

法規名稱：MEMORANDUM OF UNDERSTANDING BETWEEN THE FINANCIAL SUPERVISORY COMMISSION OF TAIWAN AND THE FINANCIAL SERVICES BOARD OF THE REPUBLIC OF SOUTH AFRICA ON THE EXCHANGE OF INFORMATION FOR CO-OPERATION AND CONSULTATION

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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 activities of non-bank financial institutions and other 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, intermediaries investing on behalf of clients, central securities depositories, collective investment schemes and provident institutions (which include all types of insurance and retirement fund activities). The FSB's mandate is to protect investors and to maintain the integrity, efficiency and financial soundness of the financial markets and provident institutions. The FSB strives to ensure that the financial markets and provident institutions fulfil their regulatory responsibilities in relation to all trading and member-related matters in a professional and impartial manner.
- 1.2 The Financial Supervisory Commission of Taiwan (FSC) is a single national financial regulator in Taiwan and was established on July 1, 2004 under the Organic Act of the Establishment of the Financial Supervisory Commission. The FSC is responsible for regulation and supervision of banking, insurance, securities and futures markets and industries and has the ability to exercise powers to obtain evidence on financial institutions or similar bodies governed by the Banking Act, the Insurance Act, the Securities and Exchange Law, the Futures Trading Law and relevant legislation.
- 1.3 The FSB and the FSC recognise the importance of international co-operation to the development and maintenance of an open, fair, ordered and sound domestic financial services industry in South Africa and Taiwan 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 services industry (excluding

banking sector) in South Africa and Taiwan and have reached the following understanding.

2. DEFINITIONS

"Authority" means the FSB or the FSC, as the case may be;

"Authorities" means the FSB and the FSC;

"Financial institutions" means the institutions, persons and markets or any other securities and derivatives market regulated or supervised by the Authorities respectively;

"Financial products" means long-term and short-term insurance contracts or policies, benefits provided by retirement funds, shares, debentures, bonds and other forms of securitised debt, futures and derivative products including commodity derivatives, participatory interests in collective investment schemes and other securities traded in the respective states of the Authorities;

"Issuer" means a person making an offer to the public or seeking listing of a security;

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

"Laws or regulations" means any laws or regulations in force in the respective jurisdictions of the Authorities;

"Person" means a natural person, body corporate, partnership, or unincorporated association, government or political subdivision, agency or instrumentality of a government;

"Requested Authority" means the Authority to whom a request is made pursuant to this Memorandum of Understanding; and

"Requesting Authority" means the Authority making a request pursuant to this Memorandum of Understanding.

3. INTENTION

3.1 This Memorandum of Understanding ("MOU") 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 governing laws, regulations and rules of their respective jurisdictions and facilitate the fulfilling of their supervisory responsibilities.

3.2 The Authorities intend to assist each other under this MOU to the full extent permitted by the laws, regulations and rules of their respective jurisdictions.

3.3 This MOU will serve to promote the integrity, efficiency and financial soundness of the financial institutions in the financial services industry by improving the effective regulation, enhancing the supervision of cross border transactions, and preventing fraudulent and other prohibited practices in Taiwan and South Africa.

- 3.4 This MOU does not create any binding legal obligations upon the Authorities.
- 3.5 The Authorities will use their best endeavours to provide each other with any information that they reasonably suspect may be in breach or anticipated breach of laws, regulations or rules in the jurisdictions of the Authorities.

4. SCOPE

The purpose of this MOU is to provide a framework for the Authorities to:

- 4.1 Exchange information on and take necessary action against persons engaging in fraudulent practices in the financial products field, whose activities they regulate. The Authorities will provide each other with the fullest mutual assistance in any matters falling within the competence of the Authorities, including in particular the following areas:
- (a) investigations and enforcement in connection with applicable laws or regulations relating to insider dealing, market manipulation and other fraudulent or manipulative practices in the financial products field;
 - (b) investigation and enforcement of, and monitoring compliance with, applicable laws and regulations relating to dealing in, advising on and the management, administration and safekeeping of financial products;
 - (c) ensure that all those persons doing business in the financial services sector are properly registered or qualified;
 - (d) checking that the conditions for the taking up of (or continuing in) business as a financial institution are met (including e.g. the enforcement of requirements to be authorised);
 - (e) enforcement and monitoring of compliance with applicable laws and regulations relating to the disclosure of interests in financial products, take-over bids or the acquisition of influence over financial institutions;
 - (f) supervision of the financial markets, including the clearing and settlement, the monitoring and surveillance of transactions in listed financial products;
 - (g) enforcement or monitoring of compliance with applicable laws relating to the duties of issuers and offerors of financial products in relation to the disclosure of information, and maintain high standards of fair dealing and integrity in their conduct of business; and
 - (h) any other activity as agreed between them from time to time.
- 4.2 In cases where the information requested may be maintained by, or available to, another authority within the

- jurisdiction of the Requested Authority, the Authorities will endeavour to provide full assistance in obtaining the information requested, to the extent permitted by law.
- 4.3 If the request for assistance is made on the basis of regulations as enforced in the respective jurisdiction, it must be in line with these regulations.
- 4.4 To the extent permitted by their respective law and procedures and without prior request, each Authority should provide the other Authority with unsolicited information available to it and which it believes to be helpful to the other Authority for the discharge of its functions and for the purposes, which it may specify in the communication.
5. REQUESTS FOR ASSISTANCE OR INFORMATION
- 5.1 This MOU does not affect the ability of the Authorities to obtain information from the relevant persons on a voluntary basis, provided that proper procedures in the jurisdiction of the other Authority for obtaining such information are observed.
- 5.2 To facilitate smooth communication and ensure continuity in the co-operation between the Authorities, each Authority will designate the contact persons set forth in the Appendix attached hereto. Request for assistance will be made in writing and addressed to the contact person of the Requested Authority.
- 5.3 In urgent circumstances, the response to requests for assistance may be effected by telephone or facsimile, provided such communication is confirmed within five business days through an original, signed document.
- 5.4 To the extent available to the Requesting Authority and in order to facilitate the Requested Authority's work, the request should specify the following:
- (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 description of the specific information, documents or assistance requested by the Requesting Authority;
 - (c) any information in the possession of the Requesting Authority that might assist the Requested Authority in identifying the persons, bodies or entities believed by the Requesting Authority to be in possession of the information sought, or the places where the Requested Authority may obtain such information;
 - (d) in so far as the request concerns information relating to transactions in specific financial products the Requesting Authority should provide at least, but not limited to the following:
 - A description of the financial products in question

- (including e.g. the relevant code);
 - The names of those firms with whose transactions in financial products the Requesting Authority is concerned;
 - The dates between which transactions in the financial products are considered relevant for the purposes of the request, and
 - The names of any firms and persons on whose behalf relevant transactions in the financial products are believed or suspected to have been entered into;
- (e) in so far as the request relates to information concerning the business or the activities of any person, such precise information as the Requesting Authority is able to provide so as to enable such persons to be identified;
- (f) an indication of the sensitivity of the information contained in the request and whether the Requesting Authority is content with the facts that it has made available in the request being disclosed to persons whom the Requested Authority may need to approach for information;
- (g) whether the Requesting Authority is or has been in contact with any other authority or law enforcement agency in the jurisdiction of the Requested Authority that it may need to approach for information;
- (h) any other Authority whom the Requesting Authority is aware has an active interest in the subject matter of the request;
- (i) the legal provisions concerning the subject matter of the request;
- (j) 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
- (k) the period of time within which the reply or response needs to be made.

6. EXECUTION OF REQUESTS FOR ASSISTANCE

- 6.1 To the extent permitted by law, the Requested Authority will take all reasonable steps to obtain and provide the information sought.
- 6.2 The Requested Authority will use the relevant means at its disposal for the execution of the request. The Authorities will consult and agree on the types of enquiry that may be necessary for the execution of the request.
- 6.3 To the extent permitted by law, the Requesting Authority will provide the Requested Authority with such further

assistance as may reasonably be required for the efficient execution of the request including the provision of further information as to the circumstances surrounding the request, staff or other resources.

- 6.4 Without prejudice to the provisions set forth by the Authorities' respective legislation relating to the inspection of financial institutions, the Authorities will consider (to the extent permitted by law) conducting joint investigations in cases where the request for assistance concerns violations of laws or regulations and where it would assist in the effective investigation of the alleged violations. The Authorities should consult to define the procedures to be adopted for conducting any joint investigation, the sharing of work and responsibilities and the follow up actions to such investigations.

7. PERMISSIBLE USES OF INFORMATION

- 7.1 Any assistance or information provided in terms of this MOU will be used by the recipient only for the purpose of performing its regulatory and supervisory functions. The Requesting Authority shall use the information exchanged solely for the purposes of:
- (a) securing compliance with or enforcement of domestic laws or regulations specified in the request;
 - (b) initiating, conducting or assisting in criminal, administrative, civil or disciplinary proceedings resulting from the violation of the laws or regulations specified in the request; and
 - (c) any of the particular purposes specified in paragraph 4.1 (a-h) to the extent that they are administered by the Requesting Authority.
- 7.2 The Authorities to which unsolicited information is supplied will use this information solely for the purposes stated in the transmission letter or for the purposes of criminal or administrative proceedings or for the discharge of the obligation to report to judicial authorities.
- 7.3 To the extent permitted by law, each Authority will keep confidential any request for assistance made under this MOU, the contents of such requests and the information received under this MOU as well as the matter arising in the course of its operation, in particular consultations between Authorities.
- 7.4 If an Authority intends to use or disclose information furnished under this MOU for any purposes other than those stated in this MOU and in the request, it must obtain the prior consent of the Authority which provided the information. If the Requested Authority consents to the use of information for purposes other than those stated, it may

subject it to certain conditions.

- 7.5 Where the Requesting Authority believes that sharing confidential information with an authorised third party is necessary, it must inform the Requested Authority of the third party's interest in this information and it must provide the Requested Authority with the opportunity to oppose the sharing of confidential information with the third party.
- 7.6 The Requesting Authority may consult with the Requested Authority on the reasons for the objection where the Requested Authority opposes such use.
- 7.7 If an Authority decides to make public an administrative or a disciplinary sanction within the course of its duties it may, with the consent of the Authority providing the information, indicate that a successful outcome of the case has been achieved with the aid of the international co-operation mechanisms provided for in this MOU.

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 MOU;
 - (b) any information received pursuant to this MOU; and
 - (c) any matter arising during the operation of this MOU, including consultations and unsolicited assistance.
- 8.2 Notwithstanding the provisions of paragraph 7 above, the confidentiality provisions of this MOU will not prevent the Authorities from informing the law enforcement agencies or regulatory bodies within their jurisdictions, i.e. 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 laws, regulations and rules falling within the scope of this MOU;
 - (b) the purpose of passing on such information to such an agency or body falls within the scope of this MOU; and
 - (c) an undertaking has been obtained from the recipient by the Requested Authority that it will maintain the confidentiality of the information, except when disclosure is required pursuant to a legally enforceable instruction.
- 8.3 If an Authority becomes aware that information passed under this MOU may be subject to a legally enforceable instruction to disclose, it will to the extent permitted by laws, regulations and rules of its jurisdiction, inform the other

Authority of that instruction. The Authorities will then consult on the appropriate course of action.

- 8.4 (a) The Authorities' confidential treatment of assistance and information will continue when either Authority gives notice of its intent to cease co-operation under this MOU.
- (b) 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 MOU.

9. RIGHTS OF REQUESTED AUTHORITY

- 9.1 The Requested Authority may deny requests for assistance -
- (a) where the request would require the Requested Authority to act in a way that would violate its governing laws, regulations and rules;
 - (b) where judicial proceedings for the imposition of criminal penalties have already been initiated in the jurisdiction of the Requested Authority, in respect of the same actions and against the same persons, or on the grounds that the provision of assistance might result in a judicial or administrative sanction being imposed, where a non-appealable judicial or administrative sanction has already been imposed in the jurisdiction of the Requested Authority in respect of the same actions and against the same persons;
 - (c) where the request is not in accordance with the provisions of this MOU; or
 - (d) on the 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 laws, regulations and rules of the Requested Authority, it will provide the reasons for not granting the assistance. The two Authorities may then be required to consult pursuant to paragraph 10 of this MOU.
- 9.3 The Authorities recognise that they intend nothing in this MOU to either limit or enhance the powers of the Authorities under their respective laws to investigate or gather information or to take measures otherwise than as provided in this MOU to obtain information, whether or not concerning a request.

10. CONSULTATIONS

The Authorities will review the implementation of this MOU regularly and conduct consultations in order to improve its operation and to resolve possible difficulties.

11. COSTS OF INVESTIGATION

Where substantial imbalance has arisen in the cumulative costs incurred, the Requested Authority may require the

Requesting Authority to make a contribution to costs.

12. AMENDMENTS TO THE MEMORANDUM OF UNDERSTANDING

The Authorities may by common consent make amendments and add further Annexes to this MOU they consider necessary.

13. TERMINATION OF MEMORANDUM OF UNDERSTANDING

13.1 This MOU shall come into effect on the date of its signature, and shall remain valid indefinitely unless it is terminated by either party giving the other party thirty (30) day's written notice of its intention to terminate it.

13.2 Upon giving the required notice, the requests for assistance made by the Authorities prior to the notification will continue to have effect until they have been fully executed.

14. DISPUTE SETTLEMENT

Any dispute or controversy arising from the implementation or application of this MOU will be settled by negotiation, with a view to an amicable settlement.

FOR THE FINANCIAL SUPERVISORY COMMISSION OF TAIWAN:

Mr Jun-ji Shih
Chairman

FOR THE FINANCIAL SERVICES BOARD OF SOUTH AFRICA:

Mr RJG Barrow
Executive Officer