

**12 June 2014**

**MEMORANDUM  
OF  
UNDERSTANDING**

**DUBAI INTERNATIONAL  
FINANCIAL CENTRE**

**Dubai Financial Services  
Authority**

**UNITED KINGDOM**

**Prudential Regulation  
Authority**

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## 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 the Dubai International Financial Centre (DIFC) 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;
    - (b) any law, regulation or requirement applicable in the DIFC or the United Kingdom; 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 [name of regulator] or the PRA;
  - “**PRA**” means the Prudential Regulation Authority (or its successor(s));
  - “**DFSA**” means Dubai Financial Services Authority;
  - “**receiving authority**” means the Authority that makes a request pursuant to this MoU and has received the information from the “requested authority”.
  - “**requesting Authority**” means the Authority that makes a request pursuant to this MoU;
  - “**requested Authority**” means the Authority that receives a request pursuant to this MoU;
  - “**emergency/crisis situation**” means where an Authority (or the Authorities) is seeking urgently to manage a circumstance where a firm 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 resulting in damage to financial stability and the wider financial system.
  - “**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.
  - “**resolution**” means action taken by an Authority to address an emergency/crisis situation, the impact of which, if left unattended, threatens 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 Principles

2. The purpose of this MoU is to establish a formal basis for co-operation, including the exchange of information and investigative assistance, to facilitate timely and effective (and in the case of the PRA, judgement-based) supervision, identify risks to the financial system and, where necessary, to address emergency/crisis situations), especially in instances where emergency/crisis situations involve firms with cross-border operations in the DIFC or the United Kingdom.

3. This MoU does not modify or supersede any laws or regulatory requirements in force in, or applying to, the DIFC 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.
4. The Authorities acknowledge that they may provide information under this MoU only if permitted or not prevented under applicable laws, regulations and requirements.

### **Confidentiality and treatment of information received**

5. An Authority that receives non-public information under this MoU will only disclose that information in accordance with disclosure permitted under its applicable professional secrecy laws, regulations and requirements. The recipient Authority will endeavour to consult with the other Authority if it proposes to pass on information to another person; however, in an emergency/crisis situation the Authority may be able only to notify (rather than to consult) that such information has been passed to another, national regulatory body. The recipient Authority will endeavour to comply with any restrictions on the use of information that are agreed when the information is provided.

### **Onward information sharing**

6. Where necessary in the furtherance of the parties' regulatory functions and supervisory objectives (e.g. in emergency / crisis situations) and where UK legislation allows, the PRA will to facilitate broader information sharing to other organisations that carry out similar regulatory and/or supervisory functions, including, given their shared supervisory objectives, within and between the PRA and Bank of England and, for example, in the case of the United Kingdom, the Financial Reporting Council and Takeover Panel.
7. The receiving Authority may use confidential information only within its respective organisation (or other national regulatory authorities as agreed between the parties to the MoU and in accordance with their respective regulatory functions) and only in connection with its public functions with regard to supervision of financial institutions. activities,
8. 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.

### **How the PRA will treat the information that it receives**

9. The PRA, in the execution of its regulatory and supervisory functions, is required to protect the information that it receives under FSMA, the UK's Data Protection Act and by the EU single market directives. Except as provided for by FSMA or the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001, the PRA must not disclose information relating to the business or other affairs of any person which it has obtained for the purposes of, or in the

discharge of any functions under FSMA. Any unauthorised disclosure of regulatory information, including that received from the DFSA, is a criminal offence.

10. The PRA will at all times use its best endeavours to protect the information it receives and where information is provided to it by DFSA on condition that it will not be disclosed further without the consent of the provider, the English Courts will impose a duty of confidence on the recipient. The PRA is, however, required to disclose such information if the following circumstances:
  - (a) The UK Parliament, being paramount in constitutional terms, could in the last resort and subject to a full vote in the House of Commons, override any statutory or other confidentiality obligations applying to the PRA, if it wanted to obtain regulatory information from the PRA or any other person in possession of it;
  - (b) Under the UK's Freedom of Information Act 2000, the PRA (in common with other public bodies in the UK) makes available to the public information relating to its regulatory functions, subject to two important exemptions:
    - (i) Personal data is excluded; and
    - (ii) Information subject to statutory restrictions on disclosure is excluded, including regulatory information that is not publicly available.
  - (c) Subject to any valid legal objections, the PRA is, like any other UK public body, obliged to comply with a court witness summons, requiring it to provide oral evidence or documents in civil and criminal litigation to which it is not a party. However, the PRA can only be compelled to provide evidence by way of witness summons in circumstances where it would be permitted to disclose that information under FSMA.

### **Rights of persons preserved**

11. 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.

### **General Notification Procedure**

12. Each party will notify the other of any material changes in their respective professional secrecy legislation. The parties will use their best endeavours to notify the other of serious financial and operational difficulties experienced by firms active in their respective jurisdictions.
13. 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) will be likely to assist in administering laws, regulations of requirements of the other Authority, if provided to the Authority.
14. 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.
15. The PRA will notify DFSA of plans to examine any branch or subsidiary of a banking or insurance organisation located in the United Kingdom and the DFSA will notify the PRA of plans to inspect any branch or subsidiary of a UK banking and insurance organisation located in the DIFC. The authority in the jurisdiction 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.

### **Recovery & Resolution planning**

16. This MoU seeks to facilitate rapid information exchange and co-operation & liaison, to address information sharing in crisis / emergency situations between supervisory authorities for recovery and resolution planning purposes (both bilaterally and through any CMG to which both parties are members and at least one party is the home authority). It aims also 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 specific firms.
17. To the extent that any 'Co-operation Agreement' (COAG) is established between the parties<sup>1</sup> at a future date, this will aim, subject to the agreement of the parties, 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 PRA on recovery & resolution - and globally, though the approach that has been developed by the FSB ("Information sharing for Resolution Purposes").
18. 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 which will or may have a significant, material impact on the operations or activities of a firm in the other jurisdiction. This will, however, be without prejudice to any arrangements relating to specific prudential issues.

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<sup>1</sup> For the PRA, any 'Co-operation Agreement' will be developed with the Resolution Directorate of the Bank of England, in consultation with the resolution authority of the counter-party to this Memorandum of Understanding.

## **Enforcement**

19. The PRA or the DFSA (as relevant) will consider taking enforcement action against firms and/or individuals as it considers appropriate to support the exercise of its supervisory judgement. The intention in deploying enforcement powers may include: reinforcing the PRA's or the DFSA's respective objectives and priorities; changing, and promoting high standards of, regulatory behaviour; the need to send a clear signal to a firm and to the regulated community more widely, about the circumstances in which the PRA or the DFSA respectively consider a firm's behaviour to be unacceptable; and deterring future misconduct.
20. The parties recognise that there may be circumstances in which one or the other of them wishes to take enforcement action in situations where the other party has a regulatory interest. Appendix 1 sets out what the parties have agreed with respect to such cases, and in relation to requests for assistance in enforcement matters.

## **Requests for Assistance**

21. If a request for assistance is made, each Authority will use reasonable 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.

## **Procedure for Requests**

22. Requests for the provision of information or other assistance, including in an emergency or 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;
- (f) 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
- (g) any other matters specified by the requested Authority and by the applicable laws, regulations and requirements in relation to the requested Authority.

### **Assessing Requests**

- 23. Each request for assistance will be assessed on a case-by-case basis by the requested 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 whole, the requested 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.
- 24. In an emergency/crisis situation, the Authorities will each endeavour to notify the other of its nature 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 cross-border entities (that have their head offices located in either Authorities' jurisdictions) are adversely affected by the situation.
- 25. 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);
  - (g) the reason for the request; and
  - (h) whether complying with the request may otherwise be prejudicial to the performance by the requested Authority of its functions.
26. The authorities recognise that assistance may be denied in whole or in part for any of the reasons mentioned in paragraph 25 in the discretion of the requested Authority.

### **Provision of Unsolicited Information**

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

### **Contact Points**

28. 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**

29. 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.

### **Commencement**

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

### **Publication of this MoU**

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

### **Review of this MoU and of supervisory developments**

32. 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 at least annually to discuss general supervisory developments.

**Termination of MoU**

33. This MOU will continue to have effect until terminated by either Authority giving 30 days' advance written notice to the other Authority.

**Executed by the Parties:**

**For the Dubai Financial Services  
Authority**

**For the Prudential Regulation  
Authority**

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Ian Johnston  
Chief Executive

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Andrew Bailey,  
Chief Executive

Date:

Date:

## **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 jurisdiction 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, in respect of 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 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 DFSA for a joint investigation should be made, through the Head of Enforcement . Suggestions to the PRA should be made to the Head of the PRA Legal Intervention Department within the Prudential Legal Function in the PRA.