

**Memorandum of Understanding**  
**between the**  
**Isle of Man**  
**Financial Supervision Commission**  
**and the**  
**Gibraltar**  
**Financial Services Commission**

## TABLE OF CONTENTS

1. INTRODUCTION
2. DEFINITIONS
3. INTENTION
4. SCOPE
5. CONSOLIDATED SUPERVISION, MARKET AND POLICY DEVELOPMENTS
6. UNDERTAKING OF INSPECTION AND ON-SITE VISITS
7. FINDINGS OF INSPECTION AND ON-SITE VISITS
8. REQUESTS FOR ASSISTANCE OR INFORMATION
9. UNSOLICITED INFORMATION
10. PERMISSIBLE USES OF INFORMATION
11. CRISIS SITUATIONS
12. CONFIDENTIALITY

13. RIGHTS OF REQUESTED COMMISSION
14. CONSULTATION
15. COSTS OF INVESTIGATION
16. LISTS OF LICENSED ENTITIES
17. TERMINATION OF MEMORANDUM OF UNDERSTANDING
18. EFFECTIVE DATE

APPENDIX A          DESIGNATED CONTACT OFFICERS

## 1 INTRODUCTION

- 1.1 The Isle of Man Financial Supervision Commission ("IOMFSC") and the Gibraltar Financial Services Commission ("GFSC") have always sought to maintain a close and co-operative relationship, especially in exchanging views and information with each other. Both Commissions are members of the Offshore Group of Banking Supervisors (OGBS) and both actively support the initiatives introduced by the Basle Committee on Banking Supervision, the International Organisation of Securities Commissions (IOSCO) and the Enlarged Contact Group on the standards of licensing and supervision of Banks, Investment Businesses and Collective Investment Schemes operating in their respective jurisdictions.
- 1.2 The arrangements outlined below are therefore intended to enhance the existing working relationship, but they are not restrictive or legally binding and they can, of course, be altered in the light of experience. Both Commissions share the goal of promoting investor and depositor protection and support the continuous development and innovation of regulations and supervision in financial products and activities within their respective financial markets.
- 1.3 The IOMFSC was established under the Financial Supervision Commission Order of 1983 (hereinafter referred to as the "Order"). The Order provides for the establishment and constitution of the statutory body under the name of the Financial Supervision Commission whose function includes taking steps leading to the effective supervision of the financial sector of the Isle of Man. The Order came into operation on 12 July 1983 when it was approved by Resolution of Tynwald.

The main functions of the IOMFSC include:-

- a) licensing and supervision of Banks under the Banking Act 1998;
- b) licensing and supervision of Investment Businesses under the Investment Business Acts 1991 to 1993;
- c) authorisation, recognition and supervision of Collective Investment Schemes under the Financial Supervision Act 1988;

- d) authorisation and supervision of Building Societies pursuant to Sections 2 and 4(A) of the Building Societies Act 1986;
- e) licensing and supervision of Corporate Service Providers under the Corporate Service Providers Act 2000; and
- f) responsibility for the Companies Registry under the Companies (Transfer of Functions) Act 2000.

The IOMFSC includes within its Mission Statement the following objectives:-

- a) to protect investors' and depositors' interests;
- b) to promote the financial stability of financial institutions;
- c) to promote the highest standards of competence and professional qualifications;
- d) to protect the integrity of the financial community;
- e) to protect the reputation of the Isle of Man.

In order to achieve these objectives the IOMFSC undertakes supervisory monitoring of licenceholders through a combination of on-site (i.e. visits to licenceholders) and off-site (i.e. desk-based) supervision. Further to this end, it co-operates with other regulators around the globe in order to play a full part in the development of international regulatory standards. In addition, the IOMFSC takes steps to investigate and where appropriate prosecute those engaged in unlicensed banking, investment or corporate service provider business.

1.4 The GFSC was established by the Financial Services Commission Ordinance, 1989.

The functions of the Commission are to keep under review the operation of Gibraltar legislation and the effectiveness of supervision of financial services; to monitor the extent to which Gibraltar legislation and supervision complies with European Union obligations and supervisory standards governing financial services in the United Kingdom where Community law applies; to protect the public against financial loss arising out of dishonesty, incompetence or malpractice; to advise the Government of Gibraltar and the Government of the United Kingdom on matter concerning financial services; and to draw up codes for regulating the terms of service of persons employed by the Commission.

1.5 The main functions of the GFSC include the following: -

- a) licensing and supervision of Banks under the Banking Ordinance, 1992;
- b) licensing and supervision of Investment Businesses under the Financial Services Ordinance, 1989 and 1998;
- c) authorisation, recognition and supervision of Collective Investment Schemes under the Financial Services Ordinance, 1989;
- d) licensing and supervision of Fiduciary Services under the Financial Services Ordinance, 1989; and
- e) licensing and supervision of Insurance Services under the Insurance Companies Ordinance, 1987.

The GFSC's mission statement is;

*"To provide effective regulation and supervision of Gibraltar's financial services sector in line with international standards, thereby protecting, so far as is possible, the interests of customers and potential customers of financial products and services, as well as the public at large, and so supporting the preservation and further enhancement of Gibraltar as a quality finance centre."*

In order to achieve these objectives the GFSC undertakes supervisory monitoring of licence holders through a combination of on-site (i.e. visits to licence holders) and off-site (i.e. desk-based) supervision. Further to this end, it co-operates with other regulators around the globe in order to play a full part in the development of international regulatory standards. In addition, the GFSC takes steps to investigate and where appropriate prosecute those engaged in unlicensed banking, investment, fiduciary services or insurance services.

## 2. DEFINITIONS

"GFSC" means the Gibraltar Financial Services Commission;

"IOMFSC" means the Isle of Man Financial Supervision Commission;

"Commission" means the GFSC or the IOMFSC, as the case may be, together referred to as "the Commissions";

"Person" means a natural person, body corporate, partnership, or unincorporated association, government or political subdivision, agency or instrumentality of a government;

**"Jurisdiction"** means the country, state or other territory, as the case may be, in which the GFSC or the IOMFSC have legal authority, power and/or jurisdiction by law;

**"Memorandum of Understanding"** sets out the arrangements for both mutual co-operation and exchange of information between regulatory bodies;

**"Licensed Entity"** means any person carrying on the functions of banking (including building societies), investment business (including collective investment schemes and those providing services to collective investment schemes) and/or corporate service provider business requiring licensing, authorisation and/or registration by the Commission in the jurisdiction in which the entity is based and who is subject to the operative legislation within that jurisdiction;

**"Requested Commission"** means the Commission to whom a request is made pursuant to paragraph 8 of the Memorandum of Understanding; and

**"Requesting Commission"** means the Commission that makes a request pursuant to paragraph 8 of the Memorandum of Understanding.

### 3. INTENTION

- 3.1 This Memorandum of Understanding sets forth a statement of intent of the Commissions to establish a framework for mutual assistance and to facilitate the exchange of information between the Commissions to enforce or secure compliance with any laws or regulations of their respective jurisdictions.
- 3.2 The Commissions intend to provide one another with assistance under this Memorandum of Understanding to the full extent permitted by the laws, regulations and rules of their respective jurisdictions. Assistance from one jurisdiction to the other will, to the extent permitted by law, not be limited to information concerning institutions authorised, licensed, registered or recognised in Gibraltar and/or the Isle of Man.
- 3.3 This Memorandum of Understanding will serve to promote the integrity, efficiency and financial soundness of licensed entities by improving the effective regulation, enhancing the supervision of cross-border transactions, and creating an environment conducive to the prevention of fraudulent and other prohibited practices by Licensed Entities in the Isle of Man and Gibraltar.
- 3.4 The Memorandum of Understanding does not create any binding legal obligations upon the Commissions.

- 3.5 The Commissions intend, where legal authorisation is lacking, to actively pursue all avenues towards obtaining, by law, all the necessary powers for the effective achievement of the objectives of the Memorandum of Understanding, and to keep each other informed of developments in connection therewith.
- 3.6 The provisions of this Memorandum of Understanding do not lead to the right of any person, directly or indirectly, to obtain, suppress or exclude any information or to challenge the execution of a request for assistance under this Memorandum of Understanding.
- 3.7 The Commissions will use reasonable effort to provide each other with any information that they discover which leads to a suspicion of a breach or anticipated breach of rules or laws in the jurisdiction of the other Commission.

#### 4. SCOPE

Through the machinery set up by this Memorandum of Understanding, the Commissions agree to promote mutual assistance and exchange of information to enable the Commissions to perform their respective duties effectively according to the laws, regulations and rules of their respective jurisdictions.

In terms of this general theme, the scope of this Memorandum of Understanding include the following:-

- a) assisting in the discovery of and taking of action against unlicensed business or fraudulent practices in relation to activities that the Commissions regulate;
- b) enforcement of the laws, regulations and rules relating to banking (including building societies), operating collective investment schemes, dealing, arranging deals and managing investments and advising on investments and corporate service providers;
- c) regulation and supervision of banks, building societies, investment businesses, stockbrokers, collective investment schemes, clearing and settlement activities and corporate service providers;
- d) promoting and securing the fit and proper qualities of directors, managers (including company secretaries and compliance officers) and controllers of Licensed Entities and the promotion of high standards of fair dealing and integrity of their conduct of business; and
- e) any matters agreed upon between the Commissions from time to time evidenced in writing.

**5. CONSOLIDATED SUPERVISION, MARKET AND POLICY DEVELOPMENTS**

The GFSC and the IOMFSC will provide to the other information regarding the extent and nature of its consolidated supervision of the group of which the Licensed Entity is a member. In addition, the GFSC and the IOMFSC will provide information concerning material changes or developments in its supervisory regime. The GFSC and the IOMFSC will also regularly discuss market risks in their respective markets and other policy developments that might be relevant to each other.

**6. UNDERTAKING OF INSPECTION AND ON-SITE VISITS**

The IOMFSC will give the GFSC advance notice of its intention to undertake an inspection visit on a Licensed Entity in the GFSC's jurisdiction as considered necessary to carry out effective consolidated supervision of the group of which the Licensed Entity is a member. The IOMFSC will confirm, in advance, the nature and scope of the visit and the GFSC will afford as full co-operation as possible in facilitating such a visit.

In undertaking such a visit the IOMFSC will invite officers of the GFSC to attend the visit and the GFSC may attend as it sees fit.

The GFSC will give the IOMFSC advance notice of its intention to undertake an inspection visit on a Licensed Entity in the IOMFSC's jurisdiction as considered necessary to carry out effective consolidated supervision of the group of which the Licensed Entity is a member. The GFSC will confirm, in advance, the nature and scope of the visit and the IOMFSC will afford as full co-operation as possible in facilitating such a visit.

In undertaking such a visit the GFSC will invite officers of the IOMFSC to attend the visit and the IOMFSC may attend as it sees fit.

It is recognised that if either authority has reason to believe that an inspection or on-site visit is for non-supervisory purposes it should have the right to prevent the visit taking place or to terminate it and require the surrender of all information obtained for non-supervisory or non-regulatory purposes.

**7. FINDINGS OF INSPECTION AND ON-SITE VISITS**

The main findings of inspection and on-site visits made by the GFSC or the IOMFSC to institutions in the other's jurisdiction, together with details of any action to be taken, to which the visits findings have

contributed, will be made available to the other authority after the conclusion of the visit.

## 8. REQUESTS FOR ASSISTANCE OR INFORMATION

- 8.1 This Memorandum of Understanding does not affect the ability of the Commissions to obtain information from persons in the other's jurisdiction on a voluntary basis, provided that the Commissions observe the procedures in that other jurisdiction for the obtaining of such information.
- 8.2 To facilitate communication and ensure continuity in the co-operation between the Commissions, each Commission designates the contact officers set forth in Appendix A hereto for communications under this Memorandum of Understanding.
- 8.3 A Requesting Commission will make requests for assistance in writing addressed to the contact officer of the Requested Commission.
- 8.4 The request will include:-
- a) a general description of both the subject matter of the request and the purpose for which the Requesting Commission seeks the assistance or information;
  - b) a general description of the assistance, documents or information sought by the Requesting Commission;
  - c) any information in the possession of the Requesting Commission that might assist the Requested Commission in identifying the persons, bodies or entities believed by the Requesting Commission to possess the information sought, or the places where the Requested Commission may obtain such information;
  - d) the legal provisions concerning the matter that is the subject matter of the request;
  - e) whether any other authority, governmental or non-governmental, is co-operating with the Requesting Commission or seeking information from the confidential files of the Requesting Commission and to whom onward disclosure of information is likely to be necessary;
  - f) the desired period of time for the reply in urgent circumstances. The Requested Commission will accept a request for assistance and will expedite to the extent possible a reply thereto by summary procedures or by means of communication other than the exchange of letters. Such urgent communications must be

confirmed in writing as prescribed above by the contact officer set out in Appendix A within five business days.

## **9. UNSOLICITED INFORMATION**

Where one Commission has information that will assist the other Commission in the performance of its regulatory functions, the former may provide such information, or arrange for such information to be provided, on a voluntary basis even though the other Commission has made no request. The terms and conditions of this Memorandum of Understanding will apply if the providing Commission specifies that it is passing the information under this Memorandum of Understanding.

## **10. PERMISSIBLE USES OF INFORMATION**

- 10.1 Any assistance or information provided in terms of the Memorandum of Understanding should be used by the recipient only for the purpose of performing its regulatory and supervisory functions.
- 10.2 The Requesting Commission may not use information furnished for any purpose other than that identified in terms of paragraph 8.4 a).
- 10.3 If the Requesting Commission wants to use the information obtained for any purpose other than that stated in terms of paragraph 8.4 a), the Requesting Commission must seek and obtain the consent in writing of the Requested Commission prior to the use of such information.
- 10.4 Where the Requesting Commission believes that sharing confidential information with a third party is necessary, it must inform the Requested Commission of the third party's interest in this information and it must provide the Requested Commission with the opportunity to oppose such use.
- 10.5 The Requesting Commission may consult with the Requested Commission concerning the reasons for the objection if the Requested Commission opposes such use.

## **11. CRISIS SITUATIONS**

Where there is a need for urgent action by either authority, the GFSC and the IOMFSC will inform the other of such information as is judged appropriate in the particular circumstances, taking into account all relevant factors, including the nature of efforts by the home and host country authorities to resolve an institution's difficulties.

## **12. CONFIDENTIALITY**

- 12.1 The Commissions will, to the full extent permitted by the laws, regulations and rules of their respective jurisdictions, keep confidential:-
- a) any request for assistance or information pursuant to this Memorandum of Understanding;
  - b) any information received pursuant to this Memorandum of Understanding; and
  - c) any matter arising during the operation of this Memorandum of Understanding, including consultations and unsolicited assistance.
- 12.2 The Requesting Commission shall not disclose the assistance or information obtained pursuant to this Memorandum of Understanding to third parties without the prior written consent of the Requested Commission and compliance with the provisions of paragraph 10.
- 12.3 Notwithstanding the provisions of paragraph 10 (10.1, 10.2, 10.3), the confidentiality provisions of this Memorandum of Understanding shall not prevent the Commission from informing the law enforcement bodies in its jurisdiction when disclosure is required pursuant to a legally enforceable demand.
- 12.4 If any Commission becomes aware that information passed under this Memorandum of Understanding may be subject to a legally enforceable demand to disclose it will, to the extent permitted by laws, regulations and rules of its jurisdiction, inform the other Commission of that demand. The Commissions will then consult on the appropriate course of action.
- 12.5 The Commissions' confidential treatment of assistance and information will continue when either Commission gives notice of its intent to cease co-operation under this Memorandum of Understanding. The Commissions understand that the laws, regulations and rules of their respective jurisdictions place limitations on use and disclosure of non-public information obtained pursuant to this Memorandum of Understanding.

### 13. RIGHTS OF REQUESTED COMMISSION

- 13.1 The Requested Commission may deny requests for assistance under the Memorandum of Understanding:-
- a) where the request would require the Requested Commission to act in a way that would violate the laws of the jurisdiction of the Requested Commission;

- b) where the request is not in accordance with the provisions of this Memorandum of Understanding; or
- c) on grounds of public interest.

13.2 Where the Requested Commission denies or opposes a request for assistance, or where assistance is not available under the law of the jurisdiction of the Requested Commission, the Requested Commission will provide the reasons why it is not granting the assistance. The Commissions will then consult pursuant to Section 14.

13.3 The Commissions recognise that they intend nothing in the Memorandum of Understanding to either limit or enhance the powers of either Commission under the laws of their respective jurisdictions to investigate or gather information or to take measures otherwise than as provided in the Memorandum of Understanding to obtain information, whether or not concerning a request under the Memorandum of Understanding.

#### 14. CONSULTATION

14.1 The Commissions will consult with each other to improve the operation of the Memorandum of Understanding and resolve any matters that may arise including but not limited to:-

- a) matters of mutual interest to enhance co-operation and to protect depositors and investors by ensuring the stability, efficiency, and integrity of the financial services industry in their respective jurisdictions;
- b) the co-ordination of the supervision of licensed entities; and
- c) the administration of the laws, regulations and rules of their respective jurisdictions.

The purpose of such consultations is to assist in the development of mutually agreeable approaches for strengthening the financial services industries of their respective jurisdictions whilst avoiding, whenever possible, conflicts that may arise from the application of differing regulatory practices.

14.2 The Commissions will consider the need for additional measures for the exchange of investigation, enforcement, supervisory and surveillance information in the administration and enforcement of the laws, regulations and rules concerning licensed entities in their respective jurisdictions, on an ongoing basis. To this end, the Commissions will inform one another of the adoption of domestic measures that may

affect their respective Commission's ability to provide assistance under this Memorandum of Understanding.

- 14.3 The Commissions may take practical measures as may be necessary to facilitate the implementation of the Memorandum of Understanding. As such, the Commissions may amend, relax or waive any of the terms of the Memorandum of Understanding.

**15. COSTS OF INVESTIGATION**

If it appears that the Requested Commission will incur substantial costs in responding to a request for assistance under this Memorandum of Understanding, the Commission will establish a cost-sharing arrangement before continuing to respond to such a request for assistance.

**16. LISTS OF LICENSED ENTITIES**

The Commissions will exchange lists of Licensed Entities in their jurisdictions at the date of signing of this Memorandum of Understanding. Such lists will be updated and exchanged at the half-year dates following. Where a Commission has such lists on its website and these are kept up-to-date this will satisfy the ongoing requirement.

**17. TERMINATION OF THE MEMORANDUM OF UNDERSTANDING**

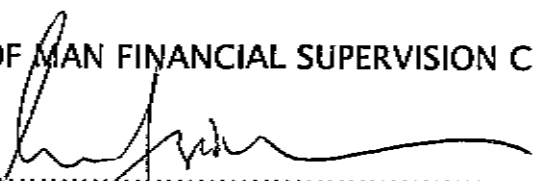
This Memorandum of Understanding will continue in effect until the expiration of thirty days after either Commission gives written notice to the other Commission of its intention to terminate the Memorandum of Understanding. If either Commission gives such notice, this Memorandum of Understanding will continue to have effect with respect to all requests for assistance that either Commission had made before the effective date of notification until the Requesting Commission terminates the matter for which it requested assistance.

18. EFFECTIVE DATE

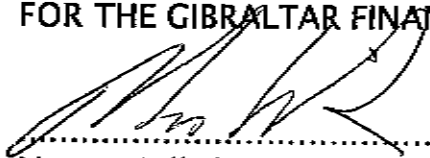
This Memorandum of Understanding will be effective from the date of its signing by the Commission.

SIGNED on this *4<sup>th</sup>* day of *December* 2003

FOR THE ISLE OF MAN FINANCIAL SUPERVISION COMMISSION

  
.....  
J R Aspden - Chief Executive

FOR THE GIBRALTAR FINANCIAL SERVICES COMMISSION

  
.....  
Marcus Killick - Commissioner

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