

MEMORANDUM OF UNDERSTANDING (MoU)

BETWEEN:

THE SECURITIES COMMISSION OF NEW ZEALAND.

AND:

THE SECURITIES COMMISSION OF PAPUA NEW GUINEA.

Introduction.

1. The Securities Commission of Papua New Guinea (SCPNG) is the national securities regulator established under Section 4 of the *Securities Act 1997*. The SCPNG is responsible for the administration and enforcement of the *Securities Act 1997* which provides for the establishment of stock markets, and the regulation of practices relating to the offering of securities to the public. The SCPNG's ability to exercise powers to obtain evidence on behalf of overseas securities commissions or similar bodies is governed by Section 10 of the *Securities Act 1997*.
2. The Securities Commission (NZSC) is established as a body corporate by Section 9 of the *Securities Act 1978*. NZSC is responsible for keeping under review practices relating to securities and for exercising securities jurisdiction in particular cases. The NZSC's ability to exercise powers to obtain evidence on behalf of overseas securities commissions or similar bodies is governed by Section 10(ca) and Section 18A of the *Securities Act 1978*.
3. In accordance with the objectives and principles of the Agreement on Development Cooperation Between the Government of Papua New Guinea and the Government of New Zealand concluded on 10 December 1991, the SCPNG and the NZSC have reached the following understanding.

Definitions.

4. For the purpose of this MoU: -
 - (a) "Authority" means the SCPNG and the NZSC.
 - (b) "investor" means a person who has, holds or places an order to obtain an interest in securities;

- (c) "issuer" means a person who issues, proposes to issue or promotes any security;
- (d) "laws and regulations" means provisions of the laws and regulations or any rule or policy applicable in Papua New Guinea and in New Zealand;
- (e) "person" means a natural person, legal entity, partnership or unincorporated association;
- (f) "requested Authority" means an Authority to whom a request is made under this Memorandum of Understanding;
- (g) "requesting Authority" means an Authority making a request under this Memorandum of Understanding;
- (h) "securities" means: -
 - (i) any share, stock, bond, note, debenture, interest in a collective investment scheme or any instrument similar to shares, stocks, bonds, notes, debentures, or interest in a collective investment scheme;
 - (ii) any contract or right giving the right to subscribe, buy, sell or acquire by conversion any instrument mentioned in (i) above;
 - (iii) any exchange contract, futures contract, options contract, or any financial instrument based on instruments mentioned in (i) above;
 - (iv) any index contract based on instruments mentioned in (i) above;
or
 - (v) any exchange contract, commodities futures contract or any commodity futures option contract;
- (i) "securities business" means any business which engages in the: -
 - (i) purchasing, selling, transferring, clearing or settling of securities;
or
 - (ii) receiving and keeping of securities on deposit; or
 - (iii) collecting, executing or transmitting orders given by investors concerning the purchase or sale of securities; or
 - (iv) engaging in, on the basis of principal or agent, the management of individual or collective securities portfolios or accounts; or
 - (v) advising on any of the above matters.

Principles.

5. (a) The Authorities intend to ensure that the fullest mutual assistance is provided within the terms of this MoU. This MoU does not modify or supersede any laws, regulations or agreements in force in, or applying to, Papua New Guinea or New Zealand.

(b) This MoU does not create any enforceable rights.
6. The purpose of this MoU is to enhance the efficiency and fairness of the securities and futures markets by providing a framework for cooperation, including channels for communication and the exchange of information, and investigative assistance to the extent permitted by the laws and practices of Papua New Guinea and New Zealand.
7. To the extent permitted by the laws and practices of Papua New Guinea and New Zealand, the SCPNG and NZSC will use reasonable efforts to provide each other with any information, documents or evidence that is discovered which gives rise to a suspicion of a breach, or anticipated breach, of the rules or laws of the other Authority's jurisdiction.

Scope.

8. The Authorities propose to ensure that mutual assistance is provided in the following areas: -
 - (a) insider trading, market manipulation and other fraudulent and manipulative practices in relation to securities:
 - (b) enforcement of the laws and regulations relating to securities:
 - (c) ensuring that participants in securities business promote high standards of fair dealing and integrity in their conduct of that business:
 - (d) the disclosure of interests in the securities of issuers:
 - (e) the duties of issuers and offerors of securities to make full and fair disclosure of information material to investors:
 - (f) breaches of companies legislation.

Assistance Available.

9. Assistance available under this MoU includes, but is not limited to -
 - (a) providing access to information in the files of a requested Authority;
 - (b) obtaining information, statements and documents from persons; and
 - (c) taking the evidence of persons.
10. The Authorities recognise that they may not in all circumstances possess the legal authority to provide the assistance contemplated in this MoU. Subject to such limitation, the Authorities intend to provide or otherwise facilitate the provision of assistance to the full extent permitted by law to accomplish the objectives of this MoU.

Requests.

11. This MoU does not affect the ability of the Authorities to obtain information from persons on a voluntary basis, provided that any laws or procedures in place in the country of each Authority for the provision of such information are observed.
12. To facilitate assistance, the requesting Authority should specify in writing -
 - (a) the information required (identity of the persons, specific questions to be asked etc.);
 - (b) the purpose for which the information is being sought;
 - (c) a description of the conduct, suspected or anticipated conduct which gives rise to the request;
 - (d) the link between the suspected or anticipated breach of rule or law and the regulatory functions of the requesting Authority;
 - (e) whether it is desired that, to the extent permitted by the laws applying to the requested Authority, any persons from the country of the requesting Authority should be present during interviews which form part of an investigation, and whether it is desired that such persons should be permitted to participate in the questioning; and
 - (f) any other matters specified by the laws and regulations in the country of the requested Authority.
13. Any document or other material provided in response to a request under this MoU and any copies thereof must be returned on request by the requested Authority, to the extent permitted by law.

14. 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 MoU. Where a request cannot be accepted completely, the requested Authority will consider whether any other assistance can be given. In particular, the requested Authority shall consider whether the request might be dealt with via channels for mutual assistance in criminal matters.
15. In deciding whether to accept or decline a request the requested Authority will take account of -
 - (a) matters specified by the laws and regulations in the country of the requested Authority;
 - (b) whether the request involves an assertion of jurisdiction not recognised by the country of the requested Authority; and
 - (c) whether it would be contrary to the public interest to give the assistance sought.
16. Unless otherwise agreed to by the requested Authority the information supplied will be used solely for the purpose of -
 - (a) securing compliance with, or enforcement of the rule or law specified in the request by initiating or assisting in any criminal prosecution arising out of the breach or suspected breach of such law; or
 - (b) conducting or assisting in civil proceedings, including proceedings in the nature of civil proceedings arising out of the breach of the rule or law specified in the request, and brought by the requesting Authority or other law enforcement or regulatory bodies within the jurisdiction of the requesting Authority; or
 - (c) taking regulatory action, or imposing or enforcing regulatory requirements within the areas set out above.
17. Each Authority will keep confidential to the extent permitted by law -
 - (a) any request made under this MoU and any matters arising in the course of its operation unless such disclosure is necessary to carry out the request, or the other Authority waives such confidentiality; and
 - (b) any information, statements, evidence or documents provided under this MoU, unless it is disclosed in furtherance of the purpose for which it was requested.

18. If an Authority becomes aware that information, statements, evidence or documents provided under this MoU may be subject to a legally enforceable demand to disclose, it will, to the extent permitted by law, inform the other Authority of the demand.
19. The requested Authority may, as a condition of providing assistance under this MoU, require the requesting Authority to make a contribution to the cost of providing assistance. Such a contribution may be required where the cost of providing assistance is substantial or where a substantial imbalance has arisen in the cumulative costs incurred.
20. Unless the request provides otherwise, the confidentiality provisions of this MoU shall not prevent the Authorities from, informing another law enforcement or regulatory body within the jurisdictions of Papua New Guinea or New Zealand of the request, or providing any information, statements, evidence or documents received pursuant to a request to such bodies, provided that -
 - (a) that agency or body is responsible for prosecuting, regulating or enforcing rules or laws falling within the areas set out in this MoU;
 - (b) that the purpose of providing that information to that agency or body falls within the areas set out in this MoU; and
 - (c) the information is provided on the understanding that it may not be used or disclosed by the agency or body except for that purpose.

Consultation.

21. The Authorities may consult informally, at any time, about a request or a proposed request.
22. The Authorities may consult, and may also revise the terms of this MoU, upon mutual agreement.

Termination.

23. This MoU shall continue to have effect until terminated by any one of the Authorities by giving 30 days advance written notice to the other Authority that the understanding set out herein is no longer to have effect.

Contact Points.

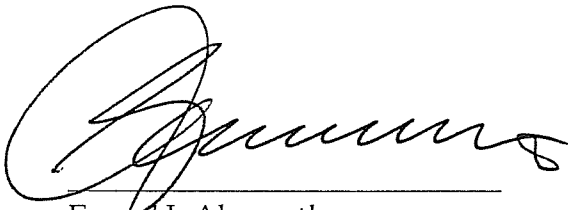
24. Any communications between the Authorities should be between the principal points of contact unless otherwise agreed.

25. The Chairman is the principal point of contact for the SCPNG.
26. The Senior Executive (Operations) is the principal point of contact for the NZSC.
27. The addresses for the contact points are given in Annexure A.

Entry into Effect.

28. This MoU will be effective from the date of its signature by the SCPNG and NZSC.

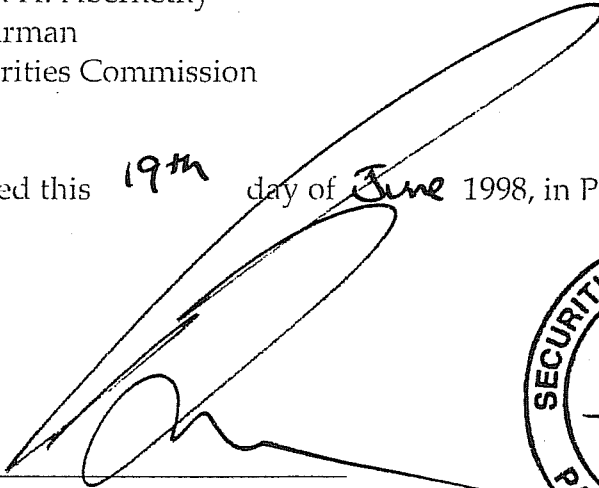
Signed this **22nd** day of **July** 1998, in Wellington, New Zealand.



Euan H. Abernethy
Chairman
Securities Commission



Signed this **19th** day of **June** 1998, in Port Moresby, Papua New Guinea.



Anthony Beven
Chairman
Securities Commission of Papua New Guinea



ANNEXURE A

CONTACT POINTS

The Chairman
Securities Commission of Papua New Guinea
6th Floor
Invesmen Haus
Douglas Street
Port Moresby NCD
PAPUA NEW GUINEA

Postal Address:
PO Box 1281
Port Moresby NCD
PAPUA NEW GUINEA

Telephone: (675) 321 3900
Facsimile: (675) 321 7560
Email: securities.commission@ipa.gov.pg

Senior Executive, Operations
Securities Commission
12th Floor
Reserve Bank Building
No. 2 The Terrace
Wellington
NEW ZEALAND

Postal Address:
PO Box 1179
Wellington 1
NEW ZEALAND

Telephone: (644) 472 9830
Facsimile: (644) 472 8076