



European Securities and
Markets Authority

**Memorandum of Understanding on the cooperation of ESMA
and the Securities and Futures Commission of Hong Kong for
the supervision of the Credit Rating Agencies**

The Securities and Futures Commission (“SFC”) and the European Securities and Markets Authority (“ESMA”), who are responsible for supervising Credit Rating Agencies (“CRAs”) in their respective jurisdictions recognise in light of the cross-border activities of certain CRAs and the global nature of ratings generally, the importance of ongoing supervisory and enforcement-related cooperation in this area and considering in particular

- that CRAs play an important role in global financial markets, as their credit ratings are used by investors, borrowers, issuers and governments as part of making informed investment and financing decisions;
- that many jurisdictions have determined that CRAs shall be regulated and have therefore introduced regulatory regimes to that end; and
- that the EU Regulation on Credit Rating Agencies (“EU Regulation”) has introduced “endorsement” and “certification” mechanisms for the benefit of CRAs established outside the European Community. Both mechanisms require that cooperation arrangements are in place between SFC and ESMA.

have reached the following legally not binding understanding:

Article 1 -- Definitions

For purposes of this Memorandum of Understanding (“MoU”), the following definitions apply:

1. “Authority” means any regulator responsible for supervising CRAs that is a party to this MoU.
2. “Assistance” means any activity conducted by a Requested Authority for the purpose of supporting a Requesting Authority in discharging its legal and regulatory duties and responsibilities in respect of CRAs and their ratings.
3. “Cooperation” means all kinds of
 - (a) Co-ordination,
 - (b) Ongoing Assistance, and
 - (c) Assistance.
4. “Credit Rating Agency” (“CRA”) means a legal person or a group of legal persons (group of CRAs) registered and regulated in any jurisdiction whose occupation includes the provision and /or issue of opinions regarding creditworthiness on a professional basis.
5. “Co-ordination” means consultation amongst Authorities on CRAs whether on an ad-hoc or periodic basis for the purpose of exchanging relevant supervisory information and agreeing if possible on common approaches of supervisory activity and enforcement action with regard to CRAs.
6. “Cross Border CRA” means a CRA or a CRA belonging to the same group which is identified for the purposes of this MoU as being such, as set out in Article 4 and which is subsequently agreed to be listed in Appendix B.

7. “Laws and Regulations” means all legally binding domestic, European, and international rules concerning the regulation and supervision of CRAs and groups of CRAs applicable in the jurisdictions of the Authorities, that fall within the competence of the Authorities.
8. “Ongoing Assistance” means all Assistance including the provision of information provided by one Authority to another Authority with or without a specific request.
9. “Requesting Authority” means the Authority making a request for Assistance under this MoU.
10. “Requested Authority” means the Authority to whom a request for Assistance is made under this MoU.

Article 2 – General Principles

1. This MoU sets forth the Authorities’ intent to cooperate with each other to the fullest extent legally permissible in executing the Laws and Regulations applicable in the respective Authorities’ jurisdictions in relation to the discharge of their responsibilities regarding CRAs. The Authorities recognise the importance and desirability of cooperation for the purpose of effectively supervising CRAs and enforcing, and securing compliance with, the relevant Laws and Regulations.
2. The provisions of this MoU do not create legally binding obligations or supersede legally binding domestic, European, or international rules.
3. This MoU does not authorise an Authority to take, or prohibit it from taking, measures other than those identified herein to obtain information necessary to ensure enforcement of, or compliance with, the relevant Laws and Regulations.
4. This MoU does not confer upon any person not an Authority, the right or ability, directly or indirectly to obtain, suppress or exclude any information or to challenge the execution of a request for Assistance under this MoU.
5. As the provisions of this MoU are not legally binding on the Authorities, they may not give rise to any legal claim by, on behalf of or against an Authority or any third party in the course of their practical implications.
6. The Authorities represent that they do not have the power under the Laws and Regulations in their respective jurisdictions to interfere with the content of credit ratings and credit rating methodologies.
7. Where a request for Assistance is denied or not permitted under domestic law, the Requested Authority will provide the reasons for not granting the Cooperation and consult pursuant to Article 9.

Article 3 – Scope

1. The Authorities will, within the framework of this MoU provide each other with the fullest cooperation permissible to supervise Cross Border CRAs and enforce compliance with the relevant Laws and Regulations. Cooperation may be denied:

- (a) where the Cooperation would require an Authority to act in a manner that would violate domestic law;
 - (b) where a request for Assistance is not made in accordance with Article 7 or 8;
 - (c) on grounds of public interest or essential national interest; and
 - (d) where the information to be disclosed is not subject to guarantees of professional secrecy.
2. The Authorities recognise and agree that the need to cooperate with each other under the terms of this MoU in discharging their legal responsibilities in respect of CRAs may be triggered by a number of different events including requests for Assistance and may arise at any time.
3. Although it is not possible to set out an exhaustive list of what the events that may trigger the need for Cooperation may be or when the need to cooperate may arise, it is anticipated that the need for Cooperation will at least arise in the following circumstances:
 - (a) the initial application for recognition, authorisation or registration by a CRA also operating in another Authority's jurisdiction (Article 4);
 - (b) the ongoing supervision of Cross Border CRAs (Article 5);
 - (c) the assessment of the need to take and the subsequent taking of supervisory or enforcement action against Cross Border CRAs (Article 6); and
 - (d) when an Authority requests Assistance (Articles 7 and 8).

Article 4 – Application of CRAs for Recognition, Authorisation, or Registration

1. When a CRA applies for a recognition, authorisation, or registration with an Authority (the “notifying Authority”), and the Authority considers that the CRA could be a Cross Border CRA, the Authority will accordingly notify the other Authority (the “notified Authority”) about the status of the CRA's recognition, authorisation, or registration and will provide it with the information regarding the CRA's cross border operations.
2. Following the initial sharing of information, the Authorities will consult with each other regarding whether or not they consider this CRA to be a Cross Border CRA and if it is regarded as such, add it to the list of Cross Border CRAs in Appendix B.
3. The Authorities will cooperate with each other in order to enable a full assessment of the Cross Border CRA's application for recognition, authorisation or registration. Such cooperation may take a number of different forms, but will without an additional separate request in any event include the provision of the information listed in paragraph 4.
4. The notified Authority will, within a reasonable timeframe, subject to availability and to the provisions of this MoU, provide where required to the notifying Authority the following:
 - (a) information and documents held on file regarding the following:
 - i. all documents about the organization and rating processes provided to the notified Authority by the Cross Border CRA in question in their latest available version;

- (g) sharing information about the high level approach adopted by an Authority to the supervision of Cross Border CRAs and notification of changes by the Authority of its approach; and
 - (h) prompt notification by an Authority in respect of any action that it may take against a Cross Border CRA that may have a direct impact on such CRA's eligibility for continued recognition, registration or authorisation or its ability to continue to meet its ongoing obligations in the jurisdiction of the other Authority, including the actions set out in Article 6(2).
3. The Authorities may agree on a bilateral basis to add to those areas not covered by Article 5(2) that trigger Cooperation without an additional separate request between the Authorities.

Article 6 – Supervisory or Enforcement Actions against Cross Border Credit Rating Agencies

1. An Authority that has taken a supervisory or enforcement action as set out in Article 6(2) or 6(3) or against a Cross Border CRA will, promptly, inform the other Authority of this fact and state whether or not this action is open to appeal.
2. In respect of the following, the initiating Authority will, promptly, notify the other Authority of:
 - (a) the initiation of proceedings by the Authority with regard to the revocation of a Cross Border CRA's registration, recognition or authorisation;
 - (b) the initiation of proceedings regarding the imposition of a temporary or permanent prohibition on a Cross Border CRA's provision and/or issue of credit ratings that are used in the jurisdiction of the other Authority for regulatory purposes;
 - (c) where applicable, the initiation of proceedings regarding the suspension of the use for regulatory purposes of the credit ratings issued by the CRA;
 - (d) the initiation of proceedings regarding measures to ensure that the Cross Border CRA in question continues to comply with its legal requirements; and
 - (e) the initiation of proceedings by the Authority regarding the issuing of a public notice of a Cross Border CRA's breach of its ongoing obligations.
3. An Authority will, promptly, inform the other Authority when it has taken any of the following supervisory or enforcement actions with regard to a Cross Border CRA:
 - (a) suspension of authorisation to provide and /or issue credit ratings;
 - (b) referrals by ESMA of matters for criminal prosecution;
 - (c) imposition of financial penalties;
 - (d) suspension of an individual who sits on the CRA's management or supervisory board;
 - (e) full or partial withdrawal of the CRA's registration, recognition or authorisation;
 - (f) temporary prohibition on the CRA's providing and /or issuing of credit ratings that are used in the jurisdiction of the other Authority for regulatory purposes;

- (g) where applicable, suspension of the use for regulatory purposes of the credit ratings issued by the CRA; and
 - (h) issuing by the Authority of a public notice of the CRA's breach of its ongoing obligations.
- 4. An Authority will inform the other Authority within a reasonable time period of the following supervisory or enforcement actions have been taken with regard to a Cross Border CRA:
 - (a) on-site inspection and its core findings of its on-site inspection;
 - (b) all relevant measures by the Authority to ensure that the CRA in question continues to comply with its legal requirements;
 - (c) changes in the composition of the CRA's board of directors (in respect of CRAs registered in Hong Kong) or supervisory board (in respect of CRAs registered in the EU); and
 - (d) formal written recommendations to make improvements to the CRA's systems and controls.
- 5. An Authority that is considering taking any action and/or measure set out in paragraphs 2 and 3 in relation to a Cross Border CRA will, endeavour to inform the other Authority before the action and/or measure is taken.

Article 7 -- Assistance

- 1) The Assistance available under this MoU includes, but is not limited to:
 - (a) providing information and documents held in the files of the Requested Authority regarding the matters set forth in the request for Assistance;
 - (b) obtaining information and documents regarding the matters set forth in the request for Assistance;
 - (c) taking or compelling a person's statement, or, where permissible, testimony under oath, regarding the matters set forth in the request for Assistance; and
 - (d) attending meetings.
- 2) Each Authority may, by request to the other Authority, conduct on-site inspections of a Cross Border CRA's offices located within the territory of the other Authority's jurisdiction to the extent permitted by the laws, regulations and other relevant legal provisions in that jurisdiction, they may take a number of different forms and the Requesting Authority shall appropriately inform the Requested Authority prior to conducting an on-site inspection, which form of on-site inspection it would like to conduct. In cases where the Requested Authority is the SFC, it has the discretion to decide whether or not it wants to participate in the on-site inspection with the Requesting Authority. Where applicable, the Authorities may agree to conduct joint inspections in which case these will be carried out under the control of the Authority in whose territory the inspection takes place.
- 3) In cases where the information requested may be maintained by, or is available to, another authority within the jurisdiction of the Requested Authority, the Authorities will to the extent legally possible

endeavour to provide full assistance in obtaining the information requested. If necessary, the Requested Authority shall provide the Requesting Authority with sufficient information so as to establish direct contact between the Requesting Authority and the other authority.

Article 8 – Requests for Assistance

1. Requests for Assistance shall be made in writing, and may be transmitted by email or facsimile, and addressed to the contact person of the Requested Authority listed in Appendix A. Requests for Assistance shall specify the following information:
 - (a) reference to the MoU;
 - (b) description of the facts underlying the request including the CRA, the individuals involved and the chronology of relevant events;
 - (c) any information including the sources of such information, known to, or in the possession of, the Requesting Authority that might assist the Requested Authority in identifying either the persons believed to possess the information or documents sought or the places where such information may be obtained;
 - (d) an indication of the sensitivity of the information contained in the request and whether the Requesting Authority is content for the fact that it has made the request to be disclosed to persons whom the Requested Authority may need to approach for information;
 - (e) description of the specific information needed or assistance sought including the time period for which documents and other information should be gathered;
 - (f) description of how the specific information requested will assist the Requesting Authority;
 - (g) the Laws and Regulations that may have been violated and that relate to the subject matter of the request;
 - (h) description of uses for which Assistance is sought;
 - (i) whether the Requesting Authority is or has been in contact with any other authority or law enforcement agency in the jurisdiction of the Requested Authority in relation to the subject matter of the request;
 - (j) any other Authority of whom the Requesting Authority is aware that it has an active interest in the subject matter of the request; and
 - (k) an indication of the urgency of the request, or the desired time period for the reply.
2. In cases of emergency, requests for Assistance may be transmitted orally provided that these requests are confirmed in the manner required by this Article unless the Requested Authority agrees to waive such requirements.

Article 9 – Consultation

The Authorities will consult on an ongoing basis with each other regarding this MoU about matters of common concern with a view to improving its operation and resolving any issues that may arise as well as enhancing the cross border supervision and enforcement of CRAs. In particular, the Authorities will consult in the event of:

- (a) a significant change in legislation where such change is relevant to the operation of this MoU;
- (b) a demonstrated change in the willingness or ability of an Authority to meet the provisions of this MoU; and
- (c) any other circumstance that makes it necessary or appropriate to consult, amend or extend this MoU in order to achieve its purposes.

Article 10– Confidentiality and Permissible Uses of Information

1. Each Authority will keep confidential all Cooperation under this MoU, including the contents of requests for Cooperation, information exchanged under Articles 4, 5 & 6 and the non-public information received and exchanged under this MoU as well as all consultations between Authorities.
2. Any disclosure of confidential information by ESMA to any competent authorities (as defined in Art. 3.1(p) of the EU Regulation) that is compelled under the EU Regulation and necessary for the discharge of the duties of that authority thereunder shall not be deemed as a breach of confidentiality under this MoU.
3. The Authorities will not disclose non-public documents and information received under this MoU, except as contemplated in paragraph 5 or in response to a legally enforceable demand. In the event of a legally enforceable demand, the Authority in question will notify the Authority which has transmitted the information prior to complying with the demand, and will assert such appropriate legal exemptions or privileges with respect to such information as may be available. The Requesting Authority will use its best efforts to protect the confidentiality of non-public documents and non-public information received under this MoU.
4. In the event of the termination of an Authority's participation in this MoU, the information obtained under this MoU will continue to be treated confidentially according to this Article.
5. Any Authority may use non-public information and non-public documents furnished under this MoU solely:
 - (a) for the purposes set forth in the request for Assistance;
 - (b) for securing compliance with or enforcement of Laws and Regulations;
 - (c) for the purposes of discharging any legal responsibility in respect of CRAs; and
 - (d) for a purpose within the general framework of the use stated in the request for Assistance, including conducting a civil or administrative enforcement proceeding, assisting in a criminal prosecution, or conducting any investigation for any general charge applicable to the violation of the provision specified in the request where such



general charge pertains to a violation of the Laws and Regulations administered by the Requesting Authority. This use may include enforcement proceedings which are public.

6. If a Requesting Authority intends to use information furnished under this MoU for any other purpose than those stated in Paragraph 5, it must obtain the consent of the Requested Authority.

Article 11 – Amendments

1. The Authorities may by common written understanding make amendments to this MoU and add further Appendices to it.
2. Factual changes to the information in Appendices A & B can be made by each Authority by giving written notice to the other Authority.



Article 12 – Entry into Effect and Termination

1. This MoU shall be effective as to the undersigned at the date set out below.
2. This MoU can be terminated by either of the Authority at any time by giving, at least, thirty days prior written notice to the other Authority.

Signed this on 7 March 2012.

European Securities and Markets Authority

Securities and Futures Commission

Ashley Alder

Chief Executive Officer

Appendix A

List of Contact Persons

Country	Name of the Authority	Address	Name of Contact Person	Telephone Number	E-Mail	Fax
European Union	ESMA	103 rue de Grenelle 75007 Paris	Verena Ross	+ 33 1 58 36 51 13	Verena.ross@esma.europa.eu	+ 33 1 58 36 43 30
European Union	ESMA	103 rue de Grenelle 75007 Paris	Felix Flinterman	+ 33 1 58 36 59 12	felix.flinterman@esma.europa.eu	+ 33 1 58 36 43 30
Hong Kong	SFC	8 th Floor, Chater House, 8 Connaught Road Central, Hong Kong	In relation to Article 4 of this MoU: Wilson Lo (Director, Licensing)	+852 2840 9458	wwslo@sfc.hk	+852 2293 5797
Hong Kong	SFC	8 th Floor, Chater House, 8 Connaught Road Central, Hong Kong	In relation to Article 5 of this MoU: Irene Tsao (Director, Intermediaries Supervision)	+852 2842 7632	ioltsao@sfc.hk	+852 2293 5750



Hong Kong	SFC	8 th Floor, Chater House, 8 Connaught Road Central, Hong Kong	In relation to other provisions of this MoU: Jimmy Chan (Director, Enforcement)	+852 2283 6159	jkhchan@sf c.hk	+852 2293 4080
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Appendix B

Cross Border CRAs

Fitch France S.A.S (France), 60 rue de Monceau, 75008 Paris, France.
Fitch Deutschland GmbH (Germany), Taunusanlage 17, 60325 Frankfurt an Main, Germany
Fitch Italia S.PA. (Italy), Vicolo Santa Maria alla Porta, 1, 20123 Milano (MI), Italy
Fitch Polska S.A (Poland) Zielna 37, 00-108, Warsaw, Poland.
Fitch Ratings España SAU. (Spain) Paseo de Gracia, 85, 7thfloor, 08008 Barcelona, Spain.
Fitch Ratings Limited (United Kingdom) 101 Finsbury Pavement, London EC2A IRS, UK.
Fitch Ratings CIS Limited (United Kingdom) 101 Finsbury Pavement, London EC2A IRS, UK.
Moody's Investors Service Cyprus Ltd (Cyprus), Kanika Business Centre 319 28th October Avenue PO Box 53205 Limassol, CY 3301, Cyprus.
Moody's France SAS (France), 96 boulevard Haussmann. 75008 Paris, France.
Moody's Deutschland GmbH (Germany), An der Welle 5, 60322 Frankfurt am Main, Germany..
Moody's Italia S.r.l. (Italy), Corso di Porta Romana, 68, 20122 Milano (MI), Italy
Moody's Investors Service España S.A. (Spain), Barbara de Braganza, 2 Madrid, 28004 Spain.
Moody's Investors Service Ltd (UK), One Canada Square Canary Wharf London, UK E14 5FA, UK.



Standard & Poor's Credit Market Services France SAS (France), 40 rue de Courcelles, Paris, 75008, France

Standard & Poor's Credit Market Services Italy SRL (Italy), Vicolo San Giovanni sul Muro, 1, 20121 Milano (MI), Italy.

Standard & Poor's Credit Market Services Europe Limited (UK) 20 Canada Square, Canary Wharf London E14 5LH, UK.

AM Best Europe Rating Services Ltd. (AMBERS) UK, 12 Arthur Street, London EC4R 9AB, UK

Standard & Poor's Hong Kong Limited (Hong Kong), Suite 3003, 30/F, Edinburgh Tower, The Landmark, 15 Queen's Road Central, Hong Kong

Moody's Investors Service Hong Kong Limited (Hong Kong), 24/F, One Pacific Place, 88 Queensway, Admiralty, Hong Kong

Fitch (Hong Kong) Limited (Hong Kong), 28/F, Tower Two, Lippo Centre, 89 Queensway, Hong Kong

A.M. Best Asia-Pacific Limited (Hong Kong), Unit 4004, Central Plaza, 18 Harbour Road, Wanchai, Hong Kong