

MEMORANDUM OF UNDERSTANDING

BETWEEN

COMISSÃO DO MERCADO DE VALORES MOBILIÁRIOS

AND

SECURITIES AND FUTURES COMMISSION OF
HONG KONG

1. INTRODUCTION

- 1.1. The Comissão do Mercado de Valores Mobiliários (CMVM) and the Securities and Futures Commission of Hong Kong (SFC) (hereinafter referred to as “the Authorities”), recognizing the increasingly international activity between the financial markets and financial services sectors of Portugal and Hong Kong and the corresponding need to establish and foster cooperation between the authorities responsible for regulating their respective financial markets and services for the protection of investors and preservation of market integrity, have reached the following understanding.

2. FUNCTIONS OF EACH AUTHORITY

2.1. Comissão do Mercado de Valores Mobiliários

The Comissão do Mercado de Valores Mobiliários (CMVM) of Portugal is a public body whose duties are that of regulating, supervising, controlling and promoting the securities markets and the activities within those markets, carried out by all the agents concerned, in accordance to the Portuguese Securities Market Code. It is also one of the CMVM's duties to assure international co-operation between the homologous authorities. The CMVM's performance of those functions is namely to assure the transparency of the primary and secondary markets in the sense of allowing the investors a full disclosure system; assure the adequate organisation and running of the securities markets, as well as the bodies responsible for the clearing and settlement and of the authorised financial companies rendering services in the securities area, to observe the compliance of practices adjusted to the rendering of investment services and financial intermediary activities in general, with the proper levels of quality.

2.2. Securities and Futures Commission

The Securities and Futures Commission (SFC) is the Commission established by the Securities and Futures Commission Ordinance to regulate securities and futures markets in Hong Kong. The functions of the SFC include administering securities and futures 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 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.

3. SCOPE

3.1. Through the machinery set up by this Memorandum, the Authorities hereby agree to promote mutual assistance and the exchange of information so that the Authorities may effectively perform their respective duties according to law.

3.2. Under the foregoing general theme, the scope of this Memorandum will include the following:

- 1) supervising and monitoring the securities and futures markets, their clearing and settlement activities, ensuring compliance with the relevant laws and regulatory requirements;
- 2) enforcement of the laws and regulatory requirements relating to dealing in, arranging deals in, managing and advising on securities, futures contracts, and other investment products;
- 3) promoting and securing the fitness and properness of dealers, investment advisers and other financial market practitioners, promoting high standards of fair dealing and integrity in their conduct of business;
- 4) enforcement of the laws and regulatory requirements relating to insider dealing, market manipulation and other fraudulent practices in relation to listed companies, securities, futures contracts, and other investment products;
- 5) ensuring 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 securities markets of either Portugal or Hong Kong, with any duties under any relevant laws and regulatory requirements and any obligation to make full, accurate and immediate disclosure of information relevant to investors;

- 6) enforcement of the laws and regulatory requirements relating to takeovers and mergers and share repurchases;
- 7) disclosure of interest in the securities of companies;
- 8) breaches of companies legislation; and
- 9) any other matters agreed upon by the Authorities.

3.3. Assistance available pursuant to this Memorandum includes, but not limited to –

- 1) Providing access to information in the files of the requested Authority;
- 2) Taking testimony and statements of persons; and
- 3) Obtaining information and documents from persons.

4. PRINCIPLES

- 4.1. This Memorandum sets forth a statement of intent of the Authorities to enhance the protection of investors and to promote the integrity of the securities and futures markets by providing a framework for cooperation, including channels for communication, increased mutual understanding and the exchange of information.
- 4.2. This Memorandum does not create any legally enforceable rights nor impose any legally binding obligations. This Memorandum does not modify or supersede any

laws or regulatory requirements in force in, or applying to, Portugal or Hong Kong.

- 4.3. To the extent permitted by the applicable laws and practices, each Authority will use reasonable efforts to provide the other Authority with any relevant information that is discovered which gives rise to a suspicion of a breach, or anticipated breach, of the regulatory requirements or laws administered by the other Authority.
- 4.4. This Memorandum does not affect the ability of the Authorities to exchange public information.

5. REQUESTS FOR ASSISTANCE OR INFORMATION

- 5.1. The Authorities may consult at any time about a request or proposed request.
- 5.2. Requests for information or assistance will be made in writing in English. In urgent cases, requests may be in a summary form to be followed by a full request as soon as possible. The full request will be signed by one of the contact persons set out in Annex A.
- 5.3. Requests for information or assistance will specify the following:
 - 1) a general description of the information or assistance requested (including the identity of persons, etc.);
 - 2) a general description of the nature of the case and the conduct or suspected conduct which gives rise to the request;
 - 3) the purpose for which the information or assistance is sought (including details of the laws or regulatory requirements pertaining to the matter which is the subject of the request);

- 4) the link between the specified laws or regulatory requirements and the regulatory function of the requesting Authority;
 - 5) the relevance of the requested information or assistance to the specified laws or regulatory requirements;
 - 6) to which Annex B bodies onward disclosure of information is contemplated and the reasons for such disclosure; and
 - 7) in the case of the obtaining of testimony from a person, whether it is likely that criminal proceedings will be brought against that person.
- 5.4. In the event that it is considered likely that it will be necessary to disclose the information or testimony requested to a person or body other than one listed in Annex B, then the requesting Authority will, in the request, seek the consent of the requested Authority to such onward disclosure.
- 5.5. Each request will be assessed by the requested Authority to determine whether information or assistance can be provided under the terms of this Memorandum. In any case where the request cannot be accepted completely, the requested Authority will consider whether there may be any other relevant information or assistance which can be given.
- 5.6. In deciding whether to accept or decline a request the requested Authority will take into account of:
- 1) matters specified by the laws and regulations in the territory of the requested Authority; and

- 2) whether it would be contrary to the public interest to give the assistance sought.
- 5.7. The requested Authority may, as a condition of agreeing that assistance is given under the Memorandum, require the requesting Authority 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.
- 5.8. Any documents or other materials provided under this Memorandum and any copies thereof must be returned on request, to the extent permitted by law.

6. UNSOLICITED INFORMATION

- 6.1. Where one Authority has information which will assist the other Authority in the performance of its regulatory functions, the former may provide such information, or arrange such information to be provided, to the extent permitted by law, on a voluntary basis even though no request has been made by the other Authority. The terms and conditions of this Memorandum will apply if the providing Authority specifies that the information is passed under this Memorandum.

7. CONFIDENTIALITY AND USE OF INFORMATION

- 7.1. Assistance or information will be provided by an Authority only for the purposes of assisting the other Authority 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 stated in the request for assistance and should not be disclosed to any third parties apart from those bodies listed in Annex B to this Memorandum, 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.

- 7.2. When a requesting Authority discloses information to a third party (including those Annex B bodies) in accordance with paragraph 7.1., the requesting Authority will obtain an undertaking from that party that it will maintain the confidentiality of the information, except when disclosure is required pursuant to a legally enforceable demand.
- 7.3. If either Authority becomes aware that information passed under this Memorandum 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. Where the provider indicates to the receiving Authority that it wishes the receiving Authority to resist the demand, the receiving Authority shall resist disclosure as far as is practicable under the law and, if necessary and appropriate, claim public interest immunity.

8. CONTACT PERSONS

- 8.1. All communications between the Authorities should be between the principal points of contacts as set out in Annex A unless otherwise agreed. Annex A may be amended by the relevant Authority upon written notice to the other Authority.

9. TERMINATION

- 9.1. Cooperation and assistance in accordance with this Memorandum will continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to discontinue cooperation and assistance. If such notice is given, cooperation and assistance in accordance with this Memorandum will continue with respect to all requests for assistance that were made before the

effective date of notification until the requesting Authority terminates the matter for which assistance was requested.

10. **EFFECTIVE DATE**

10.1. Cooperation in accordance with this Memorandum will begin on the date of its signing by the Authorities.

Signed this on 16th day of May 2000 in Sydney in duplicate in the Portuguese and the English languages, both texts being equally authentic.

**COMISSÃO DO MERCADO DE
VALORES MOBILIÁRIOS**

Fernando Teixeira dos Santos

President

**SECURITIES AND FUTURES
COMMISSION**

Andrew L Y Sheng

Chairman

ANNEX A

LIST OF CONTACT PERSONS

Comissão do Mercado de Valores Mobiliários

Comissão do Mercado de Valores Mobiliários
Avendia Fontes Pereirs de Melo, nº 21
1056-801 LISBOA
PORTUGAL

Contact Person : Mr. Gonçalo Castilho dos Santos
Co-ordinator – Office for International Affairs
Tel: (00) 351-21-317-7000
Fax: (00) 351-21-317-7077
E-mail: CMVM@CMVM.PT

Securities and Futures Commission

Securities and Futures Commission
12th Floor Edinburgh Tower
The Landmark
15 Queen's Road Central
HONG KONG
Tel: (852) 2840-9221

Contact Person: Mr Paul Bailey
Executive Director of Enforcement
Tel: (852) 28427656
Fax: (852) 25217929
E-mail: pbailey@hksfc.org.hk

Mr Alex Pang
Senior Director of Enforcement
Tel: (852) 2842-7627
Fax: (852) 2523-8864
E-mail: apang@hksfc.org.hk

ANNEX B

LIST OF LAW ENFORCEMENT AND REGULATORY BODIES
DESIGNATED UNDER PARAGRAPH 5.3.6 OF THIS MEMORANDUM

In Portugal :

The Central Bank
The Insurance Regulator
The Parliament
The Attorney-General
The Penal Procedure Court
The Superior Courts
The Investors Compensation System
The Clearing and Settlement System

In Hong Kong :

The Financial Secretary and the Financial Services Bureau
Inspectors appointed by the Financial Secretary
Hong Kong Monetary Authority
Independent Commission Against Corruption
Hong Kong Police Force
Department of Justice
Stock Exchange of Hong Kong Limited
Hong Kong Futures Exchange Limited
Insider Dealing Tribunal