



Australian Government

Australian Financial Security Authority



ASIC

Australian Securities & Investments Commission

MEMORANDUM OF UNDERSTANDING

between the

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

and the

AUSTRALIAN FINANCIAL SECURITY AUTHORITY

September 2014

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This Memorandum of Understanding (MOU) sets out a framework for cooperation between the Australian Securities and Investments Commission (ASIC) and the Australian Financial Security Authority (AFSA) to facilitate liaison, co-operation, assistance and the exchange of information between the agencies for the effective and efficient performance of their respective regulatory functions.

1. PURPOSE

- 1.1 The agencies recognise that the need for cooperation and mutual assistance at all levels between them is desirable to assist in the discharge of their respective functions and to maximise the effectiveness of their regulatory oversight functions.
- 1.2 The agencies agree to assist each other in the exchange of relevant information, appropriate referral of matters, and co-operation in compliance, education and enforcement activities within the framework of this MOU and consistent with all relevant laws.

2. RESPONSIBILITIES

- 2.1 ASIC was established by the Australian Securities and Investments Commission Act 1989 and is continued in existence by the Australian Securities and Investments Commission Act 2001. ASIC is a regulatory and law enforcement agency charged with (among other things):
 - monitoring and promoting market integrity and consumer protection in relation to the Australian financial system;
 - promoting the confident and informed participation of investors and consumers in the financial system;
 - the registration and oversight of corporate insolvency practitioners and administration of the corporate insolvency provisions of the *Corporations Act 2001* (Corporations Act);
 - administration of the *National Consumer Credit Protection Act 2009*.
- 2.2 AFSA is an Executive Agency of the Commonwealth Government. AFSA employs several statutory office-holders. Under the *Bankruptcy Act 1966* (Bankruptcy Act), the Inspector-General in Bankruptcy and Official Receiver are charged with specific functions and powers. The Official Trustee in Bankruptcy is also established under the Bankruptcy Act. The Official Receiver and the Inspector-General in Bankruptcy can act for and on behalf of the Official Trustee in Bankruptcy. The office of the Registrar of Personal Property Securities (the Registrar) is established under the *Personal Property Securities Act 2009* (the PPS Act).
- 2.3 AFSA administers and regulates the personal insolvency system in Australia, including the registration of trustees to administer personal insolvency estates and the maintenance of the National Personal Insolvency Index (NPII), which is a publicly accessible register of all bankruptcies and personal insolvencies in Australia. AFSA also administers the Personal Property Securities Register (PPSR) established under the PPS Act, on which security interests in personal property can be registered.
- 2.4 The office of the Inspector-General is established under section 11 of the Bankruptcy Act and the functions and powers of that role are set out in sections 11 and 12. In accordance with section 11(4), the Inspector-General may delegate any of his or her functions or powers to officers of AFSA.
- 2.5 The office of Official Receiver is established under section 15(1) of the Bankruptcy Act. Under section 18(8), the Official Receiver may, in the name of, and on behalf of, the Official Trustee, exercise any of the powers, or perform any of the functions of the Official Trustee. In

accordance with section 15(4), the Inspector-General may direct officers of AFSA to exercise or perform the Official Receiver's powers, functions or duties.

- 2.6 The office of the Registrar of Personal Property Securities (PPS Registrar) is established under section 194(2) of the PPS Act. The functions and powers of that position are set out in sections 195 and 195A. In accordance with section 197, the Registrar may delegate any of his or her functions or powers.
- 2.7 The Inspector-General has entered into this MOU for and on behalf of AFSA, the Official Receiver, the Official Trustee, and the PPS Registrar.
- 2.8 This MOU does not create any legally binding obligations. The liaison, cooperation and other information sharing contemplated in this MOU is subject to all applicable laws and regulations governing the exchange of confidential, protected, or personal information.

3. LIAISON BETWEEN AGENCIES

- 3.1 To promote co-operation between the agencies, regular regional and national liaison meetings will be held between ASIC and AFSA with regard to operational and policy matters. These liaison meetings should occur at least every six months.
- 3.2 The agencies agree that liaison in respect of routine operational matters will occur on an 'as needed' basis between appropriate staff of the agencies.
- 3.3 In order to ensure effective liaison, the agencies have exchanged, and will continue to update, lists of contact officers at both the regional and national level.

4. REGULATION AND POLICY DEVELOPMENT

- 4.1 Each agency will use its best endeavours to notify the other of proposed changes in regulatory policy and guidance which are likely to impact on the regulatory responsibilities of the other agency and provide the opportunity to consult the other agency about those changes.
- 4.2 Each agency will use its best endeavours to provide advance notice of proposed publication of regulatory guidance or media releases that may be of interest to, or have an impact on the regulatory responsibilities of the other agency.
- 4.3 Where appropriate, the agencies may consider whether to issue a regulatory or policy document or media release jointly having regard to the subject matter and policy objectives of each agency.

5. MUTUAL ASSISTANCE AND COOPERATION

- 5.1 The agencies recognise the need for cooperation and mutual assistance at all levels to effectively discharge their respective responsibilities. The agencies agree to provide each other with mutual assistance, exchange of relevant information and appropriate referrals of matters in areas of mutual interest to assist them to effectively discharge their respective responsibilities.
- 5.2 Subject to each agency's obligations at law, the agencies will, where appropriate, provide assistance and cooperation in a timely manner in relation to:
 - (a) the exchange of information;
 - (b) appropriate referrals of matters;
 - (c) exchange of technical information and expertise;
 - (d) best practice regulation of the insolvency industry;
 - (e) best practice enforcement procedures within the insolvency industry;
 - (f) co-operative liaison with industry bodies;
 - (g) participation in joint training programs; and
 - (h) other general matters relating to regulation and enforcement.

- 5.3 The agencies agree to provide assistance and to cooperate when mutually beneficial in matters including:
- (a) ensuring, as far as possible, that the agencies take advantage of opportunities to harmonise the administration of personal and corporate insolvency legislation;
 - (b) the planning and implementation of surveillance programs;
 - (c) evaluation of surveillance techniques;
 - (d) industry education and consultation;
 - (e) formation of joint task forces as contemplated in paragraphs 5.4 and 5.5 below; and
 - (f) investigation and enforcement of, and monitoring compliance with, applicable laws.
- 5.4 From time to time, the agencies may agree that their investigations may be conducted more effectively by the establishment of a joint task force consisting of staff members from both agencies.
- 5.5 If both agencies agree to take part in the joint task force, an agreed operational plan will be prepared between the agencies setting out the objectives, expected duration, funding arrangements, publicity arrangements, accountability, and management of the joint task force.

6. PPSR COOPERATION

- 6.1 The agencies recognise the benefit of ensuring a continuing smooth transition from the administration and maintenance of the Australian Register of Company Charges (Charges Register) by ASIC under the Corporations Act to the administration and maintenance of the PPSR by AFSA under the PPS Act.
- 6.2 The agencies agree to negotiate and enter into appropriate arrangements from time to time to facilitate the transition to, and operation of, the PPSR, including ongoing liaison in relation to the PPSR.

7. ACCESS TO INFORMATION

- 7.1 Each agency holds information relevant to the other agency's statutory responsibilities. Subject to each agency's obligations at law, the agencies agree to negotiate and enter into appropriate arrangements to facilitate access by one agency to information held by the other agency and that is relevant to the first agency's statutory responsibilities, to assist each agency to effectively and efficiently perform their statutory functions.

8. UNSOLICITED ASSISTANCE

- 8.1 Each agency recognises that in the course of carrying out its functions and exercising its powers, it will periodically come into possession of information which would, if provided to the other agency, be likely to assist that other agency in administering or enforcing the particular laws for which that agency is responsible. Each agency agrees, subject to applicable law, to use reasonable endeavours to notify the other agency on a timely basis of the existence of information which the agency holding that information considers may assist the other agency to perform its regulatory and enforcement functions, notwithstanding that it may not have received a request from the other agency for such information.

9. REQUESTS FOR CONFIDENTIAL INFORMATION

- 9.1 The agencies will use their best endeavours to provide relevant information in a timely manner in response to requests for confidential information, subject to any relevant legal and operational considerations and any conditions that the provider of the information may impose when disclosing information.
- 9.2 The agencies agree that where one agency seeks confidential information from the other agency, both agencies will confer without delay to determine the most appropriate basis for the release of the information.

10. CONFIDENTIALITY

- 10.1 An agency that receives information from the other agency under this MOU, will take all reasonable steps to ensure that such information is only used or disclosed for the purpose for which it was obtained, or, as otherwise authorised by the other agency, subject to applicable laws.
- 10.2 Where a legally enforceable demand would require the production of confidential information obtained by one agency from the other under this MOU, the agency subject to the demand will, prior to production, notify the other agency in writing of the fact of receipt of the demand to enable the other agency to determine what action, if any, it should take.

11. INTERNATIONAL REPRESENTATION

- 11.1 The agencies will cooperate to ensure that Australia has appropriate regional and international representation in areas of mutual interest.

12. TERMINATION

- 12.1 Either agency may give written notice to the other of its intention to terminate this MOU. The MOU will terminate 30 days after the date the notice was received. Cooperation will continue for all requests made before the effective date of the termination. In the event of termination, information obtained under this MOU will continue to be treated in accordance with the terms of the MOU.


13. COMMENCEMENT

- 13.1 This MOU comes into effect when signed by both an ASIC Commissioner and the AFSA Chief Executive and Inspector General in Bankruptcy and replaces the MOU between the agencies dated 3 April 2002.

Dated this 30th day of September 2014

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John Price
Commissioner
Australian Securities and
Investments Commission

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Veronique Ingram
Chief Executive and
Inspector General in Bankruptcy
Australian Financial Security Authority