

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE SECURITIES AND EXCHANGE COMMISSION, THAILAND

AND

THE SECURITIES AND FUTURES COMMISSION, HONG KONG

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1. INTRODUCTION

The Securities and Exchange Commission, Thailand ("SEC") and the Securities and Futures Commission, Hong Kong ("SFC"), recognising the increasingly close relationship between the financial markets in Thailand and Hong Kong and the corresponding need to establish and foster cooperation between the authorities responsible for regulating their respective financial markets for the protection of investors and preservation of market integrity, have reached the following understanding.

## 2. FUNCTIONS OF EACH PARTY

### (a) The Securities and Exchange Commission

The SEC is the Commission established by the Securities and Exchange Act B.E. 2535 (1992) to promote, develop and supervise the Thai capital market. The power and functions of the SEC include the issuance of rules, regulations, notifications, orders or directions under the power given by the Act and to engage in any other activities that would ensure proper disclosure of information in the public offering of securities, financial stability and proper conduct of securities companies, proper performance of various self-regulatory agencies and other institutions related to securities businesses, compliance with takeover codes and general observations of laws and regulations.

### (b) The Securities and Futures Commission

The 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 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 Stock Exchange of Hong Kong to ensure that it discharges its regulatory responsibilities in relation to all listing and member-related matters in a

professional and impartial manner; regulating dealers and investment advisers; 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.

### 3. SCOPE

Through the machinery set up by this Memorandum, the Parties hereby agree to promote mutual assistance and the exchange of information so that the Parties 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 listed companies;
- (b) supervising and monitoring stock markets and clearing and settlement activities, and their compliance with the relevant laws and regulations;
- (c) promoting and securing the fitness and properness of brokers, dealers, investment advisers, and other securities companies and promoting high standards of fair dealing and integrity in their conduct of business;
- (d) the compliance by issuers of and offerors for securities, and directors, officers, shareholders and professional advisers of all companies offering securities for sale to the public,

- all companies listed, or applying for listing, on the securities markets of either Thailand or Hong Kong, with any duties under any relevant laws and rules and any obligation to make full, accurate and immediate disclosure of information relevant to investors;
- (e) the enforcement of the laws and rules relating to issuing of, dealing in, arranging deals in, managing and advising on securities and other investment products;
  - (f) takeovers and mergers; and
  - (g) any other matters agreed upon by all Parties.

#### 4. PRINCIPLES

- (a) The Parties will use their best endeavours to meet the terms of the Memorandum. The Memorandum does not modify or supersede any laws or regulatory requirements in force in, or applying to Thailand or Hong Kong. The Memorandum does not create any rights enforceable by third parties.
- (b) The purpose of the Memorandum is to enhance the protection of investors and to promote the integrity of the securities, futures and options markets by providing a framework for co-operation, increased mutual understanding and the exchange of information to the extent permitted by the laws and practices of Thailand and Hong Kong.
- (c) To the extent permitted by the applicable laws and practices, each Party will use reasonable efforts to provide the other Party with any relevant information that is discovered which gives rise to a suspicion of a breach, or anticipated breach, of the rules or laws of the other Party.

5. REQUESTS FOR ASSISTANCE OR INFORMATION

(a) The Parties may consult at any time, about a request or proposed request.

(b) Requests for information or other assistance will be made in writing in English. In urgent cases, requests may be in summary form to be followed within five business days by a full request. The full request will be signed by one of the contact persons set out in Annex A.

(c) Requests for information will specify:-

- (i) the information requested (including the identity of persons, etc);
- (ii) the purpose for which the information is sought (including details of the laws or regulatory requirements pertaining to the matter which is the subject of the request);
- (iii) a description of the conduct or suspected conduct which gives rise to the request;
- (iv) the link between the specified laws or regulatory requirements and the regulatory function of the requesting party;
- (v) the relevance of the requested information to the specified laws or regulatory requirements; and
- (vi) to whom, if anyone, onward disclosure of information is likely to be necessary and the reason for such disclosure.

- (d) Each request will be assessed by the requested Party 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 Party will consider whether there may be any other relevant information which can be given.
- (e) In deciding whether to accept or decline a request the requested Party will take account of:
- (i) matters specified by the laws and regulations in the territory of the requested Party;
  - (ii) whether the request involves an assertion of jurisdiction not recognised by the territory of the requested Party;
  - (iii) whether it would be contrary to the public interest to give the assistance sought;
  - (iv) whether it would obstruct an ongoing investigation or impair the operation of the requested Party; and
  - (v) whether it would cause injury to any unrelated third party.
- (f) The requested Party may, as a condition of agreeing that assistance is given under the Memorandum, require the requesting Party to make a contribution to costs. Such a contribution may, in particular, be required where the cost of a request is substantial or where a substantial imbalance has arisen in the cumulative costs incurred.

6. UNSOLICITED INFORMATION

Where one Party has information which will assist another Party 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 Party. The terms and conditions of this Memorandum will apply if the providing Party specifies that the information is passed under this Memorandum.

7. CONFIDENTIALITY AND USE OF INFORMATION

This Memorandum should be kept confidential only to the Parties involved.

Assistance or information will be provided by a Party only for the purposes of assisting the other Party to this Memorandum in the performance of its regulatory functions. Any assistance or information provided under this Memorandum should be used by the recipient only for the purposes of performing its regulatory functions and should not be disclosed to any third parties without the prior consent of the provider of the assistance or information, unless it is required in accordance with legal procedures or by governmental bodies having power under the relevant law to supervise securities and financial institutions. Each Party will establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of such information.



Each Party will not be liable to any damage that may occur as a result of the delay in delivery, inaccuracy or incompleteness of information as long as they are made in good faith and without negligence on the part of the requested Party.

8. CONTACT PERSONS

All communications between the Parties should be between the principal points of contact as set out in Annex A unless otherwise agreed. Annex A may be amended by written notice from either Party without the need for re-signature of this Memorandum.

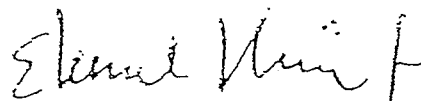
9. ENTRY INTO EFFECT

This Memorandum will come into operation from the date of signature by the SEC and the SFC.

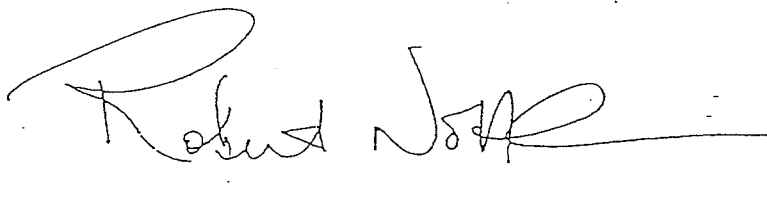
Signed this twelfth day of November 1993 in THAILAND.

SECURITIES AND EXCHANGE  
COMMISSION, THAILAND

SECURITIES AND FUTURES  
COMMISSION, HONG KONG



EKAMOL KIRIWAT  
Secretary-General



ROBERT NOTTLE  
Chairman

LIST OF CONTACT PERSONS

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