

23 February 2018

Co-operation Agreement

Swiss Financial Market
Supervisory Authority
FINMA



Eidgenössische Finanzmarktaufsicht FINMA
Autorité fédérale de surveillance des marchés financiers FINMA
Autorità federale di vigilanza sui mercati finanziari FINMA
Swiss Financial Market Supervisory Authority FINMA

HONG KONG

Securities and Futures Commission



SECURITIES AND
FUTURES COMMISSION

證券及期貨事務監察委員會

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Co-operation Agreement between
Swiss Financial Market Supervisory Authority FINMA
("FINMA")
Laupenstrasse 27
3003 Bern
Switzerland

and

Hong Kong Securities and Futures Commission
("SFC")
35/F, Cheung Kong Center
2 Queen's Road Central
Hong Kong

1. Definitions

For the purposes of this Co-operation Agreement, unless the context requires otherwise:

"Authority" means FINMA or SFC, together referred to as "the Authorities";

"Authorisation" means the process of licensing, registering, approving, authorising or otherwise bringing an entity under either Authority's supervisory remit so that it is authorised to carry on business in providing a financial service or issuing a financial product in the relevant Authority's jurisdiction, and "Authorised" has a corresponding meaning;

"Confidential Information" means any non-public information obtained by an Authority from the other Authority pursuant to this Co-operation Agreement;

"Financial technologies", or "Fintech", is used to describe a variety of business models and emerging technologies that have the potential to supplement or disrupt the financial services industry;

"Innovator Business" means an innovative financial business that has been offered support from an Authority through its Innovation Function, or would qualify for such support;

"Innovation Function" means the dedicated function established in both Authorities to act as the centralized contact point for Innovator Businesses;

"Receiving Authority" means the Authority that is receiving an Innovator Business referral or information relating to that referral;

"Referring Authority" means the Authority that is referring an Innovator Business to the Receiving Authority; and

"Regulations" means any regulation or regulatory requirement applicable in the jurisdiction of an Authority.

2. Introduction

- 2.1. The Authorities share a mutual desire to co-operate with the aim of facilitating innovation in financial services in their respective markets and of supporting Innovator Business in understanding the Regulations in each other's jurisdictions as may be required. Both Authorities have established Innovation Functions in order to do so. The Authorities believe that through co-operation with each other, they will be able to further the support of innovation in their respective markets.

Background to the two Authorities Innovation Functions

- 2.2. The SFC established the Fintech Contact Point (FTCP) in March 2016 to enhance communication with businesses involved in the development and application of Fintech in Hong Kong. The purpose of the Fintech Contact Point is to facilitate the Fintech community's understanding of the current regulatory regime, and to enable the SFC to stay abreast of the development of Fintech in Hong Kong.
- 2.3. FINMA encourages innovation and competitiveness in the Swiss financial market. FINMA is consistently removing unnecessary regulatory hurdles that may hinder Innovator Businesses' market entry. It is also enabling Innovator Businesses to have swift access to the Swiss financial market by providing specific support which includes:
 - 2.3.1. A FinTech Desk as a single point of contact for Innovator Businesses;
 - 2.3.2. Assistance for Innovator Businesses in understanding the Swiss regulatory framework and in establishing whether their business model requires Authorisation;
 - 2.3.3. A dedicated contact person for Innovator Businesses during the pre-Authorisation or Authorisation process or both.
- 2.4. FINMA provides support to all Innovator Businesses irrespective of whether they are domiciled in Switzerland or abroad.

3. Purpose

- 3.1. The purpose of this Co-operation Agreement is to provide a framework for co-operation between the Innovation Functions of each Authority. It also sets out how the Authorities plan to share and use information on innovation in their respective markets.

4. Principles

- 4.1. The Authorities intend to provide the fullest possible mutual assistance to one another within the terms of this Co-operation Agreement. This Co-operation Agreement operates subject to the domestic laws and regulations of each Authority and does not modify or supersede any laws or regulatory requirements in force in, or applying to, Hong Kong or Switzerland. This Co-operation Agreement sets forth a statement of intent and accordingly does not create any enforceable rights, and is not legally binding.

5. Scope of Assistance

Referral mechanism

- 5.1. The Authorities will refer to each other Innovator Businesses that would like to operate in the other Authority's jurisdiction. The Receiving Authority intends to assist the Innovator Businesses in understanding the regulatory regime under the Receiving Authority's remit, and how such regime may be relevant to them.

Information sharing

- 5.2. The Authorities intend to share information about innovations in financial services in their respective markets, where appropriate and as permitted under their respective legal and regulatory regimes. This may include, but is not limited to:
 - 5.2.1. Emerging trends and developments;
 - 5.2.2. Regulatory and policy issues pertaining to innovation in financial services; and
 - 5.2.3. Any other relevant issues on Fintech.

Potential joint innovation projects

- 5.3. The Authorities intend to consider participating in joint innovation projects on the application of novel financial technologies.

6. Confidentiality & Permissible Uses

- 6.1. Any Confidential Information disclosed by one Authority to the other Authority under this Co-operation Agreement, unless otherwise stated, should be treated by the other Authority as confidential information.
- 6.2. The Authorities intend that the sharing or disclosure of Confidential Information will not constitute a waiver of privilege or confidentiality of such information.
- 6.3. A Referring Authority may only send information about an Innovator Business to a Receiving Authority if the Referring Authority has received prior consent from the Innovator Business that it may so do.
- 6.4. A Receiving Authority should use information about a referred Innovator Business only for the purpose of providing support to the referred Innovator Business through the Receiving Authority's Innovation Function.
- 6.5. Unless with the written consent of the other Authority and for the purpose stated in paragraph 6.4 above, an Authority should not use any Confidential Information disclosed to it by the other Authority.
- 6.6. If either Authority is required to disclose any information provided to it by the other Authority pursuant to a requirement of law, such Authority should notify the other Authority prior to complying with such a requirement and should assert all appropriate legal exemptions or privileges with respect to such information as may be available.

7. Contact points

- 7.1. To facilitate co-operation under this Co-operation Agreement, each Authority will designate a contact point as specified in Appendix 1.

8. Term

- 8.1. This Co-operation Agreement takes effect from the date of execution and will continue to have effect until terminated by either of the Authorities by the giving of at least 30 days' written notice of termination to the other Authority.
- 8.2. Termination of this Co-operation Agreement does not affect obligations under any existing Memorandum of Understanding between the two Authorities.
- 8.3. In the event of the termination of this Co-operation Agreement, information obtained under this Co-operation Agreement will continue to be treated in the manner set out under paragraph 6.

9. Amendment

- 9.1. The Authorities will review the operation of this Co-operation Agreement and update its terms as required.
- 9.2. This Co-operation Agreement may be amended if both Authorities agree in writing to do so.

Executed by the Authorities:

For SFC

Ashley Alder
Chief Executive Officer

Date: _____

Julia Leung
Executive Director, Intermediaries

Date: _____

For FINMA

Michael Loretan
Head of Asset Management Division

Date: _____

Rupert Schaefer
Head of Strategic Services

Date: _____

Appendix 1: Authority-wide Contact Details

FINMA: FinTech Desk
Swiss Financial Market Supervisory Authority
Laupenstrasse 27
3003 Bern
Switzerland

E-Mail: fintech@finma.ch
Tel: +41 31 327 16 16

SFC: Fintech Contact Point, Licensing
Intermediaries Division
Securities and Futures Commission
35/F, Cheung Kong Center
2 Queen's Road Central
Hong Kong

E-Mail: fintech@sfc.hk