



ASIC

Australian Securities & Investments Commission



MEMORANDUM OF UNDERSTANDING

BETWEEN

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

AND

FINANCIAL SERVICES COMMISSION OF THE REPUBLIC OF KOREA

AND

FINANCIAL SUPERVISORY SERVICE OF THE REPUBLIC OF KOREA

IN RELATION TO

CONSULTATION, COOPERATION AND THE EXCHANGE OF
INFORMATION RELATED TO THE SUPERVISION OF REGULATED
ENTITIES

MEMORANDUM OF UNDERSTANDING CONCERNING CONSULTATION, COOPERATION AND THE EXCHANGE OF INFORMATION RELATED TO THE SUPERVISION OF REGULATED ENTITIES

In view of the growing globalization of the world's financial markets and the increase in cross-border operations and activities of regulated entities, the Australian Securities and Investments Commission (ASIC), the Financial Services Commission (FSC) of the Republic of Korea and the Financial Supervisory Service (FSS) of the Republic of Korea have reached this Memorandum of Understanding (MOU) regarding mutual assistance in the supervision and oversight of regulated entities that operate in the financial markets in the jurisdictions of the Authorities. The Authorities express, through this MOU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of: investor protection; fostering market and financial integrity; and maintaining confidence and systemic stability.

ARTICLE ONE: DEFINITIONS

For purposes of this MOU:

1. "Authority" means ASIC, the FSC or the FSS

"Requested Authority" means the Authority to whom a request is made under this MOU; and
"Requesting Authority" means the Authority making a request under this MOU.

2. "Person" means a natural person, unincorporated association, partnership, trust, investment company or corporation.

3. "Regulated Entity" means a financial market participant or other entity whose activities subject it to the supervision, oversight and/or authorization or registration of one of the Authorities.

4. "Cross-border On-Site Visit" means any regulatory visit by one Authority to the premises of a Regulated Entity located in the other Authority's jurisdiction, for the purposes of ongoing supervision.

5. "Emergency Situation" means the occurrence of an event that could materially impair the financial or operational condition of a Regulated Entity, investors or financial markets.

ARTICLE TWO: GENERAL PROVISIONS

6. This MOU is a statement of intent to consult, cooperate and exchange information in connection with the supervision and oversight of Regulated Entities in a manner consistent

with, and permitted by, the laws and requirements that govern the Authorities. The Authorities anticipate that cooperation will be primarily achieved through ongoing, informal, oral consultations, supplemented by more in-depth, ad hoc cooperation. The provisions of this MOU are intended to support such informal and oral communication as well as to facilitate the written exchange of non-public information where necessary.

7. This MOU does not create any legally binding obligations, confer any rights, or supersede domestic laws. This MOU does not confer upon any Person the right or ability directly or indirectly to obtain, suppress, or exclude any information or to challenge the execution of a request for assistance under this MOU.

8. This MOU does not limit an Authority to taking solely those measures described herein in fulfilment of its supervisory functions. In particular, this MOU does not affect any right of any Authority to communicate with or obtain information or documents from, any Person subject to its jurisdiction that is located in the territory of the other Authority.

9. This MOU complements, but does not alter the terms and conditions of the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (IOSCO MMOU), to which the Authorities are signatories, which also covers information-sharing in the context of enforcement investigations

10. The Authorities will, within the framework of this MOU, provide each other with the fullest cooperation permissible under the law in relation to the supervision of Regulated Entities. Following consultation, cooperation may be denied:

- a) Where the cooperation would require an authority to act in a manner that would violate domestic law;
- b) Where a request for assistance is not made in accordance with the terms of the MOU; or
- c) On the grounds of the national public interest.

11. The Authorities will periodically review the functioning and effectiveness of the cooperation arrangements among the Authorities with a view, *inter alia*, to expanding or altering the scope or operation of this MOU should that be judged necessary.

12. To facilitate cooperation under this MOU, the Authorities hereby designate contact persons as set forth in Appendix A.

ARTICLE THREE: SCOPE OF SUPERVISORY COOPERATION

13. The Authorities recognize the importance of close communication concerning Regulated Entities, and intend to consult at the staff level regarding: (i) general supervisory issues, including with respect to regulatory, or oversight developments; (ii) issues relevant to the operations, activities, and regulation of Regulated Entities; and (iii) any other areas of mutual supervisory interest.

14. Cooperation will be most useful in, but is not limited to, the following circumstances where issues of common regulatory concern may arise:

- a) The initial application of a Regulated Entity in one jurisdiction for authorization, registration or exemption from registration in the other jurisdiction;
- b) The ongoing oversight of a Regulated Entity; or
- c) Regulatory approvals or supervisory actions taken in relation to a Regulated Entity by one Authority that may impact the operations of an entity in the other jurisdiction.

15. **Notification.** Each Authority will inform the other Authority as soon as practicable of:

- a) Pending regulatory changes that, in the opinion of the Authority, may have a significant impact on the operations, activities or reputation of a Regulated Entity subject to the jurisdiction of both Authorities;
- b) Any material event that, in the opinion of the Authority, may have a significant impact on a Regulated Entity subject to the jurisdiction of both Authorities. Such events include known changes in the operating environment, operations, financial resources, management, or systems and control of a Regulated Entity; and
- c) Enforcement or regulatory actions or sanctions, including the revocation, suspension or modification of relevant licenses or registration that, in the opinion of the Authority, may have a significant impact on a Regulated Entity subject to the jurisdiction of both Authorities.

16. **Exchange of Information.** To supplement informal consultations, each Authority, to the extent permitted by domestic laws, intends to provide the other Authority, upon written request, with assistance in obtaining relevant information not otherwise available to the Requesting Authority, and interpreting such information so as to enable the Requesting Authority to assess compliance with its laws and regulations. The information covered by this paragraph includes, without limitation:

- a) Information relevant to the financial and operational condition of a Regulated Entity, including, for example, reports of capital reserves, liquidity or other prudential measures, and internal controls procedures;
- b) Relevant regulatory information and filings that a Regulated Entity is required to submit to an Authority including, for example: interim and annual financial statements and early warning notices; and
- c) Regulatory reports prepared by an Authority, including for example: results of examinations, findings, or information drawn from such results relevant to the operation of a Regulated Entity supervised by the other authority.

ARTICLE FOUR: CROSS-BORDER ON-SITE VISITS

17. The Authorities intend to facilitate access to Regulated Entities subject to the jurisdiction of both Authorities, operating in their respective territories.

18. Authorities should discuss and reach understanding on the terms regarding Cross-border On-Site Visits, taking into full account each other's sovereignty, legal framework and statutory obligations in particular in determining the respective roles and responsibilities of the Authorities.

Generally, the Authorities will act in accordance with the following procedure before conducting a Cross-border On-Site Visit.

- a) When establishing the scope of any proposed visit, the Authority seeking to conduct the visit will give due and full consideration to the supervisory activities of the other Authority and any information that was made available or is capable of being made available by that Authority.
- b) The Authorities will assist each other in reviewing, interpreting and analysing the contents of public and non-public documents and obtaining relevant information, from directors and senior management of a Regulated Entity that is subject to the jurisdiction of both Authorities.
- c) The Authorities will consult with a view to reaching an understanding on the intended timeframe for and scope of any Cross-border On-Site Visit.

ARTICLE FIVE: EXECUTION OF REQUESTS FOR ASSISTANCE

19. To the extent possible, a request for written information pursuant to Article Three should be made in writing, and addressed to the relevant contact person identified in Appendix A. A request generally should specify the following:

- a) The information sought by the Requesting Authority;
- b) A general description of the matter which is the subject of the request and the supervisory purpose for which the information is sought; and
- c) The desired time period for reply and, where appropriate, the urgency thereof.

20. In Emergency Situations, the Authorities will endeavour to notify each other of the Emergency Situation and communicate information to the other as would be appropriate in the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency Situation. During Emergency Situations, requests for information may be made in any form, including orally, provided such communication is confirmed in writing as promptly as possible following such notification.

ARTICLE SIX: PERMISSIBLE USES OF INFORMATION

21. The Requesting Authority may use non-public information obtained under this MOU solely for the purpose of supervising Regulated Entities and seeking to ensure compliance with the laws or regulations of the Requesting Authority.

22. This MOU is intended to complement, but does not alter the terms and conditions of the existing arrangements between the Authorities concerning cooperation in securities matters, as set forth in Paragraph 9. The Authorities recognize that while information is not to be gathered under the auspices of this MOU for enforcement purposes, subsequently the Authorities may want to use the information for law enforcement. In such cases, further use of the information should be governed by the terms and conditions of the IOSCO MMOU.

ARTICLE SEVEN: CONFIDENTIALITY OF INFORMATION AND ONWARD SHARING

23. Except for disclosures in accordance with the MOU, including permissible uses of information under Article Six, each Authority will keep confidential to the extent permitted by law information shared under this MOU, requests made under this MOU, the contents of such requests, and any other matters arising under this MOU.

24. To the extent legally permissible, the Requesting Authority will notify the Requested Authority of any legally enforceable demand for non-public information furnished under this MOU. Prior to compliance with the demand, the Requesting Authority intends to assert all appropriate legal exemptions or privileges with respect to such information as may be available.

25. (1) In certain circumstances, and as required by law, it may become necessary for the Requesting Authority to share information obtained under this MOU with a third party. This could occur:

- a) Where the Requesting Authority is legally compelled to do so, for example to a Court or Royal Commission;
- b) Where the Requesting Authority receives a legally enforceable demand, for example under Freedom of Information laws; and
- c) In other circumstances where such disclosure is permitted by law.

(2) In these circumstances and to the extent permitted by law, the Requesting Authority will promptly notify the other Authority indicating what information it is compelled to release and the circumstances surrounding its release. The Authority will, if requested, use its best endeavours to preserve the confidentiality of the information to the extent permitted by law.

26. Except as provided in paragraphs 24 and 25, the Requesting Authority must obtain the prior consent of the Requested Authority before disclosing non-public information received under this MOU to a third party, where it is not legally compelled to do so. If consent is not

obtained from the Requested Authority, the Authorities will consult to discuss the reasons for withholding approval of such use and the circumstances, if any, under which the intended use by the Requesting Authority might be allowed.

27. The Authorities intend that the sharing or disclosure of non-public information, including but not limited to deliberative and consultative materials, pursuant to the terms of this MOU, will not constitute a waiver of privilege or confidentiality of such information.

ARTICLE EIGHT: TERMINATION

28. Cooperation in accordance with this MOU will continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate the MOU. If either Authority gives such notice, cooperation will continue with respect to all requests for assistance that were made under the MOU before the effective date of notification until the Requesting Authority terminates the matter for which assistance was requested. In the event of termination of this MOU, information obtained under this MOU will continue to be treated in a manner prescribed under Articles Six and Seven.

EXECUTED BY THE PARTICIPANTS:

**FINANCIAL SERVICES
COMMISSION (FSC)**



**SHIN, Je-Yoon
Chairman**

Place/Date: Seoul, February 11, 2015

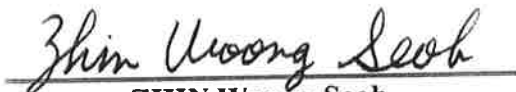
**AUSTRALIAN SECURITIES
AND INVESTMENTS
COMMISSION(ASIC)**



**Greg Medcraft
Chairman**

Place/Date: Seoul, February 11, 2015

**FINANCIAL SUPERVISORY
SERVICE (FSS)**



**ZHIN, Woong-Seob
Governor**

Place/Date: Seoul, February 11, 2015

APPENDIX A

LIST OF CONTACT PERSONS

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

1. Senior Manager, International Cooperation Requests
Assessment & Intelligence
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

Fax: +61 3 9280 3444

Email: international@asic.gov.au

THE FINANCIAL SERVICES COMMISSION

1. Mr. YungsungTark
Director of International Finance Division
Financial Services Commission
124, Sejong-daero, Jung-gu,
Seoul, 100-745
Republic of Korea

Tel: +82 2 2156 9780

Fax: +82 8 2156 9789

Email: fsc.ifd@gmail.com

THE FINANCIAL SUPERVISORY SERVICE

1. Mr. Seong-Beom Kim
Director General of International Cooperation Department
Financial Supervisory Service
38 Yeoui-daero, Youngdeungpo-gu
Seoul, 150-743
Republic of Korea

Tel: +82 2 3145 7890

Fax: +61 3 9280 3444

Email: fssintl@fss.or.kr