



FOA: Sarah Albon - Inspector General and Chief Executive
Insolvency Service
4 Abbey Orchard Street
London
SW1P 2HT

18 January 2018

Dear Sarah

Temporary arrangement for the exchange of information between the Financial Reporting Council (FRC) and the Insolvency Service (INSS) (together, the Parties, 'us' or 'we')

1. Background

1.1. This letter is intended to temporarily regulate the exchange of information between us, in accordance with our respective powers and responsibilities, before we enter into a full Memorandum of Understanding in due course.

2. Our powers/functions

2.1. The INSS relevant powers and responsibilities¹ include the power to:

- a. conduct confidential enquiries into a company's affairs where there is reason to believe the company's activities are being conducted contrary to public interest;
- b. investigate the affairs of companies and of individuals entering an insolvency procedure;
- c. seek the disqualification of directors, the bankruptcy or debt relief restriction of individuals, and petition for the winding up of companies where it is in the public interest to do so; and
- d. investigate and prosecute offences under relevant statute.

2.2. The FRC's relevant powers and responsibilities² include the power to:

- a. supervise and secure the revision of defective accounts and reports;
- b. monitor and enforce audit requirements, including by investigating and sanctioning breaches; and
- c. investigate and prosecute allegations of misconduct in public interest cases against members of the accounting and actuarial professions.

2.3. Full particulars of our powers are set out in the references at footnotes 1 and 2.

3. Purpose for information sharing

3.1. To help us perform our respective powers and responsibilities, we seek to share the following types of information:

¹ The INSS is an executive agency of the Department for Business, Energy and Industrial Strategy
<https://www.gov.uk/government/organisations/insolvency-service>

² The FRC's roles and responsibilities are set out more detail on its website:
<https://www.frc.org.uk/About-the-FRC/Role-and-responsibilities.aspx>

- a. Intelligence from our monitoring and/or intelligence gathering activities, where applicable.
- b. Information from our investigations and/or enforcement activities, to the extent permitted.

4. Legal basis for information sharing

- 4.1. Before we can share information, we must: (i) have the power to share information we have received, and (ii) comply with all personal data legislation.
- 4.2. The INSS may share material obtained in the exercise of Companies Act 1985 investigations with the FRC under the provisions of section 449 and Schedules 15C and 15D to that Act (which on amendment specifically provide for information to be disclosed to the FRC). Further, the INSS will share information where there is a public interest in doing so, and subject to the constraints of the applicable data protection law, and the constraints of general law.
- 4.3. The FRC may share information with the INSS pursuant to any or a combination of its powers under section 461(2) and (4) of the Companies Act 2006 and part 2 of Schedule 11A to that Act. Further, the FRC may share information pursuant to its own applicable operating Procedures and Regulations.
- 4.4. We will not disclose information supplied by each other to anyone else unless permitted or required by law or by order of a competent body. We will use all reasonable endeavours to notify and agree onwards disclosure with each other.
- 4.5. We will not share any legally privileged information, unless that privilege is specifically waived by all those to whom the privilege belongs, or there are grounds to override certain privilege for the investigation of crime or otherwise by order of the court.

5. Fundamental principles of information sharing

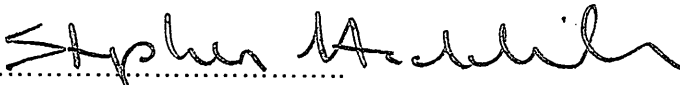
- 5.1. We will ensure we exchange information in a timely and focused manner.
- 5.2. The channels for the exchange of information are:
 - a. Discussion and consultation – meetings or telephone calls at intervals to be agreed;
 - b. Voluntary disclosure / notification – if one regulator considers that information it has gathered will be materially relevant to the other, it will offer such information to the other;
 - c. Requests for information – information available to one regulator that is relevant to the responsibilities of the other regulator will be shared where requested.
- 5.3. We will protect the confidentiality and sensitivity of all unpublished regulatory and other confidential information received from each other, and maintain effective controls designed to minimise the risk of inappropriate disclosures being made to others, particularly where they may have a conflict of interest.
- 5.4. We will ensure that, in relation to information we receive under these arrangements, we will:
 - a. only use the information to the extent permitted by law and any specific purpose for which it has been shared;

- b. store information received securely and in accordance with relevant industry guidelines;
 - c. notify each other if we are planning to disclose the information to other parties;
 - d. ensure that only individuals who have a genuine legal, operational or regulatory need to see the information will have access to it;
 - e. report any relevant data losses, wrongful disclosures or breaches of security to each other; and
 - f. only hold the information while there is a valid regulatory, legal or operational need to keep it and destroy it in line with relevant industry guidelines.
 - g. give careful consideration before withholding information on the basis of legal professional privilege to whether that privilege should be specifically waived to better deliver our respective objectives.
- 5.5. We will comply with the requirements of the Data Protection Act 1998 (DPA), General Data Protection Regulation, and Human Rights Act 1998 (HRA) in the operation of this agreement. This undertaking extends to ensuring that the operation of this agreement will also comply with the General Data Protection Regulation when applicable in the UK from 25 May 2018.
- 5.6. We will report breaches of data security to each other immediately upon discovery by telephone and in writing within 24 hours of discovery.
- 5.7. We will deal with any breach by our employees or members through our own internal procedures.

This letter is not a contract and does not create any legally binding obligations, however, it has an essential role in documenting the processes and procedures agreed between the organisations.

By signing this letter, we agree to comply with the terms set out herein.

Yours faithfully



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Stephen Hadrill
Chief Executive

For and on behalf of the **Financial Reporting Council**

Acknowledged and agreed by



Alec Pybus
Chief Operating Officer
For and on behalf of the **Insolvency Service**

Date 23/01/2018