

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. Requests for such assistance should conform to any published guidance for the making of such requests issued by the requested Authority.

This is an appendix to the memorandum of understanding entered into by the Guernsey Financial Services Commission and the Financial Services Authority on 29th July 2003.

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 GFSC for a joint investigation should be made, through Head of Enforcement, Enforcement Division. Suggestions to the FSA should be made to the Director, Enforcement.

Rights of persons preserved

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

Appendix 2 : Further Provisions for Collective Investment Scheme Matters

Preliminary

1. In this Appendix:

“collective investment scheme” has the same meaning as in section 235 of FSMA;

“HMT” means Her Majesty’s Treasury (UK);

“designated” means designated by HMT in an order made under section 270 of FSMA;

“recognised scheme” means a collective investment scheme that is recognised under section 270 of FSMA.

2. This Appendix applies to and in relation to recognised schemes managed in, and authorised under the law of, Guernsey.

3. Collective investment schemes which are authorised in countries or territories designated by HMT may be recognised schemes for the purposes of FSMA. Under section 270 of FSMA, HMT may not make an order designating any country or territory for the purposes of Part XVII of FSMA unless satisfied that:

- (a) the law and practice under which relevant collective investment schemes are authorised and supervised in that country or territory affords to investors in the United Kingdom protection at least equivalent to that provided for them by or under Part XVII of FSMA in the case of comparable authorised schemes; and
- (b) adequate arrangements exist, or will exist, for co-operation between the authorities of the country or territory responsible for the authorisation and supervision of relevant collective investment schemes and the FSA.

4. HMT asked the FSA for a report of the kind specified by section 270(5)(a) of FSMA in relation to certain territories, including Guernsey. The FSA has provided HMT with such report which HMT has had regards to in deciding whether to make an order under section 270.

5. By an Order, The Financial Services and Markets Act 2000(Collective Investment Schemes) (Designated Countries and Territories) Order 2003 (SI 2003/1181), which came into effect on 21 May 2003, HMT designated certain territories, including Guernsey, for the purposes of section 270.

6. The purpose of this Annex is to help ensure that the criteria referred to in paragraph 3 for designation of Guernsey continue to be satisfied.

Re-designation

¹ This is an appendix to the memorandum of understanding entered into by the Guernsey Financial Services Commission and the Financial Services Authority on 29th July 2003.

7. Revision of the relevant law or practice in Guernsey may require formal re-designation by HMT. Revisions of a less significant nature and revisions that are designed to replicate changes to the law, rules or practice in the UK may be agreed with the FSA without formal re-designation.

Consultation

8. To assist the FSA to fulfil its regulatory obligations under FSMA, in particular to secure the appropriate degree of protection for consumers, the GFSC must take reasonable care to ensure that it does not grant or allow any waivers or modifications from the relevant law or regulations including the giving of guidance to similar effect, in respect of a recognised scheme, unless it has first sought the views of the FSA.

Annual Report

9. The GFSC shall submit to the FSA an annual self-assessment report covering authorisation and supervision of recognised schemes within its territory. Notwithstanding that the precise format and nature of the coverage of this report will be agreed between the FSA and GFSC from time to time, this report must include at least the following:

- (a) An overview of the reporting period;
- (b) details of recognised schemes in operation during the reporting period;
- (c) new recognised scheme applications received during the reporting period;
- (d) recognised scheme amalgamations, application to terminate authorisation, terminations, amendments and transfers occurring during the reporting period;
- (e) new managers and trustees of recognised schemes during the reporting period (including promoter);
- (f) material guidance and waivers given to recognised schemes;
- (g) supervision visits conducted during the reporting period;
- (h) material administrative or financial sanctions or fines imposed against recognised schemes and any manager, authorised corporate director, trustee, depository, fund adviser or administrator of any such scheme; and
- (i) future proposals to amend legislation which might impact upon the operation of recognised schemes,

10. The self assessment report must be produced annually, covering a 12-month period, from 1st June to 31st May. The FSA would expect to receive the report no later than 12 weeks after the end of the reporting period. The FSA will send to the GFSC a response to the matters contained in the report.

Provision of Information

11. To the extent permitted by applicable laws, regulations and requirements, each Authority shall take all reasonable steps on a timely basis to provide the other Authority with any information that is in its possession or is discovered which will be likely to assist in administering the laws, regulations or requirements of the other Authority, if provided to the

other Authority, which relate to or might impact on the recognition of the collective investment schemes under section 270 of FSMA.

Assessment Visits

12. The FSA will undertake assessment visits of Guernsey on a 5 yearly basis, or more frequently if the FSA considers that this is appropriate. The FSA will send a visit report to the GFSC following every assessment visit. The GFSC will meet the FSA's reasonable costs (including travel and accommodation) for inspection visits.

Executed by the Parties:

For the GFSC



Director General Nik van Leuven

Date:

13.11.10

For the FSA



Director Verena Ross

Date: 6th September 2010