



# UK Government Investments Ltd

## **Memorandum of Understanding with HM Treasury relating to the Government's Shareholdings in the Royal Bank of Scotland Group Plc and UK Asset Resolution Ltd**

March 2018



UK Government  
Investments

# Memorandum of Understanding between HM Treasury and UK Government Investments Limited relating to the government's shareholdings in the Royal Bank of Scotland Group pic and UK Asset Resolution Ltd

## Part A – General

### 1. Introduction and Purpose

1.1. This memorandum of understanding ("**MoU**") has been prepared between HM Treasury ("**HMT**") and UK Government Investments Limited ("**UKGI**") and sets out the relationship between HMT and UKGI in relation to the services UKGI provides to HMT on the Investments, Loan Arrangements and Guarantee Arrangements (together referred to subsequently as "**the Assets**") as defined at paragraph 1.2.

1.2. In this MoU:

- a. the shares and other securities HMT holds in the Royal Bank of Scotland Group plc ("**RBS**"), and UK Asset Resolution Ltd ("**UKAR**") (which wholly owns NRAM and Bradford & Bingley pic ("**B&B**")) which are managed by UKGI are referred to as the "**Investments**";
- b. the Investments which constitute wholly-owned subsidiaries of HMT (including the indirect wholly-owned subsidiaries, B&B and NRAM) are referred to as the "**UKAR Companies**";
- c. the loan arrangements managed by UKGI under which loan facilities are made available by HMT to the UKAR Companies are referred to as the "**Loan Arrangements**";
- d. the guarantee arrangements managed by UKGI and put in place by HMT in respect of the UKAR Companies are referred to as the "**Guarantee Arrangements**";
- e. the financial institutions in which the Investments are held (together with B&B and NRAM) are referred to as the "**Investee Companies**"; and
- f. the Investment in RBS shares of which remain admitted to the Official List and admitted to trading on a recognised investment exchange are referred to as the "**Listed Investee Company**".

- 1.3. The MoU is made in accordance with paragraph 5.10 of the framework document drawn up by UKGI and HMT, which sets out the objectives for UKGI and the framework within which UKGI will pursue them (the “**UKGI Framework Document**”).
- 1.4. The MoU is effective from 31 March 2018 and will continue in force until such time as it is amended, supplemented or replaced by HMT.
- 1.5. The purpose of this MoU is to ensure there is a clear and common understanding between UKGI and HMT of the basis on which they will work together on matters pertaining to the Assets, including their respective roles and responsibilities and issues relating to accountability.
- 1.6. The MoU sets out (i) the scope of UKGI’s responsibilities with respect to its management of the Investments, the Loan Arrangements and the Guarantee Arrangements; (ii) the extent to which decision-making requires prior approval of HMT before being taken or implemented; and (iii) the anticipated dialogue between UKGI and HMT in relation to UKGI’s responsibilities in relation to the Assets.
- 1.7. UKGI is to comply with this MoU, consistent with pursuing the Objectives set out in the UKGI Framework Document.
- 1.8. HMT and UKGI are committed to delivering the terms of this MoU. Notwithstanding this, the MoU is not intended to create legal obligations or to be legally binding.
- 1.9. In the event of any conflict or inconsistency, the UKGI Framework Document takes precedence over this MoU.
- 1.10. Unless otherwise stated: (i) capitalised expressions used in this MoU have the meanings given to them in the UKGI Framework Document; and (ii) references to “Sections”, “Parts” and “paragraphs” refer to the Sections, Parts and paragraphs of this MoU.

## **2. Background**

- 2.1. UKGI is a limited company, wholly-owned by HMT, which provides independent corporate finance and governance advice to government departments. In the context of the Assets referred to in paragraphs 1.1 and 1.2 above, UKGI will provide independent advice to HMT and its ministers to deliver the Objectives set out in the UKGI Framework Document, in particular, the disposal of those assets. UKGI also manages the Assets on behalf of HMT. Any direct engagement with the Assets referred to in this MoU will formally be as an agent of HMT.
- 2.2. UKGI will provide its advice in a manner consistent with the Civil Service’s core values of integrity, honesty, objectivity, and impartiality.

- 2.3. Pursuant to paragraph 5.10 of the UKGI Framework Agreement, to facilitate UKGI in managing its work and resources, and to enable the constructive engagement of UKGI with the departments it advises, MoUs will be put in place for the benefit of UKGI and the departments it works with.
- 2.4. This MoU is not intended to affect the customer relationship between HMT and UKGI in relation to any other investments.

### **3. UKGI's approach to managing the Investments**

- 3.1. In managing the Investments, UKGI will (on behalf of HMT) follow best institutional shareholder practice. This includes compliance with the Financial Reporting Council's Stewardship Code for Institutional Investors, the Institutional Shareholders' Committee's Statement of Principles, the UKGI Stewardship Code, and the UKGI Principles of Portfolio Governance.

### **4. Engagement between UKGI and HMT in relation to the Assets**

- 4.1. Representatives of the Financial Stability Group within HMT and representatives from UKGI will meet from time to time to review the strategic options available in implementing this MoU and in delivering the objectives set out in the UKGI Framework Document and the UKGI Budget in relation to the Assets.
- 4.2. This engagement is intended to be in addition to the quarterly shareholder meetings referred to in the UKGI Framework Document (at paragraph 5.5) between representatives of HMT and UKGI to discuss UKGI's overall activities and performance against its Objectives.
- 4.3. The meetings referred to at 4.1 are to be held quarterly and will focus on UKGI consulting on and engaging with the Financial Stability Group within HMT on actions and decisions taken, or proposed to be taken, in connection with UKGI's responsibilities under this MoU and pertaining to the Assets. These quarterly discussions will cover issues including but not limited to:
  - a. market conditions and how they are affecting each of the Assets;
  - b. UKGI's current investment strategy in respect of each of the Assets;
  - c. opportunities, or potential opportunities to:
    - i. realise value with respect to RBS; and
    - ii. implement disposal and restructuring transactions in respect of UKAR in accordance with the Objectives outlined in the UKGI Framework Document;
  - d. the extent to which RBS and UKAR are complying with any conditions attaching to any decisions of the European Commission or national regulatory authorities

in relation to State aid or merger control with respect to any commitments given by HMT in that context (the “**Company Conditions**”);

- e. actions and decisions which UKGI has taken, or is proposing to take, to give effect to the obligations under the UKGI Framework Document and this MoU which pertain to the Assets; and
- f. staffing arrangements within UKGI that relate to UKGI’s activities to give effect to the obligations under the UKGI Framework Document and this MoU which pertain to the Assets, including the appointment of the Financial Institutions Group Director and senior officials.

4.4. In addition to these quarterly meetings, UKGI will keep HMT informed as to the status, design, development and execution of any transaction involving the Assets.

## **5. Accountabilities, finance, and working relationships**

5.1. HMT and UKGI agree to work together as one team to ensure the delivery of the objectives set out in this MoU. The parties shall endeavour to make the working arrangements function as efficiently, openly and collaboratively as possible.

5.2. UKGI will work directly with the Assets, acting as an agent on behalf of HMT, and UKGI will be the main point of day-to-day contact between HMT and the Assets.

5.3. HMT will ensure, where possible, that UKGI is invited to all meetings and sighted on all documents relevant to the Assets.

5.4. UKGI will ensure that all its documents are filed on UKGI’s systems in such a way as to ensure business continuity at the end of any arrangement.

5.5. UKGI may interact with members of regulators, BoE, FCA, PRA and the Financial Services Compensation Scheme Limited as and when necessary or appropriate for the fulfilment of its obligations under this MoU and the UKGI Framework Document, but HMT will remain primarily responsible for co-ordinating the actions of regulators in relation to the Assets.

## **6. Finance**

6.1. HMT is responsible for paying consultancy and advisors’ fees incurred by UKGI in respect of the Assets which are not properly payable by the Assets. UKGI must seek HMT’s consent before incurring such fees. UKGI should therefore consult with HMT prior to instructing consultants or other advisors and HMT should be involved in the procurement process as deemed appropriate by HMT.

## **7. Accountabilities**

- 7.1. The accountability to Parliament for the Assets will be:
- a. Ministerial level: HMT ministers
  - b. Principal Accounting Officer level: HMT Permanent Secretary
  - c. Senior Official level: UKGI
- 7.2. At HMT's request, UKGI senior officials may be required to assist HMT in relation to National Audit Office reports, Public Accounts Committee hearings, and Treasury Committee hearings.

## **8. Preservation of the independence of the Assets**

- 8.1. UKGI will manage the Investments on a commercial basis and will not intervene in day-to-day management decisions of the Assets.
- 8.2. HMT is determined to ensure that: (i) the Investments, and the management of the Investments by UKGI, do not lead to a prevention, restriction, distortion or significant lessening or impediment of effective competition in contravention of merger control or competition law restrictions; and (ii) UKGI adopts appropriate procedures for managing conflicts and inside information. In order to achieve this objective, UKGI will, in particular:
- a. ensure that there are no cross-directorships between:
    - i. RBS (in relation to the appointments in which UKGI has a specified role) and UKAR; or
    - ii. UKGI and RBS.
  - b. put in place robust barriers which are monitored and adhered to by UKGI personnel and enforced at all levels to ensure that commercial information relating to:
    - i. RBS does not leak to, and is not exchanged with, UKAR; or
    - ii. UKAR does not leak to, and is not exchanged with, RBS.
  - c. develop and maintain procedures to ensure that:
    - i. it makes decisions in respect of each Asset individually rather than in respect of the portfolio of Assets;



- ii. it exercises its rights in relation to each Investee Company individually if and to the extent required to comply with merger control and competition law restrictions; and
  - iii. it does not exercise its rights in relation to the Investee Companies, or otherwise manage the Investments, in a manner which may result in a prevention, restriction, distortion or significant lessening or impediment of effective competition.
- a. develop, establish and apply policies and procedures to ensure that it (and its directors, officers and employees) abides by the Code of Market Conduct, and other rules and guidance laid down by the Financial Conduct Authority and recognised investment exchanges to which securities of the Listed Investee Company are admitted to trading (such policies and procedures to cover, in particular, insider dealing and market abuse) (the "**Compliance Policies**"). In this context, it is envisaged that UKGI will normally act as other institutional shareholders would act, using published information in a structured dialogue with key members of the RBS board. In considering whether it is necessary or appropriate for UKGI (or any of its directors, officers or employees) to become an "insider" in relation to RBS (for example where it is necessary for UKGI to receive price-sensitive information to enable it to perform its responsibilities under this MoU and the UKGI Framework Document), UKGI will pay due regard to the objective of implementing this MoU and the UKGI Framework Document and manage the situation in accordance with the relevant elements of its Compliance Policies.

## Part B – RBS

### 9. Value-realisation

#### *Introduction*

- 9.1. In relation to RBS, it is anticipated that value realisations from the Investments will principally result from a decision relating to the disposal, exchange or conversion of, or other dealing in, all, or a portion of, the Investments in RBS, or any rights over or in respect of those Investments (including any such disposal effected pursuant to a buy-back programme initiated by RBS) (a "**Disposal Transaction**").
- 9.2. In connection with Disposal Transactions which may be initiated by HMT (or by UKGI in its capacity as manager of the Investments), HMT has entered into a registration and resale rights agreement with RBS which will enable the shares and other securities held by HMT in RBS (and the rights over and in respect of those shares and other securities) to be sold in such jurisdictions and in such manner as HMT may determine ("**RRA**"). The RRA requires RBS, amongst other things, to provide such assistance to HMT with respect to due diligence, marketing and the preparation of documentation (including offering memoranda) as HMT may reasonably require.

- 9.3. Without prejudice to UKGI's obligations to consult with, and obtain the approval of, HMT with respect to the design, development and implementation of Disposal Transactions (as further outlined in the remainder of this Section), UKGI shall act as the principal liaison point with RBS with respect to any such transaction (or proposed transaction).

#### *Disposal Transactions*

- 9.4. Subject to paragraph 9.5, UKGI and its representatives may, as part of the development and updating of its investment strategy for RBS, design, develop and implement Disposal Transactions.
- 9.5 UKGI will, in relation to any Disposal Transaction, comply with Part D and will also:
- a. seek HMT's views in relation to any such Disposal Transactions before entering into any substantive engagement with RBS (or its directors, officers, employees or advisers) with respect to the design, development or execution of any Disposal Transaction and including, in particular, where such engagement will or may require the exercise by UKGI (on behalf of HMT) of rights or powers under an RRA; and
  - b. obtain HMT's approval before taking any action to effect, approve or reject any Disposal Transaction.

### **10. Monitoring RBS Compliance**

- 10.1. UKGI will (on HMT's behalf) monitor, report on and work to secure compliance with the applicable Company Conditions. UKGI will engage with RBS on these conditions and shall take such action as it considers to be necessary or desirable to fulfil its obligations in respect of these conditions.

### **11. Remuneration**

- 11.1. In its engagement with RBS on remuneration issues UKGI will seek to ensure that:
- a. remuneration incentives at RBS are designed to promote long-term, sustainable performance;
  - b. remuneration policies at RBS:
    - i. are at the leading edge of implementing:
      - a. the Financial Stability Board remuneration principles; and
      - b. the Financial Conduct Authority remuneration code;



- ii. where a director of RBS loses the confidence of the board of directors, they should be able to be dismissed at a cost that is reasonable and fair (no rewards for failure); and
- c. are designed to enable it to attract and retain the staff needed to advance UKGI's objective of protecting and creating value for the taxpayer.

(together, the “**Remuneration Principles**”).

## **12. Governance**

- 12.1. UKGI will engage with RBS with respect to board composition generally, and in a way that is consistent with the principles set out in this MoU and the UKGI Framework Document.

## **13. Voting**

- 13.1. UKGI will exercise the voting rights attaching to HMT's Investments in RBS (including, in particular, in respect of ordinary course resolutions proposed at each annual general meeting and any resolutions in respect of any Disposal Transactions).
- 13.2. In exercising voting rights on behalf of HMT pursuant to paragraph 13.1, UKGI will:
  - a. have regard to UKGI's Objectives and any relevant obligations under the UKGI Framework Document;
  - b. adhere to the specific restrictions and requirements outlined in:
    - i. Section 9 in relation to Disposal Transactions;
    - ii. Section 11 in relation to matters pertaining to remuneration; and
    - iii. Section 12 in relation to matters pertaining to corporate governance;
  - c. seek to ensure that any votes are exercised in a manner which will facilitate and ensure compliance with the Company Conditions; and
  - d. adhere to the principles and requirements outlined in Section 3, such that UKGI will (amongst other things):
    - i. (on behalf of HMT) vote all the shares wherever practicable to do so;
    - ii. inform RBS in advance of its voting intentions; and
    - iii. disclose how it has voted.
- 13.3. UKGI will seek HMT's approval before exercising the voting rights attaching to HMT's Investments in RBS where:

- a. such approval is required by virtue of Section 9 or Part D; or
- b. the vote relates to the approval of any transaction pursuant to which RBS is proposing to effect disposal of an asset or business which is required in order to comply with the Company Conditions.

## **Part C – UKAR**

### **14. Disposal and restructuring transactions**

- 14.1. It is anticipated that a broad range of disposal and restructuring transactions ("**Disposal and Restructuring Transactions**") could be implemented in respect of UKAR, in each case as part of the process of giving effect to the principles of the Business Plans (see paragraph 15.1 below).
- 14.2. Subject to the remaining provisions of this Section and to Part D, UKGI and its representatives may, as part of the development and updating of its investment strategy for UKAR:
  - a. design, develop and implement Disposal and Restructuring Transactions; and
  - b. take such action as it considers to be necessary or desirable to effect or approve, or reject, proposed Disposal and Restructuring Transactions, any such action to be taken having regard to UKGI's Objectives and UKGI's other obligations under the UKGI Framework Document.
- 14.3. With regard to any Disposal and Restructuring Transaction, UKGI and its representatives must obtain the prior approval of HMT before taking action to effect or approve, or reject, such transaction, if such transaction:
  - a. involves a disposal by HMT of some or all of the shares it holds in UKAR;
  - b. will, or is expected to, give rise to proceeds of more than £250 million (or more than £500 million in transactions relating to HMT assets);
  - c. will, or is expected to, give rise to a net profit impact upon the UKAR Companies of more than £25 million; or
  - d. involves the disposal of assets at a discount or a premium which is not in line with discounts or premia (as relevant) current in the market for comparable assets.
- 14.4. Without prejudice to paragraph 14.3, UKGI will, in relation to any Disposal and Restructuring Transaction, comply with Part D and will also seek HMT's views in relation to any such Disposal and Restructuring Transaction before entering into any substantive engagement with UKAR (or its directors, officers, employees or advisers)

with respect to the design, development or execution of any Disposal and Restructuring Transaction.

## **15. Business Plan**

- 15.1. UKGI will (on HMT's behalf) monitor and work to secure compliance with the business plans of UKAR Companies ("**Business Plans**") and the Company Conditions; and, under the framework document drawn up between UKAR and UKGI (the "**UKAR Framework Document**"), UKGI has various responsibilities in relation to the UKAR Business Plan and strategy.
- 15.2. UKGI and its representatives must obtain the prior approval of HMT before approving or rejecting any action taken by UKAR which:
  - a. may involve, or may reasonably be expected to give rise to, a requirement for HMT to contribute additional capital to UKAR;
  - b. may, or may reasonably be expected to, have a material effect upon the rate at which UKAR repays the liabilities it owes to HMT in respect of the Loan Arrangements; or
  - c. may, or may reasonably be expected to, lead to a material change in the UKAR strategy.

## **16. Remuneration**

- 16.1. The UKAR Framework Document provides that UKGI will (on HMT's behalf) have various responsibilities in respect of:
  - a. the approval of the remuneration packages and any incentivisation arrangements for the directors and senior management of UKAR; and
  - b. the structure of the incentive schemes for other UKAR employees.
- 16.2. In its engagement with UKAR on remuneration issues UKGI will seek to ensure that:
  - a. remuneration incentives at UKAR are designed to promote long-term, sustainable performance;
  - b. remuneration policies at UKAR are compliant with the Financial Stability Board remuneration principles and the FCA remuneration code;
  - c. where a director of UKAR loses the confidence of the board of directors of that company, they should be able to be dismissed at a cost that is reasonable and fair (no rewards for failure); and

- d. remuneration policies at UKAR are designed to enable them to attract and motivate high calibre individuals to drive the delivery of their Business Plan.

## **17. Governance**

17.1. UKGI will (on HMT's behalf), exercise the rights in relation to the board of directors of UKAR arising by virtue of its Investment in UKAR, in accordance with the UKAR Framework Document.

## **18. Voting**

18.1. UKGI will exercise the voting rights attaching to HMT's investment in UKAR.

18.2. In exercising voting rights on behalf of HMT pursuant to paragraph 18.1, UKGI will:

- a. have regard to UKGI's objectives and other obligations under the UKGI Framework Document;
- b. adhere to the specific restrictions and requirements outlined in:
  - i. Section 14 in relation to Disposal and Restructuring Transactions;
  - ii. Section 15 in relation to matters pertaining to the UKAR Business Plans and strategy;
  - iii. Section 16 in relation to matters pertaining to remuneration; and
  - iv. Section 17 in relation to matters pertaining to corporate governance; and
- c. seek to ensure that any votes are exercised in a manner which will:
  - i. facilitate and ensure compliance with and delivery of the UKAR Business Plan;
  - ii. facilitate and ensure compliance with the Company Conditions; and
  - iii. facilitate and ensure compliance with and delivery of decisions of UKGI in accordance with this MoU and any relevant provisions within the UKGI Framework Document.

## **19. Loan Arrangements and Guarantee Arrangements**

19.1. UKGI will (on HMT's behalf), manage certain aspects of the Loan Arrangements and the Guarantee Arrangements in respect of UKAR.

## **20. Litigation and Claims Handling**

- 20.1. The UKAR Framework Document provides that UKGI will (on behalf of HMT) have various responsibilities in respect of any material litigation or claims concerning the UKAR Companies.
- 20.2. UKGI will promptly inform Treasury Legal Advisers ("TLA") of the details of any material litigation in respect of the UKAR Companies of which it becomes aware, and will:
- a. provide TLA with monthly updates in respect of all such litigation;
  - b. upon request provide TLA with any additional information that is in its possession in respect of such litigation;
  - c. request from UKAR any information in respect of such litigation that TLA reasonably considers is relevant;
  - d. consult with TLA in relation to the appropriate handling of such litigation; and
  - e. if so requested by TLA, delegate to TLA some or all its rights in relation to the handling of such litigation.

## **Part D – Approvals and Instructions**

### **21. Approvals and Instructions**

#### *UKGI's obligations*

- 21.1. In carrying out its responsibilities under this MoU and any provisions within the UKGI Framework Document which pertain to the Assets, UKGI (and its representatives):
- a. will refer all requests relating to any matter for which HMT's prior consent or approval is required under the terms of this MoU promptly to HMT, together with any information or documents pertaining to such requests which are in UKGI's possession;
  - b. will inform HMT promptly of any information regarding UKGI that would have required public disclosure if it were listed on the Official List; and
  - c. will inform HMT promptly of any information or any approaches to or from third parties pertaining to any matter for which HMT's prior consent or approval is required under the terms of this MoU of which UKGI is aware.

#### *Approvals from HMT; Instructions from HMT*

- 21.2. HMT will have approval rights over:

- a. any variation or waiver of the terms of any agreement between HMT and the Assets or the grant of any consent or approval under such an agreement;
  - b. any variation or waiver of the terms of any framework document regarding the Assets;
  - c. any disposals (including redemption prior to scheduled maturity) or acquisitions of Investments, or other strategic transactions, which are not in accordance with the objectives set out in this MoU;
  - d. any action which may have a significant bearing on, or prejudice, HMT's position as a creditor or contingent creditor of an Asset; and
  - e. any other actions that fall outside of the scope of the MoU and the discretions vested in UKGI by virtue of this MoU or which may have a significant bearing on or prejudice the delivery of, or compliance with, the activities and objectives set out in this MoU and the UKGI Framework Document.
- 21.3. Notwithstanding the foregoing, HMT may, separately, delegate authority to UKGI to take certain decisions falling within one or more of the categories 'described above without obtaining prior HMT consent.
- 21.4. HMT will authorise the Treasury Solicitor to take instructions from UKGI in relation to proxy forms, authorisations and other documents which need to be signed in order to give effect to the decisions made by UKGI in compliance with this MoU and the UKGI Framework Document in relation to the Assets, including decisions as to voting.
- 21.5. It is envisaged that any approval of HMT required pursuant to this MoU:
- a. will ordinarily be sought at one of the quarterly relationship meetings (without prejudice to UKGI's right to seek separate approval where it considers it to be necessary or desirable having regard to UKGI's Objectives); and
  - b. (in respect of Disposal Transactions and Disposal and Restructuring Transactions) may be sought either:
    - i. in respect of a single proposed Disposal Transaction or Disposal and Restructuring Transaction; or
    - ii. by reference to a general authority from HMT to implement Disposal Transactions or Disposal and Restructuring Transactions within agreed parameters (including with respect to pricing and timing).

## **Part E – Miscellaneous**

### **22. Status of this MoU**

- 22.1. It is envisaged that this MoU may be amended, supplemented or replaced by HMT from time-to-time.
- 22.2. In the event of any conflict or inconsistency, the UKGI Framework Document takes precedence over this MoU.
- 22.3. This MoU should be interpreted in the light of UKGI's memorandum and articles of association and English company law and is without prejudice to the statutory and other rights and obligations of HMT or UKGI.