

MEMORANDUM OF UNDERSTANDING

HONG KONG

**SECURITIES
AND
FUTURES
COMMISSION**

MALAYSIA

**SECURITIES
COMMISSION
(SURUHANJAYA
SEKURITI)**

**HONG KONG
22 February 1994**

MEMORANDUM OF UNDERSTANDING

CONTENTS

PAGE

1.	INTRODUCTION	1
2.	DEFINITIONS	1 - 2
3.	PRINCIPLES	2 - 3
4.	SCOPE	3 - 4
5.	REQUESTS FOR ASSISTANCE OR INFORMATION	4 - 6
6.	EXECUTION OF REQUESTS	6
7.	UNSOLICITED INFORMATION	6
8.	PERMISSIBLE USES OF INFORMATION	6 - 7
9.	CONFIDENTIALITY	7 - 8
10.	CONSULTATION	8
11.	COSTS OF INVESTIGATIONS OR ASSISTANCE	8
12.	ENTRY INTO EFFECT	8
13.	TERMINATION	9
14.	CONTACT PERSONS	9

1. INTRODUCTION

- 1.1. The Securities and Futures Commission of Hong Kong ("SFC") is the Commission established by the Securities and Futures Commission Ordinance to regulate the securities and futures markets in Hong Kong. The functions of the SFC include administering securities and futures legislation for the protection of investors and maintenance of the integrity of the markets; administering all relevant requirements to ensure full disclosure to and fair treatment of public shareholders and investors; supervising and monitoring the activities of the Exchange Companies and clearing houses of Hong Kong to ensure that they discharge their responsibilities in a professional and impartial manner; regulating dealers, investment advisers and other registered persons; and encouraging the development of securities and futures markets in Hong Kong and the increased use of such markets by investors in Hong Kong and elsewhere.

- 1.2. The Securities Commission of Malaysia ("SCM") was established under Section 3 of the Securities Commission Act 1993 to regulate the securities and futures markets in Malaysia. Its role is to ensure the orderly development of a fair and efficient securities and futures market in line with the economic and development objectives of the country. The functions of the Securities Commission of Malaysia include regulating the issue of securities, futures contracts, takeovers and mergers of companies and unit trust schemes; supervising and monitoring the activities of any exchange, clearing house and central depository; safeguarding the interests of the persons dealing in securities or trading in futures contract; promoting proper conduct amongst members of the exchanges and all registered persons; suppressing illegal, dishonourable and improper practices pertaining to securities and futures contracts; suggesting law reforms relating to securities or futures contracts and encouraging the development of the securities and futures markets in Malaysia.

2. DEFINITIONS

For the purposes of this Memorandum of Understanding:-

"Authority" means the Securities Commission of Malaysia or the Securities and Futures Commission of Hong Kong;

"Authorities" means the Securities Commission of Malaysia and the Securities and Futures Commission of Hong Kong;

"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;

"person" means a natural person, unincorporated association, partnership, or body corporate, government or political subdivision, agency or instrumentality of a government;

"securities market" means an exchange or other market, including an over-the-counter market, in respect of equity securities, debt securities, bonds, options or any other security that is recognised, regulated or supervised by 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 secure compliance with their respective securities and futures laws or regulatory requirements.
- 3.2. The purpose of this Memorandum of Understanding is to protect investors and to promote the integrity of the securities, futures and options markets by providing a framework for co-operation, including channels for communication, increased mutual understanding, the exchange of information and investigative assistance, to the extent permitted by laws and practices.
- 3.3. The Authorities will use their best endeavours to meet the terms of this Memorandum of Understanding. This Memorandum of Understanding does not impose any legally binding obligation on the Authorities or modify or supersede any domestic laws or regulatory requirements in force or applying to the Authorities. This Memorandum of Understanding does not affect any arrangements 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 person on a voluntary basis in the territory of the other Authority.
- 3.5. This Memorandum of Understanding does not create any rights enforceable by third parties.
- 3.6. To the extent permitted by laws and practices, each Authority will use reasonable efforts 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 of the other Authority.
- 3.7. The Authorities recognise the need and desirability of providing mutual assistance and exchanging information to assist each other in securing 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) provision of the assistance would violate the national or public interest or the domestic law of the Requested Authority; or
 - b) the request is not in accordance with the provisions of this Memorandum of Understanding.

4. SCOPE

Through the machinery set up by this Memorandum of Understanding, the Authorities agree to promote mutual assistance and the exchange of information so that the Authorities may effectively 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 dealing, market manipulation and other fraudulent practices in securities dealing and in relation to companies, securities, futures contracts, options and collective investment schemes;

- (b) enforcement of laws and regulations relating to dealing in, arranging deals in, managing and advising on securities, futures contracts, options and collective investments;
- (c) supervising and monitoring stock markets and clearing and settlement activities and their compliance with the relevant laws and regulation;
- (d) promoting and securing the fitness and properness of dealers and investment advisers and promoting high standards of fair dealing and integrity in their conduct of business;
- (e) the 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 respective securities markets pertaining to the Authorities with any duties under any relevant laws and rules and any obligation to make full, accurate and immediate disclosure of information relevant to investors;
- (f) the enforcement of the laws and rules relating to the issuing of, dealing in, arranging deals in, managing and advising on securities and other investment products;
- (g) takeovers and mergers; and
- (h) any other matters agreed upon between the Authorities.

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 any procedures in place in the territory of each Authority for the provision of such information are observed.
- 5.2. 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 14 herein. In urgent cases, requests may be in summary form to be followed within five (5) business days by a full request.
- 5.3. Requests for information should specify:-
 - (a) the information required (identity of persons, specific questions to be asked etc);

- (b) the purpose for which the information is sought (including details of the rule or law pertaining to the matter which is the subject of the request);
 - (c) a description of the conduct or suspected conduct which gives rise to the request;
 - (d) the link between the specified rule or law and the regulatory functions of the Requesting Authority;
 - (e) the relevance of the requested assistance to the specified rule or law;
 - (f) to whom, if anyone, onward disclosure of information is likely to be necessary and in relation to onward disclosure to an agency or body which is not designated for this purpose, the reason for such disclosure;
 - (g) any information in the possession of the Requesting Authority that might assist the Requested Authority in identifying the persons or entities believed by the Requesting Authority to possess the information sought or the places where such information may be obtained;
 - (h) the desired time period for the reply; and
 - (i) any other matters specified by the laws and regulations in the territory of the Requested Authority.
- 5.4. Any document or other material provided in response to a request under this Memorandum of Understanding and any copies thereof must be returned on request, to the extent permitted by the laws of the Requesting Authority.
- 5.5. Each request will be assessed on a case by case basis by the Requested Authority to determine whether assistance can be provided under the terms of this Memorandum of Understanding. In any case where the request cannot be accepted completely, the Requested Authority will consider whether there may be other assistance which can be given.
- 5.6. In deciding whether to accept or decline a request, the Requested Authority will take account of:-
- (a) matters specified by the laws and regulations in the territory of the Requested Authority;

- (b) whether the request involves an assertion of jurisdiction not recognised by the territory of the Requested Authority; and
- (c) whether it would be contrary to public interest to give the assistance sought.

6. EXECUTION OF REQUESTS

Access to information held in the files of the Requested Authority will, to the extent permitted by the domestic laws and internal policies of the Requested Authority, be provided upon the request of the Requesting Authority.

7. UNSOLICITED INFORMATION

Where one Authority has information which 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 prosecution arising out of the breach of such rule or law;

- (c) conducting or assisting in civil proceedings arising out of the breach of the rule or law specified in the request and brought by the Authorities or other law enforcement or regulatory bodies within the territory of the Requesting Authority;
 - (d) 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 should not be disclosed to third parties without the prior consent of the provider of the assistance or information. Each Authority will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.
- 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 matters arising in the course of the operation 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. 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 herein;
- (b) the purpose of passing such information to such an agency or body falls within the areas set out in paragraph 4 herein; or
- (c) such agencies or bodies have provided an undertaking in relation to the information requested which is required by the law of the territory of the Requested Authority.

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 may consult informally at any time about a request or proposed request.
- 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. COSTS OF INVESTIGATIONS 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. ENTRY INTO EFFECT

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

13. TERMINATION

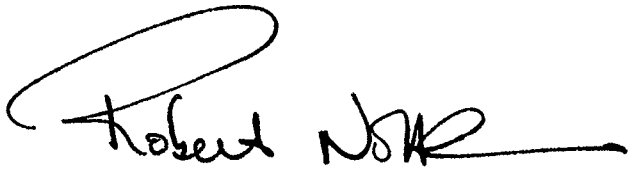
This Memorandum of Understanding will continue in effect until the expiry of thirty (30) days after either Authority gives written notice to the other Authority of its intention to terminate this Memorandum of Understanding. If either Authority gives written notice to the other Authority of its intention to terminate this Memorandum of Understanding, 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 until the requesting Authority terminates the matter for which assistance was requested.

14. 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 be amended by written notice from either Authority without the need for re-signature of this Memorandum of Understanding.

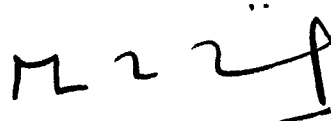
Signed this 22nd day of February 1994 in Hong Kong.

**SECURITIES AND FUTURES
COMMISSION OF HONG KONG**



Mr Robert Nottle
Chairman

**SECURITIES COMMISSION
OF MALAYSIA**



Dato' Dr Mohd Munir Abdul Majid
Chairman

ATTACHMENT

APPENDIX A

LIST OF CONTACT PERSONS

SECURITIES & FUTURES COMMISSION OF HONG KONG

- 1.
2. Alternate:

SECURITIES COMMISSION OF MALAYSIA

1. Dato' Dr. Mohd Munir Abdul Majid
Chairman
Securities Commission Malaysia
No.3 Sri Semantan Satu
Bukit Damansara
50490 KUALA LUMPUR
Tel: (603) 250-7504
Fax: (603) 253-6180

2. Alternate:

Ms. Badariah Ismail
Manager, Corporate Affairs Unit
Securities Commission Malaysia
No.3 Sri Semantan Satu
Bukit Damansara
50490 KUALA LUMPUR
Tel: (603) 250-7558
Fax: (603) 2536184