



# **MEMORANDUM UNDERSTANDING**

## **ASSISTANCE AND MUTUAL CO-OPERATION**

*BETWEEN*

**Securities Commission of Malaysia**

*AND*

**Australian Securities and Investments Commission**



**Suruhanjaya Sekuriti**  
Securities Commission



**ASIC**

Australian Securities & Investments Commission

## **MEMORANDUM OF UNDERSTANDING**

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## **1. INTRODUCTION**

The Securities Commission of Malaysia was established under Section 3 of the Securities Commission Act 1993 to regulate the securities and futures markets in Malaysia. Its primary role is to ensure the orderly development of a fair and efficient securities and futures market in line with the economic and development objectives of the country. The main functions of the Securities Commission of Malaysia include regulating the issue of securities, futures contracts, take-overs and mergers of companies and unit trust schemes, supervising and monitoring the activities of any exchange, clearing house and central depository, safeguarding the interests of the persons dealing in securities or trading in futures contract; promoting proper conduct amongst members of the exchanges and all registered persons; suppressing illegal, dishonourable and improper practices pertaining to securities and futures contracts; suggesting law reforms relating to securities or futures contracts and encouraging the development of the securities and futures markets in Malaysia.

The Australian Securities and Investments Commission ("ASIC") is the national corporate, securities and futures regulator established under section 7 of the ASIC Law. The ASIC is responsible for the administration and enforcement of the Corporations Law, Corporations Regulations, ASIC Law and ASIC Regulations, which provide for the regulation of corporations and the securities and futures industries and markets. The ASIC's power to exercise coercive powers on behalf of foreign regulators is governed by the *Mutual Assistance in Business Regulation Act 1992*.

## **2. DEFINITIONS**

For the purposes of this Memorandum of Understanding:

"Authority" means the Securities Commission of Malaysia or the Australian Securities and Investments Commission, as the case may be

"Requested Authority" means the Authority to whom a request is made pursuant to paragraph 5 of this Memorandum of Understanding

"Requesting Authority" means the Authority making a request pursuant to paragraph 5 of this Memorandum of Understanding

"person" means a natural person, body corporate, partnership, or unincorporated association, government or political subdivision, agency or instrumentality of a government

"securities market" means an exchange or other market, including an over-the counter market, in respect of equity securities, debt securities, bonds, options or any other security that is recognised, regulated or supervised by the Authorities.

"territory" means the country, state or other territory, as the case may be, in which an Authority has legal authority, power and / or jurisdiction conferred by law.

### **3. PRINCIPLES**

- 3.1. This Memorandum of Understanding sets forth a statement of intent of the Authorities to establish a framework for mutual assistance and to facilitate the exchange of information between the Authorities to enforce or ensure compliance with their respective securities and futures laws or regulatory requirements.
- 3.2. The purpose of this Memorandum of Understanding is for increased investor protection and further promotion of the integrity of the securities, futures and options markets by providing a framework for co-operation, increased mutual understanding, exchange of information and investigative assistance, to the extent permitted by the laws and practices of the Authorities.
- 3.3. The Authorities will use their best endeavours to meet the terms of this Memorandum of Understanding. This Memorandum of Understanding does not impose any legally binding obligation on the Authorities or modify or supersede any domestic laws or regulatory requirements in force in or applying to the Authorities, nor will it affect any arrangements made or to be made under other Memoranda of Understanding.

- 3.4. This Memorandum of Understanding does not affect any right of any Authority under its domestic laws or any other arrangement to take measures otherwise than as provided herein to obtain information necessary to ensure compliance with, or to enforce, its domestic laws or regulations. In particular, this Memorandum of Understanding does not affect any right of either Authority to communicate with or obtain information or documents from any other person on a voluntary basis in the territory of the other Authority.
- 3.5. This Memorandum of Understanding will not, on behalf of any person other than the Authorities, give rise to, a right, directly or indirectly, to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Memorandum of Understanding.
- 3.6. To the extent permitted by laws and practices, each Authority will use reasonable effort to provide the other Authority with any information that is discovered which gives rise to a suspicion of a breach or anticipated breach, of rules or laws in the territory of the other Authority.
- 3.7. The Authorities recognise the need and desirability for providing mutual assistance and exchanging information to assist each other in ensuring compliance with laws or regulations of their respective countries. However, the Requested Authority may deny assistance requested under this Memorandum of Understanding on the ground that:-
- (a) the provision of assistance would violate the national or public interest or the domestic law of the Requested Authority; or
  - (b) the request is not made in accordance with the provisions of this Memorandum of Understanding.

#### **4. SCOPE**

The Authorities agree to promote mutual assistance and exchange of information to enable the Authorities to effectively perform their respective duties according to law. The scope of this Memorandum will include:-

- (a) investigation and enforcement of laws, rules and regulations relating to insider dealings, market manipulation and other fraudulent practices in securities dealings in relation to companies, securities, futures contracts, options and collective investment schemes;
- (b) enforcement of laws, rules and regulations relating to dealing in, arranging deals in, managing and advising on securities, futures contracts, options, collective investments and other investment products;
- (c) supervising and monitoring stock markets and clearing and settlement activities and their compliance with the relevant laws and regulations;
- (d) promoting and securing the fitness and properness of registered persons and promoting high standards of fair dealing and integrity in their conduct of business;
- (e) the duties of directors, officers, shareholders and professional advisers of companies issuing securities to make full, accurate and timely disclosure of information relevant to investors;
- (f) take-overs and mergers; and,
- (g) any other matters agreed upon between the Authorities from time to time.

## **5. REQUESTS FOR ASSISTANCE OR INFORMATION**

- 5.1. This Memorandum of Understanding does not affect the ability of the Authorities to obtain information from persons on a voluntary basis, provided that existing procedures in the territory of each Authority for the obtaining of such information are observed.
- 5.2. The requests for information or other assistance will be made in writing in the English Language and addressed to the Requested Authority's contact person(s) referred to in paragraph 14 herein. In urgent cases, requests may be made in summary form to be followed with a full request within five (5) business days therefrom.
- 5.3. Requests for information should specify:-
  - (a) the information required (identity of persons, specific questions to be asked etc.);
  - (b) the purpose for which the information is sought (including details of the rule or law pertaining to the subject matter of the request);
  - (c) 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, onward disclosure of information is likely to be necessary, and in this context, the reason for such disclosure;
  - (g) any information in the possession of the Requesting Authority that might assist the Requested Authority in identifying the persons or entities believed by the Requesting Authority to possess the information sought or the places where such information may be obtained;

- (h) the desired time period for the reply; and
  - (i) any other matters specified by the laws and regulations in the territory of the Requested Authority.
- 5.4. Any document or other material provided in response to a request under this Memorandum of Understanding must be returned on request, to the extent permitted by the laws of the Requesting Authority.
- 5.5. 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 this Memorandum of Understanding. 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, to the extent permitted by the laws of the Requested Authority.
- 5.6. 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, and
  - (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 national or public interest to give the assistance sought.

## **6. EXECUTION OF REQUESTS**

Access to information held in the possession of the Requested Authority will be provided upon the request of the Requesting Authority, to the extent permitted by the domestic laws and internal policies of the Requested Authority.



## **7. UNSOLICITED INFORMATION**

Where one Authority has information which will assist another Authority in the performance of its regulatory functions, the former may provide such information, or arrange for such information to be provided, on a voluntary basis even though no request has been made by the other Authority. The terms and conditions of this Memorandum of Understanding will apply if the providing Authority specifies that the information is passed under this Memorandum of Understanding.

## **8. PERMISSIBLE USES OF INFORMATION**

8.1. Any assistance or information will be provided by an Authority only for the purposes of assisting the other Authority in the performance of its regulatory functions. Any assistance or information provided under this Memorandum of Understanding should be used by the recipient only for:-

- (a) the purpose of performing its regulatory functions;
- (b) the purposes stated in the request, including ensuring compliance with or enforcement of the laws or regulations of the Requesting Authority specified in the request, by initiating or assisting in criminal prosecution arising out of the breach of such rule or law; or
- (c) conducting or assisting in civil proceedings brought by the Authorities or other law enforcement or regulatory bodies within the territory of the Requesting Authority in taking regulatory action or imposing regulatory requirements within the scope stated in paragraph 4 above arising out of the breach of the rule or law specified in the request.

8.2. In the event that the Requesting Authority desires to use the information obtained for any purpose other than that stated in 8.1 above, the Requesting Authority must notify and seek the consent of the Requested Authority to such use of the information.

## **9. CONFIDENTIALITY**

9.1. Each Authority will keep confidential, to the extent permitted by law,

- (a) any request for information made under this Memorandum of Understanding and any matter arising in the course of the operation of this Memorandum of Understanding, including consultations between the Authorities and unsolicited assistance, unless such disclosure is necessary to carry out the request or the other Authority waives such confidentiality.
- (b) any information received pursuant to this Memorandum of Understanding unless it is disclosed in furtherance of the purpose for which it was requested.

9.2. Notwithstanding the provisions of paragraph 9.1 on the confidentiality provisions of this Memorandum of Understanding, the Authorities will not:-

- (a) pass the information furnished pursuant to this Memorandum of Understanding to any person, law enforcement agencies or regulatory bodies; or
- (b) inform any person, law enforcement agencies or regulatory bodies of a request under the Memorandum of Understanding;

unless:

- (c) such persons, agencies or bodies have responsibility for prosecuting, regulating or enforcing the laws and regulations of the Requesting Authority;
- (d) the purpose for passing such information to such person, agency or body falls within the laws and regulations of the Requesting Authority;

- (e) the passing of such information is not contrary to any undertaking in relation to the requested information required by the law of the jurisdiction of the Requested Authority and provided by the Requesting Authority; and
- (f) the Requesting Authority must notify and seek the consent of the Requested Authority to such use of the information.

9.3. If an Authority becomes aware that information passed under this Memorandum of Understanding 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.

## **10. CONSULTATION**

- 10.1. The Authorities may consult one another informally at any time about a request or proposed request.
- 10.2. The Authorities may consult and may revise the terms of the Memorandum of Understanding in the event of a substantial change in laws, practices, market or business conditions affecting the operation of this Memorandum of Understanding.

## **11. COST OF INVESTIGATION OR ASSISTANCE**

The Requested Authority may as a condition of agreeing that assistance be given under this Memorandum of Understanding, require the Requesting Authority to make a contribution to costs. Such a contribution may, in particular, be required where the cost of executing a request is substantial.

## **12. ENTRY INTO EFFECT**

This Memorandum of Understanding will be effective from the date of signing by the Authorities.

## **13. TERMINATION**

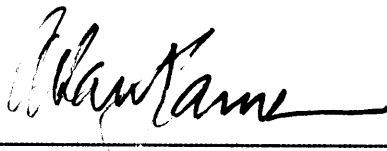
This Memorandum of Understanding will continue in effect until the expiry of thirty (30) days after either Authority gives written notice to the other Authority of its intention to terminate. This Memorandum of Understanding will continue to have effect with respect to all requests for assistance that were made before the effective date of termination.

## **14. CONTACT PERSONS**

All communications between the Authorities should be between the principal points of contact as set out in Appendix A unless otherwise agreed. Appendix A may however be amended by written notice from either Authority without the need for the resigning of this Memorandum of Understanding.

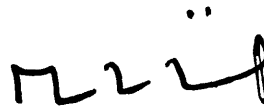
Signed this 8th day of July 1998 in Kuala Lumpur

**Australian Securities and  
Investments Commission**



**Mr. Alan Cameron A.M**  
Chairman

**Securities Commission  
of Malaysia**



**Dato' Dr Mohd Munir Abdul Majid**  
Chairman

**ATTACHMENT**

**Appendix A**

**LIST OF CONTACT PERSONS**

**SECURITIES COMMISSION OF MALAYSIA**

General Manager  
Strategy, Research and Corporate Affairs Division  
Securities Commission Malaysia  
No.3 Persiaran Bukit Kiara  
Bukit Kiara  
50490 KUALA LUMPUR  
Tel : (603) 654-8531  
Fax : (603) 653-3451

## **APPENDIX A**

### **LIST OF CONTACT PERSONS**

#### **AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION**

Head of International Relations  
National Office (Sydney)  
Australian Securities and Investments Commission  
Level 18  
135 King Street  
Sydney NSW 2000  
AUSTRALIA  
Tel: 61 2 9911 2075  
Fax: 61 2 9911 2634

#### **SECURITIES COMMISSION OF MALAYSIA**

General Manager, Corporate Affairs Department  
Securities Commission Malaysia  
No. 3, Sri Semantan Satu  
Bukit Damansara  
50490 Kuala Lumpur  
Malaysia  
Tel: (603) 250-7558  
Fax: (603) 253-6184