

# Memorandum of Understanding

Between

**The Hong Kong Institute of Certified Public Accountants**

and

**The Financial Reporting Council**

## I. Introduction

1. This memorandum of understanding is entered into between the Hong Kong Institute of Certified Public Accountants of 37<sup>th</sup> floor, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong, and the Financial Reporting Council of 29<sup>th</sup> floor, High Block, Queensway Government Offices, 66 Queensway, Hong Kong.
2. The Financial Reporting Council is empowered under section 10(2)(d) of the Financial Reporting Council Ordinance (Cap. 588) to enter into any memorandum of understanding or other obligation.
3. The Hong Kong Institute of Certified Public Accountants is empowered under section 18 of the Professional Accountants Ordinance (Cap. 50) to enter into this memorandum of understanding.

## Definitions

4. In this memorandum of understanding, save where the context otherwise requires the following terms shall have the meanings attributed to them:

<b>Term</b>	<b>Meaning</b>
Accounting standards	Hong Kong Financial Reporting Standards
Auditing standards	Hong Kong Standards on Quality Control, Auditing and Assurance and Related Services
Confidential Information	All information, knowledge and documentation passed between the Parties in the possession of the receiving party except that which is public knowledge (other than by breach of this obligation) or already known to the receiving party
Ethics standards	Code of Ethics for Professional Accountants
Enquiry	An enquiry initiated by the FRC under the FRCO
FRC	Financial Reporting Council
FRCO	Financial Reporting Council Ordinance (Cap. 588)
HKICPA	Hong Kong Institute of Certified Public Accountants
Investigation	An investigation initiated by the FRC under the FRCO
MoU	Memorandum of Understanding
Non-compliance	Relevant non-compliance as defined by the FRCO
PAO	Professional Accountants Ordinance (Cap. 50)
Parties	The HKICPA and the FRC
Relevant Irregularity	An auditing irregularity or reporting irregularity as defined by the FRCO
Specified Body	A specified body as defined by the FRCO

## **Interpretation**

5. Other terms have the meanings attributed to them in accordance with their ordinary use.
6. References to the HKICPA may where the context requires include all or any of:
  - a. the HKICPA Council;
  - b. any committee established under the PAO or by the HKICPA; and
  - c. the HKICPA Secretariat.
7. References to the FRC may where the context requires extend to all or any of:
  - a. the members of the FRC;
  - b. the Audit Investigation Board/Investigation Board or Investigator appointed to investigate a matter;
  - c. the Financial Reporting Review Committees; and
  - d. the FRC Secretariat.

## **The Parties**

8. The HKICPA is:
  - a. the regulatory body of the accountancy profession in Hong Kong;
  - b. the standard-setter for the practice of accountancy in Hong Kong;
  - c. prosecutor in disciplinary proceedings arising from complaints against certified public accountants; and
  - d. a specified body under the FRCO.
9. The FRC is established under the FRCO to:
  - a. investigate Relevant Irregularities;
  - b. enquire into Non-compliance;
  - c. prepare reports from the findings of their Investigations and Enquiries; and
  - d. refer those reports to a Specified Body for appropriate follow-up action.

## **Legal status**

10. This MoU is a statement of intent of the Parties and is not intended to:
  - a. create any binding legal obligations; or
  - b. fetter the discretion of the parties in any way in the discharge of their functions.
11. This MoU sets out the working arrangements between the Parties to ensure efficient and effective co-operation and co-ordination of their respective functions.

## **II. Working arrangements between the Parties**

### **Liaison**

12. The Chief Executive & Registrar of the HKICPA and the Chief Executive Officer of the FRC (or their representatives) will meet at least once a year to review the functioning of this MoU and any significant matters arising subsequent to the last meeting.
13. Liaison meetings will be held periodically in respect of any of the individual areas of mutual assistance on dates and at venues agreed in advance. Ad hoc meetings may be arranged in addition at the request of either party as circumstances might require.

### **Status reports**

14. The HKICPA will provide quarterly, or at such other period as may be agreed, reports on the progress or status of current matters referred by the FRC.
15. The FRC will provide quarterly, or at such other period as may be agreed, reports giving information in summary form about ongoing Investigations or Enquiries in which the HKICPA may have a regulatory interest.

### **Sharing of information and Confidentiality**

16. To the extent permitted by applicable law, each of the Parties will make all reasonable efforts to ensure that the other Party is provided with all relevant information so that it may effectively perform its statutory functions.
17. The Parties will not disclose to any third party any Confidential Information, without the written consent of the other, or unless:
  - a. required by law; or
  - b. for the purpose of seeking advice from, or giving advice by, counsel, or a solicitor, or other professional advisor, acting or proposing to act in a professional capacity in connection with any matter arising under the FRCO.

Where legally permissible, the other party will be notified upon receipt of a demand for release of Confidential Information.

18. If one of the Parties becomes aware of the possession, use, misappropriation, or knowledge of any Confidential Information without authority it will inform the other.  
Provided that information may be disclosed to any relevant party for the purposes of prosecution of disciplinary proceedings or legal proceedings.

### **Interpretation of Standards**

19. Where circumstances arise such that the FRC requires external interpretation of an Accounting standard, Auditing standard or Ethics standard, the FRC will consult with the HKICPA on any question regarding interpretation of such standards.

20. The secretariat of the HKICPA is prepared to give such interpretations provided that the:
- a. the subject of the request is not hypothetical but relates to a specific on-going Investigation or Enquiry;
  - b. full facts of relevant transactions, including the background and circumstances, leading to the request are provided;
  - c. tentative interpretations of the FRC secretariat and the bases for them are provided;
  - d. opinions provided by the secretariat of the HKICPA are accepted as being provided for the reference and information of the FRC only and for the purposes of a specific Investigation or Enquiry;
  - e. providers of the opinion are not regarded as, or required to become, expert witnesses for the purpose of substantiating the report on the Investigation or Enquiry; and
  - f. no liability is imposed on the HKICPA in respect of any liability that might be incurred by the FRC, either directly or indirectly, as a result of the interpretation.

### **Consultation**

21. There will be informal discussions between the Parties in relation to potential referrals from the FRC to HKICPA for disciplinary action.

### **Referrals to the FRC by the HKICPA**

22. If it comes to the knowledge of the Council of the HKICPA that there may be Auditing, Reporting or Relevant Irregularities or Non-compliances, the Council of the HKICPA shall, in accordance with section 42CA of the PAO, make a complaint to the FRC.
23. The HKICPA will use its best endeavours to provide the FRC with:
- a. all relevant information in its possession and explain the reasons why the HKICPA considers that it is appropriate for the FRC to take action; and
  - b. the information specified in the complaint form on the web-site of the FRC.
24. The review should normally be completed within four weeks. If the FRC decides it will not pursue a complaint further it will inform the HKICPA of its decision and the reasons for that decision.

### **Referrals to the HKICPA by the FRC**

25. Referrals shall be made to the HKICPA as soon as practicable where the FRC believes that one or more of the subparagraphs of section 34(1) of the PAO may apply to a current member of the HKICPA, registered firm or corporate practice.

26. When making a referral to the HKICPA, the FRC will provide information about recommendations or referrals made to other specified bodies in connection with that matter.
27. The HKICPA will, within three months of any referral arising from an Investigation or an Enquiry or such other period as may be agreed, inform the FRC of its planned action. If the HKICPA decides not to act upon the matter, it will provide the FRC with the reasons.
28. Documents and records seized or obtained by the FRC and information received and explanations provided during the course of an Investigation or Enquiry, including witness statements and statutory declarations, will be:
  - a. disclosed to the HKICPA when any referral is made; and
  - b. made available for use by the HKICPA in the preparation for and conduct of any disciplinary prosecution.
29. The FRC will support any disciplinary prosecution commenced as a result of a referral made to the HKICPA by:
  - a. ensuring that its reports and the evidence included therein will take into account the requirements of The Disciplinary Committee Proceedings Rules of the HKICPA;
  - b. seeking legal advice on the sufficiency of evidence when necessary;
  - c. using its best endeavours to ensure the staff and former staff of FRC Secretariat are available as witnesses as may be necessary from time to time; and
  - d. providing all other reasonable assistance.
30. The HKICPA will request any Disciplinary Committee hearing arising from a referral by the FRC to order payment to the FRC of such costs incurred by the FRC as are within the powers of the Disciplinary Committee.

### **III. Exercise of discretions relevant to the co-operation between the parties**

#### **HKICPA**

31. In making any complaint to the FRC, the HKICPA will bear in mind:
  - a. the degree of public interest, but recognises that this is constrained by the provisions of section 42CA of the PAO; and
  - b. that the FRC is unable to exercise its statutory powers unless it considers that there are circumstances suggesting a Relevant Irregularity or it appears to the FRC that there is or may be a question whether or not there is a Non-compliance.

In assessing the degree of public interest, the HKICPA will take into account the degree of public concern, the damage to the Hong Kong accountancy profession, Hong Kong financial institutions or corporate governance, the extent scale and gravity of the issues and the number of people affected.

Signed for and on behalf of the  
**FINANCIAL REPORTING COUNCIL**



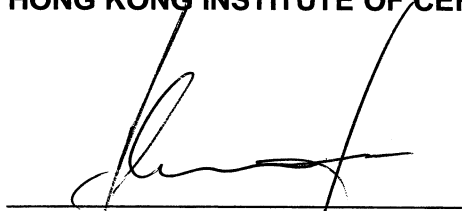
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Sophia KAO, JP

Chairman

Dated 20 February 2008

Signed for and on behalf of the  
**HONG KONG INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS**



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Albert S.C. AU

President

Dated 20 February 2008