



MEMORANDUM OF UNDERSTANDING

BETWEEN

AUSTRALIAN PRUDENTIAL REGULATION AUTHORITY

AND

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

January 2007

**MEMORANDUM OF UNDERSTANDING
ON MUTUAL ASSISTANCE AND
THE EXCHANGE OF INFORMATION**

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AND

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

1. The Australian Prudential Regulation Authority on the one hand, and the Insurance Authority of the Hong Kong Special Administrative Region of the People's Republic of China on the other hand, recognising the increasing international activity in insurance markets and the corresponding need for mutual co-operation between the relevant supervisory authorities as a means for improving their effectiveness in administering and enforcing the insurance laws of their respective jurisdictions, have reached the following understanding:

1. **Definitions**

2. For the purposes of this Memorandum of Understanding, the terms set out below have the assigned meanings unless the context requires otherwise:
 - (a) "APRA" means the Australian Prudential Regulation Authority.
 - (b) "Authority" means:
 - (i) for Australia, the Australian Prudential Regulation Authority;
and
 - (ii) for the Hong Kong Special Administrative Region of the People's Republic of China, the Insurance Authority.
 - (c) "requested Authority" means an Authority to whom a request under this Memorandum is addressed.
 - (d) "requesting Authority" means an Authority making a request under this Memorandum.
 - (e) "insurer" or "insurance company" means a licensed or authorised (or prospectively licensed or authorised) legal entity subject to the supervision (or the prospective supervision) of either Authority whose

activities include underwriting of insurance or reinsurance.

- (f) “cross border establishment” means a branch of, a subsidiary of or any other insurance company or group within one jurisdiction which falls under the consolidated or group wide insurance supervision (or prospective supervision) responsibility of the other jurisdiction (listed in Appendix 1). Cross border establishments include those where the Authorities are both host authorities (although no list will be maintained).
 - (g) “person” means a natural person, unincorporated association, partnership or body corporate, government, agency, or instrumentality of a government.
 - (h) “laws, regulations and requirements” means the provisions of the laws, or the regulations and requirements promulgated thereunder, of Australia and the Hong Kong Special Administrative Region of the People’s Republic of China on insurance business.
 - (i) “the Hong Kong Special Administrative Region” means “the Hong Kong Special Administrative Region of the People’s Republic of China”.
3. The parties recognise that while in their laws, regulations and requirements they may define terms differently, requests for assistance will not be denied solely on the grounds of differences in the definitions used by the requesting and requested Authorities.

II. Principles

4. This Memorandum sets forth the basis upon which the Authorities in Australia and the Hong Kong Special Administrative Region reciprocally propose to provide for mutual assistance and the exchange of information for the purpose of facilitating the performance of their functions under the respective laws, regulations and requirements of Australia and the Hong Kong Special Administrative Region. The purpose of the Memorandum is to help maintain efficient, fair, safe and stable insurance markets in Australia and the Hong Kong Special Administrative Region for the benefit and protection of policyholders, by providing a framework for co-operation, increased mutual understanding, the exchange of information and assistance to the extent permitted by laws, regulations and requirements and other applicable laws of Australia and the Hong Kong Special Administrative Region.
5. The Authorities intend to:

- (a) use their best endeavours to ensure that the fullest mutual assistance is provided within the terms of 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.
6. The Memorandum does not modify or supersede any laws, regulations and requirements in force in, or applying to, Australia or the Hong Kong Special Administrative Region. Nor does it create directly or indirectly any enforceable rights.

III. Scope

7. Each Authority proposes to ensure that mutual assistance is provided to the other, subject to its laws and overall policy, in the following areas of administration and enforcement of the laws, regulations and requirements relating to the business of insurance:
- (a) development of new regulatory requirements for the conduct of insurance business;
 - (b) administration of legislative provisions dealing with proposals for the establishment, acquisition and take-over of insurance companies;
 - (c) administration and enforcement of financial and other requirements for insurance companies, particularly cross border establishments;
 - (d) administration and enforcement of financial and other eligibility requirements for key positions of responsibility in insurance companies, including ownership; and
 - (e) the continuing monitoring, auditing, inspection and examination of insurance companies, particularly cross border establishments, for compliance with prudential, financial reporting and other supervisory requirements.

The Authorities will take into account the standards developed by the International Association of Insurance Supervisors where these are relevant.

8. In response to requests that satisfy the terms set out below under the heading "Requests for information and assistance", and subject to the conditions established, each Authority will provide the fullest possible measure of mutual assistance to the other subject to its laws and overall policy. Such assistance may include providing access to information in the

files of the requested Authority. 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. However, assistance may be denied on the grounds of public interest.

9. The Authorities intend to ensure that assistance will be provided in the maximum number of circumstances. However, the Authorities acknowledge that certain requests may relate to a possible breach of laws, regulations and requirements that involve an assertion of jurisdiction not recognised by a requested Authority. Where a requested Authority considers that an assertion of jurisdiction in a matter that is the subject of a request would conflict seriously with and prejudice its essential interests, the request will be denied.
10. The Authorities recognise that, so long as there are differences in the scope of the laws, regulations and requirements applied in each jurisdiction, conduct prohibited in one jurisdiction may not be prohibited in the other. In such individual cases, the Authorities intend to engage in consultations to determine whether assistance will be provided.

IV. Requests for information and assistance

11. The Authorities may provide information, or arrange for information to be provided, on a voluntary basis even though no request has been made. If the Authority so specifies, the conditions of this Memorandum will apply to the information so provided.
12. Any request for information or assistance made under this Memorandum will, wherever possible, be in writing, but in cases of urgency it may be oral and confirmed in writing within 10 days.
13. To facilitate an appropriate and timely response, the requesting Authority should specify:
 - (a) the information or assistance required;
 - (b) the purpose for which the information or assistance is sought (including in appropriate cases details of the law, regulation or requirement of the requesting Authority which is 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 law, regulation or

requirement and the regulatory functions of the requesting Authority;

- (e) the relevance of the requested information or assistance to any suspected breach of law, regulation or requirement of the requesting Authority;
- (f) any other matters specified by the laws and regulations in the jurisdiction of the requested Authority; and
- (g) any information related to the urgency of the request for information or assistance.

The requested information must be reasonably relevant to securing compliance with the law, regulation or requirement specified in the request.

14. A request for information or assistance made under this Memorandum shall be addressed to one of the requested Authority's contact points listed in Appendix 2, or that individual's nominee.
15. In any case where the request cannot be accepted completely, the requested Authority will consider whether there may be other assistance which can 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 or business law matters.
16. In any case where a requested Authority is not satisfied that a request fully complies with the requirements of the Memorandum, it may require the head of the requesting Authority to certify that the request meets the provisions in this Memorandum. The requested Authority should review its position in the light of such a certification.
17. In deciding whether to accept or decline a request the requested Authority will, in particular, take account of:
 - (a) matters specified by the laws and regulations in the jurisdiction of the requested Authority;
 - (b) whether the request involves an assertion of jurisdiction not recognised by the requested Authority;
 - (c) whether it would be contrary to the essential interests of the requested Authority to give the assistance sought; and
 - (d) the resources available to the requested Authority to deal with the request.

18. The requested Authority may, as a condition of agreeing that assistance is given under the Memorandum, require the requesting Authority to make a contribution to costs. Such a contribution may, in particular, be required where the cost of a request is substantial or where a substantial imbalance has arisen in the cumulative costs incurred.

V. Permissible Uses and Confidentiality

19. The information supplied will be used solely for lawful supervisory purposes.
20. Each authority will keep confidential to the extent permitted by law:
- (a) any request for information made under the Memorandum and any matters arising in the course of its operation, unless such disclosure is necessary to carry out the request, or the requested Authority specifically waives such confidentiality; and
 - (b) any information passed under the Memorandum.
21. The confidentiality provisions of the Memorandum shall not prevent the Authorities from informing other law enforcement or regulatory bodies within the jurisdictions of Australia and the Hong Kong Special Administrative Region of the request or passing information received pursuant to a request to such bodies, provided that:
- (a) such agencies or bodies have responsibility for prosecuting, regulating or enforcing laws, regulations and requirements falling within the areas set out in paragraph 7 above;
 - (b) the purpose of passing such information to such an agency or body is directly related to the matters set out in paragraph 7; and
 - (c) the requesting Authority consults with the requested Authority prior to disclosure and obtains an undertaking from the relevant law enforcement or regulatory body that it will keep the information confidential in accordance with the terms of this Memorandum.
22. The requesting Authority will notify the requested Authority of any legally enforceable demand for information it receives, and will assert such appropriate legal exemptions or privileges with respect to such information as may be available. The requesting Authority will consult with the requested Authority prior to complying with any such demand.

VI. Consultations and Waiver

23. The Authorities will 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.
24. Where the specific conduct set out in the request for assistance may constitute a breach of a law, regulation or requirement in both the territory of the requesting and the requested Authorities, the relevant Authorities will consult in order to determine the most appropriate means for each Authority to provide assistance.
25. Any of the conditions of this Memorandum may be relaxed or waived by mutual agreement. Amendments to this document may be effected by a written document signed by the Authorities.

VII. Termination

26. 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 understandings set out herein are no longer to have effect. This Memorandum will continue to have effect with respect to all requests for assistance made before the date of the receipt of such notice. After termination, the confidentiality provisions shall continue to apply to any information provided under this Memorandum.

VIII. Contact points

27. All communications between the Authorities should be between the principal points of contact listed in Appendix 2 unless otherwise agreed.

IX. Entry into effect

28. This Memorandum will be effective from the date of its signature by APRA and the Insurance Authority of the Hong Kong Special Administrative Region.

On behalf of the:

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

By: Dated:

Mr Clement Cheung, Commissioner of Insurance

Australian Prudential Regulation Authority

By: Dated:

Dr John Laker, Chairman