

IRISH AUDITING & ACCOUNTING SUPERVISORY AUTHORITY
INVESTIGATIONS PURSUANT TO SECTION 934, COMPANIES ACT 2014
SETTLEMENT AGREEMENTS

This Policy is a public document. Periodically, it will be reviewed and (where appropriate) revised in the light of experience.

1. Legislative Provisions on Settlement

- 1.1. Section 934E of the Companies Act 2014 (as amended) (the “**Act**”) provides that if the Irish Auditing and Accounting Supervisory Authority (the “**Authority**”) believes on reasonable grounds that a specified person (as defined in the Act) is committing or has committed a relevant contravention the Authority may enter into an agreement (a “**Settlement Agreement**”) to resolve the matters the subject of the contravention.
- 1.2. The Settlement Agreement must be entered into prior to an investigation being completed unless it is solely for the purpose of determining what sanctions, if any, to be imposed. A Settlement Agreement may be considered by the Authority at any stage from the time it becomes aware of a relevant contravention, or the possibility thereof, having been committed by a specified person, to the production of a report by an Investigation Committee (the “**Investigation Process**”).
- 1.3. The terms of the Settlement Agreement are binding on the Authority and the specified person.

2. The Authority’s Approach to Settlement

- 2.1. This settlement process offers both the Authority and the specified person a means of achieving early resolution of the matter. Early settlement is an efficient use of the Authority’s resources and provides timely resolution and transparency through the publication of the details of the case. Where settlement is agreed, it results in the avoidance of the additional costs and administrative burden of extended investigations for both the Authority and the specified person. At the same time the Settlement Agreement will take account of the public interest. Public interest includes protecting the public, maintaining public confidence in the profession and upholding proper standards of conduct.
- 2.2. The Authority considers that, in appropriate cases, it may be in the public interest for matters subject to the Investigation Process to settle. The Authority will need to be satisfied that the basis for settlement is appropriate taking into account all information available to it, including the determination of the appropriate sanction, whether all concerns have been addressed to the Authority’s satisfaction, and any other relevant considerations.
- 2.3. In determining whether it is appropriate to settle a case, the Authority will consider its statutory objectives, and whether the agreed settlement terms will result in an acceptable regulatory outcome. The Authority may have regard to the following factors (this list is not exhaustive):
 - a. The nature, seriousness and impact of the contravention including:
 - i. whether the contravention was deliberate, dishonest or reckless;
 - ii. duration and frequency of the contravention;
 - iii. whether the contravention reveals serious or systemic weaknesses of the management systems or internal controls relating to all or part of the business; and
 - iv. the extent to which the contravention departs from the required standard;
 - b. the conduct of the specified person after the contravention has occurred:

- i. the degree of co-operation with the Authority during the Investigation of the contravention;
 - ii. any remedial steps taken since the contravention was identified, and
 - iii. the likelihood that the same type of contravention will recur if no administrative sanction is imposed;
 - c. the previous record of the specified person; and
 - d. any other relevant considerations.
- 2.4 The Authority expects that the specified person will admit the contravention(s) and that the terms of the settlement will be published.
- 2.5 There is no obligation on the Authority to engage in communications to reach settlement or to settle once such settlement communications has been commenced.
- 2.6 The Authority will decide in its sole discretion whether a particular case is suitable for settlement. The settlement process runs in parallel with the Investigation Process and it should be noted that an indication of willingness to enter into settlement discussions by the specified person does not cause the suspension of the Investigation Process. The Authority expects full information in response to questions or issues raised during any Investigation Process to be provided in open correspondence.
- 2.7 If a Settlement Agreement is reached after the Investigation Committee has been convened, such Settlement Agreement shall be of no effect unless approved by the Investigation Committee.
- 2.8 The settlement communications will be conducted on a “*without prejudice*” basis unless the Authority and the specified person agree otherwise. Any discussion contained in writing should be made under cover of a separate letter which **only** addresses settlement. In such circumstances, statements made during the settlement process will not be used during any subsequent investigation or Court procedure. This is to ensure that, in the event that discussions break down, neither party is prejudiced as a result of a position taken in the course of trying to resolve the matter.
- 2.9 The settlement process is voluntary and any party may withdraw at any stage.

3. Commencement of the settlement process

- 3.1 At any stage during the Investigation Process, the Authority may issue a letter offering the possibility of settlement (the “**Settlement Letter**”) to the specified person. The Settlement Letter will be issued on a without prejudice basis.
- 3.2 The Authority will not, however, issue a Settlement Letter until such time as it has sufficient factual information, to understand the nature and gravity of the suspected relevant contraventions, to enable it to make an assessment of the suitability or otherwise of the matter being dealt with by settlement.

4. Early Settlement Discount

- 4.1 Where a specified person settles a matter at an early stage with the Authority, it is appropriate that any fine and/or other sanction that might otherwise be imposed should be adjusted to reflect the extent, significance and timing of those admissions. However, no discount should be applied to the amount of any fine that equates to the disgorgement of any benefit gained or loss avoided, or to an order for the waiver/repayment of client fees. In recognition of the benefits of such settlement agreements, it is appropriate to adjust the amount of any fine and/or other sanction that might otherwise have been imposed to reflect the stage at which a settlement agreement was reached. Normally, it will be inappropriate to reduce the period during which the specified person is to be precluded from practising to reflect a settlement because the primary purpose of such a sanction is to protect the public. Therefore, any settlement adjustment will generally apply only to any fine to be imposed.

- 4.2 The Authority may allow a discount to be applied to a sanction that in its view, it would otherwise expect to be imposed on a specified person after considering all relevant factors such as those set out in para 2.3 above. Further in accordance with S934D of the Companies Act 2014(as amended) the Authority will consider the gravity and duration of the contravention, the degree of responsibility of the specified person, the financial strength of the specified person, the amount of profits gained or losses avoided by the specified person in consequence of the relevant contravention, the level of cooperation of the specified person with the Authority and previous relevant contraventions committed by the specified person.
- 4.3 For the purpose of providing guidance on the scale of any settlement adjustment, the Authority considers that a case can be divided into two stages for the purpose of settlement.
- Stage 1:** the specified person will be required, within a period specified by the Authority in the Settlement Letter, to confirm its willingness to enter into the settlement process and to settle within the timeframe indicated by the Authority.
- a reduction up to 30%; (If the specified person does not confirm a willingness to enter into the settlement process and/or fails to settle within the indicated timeframe, the Early Settlement Discount will not apply).
- Stage 2:** from the end of stage 1 until the date on which an Investigation Committee is appointed
- a reduction up to 10%;
- 4.4 Where settlement is agreed after the Investigation Committee has commenced but before the Investigation Committee has concluded its investigation, no discount will apply and the agreed sanction will take into account the costs incurred by the Authority, including any costs incurred as part of the Investigation Process.
- 4.5 Any Settlement Agreement between the Authority and the specified person will include a statement as to any discount that was applied by the Authority. The Authority will write to the specified person notifying it of the proposed sanction (monetary or otherwise) which the Authority considers appropriate, taking into account all relevant sanctioning factors. This letter will be on a without prejudice basis. The exercise of any discount is within the discretion of the Authority.

5. Settlement Agreement

- 5.1 The terms of any proposed settlement will be put in writing and will be agreed by the Authority and by the specified person in the Settlement Agreement. The Settlement Agreement is conditional upon all relevant facts known to the specified person at the time of entry into the Settlement Agreement having been openly disclosed (in the context of responses to the inspection) and is legally binding. The specified person should have carried out such internal enquiries as are necessary to ensure that it is satisfied that it has disclosed all such relevant facts known to it or which ought to have been known to it at the time of entry into the Settlement Agreement.
- 5.2 A Settlement Agreement will only be concluded where it is consistent with the objectives of the Authority and:
- a. the basis for settlement is consistent with the general approach of the Authority to regulation;
 - b. it is fair having regard to all the known facts; and
 - c. the Settlement Agreement will contribute to the efficient, effective and economic use of resources.
- 5.3 A Settlement Agreement will include the following:
- a. admissions by reference to the relevant contraventions;
 - b. a statement that the relevant contraventions have ceased or are being addressed;

- c. a statement from the specified person that it has disclosed all relevant information in its possession;
 - d. appropriate sanctions;
 - e. any discount for early settlement;
 - f. a detailed Public Statement; and
 - g. other relevant terms.
- 5.4 The Settlement Agreement will represent the final agreed position between the parties and will specify the relevant contraventions in respect of which a settlement has been agreed. The Authority expects that all Settlement Agreements will contain admissions by the specified person in respect of the relevant contraventions contained therein.
- 5.5 The Settlement Agreement will contain details of the sanction(s) imposed on the specified person and, where a monetary penalty has been imposed, the manner in which such monetary penalty is to be paid. Where applicable, the Settlement Agreement will also include any discount that was applied.
- 5.6 Both parties shall adhere to the terms of the Settlement Agreement. However, if the specified person fails to comply with the terms of the Settlement Agreement the Authority may apply to the High Court for an order requiring the specified person to comply with the terms of the agreement, and/or may seek to recover any monetary amount agreed to in a court of competent jurisdiction as a simple contract debt due to the Authority. Further, should additional material information emerge, which was not brought to the attention of the Authority during the course of the Investigation, the Authority may, if the circumstances warrant it, commence a further Investigation into the specified person.
- 5.7 Where the relevant contraventions are admitted by the specified person but agreement cannot be reached as to the sanctions to be imposed, a Settlement Agreement cannot be entered into.

6. Public statement

- 6.1 Once the terms of a Settlement Agreement have been agreed by the Authority and the specified person, the Authority will prepare a statement for publication (the "Public Statement"). Public Statements are an important tool in promoting the transparency of the Authority's decision-making process. They inform the general public as well as the market and help to maximise the deterrent and educational effect of enforcement action. A Public Statement will be released in all cases which are settled by way of agreement.
- 6.2 The Public Statement will provide a detailed account of the admitted prescribed contraventions and may contain:
- a. the name of the specified person;
 - b. the prescribed contraventions;
 - c. the facts of the case;
 - d. the sanctions imposed, including any discount applied for early settlement; and
 - e. other relevant factors.
- 6.3 A sample Public Statement is attached at Appendix 1 to this Settlement Agreement Policy. Appended to a Public Statement will be a prepared statement by the Authority on the market aspects of the case and how it corresponds with the Authority's objectives. The wording of any market commentary is a matter for the Authority alone and does not form part of the Settlement Agreement.

- 6.4 The timing and manner of the release of a public statement will be within the sole discretion of the Authority. The Public Statement and any market commentary on the case will generally be published promptly on the Authority's website.

7. Effect of Settlement Agreement

- 7.1 The Settlement Agreement will form part of the specified person's compliance record (however described). As such, it may influence the Authority's decision to commence an investigation, taking into account the age of any previous Settlement Agreement(s), and may be taken into account in other actions taken by the Authority.
- 7.2 Settlement Agreements may be considered cumulatively, although they relate to separate areas of a specified person's business, where the concerns which gave rise to those Settlement Agreements are considered to be indicative of a specified person's compliance culture.
- 7.3 Settlement Agreements may be taken into account in determining appropriate sanctions pursuant to any subsequent investigation of contraventions by the specified person.

Appendix 1: Sample Public statement

Enforcement Action

Irish Auditing & Accounting Supervisory Authority

and

[The specified person]

[The specified person] fined [€_____] and [sanctions imposed] by the Irish Auditing and Accounting Supervisory Authority ('the Authority') in respect of breaches of [relevant legislation]

The Authority has fined [the specified person] [€_____] and reprimanded [it/him/her] for [x number of] breaches of regulatory requirements contained in [relevant legislation], following an investigation. The breaches have been admitted by [the specified person] and the contravention has been concluded by way of settlement agreement between the parties.

The Authority's investigation identified [X number of] breaches in relation to [identified breaches]. [The specified person] breached section(s) [relevant section(s)] of the [relevant legislation] by [set out breaches].

The Authority's Chief Executive, Kevin Prendergast, stated:

[Market Commentary]

Background

[Facts of the case] [The facts of the case will be described in substantial detail including details of the investigation and any mitigating or aggravating factors].

Prescribed Contraventions

The Authority's investigation identified [x number of breaches] of [relevant legislation] and details of the prescribed contraventions are set out below.

1. [Particulars of contraventions described in substantial detail]
2. [Particulars of contraventions described in substantial detail]
3. [Particulars of contraventions described in substantial detail]

Remediation

[Particulars of any remedial steps taken by the specified person.]

Sanction

The sanction(s) imposed in this case reflect(s) the seriousness with which the Authority treats the relevant contravention(s) and the importance the Authority places on compliance with [relevant legislation].

In deciding the appropriate sanction to impose, the Authority has taken the following into account:

- (i) [Particulars of factors taken into account]

The Authority confirms that the matter is now closed.

END.