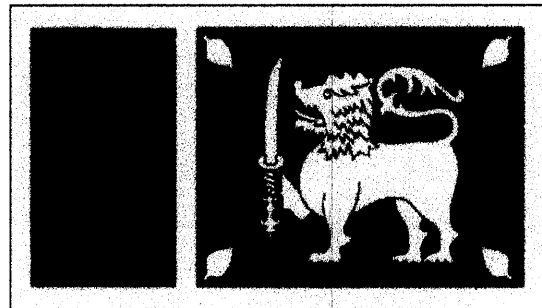
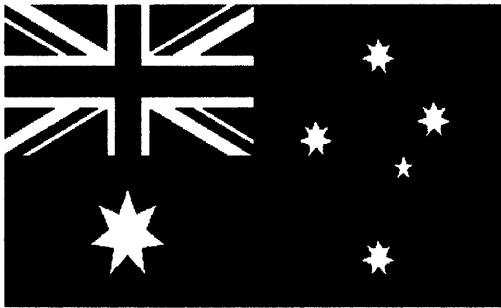


MEMORANDUM OF UNDERSTANDING
ON THE EXCHANGE OF INFORMATION

BETWEEN

AUSTRALIA

SRI LANKA



**AUSTRALIAN SECURITIES AND
INVESTMENTS COMMISSION**

**SECURITIES AND EXCHANGE COMMISSION
OF SRI LANKA**

MEMORANDUM OF UNDERSTANDING

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1. INTRODUCTION

The Australian Securities and Investments Commission (ASIC) 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 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.

The Securities and Exchange Commission of Sri Lanka (SEC) was established under the *Securities and Exchange Commission of Sri Lanka Act No. 36 of 1987* as amended by Act No. 26 of 1991 for the purpose of regulating the securities market in Sri Lanka.

The functions of the Securities and Exchange Commission are to grant licences to Stock Exchanges, Unit Trust Management Companies, Stock Brokers and Stock Dealers who engage in the business of trading of securities; to set up a compensation fund for investors and for matters connected therewith or incidental thereto in Sri Lanka. SEC is charged with the duty of advising the Government on the development of policies relating to the issuance of securities.

2. DEFINITIONS

For the purposes of this Memorandum of Understanding:

- **“Authority”** means the Australian Securities and Investment Commission or the Securities and Exchange Commission of Sri Lanka as the case may be;
- **“Authorities”** means the Australian Securities and Investments Commission and the Securities and Exchange Commission of Sri Lanka;
- **“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;
- **“Laws and Regulations”** means the provisions of the laws, regulations and other regulatory requirements applicable in the financial field in Sri Lanka and in Australia;
- **“Securities”** means shares, bonds and other forms of securitized debts, futures and derivative products and any other financial products within the respective competence of the Authorities;
- **“Issuer”** means a natural or legal person who issues or proposes to issue any security;
- **“Regulated Markets”** means securities, derivatives and any other markets recognized, regulated or supervised by 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;
- **“Investment Services Providers”** means investment firms, credit institutions and any other person as authorized to provide Investment Services within the law and regulations applicable in the countries of 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 MoU serves as a basis for co-operation for the Authorities and does not create any binding legal obligations, nor does it modify or supersede any domestic laws or regulatory requirements in force in or applying in Australia or Sri Lanka. The MoU does not create any 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 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. 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.
- 3.6. 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 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

- 4.1 The Authorities agree to provide the fullest mutual assistance within the framework of this MoU. Such assistance will be provided to facilitate the enforcement of the laws or regulations applicable to regulated markets.
- 4.2 The Authorities agree to provide mutual assistance and exchange of information in response to requests to assist them perform their respective duties according to law. 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 in relation to securities dealings;
 - (b) enforcement of laws, rules and regulations relating to issuing, dealing in, arranging deals in, managing and advising on securities;
 - (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 compliance by issuers with any duties under any relevant laws and any obligation to make full, accurate and timely disclosure of information relevant to investors;
 - (f) the disclosure of interests in brokerage companies
 - (g) take-overs and mergers; related to public companies and,
 - (h) 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 13 herein. In urgent cases, requests may be made in summary form to be followed with a full request within five (5) business days thereafter.

- 5.3. Assistance available under this MoU may include but is not limited to;
- (a) Providing access to information in the files of the requested Authority;
 - (b) Taking statements from persons; and
 - (c) Obtaining documents and information from natural and legal persons.

5.4. Requests for information should 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 rule or law 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 in terms of capital market.

5.5 The Authorities agree to provide assistance on matters that are not necessarily an offence in their own jurisdiction.

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 natural and legal 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, will, 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 will conduct inspections or examinations of the books and records of an investment services provider, or its custodian or agent, regulated markets, or securities, futures and options processing businesses.
- 6.4 To the extent permitted by law, the Requested Authority will, subject to a request from the Requesting Authority, undertake all reasonable measures to facilitate the Requesting Authority's participation in the examination. Participation may include telephone conferencing, but is not limited to it.
- 6.5 In order to avoid unnecessary delays, the Requested Authority will pass on requested information as it becomes available and consult on procedure as appropriate.
- 6.6 In case 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.
- 6.7 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 MoU. In any case where the request cannot be accepted completely, the Requested Authority will consider whether other relevant information or assistance can be given.
- 6.8 In deciding whether or not to accept or decline a request, the Requested Authority will take account of:
 - (a) Matters specified by the laws, rules, or regulations of the Requested Authority's country;
 - (b) Whether broadly equivalent assistance would 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 would be contrary to the 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.
- 6.9 If the Requested Authority believes that a request is not accord with this MoU, taking into account the provisions of this Article, 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 MoU and any copies thereof should be returned on request.

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 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 prosecutions 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. The assistance or information obtained pursuant to this Memorandum of Understanding should 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 9.1 and 9.2, the confidentiality provisions of this Memorandum of Understanding shall 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 or passing information received pursuant to a request, provided that:-

(a) such agencies or bodies have responsibility for prosecuting, regulating or enforcing rules or laws falling within the ambit of the areas set out in paragraph 4; or

(b) the purpose of passing such information to such an agency or body falls within the areas set out in paragraph 4 herein.

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, 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 will keep the operation of this MoU under continuous review and will consult one another informally at any time about a request or proposed request. In particular, the Authorities will 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 MoU.

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. 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

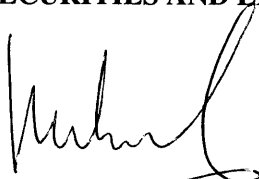
All communications between the Authorities should be between the principal points of contact as set out in Appendix A unless otherwise agreed. Appendix A may however be amended by written notice from either Authority without the need for revising this Memorandum of Understanding.

14. ENTRY INTO EFFECT

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

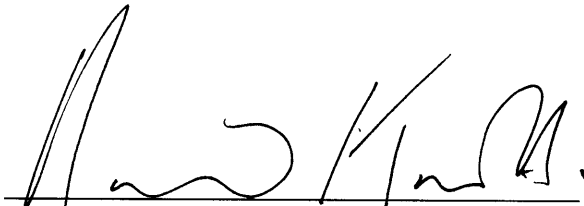
Signed in Istanbul ^{21st}..... May 2002

FOR THE SECURITIES AND EXCHANGE COMMISSION OF SRI LANKA



Mr. Michael Lloyd Mack
Chairman

FOR THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION



Mr David Knott
Chairman

APPENDIX A

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

For the Securities and Exchange Commission of Sri Lanka

1. **Dr. Dayanath C. Jayasuriya**
Director General
Phone : 00 941 437086 (Direct), 00941-439144 (General)
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secsl@sri.lanka.net

2. **Mrs. L S A Seresinhe**
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For the Australian Securities and Investment Commission

1. **Mr Greg Tanzer**
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