

**MEMORANDUM
OF
UNDERSTANDING**

AUSTRALIA

HONG KONG

**Australian Securities
Commission**

**Securities and Futures
Commission**

**MELBOURNE
29 SEPTEMBER, 1993**



MEMORANDUM OF UNDERSTANDING (MOU) between the Australian Securities Commission and the Securities and Futures Commission of Hong Kong

Introduction

1. The Australian Securities Commission (ASC) is the national corporate and securities regulator established under section 7 of the Australian Securities Commission Act 1989. The ASC is responsible for the administration and enforcement of the Corporations Law and the Australian Securities Commission Act 1989 which provide for the regulation of corporations and the securities and futures industry. The ASC's ability to exercise coercive powers on behalf of foreign regulators is governed by the Mutual Assistance in Business Regulation Act 1992.

The Securities and Futures Commission of Hong Kong (SFC) is the Commission established under section 3 of the Securities and Futures Commission Ordinance to regulate the securities and futures markets in Hong Kong. The functions of the SFC include administering securities and futures legislation for the protection of investors and maintenance of the integrity of the markets; administering all relevant requirements to ensure full disclosure to and fair treatment of public shareholders and investors; supervising and monitoring the activities of the Stock Exchange of Hong Kong and the Hong Kong Futures Exchange to ensure that they discharge their regulatory responsibilities in relation to all listing or commodities trading and member-related matters in a professional and impartial manner; regulating dealers and investment advisers; and encouraging the development of securities and futures markets in Hong Kong and the increased use of such markets by investors in Hong Kong and elsewhere.

In this MOU, "Authorities" means the ASC and the SFC.

2. The ASC on the one hand, and the SFC on the other, recognising the increasing international activity in the securities, futures and options markets and the corresponding need for mutual co-operation between the relevant national authorities, have reached the following understanding.

Principles

3. The Authorities will use their best endeavours to meet the terms of the MOU. The MOU does not modify or supersede any laws or regulatory requirements in force in, or applying to, Australia or Hong Kong. The MOU does not create any rights enforceable by third parties. The MOU does not affect any arrangements under other MOUs.
4. The purpose of the MOU is to protect investors and to promote the integrity of the securities, futures and options markets by providing a framework for co-operation, including channels for communication, increased mutual understanding, the exchange of information and investigative assistance, to the extent permitted by laws and practices.
5. To the extent permitted by laws and practices, each Authority will use reasonable efforts to provide the other Authority with any information that is discovered which gives rise to a suspicion of a breach, or anticipated breach, of the rules or laws of the other Authority.

Scope

6. The Authorities propose to ensure that mutual assistance is provided by the exchange of information in relation to the following areas:
 - (a) insider trading, market manipulation and other fraudulent and manipulative practices in relation to companies, securities, futures contracts, options and collective investment schemes;
 - (b) enforcement of the laws and regulations relating to dealing in, arranging deals in, managing and advising on securities, futures contracts, options and collective investments;
 - (c) ensuring that only fit and proper persons are authorised or registered to conduct the business referred to in sub-paragraph (b) and promoting high standards of fair dealing and integrity in their conduct of that business;

- (d) the disclosure of interests in the securities of companies;
- (e) the duties of issuers of and offerors for securities to make full and fair disclosure of information relevant to investors;
- (f) breaches of companies legislation.

Requests

7. The 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 territory of each Authority for the provision of such information are observed.
8. Requests will be made in writing. In urgent cases, requests may be in summary form to be followed within five business days by a full request. To facilitate assistance, the requesting Authority should specify in the full request:
 - (a) the information required (identity of persons, specific questions to be asked etc.);
 - (b) the purpose for which information is sought (including details of the rule or law pertaining to the matter which is the subject of the request);
 - (c) a description of the conduct or suspected conduct which gives rise to the request;
 - (d) the link between the specified rule or law and the regulatory functions of the requesting Authority;
 - (e) the relevance of the requested assistance to the specified rule or law;
 - (f) to whom, if anyone, onward disclosure of information is likely to be necessary and, in relation to onward disclosure to an agency or body which is not designated for this purpose and listed in Annex B, the reason for such disclosure.
 - (g) any other matters specified by the laws and regulations in the territory of the requested Authority.

9. Any document or other material provided in response to a request under the MOU and any copies thereof must be returned on request, to the extent permitted by law.
10. Each request will be assessed on a case by case basis by the requested Authority to determine whether assistance can be provided under the terms of the MOU. In any case where the request cannot be accepted completely, the requested Authority will consider whether there may be other assistance which can be given.
11. In deciding whether to accept or decline a request the requested Authority will take account of:
 - (a) matters specified by the laws and regulations in the territory of the requested Authority;
 - (b) whether the request involves an assertion of jurisdiction not recognised by the territory of the requested Authority and
 - (c) whether it would be contrary to the public interest to give the assistance sought.
12. The requested Authority may, as a condition of agreeing that assistance is given under the MOU, require the requesting Authority to make a contribution to costs. Such a contribution may, in particular, be required where the cost of a request is substantial or where a substantial imbalance has arisen in the cumulative costs incurred.
13. The Authorities may provide information, or arrange for information to be provided, on a voluntary basis even though no request has been made and the terms and conditions of this MOU will apply if the providing Authority specifies that the information is supplied under the MOU.

Confidentiality

14. The information supplied under the MOU will be used by the Authorities, or a recipient in paragraph 16 below, solely for the purpose of:
 - (a) securing compliance with or enforcement of the rule or law specified in the request by initiating or assisting in criminal prosecution arising out of the breach of such rule or law;
 - (b) conducting or assisting in civil proceedings arising out of the breach of the rule or law specified in the request and brought by the Authorities or other law enforcement or regulatory bodies within the territories of Australia or Hong Kong;
 - (c) taking regulatory action or imposing regulatory requirements within the areas set out in paragraph 6 above.

15. Each Authority will keep confidential to the extent permitted by law:
 - (a) any request for information made under the MOU and any matters arising in the course of its operation unless such disclosure is necessary to carry out the request or the other Authority waives such confidentiality;
 - (b) any information passed under the MOU unless it is disclosed in furtherance of the purpose for which it was requested.

16. Unless a request or the response to a request provides otherwise, the confidentiality provisions of the MOU shall not prevent the Authorities from informing the law enforcement or regulatory bodies, listed in Annex B, of the request or of passing information received pursuant to a request to such bodies, provided that:
 - (a) such agencies or bodies have responsibility for prosecuting, regulating or enforcing rules or laws falling within the areas set out in paragraph 6 above;

- (b) the purpose of passing such information to such an agency or body falls within the areas set out in paragraph 6; and
 - (c) the requesting Authority has provided any undertaking in relation to the information requested which is required by the law of the territory of the requested Authority.
17. Annex B may be amended after consultation between the Authorities, without the need for re-signature of the MOU.
18. If an Authority becomes aware that information passed under the MOU may be subject to a legally enforceable demand to disclose, it will, to the extent permitted by law, inform the other Authority of the situation. The Authorities will then discuss and determine the appropriate course of action.

Consultation

19. The Authorities may consult informally, at any time, about a request or proposed request.
20. The Authorities may consult and may revise the terms of the MOU in the event of a substantial change in laws or practices affecting the operation of the MOU.

Termination

21. The MOU shall continue to have effect unless terminated by either of the Authorities by giving 30 days' advance written notice to the other Authority that the understanding set out herein is no longer to have effect.

Contact Points

22. All communications between the Authorities should be between the principal points of contact unless otherwise agreed.
23. The Head of International Relations, Office of the Chairman (Sydney), is the principal point of contact in the ASC.

24. The Executive Director, Enforcement, is the principal point of contact in the SFC.
25. Addresses for contact points are given in Annex A. The contact points may be amended by written notice from either Authority, without the need for re-signature of the MOU.

Entry Into Effect

26. This MOU will be effective from the date of its signature by the ASC and the SFC.

SIGNED THIS TWENTY NINTH DAY OF SEPTEMBER, 1993 IN MELBOURNE.

AUSTRALIAN SECURITIES
COMMISSION

SECURITIES AND FUTURES
COMMISSION



Alan Cameron, Chairman



Robert Nottle, Chairman

ANNEX "A"

CONTACT OFFICERS

ASC: Head of International Relations
Office of the Chairman, Sydney
Level 9, Norwich House
6-10 O'Connell Street
GPO Box 4866
Sydney NSW 2001
AUSTRALIA

Telephone: 61-2- 911 2075
Facsimile: 61-2- 911 2634

SFC: Executive Director, Enforcement
Securities and Futures Commission
12th Floor, Edinburgh Tower
15 Queen's Road Central
The Landmark, Central
HONG KONG

Telephone: (852) 842 7605
Facsimile: (852) 521 7929

ANNEX "B"

LIST OF LAW ENFORCEMENT AND REGULATORY BODIES DESIGNATED UNDER PARAGRAPH 16 OF THIS MOU

In Australia:

- Commonwealth Attorney-General
- Commonwealth Director of Public Prosecutions
- Australian Federal Police
- National Crime Authority
- Australian Customs Service
- Police Services of the States of New South Wales, Victoria, Queensland, South Australia, Western Australia, and Tasmania
- New South Wales Crime Commission
- Criminal Justice Commission of Queensland
- Independent Commission Against Corruption (New South Wales)

In Hong Kong:

- Financial Secretary
- Company inspectors appointed by the Financial Secretary
- Hong Kong Monetary Authority
- Independent Commission Against Corruption
- Royal Hong Kong Police Force
- Attorney General
- The Stock Exchange of Hong Kong Limited
- Hong Kong Futures Exchange Limited
- Insider Dealing Tribunal