MEMORANDUM
OF
UNDERSTANDING
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Memorandum of Understanding ("MoU")
between the

ROYAL GIBRALTAR POLICE
(FSC)

FINANCIAL SERVICES COMMISSION
(RGP)

Recitals

A. The RGP is the civilian police force in Gibraltar and is established under the Police Act 2006. It has responsibility for the prevention and detection of crime including the investigation of financial crime, which it carries out through the Serious Crime Unit (The SCU). Financial crime investigation is regarded as a priority for the RGP and is considered to play a significant role in protecting the reputation of Gibraltar's finance industry.

B. The FSC is a statutory body established under the Financial Services Commission Act 2007. It has statutory powers of licensing, supervision and investigation, and has the ability to exercise its powers for the purpose of the prevention and detection of crime. The FSC is responsible for the regulation, supervision and inspection of all financial services in and from within Gibraltar. Such financial services include banking, investment services, insurance, insurance intermediation, insurance management, collective investment schemes, fund administration, occupational pensions, trust & company management and money service businesses. One of the functions of the FSC is to monitor compliance by Authorised persons with legislation, rules, codes and guidance relating to the prevention of financial crime and one of its regulatory objectives is the reduction of financial crime.
Operative Part

Interpretation

1. In this MoU, unless the context requires otherwise:

"Applicable Laws, Regulations and Requirements" means any law, regulation or requirement applicable in Gibraltar, and where the context permits includes:

(a) any law (statutory, common or customary), regulation or requirement applicable in Gibraltar; and
(b) any rule, direction, requirement, guidance or policy made or given by or to be taken into account by either of the Parties;

"information requirement" has the meaning attributed to it in paragraph 13;

"SCU" means the Serious Crimes Unit (RGP);

"FSC" means the Financial Services Commission in Gibraltar;

"MoU" means this Memorandum of Understanding;

"SAR" means a suspicious activity report;

"STR" means suspicious transaction report;

"RGP" means the Royal Gibraltar Police

"the Parties" means the RGP and the FSC;

"the Sending Party" means the FSC or the RGP, as relevant, when sending information to each other under the provisions of this MoU.
Purpose and Principles

2. The purpose of this MoU is to establish a formal basis for co-operation between the Parties, particularly in respect of the exchange of information to assist the RGP and the FSC in carrying out their respective functions.

3. This MoU does not modify or supersede any laws or regulatory requirements in force, in or applying to, Gibraltar. This MoU does not create any enforceable rights. This MoU does not affect any arrangements under other MoU that the Parties may have entered into.

4. The Parties acknowledge that they may only provide information under the provisions of this MoU if permitted or not prevented under Applicable Laws, Regulations and Requirements.

Exchange of information

5. It is recognised that the exchange of relevant information between the RGP and the FSC is of benefit to each in the carrying out of their respective functions and assists the jurisdiction in its fight against financial crime, money laundering and the financing of terrorism.

6. The RGP shall pass to the FSC information (except where it is impractical to do so and further delay will impact on the RGP's ability to prevent or detect crime) that comes into possession (whether through receipt of a SAR/STR or any other source) which, in the opinion of the RGP:

(a) indicates that a significant breach of Financial Services legislation may have taken place (for example, unauthorised financial services business or a contravention of Gibraltar’s provisions on insider dealing and market manipulation within the Market Abuse Act 2005);

(b) indicates that a significant breach of a regulatory requirement may have taken place (for example, a contravention of a requirement set by the
FSC’s Anti Money Laundering and Counter Terrorism Financing guidance notes).

(c) indicates that an entity that is subject to the supervision of the FSC may have significant weaknesses in its corporate governance or compliance function that the FSC is not aware of and which may result in clients/customers of the entity, or the reputation of the jurisdiction, being exposed to an unacceptable level of risk.

7. Paragraph 6 shall not restrict the discretion of the RGP to pass to the FSC information on other matters that it considers relevant to the functions of the FSC.

8. The FSC shall pass to the RGP information that comes into its possession which, in the opinion of the FSC:

(a) indicates that a significant financial crime may have been committed or is about to be committed (for example, a fraud in, or by, a financial service business);

(b) indicates that a significant breach of anti-money laundering/financing of terrorism legislation may have taken place or is about to take place;

9. Paragraph 8 shall not restrict the discretion of the FSC to pass to the RGP information on other matters that it considers relevant to the function of the RGP.

10. Unless otherwise stated, information exchanged between the RGP and the FSC under the provisions of this MoU is for intelligence purposes only and should it be required formally as evidence or for use in an investigation then the appropriate formal application must be made, via an official request or by legal means where appropriate, e.g. court order.
11. The RGP and the FSC will mutually agree acceptable protocols to ensure the secure communication of information exchanged under the provisions of this MoU.

**Case Conferences**

12. Where information exchanged between the RGP and the FSC indicates that the subject of the information is of interest to both parties (for example, where both criminal activity and regulatory breaches are suspected) a case conference may be called to ensure that the maximum and appropriate use of the information is made. In relevant cases, the RGP and the FSC will request the involvement of a representative of Gibraltar's prosecuting authority from Her Majesty's Attorney General's Chambers to attend the case conference.

**RGP Enforcement after non co-operation with FSC.**

13. Ordinarily, where the FSC is investigating a matter within its area of competence (for example, a suspected breach of regulatory legislation or a binding regulatory requirement), it would expect to rely upon the general power it has under regulatory legislation [for example, Section 6, Financial Services (Information Gathering and Co-operation) Act 2013] to require a relevant person to provide it with such information and documents as it may require to undertake the investigation. This MoU shall refer to this as the imposition by the FSC of an “**information requirement**”.

14. However there will be circumstances where it may not be possible, or appropriate for the FSC to impose an information requirement. For example, where the FSC has reasonable grounds for suspecting that if it were to impose an information requirement on a person, under the provisions of S.6 of the Financial Services (Information Gathering and Co-operation) Act 2013 or under the provisions of other financial services legislation, the person would not comply with the information requirement or the person would remove, tamper with, or destroy the information or documents sought. Persons who refuse to supply information or co-operate with the FSC under
section S16 of the same act, may have committed an indictable offence in which case the RGP may as a result of a request from the FSC, take appropriate enforcement action against the person(s) involved.

Contact points
15. The RGP and the FSC will provide each other with a list of contacts to whom information to be passed under the provisions of this MoU should be directed.

Confidentiality
16. The FSC and the RGP recognise that information exchanged under the provisions of this MoU is likely to be of a highly sensitive and confidential nature.

17. No confidential information exchanged by the RGP and the FSC under the provisions of this MoU will be voluntarily passed on to any third party without the express consent of the Sending Party.

Consultation
18. The Parties 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 that arise.

Attachments
19. Both FSC and the RGP will consider attaching personnel to each others organisations in respect of specific investigations or on a work experience basis as and when circumstances dictate or resources are available to be released by each organisation.

Commencement and Termination
20. This MoU will take effect when the Parties have signed it and will continue to have effect until terminated by either party giving 30 days' advance
written notice to the other Authority. It may be amended by agreement in writing.

21. In the event of the termination of this MoU, information obtained under this MoU will continue to be treated confidentially in the manner prescribed in paragraph 17.

Publication

22. Either, or both, of the Parties may make a copy of this MoU, or the text of it, publicly available.

Executed by the Parties:

Date. 18/6/14

For the RGP

Eddie Yome CPM
Commissioner of Police
RGP

For the FSC

Samantha Barrass
Chief Executive officer
FSC