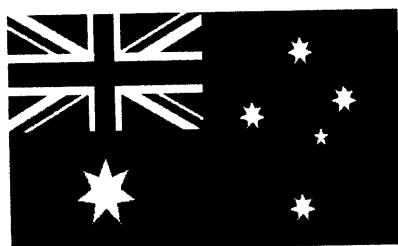


MEMORANDUM OF UNDERSTANDING
ON THE EXCHANGE OF INFORMATION
BETWEEN

AUSTRALIA



TURKEY



**AUSTRALIAN SECURITIES AND
INVESTMENTS COMMISSION**

SERMAYE PIYASASI KURULU

INTRODUCTION

The Capital Markets Board of Turkey and the Australian Securities and Investments Commission, recognising the increasing international activity in the financial markets, and the corresponding need for cooperation between the relevant national authorities, have reached the following understanding:

SIGNATORY AUTHORITIES

1. The Capital Markets Board of Turkey (CMB) is an independent legal entity with its own authority and responsibility mandated by the Capital Market Law (Law) dated 1981.

The CMB has the responsibility for the regulation, supervision and enforcement of all capital market activities, institutions and instruments in Turkey within the scope of the Law and relevant legislation. It has statutory powers of investigation, and has the ability to exercise its powers for the purpose of cooperation with regulators in other countries.

2. The Australian Securities and Investments Commission (ASIC) is the national corporate and securities regulator established under section 7 of the *Australian Securities and Investment Commissions Act 1989*.

The Australian Securities and Investments Commission is responsible for the administration and enforcement of the *Corporations Law* and the *Australian Securities and Investments Commissions Act 1989* which provide for the regulation of corporations, securities markets and intermediaries, and investor protection in relation to financial services and products.

DEFINITIONS

3. For the purpose of this Memorandum of Understanding (MoU),

- “**Authorities**” means:



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the Capital Markets Board of Turkey and;

the Australian Securities and Investments Commission;

- **“Requested Authority”** means the Authority to whom a request is made under this MoU;
- **“Requesting Authority”** means the Authority making a request under this MoU;
- **“Laws and Regulations”** means the provisions of the laws, regulations and other regulatory requirements applicable in the financial field in Turkey and in Australia;
- **“Securities”** means shares, bonds and other forms of securitized debts, futures and derivative products and any other financial products within the respective competence of the Authorities;
- **“Issuer”** means a natural or legal person who issues or proposes to issue any security;
- **“Regulated Markets”** means securities, derivatives and any other markets recognized, regulated or supervised by the Authorities;
- **“Investment Services”** means trading or carrying out transactions involving Securities on Regulated Markets on its own account and/or on behalf and for the account of third parties;
- **“Investment Services Providers”** means investment firms, credit institutions and any other person as authorized to provide Investment Services within the law and regulations applicable in the countries of the Authorities.

PRINCIPLES

4. The purpose of this MoU is to protect investors and to promote the integrity of regulated markets by providing a framework for cooperation, including channels for communication, increased mutual understanding, the exchange of regulatory and technical information, and investigative assistance.

5. The MoU serves as a basis for cooperation for the authorities and does not create any binding international legal obligations, nor does it modify or supercede any laws, regulations, or regulatory requirements in force or applying in Turkey or Australia. The MoU does not create any rights enforceable by third parties, nor does it affect any arrangements under other MoUs.

6. The performance of the provisions of this MoU shall be consistent with domestic laws, regulations, and conventions of the respective countries of the Authorities and within the availability of respective resources of the Authorities, and the performance of the provisions shall not be contrary to the public interests of the requested Authority.

7. To the extent permitted by the laws and practices of Turkey and Australia the Authorities will make reasonable efforts to provide each other with information which is discovered and which gives rise to a suspicion of a breach, or anticipated breach, of the laws, rules, or regulations of the other Authority's jurisdiction.

8. Without prior request for assistance, the Authorities may transmit to each other information they hold and which they consider useful to the other Authority in the performance of its functions and for the purposes that may be specified in the transmission letter. In this event, the terms and conditions of this MoU will apply if the providing Authority specifies that the information is given under this MoU.



MUTUAL ASSISTANCE

Scope

9. To the extent permitted by their respective national laws, the Authorities will provide the fullest mutual assistance within the framework of this MoU. Such assistance will be provided to facilitate the enforcement of the laws or regulations applicable to regulated markets.

10. The Authorities agree to provide mutual assistance and the exchange of information in response to requests to assist them to perform their respective functions in relation to the following areas, amongst others:

- (a) Insider dealing, market manipulation, and other fraudulent, deceptive, and manipulative practices in relation to securities;
- (b) Enforcement of the laws, rules, and regulations relating to issuing, dealing in, managing and advising on securities;
- (c) Fitness and properness of the natural and legal persons who are authorised to conduct the business referred to above, and promoting high standards of fair dealing and integrity in the conduct of that business;
- (d) The duties, of issuers and of offerors for securities, to make disclosure of information relevant to investors;
- (e) The disclosure of interests in the securities of companies;
- (f) Other matters agreed upon by the Authorities.

Requests

11. Requests will be made in writing and addressed to the contact person of the requested Authority listed in the Appendix A. An urgent request for assistance and a reply to such a request may be made in summary form or by means of communication other than the exchange of letters, provided that they are confirmed within ten business days in the manner prescribed in this MoU.



12. Assistance available under this MoU may include but is not limited to;

- (a) Providing access to information in the files of the requested Authority;
- (b) Taking statements from persons; and
- (c) Obtaining documents and information from natural and legal persons.

13. In order to facilitate the giving of assistance, an Authority making a request should specify:

- (a) A general description of the assistance, documents or information sought by the Requesting Authority including (where possible), the identity of persons, any specific questions to be asked of witnesses or list of documents sought which would assist the Requested Authority to comply with the request;
- (b) A general description of both the matter which is the subject of the request and the purpose for which the information is sought (including details of the rule or law pertaining to the matter which is the subject of the request);
- (c) any persons suspected of possessing the information, and any places where the information might be obtained;
- (d) to whom, if anyone, onward disclosure of information is likely to be necessary and the reason for such disclosure; and
- (e) the desired time period for the reply and, where appropriate, the urgency thereof.

14. This MoU does not affect the ability of the Authorities to obtain information from persons on a voluntary basis, provided that any procedures in place in the Authorities' respective countries are observed. The Authority which

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obtains information from persons on a voluntary basis will notify the other Authority in detail.

15. The Authorities agree to provide assistance on matters which are not necessarily an offence in their own jurisdiction.

Execution of Requests

16. The requested Authority will endeavour to obtain information and statements from persons in order to satisfy the requesting Authority's request. This includes obtaining information from natural and legal persons relevant to the request. Access to copies of information held in the files of the requested Authority will be provided at the request of the requesting Authority.

17. The requesting Authority may request that the requested Authority conduct and examination of specific persons. If requested by the requesting Authority, the requested Authority, will, subject to the laws and regulations of the requested Authority, examine persons involved directly or indirectly in the activities underlying the request, or holding information that may assist in carrying out the request.

18. Statements from persons will be taken in the same manner and to the same extent as in investigations or other proceedings in the jurisdiction of the requested Authority.

19. To the extent permitted by law, the requested Authority will conduct inspections or examinations of the books and records of an investment services provider, or its custodian or agent, regulated markets, or securities, futures and options processing businesses.



20. To the extent permitted by law, the requested Authority will, subject to a request from the requesting Authority, undertake all reasonable measures to facilitate the requesting Authority's participation in the examination. Participation may include telephone conferencing, but is not limited to it.

21. In order to avoid unnecessary delays, the requested Authority will pass on portions of the requested information as they become available and consult on procedure as appropriate.

22. In case where the requesting Authority is not satisfied with the information provided, additional information can be requested by the requesting Authority pointing out the subjects to be clarified.

23. Each request will be assessed on a case by case basis by the requested Authority to determine whether information can be provided under the terms of this MoU. In any case where the request cannot be accepted completely, the requested Authority will consider whether other relevant information or assistance can be given.

24. In deciding whether or not to accept or decline a request, the requested Authority will take account of:

(a) Matters specified by the laws, rules, or regulations of the requested Authority's country;

(b) Whether broadly equivalent assistance would be available from the country of the requesting Authority;

(c) Whether the request involves an assertion of a jurisdiction not recognised by the requesting Authority;

(d) Whether it would be contrary to the public interest for assistance to be given.

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(e) Whether the communication of information might adversely affect the sovereignty, security or public policy of the requested Authority,

(f) Whether judicial proceedings have already been initiated in respect of the same facts against the persons in question or whether a final judgement has been passed.

If the requested Authority believes that a request is not accord with this MoU, taking into account the provisions of this Article, it will promptly inform the requesting Authority of the reasons for its refusal.

25. Any document or other material provided in response to a request under this MoU and any copies thereof should be returned on request.

26. To the extent permitted by any laws or regulations applying in Turkey or Australia, the Authorities will use reasonable efforts to provide each other with any information they discover which may be relevant for the other Authority.

27. If it appears that the Requested Authority will incur substantial costs in responding to a request for assistance under this Memorandum of Understanding, the Authorities will establish a cost sharing arrangement before the Requested Authority continues to respond to the request for assistance.

PERMITTED USES OF THE ASSISTANCE OR INFORMATION PROVIDED

28. Information supplied under this MoU may be used solely for the purposes stated in the request with a view to ensuring compliance with or enforcement of the Laws and regulations specified in the request, and for any criminal, civil or administrative proceeding dealing with the violation of the provisions specified in the request.

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29. Any information provided without prior request for assistance to an Authority pursuant to Article 8 shall not be used for any purposes other than those stated in the transmission letter.

30. If the requesting Authority wishes to use the information provided for any purpose other than those stated in the previous Article, but remaining within the scope of this MoU, it must first seek permission from the requested Authority, unless transmission of the information has already been foreshadowed in the request for information or assistance.

31. If the requesting Authority believes that sharing confidential information with a third party is necessary, it must inform the requested Authority of the third party's interest in the information and it must provide the requested Authority with the opportunity to oppose such use, unless transmission of the information has already been foreshadowed in the request for information or assistance.

32. The requested Authority may impose conditions on the release of the information to a third party or it may refuse such use of the information subject to the exception in Article 34. In that case, the Authorities will consult with each other regarding the reasons for refusal and the circumstances under which use of the information might otherwise be allowed.

CONFIDENTIALITY

33. Each Authority will keep confidential, to the extent permitted by law, requests or communications of information made within the framework of this Memorandum, the contents of such requests, and any other matters arising during the implementation of this Memorandum, including consultations between the Authorities.

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34. Assistance or information will not be disclosed by the recipient to third parties without the consent of the Authority providing the assistance or information. Where compelled by law or a court order to disclose the information received, the requesting Authority should give prior written notification to the requested Authority before such disclosure can be made.

35. Unless the request provides otherwise, the confidentiality provisions of the MoU shall not prevent the Authorities from informing another law enforcement or regulatory agency within the jurisdictions of Australia or Turkey of the request or the passing of information or of the information received pursuant to a request to such agencies, provided that:

- (a) the agency is responsible for prosecuting, regulating or enforcing rules or laws falling within the areas set out in Article 10;
- (b) that the purpose of passing that information to the agency falls within the areas set out in Article 10;
- (c) the information is provided on the understanding that it may not be used or disclosed by the agency except for that purpose; and
- (d) the requesting Authority has provided an undertaking in relation to the information requested, if required by the law of the requested Authority's country, in such terms as the law requires.

CONSULTATION

36. The Authorities will keep the operation of this MoU under continuous review and will consult with a view to improving its operation and resolving any matters that may arise. In particular, the Authorities will consult upon request in the event of a denial by one Authority of, or opposition by an Authority to, a request or proposal made by the other Authority pursuant to this MoU.



37. The Authorities may consult informally, at any time, about a request or proposed request or any information provided within the discretion of an Authority in accordance with paragraphs 9, and 10 of this MoU. Additional information may be requested where further clarity is sought.

38. The Authorities may consult and revise the terms of the MoU in the event of a substantial change in the laws, regulations, or practices affecting the operation of the MoU.

39. To improve the cooperation under this MoU, the Authorities will conduct consultations and discussions on the implementation of the MoU periodically.

CONTACT POINTS

40. All communications between the Authorities should be between the points of contacts in Appendix A, unless otherwise agreed.

TERMINATION

41. This MoU will remain in effect unless terminated by any Authority upon 30 days written notice. If either Authority gives such notice, this MoU will continue to have effect with respect to all requests that were made before the effective date of notification until the requesting Authority terminates the matter for which assistance was requested. The provisions concerning confidentiality shall remain in force thereafter.

ENTRY INTO EFFECT

42. This MoU will come into effect between the Authorities from the date of signature.



43. This MoU is signed in duplicate, in the Turkish, and English languages.

SIGNED IN *Siddikler* ON *26 June 2001*



FOR THE CAPITAL MARKETS BOARD OF TURKEY

Dr Doğan CANSIZLAR, Chairman



FOR THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION



Mr David KNOTT, Chairman

APPENDIX A

The requested Authority's contact officer pursuant to the paragraph 41 of this MoU is:

For the Capital Markets Board of Turkey:

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