

**Dated:** 24 . 9 2003

**MEMORANDUM  
OF  
UNDERSTANDING**

**ISLE OF MAN**

**Isle of Man Financial  
Supervision Commission**

**UNITED KINGDOM**

**Financial Services  
Authority**

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# Contents

<b>RECITALS</b>	<b>2</b>
<b>OPERATIVE PART</b>	<b>3</b>
Interpretation	3
Purpose and Principles	3
Provision of Unsolicited Information	3
Requests for Assistance	3
Procedure for Requests	4
Assessing Requests	4
Contact Points	5
Further Procedures	5
Costs	6
Confidentiality	6
Consultation	6
Commencement	6
Termination of existing MOU	6
<b>APPENDIX 1: FURTHER PROCEDURES FOR ENFORCEMENT MATTERS</b>	<b>8</b>
Further details to be contained in requests for assistance	8
Further ground for denial of request	8
Requests to Sit in	8
Joint Investigations	8
Rights of persons preserved	9
<b>APPENDIX 2: FURTHER PROCEDURES FOR COLLECTIVE INVESTMENT SCHEME MATTERS</b>	<b>10</b>
Preliminary	10
Re-designation	10
Consultation	11
Annual Report	11
Provision of information	11
Assessment Visits	12



## 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 Isle of Man and/or in the United Kingdom, and where the context permits include:
    - (a) relevant European legislation that has not yet been transposed into UK domestic law;
    - (b) any law, regulation or requirement applicable in the Isle of Man 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 FSC or the FSA;
  - “FSA” means the Financial Services Authority of the UK;
  - “FSC” means the Financial Supervision Commission of the Isle of Man;
  - “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.

### 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, the Isle of Man or the United Kingdom. This MoU sets forth a statement of intent and accordingly does not create any enforceable rights. This MoU does not affect any arrangements under other MoUs.
4. The Authorities acknowledge that they may only provide information under this MoU if permitted or not prevented under applicable laws, regulations and requirements.

### Provision of Unsolicited Information

5. 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

6. 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**

7. 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 (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) 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**

8. Each request for assistance 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.

9. 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); and
  - (g) whether complying with the request may otherwise be prejudicial to the performance by the requested Authority of its functions.
10. The authorities recognise that assistance may be denied in whole or in part for any of the reasons mentioned in paragraph 9 in the discretion of the requested Authority.

### **Contact Points**

11. 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**

12. The further procedures set out in:
- (a) Appendix 1 will apply in relation to actual or possible enforcement matters;
  - (b) Appendix 2 will apply in relation to collective investment schemes recognised under section 270 of FSMA;
  - (c) any other Appendices covering specific areas of financial services (such as banking) or specific issues, as agreed in writing between the Authorities, will apply.

**Costs**

13. If the cost of fulfilling a request is likely to be substantial, 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.

**Confidentiality**

14. 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 if it proposes to pass on information to another person. The recipient Authority will endeavour to comply with any restrictions on the use of information that are agreed when the information is provided.
15. 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.

**Consultation**

16. 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.
17. 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.

**Commencement**

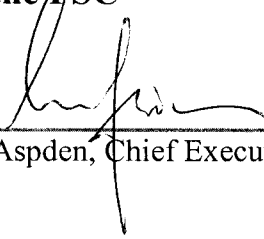
18. This MoU will take effect when both Authorities have signed it and will continue to have effect until terminated by either Authority giving 30 days advance written notice to the other Authority. It may be amended by agreement in writing.

**Termination of existing MoU**

19. Any previous MoUs between the FSC and the FSA or any of their predecessors are terminated.

**Executed by the Parties:**

**For the FSC**



John Aspden, Chief Executive

Date:

**For the FSA**



Michael Foot, Managing Director, Deposit  
Takers and Markets Directorate

Date:

24/9/03



## **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 which was 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 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 FSC for a joint investigation should be made, through the 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, the Isle of Man.
  
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 the Isle of Man. The FSA has provided HMT with such report which HMT has had regard 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 the Isle of Man, 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 the Isle of Man continue to be satisfied.

### **Re-designation**

7. Revision of the relevant law or practice in the Isle of Man 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 FSC 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 FSC 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 FSC 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, applications 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 1<sup>st</sup> June to 31<sup>st</sup> 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 FSC 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 the Isle of Man 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 FSC following every assessment visit. The FSC will meet the FSA's reasonable costs (including travel and accommodation) for inspection visits.