

MEMORANDUM OF ARRANGEMENT (MOA) between the Attorney-General's Department ('the Department') and the Australian Stock Exchange Limited ACN 008-624-691 ('ASX') to be followed by ASX to obtain authorisation of payments from a development account under section 945 of the Corporations Law for the purpose of undertaking and completing the Clearing House Electronic Subregister System (CHES) Project.

Background

- A. The ASX has sought the Attorney-General's approval for the release of funds from the Securities Industry Development Account (SIDA) pursuant to section 945 of the Corporations Law for the purpose of undertaking and completing the CHES Project described in the Schedule (being a purpose relating to the development of the securities industry in Australia).
- B. The Attorney-General has given in principle approval to the release of funds from SIDA on a progressive basis for use by ASX in accordance with arrangements agreed between the Department and ASX.
- C. The ASX and the Department have agreed on the following arrangements for the authorisation of payments from SIDA for the permitted purpose of undertaking and completing the CHES Project.
- D. This MOA is subject to endorsement by the Attorney-General and Board of ASX.

1. Interpretation

- 1.1 In this Memorandum, except in so far as the context or subject matter otherwise indicates or requires:
 - 1.1.1 'ASX Company' means ASX or subsidiary of ASX;

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- 1.1.2 'CHESS Project' means the project described in the Schedule;
- 1.1.3 'Clearing House' means the Clearing House referred to in the Schedule;
- 1.1.4 'Minister' has the same meaning as in section 945 of the Corporations Law;
- 1.1.5 'SIDA' means the Securities Industry Development Account maintained by ASX pursuant to subsection 945(1) of the Corporations Law.

2. **Limitations on Payments**

- 2.1 Payments to be made out of SIDA in accordance with this Memorandum:
 - (i) are subject to clause 10;
 - (ii) shall not exceed \$35,000,000.
- 2.2 Both the ASX and the Department acknowledge that there is no commitment by, or obligation on, the Securities Exchange Guarantee Corporation Limited to provide additional funds to SIDA to enable SIDA to finance expenditure on the CHESS Project in excess of \$35,000,000.

3. **Budget Overruns**

- 3.1 The ASX undertakes that it will meet any cost overruns in the financing of the CHESS Project over and above \$35,000,000 unless:
 - (a) the meeting of such cost overruns by the ASX, either directly or indirectly through the provision of funds to an ASX company, would endanger the ability of the ASX to pay its debts as they fall due, or otherwise to carry on its business;

- (b) the Attorney-General agrees to absolve the ASX from such undertaking having regard to the particular circumstances involved; or
- (c) the ASX is of the view that the project is no longer viable and the Attorney-General has no reasonable grounds for disagreeing with that view.

4. **Budget and Work Plan**

- 4.1 The ASX will submit to the Department a budget and work plan setting out in sufficient detail to satisfy the reasonable requirements of the Department, the proposed expenditure on equipment, computer software acquisition and development, and the legal, accounting, auditing, educational, liaison, project management structure and controls, financing, promotional and administrative expenditures in relation to the CHES project.
- 4.2 The budget and work plan shall set out the dates by which each item of the identified tasks that taken together represent the CHES Project will be completed and the budget cost of each item.
- 4.3 No payments will be made out of SIDA until the Department indicates in writing to ASX that the Department accepts the budget and work plan submitted in accordance with clause 4.1.

5. **Expenditure Report and Request for Payment Approval**

- 5.1 Within six weeks of the end of April, July, October and January in each year, ASX will submit a report to the Department together with a request for approval of payment out of SIDA for expenditure incurred by ASX Companies on items specified in the CHES budget and work plan in the three months ending 30 April, 31 July, 31 October and 31 January as the case may be.

- 5.2 The report will set out in the form of a schedule:
- 5.2.1 Actual expenditure for the three months as compared with budgeted expenditure for the same period;
 - 5.2.2 The actual tasks and items completed or partially completed compared with the tasks and items specified in the budget and work plan to be completed or partially completed, during the period;
 - 5.2.3 Whether or not ASX believes the total actual expenditure for the project is expected to exceed the total budgeted expenditure and reason(s) for any expected excess;
 - 5.2.4 Whether the CHESS Project is being implemented in accordance with the dates specified in the budget and work plan under clause 4.2 and reason(s) for any delays or expected delays;
 - 5.2.5 If the total costs are expected to exceed \$35,000,000, the estimated amount of the excess and the reason(s) therefore.

6. Immediate Requests for Payment

- 6.1 Notwithstanding clause 5, if an ASX Company incurs expenditure in an amount of \$500,000 or more in respect of the acquisition of an item of equipment, software package or the right to use software, ASX may make an immediate request for the Department's approval of a payment from SIDA for the expenditure but such request must be accompanied by a schedule showing the budgeted cost and receipt for the acquisition and the reasons for any material difference between the actual and budgeted cost.

7. **Auditor's Certificate**

- 7.1 Any request for approval of payment under clause 5 or 6 shall be supported by a certificate of ASX's external auditors stating whether, in their opinion, the expenditure for the period covered by the claim or for the particular item of equipment was expenditure incurred for the purposes of the CHESS Project.

8. **Technology Audit Reports**

- 8.1 The budget and work plan submitted under clause 4 must be accompanied by a report from an independent technology expert supporting estimates of planned workload and budgeted costs for the development of computer software to support the operations of the Clearing House, based on functional requirements specified by ASX.

The Report must include:

- (a) provision for software developments to support the business functions specified by ASX;
 - (b) provision for infrastructure software developments necessary to support those business functions;
 - (c) key assumptions underlying the estimates; and
 - (d) provision for project management overheads based on judgments for a preferred method for organising the development work.
- 8.2 A report by an independent technology expert, who has been agreed to by the Department and retained by ASX, dealing with the computer and related systems aspects of the CHESS Project must accompany the reports under clause 5 and requests under clause 6, and be provided when requested by the Department.

- 8.3 Reports under clause 8.2 must clearly state whether, in the opinion of the independent technology expert, equipment purchased or to be purchased and systems applied or to be applied are suitable for their relevant purpose and whether progress and development of the relevant systems within the CHESS Project is occurring at a satisfactory level and in line with projections in the budget and work plan.
- 8.4 The report must include reference to any likely or foreseeable problems having the potential to prevent or seriously delay future progress of the CHESS Project.

9. Authorisation of Payments

- 9.1 The Department will expeditiously process a properly completed request for approval of payment out of SIDA under clause 5 or 6 to an ASX Company in respect of those items included in the request about which an auditor's certificate under clause 7 and a report under clause 8 has been received. If in respect of any item, the certificate and report are satisfactory to the Department and the Department does not have any queries or require further information, the Department will expeditiously give written approval of payment out of SIDA.
- 9.2 During the CHESS Project ASX shall not make any payments out of SIDA in respect of any claim under clause 5 or 6 unless it has written approval to do so from the Department.
- 9.3 During the CHESS Project if the actual expenditure on any item exceeds that in the original budget, or any amendment thereof as agreed between the ASX and the Department, the Department may, having regard to the latest available estimated cost of completion of the CHESS Project, authorise reimbursement from SIDA for actual expenditure but there is no obligation to do so. In such circumstances, however, the Department shall nevertheless approve payment out of SIDA of the budgeted amount of such expenditure in accordance with clause 9.1.

10. Suspension or Cessation of Payments

- 10.1 The Minister may at any time, where he or she considers it to be in the public interest because of difficulties in relation to the development of the CHESS Project, direct that approval of payments out of SIDA for the purposes of the CHESS Project be suspended or ceased.
- 10.2 Where a direction is made under clause 10.1 written notice of the details of that direction is to be given to the ASX within 14 days of the making of the direction.
- 10.3 The Minister may at any time revoke or vary a direction under clause 10.1 and written notice of any revocation or variation is to be given to the ASX within 14 days of the direction being revoked or varied.

11. Accounting Records

- 11.1 The accounting records for the CHESS Project will be maintained by an ASX Company separately from any other accounting records and shall be audited by ASX's external auditors at least once per year.
- 11.2 A copy of the auditor's report referred to in para 11.1 shall be forwarded to the Department by no later than 30 September in each year. A copy of the last auditor's report is to be forwarded within 3 months of the date on which the CHESS Project is completed.

12. Australian Securities Commission

- 12.1 The ASX shall provide a copy of all reports required under this Memorandum to the Australian Securities Commission.

12.2 The Department will take into account the views of the Australian Securities Commission in relation to the CHES Project.

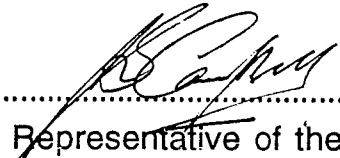
13. **Co-operation by ASX Companies**

13.1 At the end of October each year, following the receipt by the Department of the auditor's report referred to in Clause 11.2, a meeting between the Department and ASX shall be convened to review progress of the CHES Project. The Department shall be responsible for preparing the agenda for such meetings and forwarding an advance copy to the ASX.

13.2 Notwithstanding clause 13.1 the Department may, if the Department considers it reasonably necessary, at any time seek to have consultations with any ASX company involved in the CHES Project and the ASX Company will fully co-operate in such circumstances.

Dated at this 1st day of July 1992

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Representative of the
Attorney-General's Department


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Representative of the
Australian Stock Exchange
Limited ACN 008-624-691

SCHEDULE

CHESS PROJECT

The central element of the CHES Project is the implementation of the Clearing House Electronic Subregister System (CHES), thereby providing a secure, efficient and cost/effective system for settlement of ASX market transactions.

The CHES Project broadly divides into two inter-related initiatives, as follows:

1. Establishment of a Central Clearing House

The key roles of a central clearing house under the CHES concept are to:

- (a) Maintain part of the register of members for each ASX listed eligible body which issues securities that are designated by ASX to be CHES eligible;
- (b) Provide settlement services for eligible securities transactions between parties which are participants in the clearing house. Transactions eligible for settlement through the CHES clearing house include transactions between ASX member brokers, and transactions between ASX member brokers and their clients where -
 - . the client is a participant in the clearing house; or
 - . the client uses the services of a settlement agent which is a participant in the clearing house.
- (c) Provide securities transfer services for entities whose securities are CHES eligible.

The work includes the establishment of a legal framework for the CHES concept, and the development and implementation of

systems and procedures for the clearing house, including its electronic interfaces with participants, banks and the registry systems of entities whose securities are CHESSE eligible. The work also includes the acquisition and installation of computer, communications, and related equipment, to support the information processing functions of the clearing house. This equipment will be of sufficient capacity to meet estimated processing loads as documented in the "CHESSE Business Case" dated 31 May 1991.

2. Provision of Assistance for Implementation of CHESSE Compatible Systems by Organisations which use the Services of the Clearing House

Full implementation of CHESSE will require the development and implementation of systems, procedures and electronic interfaces compatible with the CHESSE clearing house by clearing house participants, banks, and the share registries of entities whose securities are CHESSE eligible. These tasks will be undertaken by those organisations at their own expense, and do not form part of the CHESSE Project. However, ASX's CHESSE Project includes all of the tasks that are associated with providing a reasonable level of advisory support and liaison services for organisations which use the services of the CHESSE central clearing house to assist those organisations in the development of the necessary systems.

