

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA
AND THE GOVERNMENT OF NEW ZEALAND
IN RELATION TO MUTUAL RECOGNITION
OF SECURITIES OFFERINGS**

(Melbourne, 22 February 2006)

Not yet in force
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AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND IN RELATION TO MUTUAL RECOGNITION OF SECURITIES OFFERINGS

The Government of Australia and the Government of New Zealand (referred to in this Agreement as "the Parties"):

CONSCIOUS of their geographic proximity, long-standing friendship, and close historic, political, and economic relationship;

RECOGNISING the development of that relationship through the Australia New Zealand Closer Economic Relations Trade Agreement done at Canberra on 28 March 1983, and subsequent arrangements and agreements developed within that framework of which this agreement forms a part;

AFFIRMING their shared commitment to appropriate and effective regulation of offers of securities to the public;

SEEKING to remove unnecessary regulatory barriers to trans-Tasman securities offerings, and to thereby facilitate investment between the two countries, enhance competition in capital markets, reduce compliance costs for business, and increase choice for investors;

DESIRING therefore to establish a mutual recognition scheme in respect of offers of securities;

HAVE agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement, unless the context otherwise requires:

Australian Minister means the Minister of the Government of Australia who is responsible for the Treasury portfolio or any other Minister or Parliamentary Secretary acting for or on behalf of such Minister;

Australian offeror means:

- (a) an offeror incorporated under the laws of Australia;
- (b) a natural person who is resident in Australia;
- (c) a legal person (who is not a natural person) who is established under the laws of Australia; or

- (d) an offeror registered as an overseas company under the laws of Australia;

entry requirements means the requirements provided for in Article 4;

home country means:

- (a) in relation to an Australian offeror making an offer in New Zealand under the Scheme, Australia;
- (b) in relation to a New Zealand offeror making an offer under the Scheme in Australia, New Zealand;

host country means:

- (a) in relation to an Australian offeror making an offer in New Zealand under the Scheme, New Zealand;
- (b) in relation to a New Zealand offeror making an offer under the Scheme in Australia, Australia;

implementing legislation means the legislation of each Party giving effect to the Scheme;

New Zealand Minister means the Minister of the Government of New Zealand who is responsible for the Commerce portfolio or any other Minister acting for or on behalf of such Minister;

New Zealand offeror means:

- (a) an offeror incorporated under the laws of New Zealand;
- (b) a natural person who is resident in New Zealand;
- (c) a legal person (who is not a natural person) who is established under the laws of New Zealand; or
- (d) an offeror registered as an overseas company under the laws of New Zealand;

ongoing requirements means the requirements provided for in Article 5;

regulated offer means:

- (a) an offer of securities made by a New Zealand offeror in respect of which a prospectus or short-form prospectus or a similar offer document is required under New Zealand securities legislation; or
- (b) an offer of securities made by an Australian offeror in respect of which a disclosure document or a product disclosure statement or a similar offer document is required under Australian securities legislation;

Scheme means the mutual recognition scheme provided for in this Agreement;

securities means debt securities, equity securities, interests in collective investment schemes and any interest in, or an option to acquire such securities;

securities legislation means:

- (a) in relation to Australia, the *Corporations Act 2001*, and any regulations made under that Act, or any legislation enacted in substitution for that Act;
- (b) in relation to New Zealand, the Securities Act 1978 and any regulations made under that Act, or any legislation enacted in substitution for that Act;

securities regulator means:

- (a) in relation to Australia, the Australian Securities and Investments Commission established under the *Australian Securities and Investments Commission Act 1989* and continued under the *Australian Securities and Investments Commission Act 2001*, or any other similar regulator established by law to replace the Commission;
- (b) in relation to New Zealand, the Securities Commission established under the Securities Act 1978 or any other similar regulator established by law to replace the Commission, and the Registrar of Companies established under the Companies Act 1993 or any other similar regulator established by law to replace the Registrar, as appropriate;

territory means:

- (a) in relation to Australia, the territory of Australia excluding any external territory, unless the Parties have exchanged notes agreeing the terms on which this Agreement shall so apply; and
- (b) in relation to New Zealand, the territory of New Zealand, excluding Tokelau.

ARTICLE 2

Objectives of this Agreement

The objective of this Agreement is to remove unnecessary regulatory barriers to trans-Tasman securities offerings, and to thereby facilitate investment between the two countries, enhance competition in capital markets, reduce compliance costs for business, and increase choice for investors.

ARTICLE 3

Mutual recognition principle

The basic principle that underpins the Scheme is that an offer of securities which is a regulated offer in one country and can lawfully be made in that country can lawfully be made in the other country, in the same manner and with the same offer documents, provided that:

- (a) the entry requirements for the Scheme are satisfied; and
- (b) the offeror complies with the ongoing requirements of the Scheme.

ARTICLE 4

Entry requirements

1. An offer may be made under the Scheme only if it meets the entry requirements prescribed in the host country.
2. The implementing legislation of each Party shall provide that an offer may be made under the Scheme only if:
 - (a) it is a regulated offer in the home country; and
 - (b) the offeror is entitled to offer the securities to the public under the law of the home country. In particular, any offer documents required to be filed with the securities regulator of the home country must have been filed, and any waiting period must have expired.
3. An offeror wishing to make an offer under the Scheme must file with the securities regulators of the host and home country a notice that that offeror proposes to make an offer under the Scheme. The notice must comply with the requirements of the implementing legislation, which shall require the notice to:
 - (a) specify the name of the offeror and the securities to be offered;
 - (b) specify the period in which it is proposed to offer the securities in the home country and in the host country. The proposed offer period in the home country must include any period during which the securities are to be offered in the host country;
 - (c) specify an address for service of proceedings in the host country, and confirm that the offeror submits to the jurisdiction of the courts of the host country;
 - (d) be signed by a person with authority to act on behalf of the offeror.
4. The notice required under paragraph (3) of this Article must be accompanied by the documents required under the implementing legislation of the host country, which shall comprise:

- (a) the offer documents filed with the securities regulator of the home country, or under which the offer can be made in the home country without filing;
- (b) a copy of any exemption relevant to the offer granted by the securities regulator of the home country that is specific to the offer or the offeror;
- (c) particulars of any general exemptions relevant to the offer granted by the securities regulator of the home country;
- (d) relevant constitutional documents in respect of the offeror or the securities offered;
- (e) a copy of the warning statement provided for in Article 5(1)(d) of this Agreement that will accompany offers in the host country.

5. No other requirements shall be prescribed for entry into the Scheme in the implementing legislation, unless the Australian Minister and the New Zealand Minister mutually determine in writing that additional or alternative entry requirements to those existing in paragraphs (3) and (4) of this Article shall be prescribed.

6. The implementing legislation of a Party may provide that an offer may be made under the Scheme in that Party only if the offeror is incorporated under the laws of the other Party, is a natural person who is resident in the territory of the other Party, or is a legal person who is established under the laws of the other Party.

ARTICLE 5

Ongoing requirements

1. An offer under the Scheme must comply with the ongoing requirements prescribed in the implementing legislation of the host country, which shall require:
- (a) the offer remain a regulated offer in the home country at all times during which it is open for acceptance by persons in the host country;
 - (b) the offer comply with the securities legislation of the home country in relation to the making of such offers;
 - (c) the offer be open to acceptance by persons in the home country at all times during which it is open for acceptance by persons in the host country;
 - (d) the principal offer document be accompanied by a specified warning to the effect that the offer is regulated under the securities legislation of the home country, and that the securities legislation of the host country does not generally apply to the offer. Other warnings may also be prescribed, for example, in relation to tax differences and currency risk;

- (e) any amendments to the offer documents filed or used in the home country be filed with the securities regulator of the host country within 5 working days of their filing or use in the home country;
 - (f) any amendment to or revocation of an exemption relevant to the offer granted by the securities regulator of the home country that is specific to the offer or the offeror be filed with the securities regulator of the host country within 5 working days of its issue;
 - (g) any amended warning statement that will be provided under sub-paragraph (d) above, prior to its use, be filed with the securities regulator of the host country;
 - (h) provision to an offeree, on request, of copies of the relevant constitutional documents in respect of the offeror or the securities offered;
 - (i) that no person be concerned in the management of the offeror who is prohibited from being concerned in the management of such a body in the host country;
2. No other ongoing requirements shall be prescribed in the implementing legislation unless the Australian Minister and the New Zealand Minister mutually determine in writing that additional or alternative ongoing requirements to those existing in paragraph (1) of this Article shall be prescribed.
3. A breach of the ongoing requirements of the implementing legislation may result in civil or criminal liability, or enforcement action by the host country securities regulator in the host country, under the laws of the host country, but shall not result in the Scheme ceasing to apply in respect of that offer.

ARTICLE 6

Application of host country laws

The Australian Minister and the New Zealand Minister may mutually determine in writing that it is appropriate for certain requirements under the securities legislation of the host country to apply to offers made under the Scheme in the territory of the host country, with such modifications as may be determined.

ARTICLE 7

Enforcement by securities regulators

1. Each Party shall provide that where it is the home country in respect of an offer under the Scheme, that Party's securities regulator shall have appropriate powers to take action in the home country in respect of any breaches of the home country securities legislation that apply to an offer made in the host country under the Scheme. Those powers shall include the power in the home country to

suspend or stop the making of an offer under the Scheme in the host country, and the power in the home country to prohibit advertisements in the host country in respect of securities offered under the Scheme, in the same circumstances in which such powers could be exercised in respect of offers made in the home country.

2. Each Party shall ensure that where it is the home country in respect of an offer, its securities regulator shall accord complaints from persons in the host country in relation to offers made under the Scheme no lesser priority than similar complaints from persons in the home country in respect of offers made in the home country.

3. Each Party shall provide that where it is the host country in respect of an offer under the Scheme, that Party's securities regulator shall have the power to take action in the host country in respect of any breaches of the requirements of the implementing legislation, including the requirement that the offer comply with the relevant laws of the home country. Those powers shall include the power to suspend or stop the making of an offer under the Scheme in the host country, and the power to prohibit advertisements in the host country in respect of securities offered under the Scheme.

4. Each Party shall confer on its securities regulator the discretion to prohibit an offeror from making an offer under the Scheme if that offeror has failed to comply with the ongoing requirements in respect of a previous offer made under the Scheme.

5. The Parties shall confer on their respective securities regulators appropriate powers to cooperate in connection with enforcement action relating to offers made or purporting to be made under the Scheme.

6. The Parties shall consult promptly after the entry into force of this Agreement to examine the existing powers of their respective securities regulators relating to the sharing of information with a view to ensuring that they are consistent with the objectives of this Agreement.

ARTICLE 8

Legislation to give effect to the Scheme

1. The Parties shall consult together in relation to the implementing legislation, and in relation to any amendments to that legislation, with a view to ensuring that it is consistent with and gives effect to the objectives of this Agreement.

2. Each Party shall notify the other Party of proposals for material changes to the scope of its securities legislation, or to the requirements under that securities legislation. The implications of these changes (if any) for this Agreement shall be considered, and the other Party may request modifications to the Scheme to accommodate any such changes.

ARTICLE 9

Consultations

The Parties shall, at the written request of either, promptly enter into consultations with a view to seeking an early, equitable and mutually satisfactory solution, if the Party which requested the consultations considers that:

- (a) an obligation under this Agreement has not been, is not being, or may not be fulfilled; or
- (b) the achievement of any of the objectives of this Agreement is being or may be frustrated.

ARTICLE 10

Review

1. The Parties agree to consult on arrangements for cross border enforceability of civil and criminal penalties imposed in connection with the Scheme.
2. The Parties agree to conduct and conclude, no later than five years after the date of entry into force of this Agreement, a review of the effectiveness of the Scheme, with a view to agreeing to and implementing any necessary improvements.

ARTICLE 11

Amendment

If either of the Parties considers that an amendment to this Agreement would be desirable, it may request consultations with the other Party to this end. Such consultations shall be entered into promptly by the Parties, unless they agree otherwise. Any agreed amendments shall enter into force when they have been confirmed by an exchange of diplomatic notes.

ARTICLE 12

Participation Of Third Parties

1. The Parties may agree to the association of any other State with this Agreement.
2. The terms of such association shall be negotiated between the Parties and that other State.

ARTICLE 13

Termination

1. Either Party may at any time give notice in writing through diplomatic channels to the other Party of its decision to terminate this Agreement.
2. Upon such notice being given, the Agreement shall terminate on a date to be agreed by the Parties in writing. In the absence of such agreement, this Agreement shall terminate on the later of:
 - (a) any date specified in the notice as the date on which the termination is to be effective; or
 - (b) the date 1 year after the date on which the notice was received.

ARTICLE 13

Entry Into Force

This Agreement shall enter into force on the date on which the Parties have exchanged diplomatic notes confirming the completion of their respective domestic procedures for the entry into force of this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE in duplicate at Melbourne on this twenty-second day of February, two thousand and six.

**FOR THE GOVERNMENT OF
AUSTRALIA**

**FOR THE GOVERNMENT OF
NEW ZEALAND**

**Hon Peter Costello MP
Treasurer**

**Hon Lianne Dalziel
Minister of Commerce, Women's
Affairs and Small Business.**