

Memorandum of Understanding between

The Insurance Authority

and

The Financial Reporting Council

This Memorandum of Understanding (MOU) is entered into between the Insurance Authority (IA) of 21st floor, Queensway Government Offices, 66 Queensway, Hong Kong, and the Financial Reporting Council (FRC) of 29th floor, Queensway Government Offices, 66 Queensway, Hong Kong.

I. Interpretation

1. “Auditing or reporting irregularity” means a relevant irregularity as defined by section 4 of the FRCO. For ease of reference, these are summarised at Schedule 1.
2. “Council” means the appointed and ex-officio members of the FRC.
3. “Enquiry” means an enquiry initiated by the Council under section 40 of the FRCO.
4. “FRCO” means the Financial Reporting Council Ordinance, Cap.588.
5. “ICO” means the Insurance Companies Ordinance, Cap. 41.
6. “Investigation” means an investigation initiated by the Council under section 23 of the FRCO.
7. “Non-compliance” means a relevant non-compliance as defined by section 5 of the FRCO. For ease of reference, these are summarised at Schedule 1.
8. “Parties” means the IA and the FRC.

II. Introduction

9. The IA is appointed pursuant to, and is responsible for administering, the ICO. The principal functions of the IA are to ensure that the interests of policyholders or potential policyholders are protected and to promote the general stability of the insurance industry. The IA has responsibilities under the ICO, and rules and regulations made thereunder, to authorize and regulate insurers to carry on insurance business in or from Hong Kong, to approve and administer a self-regulatory regime for the regulation of insurance intermediaries, to oversee the monitoring, disciplinary and enforcement functions carried out by the self-regulatory bodies so as to ensure the functions are carried out satisfactorily; and to liaise with the insurance industry including the self-regulatory and professional bodies.

10. The FRC is a body corporate established pursuant to the FRCO. Its main functions are to investigate auditing and reporting irregularities in relation to listed entities and to enquire into non-compliance with accounting requirement in relation to listed entities, prepare reports thereon and refer those reports to the appropriate regulatory bodies and agencies for appropriate follow-up action. The FRC performs these functions either on its own initiative or upon receipt of complaints. The FRC may conduct investigations or enquiries in its own right or may direct the Audit Investigation Board to do so in relation to relevant irregularities or appoint a Financial Reporting Review Committee to conduct enquiries in relation to relevant non-compliances.

III. Reasons for MOU

11. If the Council initiates an investigation of auditing or reporting irregularities in relation to a listed entity which is an insurer authorized under the ICO, the Council needs to give notice under section 24 of the FRCO to the IA. The Council or the investigator appointed by the Council shall not exercise the powers vested in it by section 25, 26, and/or 28 of the FRCO for the purpose of the investigation without first consulting the IA.

12. If the Council initiates an enquiry into non-compliances with accounting requirement on the part of a listed entity, which is an insurer authorized under the ICO, the Council needs to give notice under section 42 of the FRCO to the

IA. The Council or the enquirer appointed by the Council shall not exercise powers vested in it under section 43 of the FRCO for the purpose of the enquiry without first consulting the IA.

13. This MOU also sets out the arrangements for the notification and consultation processes.
14. Both the IA and the FRC desire to promote mutual assistance and exchange of information so that they may effectively perform their respective responsibilities.

IV. Notification and Consultation

15. When the Council initiates an investigation or enquiry as mentioned in paragraphs 11 and 12 above, it shall give a written notice to the IA as soon as practicable. The written notice will identify the listed entity concerned, provide brief reasons for the initiation of an 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).
16. The written notice can be delivered by hand, mail, facsimile or email to the contact persons of the IA (Annex 1). In normal circumstances, the contact persons of FRC (Annex 1) will communicate with the contact persons of IA in advance.
17. If an investigator or enquirer intends to exercise the relevant powers mentioned in paragraphs 11 and 12 above, prior consultation with the IA will be conducted as soon as practicable where circumstances require prior consultation with the IA. The need for consultation will first be conveyed by the contact persons of the FRC to the contact persons of the IA (Annex 1). It is advisable to have prior informal consultation between the contact persons.
18. Formal consultation can be effected through a meeting or by exchange of correspondence. The salient points discussed and the key issues agreed will also be documented.

V. Sharing of information

19. Information will be provided by either the IA or the FRC to the other party in accordance with the law. The recipient of information shall only use such information for the purpose of performing its legal functions.

Confidentiality

20. Any information shared by the parties under this MOU shall be subject to obligations of secrecy and such statutory duties of confidentiality as may apply thereto. Each party will only disclose to a third party confidential information obtained from the other subject to the provisions of this paragraph, in which regard the receiving party:
 - a) will not, except when subject to a legally enforceable demand, make any disclosure of such information which is inconsistent with any laws or regulations applicable to the provision of such information by the other party;
 - b) will endeavour to consult with the other party whenever it proposes to pass on any such information to a third party except for information disclosed in accordance with the ICO by the IA or with the FRCO by the FRC
 - c) will endeavour to comply with any restrictions on the use of information that are imposed by the other party at the time when the information is provided.
 - d) will notify the other party whenever it receives a legally enforceable demand for any information supplied under paragraph 19.

VI. Further matters relating to this MOU

21. This MOU does not modify or supersede any laws or regulatory requirements in Hong Kong. The MOU is a statement of intent of the parties and is not intended to create any binding legal obligations, to fetter the discretion of the parties in any way in the discharge of their functions or to create any rights in third parties.

22. The parties have also agreed to keep the MOU under review and will consult when necessary with a view to improving operations, resolving any matters and making any necessary amendments.

VII. SCHEDULE 1

Auditing and reporting irregularities

23. An auditing or reporting irregularity relates to an auditor in respect of the audit of the accounts of a listed corporation or a listed collective investment scheme or a reporting accountant in respect of the preparation of an accountant's report required for a listing document of a listed corporation or a listed collective investment scheme.
24. Conduct amounting to auditing or reporting irregularities includes but is not limited to –
- a) falsifying or causing to be falsified a document;
 - b) making a statement, in respect of a document, that was material and that he knew to be false or did not believe to be true;
 - c) negligence in the conduct of his profession;
 - d) professional misconduct;
 - e) doing or omitting to do something that would reasonably be regarded as bringing or likely to bring discredit upon the auditor or reporting accountant himself, the Hong Kong Institute of Certified Public Accountants (HKICPA) or the accountancy profession;
 - f) failing or neglecting to observe, maintain or otherwise apply a professional standard i.e. any (a) statement of professional ethics; or (b) standard of accounting, auditing and assurance practices, as issued or specified by the HKICPA Council from time to time; or
 - g) refusing or neglecting to comply with the provisions of any bylaw or rule made or any direction lawfully given by the HKICPA Council.

Non-compliance

25. There is a relevant non-compliance if a relevant financial report of a listed corporation or a listed collective investment scheme has not complied with a relevant requirement.
26. In relation to a listed corporation, a relevant financial report means -
- a) a balance sheet and the profit and loss account and any group accounts, so far as not incorporated in the balance sheet or profit and loss account, annexed to it, a copy of which was sent to a person entitled to be sent the copy;
 - b) the accounts of the corporation a certified copy of which was delivered to the Registrar of Companies for registration;
 - c) a summary financial report a copy of which was sent to a person entitled to be sent the copy in place of a copy of the relevant financial documents;
 - d) a set of financial statements providing information on the results of the operations or cash flows of the corporation in a period of at least 3 months, providing information on the state of affairs of the corporation as at the end of that period, and issued, circulated, published or distributed for the purposes of the Listing Rules; or
 - e) an accountant's report required for a listing document.
27. In relation to a listed collective investment scheme, a relevant financial report means -
- a) a set of financial statements providing information on the results of the operations or cash flows of the scheme in a period of at least 3 months, providing information on the state of affairs of the scheme as at the end of that period, and issued, circulated, published or distributed for the purposes of the relevant code or guideline or the Listing Rules; or
 - b) an accountant's report required for a listing document.

28. In relation to a listed corporation, relevant requirement means an accounting requirement as to the matters or information to be included in the report, as provided in -

- a) the Companies Ordinance (Cap.32);
- b) the standards of accounting practices issued or specified by the HKICPA Council;
- c) the International Financial Reporting Standards issued by the International Accounting Standards Board;
- d) the Listing Rules; or
- e) any generally acceptable accounting principles allowed for usage under the Listing Rules.

29. In relation to a listed collective investment scheme, relevant requirement means an accounting requirement as to the matters or information to be included in the report, as provided in -

- a) the standards of accounting practices issued or specified by the HKICPA Council;
- b) the International Financial Reporting Standards issued by the International Accounting Standards Board;
- c) the Listing Rules;
- d) any generally acceptable accounting principles allowed for usage under the Listing Rules; or
- e) the relevant Securities and Futures Commission code or guideline.

Signed for and on behalf of
THE FINANCIAL REPORTING COUNCIL

M.T. SHUM
Chief Executive Officer
Dated

Signed by
THE INSURANCE AUTHORITY

Clement CHEUNG

Dated