

MEMORANDUM OF UNDERSTANDING

BETWEEN

**THE FEDERAL FINANCIAL SUPERVISORY AUTHORITY (BaFin),
GERMANY**

AND

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

October 2008

**MEMORANDUM OF UNDERSTANDING
ON MUTUAL ASSISTANCE AND
THE EXCHANGE OF INFORMATION
BETWEEN
THE FEDERAL FINANCIAL SUPERVISORY AUTHORITY (BaFin),
GERMANY
AND
THE INSURANCE AUTHORITY OF THE HONG KONG SPECIAL
ADMINISTRATIVE REGION OF THE PEOPLE’S REPUBLIC OF CHINA**

1. The Federal Financial Supervisory Authority (BaFin), Germany on the one hand, and the Insurance Authority of the Hong Kong Special Administrative Region of the People’s Republic of China on the other hand, recognising the increasing international activity in insurance markets and the corresponding need for mutual co-operation between the relevant supervisory authorities as means for improving their effectiveness in administering the insurance laws of their respective jurisdictions have reached the following understanding:

I. Definitions

2. 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:
 - (i) for Germany, the Federal Financial Supervisory Authority (BaFin); and
 - (ii) for the Hong Kong Special Administrative Region of the People’s Republic of China, the Insurance Authority.
- (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) “insurer” or “insurance company” means a licensed legal entity which underwrites insurance or reinsurance.
- (e) “person” means a natural person, unincorporated association, partnership or body corporate, government, agency, or instrumentality of a government.

- (f) “laws, regulations and requirements” means the provisions of the laws, or the regulations and requirements promulgated thereunder, of Germany and the Hong Kong Special Administrative Region of the People’s Republic of China on insurance business.
- (g) “the Hong Kong Special Administrative Region” means “the Hong Kong Special Administrative Region of the People’s Republic of China”.

3. 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.

II. Principles

4. This Memorandum sets forth the basis upon which the Authorities in Germany and the Hong Kong Special Administrative Region reciprocally propose to provide for mutual assistance and the exchange of information for the purpose of facilitating the performance of their functions under the respective laws, regulations and requirements of Germany and the Hong Kong Special Administrative Region. The purpose of the Memorandum is to help maintain efficient, fair, safe and stable insurance markets in Germany and the Hong Kong Special Administrative Region for the benefit and protection of policyholders, by providing a framework for co-operation, increased mutual understanding, the exchange of information and assistance to the extent permitted by laws, regulations and requirements and other applicable laws of Germany and the Hong Kong Special Administrative Region.

5. The Authorities intend to:

- (a) use their best endeavours to ensure that the fullest mutual assistance is provided within the terms of the Memorandum; and
- (b) engage in consultations, as appropriate, on mutually agreeable approaches designed to enhance the integrity and efficiency of their respective insurance markets and the exercise of insurance market supervisory functions.

6. The Memorandum does not modify or supersede any laws, regulations and requirements in force in, or apply to, Germany or the Hong Kong Special Administrative Region. Nor does it create directly or indirectly any enforceable rights against or binding obligations upon the Authorities.

III. Scope

7. 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 business of insurance:

- (a) development of new regulatory requirements for the conduct of insurance business;
- (b) administration of legislative provisions dealing with proposals for the establishment, acquisition and take-over of insurance companies;
- (c) administration of financial and other requirements for insurance companies;
- (d) administration of financial and other eligibility requirements for key positions of responsibility in insurance companies, including ownership;
- (e) the continuing monitoring, auditing, inspection and examination of insurance companies for compliance with prudential, financial reporting and other supervisory requirements; and
- (f) fraudulent practices in relation to the offer, purchase or sale of insurance products.

The Authorities will take into account the standards developed by the International Association of Insurance Supervisors where these are relevant.

8. In response to requests that satisfy the terms set out below under the heading “Requests for Information and Assistance”, and subject to the conditions established, each Authority will provide the fullest possible measure of mutual assistance to the other subject to its laws and overall policy. Such assistance may include providing access to information in the files of the requested Authority. 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 the Memorandum. However, assistance may be denied on the grounds of public interest.

9. The Authorities intend to ensure that assistance will be provided in the maximum number of circumstances. However, the Authorities acknowledge that certain requests may relate to a possible breach of laws, regulations and requirements that involve an assertion of jurisdiction not recognised by a 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.

10. The Authorities recognise that, so long as there are differences in the scope of the laws, regulations and requirements applied in each jurisdiction, conduct prohibited by the Authority in one jurisdiction may not be prohibited by the Authority in the other. The Authorities intend to engage in consultations about individual cases falling outside the scope of the definition of laws, regulations and requirements to determine whether assistance will be provided in such cases.

IV. Requests for Information and Assistance

11. The Memorandum does not affect the ability of the Authorities to obtain information from persons on a voluntary basis, provided that procedures in place in the jurisdiction of each Authority for the provision of such information are observed.

12. Any request for information or assistance made under this Memorandum will, wherever possible, be in writing, but in cases of urgency it may be oral and confirmed in writing within 10 days.

13. To facilitate an appropriate and timely response, the requesting Authority should specify:

- (a) the information or assistance required (identity of persons, specific questions to be asked etc.);
- (b) the purpose for which the information or assistance is sought (including in appropriate cases details of the law, regulation or requirement of the requesting Authority which is suspected to have been breached);
- (c) a description of any particular conduct or suspected conduct which has given rise to the request, and its connection with the jurisdiction of the requesting Authority;
- (d) the link between any suspected breach of law, regulation or requirement and the regulatory functions of the requesting Authority;
- (e) the relevance of the requested information or assistance to any suspected breach of law, regulation or requirement of the requesting Authority; and
- (f) any information related to the urgency of the request for information or assistance.

The requested information must be reasonably relevant to securing compliance with the law, regulation or requirement specified in the request.

14. A request for information or assistance made under this Memorandum shall be addressed to one of the requested Authority's contact points listed in the Annex, or

that individual's nominee.

15. In any case where the request cannot be accepted completely, the requested Authority will consider whether there may be other assistance which can be given. In particular, the requested Authority will consider in appropriate cases whether the request might be dealt with via channels for mutual assistance in criminal matters.

16. In any case where a requested Authority is not satisfied that a request fully complies with the requirements of the Memorandum, it may require the head of the requesting Authority to certify that the request meets the provisions in this Memorandum. The requested Authority should review its position in the light of such a certification.

17. In deciding whether to accept or decline a request the requested Authority will, in particular, take account of:

- (a) matters specified by the laws and regulations in the jurisdiction of the requested Authority;
- (b) whether the request involves an assertion of jurisdiction not recognised by the requested Authority;
- (c) whether it would be contrary to the essential interests of the requested Authority to give the assistance sought; and
- (d) the resources available to the requested Authority to deal with the request.

18. The requested Authority may, as a condition of agreeing that assistance is given under the Memorandum, 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.

V. Permissible Uses and Confidentiality

19. An Authority that receives non-public information under this Memorandum agrees to treat such information as confidential in accordance with the provisions of this Memorandum and to the extent permitted by law.

20. An Authority that receives non-public information under this Memorandum will use that information only for the purposes set forth in the request for assistance, and for its supervisory functions.

21. If the recipient Authority intends to use information provided under this

Memorandum for any purpose other than those contemplated in paragraph 13, it will seek prior consent of the Authority providing the information.

22. Subject to paragraph 25, the requesting Authority confirms that it will not, without the prior written consent from the requested Authority, disclose non-public information it receives under this Memorandum.

23. Subject to paragraph 25, the requesting Authority will not disclose the information obtained pursuant to this Memorandum to third parties, without the prior written commitment from such third parties to keep the information confidential.

24. Subject to paragraph 25, the recipient Authority will comply with any restrictions on the use or disclosure of information that are agreed when the information is provided.

25. If the requesting Authority is subject to a mandatory disclosure requirement or receives a legally enforceable demand for information under applicable laws, regulations and requirements, the requesting Authority will notify the requested Authority of its obligation to disclose and will endeavour to seek consent from the requested Authority before making a disclosure. If the requested Authority withholds its consent, the requesting Authority will use its best efforts to protect the confidentiality of non-public information obtained and, if necessary, to resist disclosure, including by asserting such appropriate legal exemptions or privileges with respect to that information as may be available, for example by advising the concerned court or requesting party of the possible negative consequences of a disclosure on future co-operation between the Authorities.

26. The Authorities agree to treat the non-public information received under this Memorandum as confidential to the extent permitted by law even after withdrawal from this Memorandum under paragraph 30 below.

VI. Consultations and Waiver

27. The Authorities will keep the operation of this Memorandum under continuous review and consult with a view to improving its operation and resolving any matters. In particular, an Authority will consult the other Authority upon request in the event of:

- (a) a request being denied in whole or in part;
- (b) a change in market or business conditions or in the laws, regulations or requirements governing insurance business, or any other difficulty arisen which makes it necessary to amend or extend this Memorandum in order to achieve its purposes; or

- (c) an assertion by the requested Authority that the provision of assistance would be so burdensome as to disrupt the proper performance of its functions.

28. 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 in order to determine the most appropriate means for each Authority to provide assistance.

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

VII. Termination

30. This Memorandum will continue to have effect unless terminated by one of the Authorities by giving 30 days advance written notice to the other Authority that understandings set out herein are no longer to have effect.

31. Termination will not in any way affect the benefits and commitments of either Authority with respect to confidential information previously provided under this Memorandum and any privileges associated with such information.

VIII. Contact Points

32. All communications between the Authorities should be between the principal points of contact listed in the Annex unless otherwise agreed.

IX. Entry into Effect

33. This Memorandum will be effective from the date of its signature by the Federal Financial Supervisory Authority (BaFin), Germany and the Insurance Authority of the Hong Kong Special Administrative Region.

FOR
THE FEDERAL FINANCIAL SUPERVISORY
AUTHORITY (BaFin), GERMANY

.....
DR. THOMAS STEFFEN,
CHIEF EXECUTIVE DIRECTOR,
INSURANCE AND PENSION FUNDS SUPERVISION

Signed on _____

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

.....
MR. CLEMENT CHEUNG,
COMMISSIONER OF INSURANCE

Signed on _____