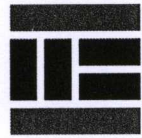




香港存款保障委員會
HONG KONG DEPOSIT
PROTECTION BOARD



SFC
證監會



Memorandum of Understanding

between

Hong Kong Deposit Protection Board

and

Securities and Futures Commission

and

Investor Compensation Company Limited

Memorandum of Understanding

between

- (1) **Hong Kong Deposit Protection Board (“DPB”)** established by section 3 of the Deposit Protection Scheme Ordinance (Chapter 581 of the Laws of Hong Kong) (the “**DPSO**”) whose office is situated at 78/F, Two International Finance Centre, 8 Finance St., Central, Hong Kong;
- (2) **Securities and Futures Commission (“SFC”)** established under section 3 of the repealed Securities and Futures Commission Ordinance (Chapter 24 of the Laws of Hong Kong) and continuing in existence by virtue of section 3 of the Securities and Futures Ordinance (Chapter 571 of the Laws of Hong Kong) (the “**SFO**”) whose office is situated at 8th Floor, Chater House, 8 Connaught Road Central, Hong Kong; and
- (3) **Investor Compensation Company Limited (“ICC”)** a private company incorporated in Hong Kong under the Companies Ordinance (Chapter 32 of the Laws of Hong Kong) (the “**CO**”), recognised as an investor compensation company under section 79 of the SFO whose registered office is situated at 29/F, Li Po Chun Chambers, 189 Des Voeux Road Central, Hong Kong.

I PURPOSES

- 1 This Memorandum of Understanding (the “**Memorandum**”) aims at:
 - (a) fostering co-operation between the parties to avoid any cross-claims between the parties or overlap of compensation payments made by DPB and ICC/ SFC to any eligible depositor who is also a qualifying client;
 - (b) setting out the arrangements between the parties for the exchange of information to facilitate the performance of each party’s respective functions; and
 - (c) setting out the obligation of each party to keep all non-public information to be received from the other parties under this Memorandum confidential.

II DEFINITION OF TERMS

- 2.1 In this Memorandum, unless the context otherwise requires:

“**associated person**” shall have the meaning ascribed to it by section 2 of the Claims Rules;

“claimant”	shall have the meaning ascribed to it by paragraph 5.2(a) (Compensation payments by SFC/ ICC to qualifying clients of specified persons) hereof;
“Claims Rules”	means the Securities and Futures (Investor Compensation Claims) Rules (Chapter 571T of the Laws of Hong Kong);
“default”	shall have the meaning ascribed to it by section 2 of the Claims Rules;
“depositor”	shall have the meaning ascribed to it by section 2(1) of the DPSO;
“DPS Fund”	means the Deposit Protection Scheme Fund established by section 14 of the DPSO;
“eligible depositor”	means any depositor other than an excluded person maintaining protected deposit(s) with any Scheme member;
“excluded person”	shall have the meaning ascribed to it by section 3 of Schedule 1 to the DPSO;
“function”	includes a power or duty under the DPSO, the SFO or any subsidiary legislation, codes, guidelines or guidances made or issued thereunder;
“ICF”	means the compensation fund known as the Investor Compensation Fund referred to in section 236 of the SFO;
“informing party”	means the party disclosing any information under Part VI of this Memorandum;
“Limits Rules”	means the Securities and Futures (Investor Compensation – Compensation Limits) Rules (Chapter 571AC of the Laws of Hong Kong);
“Monetary Authority”	means the Monetary Authority appointed under section 5A of the Exchange Fund Ordinance (Chapter 66);
“net amount”	shall have the meaning ascribed to it under section 38(7) of the DPSO;
“protected deposit”	shall have the meaning ascribed to it by section 2(1) of the DPSO;
“qualifying client”	in relation to a specified person, shall have the meaning ascribed to it by section 2 of the Claims Rules;
“quantification date”	shall have the meaning ascribed to it by section 25(1) of the DPSO;
“receiving party”	means the party receiving any information under Part VI of this Memorandum;

“related assets”	shall have the meaning ascribed to it by section 2 of the Claims Rules;
“Scheme”	shall have the meaning ascribed to it by section 2(1) of the DPSO;
“Scheme member”	shall have the meaning ascribed to it by section 2(1) of the DPSO;
“specified event”	in relation to a Scheme member, shall have the meaning ascribed to it by section 22 of the DPSO;
“specified person”	shall have the meaning ascribed to it by section 2 of the Claims Rules;
“Specified securities or futures contracts”	shall have the meaning ascribed to it by section 2 of the Claims Rules;

2.2 In this Memorandum, unless the context otherwise requires:

- (a) headings and titles are for convenience only and do not affect the interpretation of this Memorandum;
- (b) use of either gender includes the other gender, and use of the singular includes the plural and vice versa;
- (c) references to a “party” are to DPB or SFC or ICC (as applicable) and references to “parties” shall be construed accordingly; and
- (d) references to any statute or statutory provision shall be construed as references to the same as they may, from time to time, be amended, modified or re-enacted.

III GENERAL PRINCIPLES

3.1 The parties will use their best endeavours to observe the terms of this Memorandum. To the extent permitted by applicable laws, each party will make reasonable efforts to ensure that the other parties will be provided with all relevant information so that the parties may effectively perform their respective functions.

3.2 The parties recognise the following overriding principles:

- (a) this Memorandum does not modify or supersede any law, regulation, code, guideline, guidance, etc;
- (b) this Memorandum does not prevent any party from performing its respective functions;

- (c) this Memorandum does not amount to delegation of any of the powers, duties and obligations of the parties;
- (d) this Memorandum does not create any rights, obligations or liabilities legally enforceable by the parties or by any third party;
- (e) this Memorandum does not affect any arrangements under any other Memorandum that any party has entered into or may enter into with the other parties or any other person;
- (f) in the interpretation of any of the provisions of this Memorandum, such provisions should receive such fair, large and liberal construction and interpretation to ensure the attainment of the objective of this Memorandum according to its true intent, meaning and spirit,

and this Memorandum shall be construed accordingly.

IV BACKGROUND

4.1 Under the DPSO -

- (a) DPB is a statutory body established in July 2004 to perform the functions specified in section 5 of the DPSO, including establishing and maintaining the Scheme and managing and administering the DPS Fund;
- (b) the DPS Fund comprises principally contributions collected from Scheme members; and
- (c) in the event of the occurrence of a specified event, DPB shall pay compensation to eligible depositors based on a calculation made in accordance with the provisions of Division 2 (Entitlement to compensation) of Part 5 of the DPSO.

4.2 Under the SFO and subsidiary legislation made thereunder -

- (a) SFC is a statutory body established in May 1989 which performs the functions specified in the SFO, including regulating the securities and futures markets, establishing, maintaining, managing and administering the ICF, and determining claims against the ICF;
- (b) the ICF was established to provide a measure of compensation to qualifying clients who sustain a loss due to a default committed by a specified person or any of its associated persons in connection with any specified securities or futures contracts or related assets ;

