

**MEMORANDUM
OF
UNDERSTANDING**

HONG KONG

**Securities and Futures
Commission**

UNITED KINGDOM

**Financial Conduct
Authority**

RECITALS

- A. In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of regulated entities, the Securities and Futures Commission in Hong Kong (SFC) and the Financial Conduct Authority (FCA) (together, the Authorities) have reached this Memorandum of Understanding (MOU) regarding mutual assistance in the supervision and oversight of Regulated Entities in the jurisdiction of the Authorities above.
- B. The Authorities express, through this MoU, their willingness and intention to cooperate with each other on supervisory matters in the interest of fulfilling their respective regulatory mandates as follows:
- (a) SFC's responsibility, particularly in the areas of: investor protection; promoting the competence and integrity of Cross-Border Regulated Entities; fostering market and financial integrity; reducing systemic risk and maintaining financial stability.
 - (b) The FCA's responsibility for ensuring that relevant markets function well through: ensuring an appropriate degree of protection for consumers; protecting and enhancing the integrity of the UK financial system, and promoting effective competition in the interests of consumers in markets.

ARTICLE ONE: DEFINITIONS

For purposes of this MoU:

1. **Applicable laws** means any law, regulation or requirement applicable in Hong Kong and/or in the United Kingdom and where the context permits includes:
 - (a) relevant European legislation that, at the time of executing this MoU, has not been transposed into UK domestic law; and
 - (b) any rule, direction, or requirement, made or given by or to be taken into account by an Authority;

2. **Authority/ Authorities** means either or both the SFC or the FCA:
 - (a) **Requested Authority** means the Authority to whom a request is made under this MoU;
 - (b) **Requesting Authority** means the Authority making a request under this MoU;
 - (c) **Provider Authority** means the Authority that provides non-public information to the Recipient Authority under this MoU;
 - (d) **Recipient Authority** means the Authority that receives non-public information from the Provider Authority under this MoU;
 - (e) **Onward Receiving Authority** means:
 - (i) in respect of the FCA: the Prudential Regulation Authority and the Bank of England; and
 - (ii) in respect of the SFC: the Hong Kong Monetary Authority and the Hong Kong Financial Services and the Treasury Bureau;
3. **Cross-border On-site Visit** means any regulatory visit by one Authority to the premises of a Cross-Border Regulated Entity located in the other Authority's jurisdiction, for the purposes of ongoing supervision and oversight;
4. **Cross-Border Regulated Entity** means:
 - (a) a Regulated Entity that is regulated by both Authorities; or
 - (b) a Regulated Entity which is regulated in the jurisdiction of one Authority that is a Related Corporation of another Regulated Entity which is regulated in the jurisdiction of the other Authority;
5. **Person** means a natural person or legal person, an (incorporated or unincorporated) association, partnership, corporation, trust, estate, co-operative or other entity;
6. **Regulated Entity** means a financial market participant or other Person that is regulated by one of the Authorities;
7. **Related Corporation** means two or more corporations where one of them is:
 - (a) a holding company of the other;

- (b) a subsidiary of the other; or
- (c) a subsidiary of the holding company of the other;

8. **Non-public information** means:

- (a) information that is subject to section 378(1) of the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong);
- (b) “confidential information” as defined in the Financial Services and Markets Act 2000, s.348;
- (c) personal information such as the name, address, or other personally identifiable information relating to any living individual, including any information so designated by a Provider Authority; or
- (d) any other information that is not publicly available provided by a Provider Authority to a Recipient Authority under this MoU.

ARTICLE TWO: GENERAL PROVISIONS

- 9. This MoU is a statement of intent to consult, cooperate and exchange information in connection with the supervision and oversight of Cross-Border Regulated Entities in Hong Kong and the United Kingdom, in a manner consistent with and permitted by applicable laws, in order to enhance the Authorities’ respective regulatory supervisory functions, as referred to in the Recitals.
- 10. The provisions of this MoU are intended to support communication on supervisory issues of common interest concerning particular Cross-Border Regulated Entities.
- 11. This MoU does not create any legally binding obligations, confer any rights, or supersede applicable laws. This MoU does not confer upon any Person the right or ability (directly or indirectly) to obtain, suppress, or exclude any information or to challenge the execution of a request for assistance under this MoU.
- 12. This MoU does not limit an Authority’s ability to act unilaterally, as applicable laws permit, in fulfillment of its supervisory functions. In particular, this MoU

does not affect any right of an Authority to communicate with or to obtain information or documents from any Person subject to its jurisdiction that is located in the jurisdiction of the other Authority. However, an Authority should consult with the other Authority prior to carrying out any Cross-Border On-site Visit in the jurisdiction of the other Authority, on which see further below at Article Four.

13. This MoU does not alter the terms and conditions of the following existing arrangements:
 - (a) IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information, to which the Authorities are signatories, which covers cooperation and information-sharing for purposes of enforcing and securing compliance of Laws and Regulations as defined therein including providing assistance in the context of enforcement investigations;
 - (b) the Memorandum of Understanding signed on 25 February 2014 between the Authorities, which covers cooperation and information-sharing in relation to the supervision and oversight of the Hong Kong Exchanges and Clearing Limited and The London Metal Exchange;
 - (c) the Memorandum of Understanding signed on 28 October 1992 between the Treasury and the Securities & Investment Board of the United Kingdom and the SFC in respect of cooperation and information-sharing in the context of enforcement of laws and regulatory requirements, except that this MoU will supersede the provisions of the Memorandum of Understanding signed on 28 October 1992 so far as it relates to cooperation and exchange of information on supervisory matters; and
 - (d) any arrangements under other memoranda applicable to the Authorities.
14. Each Authority will, within the framework of this MoU and, subject to applicable laws, use reasonable endeavours to provide the other Authority with the fullest cooperation permissible in relation to the supervision and oversight of Cross-Border Regulated Entities. Nevertheless, cooperation may be denied in the following circumstances:

- (a) where a request for assistance is not made in accordance with the terms of this MoU;
 - (b) where the cooperation would require an Authority to act in a manner that would violate applicable laws;
 - (c) where the provision of assistance would be reasonably considered to be disruptive to the proper performance of the Requested Authority's functions; or
 - (d) where the request would be otherwise contrary to the public interest or the overall interests of the Requested Authority's jurisdiction to give the assistance sought.
15. The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements under this MoU with a view to expanding or altering the scope or operation of this MoU should that be judged necessary.
16. The Authorities will notify one another as soon as reasonably practicable if they become aware of any changes in the applicable laws governing guarantees of professional secrecy/confidentiality protections applying to non-public information exchanged between the Authorities, which could affect the Authorities' respective assessments of the equivalence guarantees.
17. To facilitate cooperation under this MoU, the Authorities designate contact persons as set out in Appendix A.

ARTICLE THREE: SCOPE OF SUPERVISORY COOPERATION

18. The Authorities recognize the importance of close communication concerning Cross-Border Regulated Entities, and intend to consult and update regularly regarding:
- (a) general supervisory issues, including with respect to regulatory, oversight or other program developments;
 - (b) issues relevant to the operations, activities, and regulation of Cross-Border Regulated Entities; and

- (c) any other areas of mutual supervisory interest to the extent this falls outside existing co-operation facilitated by the Authorities' membership of relevant supervisory colleges.
19. Cooperation will be most useful in, but is not limited to, the following circumstances where issues of common regulatory concern may arise:
- (a) the initial application of a Regulated Entity in one jurisdiction also to be regulated by the other Authority;
 - (b) the ongoing supervision and oversight of a Cross-Border Regulated Entity;
 - (c) regulatory approvals or supervisory actions taken in relation to a Cross-Border Regulated Entity by one Authority that may impact the operations of the Cross-Border Regulated Entity in the other jurisdiction;
 - (d) any updates on their respective functions, and regulatory oversight programs; or
 - (e) general supervisory developments where considered necessary.
20. **Notification.** Each Authority will inform the other Authority, as soon as is reasonably practicable, of, among other things, information that may, in its reasonable opinion, have a material adverse impact on a Cross-Border Regulated Entity including but not limited to:
- (a) changes in the ownership, operating environment, operations, financial resources, management, or systems and control of a Cross-Border Regulated Entity;
 - (b) information regarding the status of efforts to address any material financial or operational difficulties experienced by a Cross-Border Regulated Entity as described in paragraph 20(a) above; and
 - (c) pending or implemented regulatory changes that may have a significant impact on the operations, activities, or reputation of a Cross-Border Regulated Entity;
21. **Provision of Unsolicited Information.** Where an Authority has information which will assist or enable the other Authority in the performance of its

supervisory functions, information may be provided on the initiative of one Authority to the other, without the necessity of a request. The terms and the conditions of this MoU will apply if the Provider Authority specifies that the information is provided under this MoU.

22. **Exchange of Information.** Upon written request, each Authority intends to provide the other Authority with assistance in obtaining information, including non-public information, not otherwise available to the Requesting Authority. In addition, where requested, the Requested Authority will, as far as possible, provide to the Requesting Authority further explanation regarding the content of information provided, in order to assist the Requesting Authority in the performance of its supervisory functions. The Requesting Authority will include an itemized list of what further explanation it requires when making the request including (but not limited to):

- (a) information relevant to the financial and operational condition of a Cross-Border Regulated Entity, including, for example, reports of capital reserves, liquidity or other prudential measures, internal controls procedures, corporate information, license or membership history and status, and regulatory and disciplinary records;
- (b) relevant regulatory information and filings that a Cross-Border Regulated Entity is required to submit to an Authority including, for example, interim and annual financial statements and early warning notices;
- (c) information that goes to the competence and integrity of a Cross-Border Regulated Entity, such as regulatory reports prepared by an Authority, including for example: examination reports, compliance review reports on investor complaints, self-reported breaches or sundry referrals from other regulators (subject to, where applicable, their permission to do so), and findings or information drawn from such reports; and
- (d) group-level information of Cross-Border Regulated Entities, including group-wide organizational charts, board and management committee minutes, senior management responsibility maps, business model analysis and risk profiles.

ARTICLE FOUR: CROSS-BORDER ON-SITE VISITS

23. Each Authority will give advance notice to the other Authority prior to carrying out any Cross-border On-site Visits, providing information that explains the scope and purpose of the visit.
24. The Authority intending to carry out the Cross-border On-site Visit, before doing so, will:
 - (a) give the other Authority the opportunity to comment on the scope or purpose of, and raise any issues in relation to, the Cross-border On-site Visit; and
 - (b) address any such comments or issues raised by the other Authority.
25. The Authorities may conduct joint on-site visits on Cross-Border Regulated Entities in which case these will be led by the Authority in whose jurisdiction the visit takes place.
26. On request, the local Authority will endeavour to share with the visiting Authority any relevant examination reports or compliance reviews it may have undertaken in respect of the Cross-Border Regulated Entity.
27. The Authorities will communicate with each other, including conducting meetings with one another as appropriate during the course of and in the aftermath of the Cross-border On-site Visit. After concluding a Cross-border On-site Visit, the visiting Authority will communicate any material issues to the local Authority that may impact upon the regulatory status of the Cross-Border Regulated Entity, before that information is shared with the Cross-Border Regulated Entity affected.

ARTICLE FIVE: EXECUTION OF REQUESTS FOR ASSISTANCE

28. A request for information or assistance should be made in writing, and addressed to the relevant contact person identified in Appendix A. A request should specify the following:
 - (a) a description of the information sought or other assistance requested (e.g. identity of persons, specific questions to be asked, etc.);

- (b) if non-public information is provided by the Requesting Authority for confirmation or verification, the information and the kind of confirmation or verification sought;
 - (c) a concise description of the facts underlying the request;
 - (d) the supervisory purpose for which the information or other assistance is sought, by reference to applicable laws;
 - (e) to whom, if anyone, onward disclosure of information provided to the Requesting Authority is likely to be necessary and the purpose such disclosure would serve (provision of the information or assistance by the Requested Authority should not be taken as consent by the Requested Authority to such possible onward disclosure); and
 - (f) the desired time period for reply and, where there is urgency, the reason for the urgency.
29. Where matters are particularly urgent, requests for information or assistance may be made in any form, provided such request is confirmed in writing as soon as possible and not outside five working days following such request.

ARTICLE SIX: PERMISSIBLE USES OF INFORMATION

30. The Requesting Authority may use non-public information obtained under this MoU solely for the purposes of:
- (a) supervising Cross-Border Regulated Entities and seeking to ensure compliance with the laws or regulations of the Requesting Authority; or
 - (b) performing its supervisory functions, including but not limited to assessing compliance by a Cross-Border Regulated Entity with the laws and regulations it administers and identifying whether or not a Cross-Border Regulated Entity constitutes a risk to or may affect the financial stability of its jurisdiction.
31. This MoU does not alter the terms and conditions of the existing arrangements between the Authorities concerning cooperation, as set forth in Article Two. The Authorities recognize that information is not to be gathered under the auspices of this MoU for enforcement purposes. No information received under this MoU will be used in any judicial or other proceedings.

ARTICLE SEVEN: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING

32. Each Authority will treat all non-public information shared under this MoU (including the requests and contents of the requests themselves) as the confidential information of the Provider Authority and protect the information against unauthorized use or disclosure. Subject to paragraph 33 and 34, the Recipient Authority will not disclose any information received under this MoU to any third party for any purpose unless it has obtained the prior written consent of the Provider Authority.
33. If a Recipient Authority receives a legally enforceable demand for non-public information received under this MoU, to the extent possible:
 - (a) the Recipient Authority should notify the Provider Authority of the demand as soon as reasonably practicable, and give the Provider Authority a reasonable opportunity to respond to the demand prior to complying with the demand;
 - (b) if the Provider Authority does not consent to the disclosure of the non-public information, the Recipient Authority will use all means available to it to resist disclosure, including asserting available legal exemptions or privileges with respect to that non-public information;
 - (c) if the Provider Authority does not object to the disclosure of the non-public information, the Provider Authority will promptly inform the Recipient Authority of its non-objection; and
 - (d) the Recipient Authority will provide consent to an application by the Provider Authority to intervene in any related action or proceedings for the purpose of asserting and preserving any claims of confidentiality with respect to the Provider Authority's non-public information.
34. In certain circumstances, as required by applicable laws, it may become necessary for a Recipient Authority to share any non-public information received under this MoU with an Onward Receiving Authority. In these circumstances:
 - (a) the Recipient Authority will notify the Provider Authority about what non-public information it intends to share, which Onward Receiving

Authority will receive the information and the function in respect of which the Recipient Authority has provided the information to the Onward Receiving Authority;

(b) prior to passing on the information, the Recipient Authority will give the Provider Authority adequate information concerning the Onward Receiving Authority's professional secrecy regime and treatment of non-public information, including, as necessary, information to confirm that:

(i) the non-public information will be used solely for supervisory purposes, unless the prior written consent of the Provider Authority is obtained;

(ii) the Onward Receiving Authority is required to maintain a level of confidentiality in respect of the non-public information that is at least equivalent to that which the Recipient Authority is subject to (including, where relevant, restrictions or conditions imposed on it by the Provider Authority); and

(iii) the non-public information will not be shared by the Onward Receiving Authority with other parties without getting the prior written consent of the Provider Authority.

35. To the extent consistent with applicable laws, the Authorities intend that any non-public information shared under this MoU is to be treated as the property and under the control of the Provider Authority. The Recipient Authority, in storing and using such information, endeavours to maintain the identity of the source to the extent practicable. The disclosure of information under this MoU will not constitute a waiver of privilege or confidentiality of such information.

36. The restrictions of this Article do not apply to an Authority's use and disclosure of information it obtains directly from a Cross-Border Regulated Entity whether during a Cross-border On-Site Visit or otherwise. However, where that information is provided by a Provider Authority to a Recipient Authority under this MoU, the restrictions of this Article apply to the use and disclosure of the information by that Recipient Authority.

ARTICLE EIGHT: TERMINATION

37. Cooperation in accordance with this MoU will continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate this MoU. If either Authority gives such notice, cooperation will continue with respect to all requests for assistance that were made under this MoU before the effective date of notification until the Requesting Authority terminates the matter for which assistance was requested. In the event of termination of this MoU, information obtained under this MOU will continue to be treated in a manner prescribed under Articles Six and Seven.

Signed:

Andrew Bailey

Chief Executive Officer

Financial Conduct Authority

Ashley Alder

Chief Executive Officer

Securities and Futures Commission

Appendix A

Contact Persons

The Securities and Futures Commission

Senior Director, International Affairs
Senior Director, Intermediaries Supervision
Senior Director, Licensing
Securities and Futures Commission
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