

## **MEMORANDUM OF UNDERSTANDING**

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

- (1) Financial Dispute Resolution Centre Limited ("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 Memorandum and 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 individual customers (including sole proprietors) and financial institutions<sup>1</sup> ("FIs") by way of primarily mediation and, failing which and if the claimant so wishes, arbitration. The FDRC does not have any statutory 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

---

<sup>1</sup> "financial 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> "authorized institutions" refers to banks, restricted licence banks or deposit-taking companies.

the Banking Ordinance (Cap. 155) (“BO”). The 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 his 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 markets in Hong Kong and facilitating and encouraging the development of these markets. The SFC has responsibilities under the Securities and Futures Ordinance (Cap. 571) (“SFO”) to keep the securities and futures markets fair, efficient, competitive, transparent and orderly; to help the public understand how the securities and futures industry works; to protect investors’ interests; to minimize market crime and misconduct; to reduce systemic risks in the industry and to help maintain the financial stability in Hong Kong. Under the SFO, the SFC is also responsible for the licensing and supervision of intermediaries<sup>4</sup> and individuals engaged in regulated activity<sup>5</sup> as defined under the SFO.

## **COOPERATION AND INFORMATION-SHARING**

6. The Parties agree that they will, to the extent permitted by law and not prejudicial to their own functions, –

---

<sup>3</sup> “registered institutions” refers to AIs which are registered under section 119 of the SFO.

<sup>4</sup> “intermediaries” 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>5</sup> See Schedule 5 to the SFO for the definition of each regulated activity.

- (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 documents that affect the other's functions.

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 the 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 issue<sup>6</sup> and/or suspected serious misconduct cases to the MA and/or the SFC. The FDRC should, unless informed by the MA and/or the SFC otherwise, continue to process such cases on the part of monetary disputes in parallel provided sufficient funding and resources are in place;

---

<sup>6</sup> "systemic issues" relate to issues that have affected or have the potential to affect other customers of the relevant FI or members of the public.

- (c) provide the MA and/or the SFC with a copy of the application form submitted to the FDRC by an applicant of the Scheme if the applicant consents;
  - (d) provide a copy of the following documents to the MA and/or the SFC on behalf of the claimants, FIs and mediators to any mediation conducted under the Scheme -
    - (i) the agreement to mediate;
    - (ii) the mediated settlement agreement (if any); and
    - (iii) the mediation certificate;
  - (e) provide a copy of the following documents to the MA and/or the SFC on behalf of the claimants, FIs and arbitrators to any arbitration conducted under the Scheme -
    - (i) the notice to arbitrate; and
    - (ii) the arbitral award;
  - (f) 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
  - (g) 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 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 financial 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 or licensing of a new FI, or the revocation or suspension of an FI's authorization or licence; 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 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. 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.

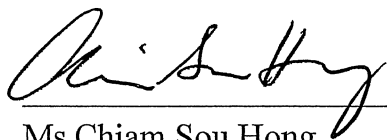
12. Each Party will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.

## **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 party 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 in writing to the other Parties.
-

This MoU shall take effect from 19 June 2012.

Signed for and on behalf of the  
FINANCIAL DISPUTE RESOLUTION CENTRE LIMITED



Ms Chiam Sou Hong  
Chief Executive Officer

Dated 26 June 2012

Signed by the  
MONETARY AUTHORITY



Mr Norman T. L. Chan

Dated 26 June 2012

Signed for and on behalf of the  
SECURITIES AND FUTURES COMMISSION



Mr Ashley Alder  
Chief Executive Officer

Dated 26 June 2012



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 Limited</u>	<u>Monetary Authority</u>	<u>Securities and Futures Commission</u>
15/F, Stanhope House, 734 King's Road, Quarry Bay, Hong Kong	55/F, Two International Finance Centre, 8 Finance Street, Central, Hong Kong	8/F, Chater House, 8 Connaught Road Central, Hong Kong
Name: Ms Chiam Sou Hong Title: Chief Executive Officer  Tel : 3199 5151 Fax : 2565 8662 Email: sou.chiam@fdrc.org.hk	In respect of this MoU other than paragraphs 7(a), 7(c), 7(d), 7(e), 7(g) and 8(b) -  Name: Mr Francis Lau Title: Head (Banking Conduct)  Tel : 2878 1693 Fax : 2258 5252 Email: <a href="mailto:francis_st_lau@hkma.gov.hk">francis_st_lau@hkma.gov.hk</a>  In respect of paragraphs 7(a), 7(c), 7(d), 7(e), 7(g) and 8(b) of this MoU -  Name: Mr Billy Lai Title: Head (Enforcement)  Tel : 2516 7067 Fax : 2516 7928 Email: <a href="mailto:billy_sy_lai@hkma.gov.hk">billy_sy_lai@hkma.gov.hk</a>	Name: Mr Jimmy Chan Title: Director of Enforcement  Tel : 2840 9222 Fax : 2521 7929 Email: <a href="mailto:jkhchan@sfc.hk">jkhchan@sfc.hk</a>