

9th April 2018

**MEMORANDUM
OF
UNDERSTANDING**

GUERNSEY

**Guernsey Financial
Services Commission**

UNITED KINGDOM

Bank of England

Contents

RECITALS	2
OPERATIVE PART	3
Interpretation	3
Treatment of Confidential Information received	5
Onward sharing of Confidential Information	5
Rights of Persons preserved	6
Notification practice and procedure	6
Recovery & Resolution planning	7
Enforcement	8
Requests for assistance	8
Procedure for requests	9
Assessing requests	9
Provision of unsolicited information	10
Contact points	10
Commencement	10
Publication of this MoU	10
Termination of MoU	11
APPENDIX 1: FURTHER PROCEDURES FOR ENFORCEMENT MATTERS	12
Further details to be contained in requests for assistance	12
Requests to sit in	12
Joint investigations	12

**This Memorandum of Understanding (“MoU”) made as of the 9th
April 2018,**

BETWEEN:

**GUERNSEY FINANCIAL SERVICES COMMISSION
 (“GFSC”)**

-and-

**BANK OF ENGLAND
 (“Bank”)**

Recitals

- A. The Guernsey Financial Services Commission (GFSC) is the regulatory body for the finance sector (banking, insurance and investment) in the Bailiwick of Guernsey. The Commission’s primary objective is to regulate and supervise financial services in Guernsey, with integrity, proportionality and professional excellence, and in so doing help to uphold the international reputation of Guernsey as a finance centre.
- B. The Bank of England, together with the Financial Conduct Authority (FCA), forms the United Kingdom’s “twin peaks” financial services regulatory structure. The Bank of England (Bank) has an objective to promote the good of the people of the United Kingdom by maintaining monetary and financial stability. The Bank has particular responsibilities including to supervise certain market infrastructure (including recognised payment systems, securities settlement systems and central counterparties) and as the UK’s resolution authority.
- C. The Prudential Regulation Authority (PRA), which is both the prudential regulator and supervisory arm of the Bank (and is overseen by the Bank’s Prudential Regulation Committee), is responsible for the prudential regulation and supervision of banks, building societies, credit unions, insurers and major investment firms. The PRA has three statutory objectives. These are: a general objective to promote the safety and soundness of the firms it regulates; an insurance specific objective to ensure the protection of those who are or will become policyholders; and, a secondary objective to facilitate effective competition in relevant markets. In carrying on its functions, the PRA will consider taking enforcement action against firms and/or individuals as it considers appropriate to support the exercise of its supervisory judgment.
- D. The PRA, in the execution of its regulatory and supervisory functions, is required to protect the information that it receives in accordance with Applicable Laws, Regulations and Requirements, including FSMA, the Data Protection Act 1998 and the EU single market directives. Any unauthorised disclosure of regulatory information, including that received from the GFSC, is a criminal offence.

- E. Many UK and Guernsey firms have operations overseas, and many firms domiciled overseas have subsidiaries or branches in the United Kingdom and/or Guernsey. Deposit-takers, investment and insurance firms are therefore supervised on a co-operative international basis, and the policy framework for this supervision is to a large extent agreed globally, including by the Basel Committee on Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS) and the Financial Stability Board (FSB), to ensure that all jurisdictions uphold appropriate standards in their collective interest. Both the Bank and GFSC participate actively in international supervisory fora and bilaterally with third country partners. Both play a full and active role in supervising firms in the financial sector, and seek to be influential and persuasive participants in international policy debates. This MoU seeks to facilitate this participation and co-operation.
- F. The GFSC and the Bank, wish to enter into this MoU to provide a formal basis for co-operation, including for the exchange of information and provision of assistance. The GFSC and the Bank believe such co-operation will enable them to perform their functions more effectively.

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 and/or in the United Kingdom, and where the context permits includes:

- (a) relevant European legislation that has not yet been transposed into UK domestic law; and
- (b) any rule, direction, requirement, guidance or policy made or given by or to be taken into account by an Authority;

and **“Applicable Law, Regulation or Requirement”** means any one of these.

“Authorities” means the GFSC and the Bank, and **“Authority”** means either one of them;

“Bank” means the Bank of England;

“Confidential Information” means, in the United Kingdom, information provided under this MoU which falls within the definition of confidential information in FSMA, viz information which:

- (a) relates to the business or other affairs of any person;
- (b) was received by the relevant Authority for the purposes of, or in the discharge of, any of its statutory functions; and
- (c) is not prevented from being confidential information because:
 - i. it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purposes for which, disclosure is not

precluded by the Applicable Laws, Regulations or Requirements of the Disclosing Authority; or

- ii. it is in the form of a summary or collection of information so framed that it is not possible to ascertain from it information relating to any particular person.

or, in Guernsey, information provided under this MoU which falls within the definition of confidential information in the Financial Services Commission (1987) Law;

“Cross-Border Firm” means a firm with cross-border operations in the UK and Guernsey which are relevant to the Authorities’ statutory objectives;

“Disclosing Authority” means the Authority that discloses, or receives a request for disclosure of, Confidential Information pursuant to this MoU;

“Emergency/Crisis Situation” means where an Authority (or the Authorities) is seeking urgently to manage a circumstance where a Cross-Border Firm, or firm supervised by either Authority, is or can reasonably be expected to be financially impaired, such that it will or is likely to affect adversely the operations of the firm and potentially result in damage to financial stability and the wider financial system;

“FSMA” means the Financial Services and Markets Act 2000;

“GFSC” means the Guernsey Financial Services Commission;

“MoU” means this memorandum of understanding;

“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;

“PRA” means the Prudential Regulation Authority (or its successor(s)), which is both the prudential regulator and supervisory arm of the Bank;

“Receiving Authority” means an Authority that has received the information from the Disclosing Authority pursuant to this MoU;

“Requesting Authority” means an Authority that makes a request pursuant to this MoU;

“Resolution” means action taken by an Authority to address an Emergency/Crisis Situation, the impact of which, if left unattended, could threaten financial stability and the financial system. Such actions might typically include (but are not necessarily limited to) facilitating the orderly failure of a firm; legal and judicial action; administration, receivership, liquidation or the facilitation of the sale or merger of a troubled firm/financial institution.

Purpose and effect of this MoU

2. The purpose of this MoU is to establish a formal basis for co-operation, including the exchange of Confidential Information and other types of assistance; to facilitate timely and effective supervision; to identify risks to the financial system; and, where necessary, to address Emergency/Crisis Situations involving firms supervised by either Authority, especially Cross-Border Firms, including those firms headquartered in the Bailiwick of Guernsey or the United Kingdom with cross-border operations in either the Bailiwick of Guernsey or the United Kingdom.
3. This MoU does not modify or supersede any laws or regulatory requirements in force in, or applying to, Guernsey or the United Kingdom. This MoU sets forth a statement of intent and accordingly does not create for either Authority any legally enforceable rights or obligations. This MoU does not affect any arrangements under other MoUs, including the MoU between the former Financial Services Authority and the GFSC, effective June 2003, in so far as it covers co-operation arrangements between the Financial Conduct Authority and the GFSC. This MoU supersedes the letter of 24 September 2012 from the FCA/PRA to the GFSC, in so far as it covers co-operation arrangements between the Bank and the GFSC.
4. The Authorities acknowledge that they may only provide Confidential Information under this MoU to the other to the extent that they are not prevented from doing so under Applicable Laws, Regulations and Requirements.

Treatment of Confidential Information received

5. Except as otherwise permitted by this MoU, the Receiving Authority may use Confidential Information provided under this MoU only within its respective organisation and only in connection with its functions with regard to the supervision (including Resolution planning, to the extent that such planning forms part of day-to-day supervision; however, should a firm fail, then it would be the Bank, as the UK's resolution authority that would take over day-to-day responsibility for overseeing matters at that point) of the firms each Authority regulates.
6. The Receiving Authority will comply with any reasonable restrictions on the use of Confidential Information provided under this MoU or that are otherwise set by the Disclosing Authority as part of the basis on which the information is provided.

Onward sharing of Confidential Information

7. Except as provided for in paragraphs 9, a Receiving Authority that receives Confidential Information under this MoU will not disclose that Confidential Information to any third party.
8. A Receiving Authority may only share Confidential Information it receives under this MoU in the ways provided for in paragraphs 9, to the extent that it is not prevented from doing so under Applicable Laws, Regulations and Requirements.
9. Subject to the requirements in paragraph 10 being met, Confidential Information received under this MoU by a Receiving Authority can be shared with a third party with the consent of the Disclosing Authority, such consent not to be unreasonably

withheld. The Disclosing Authority will endeavour to respond to a request to disclose Confidential Information as soon as practicable.

10. The Receiving Authority will consult with the Disclosing Authority in advance if it proposes to pass on Confidential Information pursuant to paragraph 9. Before a Receiving Authority discloses any Confidential Information received from a Disclosing Authority, the Receiving Authority will describe the purpose and scope of the disclosure to the Disclosing Authority. The Receiving Authority will ensure that, prior to the disclosure of any Confidential Information, the third party is subject to similar confidentiality provisions as set out in this MoU.
11. If the Receiving Authority is required by law to disclose Confidential Information provided under this MoU to a third party, it will notify the Disclosing Authority of the situation in advance of disclosure. If this is not practicable for reasons of urgency (for example, in an Emergency/Crisis Situation), the Receiving Authority will notify the Disclosing Authority as soon as reasonably practicable thereafter. Where requested by the Disclosing Authority, the Receiving Authority will use all reasonable legal means, including asserting such appropriate legal exemptions or privileges with respect to the Confidential Information as may be available, to resist any requirement to disclose any Confidential Information provided under this MoU.

Rights of Persons preserved

12. 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 Disclosing 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.

Notification practice and procedure

13. Each Authority will use their best endeavours to notify the other on a timely basis of any relevant, material changes in their respective legislative provisions relating to privacy and protection of information.
14. To the extent permitted by Applicable Laws, Regulations and Requirements, each Authority will use its best endeavours to notify the other, on a timely basis, if it intends to commence Resolution activities.
15. To the extent permitted by Applicable Laws, Regulations and Requirements, each Authority will use reasonable efforts, as far as practicable, to provide the other Authority on a timely basis with any information that is in its possession or discovered which:
 - (a) gives rise to a suspicion of a breach of the Applicable Laws, Regulations or Requirements of the other Authority; or
 - (b) would be likely to assist in Administering the Applicable Laws, Regulations or Requirements of the other Authority, if provided to the Authority.

16. Where the PRA (as the host authority) examines or inspects any branch or subsidiary of a Guernsey Cross-Border Firm located in the United Kingdom, it will, to the extent permitted by Applicable Laws, Regulations and Requirements, inform the GFSC (home) in a timely manner of any material findings. Where the GFSC (as the host authority) examines or inspects any branch or subsidiary of a UK Cross-Border Firm located in Guernsey, it will, to the extent permitted by Applicable Laws, Regulations and Requirements, inform the PRA (home) of any material findings.
17. The PRA (as the home authority) will, to the extent permitted by Applicable Laws, Regulations and Requirements, notify GFSC (host) of plans to examine or inspect any branch or subsidiary of a UK Cross-Border Firm located in Guernsey, and GFSC (as the home authority) will to the extent permitted by Applicable Laws, Regulations and Requirements, notify the PRA (host) in a timely manner of plans to examine or inspect any branch or subsidiary of a Guernsey Cross-Border Firm organisation located in the United Kingdom. The Authority in the country where such examinations or inspections are to take place may inform the examining or inspecting Authority of any subject matter in which it has a particular concern or interest.
18. In an Emergency/Crisis Situation, which occurs in the jurisdiction of one Authority, and may have a materially detrimental effect on the other Authority, the Authority in whose jurisdiction the Emergency/Crisis Situation occurs will endeavour to notify the other Authority of the nature of the situation and communicate information to the other as would be appropriate pertaining to the particular circumstances, taking into account all relevant factors, including the status of efforts to address the Emergency/Crisis Situation in question. Wherever and to the extent possible, the Authorities will co-operate in seeking potential solutions, especially in instances where a Cross-Border Firm would be adversely affected by the Emergency/Crisis Situation.

Recovery & Resolution planning

19. While noting that Guernsey currently has no bank resolution regime or resolution authority, this MoU seeks, nevertheless, to facilitate rapid information exchange, co-operation and liaison between the Authorities and to address information sharing, both as part of day-to-day supervision as regards Resolution planning and especially in Emergency/Crisis Situations between authorities for recovery and Resolution purposes (both bilaterally and through any crisis management group to which both Authorities are members and at least one Authority is the home Authority). It also aims to offer mutual support in the supervision of branches; in particular, in relation to home state supervision of recovery and resolution plans in respect of the activities of cross-border firms.
20. To the extent that any 'Co-operation Agreement' is established between the Authorities¹ at a future date, this will aim, subject to the agreement of the Authorities, to set out how to bring about contingency planning and, as necessary, an orderly Resolution of a crisis involving a specific institution, minimising the impact of any failure. Where appropriate, the detailed 'Co-operation Agreement' will take account of EU regulatory bodies and their interactions with the Bank and/or PRA on recovery

¹ Any 'Co-operation Agreement' will be developed with the Resolution Directorate of the Bank, in consultation with the resolution authority of the counter-party to this Memorandum of Understanding.

& resolution - and globally, through the approach that has been developed by the FSB ("Information sharing for Resolution Purposes").

21. To the extent practicable and as appropriate in the particular circumstances, each Authority will endeavour to inform the other Authority in advance of regulatory changes relating to Resolution measures, especially any changes which will or may have a significant, material impact on the operations or activities of a Cross-Border Firm. This will, however, be without prejudice to any arrangements relating to specific prudential issues.

Enforcement

22. Separate to requests for assistance set out in clause 24 (below), the Authorities will consider taking enforcement action against Persons (including individuals) as they consider appropriate to support the exercise of their supervisory judgement. The intention in deploying enforcement powers may include: reinforcing the Authorities' objectives and priorities; changing and promoting high standards of regulatory behaviour; the need to send a clear signal to a Person and to the regulated community more widely about the circumstances in which the Authorities consider a Person's behaviour to be unacceptable; and deterring future misconduct.
23. The Authorities recognise that there may be circumstances in which either of them wishes to take enforcement action in a situation where the other Authority has a regulatory interest. Appendix 1 sets out what the Authorities have agreed with respect to such cases, and in relation to requests for assistance in enforcement matters.

Requests for assistance

24. If a request for assistance is made, each Authority will use reasonable efforts to provide assistance to the other, subject to Applicable Laws, Regulations and Requirements and overall policy. Assistance may include for example:
 - (a) providing relevant Confidential Information in the possession of the Disclosing Authority;
 - (b) confirming or verifying Confidential Information provided to it for that purpose by the Requesting Authority;
 - (c) exchanging information on or discussing issues of mutual interest;
 - (d) obtaining specified Confidential Information and documents from Persons;
 - (e) reasonably considering any requests to question or take testimony of Persons designated by the Requesting Authority;
 - (f) reasonably considering any requests to conduct 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 Requesting Authority pursuant to paragraphs (e) - (f) above.

25. If a request for assistance by any Authority, as described in this MoU, relates to actual or possible enforcement action, the further details as described in paragraph 1 of Appendix 1 to this MoU should be contained in the request.

Procedure for requests

26. Requests for the provision of information or other assistance, including in an emergency/crisis situation, will be made in writing (including by email), 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 (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) the desired time within which the information sought should be provided;
 - (e) 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; and
 - (f) any other matters specified by the Disclosing Authority and by the Applicable Laws, Regulations and Requirements in relation to the Disclosing Authority.

Assessing requests

27. Each request for assistance will be assessed on a case-by-case basis by the Disclosing Authority, to determine whether assistance can be provided (either in part or in whole) under the terms of this MoU. In any case where the request cannot be fulfilled in part or in whole, the Disclosing Authority will consider whether there may be other assistance that can be given by itself or by any other authority in its jurisdiction and, wherever possible, will endeavour to provide this.
28. In deciding whether and to what extent to fulfil a request, the Disclosing Authority may take into account:
- (a) whether the request conforms with this MoU;
 - (b) whether the request involves the administration of a Applicable Law, Regulation or Requirement which has no close parallel in the jurisdiction of the Disclosing Authority;
 - (c) whether the provision of assistance would be so burdensome as to disrupt the proper performance of the Disclosing Authority's functions;

- (d) whether it would be otherwise contrary to the public interest or the essential national interest of the Disclosing Authority's jurisdiction to give the assistance sought;
 - (e) any other matters specified by the Applicable Laws, Regulations and Requirements of the Disclosing Authority's jurisdiction (in particular those relating to confidentiality and professional secrecy, data protection and privacy, and procedural fairness);
 - (f) the reason for the request; and
 - (g) whether complying with the request may otherwise be prejudicial to the performance by the Disclosing Authority of its functions.
29. If a request for assistance by the Bank, as described in this MoU, relates to actual or possible enforcement action, the grounds described in paragraph 2 of Appendix 1 to this MoU may be taken into account in determining whether to fulfil the request in whole or in part.
30. Where the specific conduct set out in a request for assistance may constitute a breach of an Applicable Law, Regulation or Requirement in both the territory of the Requesting and the Disclosing Authorities, the relevant Authorities will consult to determine the most appropriate means for each Authority to provide assistance.
31. The Authorities recognise that assistance may be denied in whole or in part for any of the reasons mentioned in paragraph 29 or otherwise in the discretion of the Disclosing Authority.

Provision of unsolicited information

32. The Authorities may, to the extent permitted by law, provide Confidential Information, or arrange for Confidential Information to be provided, on a voluntary basis, even though no request has been made.

Contact points

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

Commencement

34. This MoU will take effect when both Authorities have signed this document. It may only be amended by agreement in writing.

Publication of this MoU

35. The parties agree to this MoU being made publicly available.

Review of this MoU and of supervisory developments

36. 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, where they arise, that hinder its operation. The parties will endeavour to meet regularly to discuss general supervisory developments. This will, however, be without prejudice to any arrangements relating to specific prudential issues.

Termination of MoU

37. This MoU will continue to have effect until terminated by either Authority giving 30 days' advance written notice to the other Authority. After termination, paragraphs 5 to 12 will continue to apply to any Confidential Information provided under this MoU prior to termination.
38. The Authorities will consult, to determine any other matters not specified in this MoU, so as to be consistent with Applicable Laws, Regulations and Requirements.

Executed by the Parties:

**For Guernsey Financial Services
Commission**



W E D Mason, Director General
Guernsey Financial Services Commission

Date: 9th April 2018

For the Bank of England



Sam Woods, Chief Executive Officer of the
Prudential Regulation Authority and
Deputy Governor, Prudential Regulation,
Bank of England

Date: 9th April 2018

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 and policies applying to the Disclosing 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 Disclosing 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 Disclosing Authority has already been appropriately dealt with in relation to the alleged breach, in respect of the subject matter of the request.

Requests to sit in

3. If, following a request from the Requesting Authority, the Disclosing Authority conducts an interview of any Person, the Disclosing Authority may permit a representative of the Requesting Authority to attend such an interview and to ask questions. Such requests will be considered in accordance with the Applicable Laws, Regulations and Requirements of the Disclosing Authority. Requests for such assistance should conform to any published guidance for the making of such requests issued by the Disclosing 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 will 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 Kevin Bown, Deputy Director, Intelligence Services. Suggestions to the Bank should be made to the Chief Counsel of the Bank's Regulatory Action Division.

End.