

**Achievement of Market-Friendly Initiatives and Results Program  
(AMIR 2.0 Program)**

**Funded By U.S. Agency for International Development**

**Middle East New Exchange  
( ME-NEX )  
Project Planning and Management  
Regulatory Memorandum of Understanding**

Final Report

**Deliverable for Capital Markets Component, Task No. 635.2  
Contract No. 278-C-00-02-00201-00**

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**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding, is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2002, between and among the undersigned The ME-NEX (hereinafter referred to as "ME-NEX"), the Bahrain Stock Exchange, an agency of the Government of Bahrain, the Jordan Securities Commission, an agency of the Government of Jordan, the Securities Depository Center of Jordan and the Dubai Financial Market, as follows:

**WHEREAS** ME-NEX is established pursuant to an agreement dated March 14, 2001 by and among the Amman Stock Exchange, the Bahrain Stock Exchange, the Dubai Financial market and the Securities Depository Center-Jordan as a specialized market for listing and trading securities and other financial instruments issued by information technology, media, telecommunications and other growth-sector companies;

**WHEREAS** it is objective and goal of ME-NEX to extend the listing, trading, clearing & settlement and depository systems and services at the four sponsoring entities into one regional stock market;

**WHEREAS** the undersigned capital market regulatory authorities of Bahrain, Jordan and the United Arab Emirates wish to encourage the development and success of ME-NEX for the purpose of contributing to the economic growth and welfare of each country and for the development of the region;

**AND WHEREAS**, the formulation of principles, guidelines and agreements related to the respective regulatory responsibilities and jurisdiction among the undersigned parties is important to the successful development and function of NE-NEX as a specialized market for listing and trading securities and other financial instruments issued by information technology, media, telecommunications and other growth-sector companies;

**NOW, THEREFORE**, the undersigned capital market regulatory authorities of Bahrain, Jordan and the United Arab Emirates enter into this Memorandum of Understanding with each other and with the ME-NEX for the purposes of establishing basic rules and standards pursuant to which --

1. the ME-NEX will operate in and among the three countries, and
2. the ME-NEX and each of the signatory regulatory authorities define their relationships inter se.

**I. Mutual agreements**

The undersigned regulatory authorities of Bahrain, Jordan and the United Arab Emirates, individually and jointly, hereby agree and consent that, based on the documents submitted, the ME-NEX hereby is qualified and authorized to function as a duly constituted stock exchange under the respective laws of each country, and, as such, list and trade securities or other financial instruments of any issuer.

The ME-NEX hereby submits its constitution and rules, attached as a part of this Memorandum of Understanding, and agrees to operate in accordance with them. It is

agreed that the ME-NEX will not alter or amend the attached constitution and rules without prior notice to the signatory authorities.

The ME-NEX hereby agrees to operate as a self-regulatory **organization** and to cooperate fully with the regulatory authority **in each country** to enforce the laws and regulations of that **country** as applicable in accordance with the standards set forth in this Memorandum of Understanding.

## **II. Applicable rules and standards of conduct**

A. It is recognized that the laws of the countries of the respective signatory authorities may be made applicable as follows:

(a) with respect to any

(i) transaction in securities carried out in the signatory's country to which a national or resident of the signatory's country is a party, or

(ii) offer to enter into a securities transaction, made in the signatory's country by or to a national or resident of that same country;

(b) with respect to any transaction in securities

(i) carried out, or intended to be carried out, on an organized securities market wholly in the signatory's country, or

(ii) carried out, or intended to be carried out, predominantly in the signatory's country, although not on an organized securities market;

(c) conduct, regardless of where it occurs, significantly related to a transaction described in Subsection (1)(b), if the conduct has, or is intended to have, a substantial effect in the signatory's country;

(d) conduct occurring predominantly in the signatory's country that is related to a transaction in securities, even if the transaction takes place outside the signatory's country; or

(e) investment advice or solicitation of consents with respect to securities, carried out predominantly in the signatory's country.

(2) Whether the signatory country's laws may be made applicable with respect to transactions or conduct other than those addressed in Subsection (1) depends on --

(a) whether the transaction or conduct has, or can reasonably be expected to have, a substantial effect on a securities market in the signatory's country for securities of the same issuer or on holdings in such securities by nationals or residents of the signatory's country;

(b) whether representations are made or negotiations are conducted in the signatory's country;

(c) whether the party sought to be subjected to the jurisdiction of the signatory's country is a national or resident of the signatory's country or the persons sought to be protected are nationals or residents of that country.

B. In the absence of any material conflict between rules or standards of conduct of the ME-NEX and the rules or standards of conduct of a signatory's country, the rules or standards of conduct of the ME-NEX shall apply.

C. Where there is a material conflict between the ME-NEX rules or standards of conduct and the rules or standards of conduct of a signatory's country, the following shall apply:

1. The rules or standards of conduct of a signatory's country shall be determinative with respect to

(a) any transaction in securities carried out in that signatory's country to which a national or resident of that country is a party, or any offer to enter into a securities transaction, made in that country by or to a national or resident thereof;

(b) any transaction in securities

(i) carried out, or intended to be carried out, in the securities market in the signatory's country, or

(ii) carried out, or intended to be carried out, predominantly in the signatory's country, although not on an organized securities market;

(c) conduct, regardless of where it occurs, significantly related to a transaction described in Subparagraph (b) above, if the conduct has, or is intended to have, a substantial effect in the signatory's country;

(d) conduct occurring predominantly in the signatory's country that is related to a transaction in securities, even if the transaction takes place outside that country; or

(e) with respect to securities, investment advice furnished or solicitations of proxies or consents made, predominantly in the signatory's country.

2. Where there is no governing rule or standard of the ME-NEX applicable to the person or activity involved, in determining whether the application of a specific signatory's country's rules or standards of conduct to a person or activity is reasonable, the following factors shall be considered:

(a) the link of the activity to the territory of the signatory's country, i.e., the extent to which the activity takes place within the territory, or has substantial, direct, and foreseeable effect upon or in the territory;

(b) the connections, such as nationality, residence, or economic activity, between the signatory's country and the person principally responsible for the activity to be regulated, or between that signatory's country and those whom the regulation is designed to protect;

(c) the character of the activity to be regulated, the importance of regulation to the signatory's country, the extent to which another signatory's country or other non-signatory's country regulate such activities, and the degree to which the desirability of such regulation is generally accepted;

(d) the existence of justified expectations that might be protected or hurt by the regulation;

(e) the importance of the regulation to the protection of domestic investors;

(f) the extent to which another signatory's country may have an interest in regulating the activity; and

(g) the likelihood of conflict with regulation by another signatory's country.

D. When it would not be unreasonable for each of two signatories' countries to apply its rules or standards of conduct to a person or activity, but the rules or standards of the two countries are in conflict, each signatory's country has an obligation to evaluate its own as well as the other signatory's country's interest in applying its rules or standards, in light of all the relevant factors, including those set out in Paragraph B, a signatory's country should defer to the other signatory's country if that country's interest is clearly greater.

### **III. Enforcement jurisdiction**

1. The ME-NEX shall have primary jurisdiction to discipline its members for violations of ME-NEX rules, standards or procedures. In the event such violation also constitutes a violation of the laws or regulations of a signatory's country, the ME-NEX shall give notice to the appropriate regulatory authority and cooperate with the regulatory authority in the enforcement of its laws or regulations.

2. Each signatory's country shall induce or compel compliance or punish noncompliance with its laws or regulations prescribed in accordance with Paragraph II.A of this Memorandum.

3. Enforcement measures must be reasonably related to the laws or regulations to which they are directed; punishment for noncompliance must be preceded by an appropriate determination of violation and must be proportional to the gravity of the violation.

4. A signatory's country may employ enforcement measures against a person located outside its territory

(a) if the person is given notice of the claims or charges against him that is reasonable in the circumstances;

(b) if the person is given an opportunity to be heard, ordinarily in advance of enforcement, whether in person or by counsel or other representative; and

(c) when enforcement is through the courts, if the signatory country has jurisdiction to adjudicate.

#### **IV. Jurisdiction to adjudicate and resolve disputes**

1. The ME-NEX shall have the primary jurisdiction to adjudicate and resolve disputes between members and between members and clients.

2. Except where the ME-NEX has primary jurisdiction, jurisdiction to adjudicate and resolve disputes shall be based on the following criteria:

(a) the subject transaction or activity either originated in or was intended to be performed in the territory of the signatory's country, but jurisdiction shall be limited to that transaction or activity;

(b) the person, if a natural person, is a national of, or is domiciled or resident in, the signatory's country;

(c) the person, if a legal person, is organized under the laws of the signatory's country;

(d) the person, if a legal person, regularly conducts business, or has its principal place of business, in the signatory's country;

(e) the person, whether natural or legal, has carried on an activity or entered into a transaction outside the signatory's country, but the transaction or activity creating the basis for the claimed accountability has a substantial direct or foreseeable effect within the country asserting jurisdiction

(f) the person, whether natural or legal, has consented to the exercise of jurisdiction by the signatory's country.