



**SECURITIES AND
FUTURES COMMISSION**
證券及期貨事務監察委員會

FRC Financial
Reporting Council
財務匯報局

MEMORANDUM OF UNDERSTANDING

BETWEEN

SECURITIES AND FUTURES COMMISSION

AND

FINANCIAL REPORTING COUNCIL

24 February 2021

Memorandum of Understanding
between
The Securities and Futures Commission
and
The Financial Reporting Council

This Memorandum of Understanding (**MOU**) is entered into between the Securities and Futures Commission (**SFC**) of 54/F, One Island East, 18 Westlands Road, Quarry Bay, Hong Kong, and the Financial Reporting Council (**FRC**) of 24/F, Hopewell Centre, 183 Queen's Road East, Hong Kong.

I. INTERPRETATION

1. **Enquiry** means an enquiry initiated by the FRC under section 40 of the FRCO or the Pre-amended FRCO.
2. **FRCO** means the Financial Reporting Council Ordinance (Cap. 588) as in force from time to time as from 1 October 2019.
3. **Investigation** means an investigation initiated by the FRC under section 23 of the FRCO or the Pre-amended FRCO.
4. **Listed Entity** means any listed entity as defined in section 3 of the FRCO or the Pre-amended FRCO.
5. **Listed Overseas CIS** means a collective investment scheme which is (a) constituted under the laws of any place outside Hong Kong; and (b) listed or seeking to be listed in Hong Kong.
6. **Misconduct** means any misconduct as defined respectively in sections 37A and 37B of the FRCO.
7. **Parties** means the SFC and the FRC; and **Party** means either of them.
8. **PIE Auditor** means a PIE auditor as defined in section 3A of the FRCO.

9. ***PIE Engagement*** means an engagement as defined in Part 1 of Schedule 1A to the FRCO.
10. ***Practice Irregularity*** means practice irregularity as defined in section 4 of the FRCO and includes “relevant irregularity” as defined in section 4 of the Pre-amended FRCO.
11. ***Pre-amended FRCO*** means the Financial Reporting Council Ordinance (Cap. 588) as in force immediately before 1 October 2019.
12. ***Relevant Non-compliance*** means relevant non-compliance in relation to a Listed Entity as defined in section 5 of the FRCO or the Pre-amended FRCO.
13. ***SFO*** means the Securities and Futures Ordinance (Cap. 571) as in force from time to time.

II. INTRODUCTION

The SFC

14. The SFC is an independent statutory body established under the repealed Securities and Futures Commission Ordinance (Cap. 24) and continued in existence under the SFO to regulate Hong Kong’s securities and futures markets. The SFC’s statutory regulatory objectives are set out in section 4 of the SFO and those which are relevant to this MOU are to:
 - (a) maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry;
 - (b) provide protection for members of the public investing in or holding financial products; and
 - (c) minimize crime and misconduct in the securities and futures industry.
15. The SFC carries out enforcement actions in relation to listed corporations (as defined in

the SFO), such as investigating into their suspected fraudulent, prejudicial or unlawful transactions, misconduct, oppression of their members or failure to disclose all information their members might reasonably expect, provision of false or misleading information, etc. It also investigates suspected crimes or misconduct in the securities and futures industry and those investigations may involve listed corporations, their auditors or reporting accountants. Together with the Stock Exchange of Hong Kong Limited, the SFC also vets listing applications and reviews disclosure materials by listing applicants or listed corporations under the "dual filing" system. These may include information disclosed under relevant financial reporting obligations applying to listing applicants or listed corporations. In relation to listed corporations, the SFC also investigates suspected late or non-disclosure of inside information under Part XIVA of the SFO. Further, the SFC authorizes collective investment schemes for offering to the public in Hong Kong.

The FRC

16. The FRC is a statutory body established under the FRCO. The FRC's main functions relevant to this MOU are:

(A) In relation to auditors of Listed Entities:

To regulate auditors of Listed Entities through the following means:

- (a) by a system of registration (implemented by the Hong Kong Institute of Certified Public Accountants and overseen by the FRC) and recognition whereby (i) Hong Kong and non-Hong Kong auditors of Listed Entities are required to be registered and recognized respectively as PIE Auditors; and (ii) such registration and recognition is required to be renewed annually;
- (b) by (i) conducting inspections of PIE Auditors' internal quality control systems and selected engagements, (ii) preparing reports of inspections of individual PIE Auditors; (iii) taking appropriate follow-up measures in relation to inspections of PIE Auditors; and (iv) publishing annual inspection findings with highlights of the important issues identified;
- (c) by conducting Investigations into possible Misconduct or Practice Irregularities, and preparing reports thereon for the consideration of appropriate follow-up action

including sanctions by the FRC or by other authorities; and

(d) by imposing sanctions for Misconduct.

(B) In relation to Listed Entities:

To monitor the compliance by Listed Entities of regulatory requirements for financial reports by conducting Enquiries and preparing reports thereon, securing the removal of any Relevant Non-compliance; and referring the reports to other appropriate authorities for follow-up action where necessary.

Reasons for this MOU

17. Both Parties recognize the importance of ensuring the observance of proper standards by PIE Auditors in their professional work and by Listed Entities in their financial reporting to maintain investors' confidence in Hong Kong as an international financial centre. This MOU sets out the working arrangements between the Parties in order to reduce, as far as practicable, any duplication of effort and to ensure efficient and effective co-operation and coordination of the Parties' respective functions in relation to the regulation of PIE Auditors and the compliance by Listed Entities of regulatory requirements in financial reporting.

18. Pursuant to sections 24 and 29 of the FRCO or the Pre-amended FRCO:

(a) If the FRC initiates an Investigation in relation to a Listed Entity which is a licensed person within the meaning of section 1 of Part 1 of Schedule 1 to the SFO or a collective investment scheme authorized under section 104 of the SFO, the FRC shall inform the SFC by written notice that the Investigation is to be carried out; and

(b) the investigator shall not exercise the powers against any person vested in it by sections 25 or 26 of the FRCO or sections 25, 26 or 28 of the Pre-amended FRCO, as the case may be, for the purpose of the Investigation without first consulting the SFC if the person is a licensed person within the meaning of section 1 of Part 1 of

Schedule 1 to the SFO or a responsible person within the meaning of section 2 of the FRCO of a collective investment scheme authorized under section 104 of the SFO.

19. Pursuant to sections 42 and 43 of the FRCO or the Pre-amended FRCO:

- (a) If the FRC initiates an Enquiry into Relevant Non-compliances in relation to a Listed Entity which is a licensed person within the meaning of section 1 of Part 1 of Schedule 1 to the SFO or a collective investment scheme authorized under section 104 of the SFO, the FRC shall inform the SFC by written notice that the Enquiry is to be carried out; and
- (b) the enquirer shall not exercise powers against any person vested in it under section 43 of the FRCO or the Pre-amended FRCO for the purpose of the Enquiry without first consulting the SFC if the person is a licensed person within the meaning of section 1 of Part 1 of Schedule 1 to the SFO or a responsible person within the meaning of section 2 of the FRCO of a collective investment scheme authorized under section 104 of the SFO.

20. This MOU also sets out the arrangements for the notification and consultation processes.

III. GUIDANCE ON CO-OPERATION AND COLLABORATION BETWEEN THE SFC AND THE FRC

Cases of overlapping authority and matters of mutual interests

21. The Parties recognize that there are areas in relation to the observance of proper standards by PIE Auditors and the observance of relevant regulatory requirements by Listed Entities in which the Parties have overlapping remit in terms of their functions and powers or in which they have a mutual interest. The Parties will therefore endeavour to ensure that the Party with the more appropriate functions and powers will take enforcement action in such cases.

22. Cases of mutual interest will be reviewed by the Parties regularly to determine which Party should have the lead responsibility for taking any necessary enforcement action.
23. In cases of overlapping remit, the Parties will have regard to the principle that a PIE Auditor or Listed Entity should not be unnecessarily subject to concurrent enforcement actions from two authorities for the same issue, unless it is appropriate in the circumstances.
24. If one Party is considering taking enforcement action when it is aware of the fact that the other Party has already commenced an enforcement action in relation to the same issue, the Parties will, subject to applicable laws, liaise and discuss how best to proceed with their respective enforcement actions.

Conduct of concurrent enforcement actions

25. The Parties recognize that when both Parties undertake concurrent enforcement actions in relation to the same issue, steps undertaken by one Party may have an impact on the action of the other. Consequently, the Parties will, in such cases and subject to applicable laws, notify each other of significant developments in their respective enforcement action and of any significant steps they propose to take, such as:
 - (a) interviewing a key witness;
 - (b) requiring the provision of significant volumes of documents;
 - (c) executing a search warrant; or
 - (d) instituting proceedings or otherwise disposing of the matter.
26. If the Parties identify that a particular step being considered by one Party may prejudice the other Party's enforcement action, the Parties will, subject to applicable laws, discuss the matter and decide what action should be taken and by whom. In reaching these decisions, the Parties will bear in mind how their overall objectives are best served.

Joint investigations

27. In respect of significant and urgent cases which fall within the functions of both Parties, the Parties may agree to commence joint investigations in order to minimize the duplication of effort, and enhance the efficient use of their respective resources as well as the effectiveness of the investigations.
28. Once the Parties have commenced a joint investigation, they will set up a joint task force and decide on its membership to ensure efficient and timely exchange of information and coordination. The joint investigation task force will convene an initial coordination meeting as soon as practicable to formulate investigation plans, determine investigatory responsibilities and coordinate the collection of evidence. The joint investigation task force will also convene meetings at agreed regular intervals to review the progress of the joint investigation and discuss the action to be taken during or at the conclusion of the joint investigation.
29. Prior to the publication of any information concerning joint investigations, such as press releases, the parties will consult each other to ensure that the timing and contents of the releases are coordinated.

Co-operation

Complaint or referral to the FRC

30. In the performance of its functions under the SFO, if the SFC becomes aware of any matter which may fall within the regulatory remit of the FRC, the SFC will make a complaint or otherwise refer the matter to the FRC for consideration of follow-up actions. In making such complaint or referral, the SFC will, subject to applicable laws, use its best endeavours to provide the FRC with all relevant information in its possession and the rationale for the complaint or referral.

Complaint or referral to the SFC

31. If it comes to the notice of the FRC, during the performance of its duties, that there is any matter which may fall within the regulatory remit of the SFC, the FRC will make a complaint or otherwise refer the matter to the SFC for consideration of follow-up actions. In making such complaint or referral, the FRC will, subject to applicable laws, use its best endeavours to provide the SFC with all relevant information in its possession and the rationale for the complaint or referral.

Follow-up on complaints or referrals

32. Either Party who has received a complaint or referral under paragraph 30 or 31 above will, subject to applicable laws, inform the other Party of its decision over the complaint or referral and the reasons therefor.

Enforcement actions in relation to Listed Entities

33. If the FRC finds, following any Enquiry, that there is Relevant Non-compliance, the FRC may consider exercising its powers under section 49 or section 50 of the FRCO or the Pre-amended FRCO to secure the removal of the Relevant Non-compliance. Subject to applicable laws, the FRC agrees to inform the SFC that the exercise of such powers is under consideration and of the result of such consideration if the Relevant Non-compliance may also be a matter of interest or concern to the SFC.
34. Whenever the SFC is to pursue any enforcement action against any Listed Entity for any matter that reveals possible Relevant Non-compliance, and subject to applicable laws, it agrees to inform the FRC of such action if the SFC considers that the matter may be of interest or concern to the FRC.

Other Assistance

35. Each Party will, in good faith, consider rendering technical and other assistance to the other Party upon request including providing advice or the expertise of a market expert, an industry expert or an accounting expert, on a case-by-case basis.

Notification and Consultation

Certain Investigations and Enquiries

36. When the FRC initiates an Investigation or Enquiry as mentioned in paragraphs 18 and 19 above, it shall give written notice to the SFC as soon as practicable. The written notice will identify the Listed Entity concerned, provide brief reasons for the initiation of the Investigation or Enquiry (as the case may be) and specify the powers that are exercisable by the investigator or enquirer (as the case may be).
37. If an investigator or enquirer intends to exercise the relevant powers mentioned in paragraphs 18 and 19 above, prior consultation with the SFC will be conducted as soon as practicable where circumstances require such consultation. The need for consultation will first be conveyed by the Department of Investigation and Compliance of the FRC to the Enforcement Division of the SFC. It is advisable to have prior informal consultation between the Parties.
38. Formal consultation may be conducted by way of a meeting or through the exchange of letters. The salient points discussed and the key issues agreed will, in each case, be documented.

Non-enforcement related cooperation – notification of recognition of PIE Auditors

39. Where, in respect of an application for the recognition of an overseas auditor as a PIE Auditor, the SFC (a) issues a statement of no objection under section 20ZF(2)(a) of the FRCO to a Listed Overseas CIS for appointing an overseas auditor to carry out a PIE Engagement for such Listed Overseas CIS or (b) withdraws such a statement of no objection referred to in section 20ZF(2)(a) of the FRCO under section 20ZS(2)(c) of the FRCO, the SFC will notify the FRC of such issuance or withdrawal.
40. Where the FRC makes a decision to (a) grant or refuse an application by a Listed Overseas CIS for the recognition of an overseas auditor as a PIE Auditor of such Listed Overseas CIS under section 20ZF of the FRCO or (b) revoke or suspend under section

20ZS of the FRCO the recognition of an overseas auditor as a PIE Auditor of a Listed Entity, the FRC will notify the SFC of the decision.

41. Either Party intending to publish any public document in relation to the recognition of overseas auditors of a Listed Overseas CIS will, to the extent practicable and where considered appropriate, inform the other Party and circulate the draft document to the other Party for comment before publication.

Other Issues

42. Each Party, as and when it considers appropriate and to the extent practicable and subject to applicable laws, will notify the other Party of any issue that the notifying Party believes may have a significant implication for the other Party. This may include the development and publication of policies and guidelines, for example:
 - (a) where any of the SFC's proposed policies or guidelines are likely to have significant impact on the FRC's regulatory functions; and
 - (b) where any of the FRC's proposed policies or guidance are likely to have significant impact on the SFC's regulatory functions.

Meetings

43. Representatives from both Parties will meet at least once a year to review the functioning of this MOU and any significant matters arising therefrom in the preceding 12 months.
44. *Ad hoc* meetings may also be held as necessary.

Capacity Building

45. The Parties intend to co-ordinate their training initiatives and organize joint training opportunities to improve the capacity and effectiveness of their staff in performing their respective functions.

IV. SHARING OF INFORMATION

46. The Parties will exchange information which is conducive to the objectives of this MOU and which may assist the other Party in discharging its functions.
47. Information will be provided by either Party to the other in accordance with applicable laws. The recipient shall only use such information for the purpose of performing its statutory functions.

Confidentiality

48. Any information shared by the Parties under this MOU shall be subject to obligations of professional secrecy and such statutory duties of confidentiality as may apply thereto. Each Party will only disclose to a third party confidential information obtained from the other subject to the provisions of this paragraph. The receiving Party:
 - (a) will not, except as otherwise required or permitted by applicable laws, including without limitation the discharge of a Party's functions under the SFO or the FRCO as applicable, make any disclosure of information received under this MOU to a third party without the prior written consent of the Party providing the information;
 - (b) will notify the providing Party as soon as reasonably practicable in the event that the receiving Party must disclose information received under this MOU pursuant to a legal requirement under applicable laws.; and
 - (c) will comply with any restrictions or conditions on the use of information that are imposed by the other Party at the time when the information is provided.

V. FURTHER MATTERS RELATING TO THIS MOU

49. This MOU does not modify or supersede any law or regulatory requirement in Hong Kong. It is a statement of intent of the Parties and is not intended to and does not create any binding legal obligations, fetter the discretion of the Parties in any way in the

discharge of their functions or create any rights in third parties.

50. This MOU supersedes the Memorandum of Understanding entered into between the Parties on 12 November 2007 and will come into effect on 24 February 2021.
51. The Parties have agreed to keep this MOU under review and will consult each other when necessary with a view to improving the Parties' operations, collaboration and co-operation, resolving any matters arising from this MOU and making any necessary amendments.

Signed for and on behalf of

THE FINANCIAL REPORTING COUNCIL

Marek Grabowski

Chief Executive Officer

Dated: 24 February 2021

Signed for and on behalf of

THE SECURITIES AND FUTURES COMMISSION

Ashley Alder

Chief Executive Officer

Dated: 24 February 2021