



Memorandum of Understanding

between the

Israel Securities Authority (ISA)

and the

Australian Securities & Investments  
Commission (ASIC)

on the

Exchange of Information and Surveillance  
of Securities Activities  
2005

## **The Statutory Authorities**

### **ISA**

The Israel Securities Authority (ISA) is the national regulator that is responsible for the supervision of capital markets. The ISA was established pursuant to the Securities Law, 5728-1968 (hereinafter “the Securities Law”), and its function is to protect the affairs of the securities investing public, as determined in the Securities Law.

The ISA has the responsibility for the regulation, supervision and enforcement of all capital market activities, institutions and instruments in Israel within the scope of the Law and other 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.

### **ASIC**

ASIC is the national corporate regulator that is responsible for the regulation of companies, the supervision of capital markets and participants, and for consumer protection in relation to financial services in Australia. ASIC is established under section 7 of the *Australian Securities and Investment Commissions Act 1989*.

ASIC is responsible for the administration and enforcement of the *Corporations Act 2001* and the *Australian Securities and Investments Commissions Act 2001* 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 for the administration or enforcement of foreign business laws is governed by the *Mutual Assistance in Business Regulation Act 1992*.

### **Preamble**

ASIC and the ISA,

Considering the increasing internationalisation, harmonisation and interdependence of financial markets due to the use of modern technology and the need for closer co-operation between exchanges, for the broadest possible mutual assistance, for the strengthening of cross-border co-operation in order to enhance investor protection, to promote the integrity of financial markets and more generally to facilitate performance of the supervisory functions and the effective enforcement of the Laws and Regulations governing the markets;

Considering that such an approach entails the sharing of different types of information given the various duties vested in the Authorities;

Considering that ASIC is a signatory to the International Organisation for Securities Commissions (IOSCO) Multilateral Memorandum of Understanding (MMOU) and the

ISA has applied to become a signatory to the MMOU, the ASIC will continue acting in furtherance of their commitments under the MMOU and the ISA will be obliged to refrain from acts which would defeat the object and purpose of the MMOU. This bilateral Memorandum of Understanding is not intended to supercede these commitments regarding the MMOU. This bilateral Memorandum of Understanding is otherwise endeavoring to address issues specific to the relationship between the authorities.

ASIC and the ISA have thus reached the following understanding:

### **Paragraph 1 - Principles**

Without prejudice to the provisions set forth by Australian and Israeli law, the purpose of this Memorandum of Understanding is to establish a general framework for co-operation and consultation between the Authorities referred to hereinafter, in order to facilitate the fulfilling of their regulatory responsibilities. The provisions of this Memorandum of Understanding are not intended to create legally binding commitments or supersede domestic Laws or Regulations.

### **Paragraph 2 -Definitions**

1. "Authority" means the Australian Securities and Investments Commission (ASIC) and/or the Israel Securities Authority (ISA).
2. "Requested Authority" means the Authority to whom a request is made under this Memorandum of Understanding.
3. "Requesting Authority" means the Authority making a request under this Memorandum of Understanding.
4. "Laws and Regulations" means any laws and/or regulations in force in the respective states of the Authorities.
5. "Person" means any natural or legal person.
6. "Securities" means shares, bonds and other forms of securitized debts, futures and derivative products including commodity derivatives, units of undertakings in collective investment schemes and other financial products traded in the respective states of the Authorities.
7. "Financial Markets" means any securities and derivatives market supervised by an Authority.
8. "Intermediary" means any investment firm, bank, collective investment scheme and any other person acting within the scope of competence of the Authorities.
9. "Issuer" means a person making an offer to the public or seeking listing of a security.

### **Paragraph 3 -Scope of assistance**

1. To the extent permitted by their respective Laws and Regulations, the Authorities will provide each other with the fullest mutual assistance in any matters falling within the competence of the Authorities, including in particular the following areas:

- a. investigations and enforcement in connection with applicable Laws and Regulations relating to insider dealing, market manipulation and other fraudulent or manipulative practices in the securities field,
  - b. investigation and enforcement of, and monitoring compliance with, applicable Laws and Regulations relating to dealing in, advising on and the management, administration and safekeeping of securities,
  - c. checking that the conditions for the taking up of (or continuing in) business as an Intermediary are met (including e.g. the enforcement of requirements to be authorised),
  - d. enforcing and monitoring compliance with applicable Laws and Regulations relating to the disclosure of interests in securities, takeover bids or the acquisition of influence over financial intermediaries,
  - e. the supervision of the Financial Markets, including clearing and settlement facilities,
  - f. enforcing or monitoring compliance with applicable laws relating to the duties of issuers and offerors of securities in relation to the disclosure of information.
2. In cases where the information requested may be maintained by, or available to, another authority within the country of the Requested Authority, the Requested Authority will endeavour to provide full assistance in obtaining the information requested, to the extent permitted by its national Laws and Regulations. If necessary, the Requested Authority will provide the Requesting Authority with sufficient information to establish direct contact between the Requesting Authority and the other authority.
  3. The Requested Authority may refuse to act on a request for assistance where communication of the information might adversely affect the sovereignty, security or public policy of the State of the Requested Authority or where judicial proceedings for the imposition of criminal penalties have already been initiated in the jurisdiction of the Requested Authority, in respect of the same actions and against the same persons, or, on the grounds that the provision of assistance might result in a judicial or administrative sanction being imposed, where a non-appealable judicial or administrative sanction has already been imposed, in the jurisdiction of the Requested Authority, in respect of the same actions and against the same persons. Nothing in this provision shall prevent the Requested Authority from refusing a request in accordance with its own domestic Laws and Regulations.
  4. To the extent permitted by their respective national Laws and Regulations and without prior request, each Authority will provide the other Authority with any relevant factual information available to it and which it believes to be helpful to the

other Authority for the discharge of its functions and for the purposes, which it may specify in the communication (unsolicited information).

**Paragraph 4 - Requests for Assistance**

1. Requests for assistance will be made in writing, signed by the Chairman of the Requesting Authority, and addressed to the contact person of the Requested Authority listed in Annex A.
2. The Request will specify the following:
  - a. a description of the subject matter of the request and the purpose for which the information is sought and the reasons why this information will be of assistance;
  - b. a description of the specific information requested by the Requesting Authority;
  - c. a description of the facts that constitute the grounds for the suspicion that the offence that is the subject of the request has been committed, and of the connection between these facts and the assistance requested;
  - d. a short description of the relevant provisions that may have been violated and, if known to the Requesting Authority, a list of the persons or institutions believed by the Requesting Authority to possess the information sought or the places where such information may be obtained and the details that support this belief, to the best of the Requesting Authority's knowledge;
  - e. in so far as the request concerns information relating to transactions in specific securities
    - a description of the securities in question as precise as possible (including the securities code),
    - the names of those firms with whose dealings in the securities the Requesting Authority is concerned,
    - the dates between which transactions in the securities are considered relevant for the purposes of the request,
    - the names of any persons on whose behalf relevant transactions in the securities are believed or suspected to have been entered into;
  - f. in so far as the request relates to information concerning the business or activities of any person, such precise information as the Requesting Authority is able to provide so as to enable such persons to be identified;
  - g. an indication of the sensitivity of the information contained in the request and whether the Requesting Authority agrees that the request will be disclosed to persons whom the Requested Authority may need to approach for information;

- h. whether the Requesting Authority is or has been in contact with any other authority or law enforcement agency in the State of the Requested Authority in relation to the subject matter of the request;
- i. any other securities authority of another state whom the Requesting Authority is aware has an active interest in the subject matter of the request;
- j. an indication of the urgency of the request, or the desired time period for the reply.

**Paragraph 5 -Execution of Requests for Assistance**

1. To the extent permitted by their respective Laws and Regulations, the Requested Authority will take all reasonable steps to obtain and provide the information sought within a reasonable period of time.
2. The Requested Authority will use the relevant means at its disposal for the execution of the request. The Authorities will consult and agree on the types of enquiry that may be necessary for the execution of a request. Unless otherwise agreed by the Authorities, information, documents or copies thereof requested under this MOU, will be gathered in accordance with the Laws and Regulations applicable in the jurisdiction of the Requested Authority. Where permissible under the Laws and Regulations of the jurisdiction of the Requested Authority, a representative of the Requesting Authority may be present at the taking of statements and may provide, to a designated representative of the Requested Authority, specific questions to be asked of any witness.

To the extent permitted by law, the Requesting Authority will provide the Requested Authority with such further assistance as may reasonably be required for the efficient execution of the request including the provision of further information as to the circumstances surrounding the request, staff or other resources.

To the extent permitted by their respective national Laws and Regulations, the Authorities will consider conducting joint investigations in cases where the request for assistance concerns violations of Laws and Regulations, where it would assist in the effective investigation of the alleged violations. The Authorities will consult to define the procedures to be adopted for conducting any joint investigation, the sharing of work and responsibilities and the follow up actions to such investigations.

If it appears to the Requested Authority that the response to a request for assistance under this Memorandum of Understanding will incur substantial costs, the Requested Authority may call for the establishment of a cost sharing arrangement before continuing to respond to such a request.

**Paragraph 6 - Permissible Uses of the Information Exchanged and Confidentiality**

1. The Authorities will use the information exchanged solely for the purposes of:
  - a. securing compliance with or enforcement of the domestic Laws or Regulations specified in the Request;
  - b. initiating, conducting or assisting in administrative, civil, disciplinary or criminal proceedings resulting from the violation of the Laws and Regulations specified in the Request.
  - c. any of the particular purposes specified in sub-paragraphs 3 (1)a.-f. to the extent that they are administered by the Requesting Authority.
2. Any assistance or information provided under this Memorandum of Understanding should be used by the Requesting Authority only for the purposes stated in the request, including ensuring the proper administration and enforcement of the Laws and Regulations of the Requesting Authority specified in the request;
3. The Authorities to which unsolicited information is supplied will use this information solely for the purposes stated in the transmission letter or for the purposes of administrative proceedings or for the discharge of the obligation to report to judicial authorities.
4. To the extent permitted by law, each Authority will keep confidential any request for assistance made under this Memorandum of Understanding, the contents of such requests and the information received under this Memorandum of Understanding as well as any matters arising in the course of its operation, in particular consultations between or among the Authorities, and unsolicited assistance. After consultation with the Requesting Authority, the Requested Authority may disclose the fact that the Requesting Authority has made the request if such disclosure is required to carry out the request.
5. If an Authority intends to use or disclose confidential information furnished under this Memorandum of Understanding for any purpose other than those stated in this Paragraph and in the request, it must obtain the prior written consent of the Requested Authority. If the Requested Authority consents to the use of the information for purposes other than those stated, it may subject it to certain conditions.
6. Nothing in paragraphs 1 and 2 of this Paragraph will prevent an Authority from using or disclosing information in circumstances where such use or disclosure is required in order to comply with its national Laws and Regulations.

### **Paragraph 7 - Consultations**

The Authorities will review the implementation of this Memorandum of Understanding regularly and may conduct consultations in order to improve its operation and to resolve possible difficulties.

### **Paragraph 8 -List of Regulated Markets and Directory of Competent Authorities**

1. The Authorities will submit to each other a list of regulated markets as referred to in this Memorandum of Understanding in sub-paragraph 2(7) and make available the relevant rules of procedures and operation of these regulated markets upon request. The Authorities may consider making available the list of regulated markets under their respective jurisdiction on their Internet homepages.
2. The Authorities will provide each other with a directory of competent authorities within their jurisdictions, setting out the responsibilities of each body. In case of any changes thereto, the respective Authority may provide the other Authorities with an updated version of the directory.

### **Paragraph 9 - Amendments to the Memorandum of Understanding**

This MOU may be amended or modified by mutual consent. Any amendment or modification of this MOU shall follow the same procedure as its entry into force.

### **Paragraph 10 – Publication**

The Authorities agree that this Memorandum of Understanding may be published.

### **Paragraph 11 - Entry into Effect and Termination**

1. This Memorandum of Understanding will enter into force on the date of signature.
2. This Memorandum of Understanding will be concluded for an unlimited period of time and may be terminated by any of the Authorities at any time by giving, at least, thirty days prior written notice to the other Authority. If the Requested Authority undertakes to denounce the Memorandum of Understanding, requests for information communicated before the effective date of denunciation will still be processed under this Memorandum of Understanding.

Done at Tel Aviv, this 29 day of September 2005, which corresponds to the 25 day of Elul 5765, in duplicate in Hebrew and English, all texts being equally authentic.

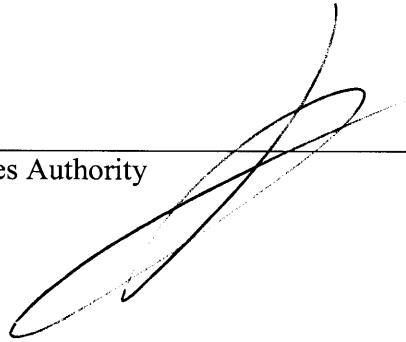
*[Signature page follows]*



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For the Israel Securities Authority

Moshe Tery  
Chairman



For the Australian Securities and Investments  
Commission  
Jeffrey Lucy  
Chairman



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## **Appendix A**

### **Contact person**

Contact person as defined by Paragraph 4 of the Memorandum of Understanding is:

#### **For ASIC**

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Executive Director  
Consumer Protection, International Relations

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#### **For the ISA**

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