

Memorandum of Understanding
between
the Monetary Authority and the Insurance Authority
in relation to Part XIA of the Insurance Ordinance (Cap. 41)



HONG KONG MONETARY AUTHORITY
香港金融管理局



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I. BACKGROUND

1. The Monetary Authority (“**MA**”) and the Insurance Authority (“**IA**”) entered into a Memorandum of Understanding (“**MoU**”) dated 19 July 2019 (“**First MoU**”) which sets out the framework between the MA and the IA (each a “**Party**”, and collectively the “**Parties**”) for strengthening cooperation in respect of regulation and supervision of entities or financial groups in which the Parties have a mutual regulatory interest. The First MoU was entered into to coincide with the commencement of the regulatory regime for licensed insurance intermediaries on 23 September 2019, which resulted in the IA taking on the function of directly regulating licensed insurance intermediaries in addition to its function for directly regulating authorized insurers.
2. The regime under Part XIA of the Insurance Ordinance (Cap. 41) (“**IO**”) for group-wide supervision by the IA of insurance groups for which the IA is appointed as the group supervisor commenced on 29 March 2021 (“**GWS Regime**”). This MoU (“**GWS MoU**”) sets out the mutually understood framework between the Parties on cooperation between them with respect to the regulation and supervision of entities or financial groups in which both Parties have a mutual regulatory interest.
3. Pursuant to section 95C of the IO, the IA may designate a Hong Kong-incorporated insurance holding company of an insurance group as a designated insurance holding company (“**DIHC**”). Once designated, the IA will have direct regulatory powers over the DIHC under Part XIA of the IO, and hence the IA can carry out effective group-wide supervision over the DIHC (including its shareholder controllers, chief executive, directors and key persons in control functions) and its supervised group (through the DIHC’s control and influence over its supervised group). Unless the IA otherwise determines, “supervised group” by default refers to the DIHC, all its subsidiaries, and any other entities that are treated as members of the insurance group according to the applicable accounting standards (section 95D of the IO).
4. It is noted that entities which are members of the supervised group of a DIHC for the purposes of the GWS Regime may be entities that are also subject to the regulation, supervision or oversight of the MA under separate statutory regimes administered by the MA (collectively, “**HKMA regulated entities**”, and each an “**HKMA regulated entity**”). The MA will in this case be an “involved supervisor” as defined in section 95A of the IO. In addition, the supervised group of a DIHC may be a sub-group within a wider financial group of which an HKMA regulated entity is a member (e.g. the HKMA regulated entity may be the holding company or a sister company of the DIHC). It is among the IA’s functions under section

95B of the IO to coordinate with involved supervisors on the supervisory activities and measures in respect of insurance groups supervised by the IA. In the interest of fulfilling their respective statutory mandates, the Parties desire to enter into this GWS MoU to facilitate effective collaboration between them on the supervision and regulation of entities or financial groups in which both Parties have a mutual regulatory interest.

II. PRINCIPLES AND INTERPRETATION

5. The Parties recognise the following principles:
 - (a) the Parties will use their best endeavours to meet the terms of this GWS 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.

6. The Parties also recognise the following overriding principles:
 - (a) this GWS MoU operates subject to the applicable laws and regulations and does not modify or supersede any law or regulation;
 - (b) this GWS MoU does not detract from the respective functions of the Parties under the relevant Ordinances including the Banking Ordinance (Cap. 155) (“**BO**”), the Payment Systems and Stored Value Facilities Ordinance (Cap. 584) (“**PSSVFO**”) and the IO;
 - (c) this GWS MoU does not amount to a delegation of any of the powers, duties and obligations of the Parties;
 - (d) this GWS MoU does not create, directly or indirectly, any rights, obligations or liabilities, enforceable by the Parties or by any third parties, and is not legally binding;
 - (e) this GWS 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
 - (f) this GWS MoU does not affect the arrangements under the First MoU,

and this GWS MoU shall be construed accordingly.

7. Unless otherwise specified, terms defined in the IO bear the same meanings when used in this GWS MoU.
8. For the purpose of this GWS MoU, “HKMA regulated entities” may include authorized institutions (“AIs”) and approved money brokers (each term as defined in the BO), system operators or settlement institutions of designated systems (each term as defined in the PSSVFO), and stored value facility licensees licensed under the PSSVFO.

III. COLLABORATIVE ARRANGEMENTS

The IA’s designation of a DIHC and determination of the scope of the supervised group of such DIHC

9. Under section 95C of the IO, where the IA is appointed as the group supervisor of an insurance group (in accordance with the principles adopted by the International Association of Insurance Supervisors), the IA has the power to designate an insurance holding company within such insurance group as a DIHC. Section 95D of the IO sets out the default members of the supervised group of a DIHC, and the IA is empowered thereunder to include or exclude an entity as a member of the supervised group.
10. Without limiting the IA’s discretion to exercise the powers under sections 95C and 95D of the IO, the IA hereby acknowledges that as a general principle, its intention is not to designate an HKMA regulated entity as a DIHC under section 95C of the IO, and not to include an HKMA regulated entity as a member of the supervised group of a DIHC under section 95D(3) of the IO. In the (albeit unlikely) event, therefore, that:
 - (a) the IA proposes to designate an HKMA regulated entity (which is also an insurance holding company) as a DIHC under section 95C of the IO;
 - (b) upon a designation referred to in paragraph 10(a) above, another HKMA regulated entity will become a member of the supervised group of the DIHC by reason of such HKMA regulated entity being a default member of the prospective supervised group within the meaning of section 95D(1) of the IO;
 - (c) upon a designation referred to in paragraph 10(a) above, the supervised group of the DIHC is a sub-group within a wider financial group of which another HKMA regulated entity is a member (even though such HKMA regulated entity will not be a member of the supervised group of the DIHC); or
 - (d) the IA proposes to exercise its power under section 95D(3) of the IO to include an entity which is an HKMA regulated entity as a member of the supervised group of a DIHC,

the IA will consult with the MA, prior to the IA commencing the designation or inclusion process, as the case may be, and if the designation or inclusion proceeds

as the IA proposed, the IA will maintain close dialogue with the MA throughout such process.

11. Without limiting the IA's discretion to exercise the powers under section 95C of the IO, in the event that the IA proposes to designate an insurance holding company (not being an HKMA regulated entity) as a DIHC under section 95C of the IO, and on designation:
 - (a) this will result in an HKMA regulated entity becoming a member of the supervised group of the DIHC by reason of such HKMA regulated entity being a default member of the prospective supervised group within the meaning of section 95D(1) of the IO; or
 - (b) the supervised group of the DIHC is a sub-group within a wider financial group of which an HKMA regulated entity is a member (even though such HKMA regulated entity will not be a member of the supervised group of the DIHC),

the IA will consult with the MA prior to the IA proceeding with its decision on whether or not to designate. If the designation proceeds as the IA proposed, the IA will maintain close dialogue with the MA throughout such process.

12. In relation to a DIHC designated under section 95C of the IO, in the event that:
 - (a) an HKMA regulated entity (which earlier was not within the supervised group of the DIHC) subsequently becomes a member of the supervised group of the DIHC by reason of such HKMA regulated entity being a default member of the supervised group within the meaning of section 95D(1) of the IO; or
 - (b) the IA becomes aware that an HKMA regulated entity (which earlier was not within the wider financial group of which the supervised group of the DIHC is a sub-group) subsequently becomes a member of such wider financial group (but is not itself a member of the supervised group of the DIHC),

the IA will inform the MA accordingly.

13. Without limiting the IA's discretion to exercise the powers under sections 95D or 95E of the IO, the IA will consult the MA before:
 - (a) pursuant to section 95E of the IO, the IA withdraws a designation of a DIHC, where (i) the supervised group of the DIHC includes an HKMA regulated entity, or (ii) the supervised group of the DIHC is a sub-group within a wider financial group of which an HKMA regulated entity is a member (even though the HKMA regulated entity is not a member of the supervised group of the DIHC); and
 - (b) pursuant to section 95D(4) of the IO, the IA excludes an HKMA regulated entity from being a member of the supervised group of a DIHC.

Establishing and maintaining reasonable, practical and proportionate arrangements for cooperation

14. In the event that an HKMA regulated entity is or may imminently become a member of the supervised group of a DIHC, the Parties will liaise as soon as practicable to establish in writing and maintain between them such reasonable, practical and proportionate arrangements as they may consider necessary to ensure that as far as practicable:
- (a) the IA consults the MA with respect to (i) any considerations of the IA as it considers appropriate relating to the HKMA regulated entity which may be relevant to the IA's decision to exercise any power under Part XIA of the IO in relation to the DIHC or its shareholder controllers, chief executive, directors or key persons in control functions, or (ii) the IA's decision to exercise any power under Part XIA of the IO in relation to the DIHC or its shareholder controllers, chief executive, directors or key persons in control functions which may be relevant to the HKMA regulated entity;
 - (b) the IA informs the MA as soon as reasonably practicable after the IA becomes aware that an application has been made to the Insurance Appeals Tribunal for a review of a specified decision which is specified in Part 3 of Schedule 9 to the IO that may be relevant to the HKMA regulated entity;
 - (c) the MA consults the IA with respect to any considerations of the MA as he considers appropriate relating to the DIHC or its supervised group which may be relevant to the MA's decision to exercise any power under the BO or the PSSVFO in relation to the HKMA regulated entity or its controllers or senior management; and
 - (d) the IA (as group supervisor of the DIHC and its supervised group) and the MA (as an authority exercising regulatory, supervisory or oversight functions over the HKMA regulated entity) provide to each other or exchange relevant information to enable the efficient and effective discharge of their respective statutory functions in such capacities.
15. In the event that an HKMA regulated entity is or may imminently become a member of the financial group of which the supervised group of a DIHC is a sub-group (even though the HKMA regulated entity is not a member of the supervised group of the DIHC), the Parties agree to liaise as soon as practicable to establish in writing and maintain between them such reasonable, practical and proportionate arrangements as they may consider necessary to ensure that as far as practicable:
- (a) the IA consults the MA with respect to (i) any considerations of the IA as it considers appropriate relating to the HKMA regulated entity which may be relevant to the IA's decision to exercise any power under Part XIA of the IO in relation to the DIHC or its shareholder controllers, chief executive, directors or key persons in control functions, or (ii) the IA's decision to exercise any power under Part XIA of the IO in relation to the DIHC or its shareholder controllers, chief executive, directors or key persons in control functions which may be relevant to the HKMA regulated entity;

- (b) the IA informs the MA as soon as reasonably practicable after the IA becomes aware that an application has been made to the Insurance Appeals Tribunal for a review of a specified decision which is specified in Part 3 of Schedule 9 to the IO that may be relevant to the HKMA regulated entity;
- (c) the MA consults the IA with respect to any considerations of the MA as he considers appropriate relating to the DIHC or its supervised group which may be relevant to the MA's decision to exercise any power under the BO or the PSSVFO in relation to the HKMA regulated entity or its controllers or senior management; and
- (d) the IA (as group supervisor of the DIHC and its supervised group) and the MA (as an authority exercising regulatory, supervisory or oversight functions over the HKMA regulated entity) provide to each other or exchange relevant information to enable the efficient and effective discharge of their respective statutory functions in such capacities.

Confidentiality and use of information

- 16. Information is to be provided by each Party under this GWS MoU or any arrangements made pursuant to this GWS MoU in accordance with the law and only for the purpose of assisting the other Party in the performance of its regulatory, supervisory or oversight 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.
- 17. 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 an entity in which both Parties have a mutual regulatory interest as expressed in this GWS MoU to an authority in a place outside Hong Kong pursuant to the applicable provisions of the BO, the PSSVFO or the IO.
- 18. 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 GWS MoU or any arrangements made pursuant to this GWS MoU.

Making of rules and regulations, publication of codes and guidelines, and amendment to the IO, etc.

- 19. 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 the regulation and supervision of HKMA regulated entities (or their controllers or senior management) for the purposes of the GWS Regime;
 - (b) subject to paragraph 20, 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, in so far as such rules, regulations or amendments relate or apply to the regulation and supervision of HKMA regulated entities (or their controllers or senior management) for the purposes of the GWS Regime; or

(c) when the IA makes any proposal or provides recommendations on any proposal to amend the IO, in so far as such amendments relate or apply to the regulation and supervision of HKMA regulated entities (or their controllers or senior management) for the purposes of the GWS Regime.

20. The IA will only consult the MA on any regulation to be made under section 128 of the IO to prescribe fees payable by a DIHC if, at the time the IA recommends the making of such regulation by the Chief Executive in Council, an HKMA regulated entity is a DIHC or the IA considers it likely that an HKMA regulated entity may be designated as a DIHC.

IV. EFFECTIVE DATE AND AMENDMENTS

21. This GWS MoU will take effect on 14 May 2021.

22. Either Party may at any time request for a specific amendment, whether by supplement or otherwise, to this GWS MoU, or may consult the other Party regarding the need for any amendment or supplement to this GWS MoU.

23. An amendment or supplement to this GWS MoU takes effect only by written agreement of the Parties.

THE MONETARY AUTHORITY

FOR AND ON BEHALF OF
THE INSURANCE AUTHORITY

Eddie W. M. Yue

Clement Cheung
Chief Executive Officer

Date:

Date: