

9 OCTOBER 2003

**MEMORANDUM
OF
UNDERSTANDING**

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

**Financial Services
Authority
United Kingdom**

Contents

RECITALS	2
OPERATIVE PART	3
Interpretation	3
Purpose	3
Principles	4
Provision of Unsolicited Information	4
Types of Assistance	4
Procedure for Requests	5
Contact Points	5
Further Procedures for Enforcement Matters	6
Assessing Requests	6
Costs	7
Confidentiality	7
Consultation	8
Term	8
Amendment	8
APPENDIX 1: FURTHER PROCEDURES FOR ENFORCEMENT MATTERS	10
Further details to be contained in requests for assistance	10
Further ground for denial of request	10
Rights of persons preserved	10

Operative Part

Interpretation

1. In this MoU, unless the context requires otherwise:

“administering” an applicable law, regulation or requirement includes enforcing the same;

"applicable laws, regulations and requirements" means any law, regulation or requirement applicable in the Hong Kong Special Administrative Region of the People's Republic of China (“Hong Kong SAR”) and/or in the United Kingdom, and where the context permits includes:

- (a) relevant European legislation that has not yet been transposed into UK domestic law;
- (b) any law, regulation or requirement applicable in the Hong Kong SAR or the United Kingdom or a part thereof; and
- (c) any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority;

“Authority” means the IA or the FSA;

“permitted onward recipient” means an agency or authority responsible for prosecuting, regulating or enforcing applicable laws, regulations and requirements falling within the area of responsibility of an Authority;

"person" means a natural person, legal entity, partnership or unincorporated association;

"requested Authority" means an Authority to whom a request is made under this MoU;

"requesting Authority" means an Authority making a request under this MoU.

Purpose

2. The purpose of this MoU is to assist the Authorities to carry out their functions more effectively by providing a framework for co-operation, including channels for communication, increased mutual understanding, and the exchange of information and investigative assistance, to the extent permitted by applicable laws, regulations and requirements.

Principles

3. The Authorities intend to provide the fullest mutual assistance to one another within the terms of this MoU. This MoU does not modify or supersede any laws or regulatory requirements in force in, or applying to, the Hong Kong SAR or the United Kingdom. This MoU sets forth a statement of intent and accordingly is not intended to create any rights enforceable in a court of law, to give rise to rights or obligations as a matter of international law or to fetter the discretion of either Authority in any way in the discharge of their functions. This MoU does not affect any arrangements under other MoUs.
4. The Authorities acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations and requirements.

Provision of Unsolicited Information

5. 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 providing Authority so specifies, the conditions of this MoU will apply to information so provided.
6. To the extent permitted by applicable laws, regulations and requirements, each Authority will use reasonable efforts on a timely basis as far as practicable to provide the other Authority with any information that is in its possession or discovered which:
 - (a) gives rise to a suspicion of a breach, or anticipated breach, of the applicable laws, regulations or requirements of the other Authority; or
 - (b) will be likely to assist in administering the laws, regulations or requirements of the other Authority, if provided to the other Authority.

Types of Assistance

7. In response to requests for assistance, each Authority will use reasonable efforts to provide mutual assistance to the other, subject to its laws and overall policy, including:
 - (a) providing information in the possession of the requested Authority;

- (b) confirming or verifying information provided to it for that purpose by the requesting Authority;
- (c) exchanging information on or discussing issues of mutual interest;
- (d) obtaining specified information and documents from persons;

Procedure for Requests

8. Requests for the provision of information or other assistance will be made in writing, or made orally and, unless otherwise agreed, confirmed in writing within ten business days. To facilitate assistance, the requesting Authority should specify in any written request:
- (a) the information or other assistance requested (identity of persons, specific questions to be asked etc.);
 - (b) if information is provided by the requesting Authority for confirmation or verification, the kind of confirmation or verification sought;
 - (c) the purpose for which the information or other assistance is sought;
 - (d) to whom, if anyone, onward disclosure of information provided to the requesting Authority is likely to be necessary and, in relation to onward disclosure to a person who is not a permitted onward recipient, the purpose such disclosure would serve;
 - (e) if the request for assistance is for the purpose of actual or contemplated enforcement action, the matters set out Appendix 1; and
 - (f) any other matters specified by the requested Authority and by the applicable laws, regulations and requirements in relation to the requested Authority.

Contact Points

9. The Authorities will provide a list of contact points to which information or requests for information or assistance under this MoU should be directed.

Further Procedures for Enforcement Matters

10. The further procedures set out in Appendix 1 will apply in relation to actual or contemplated enforcement matters.

Assessing Requests

11. 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 this MoU. In any case where the request cannot be fulfilled in part or 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.
12. In deciding whether and to what extent to fulfil a request, the requested Authority may take into account:
 - (a) whether the request conforms with this MoU;
 - (b) whether the request involves the administration of a law, regulation or requirement which has no close parallel in the jurisdiction of the requested Authority;
 - (c) whether the provision of assistance would be so burdensome as to disrupt the proper performance of the requested Authority's functions;
 - (d) whether it would be otherwise contrary to the public interest or the essential interest of the requested Authority's jurisdiction to give the assistance sought;
 - (e) if the request for assistance is for the purpose of actual or contemplated possible enforcement action, the further matter set out in clause 2 of Appendix 1; and
 - (f) any other matters specified by the laws, regulations and requirements of the requested Authority's jurisdiction (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness).

13. The authorities recognise that assistance may be denied in whole or in part for any of the reasons mentioned in paragraph 12 in the discretion of the requested Authority.

Costs

14. If the cost of fulfilling a request is likely to be substantial, the requested Authority may, as a condition of agreeing to give assistance under this MoU, require the requesting Authority to make a contribution to costs.

Confidentiality

15. Information supplied under this MoU will be used or disclosed by a recipient Authority, or person in receipt of such information from a recipient Authority, only for the purpose indicated in the table, or any purpose reasonably ancillary thereto. Consent in writing of the supplying Authority must be obtained for any other use or disclosure by the recipient Authority or third party.

Type of information	Permitted purpose
(a) Information constituted by or contained in a request	Assessing and fulfilling the request
(b) Information supplied pursuant to a request	The purpose specified in the request
(c) Unsolicited information	Administering the applicable laws, regulations and requirements of the recipient Authority and any other purpose specified by the supplying Authority in connection with the information

16. The recipient Authority will notify the supplying Authority of any legally enforceable demand for information supplied under this MoU it receives, and will assert such appropriate legal exemptions or privileges with respect to that information as may be available. The recipient Authority will consult with the supplying Authority before complying with any such demand unless this is not practicable for reasons of urgency.

17. Subject to paragraph 15 and any legally enforceable demand as mentioned in paragraph 16, information supplied under this MoU will be kept confidential.

Consultation

18. The Authorities will keep the operation of this MoU under review and will consult when necessary with a view to improving its operation and resolving any matters.
19. 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 to determine the most appropriate means for each Authority to provide assistance.

Term

20. This MoU takes effect from the date of its signature by the IA and the FSA and will continue to have effect until terminated by either of the Authorities giving at least 30 days' advance written notice to the other Authority.
21. Termination of this MoU does not affect obligations under this MoU relating to confidentiality of information, which shall continue to have effect.

Amendment

22. Amendments to this MoU may be effected by a written document signed by the Authorities.

Executed by the Parties:

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

For the FSA

Benjamin Tang,
Commissioner of Insurance
Date:

John Tiner
Chief Executive
Date:

Appendix 1: Further Procedures for Enforcement Matters

Further details to be contained in requests for assistance

1. If a request for assistance as described in this MoU relates to actual or contemplated enforcement action, the following further details will be contained in the request referred to in paragraph 8 of this MoU:
 - (a) a description of the conduct or suspected conduct which gives rise to the request;
 - (b) details of the applicable law, regulation or requirement to the administration of which the request is relevant;
 - (c) the link between the specified rule or law and the regulatory functions of the requesting Authority; and
 - (d) the relevance of the requested assistance to the specified rule or law.

Further ground for denial of request

2. If a request for assistance as described in this MoU relates to actual or contemplated enforcement action, the following further matter may be taken into account by the requested Authority in determining whether to fulfil the request in whole or in part:

whether the request would lead to the prosecution of, or the taking of disciplinary or other enforcement action against, a person who in the opinion of the requested Authority has already been appropriately dealt with in relation to the alleged breach the subject-matter of the request.

Rights of persons preserved

3. Any person providing testimony, information or documents as a result of a request made under this MoU will be entitled to all the rights and protections of the laws of

the jurisdiction of the requested Authority. Where assertions are made regarding other rights and privileges arising exclusively pursuant to the laws of the jurisdiction of the requesting Authority, the Authorities will consult to determine the most appropriate way to proceed.