

法規名稱：MEMORANDUM OF UNDERSTANDING BETWEEN THE SECURITIES AND EXCHANGE BOARD OF INDIA AND THE FINANCIAL SUPERVISORY COMMISSION, TAIWAN ON EXCHANGE OF INFORMATION FOR CO-OPERATION, CONSULTATION AND TECHNICAL ASSISTANCE

簽訂日期：民國 96 年 04 月 11 日

生效日期：民國 96 年 04 月 11 日

1. INTRODUCTION

The Securities & Exchange Board of India (SEBI) was established under the SEBI Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market in India and for matters connected therewith or incidental thereto. The main functions of the Securities and Exchange Board of India include registration, regulation and supervision of intermediaries operating in the securities market, promoting and regulating the self regulatory organizations, prohibiting fraudulent and unfair trade practices relating to the securities markets, calling from or furnishing to agencies such information as may be considered necessary by it for the efficient discharge of its functions.

The Executive Yuan established on 1 July 2004 the Financial Supervisory Commission ("the FSC") of Taiwan to promote sound business management of financial institutions, maintain financial stability, and promote the development of financial market and to promote an integrated financial supervision. The primary objectives of the Commission are to consolidate the supervision of banking, securities and insurance sectors, and to act as a single regulator for all of these industries.

2. DEFINITIONS

For the purpose of this Memorandum of Understanding:

"Authority" means the Securities and Exchange Board of India or the Financial Supervisory Commission of Chinese Taipei, as the case may be;

"Authorities" means the Securities and Exchange Board of India and the Financial Supervisory Commission of Chinese Taipei;

"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, or agency or instrumentality of a government;

"Securities Market" means an exchange or other market, including an over-the counter market, in respect of equity securities, debt securities, bonds, options, or any other securities or securities derivatives that is recognized, regulated or supervised by the Authorities; and

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

3. PRINCIPLES

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 ensure compliance with their respective securities and futures laws or regulatory requirements.

The Authorities will use their best endeavors to meet the terms of this Memorandum of Understanding. This Memorandum of Understanding does not impose any legally binding obligation on the Authority or modify or supersede any domestic laws or regulatory requirements in force in or applying to the Authorities, nor will it effect any arrangements made or to be made under other Memorandum of Understanding.

This Memorandum of Understanding does not affect any right of any Authority under its domestic laws or any other arrangement to take measures otherwise than as provided herein to obtain information necessary to ensure compliance with, or to enforce, its domestic laws or regulations. In particular, this

Memorandum of Understanding does not affect any right of either Authority to communicate with or obtain information or documents from any other persons on a voluntary basis in the territory of the other Authority.

This Memorandum of Understanding will not give rise, directly or indirectly, on the part of any person other than the Authorities the right to obtain, suppress or exclude any information or to challenge the execution of request for assistance under this Memorandum of Understanding.

To the extent permitted by the laws and practices, each Authority will use reasonable effort to provide the other Authority with any information that is discovered which gives rise to a suspicion of a breach or anticipated breach, of rules or laws in the territory of the other Authority.

The Authorities recognize the need and desirability for providing mutual assistance and exchange of information to assist each other in ensuring compliance with laws or regulations of their respective countries. However, the Requested Authority may deny assistance requested under this Memorandum of Understanding on the ground that:-

- (a) the provision of assistance would violate the national or public interest or the domestic law of the Requested Authority; or
- (b) the request is not made in accordance with the provision of this Memorandum of Understanding.

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 effectively perform their respective duties according to the law. Under the foregoing general theme, the scope of this Memorandum of Understanding will include the following:-

- (a) assisting in discovery of and taking action against insider dealing, market manipulation and other fraudulent practices

- in securities dealing in relation to companies, securities, futures contracts, options and collective investment schemes;
- (b)enforcement of laws, rules and regulations relating to dealing in, arranging deals in, managing and advising on securities, futures contracts, options and collective investments;
- (c)supervising and monitoring securities and futures markets and clearing and settlement activities and their compliance with the relevant laws and regulations;
- (d)promoting and securing the fitness and properness of licensed or registered persons and promoting high standards of fair dealing and integrity in their conduct of business;
- (e)the compliance by issuer of and offer for securities and director, officers, shareholders and professional advisers of companies listed or applying for listing, on the respective securities markets pertaining to the Authorities with any duties under any relevant laws and rules and any obligations to make full, accurate and timely disclosure of information relevant to investors.
- (f)Enforcement of laws, rules and regulations relating to the issuing of, dealing in, arranging deals in, managing and advising on securities and other investment product.
- (g)take-overs and mergers; and
- (h)any other matter 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 existing procedures in the territory of each Authority for the obtaining of such information are observed.
- 5.2 The requests for information or other assistance will be made in the English Language and addressed to the Requested Authority's contact person(s) referred to in paragraph 15 herein. In urgent cases, requests may be made in summary

form to be following with a full request within five (5) business days there from.

5.3 Requests for information should specify:-

- (a) the information required (identity of persons, specific questions to be asked etc.)
- (b) the purpose for which the information is sought (including details of the rule or law pertaining to the subject matter of the request),
- (c) the link between the specified rules or law and the regulatory functions of the Requested Authority,
- (d) the relevance of the requested assistance to the specified rule or law;
- (e) to whom, onward disclosure of information is likely to be necessary, and in this context, the reason for such disclosure,
- (f) any information in the possession of the Requesting Authority that might assist the Requested Authority in identifying the persons or entities believed by the Requested Authority to possess the information sought or the place where such information may be obtained;
- (g) the desired time period for the reply;
- (h) any other matter specified by the laws and regulations in the territory of the Requested Authority.

5.4 Any document or other material provided in response to a request under this Memorandum of Understanding must be returned on request, to the extent permitted by the laws of the Requested Authority.

5.5 Each request will be assessed on a case -by-case basis by the Requested Authority to determine whether assistance can be provided under the terms of this Memorandum of Understanding. In any case where the request cannot be accepted completely, the Requested Authority will consider whether there may be other assistance, which can be given, to the extent permitted by the laws of the Requested Authority.

5.6 In deciding whether to accept or decline a request, the Requested Authority will take account of:-

- (a) matter specified by the laws and regulations in the territory of the Requested Authority, and
- (b) whether the request involves an assertion of jurisdiction not recognized by the territory of the Requested Authority, and
- (c) whether it would be contrary to national or public interest to give the assistance sought.

6. EXECUTION OF REQUESTS

Access to information held in the possession of the Requested Authority will be provided upon the request of the Requesting Authority, to the extent permitted by the domestic laws and internal policies of the Requested Authority.

7. UNSOLICITED INFORMATION

Where one Authority has information, which will assist another 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 no request has been made by the other Authority. The terms and conditions of this Memorandum of Understanding will apply if the providing Authority specified that the information is passed under this Memorandum of Understanding.

8. PERMISSIBLE USES OF INFORMATION

- 8.1 Any assistance or information will be provided by an Authority only for the purposes of assisting the other Authority in the performance of its regulatory functions. Any assistance or information provided under this Memorandum of Understanding should be used by the receipt only for:-
- (a) the purpose of performing its regulatory functions
 - (b) the purposes stated in the requests, including ensuring compliance with or enforcement of the laws or regulations of the Requested Authority specified in the request, by initiating or assisting in criminal prosecutions arising out of the breach of such rule or law; or



(c)conducting or assisting in civil proceedings brought by the Authorities or other law enforcement or regulatory bodies within the territory of the Requesting Authority in taking regulatory action or imposing regulatory requirements within the scope stated in paragraph 4 above arising out of the breach of the rule or law specified in the request.

8.2 In the event that the Requesting Authority desires to use the information obtained for any purpose other than that stated in paragraph 8.1 above, the Requesting Authority must notify and seek the consent of the Requested Authority to such use of the information.

9. CONFIDENTIALITY

9.1 The assistance or information obtained pursuant to this Memorandum of Understanding should not be disclosed to third parties without the prior consent of the Requested Authority. Each Authority will establish and maintain such safeguard as are necessary and appropriate to protect the confidentiality of such information or assistance.

9.2 Each Authority will keep confidential, to the extent permitted by law,

(a)Any request for information made under this Memorandum of Understanding and any matter arising in the course of the operation of this Memorandum of Understanding, including consultation between the Authorities and unsolicited assistance, unless such disclosure is necessary to carry out the request or the other Authority waive such confidentiality.

(b)any information received pursuant to this Memorandum of Understanding unless it is disclosed in furtherance of the purpose for which it was requested.

9.3 Notwithstanding the provisions of paragraph 9.1 and 9.2, the confidentiality provisions of this Memorandum of Understanding shall not prevent the Authorities from informing the law enforcement or regulatory bodies in this



territory, such as the registrar of companies or stock exchanges, of the request or 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 ambit of the areas set out in paragraph 4; or
- (b) the purpose of passing such information to such agency or body fall within the areas set out in paragraph 4 herein.

9.4 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 the law, inform the other Authority of the situation. The Authorities will then discuss and determine the appropriate course of action.

10. CONSULTATION

10.1 The Authorities may consult one another informally at any time about a request or proposed request.

10.2 The Authorities may consult and may revise terms of the Memorandum of Understanding in the event of a substantial change in the laws practices, market or business conditions affecting the operation of this Memorandum of Understanding.

11. TECHNICAL ASSISTANCE

11.1 In furtherance of the objective of promoting the development of sound securities regulatory mechanisms, the Authorities may, upon a request by the other Authority, consult with and provide advice to the other Authority with a view to establishing and implementing an ongoing technical assistance program. In this regard, the Authorities intend to work together to identify and address, subject to the availability of personnel and other resources, training and technical assistance needs to facilitate the development of a regulatory framework for the offer, purchase and sale of securities or securities

derivatives in India as well as the cross border offering of securities or securities derivatives, including:

- a.laws and regulations to protect investors;
- b.standards for offering securities, including disclosure standards, accounting and auditing principles and standards, and methods and standards to be used in valuing securities;
- c.market oversight and enforcement mechanisms; and
- d.systems of supervision and standards of conduct for market professionals, including brokers, dealers and investment advisers.

12.COST OF INVESTIGATION OR ASSISTANCE

The Requested Authority may as a condition of agreeing that assistance be given under this Memorandum of Understanding, require the Requested Authority to make a contribution to costs. Such a contribution may, in particular, be required where the cost of executing a request is substantial.

13.ENTRY INTO EFFECT

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

14.TERMINATION

This Memorandum of Understanding will continue in effect until expiry of thirty (30) days after either Authority gives written notice to the other Authority of its intention to terminate. This Memorandum of Understanding will continue to have effect with respect to all requests for assistance that were made before the effective date of termination.

15.CONTACT PERSONS

All communications between the Authorities should be between the principal point of contact as set out in Appendix A unless otherwise agreed. Appendix A may however be amended by written notice from either Authority without the need for revising this Memorandum of Understanding.

IN WITNESS WHEREOF THE UNDERSIGNED FOR AND ON BEHALF AND BY

AUTHORITY OF THEIR RESPECTIVE AGENCIES, HAVE SIGNED THIS MEMORANDUM OF UNDERSTANDING ON THIS ELEVENTH DAY OF APRIL 2007 IN MYMBAI, INDIA IN TWO ORIGINALS IN THE ENGLISH LANGUAGE EQUALLY AUTHENTIC. IN THE EVENT OF ANY DISCREPANCY CONTAINED IN THIS MEMORANDUM OF UNDERSTANDING, THE RULES AND REGULATIONS SHALL PREVAIL.

FOR THE SECURITIES AND
EXCHANGE BOARD OF INDIA

FOR THE FINANCIAL SUPERVISORY
COMMISSION TAIWAN

M. DAMODARAN
CHAIRMAN

SHENG-CHENG HU
CHAIRMAN

APPENDIX A

LIST OF CONTACT PERSONS

Securities and Exchange Board of India designates as its contact official:

The Deputy General Manager
Office of International Affairs
Securities and Exchange Board of India
"SEBI Bhavan"
Plot No. C4-A, "G" Block, Bandra Kurla Complex
Bandra (East), Mumbai 400 051
INDIA
Tel: 91 22 26449024
Fax: 91 22 22449025
e-mail: oia@sebi.gov.in

Financial Supervisory Commission, Taiwan designates as its contact official:



Dr. Tien-Wei LOU

The Deputy Director General

Department of International Affairs

Financial Supervisory Commission of Taiwan

18F., No.7, Sec.2, Sianmin Blvd.,

Banciao City, Taipei County 220,

TAIWAN

Tel: 886 2 8968 0890

Fax: 886 2 8969 1162

e-mail: tienwei@fscey.gov.tw