



AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING

BETWEEN

THE STOCK EXCHANGE OF HONG KONG LIMITED

AND

THE FINANCIAL REPORTING COUNCIL

8 June 2021

Amended and Restated Memorandum of Understanding
between
The Stock Exchange of Hong Kong Limited
and
The Financial Reporting Council

This Amended and Restated Memorandum of Understanding (**MOU**) is entered into between The Stock Exchange of Hong Kong Limited (**SEHK**) of 8th Floor, Two Exchange Square, 8 Connaught Place, Central, Hong Kong, and the Financial Reporting Council (**FRC**) of 24th Floor, Hopewell Centre, 183 Queen's Road East, Hong Kong.

WHEREAS the Parties have entered into a Memorandum of Understanding on 27 December 2007 which sets out the co-operation arrangements between the Parties for the purpose of ensuring the efficient and effective discharge of their regulatory functions in relation to listed entities, the Parties are desirous of entering into this MOU to update the co-operation arrangements in light of the Financial Reporting Council (Amendment) Ordinance 2019.

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. **Listing Rules** means those listing rules made under section 23(2) of the SFO and issued by the SEHK for application by issuers listed on the Main Board and GEM.
5. **Misconduct** means any misconduct as defined respectively in sections 37A and 37B of the FRCO.

6. *Parties* means the SEHK and the FRC; and *Party* means either of them.
7. *PIE Auditor* means a PIE auditor as defined in section 3A of the FRCO.
8. *Practice Irregularities* means practice irregularities as defined in section 4 of the FRCO and includes “relevant irregularities” as defined in section 4 of the Pre-amended FRCO.
9. *Pre-amended FRCO* means the Financial Reporting Council Ordinance (Cap 588) as in force immediately before 1 October 2019.
10. *Relevant Non-compliance* means relevant non-compliance by a listed entity as defined in section 5 of the FRCO or the Pre-amended FRCO.
11. *SFC* means the Securities and Futures Commission, a statutory body established under the repealed Securities and Futures Commission Ordinance (Cap 24) and continued under the SFO.
12. *SFO* means the Securities and Futures Ordinance (Cap 571) as in force from time to time.

II. INTRODUCTION

The SEHK

13. The SEHK is a company duly incorporated under the laws of Hong Kong and is a recognised exchange company under the SFO. It operates the Main Board stock market and GEM in Hong Kong. The SEHK is a wholly-owned subsidiary of Hong Kong Exchanges and Clearing Limited (**HKEX**).
14. HKEX is a company duly incorporated under the laws of Hong Kong and is a recognised exchange controller under the SFO. It is also a listed company on the Main Board of the SEHK.

15. The SEHK is under a statutory duty to ensure, so far as reasonably practicable, that the Hong Kong markets are orderly, informed and fair. The SEHK is responsible for, amongst other things, making and administering the Listing Rules, and regulating companies listed or seeking to list on its markets. Furthermore, the SEHK has the legal functions under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32), transferred from the SFC by statutory order, of authorising prospectuses of companies that are or are to be listed on its markets.

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 recognised 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 recognise the importance of ensuring the observance of proper standards by PIE Auditors in their professional work and by listed entities in 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 co-ordination 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.

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

Cases of overlapping authority and matters of mutual interest

18. The Parties recognise that there are areas in relation to the observance of proper standards for 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 regulatory action in such cases.

19. Cases of mutual interest will be reviewed by the Parties regularly to determine which Party should have the lead responsibility for taking any necessary regulatory action.
20. In cases of overlapping remit, the Parties will have regard to the principle that a PIE Auditor or listed entity should not be subject to two sets of regulatory actions for the same issue unless it is more appropriate for both Parties to exercise different powers or take different regulatory actions.
21. However, if one Party is considering taking regulatory action when the other Party has already commenced its own regulatory action in relation to the same issue, the Parties will liaise and discuss how best to proceed with their respective regulatory actions.

Conduct of concurrent regulatory actions

22. The Parties recognise that in the event of concurrent regulatory actions, steps taken by one Party may prejudice the regulatory action of the other. Consequently, the Parties will, in such cases, notify each other of significant developments in their respective regulatory action and of any significant steps they propose to take, such as the FRC executing a search warrant or either Party:
 - (a) interviewing a key witness;
 - (b) requiring the provision of significant volumes of documents; or
 - (c) instituting proceedings or otherwise disposing of the matter.
23. If the Parties identify that a particular step proposed by one Party may prejudice the other Party's regulatory action, the Parties will 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.

Co-operation

Complaint or referral to the FRC

24. If it comes to the notice of the SEHK, during the performance of its duties, that there is any matter which may be subject to regulatory action by the FRC, the SEHK may make a complaint or otherwise refer the matter to the FRC for consideration of follow-up actions. In making such complaint or referral, the SEHK will use its best endeavours to provide the FRC with all relevant information in its possession and the reasons why the SEHK considers that it is appropriate for the FRC to act.

Complaint or referral to the SEHK

25. If it comes to the notice of the FRC, during the performance of its duties, that there is any matter which may be subject to regulatory action by the SEHK, the FRC may make a complaint or otherwise refer the matter to the SEHK for consideration of follow-up actions. In making such complaint or referral, the FRC will use its best endeavours to provide the SEHK with all relevant information in its possession and the reasons why the FRC considers that it is appropriate for the SEHK to act.

Follow-up on complaints or referrals

26. Either Party which has received a complaint or referral under paragraph 24 or 25 above will inform the other Party of its decision over the complaint or referral and the reasons therefor.

Regulatory action in relation to listed entities

27. 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 to secure the removal of the Relevant Non-compliance. The FRC agrees to inform the SEHK 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 regulatory action by the SEHK.

28. Whenever the SEHK is to pursue regulatory action against any listed entity for Relevant Non-compliance, it will keep the FRC informed of the progress of that action.

Other Assistance

29. Each Party will consider requests from the other Party for assistance to its regulatory functions, such as advice or other assistance from a market expert, an industry expert or an accounting expert, on a case-by-case basis. The other Party may offer such assistance as requested subject to the availability of its in-house experts or may recommend potential independent experts to the requesting Party.

Notification and Consultation

Recognition of PIE Auditors

30. Where, in respect of an application for the recognition of an overseas auditor as a PIE Auditor or an application for the renewal of such recognition, the HKEX (i) issues a statement of no objection under section 20ZF(2)(a) of the FRCO to a body corporate incorporated outside Hong Kong for appointing an overseas auditor or (ii) withdraws a statement of no objection, the HKEX will notify the FRC of the issuance or withdrawal of such statement.
31. Where the FRC makes a decision to (a) grant or refuse an application by a body corporate incorporated outside Hong Kong for the recognition of an overseas auditor as a PIE Auditor of such body corporate 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 body corporate incorporated outside Hong Kong, the FRC will notify the HKEX of the decision.
32. Either Party intending to publish any public document in relation to the recognition of overseas auditors 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

33. Each Party, as and when it considers appropriate and to the extent practicable, will notify the other 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 SEHK'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 SEHK's regulatory functions.

Meetings

34. 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.
35. *Ad hoc* meetings may also be held as necessary.

IV. SHARING OF INFORMATION

36. 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.
37. Information will be provided by either Party to the other Party in accordance with applicable laws. The receiving Party shall only use such information for the purpose of performing its statutory or regulatory functions.

Confidentiality

38. 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. The receiving Party will only disclose to a third party confidential information obtained from the other Party subject to the provisions of this paragraph. The receiving Party:
- (a) will not, except when subject to a legally enforceable demand, make any disclosure of such information which is inconsistent with any laws or regulations applicable to the provision of such information by the other Party;
 - (b) will endeavour to consult with the other Party whenever it proposes to pass on any such information to a third party except for information disclosed in accordance with the SFO or the FRCO;
 - (c) will endeavour to comply with any restrictions on the use of information that are imposed by the other Party at the time when the information is provided; and
 - (d) will notify the other Party whenever it receives a legally enforceable demand for any information supplied under this MOU.

V. FURTHER MATTERS RELATING TO THIS MOU

39. 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.
40. This MOU supersedes the Memorandum of Understanding entered into between the Parties on 27 December 2007.

41. 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: 8 June 2021

Signed for and on behalf of

THE STOCK EXCHANGE OF HONG KONG LIMITED



Romnesh Lamba

Chairman

Dated: 8 June 2021