

**MEMORANDUM
OF
UNDERSTANDING**



**Financial Services
Commission
GIBRALTAR**



**Jersey Financial
Services Commission**

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Memorandum of Understanding ("MoU")

between

**Financial Services Commission of
Gibraltar ("GFSC")**

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

Recitals

- A. The GFSC is a statutory body established under the Financial Services Commission Act 2007. It has statutory powers of licensing, supervision and investigation, and has the ability to exercise its powers for the purpose of co-operation with foreign authorities. The GFSC is responsible for the regulation, supervision and inspection of all financial services in and from within Gibraltar. Such financial services include banking, investment services, insurance, insurance intermediation, insurance management, collective investment schemes, fund administration, trust & company management and money service businesses.
- B. The JFSC is a statutory body established under the Financial Services Commission (Jersey) Law 1998. 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. The JFSC also incorporates Jersey's Registry of Companies, Limited Partnerships and Limited Liability Partnerships.
- C. The GFSC and the JFSC wish to enter into this MoU to provide a formal basis for co-operation, including for the exchange of information and investigative assistance. The Financial Services Commission of Gibraltar and the JFSC believe such co-operation will enable them to more effectively perform their functions.

Operative Part

Interpretation

1. In this MoU, unless the context requires otherwise:

"**administering**" an applicable law, regulation or requirement includes enforcing the same;

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

- (a) any law, regulation or requirement applicable in Gibraltar or in Jersey; 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 GFSC or the JFSC;

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

"**GFSC**" means the Financial Services Commission of Gibraltar;

"**permitted onward recipient**" means an agency or authority responsible for prosecuting, regulating or enforcing applicable laws, regulations and requirements falling within the areas of responsibility of the Authorities;

"**person**" means a natural person, legal entity, partnership or unincorporated association.

"**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.

Purpose and Principles

2. The purpose of this MoU is to establish a formal basis for co-operation, including the exchange of information and investigative assistance.
3. This MoU does not modify or supersede any laws or regulatory requirements in force in, or applying to, Gibraltar or Jersey. This MoU does not create any enforceable rights. This MoU does not affect any arrangements under other MoUs. For the avoidance of doubt however, this MoU supersedes the MoU entered into between the GFSC and the JFSC in October 1998.
4. The Authorities acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations and requirements. The Authorities represent that no domestic secrecy or blocking laws or regulations should prevent the collection or provision of information set forth in clause 6 to the Requesting Authority.

Provision of Unsolicited Information

5. The Authorities will provide information to each other on material changes or developments in their supervisory regimes and discuss market risks in their respective markets and other policy developments that might be relevant to each other.
6. Where an Authority has information that will assist the other in the performance of its regulatory functions, this information may be provided on a voluntary basis even though there has been no request made. The terms and conditions of this MoU will apply if the providing Authority specifies that it is passing the information under this MoU.
7. The Authorities will provide a list of those banking entities which the other considers to have responsibilities for as home state regulator and discuss the anticipated exchange of regulatory information with the host state as well as the frequency with which this exchange will occur.
8. Where an Authority is aware of a regulated entity in its jurisdiction having an operation in the other jurisdiction it will seek to ensure that the other Authority is made aware of that fact so that appropriate exchanges of regulatory information can take place at such frequency as is mutually agreed.

Requests for Assistance

9. If a request for assistance is made, each Authority will use its best endeavours and efforts to provide assistance to the other, subject to its laws and overall policy. Assistance may include for example:
 - (a) providing information in the possession of the Requested Authority;
 - (b) confirming or verifying information provided to it for that purpose by the Requesting Authority;
 - (c) exchanging information on or discussing issues of mutual interest;
 - (d) obtaining specified information and documents from persons;
 - (e) questioning or taking testimony of persons designated by the Requesting Authority;
 - (f) conducting inspections or examinations of financial services providers or arranging for the same; and

- (g) permitting the representatives of the Requesting Authority to participate in the conduct of enquiries made by or on behalf of the Requested Authority pursuant to paragraphs (e) – (f) above.

Permissible uses of information

- 10. Any assistance or information provided in terms of this MoU should be used by the recipient only for the purposes of performing its regulatory and supervisory functions.
- 11. The Requesting Authority may not use information furnished for any purpose other than identified in clause 10.
- 12. If the Requesting Authority wants to use the information obtained for any other purpose than that stated in clause 10, the Requesting Authority must seek consent in writing of the Requested Authority prior to the use of such information.
- 13. Where the Requesting Authority believes that the sharing of confidential information with a third party is necessary, it must inform the Requested Authority of the third party's interest in this information and it must provide the Requested Authority with the opportunity to oppose such use.
- 14. The Requesting Authority may consult with the Requested Authority concerning the reasons for the objection if the Requested Authority opposes such use.

Procedure for Requests

- 15. 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 ten 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 persons, specific questions to be asked, 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;
 - (d) to whom, if anyone, onward disclosure of information provided to the Requesting Authority is likely to be necessary and, in relation to onward disclosure to a person who is not a permitted onward recipient, the purpose such disclosure would serve;
 - (e) if the request for assistance is for the purpose of actual or possible enforcement action, the matters set out in clause 1 of Appendix 1; and
 - (f) any other matters specified by the Requested Authority and by the applicable laws, regulations and requirements in relation to the Requested Authority.

Assessing Requests

- 16. 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 will

provide the reasons for not granting the assistance and consider whether there may be other assistance which can be given by itself or by any other authority in its jurisdiction.

17. 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 request involves the administration of a law, regulation or requirement which has no close parallel in the jurisdiction of the Requested Authority;
 - (c) whether the provision of assistance would be so burdensome as to disrupt the proper performance of the Requested Authority's functions;
 - (d) whether it would be otherwise contrary to the public interest or the essential national interest of the Requested Authority's jurisdiction to give the assistance sought;
 - (e) if the request for assistance is for the purpose of actual or possible enforcement action, the further matter set out in clause 2 of Appendix 1;
 - (f) any other matters specified by the laws, regulations and requirements of the Requested Authority's jurisdiction (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness); and
 - (g) whether complying with the request may otherwise be prejudicial to the performance by the Requested Authority of its functions.
18. The authorities recognise that assistance may be denied in whole or in part for any of the reasons mentioned in clause 17 in the discretion of the Requested Authority.

Contact Points

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

Further Provisions

20. The further provisions set out in:
- (a) Appendix 1 will apply in relation to actual or possible enforcement matters;
 - (b) any other Appendices covering specific areas of financial services or specific issues, as agreed in writing by the Authorities, will apply.

Costs

21. 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.

Confidentiality

22. 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.

23. An Authority that receives non-public 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. 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.
24. 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 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.

Consultation

25. 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.
26. 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).
27. Where the specific conduct set out in the request for assistance may constitute a breach of a law, regulation or requirement in both the territory of the Requesting Authority and the Requested Authority, the Authorities will consult to determine the most appropriate means for each Authority to provide assistance.

Commencement and Termination

28. This MoU will take effect when both Authorities have signed it and 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.
29. In the event of the termination of this MoU, information obtained under this MoU will continue to be treated confidentially in the manner prescribed in clauses 22 to 24.

Publication

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

Executed by the Parties:

For the GFSC



Marcus Killick
Chief Executive Officer

Date:

13/10/08

For the JFSC



John Harris
Director General

Date:

15/10/08.

Appendix 1: Further Procedures for Enforcement Matters

Further details to be contained in requests for assistance

1. If a request for assistance as described in this MoU relates to actual or possible enforcement action, the following further details will be contained in the request:
 - (a) a description of the conduct or suspected conduct which gives rise to the request;
 - (b) details of the applicable law, regulation or requirement to the administration of which the request is relevant;
 - (c) the link between the specified rule or law and the regulatory functions of the Requesting Authority;
 - (d) the relevance of the requested assistance to the specified rule or law;
 - (e) whether it is desired that, to the extent permitted by the laws applying to the Requested Authority, any persons from the country of the Requesting Authority should be present during interviews which form part of an investigation, and whether it is desired that such persons should be permitted to participate in the questioning (as to which see clause 3 below).

Further ground for denial of request

2. If a request for assistance as described in this MoU relates to actual or possible enforcement action, the following further matter may be taken into account by the Requested Authority in determining whether to fulfil the request in whole or in part:
 - whether the request would lead to the prosecution of, or the taking of disciplinary or other enforcement action against, a person who, in the opinion of the Requested Authority has already been appropriately dealt with in relation to the alleged breach, and who is the subject-matter of the request.

Requests to Sit in

3. If, following a request from the Requesting Authority, the Requested Authority conducts an interview of any person, the Requested Authority may permit a representative of the Requesting Authority to attend such an interview and to ask questions. Such requests will be in accordance with the applicable laws, regulations and requirements of the Requested Authority. Requests for such assistance should conform to any published guidance for the making of such requests issued by the Requested Authority.

Joint Investigations

4. The Authorities acknowledge that, subject to secrecy and confidentiality issues, an investigation, where it concerns suspected breaches of the law of both jurisdictions, may be conducted more effectively by the establishment of a joint investigation involving members from both Authorities.

5. The Authority suggesting the joint investigation will advise the other Authority of the background to the request for a joint investigation, and liaise with the other Authority to determine the likely objectives of the joint investigation, the expected resources required and the approximate duration of the proposed joint investigation. Each Authority will advise the other as soon as possible as to whether it will agree to such an investigation.
6. If the Authorities agree to take part in a joint investigation, an agreed initial action plan will be prepared setting out, among other things, the objectives, expected duration, funding, publicity and accountability arrangements, management of the joint investigation, and allocation of responsibilities.
7. Suggestions to the GFSC for a joint investigation should be made through the Chief Executive Officer. Suggestions to the JFSC should be made to the Director, Enforcement.

Rights of persons preserved

8. Any person providing testimony, information or documents as a result of a request made under this MoU will be entitled to all the rights and protections of the laws of the jurisdiction of the Requested Authority. Where assertions are made regarding other rights and privileges arising exclusively pursuant to the laws of the jurisdiction of the Requesting Authority, the Authorities will consult to determine the most appropriate way to proceed.