

Memorandum of Understanding

Between

The Council of the Law Society of Scotland ('LSS')

and

The Solicitors Regulation Authority ('SRA')

(individually, 'the Party';
together, 'the Parties')

Anti Money Laundering Supervision - Multi National Practices

1 . Whereas:-

1.1. The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (hereinafter 'the Regulations') passed into UK law on 26 June 2017;

1.2. Regulation 7(1)(b) of the Regulations provides that:-

"each of the professional bodies listed in Schedule 1 is the supervisory authority for relevant persons who are members of it, or regulated or supervised by it."

1.3. 'relevant persons' are defined by Regulation 8 of the Regulations.

1.4. LSS is a professional body listed in Schedule 1 of the Regulations;

1.5. The Law Society of England and Wales (TLS) is a professional body listed in Schedule 1 of the Regulations. The SRA is a Board of TLS to whom regulatory functions are delegated and acts as the supervisory authority for members of TLS.

1.6. Regulation 7 (2) of the Regulations provides that where:-

"there is more than one supervisory authority for a relevant person, the supervisory authorities may agree that one of them will act as the supervisory authority for that person."

1.7. The purposes of this Memorandum of Understanding are:

1.7,1n to agree which of the Parties will act as the supervisory authority for a given relevant person where there is a supervisory overlap as envisaged in regulation 7(2) because both LSS and TLS are a supervisory body for

the relevant person in accordance with regulation 7(1)(b). Such persons are hereinafter referred to as 'dual regulated relevant persons'.

1.7.2. to assist both Parties in their supervisory activity of such persons under the Regulations so far as such assistance is lawful,

1.7.3. to provide a framework for the lawful flow of information between the Parties.

1.8. The Parties recognise and respect their differing operational priorities and confidentiality requirements. However, in the public interest they commit themselves to professional co-operation in the performance of their respective supervisory functions.

Legal status and effect

2. Nothing in this Memorandum of Understanding shall, or is intended to:

2.1. create any legal or procedural right or obligation which is enforceable by either of the Parties against the other; or

2.2. 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

2.3. prevent either of the Parties from complying with any law which applies to them; or

2.4. fetter or restrict in any way whatsoever the exercise of any discretion which the law requires or allows the Parties to exercise; or

2.5. create any legitimate expectation on the part of any person that either of the parties to this Memorandum of Understanding 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 Memorandum in good faith, and intend to act in accordance with its terms on a voluntary basis (in so far as so acting would not conflict with any legal obligation).

3. The following is agreed between the Parties:-

- 3.1. The LSS shall act as supervisory authority for a dual regulated relevant person which has its Registered Office in Scotland and also for its beneficial owners, officers, or managers, and employees in that capacity. That supervision shall extend to branches of the dual regulated relevant person in Scotland, England or Wales. That supervision shall be to the exclusion of the SRA, subject to the terms of this Memorandum of Understanding and include all steps required of the supervisory authority under the Regulations in relation to that relevant person.
- 3.2. The SRA shall act as supervisory authority for a dual regulated relevant person which has its Registered Office in England or Wales and also for its beneficial owners, officers, or managers, or employees in that capacity. That supervision shall extend to branches of the relevant person in Scotland, England or Wales. That supervision shall be to the exclusion of the LSS, subject to the terms of this Memorandum of Understanding and include all steps required of the supervisory authority under the Regulations in relation to that relevant person.
- 3.3. In circumstances where a dual regulated relevant person does not have a Registered Office, or where the location of the registered office is inconsistent with the actual main place of operation of the business, the Parties shall agree which of them will act as that relevant person's supervisory authority.

In reaching that agreement the Parties shall have regard to the following:-

- 3.3.1. The location of the head office and places of business of that relevant person and in particular the location from which it conducts most of its business,
 - 3.3.2. The number of solicitors at that relevant person who are members of either LSS or TLS,
 - 3-3.3. The identity and location of any person, beneficial owner, officer, or manager, exercising management control over the relevant person,
 - 3.3.4. The law applicable to the constitutive arrangements of the relevant person,
 - 3.3.5. The law practised by the relevant person, and
 - 3.3.6. Any other matter considered relevant by the Parties.
- 3.4. In the event that the terms of this Memorandum of Understanding create a situation considered to be particularly anomalous or unusual in connection with which of the parties shall supervise a particular dual regulated relevant person, the parties may agree which of them will act as supervisory authority for that person and in so doing may take account of the views of that person.
- 3.5. For the avoidance of doubt, in relation to a dual regulated relevant person in respect of whom it is agreed under the terms of this Memorandum of Understanding that the LSS will act as the supervisory authority, the LSS shall determine
- 3-5.1. whether such person shall be recommended for inclusion on the HMRC register for trust or company service providers (TCSPs); and
 - 3.5.2 \emptyset all applications for approval of its beneficial owners, officers or managers
- 3.6. In relation to a dual regulated relevant person in respect of whom it is agreed under the terms of this Memorandum of Understanding that the SRA will act as the supervisory authority the SRA shall determine

3.6.1. whether such person shall be recommended for inclusion on the

HMRC register for TCSPs; and

3.6.2. all applications for approval of its beneficial owners, officers or managers.

4. Cooperation between the Parties

4.1. The Parties undertake to agree a list of all dual regulated relevant persons of whom they are aware indicating which of the Parties is to act as the supervisory authority under the terms of this Memorandum of Understanding and to update that list as appropriate, and in any event to review that list on at least an annual basis.

4.2. Where it is lawful to do so the Parties undertake to advise each other of the following supervisory activity which is or may be relevant to compliance with the Regulations:-:

4.2.1. Supervisory activity in connection with a relevant person which has branches in the other party's jurisdiction.

4.2.2. Supervisory activity in connection with a relevant person which is part of a larger group structure with separate entities in the other party's jurisdiction.

4.2.3. Supervisory activity taken against any individual regulated by one party who they are aware is an employee, manager, officer or beneficial owner of a relevant person supervised by the other party

4.3. The Parties acknowledge that, in the course of their supervisory activities or otherwise, one Party may identify breaches or potential breaches of the Regulations falling under the jurisdiction of the other Party. Those breaches or potential breaches may relate to the conduct of an individual, a relevant person or other person. In those circumstances, and where it is lawful to do so, the Party that identifies the breaches or potential breaches shall report them to the other Party.

- 4.4. The Parties acknowledge that, in the course of their supervisory activities or otherwise, one Party may identify breaches or potential breaches of the Regulations falling under the jurisdiction of the other Party. In those circumstances it may become appropriate for
- 4.4.1. one Party to initiate an inspection or investigation of the breaches or potential breaches,
 - 4.4.2. one Party to take over conduct of an existing inspection or investigation of the breaches or potential breaches,
 - 4.4.3. the Parties to conduct a joint inspection or investigation of the breaches or potential breaches, or
 - 4.4.4. the Parties to conduct separate inspections or investigation of the breaches or potential breaches.
- 4.5. In deciding whether any of the foregoing actions are to be taken the Parties shall have regard to the following:-
- 4.5.1. the extent, nature, and duration of the breaches or potential breaches in question,
 - 4.5.2. the locations or places of business of the relevant person in question,
 - 4.5.3. whether the relevant person in question is part of a group of entities with practices across the United Kingdom,
 - 4.5.4. membership of any professional body by individuals who appear to have caused the breaches or potential breaches by the relevant person of the Regulations,
 - 4.5.5. any ongoing investigations or actions
 - 4.5.6. any other matter considered relevant by the Parties.
- 4.6. The Parties agree to co-operate where appropriate to avoid action that prejudices or may prejudice an investigation by the other Party or person.

5. Information Sharing and Data Protection

- 5.1. Where lawful to do so the Parties shall share with each other information the Party believes may be relevant to compliance with the Regulations in relation to persons they regulate where such information may assist the other Party in the effective exercise of their supervisory and/or disciplinary activities.
- 5.2. The relevant information shared must not be disclosed other than in compliance with the law. It must be stored securely and deleted when it is no longer required for the purpose for which it is provided.
- 5.3. Information shared under the terms of this Memorandum of Understanding may only be shared in accordance with the law particularly the provisions contained in regulations 52 and 106 of the Regulations and any restrictions under the Proceeds of Crime Act 2002 or the Terrorism Act 2000.
- 5.4. The parties are to share information under the terms of this Memorandum of Understanding as soon as reasonably practicable after it becomes available.
- 5.5. The parties agree to ensure that all disclosures to the other party are lawful.
- 5.6. The disclosing party also agrees to notify the recipient of:
- 5.6.1. any restrictions on the use to which the information can be put, and
 - 5.6.2. 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 always apply as a matter of law).

5.7. Both parties agree to comply with the Data Protection Act 2018, GDPR and connected legislation, the Human Rights Act 1998 and any subsequent analogous legislation in the operation of this Memorandum of Understanding.

Transparency

6. Each Party agrees to keep the relevant persons informed so they know who supervises them for the purposes of the Regulations.

Practical Exchange of Information

7. All information provided under this Memorandum of Understanding shall be passed to the nominated single point of contact of each Party.

8. Dispute resolution

8.1. In the event of a dispute between the parties arising from the terms of this Memorandum of Understanding, the Parties shall use their all reasonable endeavours to resolve that dispute in the spirit of mutual cooperation and goodwill.

8.2. The Parties specifically acknowledge the duty incumbent upon them, in terms of Regulation 7 of the Regulations, to co-operate in the performance of their functions under the Regulations.

9. Review

9.1. This Memorandum of Understanding shall be reviewed by the Parties 6 months after the Date of Implementation and annually thereafter.

10. Publication

10.1. This Memorandum of Understanding is a public document and the

Parties may publish it as they separately see fit.

11. Glossary of Terms:-

11.1. 'supervisory authority' has the meaning appearing in Regulation 3 of the Regulations.

1 1.2. 'relevant person' has the meaning appearing in Regulation 3 of the Regulations.

11.3. 'branch' has the meaning appearing in Regulation 3 of the Regulations.

11.4. 'beneficial owner, officer, or manager' have the meanings appearing in Regulation 3 of the Regulations.

11.5. 'registered office' means that office recorded as such at Companies House from time to time.

11.6. 'Date of Implementation' means...

1 1.7. "supervisory action' shall include all actions taken by the Parties under the Regulations including refusal or withdrawal of approval of beneficial owners, managers and officers.

1 1.8. 'GDPR' means The General Data Protection Regulation 2016/679.

Signed

On behalf of the Law Society of Scotland

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Date /D/14/Ci

On behalf of the Solicitors Regulation Authority

L A Newbry
Head of Legal Policy

Date U o/ q