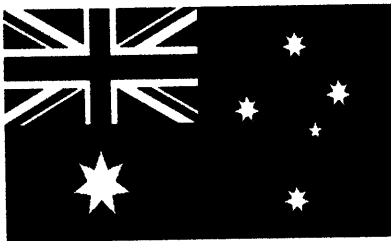


**MEMORANDUM OF UNDERSTANDING
ON THE EXCHANGE OF INFORMATION AND
MUTUAL ASSISTANCE**

BETWEEN

AUSTRALIA

PORTUGAL



**AUSTRALIAN SECURITIES AND
INVESTMENTS COMMISSION**

**THE COMISSÃO DO MERCADO DE
VALORES MOBILIÁRIOS OF
PORTUGAL**

**20 March 2001
Madeira, Portugal**

1. INTRODUCTION

- 1.1 The Comissão do Mercado de Valores Mobiliários of Portugal (CMVM) and the Australian Securities and Investments Commission (ASIC) (hereafter referred as “the Authorities”), recognizing the increasingly international activity between the financial markets and financial services sectors of Portugal and Australia and the corresponding need to establish and foster cooperation between the authorities responsible for regulating their respective financial markets and services for the protection of investors and preservation of market integrity, have reached the following understanding.

2. FUNCTIONS OF EACH AUTHORITY

2.1 Comissão do Mercado de Valores Mobiliários

The Comissão do Mercado de Valores Mobiliários (CMVM) of Portugal is a public body whose duties are that of regulating, supervising, controlling and promoting the securities markets and the activities within those markets, carried out by all the agents concerned, in accordance with the Portuguese Securities Code. It is also one of the CMVM’s duties to assure international co-operation between the homologous authorities. The CMVM’s performance of those functions is namely to assure the transparency of the primary and secondary markets in the sense of allowing the investors a full disclosure system; assure the adequate organisation and running of the securities markets, as well as the bodies responsible for the clearing and settlement and of the authorised financial companies rendering services in the securities area, to observe the compliance of practices adjusted to the rendering of investment services

and financial intermediary activities in general, with the proper levels of quality, as provided for in the Securities Code.

2.2 Australian Securities and Investments Commission

The Australian Securities and Investments Commission is the national corporate and securities regulator established under section 7 of the *Australian Securities and Investment Commissions Act 1989*. The Australian Securities and Investments Commission is responsible for the administration and enforcement of the *Corporations Law* and the *Australian Securities and Investments Commissions Act 1989* which provide for the regulation of corporations, securities markets and intermediaries, and investor protection in relation to financial services and products.

3. DEFINITIONS

For the purpose of this Memorandum:

3.1 "**Authority**" means:

- a) the Australian Securities and Investment Commission; or
- b) the Comissão do Mercado de Valores Mobiliários.

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 in Portugal;
- 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 securitized debt, negotiable futures contracts, options on shares or futures contracts, collective investment schemes and, any other financial products, which are traded on securities or futures exchanges within the competence of the Authorities.

4. SCOPE

- 4.1 Through the machinery set up by this Memorandum, the Authorities hereby agree to promote mutual assistance and the exchange of information so that the Authorities may effectively perform their respective duties according to law.
- 4.2 Under the foregoing general theme, the scope of this Memorandum will include the following:
- 1) Supervising and monitoring the securities and financial instruments markets, their clearing and settlement activities, ensuring compliance with the relevant laws and regulatory requirements;
 - 2) Enforcement of the laws and regulatory requirements relating to dealing in, arranging deals in, managing and advising on securities, futures contracts, and other investment products;

- 3) Promoting and securing the fitness and propriety of dealers, investment advisers and other financial market practitioners, promoting high standards of fair dealing and integrity in their conduct of business;
- 4) Enforcement of the laws and regulatory requirements relating to insider dealing, market manipulation and other fraudulent practices in relation to listed companies, securities, futures contracts, and other investment products;
- 5) Ensuring compliance by issuers of and offerors for securities, and directors, officers, shareholders and professional advisers of all companies listed, or applying for listing, on the securities markets of either Portugal or Australia, with any duties under any relevant laws and regulatory requirements and any obligation to make full, accurate and immediate disclosure of information relevant to investors;
- 6) Enforcement of the laws and regulatory requirements relating to takeovers and mergers and share repurchases;
- 7) disclosure of interest in the securities of companies;
- 8) breaches of companies legislation; and
- 9) any other matters agreed upon by all Authorities.

4.3 Assistance available pursuant to this Memorandum includes, but is not limited to:

- 1) Providing access to information in the files of the Requested Authority;
- 2) Taking testimony and statements of persons; and
- 3) Obtaining information and documents from persons.

5. **PRINCIPLES**

- 5.1 This Memorandum sets forth a statement of intent of the Authorities to enhance the protection of investors and to promote the integrity of the securities and futures markets by providing a framework for cooperation, including channels for communication, increased mutual understanding and the exchange of information.
- 5.2 This Memorandum does not create any legally enforceable rights nor impose any legally binding obligations. This Memorandum does not modify or supersede any laws or regulatory requirements in force in, or applying to, Portugal or Australia.
- 5.3 To the extent permitted by the applicable laws and practices, each Authority will use reasonable efforts to provide the other Authority with any relevant information that is discovered which gives rise to a suspicion of a breach, or anticipated breach, of the regulatory requirements or laws administered by the other Authority.
- 5.4 This Memorandum does not affect the ability of the Authorities to exchange public information.

6. REQUESTS FOR ASSISTANCE OR INFORMATION

- 6.1 The Authorities may consult at any time about a request or proposed request.
- 6.2 Requests for information or assistance will be made in writing in the English language to the contact persons referred to in Appendix A to this Memorandum. In urgent cases, requests for assistance and a reply to such a request may be made in summary form or by means of communication other than the exchange of letters, provided that they are confirmed in 10 working days, in the manner prescribed in this Memorandum.
- 6.3 The requests for information or assistance will specify the following:
- 1) A general description of the information or assistance requested (including the identity of persons, etc.);
 - 2) A general description of the nature of the case and the conduct or suspected conduct which gives rise to the request;
 - 3) The purpose for which the information or assistance is sought (including details of the laws or regulatory requirements pertaining to the matter, which is the subject of the request);
 - 4) The link between the specified laws or regulatory requirements and the regulatory function of the Requesting Authority;
 - 5) The relevance of the requested information or assistance to the specified laws or regulatory requirements;

- 6) To which Annex B bodies onward disclosure of information is contemplated and the reason for such disclosure;
- 7) In the case of the obtaining of testimony from a person, whether it is likely that criminal proceedings will be brought against that person; and
- 8) The urgency of the request and the timeframe within which assistance should be provided.

7. EXECUTION OF THE REQUESTS

- 7.1 The Requested Authority will endeavor to obtain information and statements from persons in order to satisfy the other Authority's request. This includes obtaining information from persons relevant to the request. Access to copies of information held in the files of the Requested Authority will be provided upon the request of the Requesting Authority.
- 7.2 If requested, the Requested Authority will take statements from persons involved, directly or indirectly, in the activities underlying the request, or will obtain other evidence from persons holding information that may be relevant to the request. The Requesting Authority may, in its discretion, request the taking of the statements from specific persons.
- 7.3 The statements from persons will be taken in the same manner and to the same extent as in investigations or other proceedings in the jurisdiction of the Requested Authority.

- 7.4 In order to avoid unnecessary delays, the Requested Authority will pass on portions of the requested information as they become available and consult on the procedure as appropriate.
- 7.5 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.
- 7.6 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. In any case where the request cannot be accepted completely, the Requested Authority will consider whether other relevant information or assistance can be given.
- 7.7 In deciding whether or not to accept or decline a request, the Requested Authority will take into account:
- 1) Matters specified by the laws or regulations of the requested Authority's country;
 - 2) Whether broadly equivalent assistance would be available from the country of the Requesting Authority;
 - 3) Whether the request involves an assertion of a jurisdiction not recognised by the Requested Authority;
 - 4) Whether it would be contrary to the public interest for assistance to be given;

- 5) Whether the communication of information might adversely affect the sovereignty, security or public policy of the Requested Authority;
 - 6) Whether judicial proceedings have already been initiated in respect of the same facts against the persons in question or whether a final judgement has been passed; and
 - 7) Whether the information or assistance would be more readily obtained through other channels.
- 7.8 If the Requested Authority believes that a request is not made in accordance with this Memorandum, taking into account the provisions of this Article, it will promptly inform the Requesting Authority of the reasons for its refusal.
- 7.9 Any document or other material provided in response to a request under this Memorandum, and any copies thereof, should be returned on request.
- 7.10 To the extent permitted by any laws or regulations applying in Portugal or Australia, the Authorities will use reasonable efforts to provide each other with any information they discover which may be relevant for the other Authority.
- 7.11 If it appears that the Requested Authority will incur substantial costs in responding to a request for assistance under this Memorandum of

Understanding, the Authorities will establish a cost-sharing arrangement before the Requested Authority continues to respond to the request for assistance.

8. CONFIDENTIALITY AND PERMISSIBLE USE OF THE INFORMATION PROVIDED

8.1 The assistance or information will be provided under this Memorandum by the Authorities for the purposes of assisting each other in the performance of their regulatory functions relevant to the scope of this Memorandum. To the extent permitted by law, each Authority will keep confidential:

- 1) Any request for information made under this Memorandum;
- 2) Any matter arising in the course of its operation; and
- 3) Any information passed under this Memorandum.

8.2 Such assistance or information will not be disclosed by the recipient to third parties without the consent of the Authority providing the assistance or information.

8.3 Information supplied under this Memorandum may be used solely for:

- 1) Ensuring compliance with or enforcement of the laws or regulations specified in the request;
- 2) Assisting investigations into, or the conduct of the following:
 - (i) Market surveillance;
 - (ii) General charges related to breaches of the laws or regulations specified in the request or arising from the information provided pursuant to paragraph 5.3 above;
 - (iii) Civil and administrative proceedings relating to breaches of laws and regulations specified in the request or arising from the information provided pursuant to paragraph 5.3 above;
 - (iv) Making a report to or briefing the authorities responsible for initiating and/or co-ordinating criminal proceedings.
- 3) Making a report to the authorities responsible for criminal proceedings; and
- 4) Criminal, civil and administrative proceedings relating to breaches of laws and regulations specified in the request.

8.4 Where the Requesting Authority intends to use the information furnished for any purpose other than those set out above, the Requesting Authority must obtain the prior written consent of the Requested Authority. The Requested Authority may impose conditions when giving its consent. If use of the information for other purposes is opposed by the Requested Authority, the Authorities agree to consult

about the reasons for the refusal and the circumstances or conditions under which the use of the information might otherwise be allowed.

- 8.5 The confidentiality provisions of this Memorandum shall not prevent the Authorities from informing other law enforcement or regulatory authorities in Portugal and in Australia where such communication is required in order to comply with the obligations under domestic laws. Where this occurs the Requesting Authority shall inform the Requested Authority, and shall ensure that the other authorities are informed of the confidentiality requirements imposed by this Memorandum on information obtained from the Requested Authority.

9. CONSULTATION

- 9.1 The Authorities will keep the operation of this Memorandum under continuous review and will consult with a view to improving its operation and resolving any matters that may arise. In particular, the Authorities will consult upon request in the event of the Requested Authority denying or opposing a request or proposal made by the Requesting Authority pursuant to this Memorandum.
- 9.2 The Authorities may consult informally, at any time, about a request or proposed request or any information provided within the discretion of an Authority in accordance with paragraph 5.3 of this Memorandum. Additional information may be requested where further clarity is sought.
- 9.3 The Authorities may consult and revise the terms of the Memorandum in the event of a substantial change in the laws, regulations, or practices affecting the operation of the Memorandum.

9.4 To improve the cooperation under this Memorandum, the Authorities will conduct consultations and discussions on the implementation of the Memorandum periodically.

10. CONTACT POINTS

10.1 All communications between the Authorities should be between the points of contacts in Appendix A, unless otherwise agreed. Appendix A may be amended by written notice from either Authority without the need for re-signature of this Memorandum.

11. TERMINATION

11.1 This Memorandum will remain in effect for an unlimited period and may be terminated by either Authority at any time by giving at least thirty days prior written notice to the other Authority. If either Authority gives such notice, this Memorandum will continue to have effect with respect to all requests made before the effective date of notification until the Requesting Authority finalises the matter for which assistance was requested. The provisions concerning confidentiality shall remain in force thereafter.

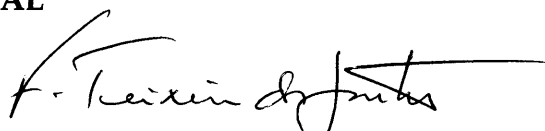
12. ENTRY INTO EFFECT

12.1 In accordance with the national regulations, the Authorities will comply with the procedures necessary for the effectiveness of this Memorandum. This Memorandum will come into effect between the Authorities from the date of signature.

This Memorandum is signed in duplicate, in the Portuguese and the English languages, both texts being equally authentic.

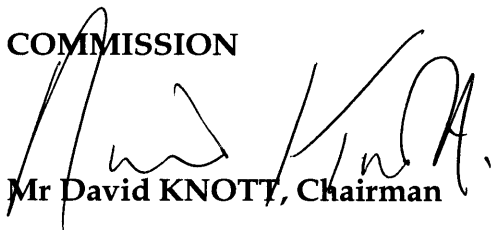
SIGNED IN *Madeira*..... ON *20 March 2001*

FOR THE COMISSÃO DO MERCADO DE VALORES MOBILIÁRIOS OF PORTUGAL



Prof. Dr. Fernando TEIXEIRA DOS SANTOS, Chairman

FOR THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION



Mr David KNOTT, Chairman

APPENDIX A

The Requested Authority's contact officer pursuant to paragraph 10.1 of this Memorandum is:

For the Comissão do Mercado de Valores Mobiliários: Dr. Gonçalo CASTILHO
DOS SANTOS

Executive Co-ordinator
Research and International Affairs Office
Tel: (351) 21 317 70 00
Fax: (351) 21 353 70 77/8
E-mail: cmvm@cmvm.pt

For the Australian Securities and Investments Commission: Mr Greg TANZER

National Director
Office of International Relations
Tel: (61 2) 9911 2075
Fax: (61 2) 9911 2634
E-mail: greg.tanzer@asic.gov.au

APPENDIX B

LIST OF LAW ENFORCEMENT AND REGULATORY BODIES DESIGNATED UNDER PARAGRAPH 6.3, SUB-PARAGRAPH 6) OF THIS MEMORANDUM

In Portugal:

The Central Bank;
The Portuguese Insurance Institute
The Parliament;
The Attorney-General
The Penal Procedure Court;
The Superior Courts;
The Investors Compensation System;
The Clearing and Settlement System.

In Australia:

The Reserve Bank of Australia
The Australian Prudential Regulation Authority
The Director of Public Prosecutions
The Australian Federal Police and the various State Police Forces
The Australian Stock Exchange Limited