

Memorandum of Understanding

on

Mutual Assistance

and the

Exchange of Information

between

The Isle of Man Insurance and Pensions Authority

and

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

1. Introduction

- 1.1 This Memorandum of Understanding is made between the Isle of Man Insurance and Pensions Authority (the 'IPA'), and The Insurance Authority of the Hong Kong Special Administrative Region of The People's Republic of China (the 'HKIA').
- 1.2 The IPA and the HKIA, recognising the increasing international activity in insurance and pensions markets and the corresponding need for mutual co-operation between the relevant supervisory authorities as a means for improving their effectiveness in administering the insurance laws of their respective jurisdictions, have reached the understanding set out below.

2. Responsibilities

- 2.1 The IPA is responsible for the authorisation and ongoing regulation and supervision of companies carrying out insurance business in or from the Isle of Man, insurance companies incorporated on the Island, and for the regulation of pension schemes. It is also responsible for the registration of insurance management companies and insurance intermediaries carrying on general business. The IPA is constituted as a Statutory Board governed by the Statutory Boards Act of 1987 (an act of Tynwald).

The IPA exercises its statutory powers of licensing, supervision and investigation in terms of the Insurance Act 1986, and other specific legislation including:

- (a) Insurance Intermediaries (General Business) Act 1996; and
- (b) Retirement Benefits Schemes Act 2000.

- 2.2 The HKIA was established by the Insurance Companies Ordinance under which the HKIA is responsible for regulating and supervising the insurance industry of the Hong Kong Special Administrative Region for the promotion of the general stability of the insurance industry and for the protection of existing and potential policyholders.

3. Definitions

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

- a. 'Authority' means the IPA or the HKIA, as the case may be, together referred to as 'the Authorities';
- b. 'Requested Authority' means an Authority to whom a request under this Memorandum is addressed.
- c. 'Requesting Authority' means an Authority making a request under this Memorandum.
- d. 'Regulated person' means any person regulated by the IPA or the HKIA in terms of legislation listed in paragraphs 2.1 and 2.2.

- e. 'Insurer/insurance company' means a legal entity which carries on business of insurance.
- f. 'Person' means a natural person, unincorporated association, partnership or body corporate.
- g. 'Laws, regulations and requirements' means the provisions of the laws, and regulatory requirements of the Isle of Man and/or the Hong Kong Special Administrative Region on insurance and/or pension business.

The Authorities 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.

4. Principles

- 4.1 This Memorandum of Understanding sets forth a statement of intent of the Authorities to establish a framework for mutual assistance and to facilitate the exchange of information between the Authorities for the purpose of improving their effectiveness in the performance of their functions.
- 4.2 The Authorities intend to provide one another with assistance under this Memorandum of Understanding to the full extent permitted by the laws, regulations and rules applicable to their respective statutory functions. Assistance from one Authority to the other may, to the extent permitted by law, include exchange of information other than concerning institutions authorised, licensed, registered or recognised in the respective jurisdictions.
- 4.3 This Memorandum of Understanding will serve to promote the integrity, efficiency and financial soundness of regulated persons by improving the effective regulation, enhancing the supervision of activities and transactions, and creating an environment conducive to the prevention of fraudulent and other prohibited practices by regulated persons in the jurisdictions.
- 4.4 This Memorandum of Understanding does not create any binding legal obligations upon the Authorities nor does it supercede domestic laws, regulations and rules. It does not, nor is it intended to, alter in any way the separate statutory constitution and responsibilities of the Authorities.
- 4.5 The Authorities will use reasonable efforts to provide each other with any information that they discover which leads to a suspicion of a breach or anticipated breach of rules or laws relevant to the statutory responsibilities of the other Authority.

5. Scope

- 5.1 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 of the laws, regulations and requirements relating to the responsibilities of the Authority:

- a. administration of legislative provisions dealing with proposals for the establishment, acquisition and take-over of insurance companies and other regulated persons;
- b. administration of financial and other eligibility requirements for key positions of responsibility (including ownership) in relation to activities that the Authorities regulate in terms of legislation listed in paragraphs 2.1 and 2.2;
- c. assisting in the discovery of unlicensed business or fraudulent practices in relation to activities that the Authorities regulate in terms of legislation listed in paragraphs 2.1 and 2.2;
- d. the continuing monitoring, auditing, inspection and examination for compliance with prudential, financial reporting and other supervisory requirements in relation to activities that the Authorities regulate in terms of legislation listed in paragraphs 2.1 and 2.2;
- e. ensuring compliance with disclosure and marketing requirements;
- f. administration of the laws, regulations and rules relating to insurance management business;
- g. administration of the laws, regulations and rules relating to:
 - (i) the business of retirement benefits schemes administration (as defined under the Retirement Benefits Schemes Act 2000); and
 - (ii) retirement schemes and retirement funds (as defined in the Special Funds (Regulation) Act) and parties related thereto;
- h. administration of the laws, regulations and rules relating to the business of insurance intermediaries;
- i. fraudulent practices in relation to the offer, purchase or sale of insurance products and/or pensions products and retirement arrangements; and
- j. any matters decided by the Authorities from time to time evidenced in writing.

6. Requests for Information

- 6.1 To facilitate communication and ensure continuity in the co-operation between the Authorities, each Authority designates the contact officers set forth in Appendix A. These persons will be the first point of contact for communications made under this Memorandum of Understanding.
- 6.2 A Requesting Authority will make requests for assistance in writing addressed to the contact officer of the Requested Authority.
- 6.3 The request will include:-
 - a. a general description of both the subject matter of the request and the purpose for which the Requesting Authority seeks the assistance or information;
 - b. a general description of the assistance, documents or information sought by the Requesting Authority;
 - c. any information in the possession of the Requesting Authority that might assist the Requested Authority in identifying the persons, bodies or entities believed by the Requesting Authority to possess the information sought, or the places where the Requested Authority may obtain such information;

- d. the legal provisions concerning the matter that is the subject matter of the request;
- e. whether any other authority, governmental or non-governmental, is co-operating with the Requesting Authority or seeking information from the confidential files of the Requesting Authority and to whom onward disclosure of information is likely to be necessary;
- f. the desired period of time for the reply in urgent circumstances. The Requested Authority will accept a request for assistance and will expedite to the extent possible a reply thereto by summary procedures or by means of communication other than the exchange of letters.

6.4 Assistance may be denied on the grounds of public interest. Public interest is taken to include issues affecting essential interests. Assistance may be denied where the provision of assistance would be so burdensome as to disrupt the proper performance of the Requested Authority's functions or where the request involves the administration of a law, regulation or requirement which has no close parallel in the jurisdiction of the Requested Authority.

6.5 Assistance may also be denied where the request, or some part of it, may relate to a possible breach of laws, regulations and requirements that involves an assertion of jurisdiction not recognised by the 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.

6.6 Each request for assistance 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. In any case where the request cannot be fulfilled in part or in whole, the Requested Authority will consider whether there may be other assistance which can be given by itself or by any other authority in its jurisdiction. In particular, the Requested Authority may, subject to its law and policy, consider in appropriate cases whether the request might be dealt with via channels for mutual assistance in criminal matters.

6.7 Any request for information or assistance made under this Memorandum of Understanding will, wherever possible, be in writing, but in cases of urgency it may be oral and confirmed in writing within ten days.

6.8 The Requested Authority may, as a condition of agreeing that assistance is given under this Memorandum of Understanding, 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.

7. Unsolicited Information

Where one Authority has information that will assist the other Authority in the performance of its statutory functions, the former may provide such information, or arrange for such information to be provided, on a voluntary basis even though the other Authority has made no

request. The terms and conditions of this Memorandum of Understanding will apply if the providing Authority specifies that it is passing the information under this Memorandum of Understanding.

8. Permissible Uses of Information

- 8.1 Any assistance or information provided in terms of the Memorandum of Understanding should be used by the recipient only for the purpose of performing its regulatory and supervisory functions.
- 8.2 The Requesting Authority may not use information furnished for any purpose other than that notified to the Requested Authority.
- 8.3 If the Requesting Authority wishes to use the information obtained for any purpose other than that notified to the Requested Authority in the original request, the Requesting Authority must seek and obtain the consent in writing of the Requested Authority prior to the use of such information.
- 8.4 Where the Requesting Authority believes that sharing information obtained pursuant to this Memorandum of Understanding with a third party is necessary, it must inform the Requested Authority of the third party's interest in this information and it must provide the Requested Authority with the opportunity to oppose such use. The Requesting Authority may consult with the Requested Authority concerning the reasons for the objection if the Requested Authority opposes such use. Subject to the law of either Authority, this provision does not apply to information passed to a law enforcement agency for the furtherance of a criminal investigation provided the agency will maintain the confidentiality of the information.

9. Confidentiality

- 9.1 The Authorities will, to the full extent permitted by their respective laws, regulations and rules, keep confidential:-
 - a. any request for assistance or information pursuant to this Memorandum of Understanding;
 - b. any information received pursuant to this Memorandum of Understanding; and
 - c. any matter arising during the operation of this Memorandum of Understanding, including consultations and unsolicited assistance.
- 9.2 The Requesting Authority will not disclose the assistance or information obtained pursuant to this Memorandum of Understanding to third parties without the prior written consent of the Requested Authority.
- 9.3 Subject to paragraph 9.4, the confidentiality provisions of this Memorandum of Understanding will not prevent the Authorities from informing the law enforcement bodies in the respective jurisdictions when disclosure is required pursuant to a legally enforceable demand.

9.4 If any Authority becomes aware that information passed under this Memorandum of Understanding may be subject to a legally enforceable demand to disclose, it will, unless prohibited by its laws, regulations and rules, inform the other Authority of that demand. The Authorities will then consult on the appropriate course of action.

9.5 The Authorities' confidential treatment of assistance and information will continue even after either Authority has given notice of its intent to cease cooperation under this Memorandum of Understanding. The Authorities understand that the laws, regulations and rules of their respective jurisdictions may place limitations on the use and disclosure of non-public information obtained pursuant to this Memorandum of Understanding.

10. Waiver

Any of the conditions of this Memorandum of Understanding may be relaxed or waived by mutual agreement

11. Termination

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

12. Entry into effect

This Memorandum will be effective from the date of its signature below.

SIGNED on this day of

FOR THE ISLE OF MAN INSURANCE AND PENSIONS AUTHORITY

.....
D A Vick – Chief Executive

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

.....
Clement Cheung – Commissioner of Insurance