MULTILATERAL MEMORANDUM OF UNDERSTANDING

CONCERNING CO-OPERATION IN THE EXCHANGE OF INFORMATION

INTERNATIONAL FORUM OF INDEPENDENT AUDIT REGULATORS

FOR AUDIT OVERSIGHT

Application questionnaire and documentation

Version dated March 21, 2017

**Application questionnaire**

**General instructions**

**Please read these instructions carefully and feel free to contact Doug Niven or your contact-person of the assessment group if you have questions.**

While certain provisions of the MMOU imply particular requirements for the signatories, other provisions offer options to the signatory. The aim of this questionnaire is to demonstrate the ability of the applicant to comply with the requirements under the MMOU.[[1]](#footnote-1) Particular focus is given with respect to an applicant’s ability to exchange Information (part 2), its legal framework concerning the use and onward sharing of Information (part 3 and 4), and the rigor of its confidentially regime (part 5). To receive a positive recommendation, the overall outcome of the questions for each of the parts 1-5 should be positive. The answers to the sub-questions of each part should give a clear picture of the applicant’s ability to provide Information under this MMOU and to maintain the confidentiality of the Information.[[2]](#footnote-2)

Kindly take note that the answers provided to the questions highlighted in green in this questionnaire are generally for information purposes rather than for determining whether an applicant may participate in the MMOU. Nonetheless, the answers should be precise and complete for bilateral, rather than multilateral, information purposes to all other signatories during the operation of the MMOU (for example, this information may indicate whether an additional bilateral agreement with a signatory would be needed). Some of the answers to the questionnaire are expected to identify any specific domestic rules that the applicant would need to apply in the context of cooperation arrangements and should be highlighted for the attention to other IFIAR signatories (part 6 and the other green questions in parts 2-5).

Please provide a complete response to each question, and copies of applicable Laws and Regulations,[[3]](#footnote-3) and other governing instruments (e.g. administrative guidance, codes of ethics, etc.) that support the responses and any additional material that the applicant would like to submit in support of its application. Examples of other documents may include a copy of the updated IFIAR Membership Profile, the applicant’s latest Annual Report, organisational charts explaining the structure of the applicant and, if possible, a copy or a website URL to any applicable bilateral agreements. All responses and attached documentation should be provided in English, accompanied by a cover letter with the signature of an appropriate representative of the applicant, and sent to the IFIAR Secretariat.

Completed questionnaires will be reviewed consistent with the MMOU Assessment Process (Annex C). Please note that the provided responses and attached documents will be published on the members-only section of the IFIAR website. Please be aware that your organization should inform the IFIAR Secretariat in the event of any material change as mentioned in section 10.3 of the MMOU. We kindly request you to use your previous application, and highlight the changes in that application.

**p a r t 1 Contact Information**

|  |  |
| --- | --- |
| **Date of application** |  |
| **Jurisdiction** |  |
| **Organization** |  |
| **Contact Person** |  |
| **Title** |  |
| **Email address** |  |
| **Telephone** |  |

**P A R T 2 Authority to provide INFORMATION**

|  |
| --- |
| **DOES THE APPLICANT HAVE the AUTHORITY TO provide INFORMATION under this mmou?** |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Relevant MMOU Provision** | **Question** | **Answer** | **Specify the relevant provisions in your laws, regulations or other governing instruments[[4]](#footnote-4) that would support your answer** |
| 1. | Sect. 4.3 (a) | Please identify and explain the provisions of your Laws and Regulations that enable you to provide Information held by your organization to another Party under this MMOU. |  |  |
| 2. | Sect. 4.3 (b) (i) | When information is not already held by your organization, would your organization have the ability to obtain and provide Information from the Auditor or from a relevant Person(s) (issuer, domestic authority, etc.) within your jurisdiction upon request of a requesting Party? | YES  (Please describe)  N NO  It depends  (Please explain) |  |
| 3. | Sect. 4.3 (b) (ii) | Would your organization be able to provide assistance to a requesting Party in obtaining Information and, where permitted by your Laws and Regulations, in facilitating the direct transfer of Information from the Auditor or other relevant Person(s) within your jurisdiction? | YES  (Please describe)  N NO  It depends  (Please explain) |  |
| 4. | Sect. 6.2 | Please indicate and explain any provisions of your Laws and Regulations that may lead to a denial of a request for Information by your organization. |  |  |

**P A R T 3 internal use for purpose other than audit oversight**

|  |
| --- |
| **DESCrIPTION OF APPLICANTS’ LEGAL FRAMEWORK regarding ITS INTERNAL USE OTHER THAN AUDIT OVERSIGHT**[[5]](#footnote-5) |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Relevant MMOU Provision** | **Question** | **Answer** | **Specify the relevant provisions in your laws, regulations or other governing instruments that would support your answer** |
| 5 | Chapter 7 and Explanatory Note § 9 | Does your organization have legal obligations to use[[6]](#footnote-6) Information for purposes other than Audit Oversight? | YES  (Please explain)  N NO  It depends  (Please explain) |  |
| 6 | Chapter 7 and Explanatory Note, § 9 | Does your organization have discretionary powers to use Information for purposes other than Audit Oversight? | YES  (Please describe)  N NO  (Please explain)  It depends  (Please describe) |  |
| 7 | Chapter 7 | Are there cases where your Laws and Regulations do not allow your organization to ask for prior consent, before you use Information received under this MMOU for other purposes? | YES  (Please explain)  N NO  (Please explain)  It depends  (Please explain) |  |
| 8 | Chapter 7 | If your organization has discretionary powers to use Information for other purposes than Audit Oversight, will you seek prior consent from the MMOU Party providing the Information before using the Information for purposes other than Audit Oversight? | YES  (Please describe)  N NO  (Please explain)  It depends  (Please describe)  Not applicable  (Please describe) |  |
| 9 | Chapter 7 | If so, is your organization able and willing not to use the Information for purposes other than Audit Oversight, if prior consent was withheld by the MMOU Party that provided the Information? | YES  (Please describe)  N NO  (Please explain)  It depends  (Please describe)  Not applicable  (Please describe) |  |

**P a r t 4 Onward sharing of information with Third Parties**[[7]](#footnote-7)

|  |
| --- |
| **4-1 DESCrIPTION OF APPLICANTS’ LEGAL FRAMEWORK regarding onward sharing for audit oversight purposes** |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | | **Relevant MMOU Provision** | **Question** | **Answer** | **Specify the relevant provisions in your laws, regulations or other governing instruments that would support your answer** |
| 10 | | Chapter 7 and Explanatory Note, § 9 | Does your organization have legal obligations to onward share Information for Audit Oversight purposes? | YES  (Please explain and list the third parties concerned)  N NO  It depends  (Please explain and list the third parties concerned) |  |
| 11 | | Chapter 7 and Explanatory Note, § 9 | Does your organization have discretionary powers to onward share Information for Audit Oversight purposes? | YES  (Please describe and list the third parties concerned)  N NO  (Please explain)  It depends  (Please describe and list the third parties concerned) |  |
| 12 | | Chapter 7 | Are there cases where your Laws and Regulations do not allow your organization to ask for prior consent, before you onward share Information received under this MMOU for Audit Oversight purposes? | YES  N NO  (Please explain) |  |
| 13 | | Chapter 7 | To the extent that Laws and Regulations allow your organization to ask for prior consent before onward sharing of Information received under the MMOU for Audit Oversight purposes, are you willing to ask for prior consent? | YES  (Please describe)  N NO  (Please explain)  It depends  (Please describe)  Not applicable  (Please describe) |  |
| 14 | Chapter 7 | | If so, is your organization able and willing not to onward share the Information, if prior consent was withheld by the MMOU Party that provided the Information? | YES  (Please describe)  N NO  (Please explain)  It depends  (Please describe)  Not applicable  (Please describe) |  | |
| 15 | Chapter 8 | | Do you confirm that any Information onward shared for Audit Oversight purposes will be maintained confidential in accordance with Chapter 8. | YES, I confirm.  (Please describe)  N NO, I don’t.  (Please explain)  I It depends  (Please explain) |  | |

|  |  |
| --- | --- |
|  | **4-2 DESCrIPTION OF APPLICANTS’ LEGAL FRAMEWORK regarding onward sharing for other purposes than audit oversight** |

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | **Relevant MMOU Provision** | | **Question** | | **Answer** | | **Specify the relevant provisions in your laws, regulations or other governing instruments that would support your answer** |
| 16 | Chapter 7 and Explanatory Note, § 9 | | Does your organization have legal obligations to onward share Information for other purposes than Audit Oversight purposes? | | YES  (Please explain and list the third parties concerned)  N NO  It depends  (Please explain and list the third parties concerned) | |  |
| 17 | Chapter 7 and Explanatory Note, § 9 | | Does your organization have discretionary powers to onward share Information for other purposes than Audit Oversight purposes? | | YES  (Please describe and list the third parties concerned)  N NO  (Please explain)  It depends  (Please describe and list the third parties concerned) | |  |
| 18 | | | Chapter 7 | | Are there cases where your Laws and Regulations do not allow your organization to ask for prior consent before you onward share Information received under this MMOU for purposes other than Audit Oversight? | YES  (Please describe)  N NO  (Please explain)  It depends  (Please describe) |  | |
| 19 | | | Chapter 7 | | To the extent that Laws and Regulations allow your organization to ask for prior consent before onward sharing of Information received under the MMOU for purposes other than Audit Oversight, are you willing to ask for prior consent? | YES  (Please describe)  N NO  (Please explain)  It depends  (Please describe)  Not applicable  (Please describe) |  | |
| 20 | | |  | | If so, is your organization able and willing not to onward share the Information, if prior consent was withheld by the MMOU Party that provided the Information? | YES  (Please describe)  N NO  (Please explain)  It depends  (Please describe)  Not applicable  (Please describe) |  | |
| 21 | | | Chapter 8 | | Do you confirm that any Information onward shared for other purposes than Audit Oversight will be maintained confidential in accordance with Chapter 8? | YES, I confirm.  (Please describe)  N NO, I don’t.  (Please explain)  It depends  (Please describe) |  | |
| 22 | | | Paragraph 9 MMOU Explanatory Note, p.26 | | If your organization is an EU/EEA audit oversight authority, do you confirm your willingness to follow the procedure as outlined in paragraph 9 of the MMoU-Explanatory Note (p.26)? That is, while EU/EEA audit oversight authorities have a certain obligation to cooperate with each other, Information received under the MMoU would not be onward shared to other EU/EEA audit oversight authorities (EU/EEA Parties under this MMOU) without prior consent of the MMOU Party that provided the information. In such cases, you would refer the other EU/EEA audit oversight authority directly to the MMOU Party that provided the Information. | YES  (Please describe)  N NO  (Please explain)  It depends  (Please describe)  Not applicable  (Please describe) |  | |

**p a r t 5 Confidential treatment of the information**

|  |
| --- |
| **DOES the Applicant HAVE THE AUTHORITY to comply with the confidentiality-regime of Chapter 8 mmou?** |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Relevant MMOU Provision** | **Question** | **Answer** | **Specify the relevant provisions in your laws, regulations or other governing instruments that would support your answer** |
| 23 | Sect. 8.1 | Please identify and explain the confidentiality requirements that apply to your organization and those who are or have been authorized to have access to Information according to the applicable Laws and Regulations, including, in particular:  (a) persons employed, contracted by, or associated with your organization;  (b) those involved in the governance of your organization. | (Please describe) |  |
| 24 | Sect. 8.1 | Is there a system of penalties and sanctions in place in your jurisdiction in the event where your organization or the other Persons mentioned in question 22 breach the confidentiality requirements? | YES  (Please describe)  N NO, there isn’t. |  |
| 25 | Sect. 8.2 | Do you confirm that you will notify the requesting Party before you disclose the fact that a request for Information has been made under this MMOU? | YES, I confirm.  N NO, I don’t.  (Please explain) |  |
| 26 | Sect. 8.3 (a) | Do you confirm that under your laws and regulation Information received under this MMOU will be protected and treated at least to the same level and extent as your own organization’s Information. | YES, I confirm.  (Please describe)  N NO, I don’t.  (Please explain) |  |
| 27 | Sect. 8.3 (a) | Please outline the retention and destruction policies that apply to Information received under this MMOU. | (Please describe) |  |
| 28 | Sect. 8.3(b) | Please outline the safeguards in place within your organization to protect the confidentiality of the Information, including storing the Information in a secure location (including IT systems). | (Please describe) |  |
| 29 | Sect. 8.3(d) | Does your organization allow auditors who are partners, employees, officers or representatives of partnerships, companies and individuals that conduct audits of financial reports, to become part of your organization as referred to in section 8.1 (a) or (b) MMOU? | YES  (Please describe)  N NO  (Please proceed to question 26) |  |
| 30 | Sect. 8.3(d) | If you answered YES to question 22, are those auditors authorized to have access to Information obtained under this MMOU? | YES  N NO |  |
| 31 | Sect. 8.3 (d) (i) | If you answered YES to question 29, please explain the system in place to guarantee the confidential treatment of the Information. | (Please describe) |  |
| 32 | Sect. 8.3 (d) (ii) – (iv) | If you answered YES to question 29, please explain the system in place to avoid and address any possible conflicts of interest in accordance with section 8.3(d) MMOU. | (Please describe) |  |
| 33 | Exceptions to confidentiality | Please explain:  (a) whether disclosure under Freedom of Information legislation applies;  (b) whether you would need to disclose of a request for Information under the MMoU to an interested party (e.g. the auditor) and, if so, would first you discuss this with the requesting Party under the MMOU; and  (c) whether you can be obliged to disclosure Information to courts. | (Please describe) |  |

**P a r t 6 Other Relevant information**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Relevant MMOU Provision** | **Question** | **Answer** | **Specify the relevant provisions in your Laws, Regulations or other governing instruments that would support your answer** |
| 34 | Sect. 3.2 | Does your organization require any additional determination or assessment to be performed with respect to a requesting Party before your organization may provide Information to that requesting Party under this MMOU? | YES  (Please explain)  N NO |  |
| 35 | Sect. 3.5 | Does your organization, prior to any transfer, need to conclude bilateral data protection agreements or ensure that personal data that may identify, directly or indirectly, a natural person will not be a part of any Information transferred? | YES  (Please explain)  N NO  It depends  (Please explain) |  |
| 36 | Sect. 8.5, 8.6 Explanatory Note, § 10 | Does your organization have the authority and/or requirements to publish inspection reports and/or announce sanctions *that include personal data*?[[8]](#footnote-8) | YES  (Please describe)  N NO  It depends  (Please explain) |  |
| 37 | Sect. 8.5 | Will your organization give prior notice of a publication as mentioned in section 8.5 MMOU? | YES  (Please explain)  N NO  It depends  (Please explain) |  |
| 38 | Sect. 8.6 | Will your organization give prior notice of a publication as mentioned in section 8.6 MMOU? | YES  (Please explain)  N NO  It depends  (Please explain) |  |

1. Where an IFIAR member is represented by more than one authority, it must decide whether to submit the questionnaire jointly or separately:

   1. If jointly: the authorities shall fill in a joint questionnaire highlighting the specificities of their organizations and will sign the MMOU as **one Party**;
   2. If separately: each authority shall fill in its separate responses to this questionnaire and each will be considered a separate applicant (and consequently, a separate Party under the MMOU).

   [↑](#footnote-ref-1)
2. The definitions of specific terms used in this questionnaire correspond with those set out under the MMOU. [↑](#footnote-ref-2)
3. In the event of a substantial change in your applicable laws and regulations that are likely come into effect within one year following the submission of this application, kindly specify the likely changes as clearly as possible in comparison with your current legal framework. [↑](#footnote-ref-3)
4. Please provide a complete response to each question, and copies of parts of applicable laws, regulations, and other governing instruments (e.g. administrative guidance, codes of ethics, etc.) to support your responses and any additional material that you would like to submit in support of your application. All assessment documentation should be provided in English. [↑](#footnote-ref-4)
5. This part on internal use of Information does only cover cases where the applicant would want to use the Information *within its own organization* for other matters than Audit Oversight (e.g. in particular integrated authorities). In the case where the Information becomes needed for criminal proceedings, this is not be considered as use for Audit Oversight purposes under this MMOU. [↑](#footnote-ref-5)
6. See footnote 5: this part of the questionnaire deals only with other use within your own organization, for example the use by another department for securities oversight purposes. See Part 4 and 5 for questions regarding onward sharing to another authority. [↑](#footnote-ref-6)
7. These questions in part 4 on onward sharing differentiate between onward sharing for Audit Oversight purposes (part 4-1) (e.g. onward sharing to administrative/civil/disciplinary courts or tribunals in cases where the enforcement is not within the Signatory Organization) and onward sharing for other purposes than Audit Oversight (part 4-2) (e.g. onward sharing to financial markets supervisory authorities). In the case where the Information becomes needed for criminal proceedings, this will not be considered under the MMOU as use/onward sharing for Audit Oversight purposes and requires either prior consent or a bilateral arrangement. [↑](#footnote-ref-7)
8. Personal data is data that may identify, directly or indirectly, a natural person. [↑](#footnote-ref-8)