



SECURITIES AND  
FUTURES COMMISSION  
證券及期貨事務監察委員會

## **MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**STATE SECURITIES COMMISSION OF  
VIET NAM**

**AND**

**SECURITIES AND FUTURES  
COMMISSION  
OF HONG KONG**

**ON INFORMATION EXCHANGE AND  
MUTUAL ASSISTANCE**

**2009**

## **1. INTRODUCTION**

The State Securities Commission in Viet Nam ("SSC") and the Securities and Futures Commission in Hong Kong ("SFC") ("the Authorities"), recognizing the increasingly international activity between the financial markets and financial services sectors of Viet Nam 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**

### **(a) State Securities Commission**

The SSC is an organisation under the Ministry of Finance, charged with the functions of exercising the State regulation of the securities and securities market, direct regulation and supervision of activities in securities and the securities market, management of public services in the fields of securities and the securities market in accordance with applicable laws.

### **(b) Securities and Futures Commission**

Under section 3 of the Securities and Futures Ordinance ("SFO"), the SFC is the statutory body to regulate and promote the efficiency of the

securities and futures markets and leveraged foreign exchange trading in Hong Kong. The SFC is responsible for the administration and enforcement of the SFO and Part II and XII of the Companies Ordinance so far as those Parts relate to the performance of functions relating to prospectuses, the purchase by a corporation of its own shares and a corporation giving financial assistance for the acquisition of its own shares. Pursuant to section 378(3)(g)(i) of the SFO, the SFC may pass information to foreign regulators.

### **3. GENERAL PRINCIPLES**

- (a) The 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 the laws and regulatory requirements of their respective jurisdictions.
  
- (b) The Memorandum of Understanding does not create any legally enforceable rights nor impose any legally binding obligations. The Memorandum of Understanding does not modify or supersede any laws or regulatory requirements in force in, or applying to, Viet Nam or Hong Kong. The Memorandum of Understanding does not affect any arrangements under other Memoranda to which either Authority may be a party.

(c) The Authorities recognize the need for and desirability of providing mutual assistance and the exchange of information to assist each other in securing compliance with their respective laws or regulatory requirements. A request for assistance may be denied, however, by the requested Authority:

(i) where the request would require the requested Authority to act in a manner that would violate its laws;

(ii) where the request is not made in accordance with the provisions of the Memorandum of Understanding; or

(iii) on the grounds of public interest.

#### **4. SCOPE OF ASSISTANCE**

Through the machinery set up by this Memorandum of Understanding, 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. Under the foregoing theme, the scope of the Memorandum of Understanding will include the following:

- (a) supervising and monitoring the securities and futures markets, their clearing and settlement activities, ensuring compliance with relevant laws and regulatory requirements;
- (b) 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;
- (c) promoting and securing the fitness and properness of dealers, investment advisers, and other financial market practitioners, promoting high standards of fair trading and integrity in their conduct of business;
- (d) 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;
- (e) 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 Viet Nam 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;

- (f) enforcement of the laws and regulatory requirements relating to takeovers and mergers and share repurchases;
- (g) the disclosure of interests in the securities of listed companies;
- (h) breaches of companies legislation; and
- (i) any other matters agreed upon by the Authorities.

## **5. REQUESTS FOR ASSISTANCE**

- (a) Requests for assistance will be made in writing in English and addressed to the requested Authority's principal point of contact listed in Appendix A.
- (b) Requests for assistance will specify the following:
  - (i) a general description of the information sought by the requesting Authority;
  - (ii) the purpose for which the information is sought;
  - (iii) a general description of the nature of the case and the conduct or suspected conduct which gives rise to the

request, including what laws or regulatory requirements are alleged to have been breached;

(iv) the link between the specified laws or regulatory requirements and the regulatory function of the requesting Authority;

(v) the relevance of the requested information to the specified laws or regulatory requirements;

(vi) the desired time period for the reply.

(c) In urgent cases, a request for assistance may be effected by summary procedures or other means mutually agreed upon by the Authorities, provided that all such communications are confirmed in the manner prescribed by paragraphs 5(a) and 5(b) of the Memorandum of Understanding.

(d) Assistance available pursuant to the Memorandum of Understanding includes but is not limited to the provision by the requested authority of information which is in the files of the requested authority.

## 6. EXECUTION OF REQUESTS FOR ASSISTANCE

- (a) Each request will be assessed by the requested Authority to determine whether information can be provided under the terms of the Memorandum of Understanding. In any case where the request cannot be accepted completely, the requested Authority will consider whether part of the information or assistance requested may be provided or whether there may be any other relevant assistance or information which might be provided.
- (b) The requested Authority may, as a condition of agreeing that assistance is given under the 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 a request is substantial or where a substantial imbalance has arisen in the cumulative costs incurred.
- (c) Any documents or other materials provided under the Memorandum of Understanding and any copies thereof must be returned on request, to the extent permitted by law.



## **7. UNSOLICITED INFORMATION**

Where one Authority has information which will assist the other Authority in the performance of its regulatory functions, including any relevant information that is discovered which gives rise to a suspicion of a breach, or anticipated breach, of the laws or regulatory requirements of the other Authority, 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 the Memorandum of Understanding will apply if the providing Authority specifies that the information is passed under the Memorandum of Understanding.

## **8. CONFIDENTIALITY AND USE OF INFORMATION**

- (a) The requesting Authority may use the information and documents furnished in response to a request for assistance under the Memorandum of Understanding solely for:
  - (i) the purpose set forth in the request for assistance, including ensuring compliance with the laws and regulatory requirements related to the request; and

- (ii) a purpose within the general framework of the use stated in the request for assistance, including assisting in exercising functions of regulation, investigation and enforcement for any general charge applicable to the violation of the provision specified in the request where such general charge pertains to a violation of the laws and regulatory requirements administered by the requesting Authority. The use may include enforcement proceedings which are public upon the approval of the requested authority.
  
- (b) If a requesting Authority intends to use information furnished under the Memorandum of Understanding for any purpose other than those stated in Paragraph 8 (a), it must obtain the consent of the requested Authority.
  
- (c) Each Authority will keep confidential requests made under the Memorandum of Understanding, the contents of such request, and any matters arising under the Memorandum of Understanding, including consultations between the Authorities, and unsolicited assistance. After consulting with the requesting Authority, the requested Authority may disclose the fact the requesting Authority has made the request if such disclosure is required to carry out the request.

- (d) The requesting Authority will not disclose information and documents received under the Memorandum of Understanding, except as contemplated by paragraph 8 (a) or in response to a legally enforceable demand. In the event of a legally enforceable demand, the requesting Authority will notify the requested Authority prior to complying with the demand, and will assert such appropriate legal exemptions or privileges with respect to such information as may be available. The Requesting Authority will use its best efforts to protect the confidentiality of the documents and information received under the Memorandum of Understanding.

## **9. CONSULTATIONS**

- (a) The Authorities will consult in the event of any uncertainty over the meaning of any terms used in the Memorandum of Understanding.
- (b) The Authorities may consult informally, at any time, about a request or proposed request.
- (c) The Authorities may consult and revise the terms of the Memorandum of Understanding in the event of a substantial change in laws, regulations, rules, practices, conditions or any other matter affecting its operation.

- (d) The Authorities may agree on such practical measures as may be necessary to facilitate the implementation of the Memorandum of Understanding.

## **10. 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 the relevant Authority upon written notice to the other Authority.

## **11. TERMINATION**

Cooperation in accordance with the Memorandum of Understanding will continue until the expiration of 30 days after any Authority gives written notice to the other Authority of its intention to discontinue the cooperation. If any Authority gives such notice, cooperation in accordance with the Memorandum of Understanding will continue with respect to all requests for assistance that were made to such Authority before the effective date of notification until the requesting Authority terminates the matter for which the assistance was requested.

**12. ENTRY INTO EFFECT**

The Memorandum of Understanding will come into operation from the date of signature by the SSC and the SFC.

Signed this 20<sup>th</sup> day of April 2009 in Hong Kong and includes 2 copies, one copy for each party.

State Securities Commission of  
Viet Nam

Securities and Futures Commission  
of Hong Kong



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Vu Bang  
Chairman



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Eddy Fong  
Chairman

## APPENDIX A

### LIST OF CONTACT PERSONS

#### **States Securities Commission of Viet Nam**

Mr Nguyen Ngoc Canh  
Director  
International Cooperation Department  
164 Tran Quang Khai Str., Hanoi, Viet Nam  
Tel: (84-4) 39350052  
Fax: (84-4) 39340740  
Email: canhn@ssc.gov.vn

#### **The Securities and Futures Commission**

Mr Mark Steward  
Executive Director, Enforcement  
Securities and Futures Commission  
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