

1 June 2016

**MEMORANDUM
OF
UNDERSTANDING**

JERSEY

**Jersey Financial Services
Commission**

UNITED KINGDOM

**Prudential Regulation
Authority
& Bank of England**

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This Memorandum of Understanding (“MoU”) made as of the first day of June, 2016,

BETWEEN:

**JERSEY FINANCIAL SERVICES COMMISSION
 (“JFSC”)**

-and-

**PRUDENTIAL REGULATION AUTHORITY
 (“PRA”)**

-and-

**BANK OF ENGLAND
 (“Bank”)**

Recitals

A. JFSC is responsible for the regulation, supervision and development of financial services in the Island of Jersey. The Commission’s key purpose is to maintain Jersey’s position as an international finance centre with high regulatory standards by:

- reducing risk to the public of financial loss due to dishonesty, incompetence, malpractice or the financial unsoundness of financial service providers;
- protecting and enhancing the reputation and integrity of Jersey in commercial and financial matters;
- safeguarding the best economic interests of Jersey; and
- countering financial crime both in Jersey and elsewhere.

In support of its key purpose, the Commission aims to:

- ensure that all entities that are authorised meet fit and proper criteria;
- ensure that all regulated entities are operating within accepted standards of good regulatory practice;
- match international standards in respect of banking, securities, trust company business and insurance regulation, and anti-money laundering and terrorist financing defences;
- identify and deter abuses and breaches of regulatory standards; and
- ensure the Commission operates effectively and efficiently and is properly accountable to the Chief Minister.

B. The PRA is a subsidiary of the Bank of England and, together with the Financial Conduct Authority (FCA), forms the United Kingdom’s “twin peaks” financial services regulatory structure. The Prudential Regulation Authority (PRA) is responsible for the

prudential regulation and supervision of banks, building societies, credit unions, insurers and major investment firms. In total the PRA regulates around 1,700 financial firms. The PRA's role is defined in terms of its two main statutory objectives and its secondary competition objective, namely: to promote the safety and soundness of these firms (the PRA's general objective) and, specifically for insurers, to contribute to the securing of an appropriate degree of protection for policyholders (the PRA's insurance objective); in addition, the PRA must so far as is reasonably possible act in a way which facilitates effective competition in the markets for services provided by PRA-authorized firms (competition objective). It is anticipated that the responsibilities and function of the PRA may be assisted or assumed and performed by the Bank of England.

- C. The Bank of England (Bank) has an objective to protect and enhance the stability of the UK financial system. The Bank has particular responsibilities to supervise certain market infrastructure (recognised payment systems, securities settlement systems and central counterparties) and as the UK's resolution authority.
- D. Banking and insurance are international industries. Many UK and Jersey firms have operations overseas, and many firms domiciled overseas have subsidiaries or branches in the United Kingdom and/or Jersey. 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 PRA and JFSC, therefore, participate actively in international supervisory fora and bilaterally with third country partners, playing a full and active role with their counterparts in supervising cross-border firms, and seeking to be influential and persuasive participants in international policy debates. This MoU therefore seeks to facilitate this participation and co-operation.
- E. JFSC and the PRA, together with the Bank of England, wish to enter into this MoU to provide a formal basis for co-operation, including for the exchange of information and investigative assistance. JFSC, the PRA 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 Jersey 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 Jersey 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/ies” means the Jersey Financial Services Commission, or the PRA/Bank of England;

“PRA” means the Prudential Regulation Authority (or its successor(s));

“Bank” means the Bank of England;

“JFSC” means the Jersey Financial Services Commission;

“receiving Authority” means the Authority that makes a request pursuant to this MoU and has received the information from the “disclosing authority”;

“requesting Authority” means the Authority that makes a request pursuant to this MoU;

“disclosing 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 and potentially result 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, 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.

2. Apart from where the context requires otherwise, both the PRA and Bank of England are, for the purposes of this MoU, treated as one Authority. When the PRA becomes part of the Bank, references in this MoU to the “PRA” will mean the Bank acting through or under its Prudential Regulation Committee and obligations incurred by the PRA pursuant to this MoU shall survive and become the obligations of the Bank.

Purpose and effect of this MoU

3. The purpose of this MoU is to establish a formal basis for co-operation, including the exchange of confidential information and investigative assistance, to facilitate timely and effective supervision and resolution, to 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 Jersey or the United Kingdom.
4. This MoU does not modify or supersede any laws or regulatory requirements in force in, or applying to, Jersey 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 JFSC, effective 10 May 2004. This MoU supersedes the letter of 3 August 2012 from the FCA/PRA to the JFSC in so far as it covers co-operation arrangements between the PRA and the JFSC.” (the letter is on the MoU page http://www.jerseyfsc.org/the_commission/international_co-operation/list-of-memoranda.asp)
5. The Authorities acknowledge that they may provide confidential information under this MoU only to the extent that they are not prevented from doing so under applicable laws, regulations and requirements.

Treatment of confidential information received

6. 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 of England, as the UK’s resolution authority that would take over day-to-day responsibility for overseeing matters at that point) of financial institutions’ activities.
7. The PRA and the Bank may, recognising their shared supervisory and resolution objectives, exchange confidential information provided under this MoU, without the need to notify or consult JFSC.

Onward sharing of confidential information

8. Where necessary in the furtherance of an Authority’s regulatory functions and objectives (including in emergency/crisis situations) and where the applicable law requires or allows, an Authority may pass confidential information provided under this MoU to another organisation that carries out similar regulatory and/or supervisory functions, applying the approach set out in this section.
9. 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.

10. The receiving Authority will consult with the disclosing Authority in advance if it proposes to pass on confidential information. Before a receiving Authority discloses any confidential information received from a disclosing Authority to a third party, the receiving Authority will describe the purpose and scope of the disclosure to, and obtain the prior written consent from, the disclosing Authority, which will not be unreasonably withheld. The receiving Authority will ensure that, prior to disclosure of any confidential information, the third party is subject to similar confidentiality provisions as set out in this MoU. If the receiving Authority is required by law to disclose to a third party confidential information provided under this MoU, it will notify the disclosing Authority of the situation in advance of disclosure, unless this is not practicable for reasons of urgency (for example, in an emergency / crisis situation), in which case it will notify as soon as reasonably practicable afterwards. Where requested by the disclosing Authority, the receiving Authority will use all reasonable legal means to resist any requirement to disclose confidential information provided under this MoU.

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 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

12. Each Authority will use their best endeavours to notify the other of any material changes in their respective legislative provisions relating to privacy and protection of information. An Authority will use its best endeavours to notify the other if it intends to commence resolution activities regarding a firm. 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 or requirements of the other Authority, if provided to the Authority.
13. Where the specific conduct set out in a request for assistance may constitute a breach of a 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.
14. Where the PRA (as the host authority) examines or inspects any branch or subsidiary of a Jersey banking and/or insurance organisation located in the United Kingdom, it will inform the JFSC (home) of any material findings. Where the JFSC (as the host authority) examines or inspects any branch or subsidiary of a UK banking and/or insurance organisation located in Jersey, it will inform the PRA (home) of any material findings.

15. The home authority will notify the host authority of any material findings emanating from examinations undertaken in the host jurisdiction.
16. Advance notification of such cross-border examinations/inspections would be given to the other Authority, both as a matter of courtesy and to enable dialogue on the potential for a joint approach.

Recovery & Resolution planning

17. While noting that Jersey currently has no bank resolution regime or resolution authority, this MoU seeks, nevertheless, to facilitate rapid information exchange and co-operation and liaison between the Authorities, to address information sharing, both as part of day-to-day supervision as regards resolution planning and especially in crisis / emergency 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 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.
18. To the extent that any 'Co-operation Agreement' (CoAg) 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 PRA on recovery & resolution - and globally, through the approach that has been developed by the FSB ("Information sharing for Resolution Purposes").
19. 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.

Enforcement

20. Separate to requests for assistance set out in clause 21 (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 considers a person's behaviour to be unacceptable; and deterring future misconduct.

¹ 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.

21. The Authorities recognise that there may be circumstances in which one or the other 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

22. 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 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; and
 - (d) where relevant, obtaining specified confidential information and documents from persons.
23. If a request for assistance by the PRA or the Bank, as described in this MoU, relates to actual or possible enforcement action, the further details as described in Clause 1 of Appendix 1 to this MoU will be contained in the request.

Procedure for Requests

24. 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; 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

25. 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 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.
26. In an emergency/crisis situation, the Authorities will each endeavour to notify the other 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 appropriate, 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 or a chief place of business located in either Authorities' jurisdictions) are adversely affected by the situation.
27. 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 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 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.
28. The Authorities recognise that assistance may be denied in whole or in part for any of the reasons mentioned in paragraph 27 or otherwise in the discretion of the disclosing Authority.

Provision of Unsolicited Information

29. 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

30. 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

31. 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

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

Review of this MoU and of supervisory developments

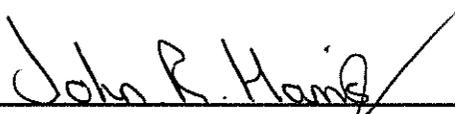
33. The Authorities will keep the operation of this MoU under review and will consult when necessary with a view to improving its operation and resolving any matters, where they arise, that hinder its operation. The parties will endeavour to meet regularly to discuss general supervisory developments.

Termination of MoU

34. 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 6, 7, 8, 9, 10 and 11 will continue to apply to any confidential information provided under this MoU prior to termination.
35. The JFSC and the PRA 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 Jersey Financial Services
Commission**



John Harris
Director General
Jersey Financial Services Commission

Date:

**For the Prudential Regulation
Authority**

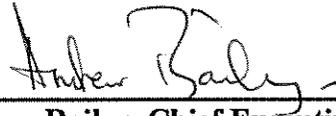


**Andrew Bailey, Chief Executive Officer of
the Prudential Regulation Authority and
Deputy Governor, Prudential Regulation,
Bank of England**

Date:

And PTO ...

For the Bank of England

A handwritten signature in black ink, appearing to read "Andrew Bailey", is written above a horizontal line.

**Andrew Bailey, Chief Executive Officer of the
Prudential Regulation Authority and Deputy
Governor, Prudential Regulation, Bank of
England**

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 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 JFSC for a joint investigation should be made, through the Director, Enforcement. Suggestions to the PRA should be made to the Chief Counsel of the PRA's Regulatory Action Division.

End.