

**MEMORANDUM  
OF  
UNDERSTANDING**

**AUSTRALIA**

**HONG KONG**

**Australian Securities  
& Investments  
Commission**

**Securities and Futures  
Commission**

**[Hong Kong]  
[8 October 2001]**



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

**Introduction**

- 1 The Australian Securities & Investments Commission (ASIC) is the national corporate and securities regulator established under section 7 of the Australian Securities Commission Act 1989. ASIC 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, securities markets and intermediaries, and investor protection in relation to financial services and products. ASIC'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. The SFC's ability to exercise powers to conduct investigations and obtain evidence on behalf of overseas regulators is governed by section 59A of the Securities and Futures Commission Ordinance and section 63A of the Leveraged Foreign Exchange Trading Ordinance.

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

2. ASIC 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 intend that the fullest mutual assistance is provided within 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, enhanced recognition of each Authority's licensing regime, some facility for joint surveillance of mutual investment entities, the periodic exchange of regulatory information and the provision of 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) the regulation and enforcement of the laws and regulations relating to dealing in, arranging deals in, managing and advising on securities, futures contracts, options, and collective investment schemes;

- (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 by enhanced recognition of each Authority's licensing regime and periodic sharing of regulatory information;
- (d) the supervision of each Authority's regulated exchanges
- (e) the disclosure of interests in the securities of companies;
- (f) the duties of issuers of and offerors for securities to make full and fair disclosure of information relevant to investors;
- (g) breaches of companies legislation.

#### **Liaison Between Authorities**

7. The Authorities agree that there will be regular liaison in relation to evaluation of surveillance techniques and exchange of surveillance manuals, analysis of relevant statistical information, determination of "best practices", exchange of technical information and expertise, co-operation in supervision of each Authority's exchanges and in supervision of prospectuses, participation in joint surveillance inspections and joint training programs where appropriate and relevant, and other matters which concern general issues of regulation and enforcement, or participation in fora where issues of common interest are addressed.

#### **Requests**

8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.

**Unsolicited Information**

14. Without prior request for assistance, the Authorities may transmit to each other information they hold and which they may 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 which event the terms and conditions of this Memorandum will apply if the providing Authority specifies that the information is given under this Memorandum.

**Joint Surveillance**

15. The Authorities agree that, to the extent permitted by law, there may be opportunities for conducting joint surveillance of mutual investment entities in each Authority's jurisdictions.
16. Arrangements for joint surveillance should be agreed in advance and the agreement should cover matters including the documents which both Authorities wish to jointly inspect, details of the entities'/companies' agreement to a joint surveillance/review by both Authorities, a summary of significant matters arising from the joint surveillance/review and any recommendations to the entity/company arising from the joint surveillance/review. Secrecy and confidentiality issues, where they exist, should also be addressed at this stage.

17. Each Authority may propose to the other a cost sharing arrangement (consistent with legal requirements) for the conduct of a joint surveillance/review. Unless otherwise agreed, each Authority is to bear its own costs of participation in joint surveillance/reviews.

#### **Joint Investigations**

18. The Authorities acknowledge that subject to secrecy and confidentiality issues, an investigation, where suspected misconduct involves both jurisdictions, may be conducted more effectively by the establishment of a joint investigation involving members from both Authorities.
19. The Authority suggesting the joint investigation will advise the other Authority of the background to the request for a joint investigation, and liaise with the other Authority to determine the likely objectives of the joint investigation, the expected resources required and the approximate duration of the proposed joint investigation. Each Authority will advise the other as soon as possible as to whether it will agree to such an investigation.
20. In accordance with the IOSCO Guide on Joint Cross-border Investigations, if both Authorities agree to take part in the joint investigation, an agreed initial action plan will be prepared setting out, *inter alia* the objectives, expected duration, funding, publicity and accountability arrangements, and management of the joint investigation.
21. Suggestions to ASIC for a joint investigation should be made, through the Office of International Relations to the Executive Director, Enforcement. Suggestions to the SFC, should be made to the Executive Director, Enforcement.

#### **Confidentiality**

22. The information supplied under the MOU will be used by the Authorities, or a recipient in paragraph 24 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.
23. 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.
24. 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.



25. Annex B may be amended after consultation between the Authorities, without the need for re-signature of the MOU.
26. 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**

27. The Authorities may consult informally, at any time, about a request or proposed request.
28. 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.

#### **Learning and Development**

29. The Authorities agree to regularly liaise and exchange learning and development programs in topics of mutual interest and each Authority agrees to notify or make papers available to the other of its own learning and development programs which might be of relevance and interest to officers in the other Authority.

#### **Termination**

30. 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**

31. All communications between the Authorities should be between the principal points of contact unless otherwise agreed.

32. The Executive Director, International Relations, Sydney, is initially the principal point of contact in ASIC. For ongoing matters involving joint surveillance of mutual investment entities, the Executive Director, Policy and Markets, is the principal point of contact in ASIC. For any other ongoing matters, the Executive Director, Enforcement, is the principal point of contact in ASIC.
33. For matters of joint surveillance of mutual investment entities, the Executive Director, Intermediaries and Investment Products, is the principal point of contact in the SFC. For any other matters, the Executive Director, Enforcement, is the principal point of contact in the SFC.
34. 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**


35. This MOU will be effective from the date of its signature by ASIC and the SFC.

SIGNED THIS OCTOBER 8, 2001 IN HONG KONG.

AUSTRALIAN SECURITIES  
& INVESTMENTS COMMISSION

SECURITIES AND FUTURES  
COMMISSION

  
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David Knott, Chairman

  
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Andrew Sheng, Chairman

ANNEX "A"

CONTACT OFFICERS

ASIC: Executive Director, International Relations  
Level 24, No 1 Martin Place,  
Sydney NSW 2000  
Australia

GPO Box 4866  
Sydney NSW 1042  
AUSTRALIA

Telephone: 61-2- 9911 2050  
Facsimile: 61-2-9911 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) 2842 7656  
Facsimile: (852)2521 7929

## ANNEX "B"

### LIST OF LAW ENFORCEMENT AND REGULATORY BODIES DESIGNATED UNDER PARAGRAPH 24 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
- Hong Kong Police Force
- Department of Justice
- The Hong Kong Exchanges and Clearing Limited
- The Stock Exchange of Hong Kong Limited
- Hong Kong Futures Exchange Limited
- Insider Dealing Tribunal
- Registrar of Companies