

# Memorandum of Understanding


Note - this is a Head MOU. It sets out the process for entering into and monitoring Subsidiary Arrangements

<b>MOU Details</b>	
<b>MOU reference No.:</b>	ATO: 12.020 <span style="float: right;">ASIC : 2010 - 002094:A3712622</span>
<b>Commissioner:</b>	Commissioner of Taxation.
<b>ATO:</b>	Australian Taxation Office (ABN 51 824 753 556).
<b>Commissioner's MOU Manager:</b>	Name: Michael Hardy Position: Assistant Commissioner Postal address: 21 Genge Street, Canberra ACT 2600 Telephone: (02) 6216 1798 E-mail address: Michael.Hardy@ato.gov.au
<b>Chairman:</b>	Australian Securities and Investments Commission Chairman.
<b>ASIC:</b>	Australian Securities and Investments Commission (ABN 86 768 265 615)
<b>ASIC Jurisdiction:</b>	Commonwealth of Australia.
<b>ASIC secrecy laws:</b>	<i>Section 127 of the Australian Securities &amp; Investments Commission Act 2002</i>
<b>Chairman's MOU Manager:</b>	Name: Natalie Dürr Position: Senior Executive Leader – Criminal Intelligence Unit, Senior Executive – Enforcement WA & Regional Commissioner - Western Australia Postal address: Level 1, 11 Mounts Bay Road, Perth WA 6000 Telephone: (08) 9261 4199 <span style="float: right;">Facsimile: (08) 9261 4227</span> E-mail address: Natalie.Durr@asic.gov.au
<b>This MOU replaces:</b>	MOU Reference Number 12.020
<b>Termination notice period:</b>	60 days.
<b>Subsidiary Arrangements:</b>	Are automatically terminated by the termination of this MOU.
<b>Relationship Management</b>	See Schedule 2
<b>Agency Contacts</b>	See Schedule 3

## Accepted and agreed


Signed by Chris Jordan,  
Commissioner, Australian  
Taxation Office

} Signature  
 } Date

  
 2/8/17

Signed by Greg Medcraft,  
Chairman, Australian  
Securities and Investments  
Commission

} Signature  
 } Date

  
 21/8/17

## 1. Parties

This Memorandum of Understanding (**MOU**) is between:

- the Australian Securities and Investments Commission (**ASIC**); and
- the Australian Taxation Office (**ATO**).

## 2. Responsibilities

The Australian Taxation Office (ATO) is the Government's principal revenue collection agency, and is part of the Treasurer's portfolio. The ATO's role is to manage and shape tax, excise and superannuation systems that fund services for Australians.

The Australian Securities and Investments Commission (ASIC) is a regulatory and law enforcement agency charged with promoting market integrity and consumer protection across the financial services sector and operating under the *Australian Securities and Investments Commission Act 2001* (ASIC Act). It is responsible for the administration and enforcement of the *Corporations Act 2001*, *Superannuation Industry (Supervision) Act 1993*, *Superannuation (Resolution of Complaints) Act 1993*, *Insurance Contracts Act 1984*, *Retirement Savings Accounts Act 1997*, *Life Insurance Act 1995*, *National Consumer Credit Protection Act 2009*, and *Medical Indemnity (Prudential Supervision and Product Standards) Act 2003*. In respect of some of these Acts, ASIC has a joint responsibility with other regulators and agencies.

## 3. Purpose

The purpose of this MOU is to express the understanding between the ATO and ASIC of the working relationship between the parties. It is to be applied with that aim in mind.

This MOU will guide collaboration, cooperation and mutual assistance in respect of the statutory functions of each agency. In addition to the matters covered by this MOU, ASIC and the ATO acknowledge that from time to time they may enter into specific arrangements for cooperation. Such arrangements may be bilateral, or multilateral and include sharing information, staff secondments, mutual training arrangements, such as the Heads of the Commonwealth Operational Law Enforcement Agencies (HOCOLEA) capabilities project, and joint task forces.

This MOU sets out the process for entering into Subsidiary Arrangements which will provide guidance in relation to collaboration, cooperation and mutual assistance in respect of the statutory functions of each party.

The parties will work together to pursue common interests and demonstrate their commitment to a whole of government approach to protecting and promoting public confidence in the integrity of the financial system.

ASIC and the ATO recognise the need for the fullest collaboration and cooperation between the two agencies at all levels to discharge their respective functions and to achieve their statutory purposes, to the extent permitted by law. This MOU does not create legally enforceable obligations between the parties.

When a matter is not dealt with explicitly in this MOU, it is expected that both ASIC and the ATO will discuss the matter and resolve it quickly in accordance with the principles established by this MOU. ASIC and the ATO recognise that proper and appropriate communication and liaison at all levels is essential to an effective working relationship. The MOU sets out the framework for liaison arrangements between ASIC and the ATO.

There are no funding arrangements or costs involved with this MOU.

## 4. Existing arrangements between the Parties

This MOU replaces the Memorandum of Understanding between the parties dated 4 February 2013 (ATO MOU Reference 12.020). This MOU does not replace any existing agreements or arrangements other than the MOU of 4 February 2013.

## 5. Agreed Principles

The Parties acknowledge that the timely sharing of information, and other cooperative arrangements, will contribute to the production of key information products to support regulatory effort in line with the parties' legislative requirements and responsibilities.

## **6. Proposing a Subsidiary Arrangement**

Either Party may give the other a written proposal for a Subsidiary Arrangement. The proposal must set out:

- the information sharing and/or other activities to be carried out under that Subsidiary Arrangement,
- the Parties' Relationship Managers for that Subsidiary Arrangement,
- the duration of that Subsidiary Arrangement,
- monitoring, evaluation and reporting requirements for that Subsidiary Arrangement, and
- all other terms proposed for that Subsidiary Arrangement (other than Common Provisions)

An initial proposal may take the form of an email or telephone call between the Parties' Relationship Managers. Each proposal for a Subsidiary Arrangement is to be cooperatively developed and negotiated by the Parties in good faith, and has no status until both Parties agree in writing.

## **7. Liaison Arrangements**

ASIC and the ATO will liaise at a national level, and in relation to specific areas of common interest. That liaison may be coordinated by each agency's Relationship Manager who is the person identified as such in the MOU, or such other person (or person in such other position) as that Party otherwise notifies the other Party from time to time.

Liaison at the national level will be conducted on a continuing basis, with formal national liaison meetings being held twice per year ('National Liaison Meeting'). The Deputy Commissioner, Private Groups and High Wealth Individuals of the ATO, and the nominee of the Chairman of ASIC in addition to such other senior officers as are agreed by the two agencies, will attend National Liaison Meetings. National Liaison Meetings will deal with operational and organisational issues, expected workloads and such issues that may warrant law reform.

## **8. Role of the Relationship Managers**

The Relationship Managers of each agency will be responsible for:

- overseeing the strategic operation of the relationship between the Parties and its general adherence to the MOU,
- monitoring and evaluating the operation and progress of this MOU and Subsidiary Arrangements,
- providing brief annual reports on the operation and progress of this MOU and Subsidiary Arrangements (including their achievements and any outstanding issues) to the Commissioner and the Chairman.

The Relationship Managers are to hold meetings at the frequency indicated in the MOU Details. Either Relationship Manager can call a meeting by giving reasonable notice to the other. A meeting may be held using any technology. The consent may be a standing one.

## **9. Relationship Management**

Details of the relationship management, liaison arrangements and activities are set out in Schedule 2 of this arrangement.

# Schedule 1 – Common Provisions

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## **c1. Status of this Arrangement**

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This Arrangement does not create legally enforceable obligations between the Parties.

## **c2. Interpretation of this Arrangement**

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In this Arrangement, unless the contrary intention appears:

- a schedule or other attachment to this Arrangement forms part of this Arrangement,
- the singular includes the plural and vice versa, and each gender includes the other genders,
- a reference to a 'person' includes a partnership or body whether incorporated or not.

## **c3. Commencement of this MOU**

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This Arrangement commences on the date it is signed by the last Party.

## **c4. Variation of Arrangement**

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Either Party may propose a variation of this Arrangement by giving the other a notice setting out details of the proposal. Unless otherwise indicated, this Arrangement can only be varied by agreement of the Parties in writing.

# Schedule 2 – Relationship Management

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## 1. Managing the relationship

ATO and ASIC Contact Officers will be responsible for the day to day operation of this MOU and will liaise as required to discuss the progress of current matters of common interest, to improve the sharing of information, to attempt to identify opportunities for joint enforcement or other activities where appropriate, and to resolve problems that may arise either in the audit, investigation or prosecution of particular matters or other relationships between the two agencies.

From time to time opportunities will arise for the agencies to develop strategies for closer collaboration in areas of common interest, such as illegal phoenix activity, auditor and liquidator misconduct, superannuation and illegal schemes. The agencies will also collaborate on law reform issues of common concern. ASIC and the ATO agree to pursue all avenues for closer collaboration, such as developing open data standards to facilitate efficient exchange of database information and cooperation in exchange of systems-based intelligence. If ASIC and the ATO are unable to agree upon a proposed course of action in a specific area at the officer level, the matter will be considered by the relevant ASIC Senior Executive and ATO Assistant Commissioner. If, following consultation, the disagreement cannot be resolved it will be referred to the next National Liaison meeting for consideration.

Strategic and operational forums will be arranged between the Parties' Relationship Managers and will provide a governance mechanism to manage the agreement and its associated agreements.

The Parties may issue joint media releases or publication in relation to any joint activities. The agencies will collaborate in drafting the proposed media release or publication.

## 2. Role of the Liaison Forum

The Liaison Forum will:

- Act as a steering committee to oversee the strategic operation of the Parties' relationship
- Provide leadership for the joint management of mutually held priorities and risks
- The Liaison Forum is to be held at least twice yearly.

## 3. Members of the Liaison Forum

The Liaison Forum members consist of:

- The Deputy Commissioner, Private Groups and High Wealth Individuals of the ATO and a Commission Member of ASIC
- The Parties' Relationship Managers
- Senior representatives for the mutually agreed strategic priorities, and
- As required, agreed contacts relating to the strategic priorities (see Schedule 3).

In consultation with the other Agency, a party's Relationship Manager may (by notice at any time) appoint, remove and replace some or all of those additional members. Additionally,

- A member can be represented by a nominee,
- The members (and nominees) present at that meeting (or part of it) are to ensure one of their number who is willing to act chairs that meeting (or that part of it),
- The chair is to ensure that minutes of the meeting are taken, and
- The chair may invite other persons to attend the meeting or part of it.

## Schedule 3 - Agency contacts

### 1. Agency representatives and contacts

In accordance with the terms of this Arrangement, the Parties agree to maintain a current list of Senior Representatives and area contacts.

This list can be varied at any time in accordance with this MOU and will be maintained by each Parties' respective Relationship Manager.

### 2. ATO Relationship Manager

Position Title	Deputy Commissioner
Name	Will Day
Business / Postal Address	21 Genge St, Canberra, ACT, 2600 PO Box 9977, Civic Square, ACT, 2608
Phone Number	(02) 6216 2270
Email Address	<a href="mailto:William.Day@ato.gov.au">William.Day@ato.gov.au</a>

### 3. ATO MOU Manager

Name & Position	Phone Number	Strategic Priority
Michael Hardy, Assistant Commissioner	(02) 6216 1798	All

### 4. ATO Contact Officers

Name & Position	Phone Number	Area of responsibility
Kylie Porter Relationship Officer	(08) 8208 1802	MOU Management
Michael Hardy Assistant Commissioner	(02) 6216 1798	Phoenix and Refund Fraud
Brett Martin Assistant Commissioner	(02) 6216 8256	Smarter Data
Mathew Umina Assistant Commissioner	(03) 9285 1512	Public Groups and International Risk and Strategy
Kasey Macfarlane Assistant Commissioner	(07) 3213 8346	Superannuation

### 5. ASIC Relationship Manager

Position Title	Commissioner
Name	John Price
Business / Postal Address	Level 8, 120 Collin St, MEL VIC 3000 GPO Box 9827, MEL VIC 3000
Phone Number	(03) 9280 3200
Fax Number	(03) 9280 3288
Email Address	<a href="mailto:John.Price@asic.gov.au">John.Price@asic.gov.au</a>

### 6. ASIC MOU Manager

Name & Position	Phone Number	Strategic Priority
Natalie Dürr Senior Executive Leader	(08) 9261 4199	All

## 7. ASIC Contact Officers

<b>Name &amp; Position</b>	<b>Phone Number</b>	<b>Area of responsibility</b>
Mark Geddes Relationship Officer	(02) 9911 2303	MOU Management
Adrian Brown Senior Executive Leader	(03) 9280 4199	Insolvency Practitioners
Douglas Niven Senior Executive Leader	(02) 9911 2079	Financial Reporting & Audit
Joanna Bird Louise Macaulay Senior Executive Leaders	(02) 9911 2384 (02) 9911 2014	Financial Advisers
John Wallace Senior Executive Leader	(03) 9280 3673	Chief Data Officer
Mark Adams Senior Executive Leader	(02) 9911 2050	Strategic Intelligence