



Jersey Financial
Services Commission



The Law Society
of Jersey

**MEMORANDUM
OF
UNDERSTANDING**

between the

Jersey Financial Services Commission

and

The Law Society of Jersey

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Definitions

In this Memorandum of Understanding, unless the context requires otherwise:

"**applicable laws, regulations and requirements**" means any law, regulation or requirement applicable in Jersey from time to time, and where the context permits includes:

- (a) any law, regulation or order in force; and
- (b) any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority;

"**Authority**" means the JFSC or The Law Society;

"**dual regulated person**" means a person subject to the jurisdiction of both the JFSC and The Law Society in the carrying out of their respective statutory functions;

"**JFSC**" means the Jersey Financial Services Commission;

"**independent legal professionals**" has the same meaning as that ascribed to it in Schedule 2 of the Proceeds of Crime (Jersey) Law 1999, as amended;

"**legal services body**" has the same meaning as that ascribed to it in The Law Society of Jersey Law 2005, as amended;

"**person**" means a natural person, legal entity, partnership or unincorporated association (for the avoidance of doubt "person" includes a legal services body).

"**Requested Authority**" means the Authority to whom a request for assistance is made under this MoU.

"**Requesting Authority**" means the Authority making a request for assistance under this MoU.

"**The Law Society**" means The Law Society of Jersey.

Memorandum of Understanding ("MoU")

between the

**Jersey Financial Services Commission
("JFSC")**

and

**The Law Society of Jersey
("The Law Society")**

Recitals

- A. The JFSC is a statutory body established under the Financial Services Commission (Jersey) Law 1998, as amended.
- B. The JFSC's main function is the supervision of financial services providers. This includes the authorisation and supervision of collective investment funds and recognized fund functionaries under the Collective Investment Funds (Jersey) Law 1988, the licensing and supervision of banks under the Banking Business (Jersey) Law 1991, the licensing and supervision of insurance companies under the Insurance Business (Jersey) Law 1996, and the licensing and supervision of investment business, trust company business, insurance mediation business, money service business and fund services business under the Financial Services (Jersey) Law 1998.
- C. The JFSC also incorporates Jersey's Registry of Companies, Limited Partnerships and Limited Liability Partnerships.
- D. The JFSC also has responsibility, pursuant to the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, as amended, for monitoring the compliance of financial services providers and designated non-financial businesses and professions (which includes independent legal professionals) with their obligations under Jersey legislation to forestall, prevent and detect money laundering and the financing of terrorism.
- E. The Law Society is a statutory body established under The Law Society of Jersey Law 2005, as amended. It is the governing body of lawyers practising as advocates and solicitors of the Royal Court of Jersey.
- F. The Law Society's functions include:
 - (a) determining applications from limited liability partnerships¹ that wish to be recognized as legal services bodies and determining what conditions (if any) the recognition of a legal services body should be subject to;
 - (b) (through its disciplinary committee) investigating complaints of professional misconduct made against an advocate, solicitor or legal services body and, where it is satisfied that a complaint is proved:

¹ Or such other bodies as the Chief Minister prescribes by Order.

- i. imposing on the relevant advocate, solicitor or legal services body one of the penalties set out in Article 23(2) of The Law Society of Jersey Law 2005, as amended; or
 - ii. referring the complaint to the Attorney General.
- G. The Authorities wish to enter into this MoU to provide a formal basis for co-operation, including for the exchange of information. The Authorities believe such co-operation will enable them to more effectively perform their functions.

Purpose and Principles

1. The purpose of this MoU is to provide a framework for the working relationship between the Authorities. In particular, it establishes a framework for the exchange of relevant information in relation to dual regulated persons to enable or assist the Authorities to carry out their respective statutory functions.
2. This MoU does not modify or supersede any applicable laws, regulations and requirements and any obligation herein contained shall be construed as being subject to any applicable laws, regulations and requirements. Notwithstanding any other provision of this MoU, this MoU does not create any enforceable rights. This MoU does not affect any arrangements either of the Authorities may have under other MoUs.
3. The Authorities acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations and requirements.

Scope of co-operation

4. This MoU covers co-operation in relation to dual regulated persons.
5. Co-operation may include, but not necessarily be limited to, the exchange of relevant information:
 - (a) to assist the Authorities to determine whether a dual regulated person's application to be registered, licensed or recognized (as the case may be) should be approved;
 - (b) to assist the Authorities with the ongoing supervision of a dual regulated person or an investigation into the conduct of a dual regulated person;
 - (c) to assist with the taking of relevant disciplinary action against a dual regulated person.

Proactive sharing of relevant information

6. Provided it is lawful to do so in the particular circumstances and would enable or assist an Authority to exercise its statutory functions, the Authorities may proactively share relevant information where:
 - (a) a dual regulated person makes an application to be registered, licensed or recognized (as the case may be), by the other Authority;

- (b) an Authority becomes aware of, or suspects, material contraventions by a dual regulated person of regulatory requirements set by the other Authority or of material contraventions of legislation (including in the case of The Law Society, its bye-laws) administered by the other Authority;
- (c) information in the possession of an Authority indicates that a dual regulated person may not be a fit or proper person or may not otherwise meet the criteria to be, or to continue to be, registered, licensed or recognized (as the case may be) by the other Authority;
- (d) an Authority imposes a sanction on a dual regulated person.

Requests for Assistance

7. If a request for assistance is made, each Authority will use its best endeavours and efforts to provide assistance to the other, subject to applicable laws, regulations and requirements. Assistance may include for example:
- (a) providing information about a dual regulated person in the possession of the Requested Authority;
 - (b) confirming or verifying information about a dual regulated person provided to it for that purpose by the Requesting Authority;
 - (c) exchanging information on, or discussing issues of, mutual interest.

Procedure for Requests

8. Requests for the provision of information or other assistance will be made in writing, or – in urgent cases - made orally and, unless otherwise agreed, confirmed in writing within five business days. To facilitate assistance, the Requesting Authority should specify in any written request:
- (a) a description of the information or other assistance requested (identity of the dual regulated person, specific information sought, etc.);
 - (b) if information is provided by the Requesting Authority for confirmation or verification, the information and the kind of confirmation or verification sought;
 - (c) the purpose for which the information or other assistance is sought; and
 - (d) to whom, if anyone, onward disclosure of information provided to the Requesting Authority is likely to be necessary and the purpose such disclosure would serve.

Assessing Requests

9. Each request for assistance will be assessed on a case-by-case basis by the Requested Authority to determine whether assistance can be provided under the terms of this MoU. In any case where the request cannot be fulfilled in part or whole, the Requested Authority may be asked to provide the reasons for not

granting the assistance and consider whether there may be other assistance which can be given by itself.

10. In deciding whether and to what extent to fulfil a request, the Requested Authority may take into account:
 - (a) whether the request conforms with this MoU;
 - (b) whether the provision of assistance would be so burdensome as to disrupt the proper performance of the Requested Authority's functions;
 - (c) whether it would be otherwise contrary to the public interest to give the assistance sought;
 - (d) any other matters specified by applicable laws, regulations and requirements (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness);
 - (e) whether complying with the request may otherwise be prejudicial to the performance by the Requested Authority of its functions; and
 - (f) the security arrangements, including cyber defences, that will apply to information disclosed under this MoU.
11. The Authorities recognise that assistance may be denied in whole or in part for any of the reasons mentioned in clause 10 in the discretion of the Requested Authority.

Contact Points

12. The Authorities will provide a list of contact points to which information or requests for information or assistance under this MoU should be directed.

Costs

13. If the cost of fulfilling a request is likely to be substantial, the Requested Authority may, as a condition of agreeing to give assistance under this MoU, require the Requesting Authority to make a contribution to costs.

Conditions

14. An Authority will comply with any conditions placed on the use of information disclosed to it by the other under this MoU.
15. The Law Society acknowledges that, because it is not a body independent of the legal profession², there may be occasions when, because of the potential for conflicts of interest to arise, information that is to be disclosed to it by the JFSC under this MoU may, of necessity, be made subject to conditions specifying (inter alia): who in The Law Society is permitted to have access to the information; for

² By virtue of The Law Society of Jersey Law 2005, as amended, the membership of The Law Society consists of practising advocates and solicitors. In addition, its executive body – the Committee of the Law Society – consists of practising advocates and solicitors.

what purpose the information may be used; and the manner in which the information must be stored (physical or electronic security measures).

Confidentiality

16. Each Authority will keep confidential requests made under this MoU, the contents of such requests, any matters arising under this MoU, including consultations, and unsolicited assistance. After consultation with the Requesting Authority, the Requested Authority may disclose the fact that the Requesting Authority has made the request if such disclosure is required to carry out the request.
17. An Authority that receives information under this MoU will only disclose that information in accordance with disclosure permitted under its applicable laws, regulations and requirements. The Requested Authority's consent will be sought in good time before any voluntary disclosure by a Requesting Authority of information supplied under this MoU to another person. Subject to any overriding legal obligation, the Requesting Authority will comply with any restrictions set by the Requested Authority on the use of information that are agreed when the information is provided.
18. In the event that a legally enforceable demand for disclosure of information supplied under this MoU is anticipated, the Requesting Authority will notify the Requested Authority of the possibility of disclosure. If there is a legally enforceable demand for information supplied under this MoU, the Authority receiving the demand will notify the Authority that supplied the information of the demand, unless this is not practicable for reasons of urgency. The Authority receiving the demand will, if requested by the other Authority, use all reasonable legal means to resist such a demand, including asserting such appropriate legal exemptions or privileges with respect to that information as may be available. Where the circumstances are such that it is not practicable for the Authority receiving the legally enforceable demand to notify the other Authority of the possibility of the onward disclosure of the information by virtue of a legal obligation, the Authority receiving the demand will assume that the other Authority would wish it to assert such appropriate legal exemptions or privileges with respect to that information as may be available.

Retention and disposal of information

19. The Authorities acknowledge that any information provided under this MoU must not be retained for longer than is reasonably required to fulfil the purpose for which it was sought or for longer than is permitted under applicable laws, regulations and requirements. As soon as practicable after any information supplied under this MoU is no longer required, the relevant Authority will dispose of it in a secure manner.

Consultation

20. The Authorities will keep the operation of this MoU under review and will consult when necessary with a view to improving its operation and resolving any matters.
21. Both Authorities will consult in matters relating to any difficulties that may arise in relation to specific requests made pursuant to this MoU (e.g. where a request may

be denied, or if it appears that responding to a request will involve a substantial cost).

Commencement and Termination

22. This MoU will take effect upon the later of:
- (a) both Authorities having signed it; and
 - (b) the coming into force of The Law Society of Jersey (Amendment No. 4) Law 2017.
23. This MoU will continue to have effect until terminated by either Authority giving 30 days' advance written notice to the other Authority. It may be amended by agreement in writing.
24. In the event of the termination of this MoU, information shared under this MoU will remain subject to clauses 14 to 19.

Publication

25. Either, or both, Authorities may make a copy of this MoU, or the text of it, publicly available.

Executed by the Parties:

For the JFSC



John Harris
Director General

Date: 18th January 2018.

For The Law Society



Neville Benbow
Chief Executive

Date: 19 January 2018.