

Memorandum of Understanding signed by the Securities and Futures Commission and the Insurance Authority for better co-operation and enforcement

October 20, 2020

On 28 September 2020, the Securities and Futures Commission (“**SFC**”) and the Insurance Authority (“**IA**”) entered into a new Memorandum of Understanding (“**MoU**”), which superseded a previous memorandum of understanding signed on 20 December 2005.¹

While not legally binding, the purpose of the MoU is to enhance co-operation between the SFC and the IA, and improve the efficiency of their respective enforcement powers through co-operation. While each body is empowered to regulate the institutions within its ambit, increasingly, there are circumstances where entities or key persons may be of interest to both the SFC and the IA, for example:

- where an authorised insurer or a licensed insurance intermediary or its subsidiary is an SFC-licensed person;
- where an SFC-licensed person’s subsidiary is an authorised insurer or a licensed insurance intermediary;
- where an authorised insurer or a licensed insurance intermediary is involved in the management, operation, administration, issuance or distribution of any SFC-authorised investment products e.g. collective investment schemes and structured products;
- where a group has both an SFC-licensed person and an authorised insurer and/or a licensed insurance intermediary; and
- where an authorised insurer is seeking to obtain or maintain the SFC’s authorisation of a collective investment scheme that is insurance-related e.g. investment-linked assurance schemes, approved pooled investment funds under the mandatory provident funds regime and pooled retirement funds under the occupational retirement schemes regime.

In July 2020, a new regulatory regime was introduced in Hong Kong for insurance-linked securities (ILS) business. For more details about this, read our article [here](#).

Both the SFC and the IA acknowledge the importance of closer co-operation and mutual assistance in matters concerning insurance-related investment products, licensing, supervision and enforcement matters of mutual concern. The MoU evinces both bodies’ commitment for future referral of cases for attention, joint inspections and investigation, and the sharing of information pertaining to products and relevant entities or key persons.

Key features of the MoU include:

- **Referrals of enforcement cases:** The SFC or IA will actively consider whether it should refer matters to the other party for possible action. A party may refer a case where the suspected offence or misconduct falls entirely outside its own functions but within the functions of the other party, or the suspected offence or misconduct falls within both parties’ functions, and referring the case to the other party having considered the other party is in a better position to handle the case and/or the other party is already handling the same case to prevent a parallel investigation;

- **Joint investigation and inspections:** The SFC or IA may agree to commence a joint investigation or joint inspection on an authorised insurer, licensed insurance intermediary or SFC-licensed corporation regulated under their respective supervisory regimes to reduce duplication of effort and to enhance the effective use of resources and effectiveness of the investigation. A joint task force will be created to ensure efficient and timely exchange of information and coordination; and
- **Confidentiality:** A party may provide information on its own volition or upon the other party's request in writing. Each party shall also provide the other party with information regarding any complaint, disciplinary action or material inspection finding. Any non-public information exchanged between the parties under the MoU (including requests made under the MoU, and the contents of such requests) will be treated as confidential and used by the recipient only in accordance with applicable laws and the MoU for the purposes stated in any written requests for information or assistance. Each party will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of information exchanged pursuant to applicable law and under the MoU.

1. The new MoU reflects the implementation of the direct regulatory regime under the Insurance Companies Ordinance (Cap. 41) as amended by the Insurance Companies (Amendment) Ordinance 2015.↩

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