



MEMORANDUM OF UNDERSTANDING

BETWEEN

THE HONG KONG POLICE

OF THE

HONG KONG SPECIAL ADMINISTRATIVE REGION

AND

THE FINANCIAL REPORTING COUNCIL

16th September 2022

1. Background

- 1.1 This Memorandum of Understanding (**MoU**) sets out the framework for cooperation between the Hong Kong Police (**HKP**) and the Financial Reporting Council (**FRC**) in the performance of their respective enforcement and regulatory functions (**Functions**).
- 1.2 This MoU supersedes any previous arrangements between the HKP and the FRC on the same matters.

2. Interpretation

- 2.1 *AFRC* means an entity to be known as the Accounting and Financial Reporting Council (once the Financial Reporting Council (Amendment) Ordinance 2021 comes into effect).
- 2.2 *AFRCO* means an Ordinance to be known as the Accounting and Financial Reporting Council Ordinance, Cap 588 (once the Financial Reporting Council (Amendment) Ordinance 2021 comes into effect).
- 2.3 *CPA Misconduct* means CPA misconduct as defined in section 37AA of the AFRCO.
- 2.4 *CPAs* means certified public accountants as defined in section 2 of the FRCO.
- 2.5 *Enquiry* means an enquiry initiated by the FRC under section 40 of the FRCO.
- 2.6 *FRCO* means the Financial Reporting Council Ordinance, Cap 588. All references to “FRCO” in this MOU shall be changed to “AFRCO” as soon as the Financial Reporting Council (Amendment) Ordinance 2021 comes into effect.

- 2.7 **Listed Entity** means any listed entity as defined in section 3 of the FRCO.
- 2.8 **Misconduct** means for a PIE Auditor, any misconduct as defined in section 37A of the FRCO; and for a Registered Responsible Person of a registered PIE Auditor, any misconduct as defined in section 37B of the FRCO.
- 2.9 **Non-PIE Auditor** means a non-PIE auditor as defined in section 3A of the FRCO.
- 2.10 **Parties** means the FRC and the HKP; and **Party** means either of them.
- 2.11 **PFO** means the Police Force Ordinance, Cap 232.
- 2.12 **PIE** has the meaning given to it in the FRCO.
- 2.13 **PIE Auditor** means a PIE auditor as defined in section 3A of the FRCO.
- 2.14 **Practice Irregularity** means any practice irregularity committed by a PIE Auditor or non-PIE Auditor as defined in section 4 of the FRCO.
- 2.15 **Practice Unit** means a practice unit as defined in section 2 of the FRCO.
- 2.16 **Registered Responsible Person** means a registered responsible person as defined in section 2 of the FRCO.
- 2.17 **Relevant Non-compliance** means any relevant non-compliance in relation to a Listed Entity as defined in section 5 of the FRCO.

3. Functions of the Parties

The Hong Kong Police

- 3.1 The general duties and powers of the HKP are primarily set out in the PFO. The HKP, in the performance of its general Functions under the PFO, is responsible for maintaining law and order and preventing and detecting crimes in Hong Kong.

The Financial Reporting Council

- 3.2 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 and recognition whereby (i) Hong Kong and non-Hong Kong auditors of PIEs 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 to ensure compliance with professional standards and the provisions of the FRCO;
 - (c) by conducting investigations into possible Misconduct by PIE Auditors and Registered Responsible Persons including Practice Irregularities for consideration of disciplinary sanctions;
 - (d) by conducting investigations into possible Practice Irregularities by non-PIE Auditors; and
 - (e) by imposing disciplinary sanctions for Misconduct; and

- (2) to monitor the compliance by Listed Entities of regulatory requirements for financial reports by conducting Enquiries and preparing reports thereon, ensuring that any Relevant Non-compliance is remedied; and referring the reports to other appropriate authorities for follow-up action where necessary.

3.3 Upon the commencement of the Financial Reporting Council (Amendment) Ordinance 2021 on a date to be appointed by the Secretary for Financial Services and the Treasury, the FRC and FRCO will be renamed as the AFRC and AFRCO respectively. The AFRC will become the independent regulator of the accounting profession in Hong Kong and will assume the following additional Functions relevant to this MoU:

- (1) issuance of practising certificates to CPAs;
- (2) registration of CPA firms (as defined in the AFRCO) and corporate practices (as defined in the AFRCO);
- (3) inspection of Practice Units; and
- (4) investigation and discipline of all CPAs and Practice Units in relation to CPA Misconduct.

3.4 This MOU shall remain in full force and effect and continue to apply notwithstanding the coming into effect of the Financial Reporting Council (Amendment) Ordinance 2021 but all references in this MoU to “FRC” shall read “AFRC” and all references to “FRCO” shall read “AFRCO”. This shall mean that where any terms are defined in this MoU with reference to the FRCO, these terms shall henceforth be defined with reference to the AFRCO instead.

3.5 The FRC is committed to upholding the quality of financial reporting and audit quality in Hong Kong, so as to enhance protection for investors, deepen investor confidence in corporate reporting and promote a fair and ethical business environment in Hong Kong.

4. Purpose and Principles

4.1 The Hong Kong Special Administrative Region is a major international financial and commercial centre. It is important to maintain and strengthen the integrity and fairness of its capital market and the general business environment in Hong Kong. The Parties have a mutual interest and respective duties in combatting crime and/or illicit activities relating to Listed Entities and other business entities and in maintaining the integrity of financial reporting and audit quality in Hong Kong. The Parties recognise the need for the fullest collaboration and cooperation in order to perform their 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 collaboration and cooperation; 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 Functions, 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 HKP may make a referral to the FRC for its evaluation of possible action where it considers that a case falls:

- (a) outside the Functions of the HKP but may fall within the Functions of the FRC; or
- (b) within the Functions of the HKP but also contains elements which may fall within the Functions of the FRC.

5.3 The FRC may make a referral to the HKP for its evaluation of possible action where it considers that a case falls:

- (a) outside the Functions of the FRC but there is suspected criminality which may fall within the Functions of the HKP; or
- (b) within the Functions of the FRC but also contains criminal elements which may fall within the Functions of the HKP.

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 evaluation outcome 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 minimise 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, findings and outcomes of the joint investigation and their respective investigatory efforts and discuss the action to be taken during or at the conclusion of the joint investigation.

7. Early Involvement of the Department of Justice

7.1 In a joint investigation by both Parties or a parallel investigation by each Party on the same subject matter, the Parties will consider whether to consult the Department of Justice at an early stage about whether only one Party should continue with the investigation or each Party should focus on any particular aspect.

8. Exchange and Use of Information

- 8.1 The Parties will exchange information which is relevant to the objectives of this MoU and which may assist the other Party in discharging its Functions.
- 8.2 Each Party will provide the other with information in accordance with applicable laws (particularly the Personal Data (Privacy) Ordinance, Cap 486). Each Party will treat any non-public information the other gives it 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.
- 8.3 Each Party will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.

9. Investigative Assistance

- 9.1 If the FRC has obtained a warrant to search, and if it reasonably believes that there will be a credible threat to the safety of the relevant FRC staff, the HKP will, if permitted under the warrant, render reasonable assistance to the FRC in the execution of the warrant in accordance with the terms of the warrant and applicable law.
- 9.2 If the HKP reasonably believes that it is necessary to have the opinion of an accounting or audit expert during the conduct of its investigation, it may request the FRC to assist. The FRC will offer assistance subject to the availability of its in-house accounting and audit experts or will recommend potential independent experts who may be available to assist the HKP.

9.3 Each Party will consider requests from the other Party for investigative assistance not otherwise specified in this paragraph 9 on a case-by-case basis.

10. Communication and Media Strategy

10.1 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.

10.2 Prior to the publication of any information, such as media releases concerning any joint investigations, the Parties will consult one another and ensure that the timing and contents of the media releases are consistent.

11. Capacity Building

11.1 The Parties intend to coordinate their training initiatives and organise joint training opportunities to improve the capacity and effectiveness of their staff in performing their respective Functions.

12. Designated Principal Contacts

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

12.2 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.

12.3 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.

13. Effective Date and Termination

13.1 This MoU shall take effect on 16th September 2022.

13.2 This MoU may be amended or terminated at any time in writing by both Parties.

Dated this 16th day of September 2022

Original Signed

Ms. CHUNG Wing-man

Assistant Commissioner of Police, Crime
for and on behalf of the
Hong Kong Police

Original Signed

Mr. Marek Grabowski

Chief Executive Officer
for and on behalf of the
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