

8. The IA and the OIC will establish, promote and encourage cooperation in capacity building and technical assistance, exchange of regulatory expertise and technical knowledge, which relate to their respective insurance regulatory functions.

9. Each Authority acknowledges that adequate measures are in place in its jurisdiction to ensure protection of secrecy of any information shared between the Authorities pursuant to this Memorandum.

IV. Requests for Information and Assistance

10. The Memorandum does not affect the ability of the Authorities to obtain information from persons on a voluntary basis, provided that procedures in place in the jurisdiction of each Authority for the provision of such information are observed.

11. Any request for information or assistance made under this Memorandum shall, wherever possible, be put in written form, but in cases of emergency it may be oral and confirmed in writing within 10 days.

12. To facilitate an appropriate and timely response, the Requesting Authority should specify:

- (a) the information or assistance required (identity of persons, specific questions to be asked etc.);
- (b) the purpose for which the information or assistance is sought (including in appropriate cases details of the laws, regulations or requirements in the jurisdiction of the Requesting Authority which are suspected to have been breached);
- (c) a description of any particular conduct or suspected conduct which has given rise to the request, and its connection with the jurisdiction of the

Requesting Authority;

- (d) the link between any suspected breach of the laws, regulations or requirements and the regulatory functions of the Requesting Authority;
- (e) the relevance of the requested information or assistance to any suspected breach of the laws, regulations or requirements in the jurisdiction of the Requesting Authority;
- (f) any information related to the urgency of the request for information or assistance; and
- (g) any other matters specified by the laws, regulations and requirements in the jurisdiction of the Requested Authority.

13. A request for information or assistance made under this Memorandum shall be addressed to one of the Requested Authority's contact points listed in the Annex, or that individual's nominee.

14. Each request will be assessed on a case-by-case basis by the Requested Authority to determine whether assistance can be provided under the terms of the Memorandum and the laws, regulations and requirements. In case where the request cannot be accepted completely, the Requested Authority will consider whether other assistance may be given. In particular, the Requested Authority will consider in appropriate cases whether the request might be dealt with via channels for mutual assistance in criminal matters.

15. In case where a Requested Authority has doubts on whether a request fully complies with the requirements of the Memorandum, it may require the Commissioner or CEO of the Requesting Authority to certify that the request meets the provisions in this Memorandum. The Requested Authority should review its position taking into account the certification.

16. In deciding whether to accept or decline a request, the Requested Authority shall, in particular, take account of:

- (a) matters specified by the laws, regulations and requirements in the jurisdiction of the Requested Authority;
- (b) whether the request involves an assertion of regulatory jurisdiction not recognized by the jurisdiction of the Requested Authority;
- (c) whether it would be contrary to the public interest of the Requested Authority to give the assistance sought; and
- (d) the resources available to the Requested Authority to deal with the request.

V. Permissible Uses and Confidentiality

17. It is a valid purpose under this Memorandum for a Requesting Authority to seek information relevant to its lawful supervision of a Regulated Entity which is subject to the supervision and responsibilities of the Requested Authority. The Authorities recognize that information is not to be gathered under the auspices of this Memorandum for enforcement purposes.

18. It is not a valid purpose under this Memorandum for a Requesting Authority to seek information on an individual unless the request relates to the fulfilment of supervisory functions and does not concern the affairs of the individual in his/her capacity as a policy holder.

19. The existence and content of any request for information made under this Memorandum will be treated as confidential by both the Requested Authority and the Requesting Authority unless both Authorities agree otherwise.

20. Any Confidential Information exchanged belongs to, and will remain the property of, the Requested Authority.

21. The Requesting Authority will use Confidential Information received under this Memorandum only for the purposes specified in the request.

22. The Requesting Authority will take all actions necessary to preserve, protect and maintain the confidentiality of information received from a Requested Authority.

23. The Requesting Authority will restrict access to Confidential Information received from a Requested Authority to those persons working for the Requesting Authority or acting on its behalf who:

- (a) are subject to the Requesting Authority's professional secrecy requirements;
- (b) are under its direct supervision and control; and
- (c) have a need for such information that is consistent with, and directly related to, the purposes for which the information was requested.

24. Where it becomes necessary for a Requesting Authority to share Confidential Information provided under this Memorandum with other local, regional, state, federal or international law enforcement or regulatory officials who have authority over the Regulated Entity, the Requesting Authority shall:

- (a) notify the Requested Authority promptly;
- (b) obtain prior written consent of the Requested Authority; and
- (c) prior to passing on the information, ensure that each intended recipient agrees to maintain the confidential status of the information provided and has the legal authority to do so.

25. Where Confidential Information provided under this Memorandum is subject to a legally enforceable demand in the jurisdiction of the Requesting Authority, the Requesting Authority shall, to the extent permitted by the laws, regulations and requirements, notify the Requested Authority prior to complying with the demand. Where consent to disclose the information is not given by the Requested Authority, the Requesting Authority shall use all reasonable legal means to resist the demand and protect the confidentiality of the information.

26. Reasonable legal means referred to in clause 25 include asserting appropriate legal exemptions or legal privilege with respect to that information as may be available and providing the Requested Authority an opportunity to take whatever action it deems appropriate to preserve, protect and maintain the confidential nature of the information.

27. The Authorities agree that the sharing or disclosure of Confidential Information pursuant to the terms of this Memorandum will not constitute a waiver of privilege or confidentiality of the information.

VI. Consultation and Waiver

28. The IA and the OIC keep the operation of this Memorandum under continuous review and consult with a view to improving its operation and resolving any matters. In particular, an Authority will consult the other Authority upon request in the event of:

- (a) a request being denied in whole or in part;
- (b) a change in market or business conditions or in the laws, regulations or requirements governing insurance business, or any other difficulty arising which makes it necessary to amend or extend this Memorandum in order to achieve its purposes; or
- (c) an assertion by the Requested Authority that the provision of assistance would be so burdensome as to disrupt the proper performance of its functions.

29. Where the specific conduct set out in the request for assistance may constitute a breach of the laws, regulations or requirements in both the jurisdictions of the Requesting Authority and the Requested Authority, both Authorities will consult in order to determine the most appropriate means for each Authority to provide assistance.

30. Any of the conditions of this Memorandum may be amended or waived by mutual agreement. The amendment shall form an integral part of the Memorandum.

VII. Termination

31. This Memorandum will continue to have effect unless terminated by one of the Authorities by giving 30 days' advance written notice to the other Authority that the understandings set out herein are no longer to have effect.

32. In the event of termination of this Memorandum, information obtained under this Memorandum shall continue to be treated in a manner prescribed under Article V.

VIII. Contact Points

33. All communications between the Authorities should be between the principal points of contact listed in Annex unless otherwise agreed.

IX. Entry Into Effect

34. This Memorandum will be effective from the date of its execution by the IA and the OIC.

This Memorandum is hereby entered into as evidenced by the signature of the following representatives of the IA and the OIC.

**For the
Insurance Authority of the Hong Kong
Special Administrative Region of the
People's Republic of China**

**For the
Office of Insurance Commission of
Thailand**

Clement Cheung
Chief Executive Officer

Date:

Suthiphon Thaveechaiyagarn
Secretary-General

Date:.....

Annex - Contact Points

The Insurance Authority of the Hong Kong Special Administrative Region of the People's Republic of China

Tony Chan

Associate Director, Policy and Development Division

Address: 19/F, 41 Heung Yip Road, Wong Chuk Hang, Hong Kong

Tel: (852) 3899 9988

Fax: (852) 3899 9993

Email: tonychan@ia.org.hk

Office of Insurance Commission of Thailand

Udomkeit Sawathiparnich

Director

Policy and International Affairs Division

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