

IRISH AUDITING & ACCOUNTING SUPERVISORY AUTHORITY
ENQUIRIES PURSUANT TO SECTION 933, 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 933A 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 Prescribed Accountancy Body has not complied with certain procedures, the Authority may enter into an agreement (a “**Settlement Agreement**”) to resolve the matters the subject of the non-compliance.
- 1.2 The Settlement Agreement must be entered into prior to a full enquiry 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 any non-compliance by a Prescribed Accountancy Body until the matter has been referred to full enquiry. Thereafter, any Settlement Agreement must be approved by the Enquiry Committee in order to take effect.
- 1.3 The terms of the Settlement Agreement are binding on the Authority and the relevant body.

2. The Authority’s Approach to Settlement

- 2.1 This settlement process offers both the Authority and the relevant body a means of achieving early resolution of the matter. Early settlement is an efficient use of the Authority’s resources and provides timely resolution of matters. Where settlement is agreed, it results in the avoidance of additional costs and the administrative burden of holding a full enquiry.
- 2.2 The settlement process is voluntary, and any party may withdraw at any stage.
- 2.3 The Authority considers that, in certain cases, it may be appropriate to enter into an agreement to resolve the matters that are the subject of the non-compliance. 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 sanctions, whether all concerns have been addressed to the Authority’s satisfaction, and any other relevant considerations.
- 2.4 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 non-compliance including:
 - i. the duration and the frequency of the non-compliance;
 - ii. whether the non-compliance reveals serious or systemic weaknesses within the relevant body; and
 - iii. the extent to which the non-compliance departs from the approved investigation and disciplinary procedures or applicable provisions as relevant;
 - b) the conduct of the relevant body after the non-compliance occurred or was identified:
 - i. the degree of co-operation with the Authority;
 - ii. any remedial steps (whether taken promptly or otherwise) taken since the non-compliance was identified, and
 - iii. the likelihood that the same type of non-compliance will recur if no sanction is imposed;
 - c) the previous record of the relevant body; and
 - d) any other relevant considerations.

- 2.5 The Authority expects that the relevant body will admit the contravention(s).
- 2.6 There is no obligation on the Authority to engage in communications to reach settlement or to settle once such communication has commenced.
- 2.7 The Authority will decide in its sole discretion whether a particular case is suitable for settlement. The settlement process runs in parallel with the enquiry process and it should be noted that an indication of willingness to enter into settlement discussions by the relevant body does not cause the suspension of the enquiry process.
- 2.8 The Authority may engage in negotiations on a without prejudice basis or 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 enquiry 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.

3. Commencement of the settlement process

- 3.1 The Authority may issue a letter offering the possibility of settlement (the "Settlement Letter") to the relevant body. 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 information to understand the nature and extent of any non-compliance, to enable it to make an assessment of the suitability or otherwise of the matter being dealt with by settlement.

4. Settlement Agreement

- 4.1 The terms of any proposed settlement will be put in writing and will be agreed by the Authority and by the relevant body in the Settlement Agreement. The Settlement Agreement is conditional upon all relevant facts known to the relevant body at the time of entry into the Settlement Agreement having been brought to the attention of the Authority and is legally binding. The relevant body should have carried out such internal enquiries as are necessary to ensure that it is satisfied that it has disclosed all such facts to the Authority.
- 4.2 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.
- 4.3 A Settlement Agreement will include the following:
 - a) admission of non-compliance by the relevant body;
 - b) a statement that the relevant non-compliance has ceased or is being addressed;
 - c) a statement from the relevant body that it has disclosed all relevant information in its possession;
 - d) appropriate sanctions;
 - e) A Public Statement; and
 - f) any other relevant terms.
- 4.4 The Settlement Agreement will represent the final agreed position between the parties and will specify the basis upon which a settlement has been agreed. The Authority expects that all Settlement Agreements will contain admissions by the relevant body.
- 4.5 The Settlement Agreement will contain details of the sanction(s) imposed on the relevant body and, where a monetary penalty has been imposed, the manner in which such monetary penalty is to be paid.
- 4.6 Both parties shall adhere to the terms of the Settlement Agreement. However, if the relevant body fails to comply with the terms of the Settlement Agreement the Authority may apply to

the High Court for an order requiring the relevant body 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 Settlement Agreement process, the Authority may, if the circumstances warrant it, commence a further enquiry into the relevant body.

- 4.7 Where the relevant body admits the non-compliance, but agreement cannot be reached as to the sanctions to be imposed, a Settlement Agreement cannot be entered into.

5. Public statement

- 5.1 Once the terms of a Settlement Agreement have been agreed by the Authority and the relevant body, the Authority may at its discretion publish the Settlement Agreement on its website (the "Public Statement"). The Authority may exercise its discretion to publish the Settlement Agreement, when in the opinion of the Authority publication is warranted. Each case will depend on its own facts. If publication is warranted, appended to a Public Statement will be a prepared statement by the Authority on 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.
- 5.2 The timing and manner of the release of a public statement will be within the sole discretion of the Authority. The Authority may take into account any submissions by the relevant body.

6. Effect of Settlement Agreement

- 6.1 The Settlement Agreement will form part of the relevant body's compliance record (however described). As such, it may influence the Authority's decision to commence an enquiry, taking into account the age of any previous Settlement Agreement(s), and may be taken into account in other actions taken by the Authority.
- 6.2 Settlement Agreements may be considered cumulatively, where the concerns which gave rise to those Settlement Agreements are considered to be indicative of a relevant body's compliance culture.
- 6.3 Settlement Agreements may be taken into account in determining appropriate sanctions pursuant to any subsequent investigation of non-compliance by the relevant body.