

MEMORANDUM OF UNDERSTANDING

BETWEEN

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

AND

ROYAL MONETARY AUTHORITY OF BHUTAN

IN RELATION TO

ASSISTANCE AND MUTUAL CO-OPERATION

MEMORANDUM OF UNDERSTANDING

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1. INTRODUCTION

The **Securities and Exchange Commission of Pakistan (SECP)** was established under the Securities and Exchange Commission of Pakistan Act, 1997 for the beneficial regulation of the capital markets, superintendence and control of corporate entities and for matters connected therewith.

The **Royal Monetary Authority of Bhutan (RMAB)** was established under the Royal Monetary Authority of Bhutan Act 1982 for the purpose of regulating financial institutions and the securities market in Bhutan. The functions of the RMAB are to grant licences to institutions providing financial services including Stock Exchanges. The RMAB is charged with the duty of advising the Government on the development of policies relating to the financial and securities market.

2. DEFINITIONS

For the purposes of this Memorandum of Understanding:

"Authority" means the Securities and Exchange Commission of Pakistan or the Royal Monetary Authority of Bhutan, as the case may be;

"Authorities" means the Securities and Exchange Commission of Pakistan and the Royal Monetary Authority of Bhutan;

"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, 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 security that is recognised, 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 jurisdiction conferred by law.

3. PRINCIPLES

- 3.1. 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.

- 3.2. The Authorities will use their best endeavours to meet the terms of this Memorandum of Understanding. This Memorandum of Understanding does not impose any legally binding obligation on the Authorities or modify or supersede any domestic laws or regulatory requirements in force in or applying to the Authorities, nor will it affect any arrangements made or to be made under other Memoranda of Understanding.
- 3.3. 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 person on a voluntary basis in the territory of the other Authority.
- 3.4. 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 a request for assistance under this Memorandum of Understanding.
- 3.5. To the extent permitted by 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.
- 3.6. The Authorities recognise the need and desirability for providing mutual assistance and exchanging 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 laws of the Requested Authority; or
 - (b) the request is not made in accordance with the provisions 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 law. Under the foregoing general theme, the scope of this Memorandum will include the following:-

- (a) assisting in discovery of and taking action against insider dealings, market manipulation and other fraudulent practices in securities dealings 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 issuers of and offers for securities and directors, 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 obligation 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 products.
- (g) take-overs and mergers; and,
- (h) any other matters 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 writing in the English Language and addressed to the Requested Authority's contact person(s) referred to in paragraph 14 herein. In urgent cases, requests may be made in summary form to be followed with a full request within five (5) business days therefrom.
- 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 rule or law and the regulatory functions of the Requesting 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 Requesting Authority to possess the information sought or the places where such information may be obtained;
 - (g) the desired time period for the reply;
 - (h) any other matters 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 Requesting 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) matters specified by the laws and regulations in the territory of the Requested Authority, and
 - (b) whether the request involves an assertion of jurisdiction not recognised 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 specifies 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 recipient only for: -

- (a) the purpose of performing its regulatory functions;
- (b) the purposes stated in the request, including ensuring compliance with or enforcement of the laws or regulations of the Requesting 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 safeguards 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 consultations between the Authorities and unsolicited assistance, unless such disclosure is necessary to carry out the request or the other Authority waives 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 paragraphs 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 its territory, such as the registrar of companies or stock exchange, 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 an agency or body falls 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 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 the terms of the Memorandum of Understanding in the event of a substantial change in laws practices, market or business conditions affecting the operation of this Memorandum of Understanding.

11. COSTS OF INVESTIGATION OR ASSISTANCE

The Requested Authority may as a condition of agreeing that assistance be given under this 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 executing a request is substantial.

12. ENTRY INTO EFFECT

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

13. TERMINATION

This Memorandum of Understanding will continue in effect until the 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.

14. 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 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.

Signed on this 14th day of May, 2005 in Islamabad, Pakistan.

**FOR THE SECURITIES AND EXCHANGE
COMMISSION OF PAKISTAN**

**FOR THE ROYAL MONETARY AUTHORITY OF
BHUTAN**


**MR. SHAHID GHAFFAR
COMMISSIONER**


**MR. DECHEN TSHERING
DEPUTY MANAGING DIRECTOR**

APPENDIX A
LIST OF CONTACT PERSONS

SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Executive Director, Securities Market

Phone: (92-51) 920 7091-4 Ext 249

Direct Line (92-51) 9205588

Fax: (92-51) 921 8595

E-mail: headquarters@secp.gov.pk

ROYAL MONETARY AUTHORITY OF BHUTAN

Head, Financial Institutions Supervision Division (RMAB)

Phone no.: 975-2-323110-2

Fax no.:975-2-322847

Email: edm@rma.org.bt