

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**SECURITIES AND FUTURES COMMISSION**

**AND**

**INSURANCE AUTHORITY**

**HONG KONG**

**20TH DECEMBER 2005**

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## **MEMORANDUM OF UNDERSTANDING (“MoU”)**

**BETWEEN:** The Securities and Futures Commission (the “**SFC**”) of 8<sup>th</sup> Floor, Chater House, 8 Connaught Road Central, Hong Kong

**AND:** The Insurance Authority (the “**IA**”) of 21<sup>st</sup> Floor, Queensway Government Offices, 66 Queensway, Hong Kong

### **1 STATUS OF PARTIES**

1.1 The SFC is a statutory body established pursuant to the repealed Securities and Futures Commission Ordinance (Cap. 24) and continued in existence pursuant to the Securities and Futures Ordinance (Cap. 571) (the “**SFO**”). The SFC is responsible for administering the laws governing the securities and futures markets in Hong Kong and facilitating and encouraging the development of these markets. The SFC has responsibilities under the SFO, and the rules and regulations made thereunder, to set standards for the authorization of collective investment schemes that are offered to the public and is responsible for the licensing and supervision of persons who are engaged in a regulated activity as defined under the SFO.

1.2 The IA is appointed pursuant to, and is responsible for administering, the Insurance Companies Ordinance (Cap. 41) (“**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.

### **2 DEFINITIONS**

2.1 Unless otherwise specified, terms defined in the ICO, the SFO, the Code on Investment-Linked Assurance Schemes, the Code on Pooled Retirement Funds and the SFC Code on MPF Products issued by the SFC (together, the Codes are referred to as the “**SFC Codes**”) bear the same meaning when used in this MoU.

2.2 The reference to self-regulatory bodies in this MoU means the self-regulatory bodies involved in the regulation of insurance intermediaries in Hong Kong,

namely, the Insurance Agents Registration Board set up by the Hong Kong Federation of Insurers, the Hong Kong Confederation of Insurance Brokers and the Professional Insurance Brokers Association, which are established pursuant to the insurance self-regulatory system administered under the ICO.

### **3 REASONS FOR THE MOU**

- 3.1 Both parties desire to reduce, as far as is reasonably practicable, duplication of effort between them by specifying in this MoU their respective responsibilities regarding the regulation of insurance-related investment products that are collective investment schemes and the sharing of information in respect of persons who are regulated under their respective supervisory regimes, including insurers, insurance intermediaries and persons who are engaged in a regulated activity as defined under the SFO. The parties also desire to promote mutual assistance and the exchange of information so that they may effectively perform their respective responsibilities.
- 3.2 Both parties will use their best endeavours to meet the arrangements set out in the MoU. The MoU does not modify or replace any laws, rules or regulatory requirements and does not create any rights enforceable by third parties.

### **4 RELEVANT RESPONSIBILITIES OF THE IA UNDER THE MOU**

- 4.1 The IA is responsible for the overall regulation of insurance business in or from Hong Kong including regulation over insurance intermediaries. This involves the due and proper discharge of all statutory obligations under the ICO as well as the rules and regulations made thereunder. The responsibilities of the IA insofar as relevant for the purposes of this MoU include:
  - (a) authorizing insurers to carry on insurance business in or from Hong Kong and supervising an insurer's compliance with the provisions of the ICO;
  - (b) promoting and ensuring adherence to proper standards of conduct and sound and prudent business practices amongst insurers;
  - (c) regulating insurance intermediaries by, inter alia, approving the code of practice for the administration of insurance agents issued by a self-regulatory body in accordance with the requirements of the IA; directly authorizing insurance brokers and specifying minimum requirements for such authorization; approving a body of insurance brokers and specifying minimum requirements for such approval; and overseeing the regulation of insurance intermediaries by the relevant self-regulatory bodies;

- (d) promoting and ensuring adherence to proper standards of conduct by insurance intermediaries and, where necessary, reviewing and revising the regulatory system for the same;
- (e) promoting and developing self-regulation by market and professional bodies of the insurance industry;
- (f) preparing and publishing guidelines for the guidance of authorized insurers, insurance intermediaries and auditors and actuaries of such insurers and intermediaries;
- (g) investigating alleged breaches of the provisions of the ICO and any rules and regulations administered by the IA and taking appropriate enforcement actions where necessary;
- (h) receiving complaints referred by the SFC or public complaints relating to insurers and insurance intermediaries and, where appropriate, referring cases to the insurers, the relevant self-regulatory body and/or other regulator(s) concerned as soon as practicable for follow-up action;
- (i) overseeing the handling of complaints and enforcement and disciplinary actions on insurers and insurance intermediaries by the relevant self-regulatory body;
- (j) receiving confidential information from the SFC regarding insurers and insurance intermediaries;
- (k) informing the SFC as soon as practicable upon becoming aware of issues concerning the fitness and properness of an insurer or an insurance intermediary that it believes is licensed with the SFC or that has substantial involvement in the operation of an insurance-related investment product authorized by the SFC or issues concerning potential breaches of the SFO, including the unauthorized public offer of investments falling within the SFC's purview;
- (l) exchanging information, and procuring the exchange of information by the self-regulatory bodies, with the SFC as soon as practicable on a regular basis, regarding any complaint, disciplinary or enforcement action or irregular inspection findings involving any insurer or insurance intermediary that it believes is licensed with the SFC;
- (m) maintaining proper files, records and systems of all transactions and other matters processed by the IA; and

- (n) co-operating with and assisting the SFC and, where appropriate, other regulators in Hong Kong or elsewhere that are concerned with the regulation of insurance-related investment products and their operators.

## **5 RELEVANT RESPONSIBILITIES OF THE SFC UNDER THE MOU**

- 5.1 The SFC's responsibilities relating to insurance products include administering certain statutory provisions under the SFO, and the rules and regulations made thereunder, for the authorization of insurance-related investment products that are offered to the public, being contracts of insurance in the form of investment-linked assurance schemes ("ILAS"), approved pooled investment funds ("APIF") under the mandatory provident funds regime and pooled retirement funds ("PRF") under the occupational retirement schemes regime.
- 5.2 The SFC is also responsible under the SFO for the licensing and supervision of persons who are engaged in a regulated activity as defined under the SFO, including dealing in securities and advising on securities. The parties acknowledge that certain insurers and insurance intermediaries subject to the IA's regulatory regime also carry on business in a regulated activity and are licensed with the SFC.
- 5.3 Insofar as relevant for the purposes of this MoU, the SFC is responsible for:
  - (a) vetting and authorizing ILAS, APIF and PRF and related marketing materials in accordance with the SFO and the provisions in the respective SFC Codes;
  - (b) licensing persons who carry on business in a regulated activity, and the continued monitoring of their conduct in this respect;
  - (c) through a program of surveillance and inspection, supervising the activities of SFC licensed persons in the provision of services with respect to the regulated activity carried on by them;
  - (d) investigating alleged breaches of the provisions of the SFO and any rules and regulations administered by the SFC, and taking appropriate enforcement actions where necessary;
  - (e) receiving complaints referred to the SFC by the IA or the public relating to an ILAS, APIF or PRF authorized by the SFC or relating to SFC licensed persons with respect to the regulated activity carried on by them;
  - (f) receiving confidential information from the IA regarding insurers or

insurance intermediaries licensed with the SFC or that have substantial involvement in the operation of an insurance-related investment product authorized by the SFC;

- (g) informing the IA as soon as practicable upon becoming aware of issues concerning the fitness and properness of an insurer or an intermediary that it believes falls under the IA's regulatory regime or concerning potential breaches of the ICO;
- (h) exchanging information with the IA as soon as practicable on a regular basis, regarding any complaint, disciplinary or enforcement action or irregular inspection findings involving any insurer or intermediary that it believes falls within the IA's regulatory regime;
- (i) maintaining proper files, records and systems of all transactions and other matters processed by the SFC; and
- (j) co-operating with and assisting the IA and, where appropriate, other regulators in Hong Kong or elsewhere that are concerned with insurance-related investment products and their operators.

## **6 STATUS OF THE MOU**

6.1 The IA and the SFC acknowledge and agree that:

- (a) this MoU is entered into by the parties hereto in good faith and for the purpose of facilitating a cooperative working relationship between the parties hereto in accordance with their respective responsibilities as set out in paragraphs 4 and 5;
- (b) in the interpretation of any of the provisions of this MoU such provisions shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of this MoU according to its true intent, meaning and spirit;
- (c) each of the parties hereto shall:
  - (i) maintain a good working relationship with the other;
  - (ii) co-operate with the other in complying with the provisions hereof; and
  - (iii) perform its obligations hereunder, fully, in good faith and to the best

of its ability;

- (d) this MoU is a public document and the contents hereof may be disclosed and copies may be furnished by either party hereto to any third party without the consent of the other hereto;
- (e) this MoU shall not give rise to any rights, direct or indirect, on the part of third parties, nor shall such parties be entitled to require compliance by either the IA or the SFC with any of their respective obligations arising hereunder; and
- (f) nothing in this MoU shall affect the rights of the IA or the SFC to exercise any of their respective powers or perform any of their respective functions under the ICO or the SFO.

## **7 FUTURE POLICY DEVELOPMENT**

- 7.1 The IA and the SFC each agrees to consult the other in the preparation and the issue of further guidelines in relation to the regulation of insurance-related investment products and their operators, where necessary.
- 7.2 The IA and the SFC each agrees to consult the other in considering a policy of introducing measures, statutory or otherwise, designed to set minimum standards and encourage enhanced professional standards and practices for persons engaged in insurance-related investment business in Hong Kong, where necessary.

## **8 CONFIDENTIALITY AND USE OF INFORMATION**

- 8.1 Assistance or information will only be provided by either the IA or the SFC to the other party in accordance with the law and for the purposes of assisting the other in the performance of its regulatory functions.
- 8.2 Any assistance or information provided under this MoU will be used by the recipient only for the purposes of performing its regulatory functions, and for the purpose within the general framework of the use stated in the law or any relevant request for assistance/information, including the conducting of any civil or administrative enforcement proceeding, assisting in a criminal prosecution, or conducting any investigation for any general charge applicable to a violation of the laws and regulations administered by the recipient party.
- 8.3 Other than provided above or except otherwise required by the relevant laws,



information obtained pursuant to this MoU will not be disclosed to any third party without the prior consent of the provider of the assistance or information. Each party will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.

## **9 CONTACT PERSONS**

- 9.1 The parties will each appoint a person or persons to be the principal points of contact for the exchange of information under this MoU depending on the regulatory function concerned. The initial contact persons are set out in Annex A. Annex A may be amended by written notice from either party.

## **10 EFFECTIVE DATE AND TERMINATION**

- 10.1 The parties hereto agree to keep the operation of this MoU under review and to consult each other with a view to improving its operation and resolving any matters.
- 10.2 Subject to paragraph 9.1, this MoU may be amended at any time by written agreement between the parties hereto.
- 10.3 This MoU sets out the basis upon which the SFC and the IA intend to work together and is not intended to be legally binding on either party.
- 10.4 This MoU shall take effect from the date of execution by both the IA and the SFC and shall remain in full force and effect unless and until the parties hereto mutually agree in writing to terminate the whole or any part hereof.

DATED this 20<sup>th</sup> day of December, 2005

SIGNED FOR AND ON BEHALF OF THE )  
SECURITIES AND FUTURES COMMISSION )  
BY MARTIN WHEATLEY authorized so to ) )  
do by resolution of the Securities and Futures )  
Commission on )

SIGNED BY THE INSURANCE AUTHORITY )  
RICHARD YUEN )  
on )

## **ANNEX A - LIST OF CONTACT PERSONS**

### Securities and Futures Commission, Hong Kong

*On matters concerning enforcement or disciplinary action:*

Executive Director, Enforcement Division

*On any other matters under this MoU:*

Executive Director, Intermediaries and Investment Products Division

Alternate:

Head, Insurance-related Policies and Products

### Insurance Authority, Hong Kong

Assistant Commissioner of Insurance, Policy & Development

Alternate:

Senior Insurance Officer, Intermediaries