

MEMORANDUM OF UNDERSTANDING

BETWEEN

HM REVENUE & CUSTOMS (HMRC)

AND

**THE FINANCIAL REPORTING REVIEW PANEL (THE
PANEL)**

PREAMBLE

- A The Companies (Audit, Investigations and Community Enterprise) Act 2004 (the Act) introduces provisions that enable information held by or on behalf of the Commissioners of HM Revenue & Customs (HMRC) to be disclosed to a person authorised under section 245C of the Companies Act 1985 or under Article 253C of the Companies (Northern Ireland) Order 1986 to apply to the court for a declaration or declarator that the annual accounts of a company do not comply with the requirements of the Companies Act or such Order.
- B Any such disclosure must be made for a permitted purpose, namely the purpose of facilitating the taking of steps by the authorised person to discover whether there are grounds for such an application or a determination by the authorised person as to whether or not to make such an application (the permitted purpose).
- C The Financial Reporting Review Panel (the Panel) is a body so authorised. By agreement between the Panel and the Department of Trade and Industry, the Panel exercises its authority in respect of the annual accounts of:
- public limited companies
 - companies within a group headed by a plc
 - any private company not qualifying as small or medium sized
 - any private company within a group which does not qualify as a small or medium-sized group.
- D The Panel has also been appointed under the Act to keep under review accounts and reports produced by certain issuers of listed securities that are required to comply with accounting requirements of listing rules and, if it thinks fit, to inform the Financial Services Authority of any conclusions it reaches in relation to any such reports and the provisions which authorise the disclosure of information by HMRC also apply in relation to such functions.
- E The purpose of this Memorandum of Understanding is to document the principles underlying the provision of information that may be disclosed by HMRC to the Panel and the administrative arrangements for such provision. This Memorandum seeks to maintain the confidence with which customers provide information to HMRC whilst, at the same time, ensuring HMRC's co-operation with the Panel to the extent permitted by law.
- F This Memorandum of Understanding does not modify or supersede any laws or regulatory requirements. It is a statement of intent of HMRC and the Panel and is not intended to create any binding obligations or to fetter the discretion of either body in the discharge of their functions under the law and their operating procedures nor does it prejudice their individual responsibilities or autonomy.

OPERATIVE PROVISIONS

1. **Safeguards.** HMRC has strict rules on the confidentiality of information. It is legally obliged to keep customers' affairs completely confidential. Information can only be disclosed where legislative provisions, such as the Act, permit the disclosure of information or where the customer involved has consented to the disclosure. In particular:

- HMRC staff are bound by sections 18 and 19 of the Commissioners for Revenue and Customs Act 2005, which makes any unauthorised disclosure of information about an identifiable customer by any member of staff a criminal offence.

Conviction may lead to a fine, imprisonment for up to two years, or both. Exceptions to these rules arise only in very restricted circumstances.

2. **Scope of information.** HMRC holds information about entities which it has obtained for the purpose of its functions and which it may decide to disclose to the Panel pursuant to the Act if the information concerns entities falling within the scope of the Panel's authority, as set out in the preamble and indicates that there is, or may be, a breach of relevant reporting requirements.

3. **Starting date.** HMRC will only disclose information relating to accounting periods ending after 6th April 2005, the date on which relevant provisions of the Act commenced.

4. **Permitted purpose.** HMRC will only disclose information to the Panel for the permitted purpose and the Panel will only use such information for the permitted purpose or for proceedings in or in connection with an application to the court and otherwise as permitted by the Act.

5. **Further disclosure prohibited.** Under and subject to the provisions of the Act, the Panel is prohibited from disclosing information provided by HMRC except:

- to the person to whom the information relates; or
- in or in connection with proceedings on an application to the court.

6. **References in Panel reports and press notices.** The Panel may include the number of referrals received from HMRC in its annual and periodic reports, but will not publish any details of information received from HMRC under this Memorandum of Understanding. The Panel is not precluded from referring to the substance of the matter under consideration in any press notice that may be issued in accordance with its procedures.

7. **Security of information:** Any disclosure by HMRC will be made in writing or by secure electronic communication and information disclosed by HMRC must be kept secure by the Panel. The Panel has satisfied HMRC that it has adequate arrangements in place to protect the confidentiality of such information.

8. **No initiation of enquiries.** HMRC will only make enquiries in the ordinary course of exercising its functions. HMRC will not initiate enquiries at the request of the Panel.

- 9. Proportionality.** There is a general obligation on HMRC to ensure that information disclosed to the Panel is proportionate to the purpose for which it is required under the Act. In this respect, it has regard to the policy of the Panel which requires there to be a case of substance for the Panel to initiate an enquiry. Minor breaches of relevant reporting requirements are unlikely to give rise to disclosure to the Panel.
- 10. Discussion with entity.** Before making a disclosure to the Panel, HMRC will seek to discuss the issue giving rise to their concern with the entity and, if the entity agrees, with its advisors. Disclosure to the Panel will be made if HMRC is not satisfied that their initial concerns as to the appropriateness of the accounting treatment in issue have been satisfied and irrespective of any voluntary action the entity offers to correct the matter. The entity will be advised that a disclosure is being made to the Panel.
- 11. Authority for disclosure.** Information may not be disclosed by HMRC except by, or with the authority of, the Commissioners of HMRC. The Act allows the Commissioners of HMRC to delegate their authority to make disclosures of information to appropriate members of staff. The Commissioners have delegated this power to the Commissioners' Advisory Accountant (CAA). Disclosures will be made by authorised staff, in writing, with a copy to the entity. Disclosure will be made to the Panel Secretary as the authorised officer of the Panel to receive such information.
- 12. Records.** HMRC will maintain a record of disclosures, ensuring that internal audit staff can verify compliance with the law and the security protocols for the exchange of information.
- 13. Panel enquiries.** Information disclosed to the Panel by HMRC may be used by the Panel, pursuant to the permitted purpose. Under the Companies Act 1985, the Panel has power to require persons to produce any document or to provide any information or explanations that it may reasonably require for the permitted purpose. The Panel is restricted from disclosing information so supplied except to the persons and for the purposes set out in that Act. Save as specifically set out in its Operating Procedures the Panel treats all information obtained by it in the exercise of its functions as if it were subject to those statutory restrictions, whether or not it is subject to those restrictions as a matter of law. Information received by the Panel from an entity in answer to its own enquiries following a referral by HMRC may be disclosed by the Panel to the persons and for the purposes set out in the Act.
- 14. Application to Panel's functions in relation to listing rules.** Provisions in this Memorandum of Understanding relating to the provision of information in relation to the Panel's authority to apply to court under the Companies Act also apply to its function of keeping under review periodic accounts and reports that are produced by issuers of listed securities and 'permitted purpose' shall be construed accordingly.
- 15. Information to be provided to HMRC.** In order to assist HMRC in the exercise of its functions the Panel will inform HMRC why it does not intend to pursue a referral from HMRC and, where an enquiry is pursued, will provide a confidential report to HMRC about the outcome. Disclosures by the Panel will, in the first instance, be made to the CAA. The Panel will notify the entity if it does not intend pursuing the referral from HMRC.

- 16. Meetings.** Representatives of HMRC and the Panel will meet periodically, as necessary, to discuss issues of common interest which may include, for example, the principles of proportionality underlying HMRC referrals and any concerns in respect of confidentiality issues attending the referral process.
- 17. Entry into effect** This Memorandum of Understanding shall come into force on the date of the signatures set out below.
- 18. Review of the Memorandum of Understanding** HMRC and the Panel will keep the operation of this Memorandum of Understanding under review and will consult when necessary with a view to improving its operation. The Memorandum may be amended with the consent of both HMRC and the Panel.

Executed on 24 June 2005

For HMRC

For the Panel
