

**MEMORANDUM OF UNDERSTANDING
ON THE EXCHANGE OF INFORMATION
BETWEEN**

AUSTRALIA



ASIC

Australian Securities & Investments Commission

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

PAKISTAN



Securities and Exchange Commission of Pakistan

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

MEMORANDUM OF UNDERSTANDING

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1. INTRODUCTION

The Securities and Exchange Commission of Pakistan (SECP) and the Australian Securities and Investments Commission (ASIC), recognising the increasing international activity in the financial markets, and the corresponding need for cooperation between the relevant national authorities, have reached the following understanding under this bilateral Memorandum of Understanding.

ASIC is also a signatory to the International Organisation for Securities Commissions (IOSCO) Multilateral Memorandum of Understanding (MMOU) and will continue acting in furtherance of its commitments under the MMOU. This bilateral Memorandum of Understanding is not intended to supersede ASIC's commitments or entitlements under the MMOU. This bilateral Memorandum of Understanding is otherwise endeavouring to address issues specific to the relationship of ASIC and SECP.

STATUTORY AUTHORITIES

The **SECP** was established under the Securities and Exchange Commission of Pakistan Act, 1997 for the beneficial regulation of the capital markets, superintendence and control of corporate entities and for matters connected therewith.

The SECP has the responsibility for the regulation and supervision of all capital market activities, institutions and instruments in Pakistan within the scope of the Law and relevant legislation. It has statutory powers of enforcement and investigation.

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*.

2. DEFINITIONS

For the purposes of this Memorandum of Understanding:

- **“Authorities”** means ASIC and SECP;
- **“Authority”** means ASIC or SECP as the case may be;
- **“Information”** includes information and documents;
- **“Investment Services Provider”** means financial service providers, investment firms, credit institutions and any other Person authorized to provide Investment Services in accordance with Laws and Regulations applicable in the countries of the Authorities;
- **“Investment Services”** means trading or carrying out transactions involving Securities on Regulated Markets on its own account and/or on behalf and for the account of third parties;
- **“Issuer”** means a natural or legal person who issues or proposes to issue any security;
- **“Laws and Regulations”** mean the provisions of the laws of the jurisdictions of the Authorities, the regulations promulgated there under, and other regulatory requirements that fall within the competence of the Authorities, concerning the following:
 - (a) insider dealing, market manipulation, misrepresentation of material information and other fraudulent or manipulative practices relating to securities, derivatives and options including solicitation practices, handling of investor funds and customer orders;
 - (b) the registration, issuance, offer, or sale of securities and derivatives, and reporting requirements related thereto;
 - (c) market intermediaries, including investment and trading advisers who are required to be licensed or registered, collective investment schemes, brokers, dealers, and transfer agents; and
 - (d) markets, exchanges, and clearing and settlement entities.
- **“Person”** means a natural person, body corporate, partnership, or unincorporated association, government or political subdivision, agency or instrumentality of a government;
- **“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;

- **“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 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 markets by providing a framework for co-operation, increased mutual understanding and exchange of information, to the extent permitted by the respective laws and practices of the Authorities.
- 3.3. The Memorandum of Understanding serves as a basis for cooperation for the Authorities and does not create any binding legal commitments, nor does it modify or supersede any Laws and Regulations in force in or applying in Australia or Pakistan. The Memorandum of Understanding does not create any enforceable rights including rights enforceable by third parties, nor does 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 Laws and Regulations to take measures otherwise than as provided herein to obtain information necessary to ensure compliance with, or to enforce, its Laws and Regulations. In particular, this Memorandum of Understanding does not affect the ability of either Authority to communicate with or obtain information or documents from any other person on a voluntary basis subject to any applicable laws and procedures of the Authorities.
- 3.5. To the extent permitted by their respective laws and procedures, each Authority will use reasonable efforts to provide the other Authority with any information in its possession which gives rise to a suspicion of a breach or anticipated breach of the Laws and Regulations, or may assist in the administration and enforcement of the Laws and Regulations.
- 3.6. 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 will 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

- 4.1 The Authorities will, within the framework of this Memorandum of Understanding, provide each other with the fullest assistance permissible to enable the proper administration of the Laws and Regulations of the Authorities.
- 4.2 The Authorities will provide mutual assistance and exchange of information in response to requests to enable the Authorities to effectively perform their respective duties according to their Laws and Regulations. Under the foregoing general theme, the scope of this Memorandum will include the following:-
- (a) assisting in discovery of and taking action against insider dealings, market manipulation and other fraudulent, deceptive and manipulative practices;
 - (b) supervising and monitoring stock markets and clearing and settlement activities and their compliance with the relevant Laws and Regulations;
 - (c) promoting and securing the fitness and properness of registered persons and promoting high standards of fair dealing and integrity in their conduct of business;
 - (d) the compliance by issuers with any duties under the Laws and Regulations and any commitment to make full, accurate and timely disclosure of information relevant to investors;
 - (e) takeovers and mergers, related to public companies, and
 - (f) any other matters decided upon in writing between the Authorities from time-to-time.
- 4.3 Assistance available under this Memorandum of Understanding may include but is not limited to;
- (a) Providing access to information in the possession of the requested Authority; and
 - (b) Obtaining documents and information from persons.

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 laws and procedures in the territory of each Authority for obtaining such information are observed in the territory of each Authority.
- 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 13 herein. In urgent cases, requests may be made orally

and confirmed with a full request in writing within five (5) business days thereafter.

5.3 Requests for information will specify:-

- (a) the information required (identity of persons, specific questions to be asked, list of documents sought etc.)
- (b) a general description of the matter and 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 Laws and Regulations and the regulatory functions of the Requesting Authority,
- (d) any persons suspected of possessing the information, and any places where the information might be obtained;
- (e) to whom, if anyone, onward disclosure of information is likely to be necessary, and in this context, the reason for such disclosure,
- (f) the desired time period for the reply;
- (g) any other matters specified by the Laws and Regulations in the territory of the Requested Authority;
- (h) any other information the Requesting Authority deems necessary to specify.

5.4 The Authorities will provide assistance on matters that are not offences in their own jurisdiction or contrary to public policy.

6. EXECUTION OF REQUESTS

- 6.1 The Requested Authority will endeavour to obtain information and statements from persons in order to satisfy the Requesting Authority's request. This will include obtaining information from persons relevant to the request. Access information held in the possession of the Requested Authority will be provided at the request of the Requesting Authority.
- 6.2. The Requesting Authority may request that the Requested Authority conduct and examine specific persons. If requested by the Requesting Authority, the Requested Authority may, subject to the Laws and Regulations of the Requested Authority, examine persons involved directly or indirectly in the activities underlying the request, or holding information that may assist in carrying out the request.
- 6.3 To the extent permitted by law, the Requested Authority may conduct inspections or examinations of the books and records of an Investment Services

Provider, or its custodian or agent, markets, or securities, clearing and settlement or futures and options processing businesses.

- 6.4. To the extent permitted by law and policy, the Requested Authority will, subject to a request from the Requesting Authority, carry out all reasonable measures to facilitate the Requesting Authority's request.
- 6.5 In cases where the Requesting Authority is not satisfied with the information provided, additional information can be requested by the Requesting Authority pointing out the subjects to be clarified.
- 6.6 Each request will be assessed on a case-by-case basis by the Requested Authority to determine whether information can be provided under the terms of this Memorandum of Understanding, the IOSCO MMOU and the Laws and Regulations of the Authorities. In any case, where the request cannot be accepted completely, the Requested Authority will consider whether other relevant information or assistance can be given.
- 6.7 In deciding whether or not to accept or decline a request, the Requested Authority will take account of:
 - (a) Matters specified by the laws and procedures of the Requested Authority's country;
 - (b) Whether broadly equivalent assistance will be available from the country of the Requesting Authority;
 - (c) Whether the request involves an assertion of a jurisdiction not recognised by the Requesting Authority;
 - (d) Whether it will be contrary to the national or public interest for assistance to be given;
 - (e) Whether the communication of information might adversely affect the sovereignty, security or public policy of the Requested Authority;
 - (f) Whether judicial proceedings have already been initiated in respect of the same facts against the persons in question or whether a final judgment has been passed.
- 6.8 The Requested Authority may impose conditions of the onward release of such information to third parties. These conditions include prohibiting the onward release of information to third parties. The Authorities will consult with each other regarding the reasons for refusal and the circumstances under which use of the information might otherwise be allowed.
- 6.9 If the Requested Authority believes that a request does not accord with this Memorandum of Understanding, taking into account the provisions of this paragraph, it will promptly inform the Requesting Authority of the reasons for its refusal.

- 6.10 Any document or other material provided in response to a request under this Memorandum of Understanding and any copies thereof are to be returned on request by the Requested Authority.

7. UNSOLICITED INFORMATION

Where one Authority has information that 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 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 will be used by the recipient only for:-
- (a) the purpose of performing its regulatory functions;
 - (b) the purposes stated in the request for assistance or information, including ensuring the proper administration and enforcement of the Laws or Regulations of the Requesting Authority specified in the request; or
 - (c) conducting or assisting in civil proceedings brought by the Authority 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.
- 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. The assistance or information obtained pursuant to this Memorandum of Understanding will not be disclosed to third parties without the prior consent of the Requested Authority. Each Authority will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information or assistance.
- 9.2. 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 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.
- 9.3. Notwithstanding the provisions of paragraphs 6.9, 9.1 and 9.2, the confidentiality provisions of this Memorandum of Understanding will not prevent the Authorities from informing the law enforcement or regulatory bodies in its territory, such as the registrar of companies or stock exchange, of the request for the purposes of assisting the Authorities in responding to the request.
- 9.4. If an Authority becomes aware that information passed under this Memorandum of Understanding may be subject to a legally enforceable demand to disclose that information the Authority 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. Provided that neither authority will take any action without the consent of the other.

10. CONSULTATION

- 10.1. The Authorities may consult one another informally at any time about a request or proposed request. In particular, the Authorities may consult upon any request in the event of a denial by one Authority of, or opposition by an Authority to, a request or proposal made by the other Authority pursuant to this Memorandum of Understanding.
- 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 arranging 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. 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.

13. CONTACT PERSONS

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

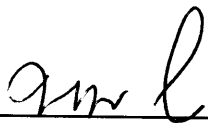
14. ENTRY INTO EFFECT

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

IN WITNESS WHEREOF, the Undersigned, for and on behalf and by authority of their respective agencies, have signed this Memorandum of Understanding.

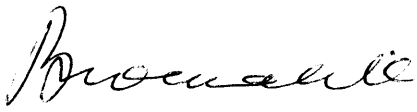
Signed on this fifteenth day of June 2005 in Canberra, Australia.

FOR THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION



Chair – Jeffrey Lucy AM

FOR THE SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN



**Babar W. Malik
High Commissioner
For and on behalf of
Chair -Tariq Hassan**

APPENDIX A

The Requested Authority's contact officers pursuant to paragraph 13 of this Memorandum of Understanding are:

For the Securities and Exchange Commission of Pakistan

- 1. Commissioner
Securities Market
Phone: (92-51) 920-4314
Fax no.: (92-51) 920-8640
Email: shahid.ghaffar@secp.gov.pk**

- 2. Director
Chairman's Secretariat
Phone: (92-51) 920-8647
Fax no.: (92-51) 920-5692
Email: jaweria.ather@secp.gov.pk**

For the Australian Securities and Investment Commission

- 1. Executive Director
International Relations
Phone: (61 7) 3867 4704
Fax no.: (61 7) 3867 4708
Email: greg.tanzer@asic.gov.au**

- 2. Director
International Relations
Phone: (61 2) 9911 2050
Fax no.: (61 2) 9911 2634
Email: mark.mcginness@asic.gov.au**