

MEMORANDUM OF UNDERSTANDING BETWEEN THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION AND THE COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER OF LUXEMBOURG ON COOPERATION AND THE EXCHANGE OF INFORMATION RELATED TO THE OVERSIGHT OF AUDITORS

The Australian Securities and Investments Commission ("ASIC"), based on its obligations and authority under the *Australian Securities and Investments Commission Act 2001* (the "ASIC Act"), the *Corporations Act 2001* (the "Corporations Act") and related regulations;

and

The Commission de Surveillance du Secteur Financier ("CSSF"), based on its obligations and authority under the Law of December 23, 1998 establishing a financial sector supervisory commission and based on its obligations and authority under the law of December 18, 2009 relating to the audit profession;

Have agreed as follows:

Having regard to the law of December 18, 2009 relating to the audit profession as based on Article 47 of the Directive 2006/43/EC which allows the CSSF under certain conditions to transfer to the ASIC information held by Auditors approved by the CSSF;

Recognising that the European Commission has decided upon the adequacy referred to in Article 47, paragraph 1(c) of the Directive 2006/43/EC in respect of the ASIC (Decision No. 2010/485/EU);

Recognising that the European Commission has decided upon the equivalence referred to in Article 46, paragraph 1 of the Directive 2006/43/EC in respect of the Australian public oversight, quality assurance, investigation and penalty systems for auditors and audit entities (Decision No. 2011/30/EU);

Recognising that the transfer of personal data from Luxembourg to Australia has to be in accordance with the Law of August 2, 2002 implementing Directive 95/46/EC and in particular Chapter IV of Directive 95/46/EC;

Having regard to subsections 11(10) and 11 (14) of the ASIC Act which authorises ASIC to enter into an agreement with and thereby disclose information to a regulatory body of a foreign country to assist that regulatory body ascertain whether Australian auditors comply with audit requirements of that country;

PURPOSE

1. Both Parties seek to improve the quality, accuracy and reliability of the audit of public companies through audit regulation and auditor oversight so as to protect investors, help strengthen public trust in the audit process and increase investor confidence in their respective capital markets.

2. Given the global nature of capital markets, the Parties recognise the need for mutual cooperation in matters related to the oversight of Auditors subject to the regulatory jurisdictions of either or both ASIC and CSSF.
3. The purpose of this Memorandum of Understanding ("MOU") is to facilitate mutual cooperation between the Parties in the area of public oversight, Inspections and Investigations of Auditors subject to the oversight of the Parties. ASIC and CSSF believe it is in their common interest to cooperate in the oversight of Auditors that fall within the regulatory jurisdiction of either or both Parties to the extent such cooperation is compatible with the Parties' respective Laws or regulations, their important interests and their reasonably available resources. Cooperation is intended to permit the Parties to meet their respective statutory oversight mandates.

DEFINITIONS

4. For the purpose of this MOU,

"Party" or "Parties" means either or both ASIC and CSSF.

"Auditor" means a natural person, audit firm or audit company that is subject to the regulatory oversight of either or both: CSSF in accordance with the law of December 18, 2009 relating to the audit profession in Luxembourg, and ASIC in accordance with Laws or regulations in Australia.

"Laws or regulations" mean any laws, rules or regulations in force in the respective countries of either of the Parties.

"Inspections" refers to external quality assurance reviews of Auditors generally undertaken on a regular basis with the aim of enhancing audit quality.

"Investigations" refers to investigations in response to a specific suspicion of infringement or violation of Laws or regulations.

"Information" means non-public information that relates to: (1) Inspections or Investigations, including information on firm-wide quality control procedures and engagement reviews, (2) audit working papers or other documents held by Auditors, and (3) other areas of interest concerning the oversight of Auditors provided that the information relate to the regulatory functions or responsibilities of either or both Parties.

COOPERATION

Exchange of Information

5. Cooperation includes the exchange of Information between Parties for the purposes permitted or required by Laws or regulations on public oversight, Inspections, and Investigations of Auditors.

Mutual recognition

6. Each Party recognises the regulatory competency of the other Party, and to the extent possible, will rely on the regulatory activities of the other Party in relation to the public oversight, Inspections, Investigations of Auditors operating in the other Party's jurisdiction.¹
7. To the extent permitted by their respective Laws or regulations, each Party will use their best endeavours to inform one another, prior to or immediately after taking any significant public oversight activities in respect of Auditors that are registered or seek registration or operate in the jurisdiction of the other Party.

Requests for Information

8. Each Party may provide the other Party with Information upon request.
9. Requests will be made in writing (including by e-mail) and be addressed to the contact person of the other Party.
10. The requesting Party shall specify the following:
 - (a) the Information requested;
 - (b) the purposes for which the Information will be used;
 - (c) the reasons why the Information is needed, and if applicable, the relevant Laws or regulations that may have been violated;
 - (d) an indication of the date by which the Information is needed;
11. In cases where the Information requested is located in the other Party's jurisdiction and held by an Auditor, the Parties will not request the direct transfer of such Information by the Auditor. Such Information will be requested from the other Party in each case.
12. In cases where the Information requested is held or maintained by or available from another entity within the country of the requested Party, the requested Party may obtain the Information from that other entity and provide it to the requesting Party to the extent permitted by the requested Party's national Laws or regulations.

Execution of requests for Information

13. Each request will be assessed on a case by case basis by the requested Party to determine whether the Information can be provided under the terms of this MOU. In any case where the request cannot be met in full within the desired time period, the requested Party will inform the requesting Party accordingly and will consider whether other relevant Information or assistance can be given.

¹ In any case, the CSSF requires a light registration process for a third-country audit entity which originates from a third-country which has been declared as equivalent by the European Commission as well as the disclosure of an annual transparency report.

14. Each party shall endeavour to provide a prompt and adequate response to requests for Information.
15. In order to avoid unnecessary delays, the requested Party may provide as appropriate parts of the requested Information as they become available.
16. The requested Party may refuse to act on a request where:
 - (a) it concludes that the request is not in accordance with this MOU;
 - (b) acceding to the request would contravene the Laws or regulations of the requested Party's country or contrary to a court order;
 - (c) it would burden the requested Party disproportionately;
 - (d) it concludes that it would be contrary to the public interest of the requested Party for assistance to be given;
 - (e) the provision of Information would adversely affect the sovereignty or security or public order of the requested Party's country; or
 - (f) judicial proceedings have already been initiated or have become legally effective in respect of the same actions and against the same persons before the authorities of the country of the requested Party.
17. The requested Party will promptly inform the requesting Party of the reasons where it refuses or is unable to act on a request made under this MOU.
18. Any document or other material provided in response to a request under this MOU and any copies thereof shall be returned on request to the extent permitted by national Laws or regulations.

CONFIDENTIALITY

19. Except as set out below and to the extent consistent with their Laws or regulations, the Parties shall keep confidential all Information received or created in the course of cooperation and endeavor to ensure that the obligation of confidentiality is applied to all persons who are or have been:
 - (a) employed by the Parties;
 - (b) involved in the governance of the Parties; or
 - (c) otherwise associated with the Parties.

USE OF INFORMATION

20. The Parties may use Information received or created in the course of cooperation only for the exercise of their functions of public oversight, Inspections and Investigations of Auditors. If any Party intends to use Information received or created in the course of cooperation for any purposes other than those stated in the request, it must obtain prior written and specific consent of the requested Party. If the requested Party consents to the use of Information for a purpose other than that stated, it may subject it to conditions.

EXCEPTIONS TO CONFIDENTIALITY

21. To the extent legally permissible, the requesting Party will notify the requested Party of any legally enforceable demand for non-public information furnished under this MOU, stating the reasons as to why the Party is required to disclose or transfer the Information.
22. The Parties will then discuss and determine the appropriate course of action prior to the requesting Party complying with the demand including if the requesting Party is to assert such appropriate legal exemptions or privileges with respect to such Information as may be available.
23. Except in the circumstances referred to in paragraph 21, a Party that intends to disclose or transfer to a third party any Information received or created in the course of cooperation shall request prior written consent of the Party which provided the Information and if that Party so requires, shall use its best endeavours to make such disclosure on terms which preserve the confidentiality of that information.

THE TRANSFER OF PERSONAL DATA

24. This MOU is subject to a framework between the Parties on the transfer of personal data.

OTHER

25. This MOU does not create any binding legal obligations, nor does it modify or supersede any Laws or regulations in Luxembourg or in Australia. This MOU does not give rise to a right on the part of the CSSF, ASIC or any other governmental or non-governmental entity or any private person to challenge, directly or indirectly, the degree or manner of cooperation by the CSSF or ASIC.
26. This MOU does not prohibit the Parties from taking measures with regard to the supervision of Auditors that are different from or in addition to the measures set forth in this MOU.
27. The Parties may at the request of either Party consult on issues related to the matters covered by this MOU and share experiences and knowledge gained in the discharge of their respective duties to the extent permitted by their respective Laws or regulations.
28. The Parties may consult informally, at any time, about a request or proposed request or about any Information provided.

29. The Parties may consult and revise the terms of this MOU in the event of a substantial change in Laws or regulations and/or practices affecting the operation of this MOU.
30. To the extent consistent with its respective laws, regulations, rules and its important interests, including, without limitation, any requirement of either Party to obtain a person's consent before disclosing personal information about that person, each Party shall use reasonable efforts to provide the other Party with any information it discovers which the Party believes gives rise to a suspicion of an infringement or an anticipated infringement of the laws, regulations, rules or standards of the other Party.
31. In considering the appropriate disciplinary action, if any, for a firm or regulated auditors that fall within the regulatory jurisdiction of both Parties, each Party shall endeavour to consider any disciplinary action(s) imposed on such firm or regulated auditors under the laws, regulations, rules and/or standards of the other Party for a violation(s) based upon the same or related conduct or facts.

ENTRY INTO EFFECT AND TERMINATION

32. This MOU will come into force from the date of signature by both Parties.
33. This MOU may be terminated by either Party at any time. The provisions concerning confidentiality (paragraphs 19 to 23) and on the transfer of personal data (paragraph 24) shall remain in force thereafter.

Luxembourg, 12 December 2016

Sydney, 3 February 2017

**Commission de Surveillance du
Secteur Financier**

**Australian Securities
and Investments Commission**



Claude Marx
(Director General)



Greg Medcraft
(Chairman)

FRAMEWORK ON THE TRANSFER OF PERSONAL DATA BETWEEN THE AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION AND THE COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER OF LUXEMBOURG.

The Australian Securities and Investments Commission ("ASIC") and The Commission de Surveillance du Secteur Financier of Luxembourg ("the CSSF") have concurred on the following Framework (the "Framework").

I- DEFINITIONS

1. For the purpose of this Framework:

"Auditor" has the meaning given in the MOU.

"Authority" or **"Authorities"** means either or both the CSSF and ASIC;

"Controller" means, in relation to Personal data processed and transferred between the Authorities, the Authority which alone or jointly determines the purposes and means of the processing of Personal data;

"MOU" means the Memorandum of Understanding between ASIC and CSSF on Cooperation and the Exchange of Information Related to the Oversight of Auditors, as published by the Authorities on their respective website;

"Personal data" means any information relating to an identified or identifiable natural person ("data subject"); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his/her physical, physiological, mental, economic, cultural or social identity;

"Personal data protection authority" means the competent authority with regulatory oversight in relation to personal data protection in the jurisdiction of each of the Authorities;

"Processing of Personal data" ("processing") means any operation or set of operations which is performed upon Personal data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;

"Processor" means a natural or legal person, public authority, agency or any other body which processes Personal data on behalf of a Controller;

"Sensitive data" means data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade union membership and data concerning health or sex life and data relating to offences, criminal convictions or security measures in relation to individuals;

"Third party" means any natural or legal person, public authority, agency or any other body other than: the data subject, the CSSF, ASIC and persons who, under the direct authority of the Controller or the Processor, are authorized to process the data.

II- DATA PROCESSING PRINCIPLES

The Authorities confirm that the transmission of Personal data between the Authorities shall be governed by the following principles:

1. Purpose limitation: Personal data transmitted by one Authority to the other Authority may be processed and subsequently used for the specific purposes of public oversight, external quality assurance and investigation of Auditors.

If an Authority intends to use or onward transfer such data for any purpose other than those stated in its initial request, the Authority shall comply with paragraphs 20 to 23 of the MOU.

2. Data quality and proportionality: Each Authority will endeavor to ensure that it transmits to the other Authority Personal data that is accurate and up to date. The Authorities will endeavor to ensure that the Personal data is adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed. Each Authority will inform the other Authority if it learns that previously transmitted data is inaccurate or out of date.

The Personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the data were collected or for which they are further processed. The Authorities will have in place acceptable record disposal procedures for all information received pursuant to applicable laws, rules or regulations.

3. Transparency: In Australia, under the *Privacy Act 1988*, ASIC is required to manage personal information (which covers Personal data) in an open and transparent way through a clearly expressed and up to date privacy policy. In addition, ASIC is subject to rules of procedural fairness where ASIC proposes to disclose confidential information such as Personal data that may have a direct and material adverse effect upon the rights, interests or legitimate expectations of a person.

In Luxembourg, CSSF must provide the data subject with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer) as set forth in respective legislation in its jurisdiction.

4. Security and confidentiality: Technical and organizational security measures that are appropriate to the risks, such as accidental or unlawful destruction, loss, alteration, unauthorized disclosure or access, presented by Processing of Personal data must be taken by the data Controller. Any person acting under the authority of the data Controller, including a Processor, must not process the data except on instructions from the data Controller. Personal data exchanged for the purposes of this Framework will only be communicated by secured means so as to prevent accidental, unlawful or unauthorized access to the data.

5. Rights of access, rectification, deletion or objection: The Authorities recognize such rights of data subjects as provided under the laws or regulations in its jurisdiction to access the data relating to him or her (i.e. Personal data) that are processed under this Framework. For example, in Luxembourg, if the data turns out to be incomplete, inaccurate or outdated, the data subject may, to the extent provided under applicable laws or regulations, make a request for rectification, erasure or blocking of the data. To the extent required by such laws or regulations, the CSSF will put in place appropriate procedures to allow a data subject to make such requests. In Australia, under the *Privacy Act 1988*, an individual whose personal information is held by ASIC is entitled to request access to their personal information and request the correction of information held that is inaccurate, out of date, incomplete, irrelevant or misleading.

The Authorities acknowledge that only exceptions permitted will be those provided under laws or regulations in their home jurisdictions including where it is necessary in a democratic society to safeguard important public interests such as:

- (i) the prevention, investigation, detection and prosecution of criminal offences, or breaches of obligations by Auditors; or
- (ii) the monitoring, inspection or performance of a regulatory function connected with the exercise of official power by an Authority.

6. Sensitive data: will not be transferred by one Authority to the other Authority except in accordance with the laws and regulations of the first-mentioned Authority's jurisdiction concerning the handling of sensitive data.

7. Onward transfer: In the event that an Authority intends to transfer to a Third party any Personal data received or created in the course of cooperation, it will comply with the process set forth in paragraph 21 to 23 of the MOU. It will be the responsibility of the Authorities to provide relevant information to the data subject, if required by the laws and regulations in the jurisdiction of the data providing authority.

8. Redress: The Authorities acknowledge that they have exchanged information describing the consequences for the unlawful disclosure of non-public or confidential information. Any suspected violation will be reported to the data providing Authority and where appropriate, to the relevant Personal data protection authority .

III- OTHER

1. Resolution of disputes with data subjects: In the event of a dispute or claim brought by a data subject concerning the processing of the Personal data against either or both of the Authorities, the Authorities will inform each other about any such disputes or claims..

Luxembourg, 12 December 2016

Sydney, 3 February 2017

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