

# MEMORANDUM OF UNDERSTANDING BETWEEN THE IRISH AUDITING & ACCOUNTING SUPERVISORY AUTHORITY AND THE OFFICE OF THE DIRECTOR OF CORPORATE ENFORCEMENT

This Memorandum is made on the 26<sup>th</sup> May, 2006 between the Irish Auditing & Accounting Supervisory Authority, Willow House, Millennium Park, Naas, Co. Kildare and the Office of the Director of Corporate Enforcement, 16 Parnell Square, Dublin 1.

## 1. Definitions

“Authority” means the Irish Auditing & Accounting Supervisory Authority and/or the Office of the Director of Corporate Enforcement, and “Authorities” shall be construed accordingly,

“IAASA” means the Irish Auditing & Accounting Supervisory Authority,

“Liaison Officer” means a liaison officer designated from time to time by the signatories to this Memorandum or their respective successors for the purpose of transmitting or receiving information between the Authorities pursuant to law,

“Memorandum” means all provisions of this Memorandum of Understanding, as from time to time amended by agreement between the Authorities in accordance with Article 8 of this Memorandum,

“ODCE” means the Office of the Director of Corporate Enforcement,

“Requesting Authority” means the Authority submitting a request for information under this Memorandum,

“Respondent Authority” means the Authority to whom a request for information has been submitted under this Memorandum,

“the 2001 Act” means the Company Law Enforcement Act, 2001,

“the 2003 Act” means the Companies (Auditing and Accounting) Act, 2003,

a reference to any statute or statutory provision shall include any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, instruments or other subordinate legislation made under the relevant statute.

## **2. Recitals/Background**

- 2.1 Notwithstanding any other provision of this Memorandum, this Memorandum is not intended to create legally binding relations between the parties but rather to outline the intentions of the Authorities (which shall not be legally binding) regarding co-operation between them.
- 2.2 This Memorandum does not delimit in any way the scope for the sharing of information between the Authorities which is permitted by law.
- 2.3 This Memorandum shall not operate to make an Authority liable to any person in damages or otherwise for anything done or omitted for which it would not otherwise be so liable.

## **3. Terms of the Memorandum**

This Memorandum commences on the date of this Memorandum and will continue in effect until the expiration of 30 days after either Authority gives notice to the other Authority of its intention to terminate the Memorandum. If either Authority gives such notice, this Memorandum will continue to have effect with regard to all requests for assistance that either Authority had made before the effective date of notification until the Requesting Authority terminates the matter for which it requested such assistance. The provisions of this Memorandum concerning confidentiality will continue thereafter with respect to information in the possession of the Requesting Authority.

## **4. Exchange of Information**

- 4.1. The ODCE and IAASA hereby agree to the exchange of information to the extent that the disclosure and provision of such information is permitted by law.
- 4.2. Any information disclosed by the ODCE to IAASA must be in accordance with the provisions of section 17 of the 2001 Act.
- 4.3. Any information disclosed by IAASA to the ODCE must be in accordance with the provisions of section 31 of the 2003 Act.
- 4.4. The Respondent Authority will not disclose any information that would be in breach of the relevant legislative provisions governing disclosure except where required to do so by law.

## **5. Requests for Information**

- 5.1. Each Authority agrees that on considering a request made to a Liaison Officer of the Respondent Authority, it will provide to the Requesting Authority any information in its possession of a kind specified in the request:
  - where it agrees that the request appears reasonable; and
  - where it is permitted to do so by law.
- 5.2. The request shall:
  - set out the nature of the information requested;

- state that the information is required by the Requesting Authority for the purpose of the performance of its functions; and
  - state the particular functions for which the information is required.
- 5.3. Except in respect of urgent requests made under clause 5.6, no request for information will be accepted by the Respondent Authority unless the request is made in writing in an agreed manner and is channelled through a relevant Liaison Officer of the respective Authorities.
- 5.4. The ODCE and IAASA agree, as far as is permitted by law, to endeavour to provide each other with every reasonable assistance upon receipt of a request for information.
- 5.5. In general, the Respondent Authority will make all reasonable efforts to comply with the request for information within six weeks. Where compliance within this timeframe is not possible, the Respondent Authority will notify the Requesting Authority of this fact as soon as possible and will seek to provide the requested information by an agreed date.
- 5.6. In cases of urgency, requests for information may, at first instance, be made orally, and their responses given orally. Upon receipt of an urgent request, the Respondent Authority will endeavour to provide the required information as soon as practicable.
- 5.7. Each Authority will endeavour to provide information in a format and medium appropriate to the requirements of the Requesting Authority.
- 5.8. Where a request for information is declined, the Respondent Authority shall take all reasonable steps to provide reasons for the request being declined except as may be required by law.

## **6. Voluntary Disclosure of Information**

Where either Authority possesses information which is, in its opinion, connected with the functions of the other Authority, it may disclose that information to the other Authority, provided that the disclosure is permitted by law.

## **7. Use and Disclosures of Information**

- 7.1. Except as may be required by law, an Authority will not disclose any information which it has received from the other Authority to a third party without the latter Authority's prior written approval, and such approval shall not be unreasonably withheld.
- 7.2. Except as may be required by law, the Authorities hereby commit themselves to use the information solely for the purposes described in the request.
- 7.3. Except as may be required by law, should the Requesting Authority wish to use the shared information for any purpose other than the purpose(s) expressed in the request, it must obtain the prior written approval of the Respondent Authority.

- 8. Measures to Promote an Understanding of Authorities' Roles and Functions**  
Each Authority agrees to take reasonable steps to make its relevant staff aware of the principal statutory obligations, powers and functions of the other Authority. The Authorities agree to endeavour to provide inter-Authority training presentations from time to time.
  
- 9. Review of this Memorandum**  
The Authorities may review this Memorandum at the request of either Authority. This Memorandum may be varied at any time by consent of both Authorities. Any variation agreed shall be in writing, shall be signed by the signatories of this Memorandum or their respective successors and shall be introduced on a date agreed by the Authorities.
  
- 10. Requests for Meetings**  
Notwithstanding the foregoing, an Authority may request a meeting with the other Authority to discuss one or more information requests or any other relevant issue, and the other Authority agrees to endeavour to attend a meeting as requested.
  
- 11. Costs**  
Each Authority agrees to bear its own costs, fees and expenses incurred on foot of a request for, or the giving of, information under this Memorandum, subject to the Authorities agreeing to alternative arrangements in circumstances where a Responding Authority incurs excessive costs, fees or expenses on foot of such a request.

**PAUL APPLEBY**  
**Director of Corporate Enforcement**  
**26 May, 2006**

**IAN DRENNAN**  
**Chief Executive**  
**Irish Auditing & Accounting Supervisory Authority**  
**26 May, 2006**