

**Memorandum of Understanding**

**between**

**the Solicitors Regulation Authority**

**and**

**the Isle of Man Financial Services  
Authority**



ISLE OF MAN  
FINANCIAL SERVICES AUTHORITY

*Lught-Reill Shirveishyn Argidoil Ellan Vannin*

## Definitions

For the purposes of this Memorandum of Understanding ("MOU") -

<b>"Data Protection Laws"</b>	means the Data Protection Act 1998 (UK) and the Data Protection Act 2002 (IOM)
<b>"DBROAI5"</b>	means the Designated Businesses (Registration and Oversight) Act 2015 (IOM)
<b>"FOIS"</b>	means the Freedom of Information Act 2000 (UK), the Freedom of Information Act 2015 (IOM) and the SRA Transparency Code
<b>"HRAS"</b>	means the Human Rights Act 1998 (UK) and the Human Rights Act 2001 (IOM)
<b>"IOMFSA"</b>	means the Isle of Man Financial Services Authority
<b>"LPP"</b>	means Legal Professional Privilege
<b>"Parties"</b>	means the SRA and the IOMFSA
<b>"SPOC"</b>	means Single Points of Contact
<b>"SRA"</b>	means the Solicitors Regulation Authority

## Introduction

1. The SRA is committed to serve the public interest and protect consumers of legal services by working to achieve the appropriate public interest outcomes in the prevention, detection, investigation and prosecution of dishonesty and serious misconduct in the community regulated by the SRA. In support of that aim, this MOU sets out the framework for effective liaison and communications between the IOMFSA and the SRA.
2. The IOMFSA is the regulatory body for the financial sector in the Isle of Man and is established by article 4 of the Transfer of Functions (Isle of Man Financial Services Authority) Order 2015 and discharges its functions in accordance with the FSA08. The IOMFSA's regulatory objectives, as set by Tynwald, are to:
  - secure an appropriate degree of protection for policyholders, members of retirement benefits schemes and the customers of persons carrying on a regulated activity;
  - reduce financial crime; and
  - maintain confidence in the Island's financial services and insurance and pensions industries through effective regulation, and thereby support the Island's economy and its development as an international financial centre.
3. The Parties, recognising the need for mutual co-operation between the Parties as a means for improving their effectiveness in administering and enforcing the laws of their respective jurisdictions, have reached the understanding set out below.

4. This MOU sets forth the Parties' intent with regard to cooperation and the exchange of information for the purpose of their respective functions. The Parties acknowledge that they may only provide information under this MOU if permitted or not prevented under applicable laws, regulations and other requirements.
5. The Parties recognise and respect their differing duties, operational priorities and constraints, and confidentiality requirements. However, they commit themselves to professional co-operation in preventing or taking action in relation to dishonesty or serious misconduct involving law firms or solicitors registered by the IOMFSA under the DBROA15.

### **Legal status and effect**

6. Nothing in this MOU shall, or is intended to:
  - a. create any legal or procedural right or obligation which is enforceable by either of the Parties against the other; or
  - b. create any legal or procedural right or obligation which is enforceable by any third party against either of the Parties, or against any other third party; or
  - c. prevent either of the Parties from complying with any law which applies to them; or
  - d. fetter or restrict in any way whatsoever the exercise of any discretion which the law requires or allows the Parties to exercise; or
  - e. create any legitimate expectation on the part of any person that either of the Parties to this MOU will do any act (either at all, or in any particular way, or at any particular time), or will refrain from doing any act.

Nevertheless, the Parties are genuinely committed to pursuing the aims and purposes of this MOU in good faith, and intend to act in accordance with its terms on a voluntary basis.

### **Roles and responsibilities**

7. The SRA is the independent regulatory body established by the Law Society for the regulation of legal services by law firms and solicitors in England & Wales. The SRA's powers arise from various statutes and regulations including the Solicitors Act 1974, the Administration of Justice Act 1985, the Courts and Legal Services Act 1990, the Legal Services Act 2007 and the SRA's Handbook:  
<http://www.sra.org.uk/solicitors/handbook/welcome.page>
8. The SRA has statutory and rule-based powers to require the production of documents or information, such as section 44B of the Solicitors Act 1974 and section 93 of the Legal Services Act 2007.
9. The SRA may inspect material that is subject to a law firm's client's LPP or confidentiality but may only use such material for its regulatory purposes. The SRA

also protects the LPP and confidentiality of clients. LPP material will not be disclosed by the SRA to any other person other than where necessary for its regulatory purposes. Material that is not subject to LPP may be disclosable in the public interest, in the absolute discretion of the SRA, including material comprising communications in furtherance of crime or fraud.

10. The IOMFSA is responsible for the licensing, regulation and supervision of deposit takers, investment businesses, collective investment scheme functionaries, corporate service providers, trust service providers, money transmission services providers and professional officers. It is also responsible for the authorisation and ongoing regulation and supervision of companies carrying out insurance business in or from the Isle of Man, insurance companies incorporated on the Island, the regulation of retirement benefits schemes, the registration of insurance management companies and insurance intermediaries carrying on general insurance business. Further, it is responsible for the registration of certain non-financial businesses and professions and the monitoring of their compliance with anti-money laundering and countering the financing of terrorism legislation.
  1. Section 16 of the DBROA15 provides the IOMFSA with statutory powers to require the production of documents or information.
  2. Section 14 of the DBROA15 provides the IOMFSA with powers of inspection and investigation in relation to registered persons but section 21 of the DRBOA15 states that a person is not under an obligation to disclose any information subject to LLP within the meaning of section 13 of the Police Powers and Procedures Act 1998. Material that is not subject to LPP may be disclosable in the public interest, at the absolute discretion of the IOMFSA, including material comprising communications in furtherance of crime or fraud.

### **Ability to share information**

3. Through the exercise of its statutory responsibilities, the IOMFSA obtains a wide range of information and data on the firms which it regulates or has oversight over. Restricted information obtained by the IOMFSA may only be passed to third parties in compliance with a statutory gateway'. A statutory gateway permits the passing of restricted information in certain circumstances, but does not demand or require it. Any decision relating to whether to pass restricted information via gateways is a matter for the IOMFSA alone.
4. The SRA may seek information from the IOMFSA pursuant to section 44BB of the Solicitors Act 1974 or any analogous or replacement power.

### **Information sharing**

5. Unless otherwise stated, the information exchanged is for intelligence purposes only and should it be required formally as evidence or for use in an investigation or enquiry then the appropriate application must be made.

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section 31 of and Schedule 5 to the FSA08; section 46 of and Schedule 6 to the IA08; section 22 of and Schedule 2 to the DBROA15; and section 16 of and Schedule 3 to the CODA09

16. Where it is lawful and in the public interest to do so, the Parties agree to disclose information to the other:
- a. to enable the assessment of risk to the public such as to:
    - i. minimise the risk of financial default;
    - ii. minimise the risk of fraud or other criminality; and
    - iii. identify the risk of financial failure; and
    - iv. minimise the risk to clients;
  - b. so that alleged criminality, misconduct, breach of the SRA principles, or other failures are properly investigated and decided upon;
  - c. to enable the proper processing of claims or applications for redress or compensation of any description; and
  - d. for the purposes of regulatory, disciplinary or other legal proceedings, whether in public or not;
- provided that the recipient is reasonably considered able to take regulatory or other proper action upon the information.
17. The recipient of information received from the other Party will:
- a. comply at all times with the Data Protection Laws and any related or analogous legislation;
  - b. keep the information secure;
  - c. use the information only for proper purposes, such as regulatory, disciplinary or other legal investigations or proceedings; and
  - d. liaise or co-operate where appropriate to avoid action that prejudices or may prejudice an investigation by another party or person.
18. Proper purposes may also include further lawful disclosure of the information such as to persons under investigation, witnesses, legal advisers, other regulators, professional bodies, prosecuting bodies, and law enforcement agencies. However, disclosure to these, or any other persons, requires the prior permission in writing of the Party that originated the disclosed information.
19. The Parties agree to ensure that disclosures to the other Party are lawful.
20. The disclosing Party also agrees to notify the recipient of:
- e. any restrictions on the use to which the information can be put; and
  - f. any restrictions which apply to the onward disclosure of the information, and
- in the absence of such notification, the receiving Party may assume that there are no such restrictions (in addition to any restrictions that apply as a matter of law).

### **Practical exchange of information**

21. To the extent permitted or not prevented under applicable laws, regulations and other requirements and consistent with their own policies and procedures, the Parties will provide, spontaneously or upon request from the other, any available information that may be relevant to the other party's functions.
22. Where a request for information is made and where it is possible to do so, a brief statement of the underlying facts justifying the request should be provided.
23. All information exchanged between the Parties should be passed via nominated SPOC. The nominated SPOCs are detailed in Appendix A.

### **Additional assistance**

24. Either of the Parties may request additional co-operation in the following areas, and such requests shall be given due consideration:
  - a. sharing subject-matter expertise;
  - b. supplying witness statements, expert advice or oral evidence for use or potential use in court or tribunal proceedings

### **Security and assurance**

25. All information exchanged by the Parties will be subjected to strict controls and safeguards to ensure that the information is used only in an authorised matter and is treated in a confidential manner.
26. The Parties agree to —
  - a. only use the data for the purposes for which they have received it;
  - b. store data securely;
  - c. ensure that only people who have a genuine business need to see that data will have access to it;
  - d. report data losses or wrongful disclosure to the SPOCs;
  - e. only hold it while there is a business need to keep it;
  - f. destroy it in line with applicable guidelines; and
  - g. provide assurance that they have complied with these principles, upon request.

### **Compliance with legislation**

27. Both Parties undertake to comply with the requirements of the relevant Data Protection Laws and the HRAS in the operation of this agreement.

### Requests under the FOIS

28. The SRA is not subject to the Freedom of Information Act 2000 but operates its own Transparency Code in spirit of the Act. If a request under the FOIS is received in relation to the other Party's information then the receiving Party will inform the other Party, and invite representations on the potential impact of disclosure.

### Charges

6. No charges will be made in relation to the exchange of information between the Parties.

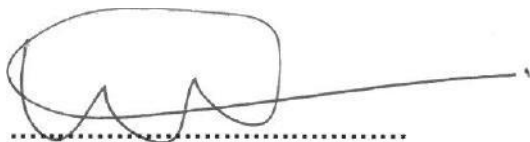
### Resolving issues

7. Any issues or problems that arise between the Parties will be resolved through discussion by the SPOCs, with escalation to more senior managers where necessary.

### Reporting and review arrangements

8. The Parties may, by joint written agreement, amend, relax or waive any of the terms of the MOU.
9. This MOU will continue in effect for an indefinite period unless terminated by either Party giving the other thirty days written notice of its intention to terminate the MOU: unless both parties agree to waive this requirement. If either Party gives such notice, this MOU will continue to have effect with respect to all requests for assistance that either Party had made before the effective date of termination.

**Signed this 4 September 2017**



**Karen Badgerow**  
Chief Executive  
Isle of Man Financial Services Authority



**Carol Westrop**  
Head of Legal Policy  
Solicitors Regulation Authority

## Appendix A

### Single Points of Contact ("SPOC")

SPOC for the SRA		SPOC for the IOMFSA	
<b>Name:</b>	<b>Christopher Hall</b>	<b>Name:</b>	<b>David Griffin</b>
<b>Title:</b>	<b>Intelligence Team Leader</b>	<b>Title:</b>	<b>Head of Enforcement</b>
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