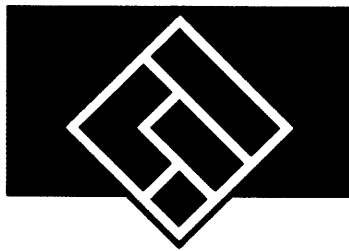


MEMORANDUM OF UNDERSTANDING
ON
THE EXCHANGE OF INFORMATION AND MUTUAL ASSISTANCE

BETWEEN

THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION



ASIC

Australian Securities &
Investments Commission

Ministry of Economic
Development

Manatū Ohanga

Companies Office



THE NEW ZEALAND REGISTRAR OF COMPANIES

MEMORANDUM OF UNDERSTANDING

FOR THE EXCHANGE OF INFORMATION AND MUTUAL ASSISTANCE

BETWEEN

THE AUSTRALIAN SECURITIES AND INVESTMENT COMMISSION (ASIC)

AND

THE NEW ZEALAND REGISTRAR OF COMPANIES

This Memorandum of Understanding (Memorandum) sets out a framework for co-operation between the Australian Securities and Investment Commission (ASIC) and the New Zealand Registrar of Companies (together referred to as the Authorities) to facilitate the co-operation, assistance and exchange of confidential information between the Authorities. The Memorandum also provides a basis for the Authorities working together towards the harmonisation of the legal and regulatory framework for securities and corporate entities in Australia and New Zealand.

Article 1: Introduction

- 1.1 ASIC is the national corporate and financial services regulator established under section 7 of the Australian Securities and Investment Commission Act 1989 and continued in existence by section 261 of the Australian Securities and Investments Commission Act 2001. 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 and financial services. 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.
- 1.2 The Registrar is responsible for administration of the regulatory framework for incorporated entities registered under various Acts including the Companies Act 1993. The Registrar also provides prosecution and enforcement functions under the Companies Act 1993, Securities Act 1978 and Corporations (Investigation and Management) Act 1989.
- 1.3 The Memorandum of Understanding will be effective from the date of its signing by the Authorities.

Article 2: Purpose of the Memorandum

- 2.1 The Authorities recognise that co-operation between them is desirable to assist in the discharge of their respective functions in Australia and New Zealand.
- 2.2 The Authorities agree to work together in relation to initiatives to harmonise the legal and regulatory framework for securities and corporate entities in Australia and New Zealand.

- 2.3 The Authorities agree to assist each other to the extent possible in the exchange of information, the referral of matters; to cooperate on compliance, education and enforcement activities within the framework of this Memorandum and consistent with all relevant laws, in particular:
- a. assist the Australian and New Zealand Governments in exploring opportunities to harmonise the legal and regulatory framework for securities and corporate entities in Australia and New Zealand;
 - b. sharing information on operational issues associated with the application of securities and corporate entities legislation in Australia and New Zealand;
 - c. assisting with investigations and enforcement action in respect of contraventions of laws or regulatory requirements regarding securities and corporate entities in Australia and New Zealand;
 - d. promote and facilitate access to each Authority's public information services;
 - e. ongoing co-operation and sharing information between the Authorities to improve compliance with laws and regulations administered by the Authorities.
- 2.4 The Memorandum does not prohibit either Authority from taking other measures which conform with domestic or international law, to achieve the same purpose.
- 2.5 Each Authority agrees that this Memorandum represents the preferred way of obtaining confidential information necessary to ensure compliance with or enforcement of their laws and regulations. This Memorandum does not create any binding legal obligations upon the Authorities or modify or supersede any laws or regulations applicable in Australia or New Zealand. Nor does the Memorandum give rise, directly or indirectly, on the part of any person other than the Authorities the right to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Memorandum.
- 2.6 Any document or other material provided in response to a request under this Memorandum is to be returned on request.
- 2.7 This Memorandum does not affect the ability of the Authorities to exchange non-confidential information.

Article 3: Definitions

For the purpose of this Memorandum:

- 3.1 "Authority" means:
- a. The Australian Securities and Investments Commission (ASIC); or
 - b. The New Zealand Registrar of Companies
- 3.2 "Requested Authority" means the Authority to whom a request under this Memorandum is made;

- 3.3 "Requesting Authority" means an Authority making a request under this Memorandum;
- 3.4 "Laws and regulations" means the provisions of the laws, regulations and other regulatory requirements applicable in Australia and New Zealand;
- 3.5 "Person" means a natural person, legal entity, partnership or unincorporated association;
- 3.6 "Securities" means shares, units of such shares, bonds and other forms of securitised debt, negotiable futures contracts, options on shares or futures contracts, collective investment schemes and any other financial products which are within the area of competence of the Authorities;
- 3.7 "Corporate Entities" means a legal entity, possessing the character of perpetuity.

Article 4: Liaison

- 4.1 There will be regular meetings between the Authorities as follows:
 - a. meetings at Commissioner / Registrar level annually or otherwise as agreed between the Authorities;
 - b. meetings at officer level twice a year or otherwise as agreed between the Authorities to provide information on current matters which may be of interest.
- 4.2 The Authorities agree that, where appropriate, they will consult with each other in relation to recent court judgements, current law reform, policy issues and other matters of mutual interest.
- 4.3 Where appropriate, the Authorities will agree joint work programs on matters of mutual interest.
- 4.4 The Authorities will keep the operation of this Memorandum under continuous review and will consult each other with a view to improving its operation and resolving any matters which may arise.

Article 5: Exchange of Information for Compliance and Enforcement Purposes upon Request

- 5.1 The Authorities agree that, subject to their respective laws and regulations, information available to one Authority, which is relevant to the responsibilities of the other Authority, will be shared as requested, provided that compliance with the request will not adversely affect the operations of the complying Authority.
- 5.2 Each Authority will use best endeavours to provide relevant information to the other Authority in a timely manner.
- 5.3 When exchanging confidential information, the Authorities acknowledge the confidentiality and secrecy requirements of the laws and regulations under which each Authority operates. Information provided to the Requesting Authority under this Memorandum will not be released or disclosed to a third party without the express consent of the Requested Authority or as specified in the Request for Assistance.

- 5.4 Assistance under the Memorandum may be denied, in particular:
- a. where the execution of the request would prejudice the sovereignty, the security, the fundamental economic interests or public interest of Australia or New Zealand; or
 - b. where such assistance is not permitted by the laws or regulatory requirements in force in, or applying to, Australia or New Zealand; or
 - c. where the request is not in accordance with the provisions of this Memorandum of Understanding.
- 5.5 Where the Requested Authority denies or opposes a request for assistance it will provide the reasons why it is not granting the assistance and the Authorities will consult on other possible means of dealing with the request.

Article 6: Unsolicited Information

- 6.1 Without prior request for assistance, the Authorities will use reasonable efforts to transmit to each other information they hold 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.

Article 7: Requests for Assistance on Compliance or Enforcement Matters

- 7.1 Requests for assistance in relation to compliance or enforcement matters must be made in writing and addressed to the Requested Authority's contact person listed in Appendix A. Appendix A may be amended by written notice from either Authority without the need for re-signature of this Memorandum.
- 7.2 The request for assistance must specify the following:
- a. a general description of the assistance, documents or information sought by the Requesting Authority;
 - b. a general description of the purpose for which the information is sought;
 - c. a brief description of the facts giving rise to the request (including details of the rule or law pertaining to the matter which is the subject of the request);
 - d. whether the information is sought as part of an investigation into suspected breaches of the law or for compliance activities;
 - e. the link between the specified rule or law and the regulatory functions of the Requesting Authority;
 - f. the relevance of the requested assistance to the specified rule or law;
 - g. in the case of requests for assistance in relation to an investigation, the possible sanctions, penalties or consequences that may result from proceedings arising from the investigations;

- h. to whom, if anyone, onward disclosure of information is likely to be necessary and the reason for such disclosure;
- i. 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;
- j. the desired time period for the reply and, where appropriate, the urgency thereof; and
- k. any other matters specified by the laws and regulations in the territory of the Requested Authority.

7.3 In urgent circumstances, requests for assistance and replies to such requests may be transmitted by summary or emergency procedures defined by mutual agreement between the Authorities, provided that they are confirmed in the manner prescribed in paragraphs 1 and 2 of this Article within 5 business days.

Article 8: Execution of Requests

- 8.1 Subject to Articles 2, 5 and 7, the Requested Authority will provide to the Requesting Authority the information that it holds or that it may obtain by such means as may be determined by the Requested Authority, in accordance with the applicable rules.
- 8.2 In general, the Requested Authority will bear the cost incurred by it in locating and providing the information to the Requesting Authority.
- 8.3 If it appears that the Requested Authority will incur substantial costs in responding to a request for assistance under the Memorandum, the Authorities may negotiate a cost-sharing arrangement.

Article 9: Permissible Use of Information

- 9.1 The Requesting Authority shall use the information furnished solely for 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.
- 9.2 Any information provided without prior request for assistance to an Authority pursuant to Article 6 shall not be used for any purpose other than those stated in the transmission letter.
- 9.3 However, if the Requesting Authority wishes to use the information provided for any purpose other than those stated in paragraph 1 and 2 of this Article, including the transmission of this information to another person, it must first seek permission from the Requested Authority (unless the transmission of information has already been foreshadowed under Article 7.2(h)).
- 9.4 If the Requested Authority agrees to the use of the information for the purposes other than those stated in paragraphs 1 and 2 of this Article, it may subject the utilisation of the information to certain conditions. The Requested Authority may refuse such use of the information; in that case the Authorities will consult

each other regarding the reasons for refusal and the circumstances under which use of the information might otherwise be allowed.

Article 10: Confidentiality of Requests

- 10.1 Each Authority shall keep confidential requests for 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.
- 10.2 In all cases, the Requesting Authority shall keep confidential, any information received pursuant to the Memorandum.
- 10.3 Notwithstanding paragraphs 1 and 2 of this Article, the confidentiality provisions of this Memorandum will not prevent the Authorities from providing information to any person specifically identified in the request for information pursuant to Article 7.2(h)).
- 10.4 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. The Authorities will then consult on an appropriate course of action.

Article 11: Disputes

- 11.1 In any case of dispute over the interpretation of this Memorandum, the Authorities will consult each other with a view to reaching a mutually acceptable interpretation.

Article 12: Amendments to the Memorandum

- 12.1 Further to consultations held pursuant to Article 4, the Authorities may agree on such amendments as may be necessary to give effect to this Memorandum.
- 12.2 If in future there are any legislative changes which will affect the scope of this Memorandum, both parties may review the Memorandum.

Article 13: Publication

- 13.1 The Authorities may agree to publish the Memorandum.

Article 14: Termination

- 14.1 This Memorandum will remain in effect unless terminated by any Authority upon 30 days written notice. Where the Authority gives such notice, this Memorandum will continue to have effect with respect to all requests for assistance made before the date of the receipt of the notification.

IN WITNESS WHEREOF the undersigned have signed this Memorandum.

Signed this 8th day of FEBRUARY 2006 in duplicate in Wellington, New Zealand.

**For the Australian
Securities and Investments
Commission**



JEFFREY LUCY AM
Chairman

**The Registrar of Companies
Ministry of Economic
Development**



NEVILLE HARRIS
Registrar of Companies

APPENDIX A

The Authority's contact officer pursuant to Article 7 of the Memorandum is:

For ASIC:

Andrew Crain

Director, Office of International Relations

Ph: +61 2 9911 2050

Email: andrew.crain@asic.gov.au

For the Registrar of Companies

Liz Thomson

Manager, Legal Services

Ph: +64 4 470 2504

Email: liz.thomson@med.govt.nz

Alternate:

Justin Hygate

Group Manager, Business Registries

Ph + 64 3 962 2707

Email: justin.hygate@med.govt.nz