

## **MEMORANDUM OF UNDERSTANDING**

### **PARTIES TO THE MEMORANDUM:**

- (1) Financial Dispute Resolution Centre ("FDRC");
- (2) Monetary Authority ("MA"); and
- (3) Securities and Futures Commission ("SFC").

### **PURPOSES**

1. This Memorandum of Understanding ("MoU") provides a framework agreed by the FDRC, the MA and the SFC (each referred to as a "Party", together as "Parties") to delineate the roles and responsibilities of: (i) the FDRC; and (ii) the MA and the SFC to ensure the smooth operation of the financial dispute resolution scheme ("Scheme"). The Parties also desire to promote co-operation and the exchange of information so that they may effectively perform their respective roles, functions and responsibilities.

### **PRINCIPLES**

2. This MoU recognizes the following principles:
  - (a) the Parties will at all times use their best endeavours to meet the terms of this MoU;
  - (b) this MoU, of which the Annex is an integral part, does not modify or supersede any law or regulation;
  - (c) this MoU does not detract from the functions, objectives or duties of the Parties under the relevant ordinances or documents;

- (d) this MoU does not amount to a delegation of any of the powers, duties and obligations of the Parties;
  - (e) this MoU does not create, directly or indirectly, any rights, obligations or liabilities, enforceable by the Parties or by any third party;
  - (f) this MoU does not affect any arrangements under any other MoU that any of the Parties has entered into or may enter into with any other party; and
  - (g) the applicable law is the laws of Hong Kong,
- and this MoU shall be construed accordingly.

#### **ROLES AND RESPONSIBILITIES**

3. The FDRC is a company limited by guarantee incorporated in Hong Kong under the Companies Ordinance (Cap. 32) on 18 November 2011. It is a non-statutory and non-profit making company. The objectives of FDRC are set out in its Articles of Association. Its main role is to establish, promote, manage or administer (whether alone or jointly with any other person or persons) the Scheme. The FDRC will facilitate the resolution of monetary disputes between customers (including individuals, sole proprietors, partnerships and limited companies (including financial institutions where applicable)) and financial institutions<sup>1</sup> ("FIs") primarily by way of mediation, failing which and if the claimant so wishes, arbitration. The FDRC does not have any investigative or disciplinary powers.
4. The MA is appointed pursuant to the Exchange Fund Ordinance (Cap. 66) and is responsible for supervising authorized institutions<sup>2</sup> ("AIs") under the Banking Ordinance (Cap. 155) ("BO"). The

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<sup>1</sup> "[F]inancial institutions" means financial institutions or financial services providers authorized by the MA or licensed by the SFC, but excludes those financial institutions which only carry on Type 10 regulated activity (i.e. provision of credit rating services) under the Securities and Futures Ordinance (Cap. 571).

<sup>2</sup> "[A]uthorized institutions" refers to banks, restricted licence banks or deposit-taking companies.

principal function of the MA under the BO is to promote the general stability and effective working of the banking system. In particular, the MA is responsible for: ensuring that AIs operate in a responsible, honest and business-like manner; promoting and encouraging proper standards of conduct and sound and prudent business practices among AIs; suppressing illegal, dishonourable business practices; co-operating with and assisting other supervisory authorities within and outside Hong Kong; and considering and proposing reforms of the law relating to banking business and the business of taking deposits. The MA may issue guidelines in relation to its functions for the guidance of AIs. The MA is also the frontline supervisor of registered institutions<sup>3</sup> and is responsible for the day-to-day supervision of the carrying on of regulated activities by registered institutions.

5. The SFC is responsible for administering the laws governing the securities and futures industry<sup>4</sup> in Hong Kong. The SFC is obliged under the Securities and Futures Ordinance (Cap. 571) ("SFO") to: maintain and promote the fairness, efficiency, competitiveness, transparency and orderliness of the securities and futures industry; promote understanding by the public of financial services including how the securities and futures industry works; provide protection for members of the public investing in financial products; minimize crime and misconduct in the securities and futures industry; reduce systemic risks in the securities and futures industry; and assist the Financial Secretary in maintaining the financial stability of Hong Kong by taking appropriate steps in relation to the securities and futures industry. Under the SFO, the SFC is also responsible for: the licensing and registration of intermediaries<sup>5</sup> engaged in regulated activity<sup>6</sup> as defined under the SFO; the licensing of individual

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<sup>3</sup> "[R]egistered institutions" refers to AIs which are registered under section 119 of the SFO.

<sup>4</sup> "[S]ecurities and futures industry" is defined in section 1 of Part 1 of Schedule 1 to the SFO as meaning "the securities and futures market and participants (other than investors) therein (including recognized exchange companies, recognized clearing houses, recognized exchange controllers, recognized investor compensation companies and persons carrying on any regulated activity), and any activities related to financial products that are carried on in such securities and futures market or by such participants."

<sup>5</sup> "[I]ntermediaries" refers to corporations licensed with the SFC under section 116 or 117 of the SFO as licensed corporations, or registered with the SFC under section 119 of the SFO as registered institutions.

<sup>6</sup> See Schedule 5 to the SFO for the definition of each regulated activity.

representatives of licensed corporations; the supervision of licensed persons; and enforcement matters including investigating suspected crime and misconduct in the securities and futures industry, taking disciplinary and other action in relation to intermediaries and related regulated persons and conducting civil and criminal proceedings.

## **COOPERATION AND INFORMATION SHARING**

6. The Parties agree that they will, to the extent permitted by law and not prejudicial to their own functions:
  - (a) consult one another at an early stage on any issues which might have significant implications for the other Parties;
  - (b) seek to promote understanding of their different roles and responsibilities;
  - (c) seek to achieve a complementary and consistent approach, so far as that is consistent with their independent roles;
  - (d) meet at least once a year to review the implementation of this MoU and any significant matters arising in the preceding 12 months (ad hoc meetings may also be held as the need arises) and communicate regularly to discuss matters of mutual interest;
  - (e) periodically review operational procedures on dealing with routine information-sharing; and
  - (f) share at an early stage information that affects the functions of another Party.
  
7. The FDRC agrees that it will:
  - (a) explain to the customers of FIs who approach the FDRC the possible channels they may have for resolving monetary disputes with the FIs and how they may take their cases forward. In relation to cases involving regulatory concerns, it will be up to the customers to decide if they would like to refer

their cases to regulators to follow up on the part of any alleged misconduct;

- (b) submit such information within its knowledge relating to systemic issues<sup>7</sup> and/or suspected serious misconduct cases to the MA and the SFC. The FDRC should, unless informed by the MA and/or the SFC otherwise, continue to process the monetary disputes aspects of such cases in parallel provided sufficient funding and resources are in place;
  - (c) if an FI fails to fulfill any of its obligations under the Terms of Reference of the FDRC, issue a non-compliance letter/notice to the FI with a copy to the MA and/or the SFC for possible follow-up actions; and
  - (d) regularly inform the MA and the SFC about the number and types of disputes handled by the FDRC on an anonymous basis.
8. The MA and the SFC agree that they will, to the extent permitted by law and not prejudicial to their own functions:
- (a) respect the FDRC's principle of impartiality and confidentiality. They will only request the FDRC to provide information that is reasonably required for discharging their statutory functions;
  - (b) inform the complainants who wish to lodge a complaint against an FI to the MA and/or the SFC of the option of going to the FDRC for cases involving monetary disputes. It will be up to such person to decide if he/she should refer his/her case to the FDRC;
  - (c) where relevant, inform the FDRC of any issuance of new codes, guidelines, rules, regulations and requirements enforced by the MA or the SFC, as well as any changes to such codes, guidelines, rules, regulations and requirements that may have

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<sup>7</sup> "[S]ystemic issues" relate to issues that have affected or have the potential to affect other customers of the relevant FI or members of the public.

an impact on the work of the FDRC and/or the operation of the Scheme;

- (d) where permissible, assist the FDRC in the delivery of training to mediators and/or arbitrators in respect of the regulatory framework of the banking and securities and futures industry in Hong Kong;
  - (e) where reasonably requested by the FDRC, update the list of FIs covered by the Scheme;
  - (f) inform FDRC of an FI's name change, the authorization, licensing or registration of a new FI, or the revocation or suspension of an FI's authorization, licence or registration; and
  - (g) where permissible, invite staff of the FDRC to attend relevant briefing or training sessions organized by the MA and/or the SFC to keep the staff of the FDRC abreast of the latest development of the regulatory framework that may have an impact on the work of the FDRC and/or the operation of the Scheme.
9. Information exchange will be made in written form among the designated principal contacts of the Parties (see **Annex**) unless otherwise agreed.

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

10. Assistance or information will only be provided by each Party to any other Party hereto in accordance with the law and for the purposes of assisting the other Party in the performance of its functions or meeting its objectives.
11. Any assistance or information provided under this MoU will be used by the recipient only for the purposes of performing its functions or meeting its objectives. A recipient of information provided under this MoU will not disclose the information to any third party unless:
- (a) prior written consent of the provider of the assistance or

information has been obtained; or

(b) the disclosure is required by applicable laws.

12. Each Party will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.

#### **AMENDMENTS**

13. Each Party may at any time request the other Parties to agree to make a specific amendment, whether by supplement or otherwise, to this MoU, or may invite consultation with the other Parties regarding the need for any amendment or supplement to this MoU.
  14. An amendment or supplement to this MoU takes effect only by written agreement of all the Parties.
  15. Each Party may at any time make any change to the contact details of the designated principal contacts of such Party or to its designated principal contacts (see **Annex**). Any such change may take effect upon written notification to the other Parties.
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This MoU shall take effect from 1 January 2018.

Signed for and on behalf of the  
FINANCIAL DISPUTE RESOLUTION CENTRE



Mr Anthony Ng

Chief Executive Officer

Dated 13 November 2017

Signed by the  
MONETARY AUTHORITY



Mr Norman T. L. Chan

Chief Executive

Dated 15 November 2017

Signed for and on behalf of the  
SECURITIES AND FUTURES COMMISSION



Mr Ashley Alder

Chief Executive Officer

Dated 18 November 2017



**DESIGNATED PRINCIPAL CONTACTS**

The designated principal contacts for the communication and exchange of information among the Parties as set out in this MoU are as follows:

| <u>Financial Dispute Resolution Centre</u>  | <u>Monetary Authority</u>   | <u>Securities and Futures Commission</u>  |
|---|---|---|
| <p>Unit 3701-04, 37/F., Sunlight Tower, 248 Queen's Road East, Wan Chai, Hong Kong</p> <p>Name: Mr Anthony Ng<br/>Title: Chief Executive Officer</p> <p>Tel : 3199 5151<br/>Fax : 2565 8662<br/>Email:<br/>Anthony.Ng@fdrc.org.hk</p> | <p>55/F, Two International Finance Centre, 8 Finance Street, Central, HongKong</p> <p>In respect of this MoU other than paragraphs 7(a), 7(b), 7(c), 7(d), and 8(b) –</p> <p>Name: Ms Sarah Kwok<br/>Title: Head (Banking Conduct)</p> <p>Tel : 2878 1513<br/>Fax: 2258 5252</p> <p>Email:<br/><a href="mailto:sarah_sn_kwok@hkma.gov.hk">sarah_sn_kwok@hkma.gov.hk</a></p> <p>In respect of paragraphs 7(a), 7(b), 7(c), 7(d), and 8(b) of this MoU -</p> <p>Name: Mr Steve Lau<br/>Title: Head (Enforcement)</p> <p>Tel : 2516 6116<br/>Fax : 2516 6734<br/>Email:<br/><a href="mailto:spwlau@hkma.gov.hk">spwlau@hkma.gov.hk</a></p> | <p>35/F Cheung Kong Center, 2 Queen's Road Central, Hong Kong</p> <p>Name: Mr Paul Yeung<br/>Title: Commission Secretary and Senior Director</p> <p>Tel : 2231 1498<br/>Fax: 2293 5647</p> <p>Email:<br/><a href="mailto:pklyeung@sfc.hk">pklyeung@sfc.hk</a></p> |

