

# MEMORANDUM OF UNDERSTANDING

BETWEEN THE SECURITIES AND FUTURES COMMISSION

OF HONG KONG AND

THE COMISION NACIONAL DEL MERCADO

DE VALORES

DEL REINO DE ESPAÑA

17 september 1996

**MEMORANDUM OF UNDERSTANDING  
ON MUTUAL ASSISTANCE AND EXCHANGE OF INFORMATION  
BETWEEN THE COMISION NACIONAL DEL MERCADO DE VALORES OF SPAIN  
AND THE SECURITIES AND FUTURES COMMISSION OF HONG KONG**

The Comisión Nacional del Mercado de Valores of Spain and the Securities and Futures Commission of Hong Kong acknowledge the importance of ensuring compliance with and enforcement of the securities and futures laws, rules and regulations of Spain and Hong Kong. In light of the increasing international activity in the securities and futures markets, and the need for mutual cooperation in order to facilitate the performance of their respective duties, the Comisión Nacional del Mercado de Valores and the Securities and Futures Commission, acting in their capacities as administrative authorities, have reached the following understanding:

**1.- Definitions**

1-1 For the purposes of this Memorandum of Understanding (Memorandum) :

- a) "Authority" means :
  - (i) the Comisión Nacional del Mercado de Valores of Spain (CNMV) ; or
  - (ii) the Securities and Futures Commission of Hong Kong (SFC);
- b) "Requested Authority" means an Authority to whom a request under this Memorandum is made ;
- c) "Requesting Authority" means an Authority making a request under this Memorandum;
- d) "person" means a natural person, association, partnership, corporation, trust, government or political subdivision, agency or instrumentality of a government;
- e) "securities and futures market" means an exchange or other market, including over-the-counter market, for equity securities, debt securities, bonds, futures, options or any other financial instrument that is recognized, regulated or supervised by the Authorities.

**2.- General Principles**

2-1 This Memorandum sets forth a statement of intent of the Authorities regarding mutual assistance and exchange of information between the Authorities for the purpose of facilitating the Requesting Authority's efforts to secure enforcement of or the compliance with any legal rule or requirement. This Memorandum does not impose any legally binding obligations nor create any legally enforceable rights.



2-2 Nothing in this Memorandum is intended to limit the powers of the CNMV under the laws of Spain or the powers of the SFC under the laws of Hong Kong to investigate or gather information or to make measures otherwise than as provided in this Memorandum to obtain information, whether or not in connection with a request under this Memorandum.

### 3.- Scope of Assistance

- 3-1 The Authorities will promote the fullest mutual assistance to the extent permitted by the laws of Spain and Hong Kong, within the framework of this Memorandum, 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) insider dealing, market manipulation and other fraudulent practices in relation to listed companies, securities, futures contracts, and other investment products,
  - b) supervising and monitoring the securities and futures markets, their clearing and settlement activities, ensuring compliance with the relevant laws and regulatory requirements,
  - c) 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,
  - d) enforcement of the laws and regulatory requirements relating to leveraged foreign exchange trading,
  - e) promoting and securing the fitness and properness of dealers, investment advisers, leveraged foreign exchange traders and other financial market practitioners, promoting high standards of fair dealing and integrity in their conduct of business,
  - f) 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 Spain 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,
  - g) takeovers and mergers and share repurchases,
  - h) the disclosure of interests in the securities of companies,
  - i) breaches of companies legislation, and
  - j) any other matters agreed upon by both Authorities.



3-2 Assistance available pursuant to this Memorandum includes but is not limited to :

- a) providing access to information in the files of the Requested Authority,
- b) taking testimony and statements of persons, and
- c) obtaining information and documents from persons.

3-3 The Authorities recognize that they may not in all circumstances possess the legal authority to provide the assistance contemplated in this Memorandum. Subject to such limitations of legal authority, the Authorities will use all reasonable efforts to obtain the assistance of other governmental agencies or entities that have such authority, necessary to provide the assistance described in this Memorandum.

#### 4.- Requests for Assistance

4-1 Requests for assistance will be made in writing and addressed to the Requested Authority's contact officer listed in Appendix A.

4-2 The request for assistance will specify the following :

- a) detailed particulars of the information sought by the Requesting Authority;
- b) a concise description of the matter or conduct which is the subject of the investigation for which the request is made, the relevance of the information requested to the matter under investigation and the purpose for which the information is sought;
- c) the person (s) suspected or believed by the Requesting Authority to possess the information sought, or the places where such information may be obtained, if the Requesting Authority has such knowledge;
- d) whether the presence and participation of its representatives is desired during the taking by the Requested Authority of statements of persons in connection with the request;
- e) to which Appendix B bodies onward disclosure of information is contemplated, and
- f) the desired time period for the reply and, where appropriate, the urgency thereof.

4-3 In the event of urgency, requests for assistance and replies to such requests will be effected by summary procedures or by means of communication other than the exchange of letters, provided that they are confirmed in the manner prescribed in Paragraphs 4-1 and 4-2.



4-4 Requests for assistance may be denied where the request does not comply with the provisions set forth in this Memorandum on the grounds of public interest.

#### 5.- Execution of Requests

5-1 If the Requesting Authority specifies in the request :

- a) a statement will taken from any person who has participated directly or indirectly in the matters specified in the request, or who has information relating to those matters,
- b) the production of any relevant document will be required,
- c) a transcript of the statement will be made,
- d) subject to the approval of the Requested Authority :
  - (i) a designated representative of the Requesting Authority may be present when a statement is taken, and
  - (ii) such representative may prescribe specific questions to be asked, or may, if permitted by the law of the jurisdiction of the Requested Authority, ask questions directly of the person.

5-2 A person whose statement is taken pursuant to a request will have the right to have counsel present during the taking of the statement.

5-3 The statement of persons will be taken in the same manner and to the same extent as in investigations or other proceedings in the jurisdiction of the Requested Authority. Notwithstanding any other provision of this Memorandum, any person giving a statement as a result of a request made under this Memorandum will be entitled to all of the rights and protections of the Constitution and laws of the jurisdiction of the Requested Authority. Assertions made at the time the statement is taken regarding other rights and privileges arising exclusively pursuant to the Constitution or laws of the jurisdiction of the Requesting Authority will be preserved for consideration by adjudicatory bodies in the jurisdiction of the Requesting Authority.

5-4 If it appears that responding to a request for assistance under this Memorandum will involve substantial costs being incurred by the Requested Authority, the Requested Authority and the Requesting Authority will establish a cost sharing arrangement before the Requested Authority continues to respond to such request for assistance.

#### 6.- Permissible Uses of Information

6-1 The Requesting Authority may use the information furnished solely :

- a) for purpose stated in the request with respect to ensuring compliance with or enforcement of the laws, regulations or rules administered or enforced by the Requesting Authority, including the legal provisions specified in the request and related provisions, and



- b) for purposes consistent with and necessary for achieving the purpose stated in the request, including conducting a civil or administrative enforcement proceeding, assisting in a criminal prosecution, or conducting any investigation related thereto for any general charge applicable to the violation of the legal rule or requirement specified in the request.

6-2 To the use of information furnished for any purpose other than those stated in Paragraph 6-1, the Requesting Authority will first inform the Requested Authority of its intention and provide the Requested Authority an opportunity to oppose such use. If the Requested Authority opposes the use, the Authorities agree to consult pursuant to Paragraphs 8-1 and 8-2 concerning the reasons for the refusal and the circumstances under which use of the information might otherwise be allowed. If the Requested Authority agrees, subject to certain conditions, to the use of the information for purposes other than those stated in Paragraph 6-1, the information may only be disclosed under the conditions imposed by the Requested Authority.

#### 7.- Confidentiality

- 7-1 Each Authority will keep confidential to the extent permitted by its law requests made under the Memorandum, the contents of such requests, and any other matters arising during the operation of this Memorandum, including consultations between the Authorities. However, disclosures that are absolutely necessary to carry out the requests are permitted, and confidentiality may be waived by mutual agreement of the Authorities.
- 7-2 The Requesting Authority will keep confidential to the extent permitted by its law, any information received pursuant to this Memorandum, unless it is disclosed to Appendix B bodies in accordance with Paragraphs 6-1 and 6-2 or disclosure is absolutely necessary to carry out the investigation giving rise to the request or to conduct any civil or administrative enforcement proceeding or any criminal prosecution.
- 7-3 Except as contemplated by Paragraph 7-2, the Requesting Authority will not disclose the information to any other person and will use its best efforts to ensure that it is not obtained by any other person. However, unless otherwise agreed, if such information is obtained by a public authority, the Requesting Authority will use its best efforts to ensure that such information is not used by that public authority in any way that involves disclosure to any other person.
- 7-4 The Requesting Authority will notify the Requested Authority of any legally enforceable demand for information prior to complying with the demand and will assert such appropriate legal exemptions or privileges with respect to such information as may be available.
- 7-5 As soon as the Requesting Authority has terminated the matter for which assistance has been requested under this Memorandum, it will, upon request of the Requested Authority, return to the Requested Authority, to the extent permitted by the law of the jurisdiction of the Requesting Authority, all documents and copies thereof not already disclosed in proceedings referred to in Paragraphs 6-1 and 6-2. Other material disclosing



the contents of such documents also will be returned, other than material that is generated as part of the deliberative, investigative, internal or analytical process of the Requesting Authority, which may be retained.

#### 8.- Disputes and Consultations

8-1 The Authorities will keep the operation of this Memorandum under continuous review and will consult with a view to improving its operation and resolving any matters that may arise. In particular, the Authorities will consult upon request in the event of :

- a) a refusal by one Authority to comply with a request for information on the grounds of public interest, or
- b) a change in market or business conditions or in the legislation governing matters within the jurisdiction of either Authority, or any other difficulty which makes it necessary to amend or extend this Memorandum in order to achieve its purposes.

8-2 The Authorities may agree on such practical measures as may be necessary to facilitate the implementation of this Memorandum, including the waiver of any of its requirements.

#### 9.- Unsolicited Assistance

To the extent permitted by the laws and regulations of its jurisdiction, each Authority will use reasonable efforts to provide the other Authority with any information it discovers which gives rise to a suspicion of a breach, or anticipated breach, of the laws, rules or regulations administer or enforced by the other Authority.

#### 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 updated by the relevant Authority upon written notice to the other Authority.

#### 11.- Termination

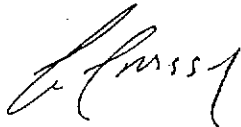
Cooperation in accordance with this Memorandum will continue until the expiration of 30 days after either Authority gives written notice to the other Authority of its intention to discontinue cooperation. If such notice is given, cooperation in accordance this Memorandum will continue with respect to all requests for assistance that were made before the date of notification until the Requesting Authority concludes the matter for which assistance was requested.



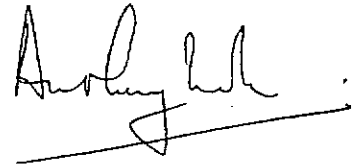
12.- Effective Date

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

Signed at Montréal, this September 17th 1996, in duplicate, in the English and Spanish languages.



Mr. Luis Carlos CROISSIER BATISTA  
President of the  
Comisión Nacional del  
Mercado de Valores of Spain



Mr. Anthony NEOH  
Chairman of the  
Securities and Futures Commission  
of Hong Kong



APPENDIX B

For Comisión Nacional del Mercado de Valores, Spain

- \* Bank of Spain
- \* Judicial Authorities
- \* Ministry of Economic and Finance
- \* Commission for Money Laundering Prevention

For the Securities and Futures Commission, Hong Kong

- \* The Financial Secretary and the Financial Services Branch
- \* Inspectors appointed by the Financial Secretary
- \* Hong Kong Monetary Authority
- \* Independent Commission Against Corruption
- \* Royal Hong Kong Police Force
- \* The Attorney-General's Chambers
- \* The Stock Exchange of Hong Kong Limited
- \* The Hong Kong Futures Exchange Limited
- \* Insider Dealing Tribunal

