



Autoriteit
Financiële Markten



רשות ניירות ערך
ISRAEL SECURITIES AUTHORITY

Memorandum of Understanding
between the
Netherlands Authority for the Financial Markets
("AFM")
and the
Israeli Securities Authority
("ISA")
on the
Exchange of Information and Surveillance
of Securities Activities

2005

The AFM and the ISA,

Considering the increasing internationalisation, harmonisation and interdependence of Financial Markets due e.g. to the use of modern technology and the need for closer co-operation between exchanges, for the broadest possible mutual assistance, for the strengthening of cross-border co-operation in order to enhance investor protection, to promote the integrity of financial markets and more generally to facilitate performance of the supervisory functions and the effective enforcement of the laws and regulations governing the markets;

Considering that such approach entails the sharing of different types of information given the various duties vested in the Authorities;

Considering that the most expedient way to achieve a necessary consensus is a Memorandum of Understanding;

The AFM and the ISA have thus reached the following understanding:

Article 1 - Principles

Without prejudice to the provisions set forth by the Dutch and Israeli legislation, the purpose of this Memorandum of Understanding is to establish a general framework for co-operation and consultation between the Authorities referred to hereinafter, in order to facilitate the fulfilling of their supervisory responsibilities. The provisions of this Memorandum of Understanding are not intended to create legally binding obligations or supersede domestic laws or regulations.

Article 2 -Definitions

1. "Authority" means the Netherlands Authority for the Financial Markets and/or the Israel Securities Authority.
2. "Requested Authority" means the Authority to whom a request is made under this Memorandum of Understanding.
3. "Requesting Authority" means the Authority making a request under this Memorandum of Understanding.
4. "Laws or regulations" means any laws or regulations in force in the respective states of the Authorities.
5. "Person" means any natural or legal person.
6. "Securities" means shares, bonds and other forms of securitized debts, futures and derivative products including commodity derivatives, units of undertakings in collective investment schemes and other financial products traded in the respective states of the Authorities.
7. "Financial markets" means any securities and derivatives market supervised by an Authority.
8. "Intermediary" means any investment firm, bank, collective investment scheme and any other person acting within the scope of competence of the Authorities.
9. "Issuer" means a person making an offer to the public or seeking listing of a security.

Article 3 -Scope of assistance

1. To the extent permitted by their respective laws and regulations, the Authorities shall 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 securities 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 securities,
 - c. checking that the conditions for the taking up of (or continuing in) business as an Intermediary are met (including e.g. the enforcement of requirements to be authorised),
 - d. enforcing and monitoring compliance with applicable laws and regulations relating to the disclosure of interests in securities, takeover bids or the acquisition of influence over financial intermediaries,
 - e. the supervision of the Financial Markets, including the clearing and settlement, the monitoring and surveillance of OTC-transactions in securities listed on regulated markets,
 - f. enforcing or monitoring compliance with applicable laws relating to the duties of issuers and offerors of securities in relation to the disclosure of information.
2. In cases where the information requested may be maintained by, or available to, another authority within the country of the Requested Authority, the Authorities will endeavour to provide full assistance in obtaining the information requested, to the extent permitted by law. If necessary, the Requested Authority shall provide the Requesting Authority with sufficient information to establish direct contact between the Requesting Authority and the other authority.
3. The Requested Authority may only refuse to act on a request for assistance where communication of the information might adversely affect the sovereignty, security or public policy of the State of the Requested Authority or 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.

4. To the extent permitted by their respective national law and procedures and without prior request, each Authority should provide any other Authority with any relevant factual 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 (unsolicited information).

Article 4 - Requests for Assistance

1. Requests for assistance shall be made in writing, signed by the Chairman of the Requesting authority and addressed to the contact person of the Requested Authority listed in Annex A.
2. The Request should specify the following:
 - a. a description of the subject matter of the request and the purpose for which the information is sought and the reasons why this information will be of assistance;
 - b. a description of the specific information requested by the Requesting Authority;
 - c. a description of the facts that constitute the grounds for the suspicion that the offence that is the subject of the request has been committed, and of the connection between these facts and the assistance requested;
 - d. a short description of the relevant provisions that may have been violated and, if known to the Requesting Authority, a list of the persons or institutions believed by the Requesting Authority to possess the information sought or the places where such information may be obtained and the details that support this belief, to the best of the Requesting Authority's knowledge;
 - e. in so far as the request concerns information relating to transactions in specific securities
 - a description of the securities in question as precise as possible (including e.g. the securities code),
 - the names of those firms with whose dealings in the securities the Requesting Authority is concerned,
 - the dates between which transactions in the securities are considered relevant for the purposes of the request,
 - the names of any persons on whose behalf relevant transactions in the securities are believed or suspected to have been entered into;
 - f. in so far as the request relates to information concerning the business or activities of any person, such precise information as the Requesting Authority is able to provide so as to enable such persons to be identified;

- g. an indication of the sensitivity of the information contained in the request and whether the Requesting Authority agrees that the request shall be disclosed to persons whom the Requested Authority may need to approach for information;
- h. whether the Requesting Authority is or has been in contact with any other authority or law enforcement agency in the State of the Requested Authority in relation to the subject matter of the request;
- i. any other securities authority of another state whom the Requesting Authority is aware has an active interest in the subject matter of the request;
- j. an indication of the urgency of the request, or the desired time period for the reply.
- k. a declaration that any information or document transferred to the Requesting authority pursuant to the request shall be used solely for the purpose for which it was delivered;

Article 5 -Execution of Requests for Assistance

1. To the extent permitted by their respective laws and regulations, the Requested Authority shall take all reasonable steps to obtain and provide the information sought at a reasonable period of time.
2. The Requested Authority shall use the relevant means at its disposal for the execution of the request. The Authorities shall consult and agree on the types of enquiry that may be necessary for the execution of a request.

To the extent permitted by law, the Requesting Authority shall 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.

To the extent permitted by their respective national law the Authorities will consider conducting joint investigations in cases where the request for assistance concerns violations of laws or regulations, 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.

If it appears to the Requested Authority that the response to a request for assistance under this Memorandum of Understanding will incur substantial costs, the Requested Authority may call for the establishment of a cost sharing arrangement before continuing to respond to such a request.

Article 6 - Permissible Uses of the Information Exchanged and Confidentiality

1. The Authorities shall use the information exchanged solely for the purposes of:
 - a. securing compliance with or enforcement of the domestic laws or regulations specified in the Request;
 - b. initiating, conducting or assisting in administrative, civil or disciplinary proceedings resulting from the violation of the laws or regulations specified in the Request, provided however that if any Authority intends to use or disclose information furnished under the Memorandum of Understanding for the purpose of initiating, conducting or assisting in a criminal procedure, it must obtain the prior written consent of the providing Authority;
 - c. any of the particular purposes specified in Art.3 (1)a.-f. to the extent that they are administered by the Requesting Authority.
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 administrative proceedings or for the discharge of the obligation to report to judicial authorities. If this information is used for the purpose of initiating, conducting or assisting in a criminal procedure, it must obtain the prior written consent of the providing Authority.
3. To the extent permitted by law, each Authority will keep confidential any request for assistance made under this Memorandum of Understanding, the contents of such requests and the information received under this Memorandum of Understanding as well as the matter arising in the course of its operation, in particular consultations between Authorities.
4. If an Authority intends to use or disclose information furnished under this Memorandum for any purpose other than those stated in this Article 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 the information for purposes other than those stated, it may subject it to certain conditions.
5. Nothing in paragraphs 1 and 2 of this Article shall prevent an Authority from using or disclosing information in circumstances where such use or disclosure is required in order to comply with its obligations under its respective national laws.
6. 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 the successful outcome of the case has been achieved with the aid of the international co-operation mechanisms provided for in this Memorandum of Understanding.

Article 7 - Consultations

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

Article 8 -List of Regulated Markets and Directory of Competent Authorities

1. The Authorities will submit to each other a list of regulated markets as referred to in this Memorandum of Understanding in Article 2 (7) and make available the relevant rules of procedures and operation of these regulated markets upon request.
The Authorities might consider making available the list of regulated markets under their respective jurisdiction on their Internet homepages.
2. The Authorities will provide each other with a directory of competent authorities within their jurisdictions, setting out the responsibilities of each body. In case of any changes thereto, the respective Authority will provide the other Authorities with an updated version of the directory.

Article 9 - Amendments to the Memorandum of Understanding

The Authorities may by common consent make amendments to this Memorandum of Understanding and/or add further Annexes to the Memorandum of Understanding they consider necessary.

Article 10 – Publication

The Authorities agree to publish this Memorandum of Understanding

Article 11 - Entry into Effect and Termination

1. This Memorandum of Understanding shall be effective as to the undersigned at the date set out below this Article.
2. This Memorandum of Understanding shall be concluded for an unlimited period of time and may be terminated by any of the Authorities at any time by giving, at least, thirty days prior written notice to the other Authority. If the Requested Authority undertakes to denounce the Memorandum of Understanding, requests for information communicated before the effective date of denunciation will still be processed under this Memorandum of Understanding.

[Signature page follows]

*[Signature page of the MOU between the Netherlands Authority for the Financial Markets
and the Israel Securities Authority]*

Signed at Jerusalem, Israel on March 9, 2005.

 
Netherlands Authority for the Financial Markets

By: Arthur Docters van Leeuwen,
Chairman of the Executive Board

and

Paul Koster,
Member of the Executive Board

Israel Securities Authority

By: Moshe Tery, Chairman



Annex A

Contact persons

Contact person as defined by Article 4 of the Memorandum of Understanding is:

For the Netherlands Authority for the Financial Markets

The Head of the Legal Affairs Department

Tel.:(31.20)55.35.200

Fax:(31.20)62.06.649

For the Israel Securities Authority

The Head of International Affairs Department

Tel.:(972) 2-6556566

Fax:(972) 2-6513646