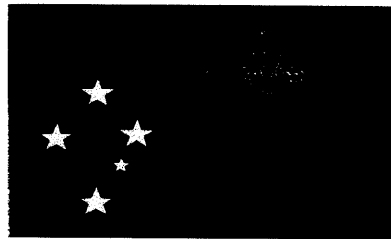
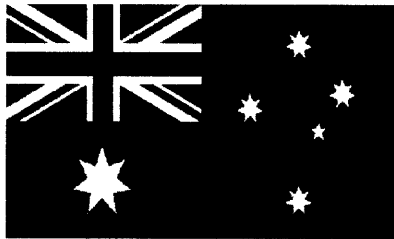


MEMORANDUM OF UNDERSTANDING

AUSTRALIA

PAPUA NEW GUINEA



**AUSTRALIAN SECURITIES AND
INVESTMENTS COMMISSION**

**SECURITIES COMMISSION OF
PAPUA NEW GUINEA**

**MELBOURNE, AUSTRALIA
21 FEBRUARY 1999**

Memorandum of Understanding

THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION AND THE SECURITIES COMMISSION OF PAPUA NEW GUINEA,

RECOGNISING, in the light of the increasing international activity in securities markets, the need for mutual co-operation and consultation in order to enhance investor protection, promote the integrity of financial markets, and facilitate the performance of their respective functions and powers;

CONSIDERING the Joint Declaration of Principles Guiding Relations Between Papua New Guinea and Australia;

CONSIDERING the importance of ensuring compliance with, and enforcement of the laws and regulations governing securities, which are applicable in Australia and Papua New Guinea; and

WILLING therefore to establish the fullest mutual assistance by providing a framework for co-operation, including channels for communication, increased mutual understanding, the exchange of information and investigative assistance permitted by the laws and practices of Australia and Papua New Guinea;

RESOLVE:

To enter into the following understanding.

1. Definitions

For the purpose of this Memorandum of Understanding:

‘Authority’ means:

- (a) the Australian Securities and Investments Commission; or
- (b) the Securities Commission of Papua New Guinea.

The Australian Securities and Investments Commission is the national corporate and securities regulator established under section 7 of the *Australian Securities and Investments Commission 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 Commission Act 1989*, which provide for the

regulation of corporations and the securities and futures markets. The Australian Securities and Investments Commission's ability to exercise coercive powers on behalf of foreign regulators is governed by the *Mutual Assistance in Business Regulation Act 1992*.

The Securities Commission of Papua New Guinea was established as a body corporate under section 4 of the *Securities Act 1997*. The Securities Commission of Papua New Guinea is responsible for the administration and enforcement of the *Securities Act 1997* which provides for the establishment of stock markets, and the regulation of practices relating to the offering of securities to the public. The Securities Commission of Papua New Guinea's ability to exercise powers to obtain evidence on behalf of overseas securities commissions or similar bodies is governed by Section 10 of the *Securities Act 1997*.

"investor" means a person who has, holds or places an order to obtain an interest in securities;

"issuer" means a person who issues, proposes to issue or promotes any security;

"laws and regulations" means provisions of the laws and regulations or any rule or policy applicable in Australia and in Papua New Guinea;

"person" means a natural person, legal entity, partnership or unincorporated association;

"requested Authority" means an Authority to whom a request is made under this Memorandum of Understanding;

"requesting Authority" means an Authority making a request under this Memorandum of Understanding;

"securities" means:

- (i) any share, stock, bond, note, debenture, interest in a collective investment scheme or any instrument similar to shares, stocks, bonds, notes, debentures, interest in a collective investment scheme;
- (ii) any contract or right giving the right to subscribe, buy, sell or acquire by conversion any instrument mentioned in (i) above;
- (iii) any exchange contract, futures contract, options contract, or any financial instrument based on instruments mentioned in (i) above;

- (iv) any index contract based on instruments mentioned in (i) above; or
- (v) any exchange contract, commodities futures contract or any commodity futures option contract;

"securities professionals" means:

- (a) any person who engages in the business of:
 - (i) purchasing, selling, transferring, clearing or settling securities;
 - (ii) receiving and keeping securities on deposit;
 - (iii) collecting, executing or transmitting orders given by investors concerning the purchase or sale of securities;
 - (iv) engaging on the basis of principal or agent, in the management of individual or collective securities portfolios or accounts;
 - (v) advising on these matters; and
- (b) any person who is associated with another person who performs any functions listed in subparagraph (a) including, without limitation, an employee or authorised representative.

2. General Principles

2.1 The purpose of this Memorandum of Understanding is to establish within the limits provided by the law a framework for mutual assistance between the Authorities in order to protect investors, promote the integrity of financial markets, facilitate the performance of the Authorities' functions, and ensure compliance with the laws and regulations governing securities, which are applicable in Australia and Papua New Guinea.

2.2 To the extent permitted by the laws and practices of Papua New Guinea and Australia, the Authorities will use reasonable efforts to provide each other with any information, documents or evidence that are discovered which give rise to a suspicion of a breach, or anticipated breach, of the rules or laws of the other Authority's jurisdiction.

2.3 The Authorities intend to ensure that the fullest mutual assistance is provided within the terms of the Memorandum of Understanding.

2.4 The Memorandum of Understanding does not:

- (a) modify or supersede any laws or regulations applicable in Australia or Papua New Guinea;
- (b) affect the ability of the Authorities to exchange non-confidential information;
- (c) create a binding obligation under international law;
- (d) create any enforceable rights;
- (e) affect any other Memoranda of Understanding entered into by the Authorities.

3. Scope of Assistance

3.1 Mutual assistance will be provided in the following areas:

- (a) insider trading, market manipulation and other fraudulent and manipulative practices in relation to securities;
- (b) enforcement of the laws and regulations relating to securities business;
- (c) ensuring that participants in securities business promote high standards of fair dealing and integrity in their conduct of that business;
- (d) rights of investors to obtain timely and accurate information about securities, and disclosure of interests in securities of issuers;
- (e) the duties of issuers of and offerors for securities to make full and fair disclosure of information material to investors; and
- (f) breaches of companies legislation.

3.2 Assistance available under this Memorandum of Understanding includes:

- (a) providing information from files of the requested Authority;
- (b) obtaining evidence and documents from persons; and
- (c) taking statements from persons.

4. Requests for Assistance

4.1 Requests for assistance must be made in writing and addressed to the requested Authority's contact officer listed in Appendix A.

4.2 To facilitate assistance, the requesting Authority should specify:

- (a) a description in general terms of the subject matter of the request and of the facts of the matter including:
 - (i) the conduct under investigation;
 - (ii) any periods of time to which the request relates; and
 - (iii) the names, and last known addresses, of individuals or companies referred to in the request;
- (b) the assistance sought, such as (where possible) any particulars which will assist the requested Authority in complying with the request, including specific questions to be asked of witnesses, or a list of documents sought;
- (c) the purpose for which assistance is sought;
- (d) a copy of the laws or regulations which may have been violated, and a statement of the way in which the facts give rise to a belief or suspicion that the laws or regulation may have been violated;
- (e) a statement as to whether the requesting Authority has sought, or could conveniently seek, from another source the information, evidence or documents to which the request relates;
- (f) the purpose for which the information, evidence or documents is to be used or may at any future time be used;
- (g) the desired time period and means for the reply and, where appropriate, the urgency of the request;

- (i) any other matters specified by the laws and regulations in the country of the requested Authority.

4.3 Any document or other material provided in response to a request under the Memorandum of Understanding and any copies thereof must be returned on request, to the extent permitted by law.

4.4 The Memorandum of Understanding does not affect the ability of the Authorities to obtain information from persons on a voluntary basis, provided that any procedures in place in the country of each Authority for the provision of such information are observed.

5 Execution of Requests

5.1 Each request will be assessed by the requested Authority to determine whether assistance can be provided under the terms of the Memorandum of Understanding. If a request cannot be accepted completely, the requested Authority will consider whether any other assistance can be given (for instance, through channels for mutual assistance in criminal matters).

5.2 In deciding whether to accept or decline a request the requested Authority will take into account whether:

- (a) executing the request would violate legal requirements in the country of the requested Authority;
- (b) the request involves an assertion of jurisdiction not recognised by the requested Authority;
- (c) it would be contrary to the public interest to give the assistance sought; and
- (d) the information or assistance would be more readily obtained through other channels.

6 Permissible Use of Information

- 6.1 Unless otherwise agreed to by the requested Authority the information supplied will be used solely for the purpose of:
- (a) securing compliance with, or enforcing, the rule or law specified in the request by initiating or assisting in criminal prosecution arising out the breach or suspected breach of such law;
 - (b) conducting or assisting in civil proceedings, including proceedings which arise out of any actual, suspected or anticipated breach of the rule or law specified in the request, and brought by the Authorities or other law enforcement or regulatory agencies within the jurisdictions of Australia or Papua New Guinea; or
 - (c) taking regulatory action or imposing regulatory requirements within the areas set out above.

7 Confidentiality

- 7.1 Each Authority shall keep confidential, to the extent permitted by law, requests or communications of information, made within the framework of this Memorandum of Understanding, the contents of such requests, and any other matters arising during the implementation of this Memorandum of Understanding, including consultations between the Authorities.
- 7.2 In all cases, the requesting Authority shall keep confidential, to the extent permitted by law, any information received pursuant to this Memorandum of Understanding to the same extent as such information would be kept confidential in the State of the Authority which has furnished the information.
- 7.3 If a requesting Authority becomes aware that information, statements, evidence or documents provided under the Memorandum of Understanding may be subject to a legally enforceable demand to disclose, the requesting Authority will, to the extent permitted by law, inform the requested Authority of the demand.
- 7.4 Unless the request provides otherwise, the confidentiality provisions of the Memorandum of Understanding shall not prevent the Authorities from informing another law enforcement or regulatory agency within the jurisdictions of Australia

or Papua New Guinea of the request or the passing of information or of the information received pursuant to a request to such agencies, provided that:

- (a) the agency is responsible for prosecuting, regulating or enforcing rules or laws falling within the areas set out in clause 6;
- (b) that the purpose of passing that information to the agency falls within the areas set out in clause 6;
- (c) the information is provided on the understanding that it may not be used or disclosed by the agency except for that purpose; and
- (d) the requesting Authority has provided an undertaking in relation to the information requested, if required by the law of the requested Authority's country, in such terms as the law requires.

8 Consultation and Disputes

- 8.1 The Authorities may consult informally, at any time, about a request or proposed request.
- 8.2 The Authorities may consult and review this Memorandum of Understanding with the aim of improving its operation and resolving any disputes which arise.
- 8.3 The Authorities will consult in the event of any dispute over the meaning of any term used in this Memorandum of Understanding.

9 Amendments to the Memorandum of Understanding

- 9 The Authorities may consult and may revise the terms of the Memorandum of Understanding upon mutual agreement.

10 Entry into Effect

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

11 Termination

11.1 The Memorandum of Understanding shall continue to have effect until terminated by any one of the Authorities by giving 30 days' written notice to the other Authority of its termination.

11.2 If an Authority gives notice that this Memorandum of Understanding is to be terminated, the Memorandum of Understanding will continue to have effect with respect to any requests for assistance made before the date of notification.

12 Contact Officers

12 All communications between the Authorities should be between the contact officers listed in Appendix A, unless otherwise agreed.

13 Entry into Effect

13 This Memorandum of Understanding will be effective from the date of its signature by the Australian Securities and Investments Commission and the Securities Commission of Papua New Guinea.

Signed this twenty-first day of February, 1999 at Melbourne, Australia



Alan Cameron AM
Chairman
Australian Securities and
Investments Commission



Reynold Pus
Chairman
Securities Commission of
Papua New Guinea

APPENDIX A

The requested Authority's contact officer for the purposes of making requests under this Memorandum of Understanding

Australian Securities and Investments Commission

Director, Office of International Relations
National Office Sydney
Level 18
135 King Street
Sydney NSW 2000
AUSTRALIA

Postal Address:
GPO Box 4866
Sydney NSW 1042
AUSTRALIA

Telephone: 612 911 2075
Facsimile: 612 911 2634
Email: rose.webb@asic.gov.au

Securities Commission of Papua New Guinea

Chairman
Level 6
Invesmen Haus
Douglas Street
Port Moresby
PAPUA NEW GUINEA

Postal Address:
PO Box 1281
Port Moresby NCD
PAPUA NEW GUINEA

Telephone: 675 321 3900
Facsimile: 675 321 7560
Email: securities.commission@ipa.gov.pg