

**MULTILATERAL MEMORANDUM OF UNDERSTANDING
CONCERNING CO-OPERATION IN THE EXCHANGE OF INFORMATION
FOR AUDIT OVERSIGHT**

INTERNATIONAL FORUM OF INDEPENDENT AUDIT REGULATORS



Adopted on June 30, 2015

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INTERNATIONAL FORUM OF INDEPENDENT AUDIT REGULATORS
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The Parties to this MMOU share the common goal of serving the public interest and enhancing investor protection by improving audit quality globally. Given the global nature of capital markets, the Parties recognize the need for co-operation in matters related to the oversight of auditors that fall within the regulatory jurisdiction of the Parties. The Parties envision that this MMOU will facilitate such co-operation.

The Explanatory Note annexed to this MMOU forms an integral part thereof. It explains why certain approaches were taken in the MMOU and how certain provisions were drafted in order to accommodate legal frameworks that may vary from signatory to signatory.

1. Purpose of MMOU

The purpose of this MMOU is to facilitate co-operation in the exchange of Information between the Parties to the extent permitted by their respective Laws and Regulations in the area of public oversight of auditors, including inspections, investigations, enforcement and/or registration.

2. Definitions

2.1 For the purposes of this MMOU:

- (a) “Audit Oversight” means the regulatory functions of a Party relating to Auditors in accordance with the Party’s Laws and Regulations;
- (b) “Auditor” means an entity regardless of its legal form, a partnership or a Person that is engaged or participates in the practice of auditing and that is subject to the regulatory jurisdiction of a Party;
- (c) “Enforcement” means oversight activity directed at preventing or addressing violations of audit laws and regulations, which may result in imposition of penalties, punishments, restrictions, or other disciplinary measures/sanctions;
- (d) “IFIAR” means the International Forum of Independent Audit Regulators;
- (e) “IFIAR Officers” means the Chair and Vice Chair of IFIAR;
- (f) “IFIAR Secretariat” means the individuals designated by IFIAR Officers to provide secretariat support to the IFIAR Officers in performing their role and responsibilities as IFIAR Officers;
- (g) “Information” means non-public information – regardless of its form – that relates to the purpose of Audit Oversight;

- (h) “Inspections” refers to reviews of audit engagements, quality control and/or Auditors to assess the quality of audits and/or compliance of each Auditor with applicable Laws and Regulations in connection with the performance of audits and related matters;
- (i) “Investigations” refers to reviews undertaken by a Party of any act or practice, or omission to act, by an Auditor that may violate applicable Laws and Regulations;
- (j) “Laws and Regulations” means:
 - (a) the provisions of the legal authority (including relevant supranational laws) for a Party’s competence over Audit Oversight and its regulatory powers, including any relevant restrictions on gathering, obtaining and sharing of Information (such as regarding confidentiality and personal data protection); and
 - (b) the provisions in law, related rules, regulations or directive guidance promulgated thereunder and any other regulatory requirements such as auditing, professional and ethical standards that are relevant to Auditors and subject to oversight by a Party;
- (k) “MMOU” means this multilateral memorandum of understanding;
- (l) “Party” means an IFIAR member who has signed this MMOU;
- (m) "Person" means a natural or legal person, or an entity, body, or association, regardless of the legal form, including corporations and partnerships;
- (n) “Registration” means the registration of an Auditor that enables the Auditor to perform audits of entities established in the jurisdiction of a Party, entities whose securities are listed in the jurisdiction of a Party, or other entities who must be audited by an Auditor registered with the Party.

3. General principles

- 3.1 This MMOU does not create any legal obligations or supersede any Laws or Regulations, and does not give rise to a right on the part of any of the Parties or any other governmental or non-governmental entity or any Person to legally challenge, directly or indirectly, the degree or manner of mutual co-operation by any of the Parties.
- 3.2 The Parties recognize that there may be additional determinations or assessments with respect to the requesting Party that are specifically required by a requested Party’s Laws and Regulations before that requested Party may provide Information to the requesting Party. In order to make such determinations or assessments, the requested Party may require certain relevant Information and assurances from the requesting Party.
- 3.3 This MMOU operates in relation to a request by one or more Parties to another Party or Parties only to the extent that it is consistent with the terms of any bilateral or other multilateral arrangements between those Parties in relation to Audit Oversight and does

not supersede or amend any such bilateral or other multilateral arrangements. In the event of any inconsistency between this MMOU and such other arrangements, the bilateral or other multilateral arrangement will prevail.

- 3.4 This MMOU does not prohibit any of the Parties from taking measures with regard to Audit Oversight that are different from or in addition to the measures set forth in this MMOU.
- 3.5 The Parties recognize that transfers of personal data pursuant to this MMOU will be in compliance with their applicable Laws and Regulations for the protection of personal data, and that prior to any transfer, the Parties may need to conclude bilateral data protection agreements or ensure that data that may identify, directly or indirectly, a natural person (personal data) will not be a part of any Information transferred. This MMOU does not constitute consent on behalf of any natural person to the disclosure by a Party to another Party, or to any third party, of any personal data which is protected from disclosure under the Laws and Regulations of the jurisdiction of a Party.

4. Scope of co-operation

- 4.1 In general, this MMOU covers the exchange of Information between Parties for the purposes permitted or required by their Laws and Regulations, including Inspections, Investigations, Enforcement and/or Registration.
- 4.2 The Parties will endeavour to provide each other with the fullest assistance permissible in facilitating the exchange of Information to secure compliance with their respective Laws and Regulations in respect to Audit Oversight.
- 4.3 Cooperation under this MMOU may include:
 - (a) providing Information held by the requested Party regarding the matter set forth in the request for Information under Chapter 5; and
 - (b) when the Information is not already held by the requested Party:
 - (i) obtaining Information upon request of the requesting Party where permitted by the requested Party's Laws and Regulations, or alternatively,
 - (ii) using best efforts to assist the requesting Party to obtain Information regarding the matter set forth in the request for Information under Chapter 5, and, where permitted by the requested Party's Laws and Regulations, to facilitate the direct transfer of Information from the Auditor or other relevant Person(s) within the requested Party's jurisdiction.

5. Requests for Information

- 5.1 Requests for Information under this MMOU will be made in writing (including by e-mail) and addressed to an appropriate contact of the requested Party. In urgent circumstances, requests for Information may be made orally, and if required by the requested Party, such communication may be confirmed subsequently in writing.

- 5.2 Requests for Information will include the following:
- (a) the Information requested;
 - (b) the purpose for which the Information will be used;
 - (c) the reasons why the Information is needed, including any pertinent facts underlying the request and, if applicable, the relevant provisions that may have been violated;
 - (d) an indication of the date by which the Information is needed;
 - (e) any Information known to, or in the possession of, the requesting Party that might assist the requested Party in identifying either the Persons believed to possess the Information sought or the places where such Information may be obtained;
 - (f) an indication of any special precautions that should be taken in collecting the requested Information due to investigatory considerations, including the sensitivity of such Information;
 - (g) an indication of whether the Information might, consistent with what the Party has disclosed as part of the Assessment Process (Annex C), be used for another purpose or onward shared under the provisions of Chapter 7, or made public under section 8.5, if no bilateral arrangements are in place.
- 5.3 The Parties recognize the importance of providing prompt and timely co-operation and exchange of Information for the purposes of Audit Oversight.

6. Execution of the request

- 6.1 Each request will be assessed on a case-by-case basis by the requested Party to determine the fullest extent of Information that can be provided under the terms of this MMOU and the procedures applicable in the jurisdiction of the requested Party. In any case where the request cannot be met in full within the desired time period, the requested Party will consult with the requesting Party to determine if there are alternative ways to meet the Audit Oversight objectives of the requesting Party.
- 6.2 A request for Information may, in particular, be denied by the requested Party where the request would require the requested Party to act in a manner that would violate its Laws and Regulations or the request is not made in accordance with the provisions of this MMOU.
- 6.3 Where a requested Party denies or is unable to provide all or part of the requested Information, the requested Party will identify the Information withheld, provide the reasons for not granting the Information, and consult according to section 9.1 with the requesting Party to determine if there are alternative ways to meet the Audit Oversight objectives of the requesting Party.

7. Permissible Use of Information and Onward Sharing

Any Information received in the course of co-operation for Audit Oversight purposes under this MMOU will not be used for any other purposes or onward shared (including use or onward sharing for criminal proceedings), except where:

- (a) the use of Information for other purposes and/or onward sharing is addressed in a bilateral arrangement between the Parties; or,
- (b) the requesting Party has obtained prior written consent from the requested Party for the use of Information for other purposes and/or for any onward sharing of such Information.

8. Confidentiality

8.1 Each Party will hold confidential all Information received in the course of co-operating under this MMOU, and will not disclose such Information other than as provided by Chapter 7 or sections 8.5 and 8.6. In addition, each requesting Party will ensure that such confidentiality also applies to those who are or have been authorized to have access to Information according to the applicable Laws and Regulations, in particular:

- (a) persons employed, contracted by, or associated with the Party; or
- (b) persons involved in the governance of the Party.

8.2 Notwithstanding section 8.1, after notifying the requesting Party, the requested Party may disclose the fact that a request for Information has been made to the extent necessary to execute the request. The Parties may consult and agree to disclose additional details regarding the request.

8.3 Each Party will:

- (a) ensure that Information provided to it by another Party in response to a request under this MMOU is protected at least to the same extent and with the same care as it would protect its own Information of a similar nature and that it is retained and destroyed in accordance with appropriate retention policies.
- (b) establish and maintain such safeguards as are necessary and appropriate to protect the confidentiality of the Information, including storing the Information in a secure location.
- (c) comply with this MMOU and all its applicable Laws and Regulations concerning the collection, retention, storage, use and disclosure of Information; and
- (d) ensure that any natural persons as referred to in section 8.1 who are partners, employees, officers or representatives of partnerships, companies and individuals that conduct audits of financial reports and who are authorized to have access to Information obtained from another Party under this MMOU:

- (i) are bound by confidentiality requirements; and
- (ii) do not participate in a matter where a ‘reasonable person’ would conclude that they may have a conflict of interest;
- (iii) receive Information in relation to a matter where they may have a conflict of interest only when that Information can be effectively anonymised; or
- (iv) are subject to other appropriate procedures to protect the Information and address any possible conflict of interest.

8.4 The provision of Information by a Party pursuant to this MMOU does not negate or waive any confidentiality or privilege that might otherwise attach to such Information.

Exceptions to confidentiality

8.5 A Party may issue its own public inspection reports that include Information received under this MMOU or in accordance to 3.5 under additional data protection agreements as permitted or required by its Laws and Regulations, including public reports that identify the Auditor inspected and the inspection results, but do not identify the names of the audit clients reviewed. Before issuing public inspection reports, the Party will give prior notice of the publication to the other Party if its Laws and Regulations do not prohibit such notice.

8.6 A Party may also publicly announce its jurisdiction’s sanctions – including disciplinary measures - imposed upon Auditors as permitted or required by its Laws and Regulations. Before publicly announcing any sanctions imposed on an Auditor that is located in the other Party’s jurisdiction, and subject to the other Party’s authority, the Party will give prior notice of the announcement to the other Party if its Laws and Regulations do not prohibit such notice.

9. Consultations

9.1 In the case of specific requests made pursuant to this MMOU, the requesting Party and requested Party will consult with one another as necessary, for example, where a request for Information or consent for onward sharing may have been denied according to section 6.2 or Chapter 7 respectively. If it appears that responding to a request will involve a substantial cost to or administrative burden for the requested Party, the Parties will seek to narrow the request or may agree to cost sharing arrangements. In all consultations, the Parties will endeavour to co-operate to the fullest extent possible, keeping in mind that Audit Oversight is established to serve the public interest and protect investors in global markets. A request may be denied where consultation does not lead to a resolution. In such case, a requesting Party may take measures as provided in section 3.4.

9.2 The Parties may periodically consult on issues related to the matters covered by this MMOU and otherwise exchange views and share experiences and knowledge gained in the discharge of their respective duties to the extent consistent with their respective Laws and Regulations and will consult about matters of common concern with a view to improving its operation and resolving any issues that may arise.

The Parties may, for example, consult in the event of:

- (a) a significant change in market or business conditions or in legislation where such change is relevant to the operation of this MMOU;
- (b) a demonstrated change in the willingness or ability of a Party to meet the provisions of this MMOU; and
- (c) any other circumstance that makes it necessary or appropriate to consult, amend or extend this MMOU in order to achieve its purposes.

10. Participation

- 10.1 IFIAR members may become a Party to this MMOU in accordance with the procedures set forth in the MMOU's Assessment Process (Annex C). The Assessment Process forms an integral part of this MMOU.
- 10.2 Subject to the announcement of a positive assessment, an IFIAR member will be added as a new Party under this MMOU by providing a signed copy of this MMOU to the IFIAR Secretariat.
- 10.3. Each Party agrees to notify the IFIAR Secretariat of any material change in circumstances that may be relevant to its ongoing participation in the MMOU, including changes in circumstances relating to the confidentiality of Information received from other Parties and relevant changes in the governance structure of the Party.

11. Termination

- 11.1 A Party may terminate its participation in this MMOU at any time upon written notice to the IFIAR Secretariat.
- 11.2 When a Party terminates its participation in this MMOU, co-operation and assistance by such Party with the other Parties under this MMOU will cease after having provided written notice to the IFIAR Secretariat of its termination of participation. The IFIAR Secretariat will immediately notify the other Parties to the MMOU of such termination.
- 11.3 A Party who ceases to be an IFIAR member automatically ceases to be a Party to this MMOU on the same date as the date of termination of its status as an IFIAR member, as determined under the IFIAR Charter.
- 11.4 In the event that it is considered that a Party no longer meets the requirements for continued participation in this MMOU, the Party's participation may be terminated in accordance with section 11.5. The requirements for continued participation are referred to in item 5 of the MMOU's Assessment Process (Annex C). For example, where a Party has failed to comply with provisions of the MMOU or where it contravenes the confidentiality regime, its participation may be terminated.

- 11.5 The IFIAR Officers may, after consultation with the IFIAR Advisory Council (or any successor IFIAR governing body), terminate the participation of a Party in this MMOU as described in section 11.4. In such a case, the Party's participation is terminated immediately upon the issuance of written confirmation by the IFIAR Chair to the terminated Party and to the other Parties.
- 11.6 In the event of the termination of a Party's participation in this MMOU, the Party will continue to treat Information obtained under this MMOU in the manner prescribed under Chapters 7 and 8.
- 11.7 This MMOU continues in force until superseded by a subsequent MMOU or until terminated by the members of IFIAR in accordance with the IFIAR Charter.

12. Effective date

The provisions of this MMOU become effective in relation to a Party on the date such Party executes a signed copy of this MMOU in accordance with section 10.2.

Annex A: List of the Signatories to the MMOU

Annex B: Explanatory Note

Annex C: Assessment Process

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ANNEX A

List of the Signatories to the MMOU

Signed by

[Name and title]

[Name of Regulator]

[Signature]

[Date]

The [signing EU/EEA-regulator] hereby declares that for the purposes of Article 47 of Directive 2006/43/EC, it signs the MMOU and it is effective only with regard to a signing non-EU/EEA regulator that is declared adequate (and as long as it continues to be declared adequate) by the European Commission by a Commission Decision in accordance with and for the purposes of Article 47 of that Directive.

Signed by

[Name and title]

[Name of Regulator]

[Signature]

[Date]

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ANNEX B
EXPLANATORY NOTE

(1) Purpose of the Explanatory Note

The Explanatory Note annexed to this MMOU explains why certain approaches were taken in the MMOU and how certain provisions were drafted in order to accommodate legal frameworks that may vary from signatory to signatory. Three general principles were followed in the creation of the MMOU:

- The MMOU is a framework for co-operation, and does not impose a limitation on Parties to make further co-operative arrangements;
- The MMOU seeks to maximize co-operation in a flexible approach with a goal to promote the public interest and to safeguard investors;
- The MMOU works within the scope of existing authorities so as not to require any signatory to change or act in a manner that is inconsistent with its regulatory regime.

In the event there is an inconsistency between the MMOU and the Explanatory Note, the MMOU is authoritative.

(2) Definitions

Because the MMOU includes many Parties whose terminology and scope of each definition might differ in each country, the MMOU sets forth definitions that are as neutral and generic as possible.

The term “**Auditor**” is intended to be expansive and to cover the competence of a given Party.

The definition of “**Information**” applies by its terms to non-public information “regardless of its form” meaning, for example, that if a Party to the MMOU receives information from another Party and subsequently incorporates that information into an internal working document or memorandum, the information that was received from the other Party under the MMOU and is subsequently incorporated into that document or memorandum remains subject to the provisions of the MMOU; or if a Party creates a translation of information received from another Party under the MMOU, the translation of such information would also be subject to the provisions of the MMOU.

‘**Investigations**’ is stated as a separate definition given there are jurisdictions where this is part of the enforcement-regime (i.e. Japan, USA) and other jurisdictions where it is part of the inspection-regime (for example France, the Netherlands). Including “Investigations”, “Inspections” and “Enforcement” as separate definitions makes it clear that all of these activities are covered by the MMOU.

The definition of “**Laws and Regulations**” refers to relevant competences and regulatory powers of a Party and any standards that are applicable to Auditors in its jurisdiction, and also covers any relevant restrictions on gathering, obtaining and sharing of information by that Party. This

definition is used in the MMOU to ensure that domestic and supranational Laws and Regulations are respected. For example section 6.2 of the MMOU says that a request may be denied where the request would require the requested Party to act in a manner that would violate its Laws and Regulations.

The Parties recognize that the application of the definition of a “**Party**” may differ depending on the specific effects of a non-application clause (see further paragraph 12).

(3) MMOU as a non-binding instrument, sections 3.1 and 3.4

The MMOU expressly states it does not create any legal obligations, *i.e.* it is a non-binding agreement (sections 3.1 and 3.4). It cannot override any jurisdiction’s laws or regulations and does not create any rights or obligations with respect to any of the Parties or other persons or entities. The non-binding character is also implicit throughout the MMOU through the use of non-binding words such as “may” or “should” with respect to the *framework* of co-operation. In contrast, once two or more Parties actually start co-operating under this MMOU, they have expectations that they will use best efforts to cooperate and act in accordance with the procedures set forth in the MMOU. For this reason stronger terminology – such as “will” is used with respect to the *process* of the co-operation. However, this use does not mean that the MMOU creates any enforceable rights or obligations.

(4) Additional determinations or assessments, section 3.2

The MMOU foresees that in some cases additional determinations or assessments may be needed before a Party may provide confidential information in response to a request. It is understood that, pursuant to a Party’s Laws and Regulations, it might be required to undertake an additional assessment on a case-by-case basis.

Some examples of additional determinations/assessments are:

- Where the Laws and Regulations of a requested Party require compliance with additional (legal) requirements to the general assessment process. For example, the requested Party may have to determine first whether the requesting Party has some form of responsibility over the same tasks (registration, inspections, investigations and/or enforcement) and/or exercise similar/additional competences/authority as the requested Party.
- Where a separate legal imperative may be required to be met (see sections 3.2 and 3.5 of the MMOU).

For example, the Parties of the European Union including Lichtenstein, Norway and Iceland (hereafter referred to as EU/EEA Parties) have informed the other

Parties that they may only share personal data for audit oversight purposes with non-EU/EEA Parties when:

- The jurisdiction of the non-EU/EEA Party has been subject to a positive Decision by the EC on the adequacy of protection of personal data (section 3.2);
 - The EU/EEA Party and non-EU/EEA Party have a bilateral agreement on the protection of personal data (section 3.5); or
 - When other specific requirements are met as set out in the Data Protection Directive (95/46/EC) (section 3.2).
- Where the Laws and Regulations of a Party require a case-by-case assessment of another Party's confidentiality regime and may impose additional requirements for confidentiality purposes.

Whether additional determinations or assessments may be needed by a Party, and the nature of those determinations or assessments, should be disclosed through the Assessment Process and be made available for information purposes on the Members' area of the IFIAR website.

(5) Effect of the MMOU on bilateral or multilateral arrangements, section 3.3

As noted in the general principles, the MMOU as a framework document anticipates bilateral arrangements where parties need or want to document more detailed technical points and protocols specific to their two regimes. Many IFIAR members have in place bilateral working arrangements that provide a specific level of co-operation which may include particular conditions and/or responsibilities. The MMOU is not intended to supersede, amend or interpret bilateral working arrangements that are in place or that will be negotiated in the future. Such working arrangements take precedence over the terms of the MMOU. Bilateral working arrangements are beneficial for the Parties to identify and work on specific points of cooperation that may not be provided by a multilateral arrangement.

- The EU/EEA Parties have informed the other Parties that when the MMOU is effective between an EU/EEA Party and a non EU/EEA Party according to the non-application clause (see further paragraph 12), the MMOU may be considered to serve as a working arrangement for the purposes of Article 47 Directive 2006/43/EC.

(6) Reciprocity and the need to accommodate different regulatory regimes, Chapter 4

While reciprocity is a fundamental legal principle in co-operation within many jurisdictions, the concept and application of reciprocity may vary among the Parties' jurisdictions. This does not

imply any limitations in all Parties' ability to cooperate in the exchange of information for audit oversight purposes.

Reciprocity issues under this MMOU should be resolved on a case-by-case basis between those Parties that seek to co-operate with one another (kindly refer to point (4) above about section 3.2 MMOU). Whilst some Parties may have the authority to obtain information on behalf of a foreign regulator, others may not, or they may allow a requesting Party to obtain the information directly from the Auditor. The requested Party may obtain the information or, alternatively, use best efforts to facilitate access to the information sought by the requesting Party (see section 4.3 paragraph (b)). Hence, the MMOU does not seek to define reciprocity or require it other than to set forth that each Party should be able to exchange information which is already held by the requested Party and to use best efforts to assist to obtain the information if the information is not already held by the Party, and, where permitted by the requested Party's Laws and Regulations, to facilitate direct access to that information by the other Party.

The ability of a regulator to obtain information for another regulator, or by alternative means, will be asked in the assessment process and will be duly mentioned in the Members' area of the IFIAR website for information purposes of the other Parties to the MMOU.

(7) Broadest scope possible, sections 4.2 and 4.3

The Parties to this MMOU seek to cooperate to the broadest extent possible consistent with their respective mandates and relevant Laws and Regulations in sharing non-public information for audit oversight (e.g. inspections, enforcement, and registration). In addition, the MMOU may provide a basis for the co-operation on supervisory colleges and multilateral inspections, although for these purposes the Parties may need to develop certain protocols.

(8) Denial of a request, sections 6.2 and 6.3

Section 6.2 outlines two grounds for the denial of a request. A request for information may be denied by the requested Party where the request would require the requested Party to act in a manner that would violate its Laws and Regulations or where the request is not made in accordance with the provisions of the MMOU.

Grounds to deny a request may vary from jurisdiction to jurisdiction, some examples under these general provisions may include:

- Where the provision of information would adversely affect the sovereignty, security, or public order of the requested Party;
- Where judicial proceedings have already been initiated or concluded in respect of the same actions and against the same persons in the requested Party's jurisdiction (Double jeopardy);
- Where final judgment has already been passed in respect of the same actions (for the same violations) and on the same statutory auditors or audit firms by the competent authorities of the requested Party;

- Where the protection of commercial interest of the audited entity, including its industrial and intellectual property, would be undermined;
 - Where, in accordance with section 3.2 and/or 3.5, additional determinations or assessments with respect to the requesting Party may be needed before the requested Party may exchange confidential information;
 - Where information would be provided to current practitioners as mentioned in section 8.3 (d).
- Where a request is denied or likely to be denied, either in part or in whole, the Parties should consult with each other to find any alternative ways (see section 6.3). Section 6.3 refers to Chapter 9 on consultation.

(9) Permissible use of information and onward sharing, Chapter 7

The Parties to this MMOU are subject to various legal and regulatory requirements regarding the possible use and potential onward sharing of information received from another regulator. The MMOU provides that a Party would either need (a) to negotiate a bilateral arrangement on the use of information for other purposes and/or onward sharing of information or (b) to obtain prior written consent on a case-by-case basis to use any received information for purposes other than audit oversight or to share it with other domestic regulators/third parties. Chapter 7 is intended to cover such instances as onward sharing within the same organization (e.g. an integrated audit and securities/market regulator), with other domestic regulators (including a professional body), public prosecutors and regulators in another jurisdiction. In the case where the information becomes needed for criminal proceedings, this will not be considered under this MMOU as use for audit oversight purposes. Thus, where the information received or requested by the requesting Party is intended for an onward transfer to a public prosecutor or judge to be used in criminal proceedings, this is subject to Chapter 7.

Some Parties may have under their Laws and Regulations a legal obligation to onward share information under specific circumstances (or a legal obligation to use it for other purposes). To deal with such circumstances, a bilateral agreement between the two parties could set out specific arrangements to address such situations taking into account the legislation of these involved Parties (Chapter 7 under (a)). Given the various legislative frameworks of all the Parties to this MMOU, this cannot be dealt with in the MMOU itself.

Where a Party has legal obligations to use information for another purpose and/or onward share information in certain circumstances, this should be disclosed through the Assessment Process and will be made available for information purposes on the Members' area of the IFIAR website. This allows any Party in advance to assess the need for a bilateral agreement as mentioned in Chapter 7 with that Party before it decides to transfer any information to that Party under this MMOU.

When information is received under this MMOU from Party (A) and the receiving Party (B) wants to transfer the information to another Party (C) under this MMOU (onward sharing), Chapter 7 is applicable. However, if such a situation occurs, Party (C) should, as a principle, request information directly from Party (A).

(10) Confidentiality, Chapter 8

The sensitivity of information relating to audit oversight is well recognized. Disclosure of such information may cause financial and business implications to the audit client or the Auditor, may undercut administrative or even criminal actions, and may affect capital markets. Consequently, it is important for the Parties to ensure there are adequate safeguards in place to maintain the confidentiality of information exchanged. The MMOU gives prominence to confidentiality for these reasons.

The Chapter of the MMOU on confidentiality does not expressly consider the matter of sharing information with a professional body. Rather, Chapter 7 on permissible use and onward sharing is intended to cover such instances. If a requesting Party seeks to share information with a professional body, it will need to either obtain prior consent or enter into a bilateral arrangement with the requested Party.

Sections 8.5 and 8.6 refer to the issuing of public inspection reports or sanctions of *the requesting Party's own jurisdiction* and requires prior notice of publication to the extent a Party's Laws and Regulations permit. If the requesting Party does not have that authority to provide prior notice before it issues its own reports or sanctions, this should be disclosed to all Parties through the Assessment Process, and posted in the Members' area of the IFIAR website, so that the requested Party can take this into account when considering the request. Where permitted by a requesting Party's Law and Regulations, the prior notice may, upon request, identify the extent to which any information shared by the requested Party is published. Through the Assessment Process a Party should disclose its authority and/or requirements to publish inspection reports and announce sanctions that include personal data.

(11) Consultation, Chapter 9

Chapter 9 provides the basic mechanism for the Parties to resolve, conflicts of law, conflicting demands or varying mandates through consultation. Although, section 9.1 addresses the situation where a request would burden the requested Party disproportionately (in cost or administrative burden) and triggers consultation with the requesting Party, it may also, amongst other matters, include situations provided in sections 6.2 and 6.3. The reference to cost or burden is to the *Party* and should not reflect the cost or burden to the *Auditor* which may bear the costs of copying, reviewing and redacting, etc. as a compliance cost. It is understood that as the number of requests for information increase, there will be costs and burdens. As a general rule, all Parties should benefit from the co-operation framework and requested Parties should bear their own costs. It is recognized, however, that some requests, may involve substantial costs or administrative burdens

on the resources of the requested Party, and therefore could be an appropriate subject for consultation.

(12) Aim, effect and operation of a non-application clause

The MMOU provides a generic framework for cooperation in the exchange of information without mentioning any specific regime of a certain Party or Parties. Within the definition of “Laws and Regulations” (see above under (2)) the mandate of each Party involved will be decisive for the application of this MMOU in a certain case. However, an exception to this approach is made for the Parties of this MMOU that are EU/EEA-regulators.

The EU/EEA Parties have informed the other Parties that an EU/EEA Party only enters into a working arrangement for information exchange and shares certain information with non-EU/EEA regulators after - and as long as - the European Commission (EC) declares that regulator adequate for the purposes of Article 47 of Directive 2006/43/EC (Directive). Since that adequacy assessment is done by the EC before the MMOU is effective between an EU/EEA Party and a non-EU/EEA Party, the requirement is covered by the EU/EEA Parties signing with a non-application clause whereby the MMOU as a whole would not be effective as between an EU/EEA Party and any non-EU/EEA Party that had not been declared adequate by the EC. This means that the MMOU does not apply in relation to ‘non-adequate third country’ Parties regarding information under the scope of Article 47 of the Directive 2006/43/EC.

This non-application clause will have the effect that, according to the abovementioned information, the MMOU can only operate—and therefore only information can be exchanged—amongst Parties within each of the following groups:

- (1) EU/EEA Parties;
- (2) EU/EEA Parties and non-EU/EEA Parties that have been declared adequate by the European Commission through the adoption of an EC Decision;
- (3) non EU/EEA Parties.

In other words, EU/EEA Parties are only considered as Parties as to an adequate declared non-EU/EEA Party and only so long as the non-EU/EEA Party continues to be declared adequate. Conversely, a non-EU/EEA Party that is not or no longer declared adequate by an EC Decision is not considered as a Party in relation to an EU/EEA Party.

The Assessment Group (as referred to in paragraph 4 of Annex C of the MMOU) may, on request, review the possibility for other non-application clauses. The use of non-application clauses should be consistent with the overall spirit of the MMOU to promote cooperation in the exchange of audit oversight information between audit regulators and limited to compelling circumstances, such as where laws and Regulations would prohibit cooperation with a particular regulator or where the overall relationship with a particular regulator would make cooperation

under the MMOU impossible to implement in practice. It is understood that any non-application clause will operate mutually, ensuring that neither the Party signing with a non-application clause nor the Party or Parties that are intended to be within its scope have any requirement under the MMOU to exchange information with one another, though the non-EU/EEA Party may elect to continue to share information on a voluntary basis despite the lack of reciprocity where it protects investors.

MULTILATERAL MEMORANDUM OF UNDERSTANDING
CONCERNING CO-OPERATION IN THE EXCHANGE OF INFORMATION
FOR AUDIT OVERSIGHT

INTERNATIONAL FORUM OF INDEPENDENT AUDIT REGULATORS

ANNEX C
ASSESSMENT PROCESS

Eligibility to become a Signatory to the MMOU

1. All IFIAR Members are eligible to apply to become a Signatory (“Signatory”) to the MMOU subject to the procedures set out below.

Application process

2. Any IFIAR Member who wishes to sign the MMOU (“Applicant”) may apply to become a Signatory by submitting an application letter, signed by a duly authorized representative of the IFIAR Member and submitted to the IFIAR Secretariat. The application letter should be accompanied by a full set of assessment documentation, consisting of a completed application questionnaire including copies of applicable laws, regulations, and other governing instruments (e.g., administrative guidance, codes of ethics, etc.) that support the responses to the questionnaire and any additional material that the Applicant would like to submit in support of its application. The assessment documentation should be provided in English.
3. The IFIAR Secretariat will notify the Applicant that its application has been received and that a review process will be carried out by the Assessment Group referred to below in paragraph 4. The application will be reviewed only after the Assessment Group confirms that the application questionnaire has been filled out in full and the required assessment documentation has been attached.

Assessment process

4. The assessment process will be carried out by an “Assessment Group” established and directed by the International Cooperation Working Group (ICWG), in collaboration with the Enforcement Working Group (EWG), as appropriate. The Assessment Group will review each application and then make a recommendation to the Officers based on this review as to whether the Applicant should be invited to become a Signatory.
5. The Assessment Group review will be based on the group’s assessment of the ability of the Applicant to comply fully with the MMOU provisions, in particular with respect to the rigor of its confidentiality regime and its ability to exchange information and to ensure that any information it uses for other purposes or any information it onward shares under this MMOU will be under the application of Chapter 7 of the MMOU and be maintained confidential in accordance with Chapter 8.
6. The Assessment Group may establish subgroups and may call on assistance outside of the group, to assist in its review process. In addition, the Assessment Group may look to the IFIAR Secretariat for assistance and support. The Assessment Group will ensure that no IFIAR Member participates in a review of its own application.

7. The Assessment Group may seek such information from the Applicant and from other IFIAR Members as it deems necessary to carry out the review.
8. Whenever the Assessment Group believes there is insufficient evidence to support a positive recommendation or is otherwise unable to support a positive recommendation, it will notify the Applicant in writing of the status of its application and the reasons therefore, highlighting the specific MMOU provisions with which the Applicant appears to be unable to comply. If desired, the Applicant may request a further discussion with the full Assessment Group following such written notification and prior to the Assessment Group notifying the Officers of its recommendation.

Decision Making Process

9. With respect to the assessment review of potential initial Signatories, the Officers shall request that applications be submitted by a date certain. All applications received by such date will be reviewed simultaneously by the Assessment Group. Upon completion of the reviews, all applications will be forwarded at the same time to the Officers along with the recommendations of the Assessment Group, both positive and negative, and the relevant assessment documentation. The Officers, after consultation with the Advisory Council¹, will notify the IFIAR membership as a whole of those applications having received positive recommendations from the Assessment Group, giving them 15 calendar days to object. Provided there is no objection by any IFIAR Member to these positive recommendations, the Officers will invite the initial Applicants having received positive recommendation to sign the MMOU. If there is an objection to any of the applications, the Officers will consult with the relevant parties to resolve the matter, which may include returning any of the applications to the Assessment Group for further review. If the matter cannot be resolved, any Applicant having a negative recommendation or receiving an objection may ask for a decision by the Members under Section 3.1.E of the IFIAR Charter. Upon resolution of the matter either through consultation or by decision, the Officers will invite the Applicants to sign the MMOU.
10. For any subsequent application, the Assessment Group shall provide to the Officers the recommendation, positive or negative, of the Assessment Group. The Officers, after consultation with the Advisory Council, will notify the Applicant and Signatories of the recommendation of the Assessment Group, giving them 15 calendar days to object. The Officers will also make the assessment documentation and recommendation available to all

¹ Any reference to the Advisory Council in this document also refers to any successor IFIAR governing body.

IFIAR Members at the same time they are provided to the Applicant and Signatories. Provided there is no objection to a positive recommendation by any Signatory, the Officers will invite the Applicant having received the positive recommendation to sign the MMOU.

11. Where an objection to a recommendation (in writing and with stated reasons for such objections) has been raised by one or more Signatories or (by an Applicant to a negative recommendation), the Officers will consult with the relevant parties to resolve the matter, which may include returning the application to the Assessment Group for further review. At their discretion, the Officers may also take into consideration any issues raised by non-Signatories. If there are objections and the matter cannot be resolved, the Applicant may ask for a decision by the Signatories, which will require the consent of at least 90 percent of the Signatories. Upon resolution of the matter either through consultation or by decision, the Officers will invite the Applicant to sign the MMOU.
12. If its application has been denied, an Applicant may re-apply to become a Signatory, in accordance with the procedure above, once it has taken the necessary steps to address satisfactorily the reasons for the denial of its application during the previous assessment process.
13. MMOU Annex A will be maintained to list all IFIAR Members that are Signatories.

Procedure for the monitoring of the operation of the MMOU and the ongoing assessment

14. To ensure that the MMOU continues to achieve its objectives to promote cooperation amongst the Signatories and that its provisions are being properly observed and implemented, this MMOU may be reviewed in light of evolving international practices on cooperation in the exchange of information as well as on any feedback received by the Signatories. Such review will be carried out by the Assessment Group.
15. In order to ensure continuous compliance with the provisions of the MMOU, the Signatories should update as appropriate their assessment documentation that will be posted on the members only section of the IFIAR website and notify immediately the IFIAR Secretariat of any material changes in relevant domestic laws and regulations (including administrative guidance, codes of ethics, etc.) that may affect their ability to cooperate within the MMOU.
16. The Assessment Group may review any assessment recommendation:
 - a. Based on any changes in the relevant domestic laws, regulations, guidance, codes, etc. of a Signatory;

- b. If any considerations are presented or concerns raised by a Signatory that another Signatory may no longer meet the terms of the MMOU; or
- c. If it deems it necessary for any other reason.

17. If, based on the review of the Assessment Group, it is determined that a Signatory can no longer comply with the terms of the MMOU, the participation of the Signatory in the MMOU may be terminated by the Officers according to section 11.5 of the MMOU.