



**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE INDEPENDENT COMMISSION AGAINST CORRUPTION**

**OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

**AND**

**THE FINANCIAL REPORTING COUNCIL**

**29 SEPTEMBER 2021**

## 1. Background

1.1 This Memorandum of Understanding (“**MoU**”) sets out the framework for cooperation and collaboration between the Independent Commission Against Corruption (“**ICAC**”) and the Financial Reporting Council (“**FRC**”) in the performance of their respective enforcement and regulatory functions (“**Functions**”).

## 2. Interpretation

2.1 *Enquiry* means an enquiry initiated by the FRC under section 40 of the FRCO or the Pre-amended FRCO.

2.2 *FRCO* means the Financial Reporting Council Ordinance, Cap. 588, as in force from time to time from 1 October 2019.

2.3 *ICACO* means the Independent Commission Against Corruption Ordinance, Cap. 204.

2.4 *Listed Entity* means any listed entity as defined in section 3 of the FRCO or the Pre-amended FRCO.

2.5 *Misconduct* means any misconduct as defined respectively in sections 37A and 37B of the FRCO.

2.6 *Parties* means the FRC and the ICAC; and *Party* means either of them.

2.7 *PIE Auditor* means a PIE auditor as defined in section 3A of the FRCO.

2.8 *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.

2.9 *Pre-amended FRCO* means the Financial Reporting Council Ordinance, Cap. 588, as in force immediately before 1 October 2019.

2.10 *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.

### **3. Functions of the Parties**

3.1 The ICAC was established under the ICACO as an independent anti-corruption agency accountable directly to the Chief Executive of Hong Kong. It is the statutory duty of the ICAC to, among other things, investigate corrupt practices and offences under ICACO, Prevention of Bribery Ordinance, Cap. 201 and Elections (Corrupt and Illegal Conduct) Ordinance, Cap. 554.

3.2 Pursuant to the general duties and powers as set out primarily in the above-mentioned Ordinances, the ICAC is committed to fighting corruption through effective law enforcement, education and prevention to help keep Hong Kong fair, just, stable and prosperous.

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

- (1) 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 conducting inspections of PIE Auditors' internal quality control systems and selected engagements, for compliance with professional standards and the provisions of the FRCO;
  - (c) by conducting investigations into possible Misconduct including Practice Irregularities for consideration of disciplinary sanctions, and
  - (d) by imposing disciplinary sanctions for Misconduct.
- (2) 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.

3.4 The FRC is committed to upholding the quality of financial reporting of Listed Entities in Hong Kong and the audit quality of PIE Auditors, so as to enhance protection for investors and deepen investor confidence in corporate reporting.

#### **4. Purpose and Principles**

4.1 The Hong Kong Special Administrative Region is a major international financial centre. It is important to maintain and strengthen the integrity and fairness of the Hong Kong capital market. The parties have a mutual interest and respective duties in combatting corruption and/or illicit activities relating to Listed Entities and in maintaining the integrity of financial reporting by Listed Entities and the audit quality of PIE Auditors. The parties recognize the need for the fullest cooperation and collaboration in order to perform their respective Functions effectively.

4.2 The parties acknowledge the following overriding principles:

- the parties will use their best endeavours to meet the terms of this MoU;
- this MoU does not modify or supersede any laws or regulations in Hong Kong;
- this MoU does not amount to a delegation of any of the powers, duties or obligations of the parties;
- this MoU does not create, directly or indirectly, any legal rights, obligations or liabilities, enforceable by the parties or any other person;
- if a matter is not dealt with explicitly in this MoU, the parties agree to work together to resolve it quickly in accordance with the principles of cooperation and collaboration; and
- this MoU does not affect any arrangements under any other MoU that the parties have entered into or may enter into with any other person.

#### **Guidance on Cooperation and Collaboration between the Parties**

#### **5. Referral of Cases**

5.1 In the discharge of its duties, each party will actively consider whether it should refer matters to the other party for possible action, having regard to the other party's Functions.

5.2 The ICAC may make a referral to the FRC for evaluation of possible action where it considers that:

- (a) a matter falls outside the Functions of the ICAC (see paragraphs 3.1 and 3.2) but may fall within the Functions of the FRC under the FRCO or the Pre-amended FRCO (see paragraphs 3.3 and 3.4); or
- (b) a matter falls within the Functions of the ICAC but also contains elements which may fall within the Functions of the FRC under the FRCO or the Pre-Amended FRCO.

5.3 The FRC may make a referral to the ICAC for evaluation of possible action where it considers that:

- (a) a matter falls outside the Functions of the FRC under the FRCO or the Pre-Amended FRCO (see paragraphs 3.3 and 3.4) but may fall within the Functions of the ICAC (see paragraphs 3.1 and 3.2); or
- (b) a matter falls within the Functions of FRC but also contains elements which may fall within the Functions of the ICAC.

5.4 Following receipt of sufficient materials to conduct a referral evaluation, the party receiving a referral (“**Receiving Party**”) will advise the referring party (“**Referring Party**”) about the outcome of its evaluation as soon as practicable. If the Receiving Party cannot complete the evaluation within a reasonable period of time, particularly relating to a complicated case, it will provide an update to the Referring Party on the status of the evaluation. If the Receiving Party has communicated to the Referring Party its acceptance of the referral for investigation, the Referring Party will not take any action that may compromise the investigation of the Receiving Party without prior consultation with the latter.

## **6. Joint Investigations**

6.1 If a case falls within the Functions of both parties, the parties may agree to commence a joint investigation in order to minimize the duplication of effort, and enhance the efficient use of their respective resources as well as the effectiveness of the investigation in a coordinated matter.

6.2 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.

## **7. Exchange and Use of Information**

7.1 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.

7.2 Each party will provide the other party with information in accordance with applicable laws (particularly the Personal Data (Privacy) Ordinance, Cap. 486). Each party will treat any non-public information provided by the other party as confidential and only use it in accordance with applicable laws and this MoU. Except as otherwise required or permitted by law, a party that receives information under this MoU will not disclose it to a third party without the prior written consent of the party providing the information.

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

## **8. Investigative Assistance**

8.1 Each party will consider requests from the other party for investigative assistance on a case-by-case basis.

## **9. Communication and Media Strategy**

9.1 The parties will hold liaison meetings every six months or at intervals to be agreed between the parties and ad hoc meetings, where necessary, to discuss cases of mutual interest, any proposed legislative and/or policy changes that may affect the Functions of each party as well as the implementation of this MoU.

9.2 Prior to the publication of any information, such as media releases concerning any joint investigations, the parties will consult each other and ensure that the timing and contents of the media releases are coordinated.

**10. Capacity Building**

10.1 The parties intend to coordinate their training initiatives and organize joint training opportunities to improve the capacity and effectiveness of their staff in performing their respective Functions.

**11. Designated Principal Contacts**

11.1 Each party will send any request or communication relating to policies or high level inter-organizational relationship matters to one of the designated principal contacts of the other party whose contact details are set out in Appendix A.

11.2 Each party will send any request or communication relating to a specific case and any other routine matter to the designated secondary contacts of the other party whose contact details are set out in Appendix B.

11.3 The parties may add to and/or change their respective designated principal or secondary contacts from time to time by notifying each other in writing.

**12. Effective Date and Termination**

12.1 This MoU shall take effect on 29 September 2021.

12.2 This MoU may be amended or terminated at any time in writing by both parties.

Dated 29 September 2021.

Mr YAU Shu-chun  
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for and on behalf of the  
Independent Commission Against  
Corruption

Mr Marek GRABOWSKI  
Chief Executive Officer  
for and on behalf of the  
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