

**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.<sup>1</sup>
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.

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<sup>1</sup> 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 deemed 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.

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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**

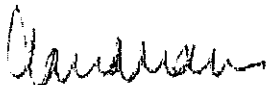
32. This MOU will come into force from the date of signature by both Parties.
33. This MOU may be terminated by either Party at any time. The provisions concerning confidentiality (paragraphs 19 to 23) and on the transfer of personal data (paragraph 24) shall remain in force thereafter.

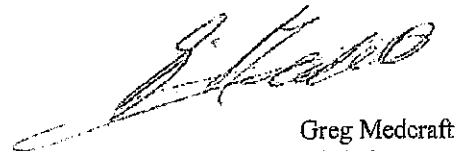
Luxembourg, 12 December 2016

Sydney, 3 February 2017

**Commission de Surveillance du  
Secteur Financier**

**Australian Securities  
and Investments Commission**

  
Claude Marx  
(Director General)

  
Greg Medcraft  
(Chairman)