INSOLVENCY REGIME

**MEMORANDUM OF UNDERSTANDING**

BETWEEN

THE SECRETARY OF STATE

FOR BUSINESS, INNOVATION AND SKILLS

AND

THE RECOGNISED PROFESSIONAL BODIES

## **MEMORANDUM OF UNDERSTANDING**

- Foreword -

Pursuant to the Insolvency Act 1986 the Secretary of State is empowered to recognise certain professional bodies (known as the Recognised Professional Bodies) for the purpose of authorising suitable individuals to act as insolvency practitioners.

To underpin the insolvency regime the Secretary of State has agreed a set of principles with those Bodies for the purposes of achieving consistency in the authorisation and regulation of insolvency practitioners. The Secretary of State when exercising authorisation functions as the Competent Authority will abide by these principles.

Each Body is monitored by the Secretary of State for adherence to these principles.

Where reference in this document is made to a Body’s members, the reference is only to those members authorised to act as insolvency practitioners.

## **MEMORANDUM OF UNDERSTANDING**

- Agreed Principles -

###### GRANTING OF AUTHORISATIONS

Each Body recognised by the Secretary of State will grant authorisations only to suitable applicants and will work to common standards in considering those applications.

###### MAINTENANCE OF AUTHORISATIONS

Each Body will ensure, through monitoring and other activities, that the authorisations it has granted remain valid.

1. **ETHICS AND PROFESSIONAL STANDARDS**

## Each Body will apply an ethical code or guide to its members, and will seek to ensure that those members work to common professional standards that are reviewed and, where possible enhanced, to enable creditors and others to receive an efficient service at fair cost.

#### HANDLING OF COMPLAINTS

Each Body will have in place an accessible, effective, fair, and transparent procedure for dealing with complaints against members.

#### SECURITY AND CAUTION

Each Body will have in place appropriate mechanisms to ensure that its members comply with legislative requirements for security (in England and Wales) or caution (in Scotland), and to ensure that potential claims arising from the fraud or dishonesty of an insolvency practitioner are identified and made.

**DISCLOSURES AND EXCHANGE OF INFORMATION**

Each Body will freely share information with the Secretary of State and the other Bodies to assist in the proper performance of their regulatory duties.

**RETENTION OF RECORDS**

### Each Body will retain members’ monitoring reports and records relating to complaints for sufficient time to allow the Secretary of State to be satisfied that the Principles set out in this Memorandum are being met.

**REPORTING TO THE SECRETARY OF STATE**

### Each Body will furnish the Secretary of State with sufficient information to enable the Secretary of State to be satisfied that the Body is meeting its legislative and otherwise agreed obligations. Such information will also enable the Secretary of State to maintain a comprehensive database of currently authorised insolvency practitioners.

## MEMORANDUM OF UNDERSTANDING

- Detail -

###### GRANTING OF AUTHORISATIONS

The purpose of this section is to ensure that the Bodies work to common standards in considering applications for authorisation from those individuals eligible under section 391(3) of the Insolvency Act 1986.

1. The Body will only grant authorisations to applicants who demonstrate:
2. That they are fit and proper persons to act as insolvency practitioners. In this respect, the Body will have regard to, amongst other things, Regulation 6 of the Insolvency Practitioners Regulations 2005;

And in the case of applicants who have not previously held an authorisation:

1. That they will have acquired the necessary and relevant insolvency experience required to satisfy the Body's bye-laws and rules, and regulations (experience includes regulatory and advisory work experience as defined in the Insolvency Practitioner Regulations 2005), and
2. That they hold a pass in the Joint Insolvency Examination set by the Joint Insolvency Examination Board or, in the case of eligible applicants from other member states of the European Economic Area, they comply with the requirements of The European Communities (Recognition of Professional Qualifications) Regulations 2007.
3. When considering an application from an applicant who is the holder of or has held an authorisation, the Body will in addition to the matters in 1(A) have regard to the following in relation to the applicant:
	1. The contents of monitoring reports in its possession,
	2. The applicant’s regulatory and disciplinary record,
	3. Evidence of appropriate continuing professional development,
	4. Evidence of continuing knowledge of and experience in insolvency practice (which expression includes regulatory and advisory work experience as defined in the Insolvency Practitioner Regulations 2005), and
	5. Any other information in its possession including, but not limited to, that relating to complaints, statutory compliance, compliance with bye-laws and, rules and regulations of the Body.
4. The Body will ensure that there is an adequate system in place to substantiate information provided by applicants in relation to their applications for authorisation.
5. If it is known that an applicant is a member of another Body, enquiries should be made of that Body before a licence is granted; the communication after the event should be to confirm (to the Body that previously granted a licence, if any) that one has been issued.

**2 MAINTENANCE OF AUTHORISATIONS**

The purpose of this section, in conjunction with the details contained in the ‘Principles for Monitoring’, is to ensure that the Bodies work to common standards in carrying out monitoring and other activities to certify that the authorisations granted remain valid.

* 1. To secure the integrity of insolvency practitioner authorisation, the Body will neither:
1. Permit an authorisation to continue in force for a duration incompatible with the requirements of The Provision of Services Regulations (SI 2009/2999), or
2. Knowingly grant to an individual an authorisation contemporaneously with one from another Recognised Professional Body or Competent Authority.
	* 1. Where a practitioner undertakes appointments as nominee or supervisor of Individual Voluntary Arrangements and the practitioner passed the Personal Insolvency Paper of the Joint Insolvency Examination before December 2007, the Body will ensure that the practitioner has demonstrated knowledge of non-statutory debt solutions to the extent of that covered by the current syllabus of the Joint Insolvency Examination Board.
		2. Where a person is no longer authorised for whatever reason, the Body will:
		3. Notify the Secretary of State as detailed in 8(D)(i) or 8(D)(ii) and, with such assistance from the Secretary of State as may be appropriate, take all necessary steps in relation to all appointments held by the former practitioner to secure the expeditious appointment of a replacement practitioner unless, either by insolvency type or individual case, it is agreed otherwise by the Secretary of State,
		4. Consider seeking to transfer recently closed cases, and
		5. Seek, by its membership rules or otherwise, to obtain the agreement of the outgoing IP to transfer cases, deliver up all relevant paperwork and attend upon the successor if required.

(D) The Body will ensure that its authorised practitioners are subject to monitoring so as to enable the Body to make an objective assessment of the conduct and performance of the practitioner and to ascertain whether the practitioner is and continues to be fit and proper.

(E) The Body will:

(i) Ensure that all monitoring activities, including visits to practitioners comply with the Principles for Monitoring as agreed between the Secretary of State and the Recognised Professional Bodies,

(ii) Ensure that adequate resources are available to undertake the monitoring function and that it is carried out by individuals with appropriate training and skills,

(iii) Have an appropriate system for considering, reviewing, and evaluating monitoring reports. It will ensure that those engaged in these functions are both independent of and seen to be independent of, the subjects of the monitoring reports, and

(iv) Ensure that prompt and appropriate action is taken when it becomes aware of serious concerns in relation to a practitioner’s fitness.

**3 ETHICS AND PROFESSIONAL STANDARDS**

## The purpose of this section is to ensure that the Bodies ensure their members work to common professional standards that are reviewed and, where possible enhanced, to enable creditors and others to receive an efficient service at a fair cost.

(A) The Body will apply its professional and ethical code or guide in relation to the activities of its authorised practitioners, ensuring practitioners follow the appropriate codes of integrity, objectivity, professional competence and due care, confidentiality, professional behaviour, due skill and courtesy.

(B) The Body will with the Secretary of State and the other Recognised Professional Bodies participate in the development of professional and ethical standards, and best practice guidance, for insolvency practitioners through the Joint Insolvency Committee.

(C) The Body will issue to the practitioners it authorises the Statements of Insolvency Practice, approved by the Joint Insolvency Committee (once adopted by the Body), as required practice and the Body will also arrange for appropriate best practice, ethical, and technical guidance to be made available to its practitioners.

**4 HANDLING OF COMPLAINTS**

The purpose of this section is to ensure that the Bodies work to common standards, by having in place an accessible, effective, fair, and transparent procedure for dealing with complaints against members; that complaints are progressed expeditiously; that complainants are made aware of the findings of their complaints in a timely manner, and that the Bodies employ practices that will assist the Secretary of State function of monitoring the Recognised Professional Bodies.

1. The Body will ensure that:
	1. Guidance explaining its complaints process is published and easily accessible for any person wishing to make a complaint against one or more of its members in relation to both formal appointments and other engagements that may result from the member’s authorisation,
	2. All complaints are progressed expeditiously and impartially, and that appropriate review procedures are in place to facilitate this, and
	3. Those investigating and considering complaints are independent of and seen to be independent of the subjects of the complaints, and that all complaints are investigated by individuals with appropriate training and skills.

(B) The Body will send a written acknowledgement to the complainant within ten working days of receipt of a complaint.

(C) Within fifteen working days of the conclusion of the complaint the Body will send a letter to the complainant setting out:

* + 1. its findings in respect of the complaint
		2. an indication of proposed further action, if any.

And will include details of available options should the complainant be dissatisfied with the Body’s findings.

* + - * 1. Where an insolvency practitioner ceases to be authorised by a Recognised Professional Body during the course of a complaint investigation, and becomes authorised by a second Body, the first will, where it retains its jurisdiction to consider the practitioners conduct, complete its investigation (including any disciplinary and appeal hearings) and upon request, notify the second of the heads of complaint that were being investigated, its conclusions and any regulatory or disciplinary sanction imposed.

**SECURITY AND CAUTION**

The purpose of this section is to ensure both that insolvency practitioners comply with the legislative requirements as regards security (in England and Wales) or caution (in Scotland) (the bonding requirements); and that mechanisms are in place to ensure that potential claims under bonds are identified and made.

(A) The Body will monitor the performance of its practitioners in relation to the bonding requirements of the Insolvency Act 1986, detailed criteria in respect of which are prescribed in the Insolvency Practitioners Regulations 2005.

(B) The Body will have a system to record the receipt of enabling bonds and renewals of such bonds. It will also take all reasonable steps to identify instances of non-compliance by practitioners in relation to cover schedule returns and take appropriate action where there is evidence of non-compliance with the prescribed requirements.

(C) Where the Body has reasonable grounds to believe that a claim may be made against the bond of one of its authorised practitioners the Body will take such steps as are necessary to ensure that an investigation is carried out and where appropriate will process or arrange for an authorised practitioner (or by agreement with the Secretary of State, another suitably qualified person) by assignment, to process any claim arising under a bond or bonds.

**6 DISCLOSURES AND EXCHANGE OF INFORMATION**

The purpose of this section is to ensure that information is shared freely between the Recognised Professional Bodies and the Secretary of State, to assist them in carrying out their regulatory duties, including those outlined in this document.

(A) The Body will not enter into any agreement, contractual or otherwise, with one or more of its practitioners that would prevent or hinder compliance with this section.

(B) Subject to the terms and conditions set out in the remainder of this section, the Body will disclose relevant information in its possession to the Secretary of State and other Recognised Professional Bodies where:

* 1. It is requested to do so by the Secretary of State, or
	2. Where it appears to the Body that information should be so disclosed to enable the Secretary of State or other Body to carry out their regulatory duties.

(C) Where the Body receives a request of the type described and it believes such information to be subject to a statutory or other legal restriction the Body will use its best endeavours to secure a waiver of the restriction from any person entitled to grant such a waiver, otherwise it shall consult the Secretary of State on the nature of the restriction.

(D) The Secretary of State will:

(i) Disclose to the Body such information as appears necessary for the purpose of the exercise of the Body’s functions under Part XIII of the Insolvency Act 1986,

(ii) Disclose relevant information to the Body where it appears that information should be so disclosed to enable the Body to carry out its regulatory duties, and

(iii) Record authorisation information as detailed in 8(D)(i) to 8(D)(iii), as the case requires, the individual and the Body by name, together with the date of notification and make the list available to the Recognised Professional Bodies on request.

(E) Where documents are supplied in any form to the Body by the Secretary of State in the course of any disclosure pursuant to paragraphs 6(D)(i) and 6(D)(ii), the documents are to be returned by the Body to the Secretary of State on an agreed date (as may be extended by the Secretary of State) in the form in which they were supplied. Copies of such documents are only to be made with the consent of the Secretary of State.

(F) Any relevant information received by the Body from the Secretary of State or another Recognised Professional Body will be used only for the purposes of the exercise of the Body’s functions in relation to Part XIII of the Insolvency Act 1986. No disclosure of that information to any Body or person other than in pursuance of such purposes is to be made by the Body without the consent of the Secretary of State or, as the case may be, the other Recognised Professional Body.

* 1. **RETENTION OF RECORDS**

### The purpose of this section is to ensure that monitoring reports, and records relating to complaints are retained for a sufficient period to enable the Secretary of State satisfy himself that a Body is complying with the terms of the Memorandum of Understanding.

(A) The Body will retain monitoring reports, and records relating to complaints (against both members and the exercise of the Body’s regulatory functions) until the conclusion of the next regulatory inspection carried out by the Secretary of State or for a period of five years from the receipt of such reports and/or complaints, whichever period is the shorter. Such records are to be kept in original form or other accessible storage medium.

* 1. **REPORTING DUTIES TO THE SECRETARY OF STATE**

### The purpose of this section is to furnish the Secretary of State with sufficient information to enable a contemporaneous database of authorised insolvency practitioners to be maintained, and to provide information about complaints that may be useful in evaluating and formulating policy objectives.

* + 1. Changes in Byelaws

The Body will notify the Secretary of State of changes in its byelaws and rules and regulations in relation to insolvency practitioners. Where changes solely affect insolvency practitioners, the Body will consult the Secretary of State in advance of any changes being made.

(B) List of Authorised Insolvency Practitioners

The Body will supply to the Secretary of State a list of the practitioners it authorises as at 1st January and the date of the expiry of their current authorisation and enabling bond, by 31st January of each year.

(C) The Annual Report

The Body will supply to the Secretary of State an annual report in an agreed format, providing details of licensing activities undertaken in the previous year, by 31st January. The Annual Report submitted by each Body to the Secretary of State will include the following details: -

(i) The number of applications for authorisation received, how many were granted, and how many refused,

(ii) The number of authorisations

(a) Revoked

(b) Lapsed,

(iii) The number of matters considered on appeal subdivided to show whether the original decision was confirmed or reversed,

(iv) The number of complaints in hand at the beginning of the year; the number received during the year; the number dealt with and the balance in hand at the end of the year,

(v) An analysis of the nature of complaints received during the year,

* 1. An account of how the complaints dealt with during the year were disposed of including the numbers considered by the Investigation and Disciplinary Committees and providing details of revocations and lesser penalties imposed, and

(vii) The number of monitoring visits carried out subdivided to show the results of those visits.

(D) Reporting duties throughout the Year

The Body will supply to the Secretary of State, at the time set out, the following:

* + 1. Details of individuals whose authorisation has lapsed (if not immediately renewed) within one week of the Body becoming aware of the lapse,
		2. Details of individuals whose authorisation has been revoked, within one week of loss of authorisation being effected. Where a practitioner is not authorised and the practitioner appeals this decision, the Body should report this under 8(D)(ix),

(iii) A list of all individuals to whom it has granted a first authorisation to act as an insolvency practitioner, no later than the end of the week following the week in which it granted the authorisation,

(iv) A list of all individuals whose applications for authorisation to act as an insolvency practitioner it has rejected, no later than the end of the month following the month in which it rejected the authorisation, and

(v) Where any Head of Complaint remains under investigation twelve months after the date of issue of the acknowledgement, the Body will bring that matter to the attention of the Secretary of State no later than the end of following quarter after the expiry of the twelve month period.

(vi) The Body will provide such further information as the Secretary of State may from time-to-time require, relating to its activities as a Recognised Professional Body, having previously been given reasonable notice of any such requirement.

The Body will promptly notify the Secretary of State when:

(vii) It proposes to withdraw a practitioner’s authorisation on the grounds that he/she is no longer ‘fit and proper’ to retain their authorisation, no later than the end of the month following the month in which action is commenced.

(viii) Disciplinary or regulatory action has been taken against a practitioner, no later than the end of the month following the month in which action is effective.

(ix) A practitioner has lodged an appeal against disciplinary or regulatory action that would fall into 8D(vii) or 8D(x), no later than the end of the week following the week in which the appeal is lodged. Other appeals can be notified to the Secretary of State at conclusion.

(x) It becomes aware of any significant change in a practitioner’s circumstances, including matters that might impact on the creditors of an insolvency procedure where the practitioner is office-holder, or affect the ability of the practitioner to accept new appointments (including restrictions imposed or lifted), no later than the end of the week following the week in which the Body becomes aware of the change.

(E) The Body shall promptly notify the Secretary of State when it comes into possession of information that might affect the register of insolvency practitioners maintained by the Secretary of State no later than the end of the week following the week in which the Body is advised or otherwise learns of the change. Such matters include but are not limited to:

* A change of the practitioner’s name,
* A change of address, and
* A change in the practice name.