

**MEMORANDUM  
OF  
UNDERSTANDING**

**GUERNSEY**



Guernsey Financial  
Services Commission

**CAYMAN ISLANDS**

**Cayman Islands  
Monetary Authority**

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## Memorandum of Understanding (“MoU”)

between

**Guernsey Financial Services  
Commission (“Guernsey FSC”)**

**and Cayman Islands Monetary Authority  
 (“CIMA”)**

### Recitals

- A. The Guernsey FSC is established under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended, to supervise and regulate financial services businesses in the Bailiwick of Guernsey, to protect the public interest and protect and enhance the reputation of the Bailiwick as a financial centre.
- B. CIMA was established as a body corporate on 1 January 1997 as a result of the merger of the former Financial Services Supervision Department and Cayman Islands Currency Board. Its statutory functions are set out in the 1996 Monetary Authority Law 1996, namely (a) currency management, (b) regulation and supervision of financial services (including monitoring procedures for the prevention of money laundering), (c) advice to the government and (d) liaison with overseas regulators.
- C. The Guernsey FSC and CIMA wish to enter into this MOU to provide a formal basis for co-operation, including the exchange of information and investigative assistance which the Guernsey FSC and the CIMA believe 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 Guernsey or in the Cayman Islands, and includes:

- (a) relevant European legislation that has not yet been transposed into the domestic law of the Cayman Islands;
- (b) any law, regulation or requirement applicable in a part of Guernsey or the Cayman Islands; and
- (c) any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority;

“Authority” means the Guernsey FSC or CIMA;

“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;

“CIMA” means the Cayman Islands Monetary Authority;

“Guernsey” means the Bailiwick of Guernsey;

“Guernsey FSC” means the Guernsey Financial Services Commission;

the singular includes the plural and vice versa.

### 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, Guernsey or the Cayman Islands and being a statement of intent, does not create any enforceable rights.
- 4. This MoU does not affect any arrangements under other MoUs.
- 5. The parties acknowledge that they may only provide information under this MoU if not prevented under applicable laws, regulations and requirements.

### Provision of Unsolicited Information

- 6. The Authorities may provide information, or arrange for information to be provided, on a voluntary basis even though no request has been made.

## Requests for Assistance

7. If a request for assistance is made, each Authority will use reasonable endeavours to provide mutual assistance to the other, subject to its law and policy. This may include:
- (a) providing information in the possession of the requested Authority;
  - (b) confirming or verifying information provided for that purpose by the requesting Authority;
  - (c) exchanging information on, or discussing issues of, mutual interest;
  - (d) obtaining specified information and documents;
  - (e) questioning or taking testimony of persons identified by the requesting Authority;
  - (f) conducting inspections or examinations of financial services businesses 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.

## Procedure for Requests

8. Requests for the provision of information or other assistance will be made in writing, or 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) the information or other assistance requested (including the identity of persons and specific questions to be asked);
  - (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**

9. Each request 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 consider whether there may be other assistance which can be given by itself or by any other authority in its jurisdiction.
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 as (subject to clause 14) where compliance with the request would impose unreasonable expenditure on the requested Authority;
  - (c) whether it would be otherwise contrary to the public interest or the essential jurisdictional interest of the requested Authority to give the assistance sought;
  - (d) 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; and
  - (e) any other matters specified by the laws, regulations and requirements of the requested Authority's jurisdiction (in particular those relating to confidentiality, data protection and privacy, and procedural fairness).
11. The authorities recognise that assistance may be denied in whole or in part for any of the reasons mentioned in paragraph 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.

## **Further Procedures for Enforcement Matters**

13. The further procedures set out in Appendix 1 will apply in relation to actual or possible enforcement matters.

## **Costs**

14. 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, if the cost of fulfilling a request is likely to be substantial.

## **Confidentiality**

15. 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 recipient Authority will endeavour to consult with

the other Authority where it proposes to pass on information to another person or body. The recipient Authority will endeavour to comply with any restrictions on the use of information that are agreed when the information is provided.

16. In the event of 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 and will assert such appropriate legal privileges with respect to that information as may be available.

### Consultation

17. 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.
18. 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 and the requested Authorities, the relevant Authorities will consult to determine the most appropriate means for each Authority to provide assistance.

### Publication

19. Either Authority may make a copy of this MoU, or the text of it, publicly available, subject to providing prior notification to the other Authority and its intention to do so.

### Termination of the MoU

20. This MoU will continue in effect until expiration of 30 days after either Authority gives written notice to the other Authority of its intention to terminate the MoU. If either Authority gives such notice, this MoU will continue to have effect with respect to all requests for assistance that the Authorities made before the effective date of notification until the requesting Authority terminates the matter for which it requested assistance.

### Effective Date

21. This MoU will be effective from the date of its signing by the Authorities.

### Executed by the Parties:

**For the Guernsey FSC**

**For CIMA**




W E D Mason, Director General

Cindy Scotland, Managing Director

Date: 6<sup>3</sup>/15

Date: 25<sup>th</sup> February 2015

## **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; and
  - (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 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.

### **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 Guernsey FSC for a joint investigation should be made through the Director General. Suggestions to CIMA should be made to Cindy Scotland, Managing Director.

### **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.

