

**Memorandum of Understanding**  
**between the**  
**Securities and Futures Commission**  
**of Hong Kong**  
**and the**  
**Financial Services Board**  
**of the Republic of South Africa**  
**on the Exchange of Information**  
**for Co-operation and Consultation**

Nairobi, KENYA  
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## 1. INTRODUCTION

- 1.1 The Financial Services Board of South Africa ("FSB") was established under section 2 of the Financial Services Board Act, 1990, to supervise the exercise of control, in terms of any law, over the activities of financial institutions (excluding banks) and over financial services in South Africa and to advise the Minister of Finance on matters concerning financial institutions and financial services. The functions of the FSB include the regulation and supervision of the activities of South African licensed exchanges, clearing houses, independent intermediaries investing on behalf of clients (excluding advisers), central securities depositories, collective investment schemes and provident institutions (which include all types of insurance and retirement fund activities) in order to protect investors and to maintain the integrity, efficiency and financial soundness of the financial services industry. The FSB strives to ensure that the financial institutions comply with the laws, regulations and rules of its jurisdiction.
- 1.2 The Securities and Futures Commission of Hong Kong ("SFC") was established under the Securities and Futures Commission Ordinance to regulate securities and futures markets and leveraged foreign exchange trading in Hong Kong. The functions of the SFC include administering securities, futures and leveraged foreign exchange trading 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, leveraged foreign exchange traders, 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.
- 1.3 The FSB and the SFC recognise the importance of international co-operation to the development and maintenance of open, fair, ordered and sound domestic financial services industry in South Africa and Hong Kong, respectively and the increasing international activity in the supply of financial services and the corresponding need for mutual co-operation and the sharing of information in the administration and enforcement of laws, regulations and rules concerning the financial institutions in South Africa and Hong Kong and have reached the following understanding.

## 2. DEFINITIONS

**"Authority"** means the Financial Services Board of South Africa or the Securities and Futures Commission of Hong Kong, as the case may be;

**"Authorities"** mean the Financial Services Board of South Africa and the Securities and Futures Commission of Hong Kong;

**"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;

**"financial institutions"** mean the institutions and persons regulated and supervised by the Authorities respectively; and

**"jurisdiction"** means the country, state or other territory, as the case may be, in which an Authority has legal authority, power and/or jurisdiction by law.

## 3. INTENTION

- 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 any laws or regulations of their respective jurisdictions.
- 3.2 The Authorities intend to provide one another with assistance under this Memorandum of Understanding to the full extent permitted by the laws, regulations and rules of their respective jurisdictions.
- 3.3 This Memorandum of Understanding will serve to promote the integrity, efficiency and financial soundness of the financial markets and provident institutions by improving the effective regulation, enhancing the supervision of cross-border transactions, and preventing fraudulent and other prohibited practices in Hong Kong and South Africa.

- 3.4 The Memorandum of Understanding does not create any binding legal obligations upon the Authorities.
- 3.5 The Authorities intend, where legal authorisation is lacking, to actively pursue all avenues towards obtaining, by law, all the necessary powers for the effective achievement of the objectives of the Memorandum of Understanding, and to keep the other Authority informed of developments in connection therewith.
- 3.6 The provisions of this Memorandum of Understanding do not give rise to the right of any person, directly or indirectly, to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Memorandum of Understanding
- 3.7 The Authorities will use reasonable effort to provide each other with any information that they discover which leads to a suspicion of a breach or anticipated breach of rules or laws in the jurisdictions of the Authorities.

#### **4. SCOPE**

Through the machinery set up by this Memorandum of Understanding, the Authorities agree to promote mutual assistance and exchange of information to enable the Authorities to perform their respective duties effectively according to the laws, regulations and rules of their respective jurisdictions.

In terms of this general theme, the scope of this Memorandum of Understanding include the following:

- (a) assisting in the discovery of and taking of action against fraudulent practices in relation to activities they regulate;
- (b) enforcement of the laws, regulations and rules relating to dealing in securities, futures contracts and other investment products, including the management of investments;
- (c) regulation and supervision of financial institutions and clearing and settlement activities;

- (d) promoting and securing the fit and proper qualities of registered persons and the promotion of high standards of fair dealing and integrity of their conduct of business; and
- (e) any 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 the Authorities observe procedures in the jurisdiction of each Authority for the obtaining of such information.
- 5.2 To facilitate communication and ensure continuity in the co-operation between the Authorities, each Authority designates the contact persons set forth in Appendix A hereto for communications under this Memorandum of Understanding.
- 5.3 A Requesting Authority will make requests for assistance in writing addressed to the contact officer of the Requested Authority.
- 5.4 The request will include -
  - (a) a general description of both the subject matter of the request and the purpose for which the Requesting Authority seeks the assistance or information;
  - (b) a general description of the assistance, documents or information sought by the Requesting Authority and the relevance of the requested information to the specified laws or regulatory requirements;
  - (c) any information in the possession of the Requesting Authority that may assist the Requested Authority in identifying the persons, bodies or entities believed by the Requesting Authority to possess the information sought, or the places where the Requested Authority may obtain such information;
  - (d) the legal provisions concerning the matter that is the subject matter of the request;

- (e) whether any other authorities, governmental or non-governmental, are co-operating with the Requesting Authority or seeking information from the confidential files of the Requesting Authority and to whom onward disclosure of information is likely to be necessary; and
- (f) the desired period of time for the reply.

In urgent circumstances, the Requested Authority may accept a request for assistance and may expedite to the extent possible a reply thereto by summary procedures or by means of communication other than the exchange of letters. Such urgent communications must be confirmed in writing as prescribed above by the contact persons set out in Appendix A within five business days.

## **6. UNSOLICITED INFORMATION**

Where one Authority has information that will assist the other 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 the other Authority has made no request. The terms and conditions of this Memorandum of Understanding will apply if the providing Authority specifies that it is passing the information under this Memorandum of Understanding.

## **7. PERMISSIBLE USES OF INFORMATION**

- 7.1 Any assistance or information provided under this Memorandum of Understanding should be used by the recipient only for the purposes of performing its regulatory and supervisory functions.
- 7.2 The Requesting Authority may not use information furnished for any purpose other than that identified in terms of paragraph 5.4(a).
- 7.3 If the Requesting Authority wants to use the information obtained for any purpose other than that stated in terms of paragraph 5.4(a), the Requesting Authority must notify the Requested Authority of its intention and provide the Requested Authority with an opportunity to oppose such use.
- 7.4 Where the Requesting Authority believes that sharing confidential information with a third party is necessary, it must inform the

Requested Authority of the other party's interest in this information and it must provide the Requested Authority with the opportunity to oppose such use.

- 7.5 The Requesting Authority may consult with the Requested Authority concerning the reasons for the objection if the Requested Authority opposes such use.

## 8. CONFIDENTIALITY

- 8.1 The Authorities will, to the full extent permitted by the laws, regulations and rules of their respective jurisdictions, keep confidential -

- (a) any request for assistance or information pursuant to this Memorandum of Understanding;
- (b) any information received pursuant to this Memorandum of Understanding; and
- (c) any matter arising during the operation of this Memorandum of Understanding, including consultations and unsolicited assistance.

- 8.2 The Requesting Authority shall not disclose the assistance or information obtained pursuant to this Memorandum of Understanding to third parties without the prior consent of the Requested Authority.

- 8.3 Notwithstanding the provisions of paragraphs 7.1, 7.2 and 7.3, the confidentiality provisions of this Memorandum of Understanding shall not prevent the Authorities from informing the law enforcement or regulatory bodies in its jurisdiction, e.g. the Registrar of Companies or the exchanges, of the request or from 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 scope of this Memorandum of Understanding; or
- (b) the purpose of passing on such information to such agencies or bodies falls within the scope of this Memorandum of Understanding,



and an undertaking has been obtained from the recipient by the providing Authority that it will maintain the confidentiality of the information, except when disclosure is required pursuant to a legally enforceable demand.

- 8.4 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 laws, regulations and rules of its jurisdiction, inform the other Authority of that demand. The Authorities will then consult on the appropriate course of action.
- 8.5 The Authorities' confidential treatment of assistance and information will continue when either Authority gives notice of its intent to cease co-operation under this Memorandum of Understanding. The Authorities understand that the laws, regulations and rules of their respective jurisdictions place limitations on use and disclosure of non-public information obtained pursuant to this Memorandum of Understanding.

## **9. RIGHTS OF REQUESTED AUTHORITY**

- 9.1 The Requested Authority may decline requests for assistance under the Memorandum of Understanding -
- (a) where the request would require the Requested Authority to act in a way that would violate the laws of the jurisdiction of the Requested Authority;
  - (b) where the request is not in accordance with the provisions of this Memorandum of Understanding; or
  - (c) on grounds of public interest.
- 9.2 Where the Requested Authority denies or opposes a request for assistance, or where assistance is not available under the law of the jurisdiction of the Requested Authority, the Requested Authority will provide the reasons why it is not granting the assistance. The Authorities will then consult pursuant to Section 10.

- 9.3 The Authorities recognise that they intend nothing in the Memorandum of Understanding to either limit or enhance the powers of the Authorities under the laws of their respective jurisdictions to investigate or gather information or to take measures otherwise than as provided in the Memorandum of Understanding to obtain information, whether or not concerning a request under the Memorandum of Understanding.

## 10. CONSULTATION

- 10.1 The Authorities will consult with each other to improve the operation of the Memorandum of Understanding and resolving any matters that may arise including but not limited to -

- (a) matters of mutual interest to enhance co-operation and to protect investors by ensuring the stability, efficiency, and integrity of the financial services industry in their respective jurisdictions;
- (b) the co-ordination of the supervision of financial institutions; and
- (c) the administration of the laws, regulations and rules of their respective jurisdictions.

The purpose of such consultations is to assist in the development of mutually agreeable approaches for strengthening the industries of their respective jurisdictions while avoiding, whenever possible, conflicts that may arise from the application of differing regulatory practices.

- 10.2 The Authorities will consider the need for additional measures for the exchange of investigation, enforcement, supervisory and surveillance information in the administration and enforcement of the laws, regulations and rules concerning financial institutions in their respective jurisdictions, on an ongoing basis. To this end, the Authorities will inform one another of the adoption of domestic measures that may affect their respective authority to provide assistance under this Memorandum of Understanding.
- 10.3 The Authorities may take practical measures as may be necessary to facilitate the implementation of the Memorandum of Understanding. As such, the Authorities may amend, relax or waive any of the terms of the Memorandum of Understanding.

## 11. COSTS OF INVESTIGATION

If it appears that the Requested Authority will incur substantial costs in responding to a request for assistance under this Memorandum of Understanding, the Authorities will establish a cost-sharing arrangement before continuing to respond to such a request for assistance.

## 12. TERMINATION OF MEMORANDUM OF UNDERSTANDING

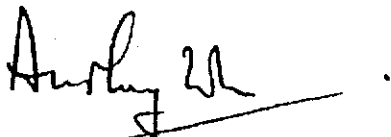
This Memorandum of Understanding will continue in effect until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate the Memorandum of Understanding. If either Authority gives such notice, this Memorandum of Understanding will continue to have effect with respect to all requests for assistance that the Authorities made before the effective date of notification until the requesting Authority terminates the matter for which it requested assistance.

## 13. EFFECTIVE DATE

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

SIGNED at Nairobi, this day of September, 1998

FOR THE SECURITIES AND FUTURES COMMISSION OF HONG KONG



Mr Anthony Neoh  
Chairman

FOR THE FINANCIAL SERVICES BOARD OF SOUTH AFRICA



Dr. Chris de Swardt  
Chairman



Mr. Rick Cottrell  
Executive Officer