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and Banking (Amendment) Bill 2000  
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**Bills Committee on  
Securities and Futures Bill and Banking (Amendment) Bill 2000**

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As requested by Members of the Bills Committee, I attach copy of the Memorandum of Understanding (MoU) between the Securities and Futures Commission (SFC) and the Hong Kong Monetary Authority (HKMA). The MoU was signed in October 1995 and sets out the framework agreed between the two regulators for strengthening co-operation in respect of supervision of entities or financial groups where they have a mutual interest.

As I explained at the Bills Committee meeting on 19 January, the current MoU will need to be revised to reflect the enhanced co-operation between the SFC and the HKMA in supervising banks and other authorized financial institutions conducting securities businesses under the Securities and Futures Bill and the Banking (Amendment) Bill 2000. We will provide Members with an outline of the revised MoU in due course to facilitate discussion of the new licensing and regulatory regime under Parts V to VII of the Securities and Futures Bill and the relevant provisions of the Banking (Amendment) Bill.

The annexes to the current MoU contain names of institutions. They are not attached herewith to avoid confusion as to the statutory functions of the SFC and the HKMA respectively over the institutions concerned, which would not be affected whatsoever by the MoU.

Yours sincerely,

( Miss Vivian Lau )  
for Secretary for Financial Services

Encl.

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**Memorandum of Understanding  
between  
Hong Kong Monetary Authority & Securities and Futures Commission**

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**INTRODUCTION**

1. This Memorandum of Understanding (the "MoU") sets out the framework agreed between the Hong Kong Monetary Authority ("HKMA") and the Securities and Futures Commission ("SFC"), herein each referred to as "party", for strengthening co-operation in respect of supervision of entities or financial groups where the parties have a mutual interest.

**PRINCIPLES**

2. The MoU recognises the following principles:
  - the parties will use their best endeavours to meet the terms of the MoU;
  - for institutions or groups where they both have an interest, the parties will use their best endeavours to ensure that there are no gaps in regulation and to minimise the unnecessary duplication of effort inherent in dual regulation;
  - to the extent permitted by applicable laws, each party will use reasonable efforts to ensure that the other party is provided with all relevant information so that the parties may effectively perform their respective statutory functions;
  - the MoU does not detract from the respective statutory functions of the parties under the relevant Ordinances (including the Banking Ordinance, Securities and Futures Commission Ordinance, Securities Ordinance, and Commodities Trading Ordinance and the Leveraged Foreign Trading Ordinance);
  - the MoU does not amount to a delegation of the parties' powers, duties and obligations;
  - the MoU does not create any rights enforceable by the parties or by third parties; and
  - the MoU does not affect any arrangements under other MoUs.

## SCOPE

3. In order to better implement these principles, the parties will:
  - appoint coordinators, whose functions will be in accordance with the principles laid down in the MoU, for the co-ordination and exchange of information necessary to the exercise of the parties' regulatory functions over entities and financial groups in which they both have an interest; and
  - consult each other in areas of staff training, issuance of guidelines, and formulation of policy in areas covering securities, futures, fund management, and leveraged foreign exchange trading as they affect authorised institutions.
4. The parties recognise that the current rationalisation of the Ordinances administered by the SFC, which may, inter alia, affect the status of persons now approved as exempt dealers, will require a review of the MoU to be carried out prior to the implementation of the new legislation emerging from the rationalisation.

## COORDINATION

### Institutions under dual supervision

5. As both parties have statutory obligations to supervise authorised institutions which are registered with the SFC, some overlap of supervisory responsibility is unavoidable. The parties will appoint one of themselves in each case to coordinate their supervisory effort and to minimise the occurrence of overlap.
6. The choice of the coordinator will depend on whether the volume of business of the institution concerned is primarily related to banking or securities. Based on this criterion, Annex A identifies the coordinator of authorised institutions which are registered as securities dealers with the SFC.
7. For authorised institutions which are registered solely as investment advisers with the SFC, the HKMA will be the coordinator, though the SFC will continue to monitor their compliance with its code of conduct. Annex B lists the authorised institutions under this category.
8. If the nature of business of the institutions listed in Annexes A & B changes substantially, so that it is necessary to change the coordinator, or if other authorised institutions register as securities dealers, commodities dealers or investment advisers with the SFC, the parties will consult each other with a view to amending either or both Annexes A & B.
9. Notwithstanding the coordination arrangements, the parties will continue to exercise their respective statutory functions over these institutions, including setting capital and liquidity requirements and receiving prudential information and the co-ordinator will not curtail the supervisory action of the other party except with the consent of the latter.

10. The parties will exchange prudential information that reflects on an institution's financial position and the fitness and properness of its management, or that assists either party in performing its statutory functions. Each will inform the other prior to taking any disciplinary/regulatory action. The coordinator will also act as the conduit of information received from home supervisors of overseas incorporated entities.
11. The coordinator will liaise with the other party on arrangements for the timing of on-site examinations and for meetings with the regulated institutions and their auditors. In addition, there will be six-monthly meetings of the parties to this MoU to discuss entities under dual supervision. Responsibility for chairing these six-monthly meetings, for the preparation of the agenda and for taking minutes will alternate between the parties.

#### Groups containing entities supervised by the parties

12. Where there are groups containing entities supervised separately by each party, there will be a need to ensure that information relating to the group which may be of concern to one or both the parties should be available on a timely basis and that appropriate regulatory action is taken. A coordinator will be appointed for each group to ensure that these activities are carried out smoothly and effectively and in a timely fashion.
13. The coordinator chosen will be, as between banking and securities activity of the group, the regulator of the activity which is more substantial or significant.
14. The choice of the coordinator for overseas-owned groups will depend on the nature of the home supervisor responsible for the consolidated supervision of the particular group. If that home supervisor is a banking regulator, the HKMA will be the coordinator of the group's entities in Hong Kong; if the home supervisor is a securities regulator, the SFC will be the coordinator of the group's entities in Hong Kong. Based on this criterion, Annex C lists the groups which fall into the respective parties' supervision.
15. If the nature of the business of the entities listed in Annex C changes substantially, or if there is a change in the home supervisor, the parties will consult each other with a view to amending Annex C.
16. Notwithstanding the coordination arrangements each party will continue to be responsible for supervising the entity registered solely with it. The coordinator will have no power to seek to interfere with the supervisory responsibility of the party with whom an entity is solely registered.
17. The role of the coordinator includes:
  - in the case of locally incorporated groups, using best endeavours to obtain and disseminate information relating to the group which is relevant to the functions of the parties;

in the case of overseas incorporated entities, acting as the conduit of information provided by home supervisors and ensuring that relevant regulatory information about the group is shared promptly between the parties;

- acting as the point of contact for notification of any serious concern about the group so that such concerns arising on the part of different regulators are brought together, evaluated on an overall basis and, to extent permitted by applicable laws, passed to other regulators with an interest in the group; and
- coordinating any regulatory action which may be necessary by more than one regulator in relation to the group.

18. Each party will inform the other prior to taking any disciplinary or regulatory action, the result of which may impact on the activities of any entity in the same group which is supervised by the other party.

19. There will be six-monthly meetings between the parties to discuss supervisory issues related to the groups. Responsibility for chairing these meetings, for preparing the agenda and taking minutes of the meetings will alternate between the parties.

#### Exempt dealers

20. Pending rationalisation of the Ordinances administered by the SFC, the HKMA will be responsible for the supervision of the securities business of authorised institutions which are exempt dealers except that if these institutions are also registered as advisers with the SFC, their business conduct with respect to their advisory business will be supervised by the SFC. The SFC will arrange for the HKMA to participate in its training programme and to receive technical assistance to help the HKMA to exercise its supervisory responsibilities in relation to the securities business of such institutions.

#### OTHER AREAS OF LIAISON

21. In addition to the meetings referred to earlier there will be:

- bi-monthly meetings to discuss current general policies and issues, and these meetings will be chaired alternately by the parties and will be formally minuted; and
- ad hoc meetings to deal with specific supervisory concerns, such as regulatory or disciplinary action, and these meetings may be called by either of the parties, and will be chaired by the one who initiates the meeting.

22. The parties will liaise, and cooperate as far as possible, on the form and content of guidelines, codes etc. which cover topics of mutual concern to ensure maximum possible consistency.
23. The parties agree to make arrangements for staff of the other party to attend its training seminars and to appreciate the scope of its supervisory practices. Secondments between the parties will be considered subject to the practicalities.

Date: 23 October 1995

**[Annexes not attached]**