Memorandum of Understanding

between

the Treasury

and

the Financial Supervision Commission
INTRODUCTION

1.1 This Memorandum of Understanding sets out the framework for co-operation between the Treasury and the Financial Supervision Commission ("the Commission") collectively known as "the Authorities". In particular, it sets out the arrangements which have been established to ensure that the Commission is accountable to Treasury for its actions and clarifies the circumstances in which restricted information might flow between the Commission and Treasury.

1.2 The division of responsibilities is based on four guiding principles:

- **clear accountability.** Each Authority must be accountable for its actions, so each must have unambiguous and well-defined responsibilities;
- **transparency.** Tynwald, the financial services industry and the public must know who is responsible for what;
- **avoidance of duplication.** Each Authority must have a clearly defined role, to avoid second guessing, inefficiency and the unnecessary duplication of effort. This will help ensure proper accountability;
- **regular information exchange.** This helps each Authority to discharge its responsibilities as efficiently and effectively as possible.

1.3 The Authorities have a well-established close and co-operative relationship. Both Authorities acknowledge the importance for the Island of complying with internationally accepted standards including –

- the Basel Core Principles for Effective Banking Supervision;
- the International Organisation of Security Commission's ("IOSCO") Objectives and Principles of Securities Regulation; and

The Authorities acknowledge that it is in the national interest to honour such commitments.

1.4 The arrangements outlined below are intended to support an effective working relationship, but they are not restrictive or legally binding. Both Authorities endorse the Commission's regulatory objectives, which are to:

- secure an appropriate degree of protection for the customers of persons carrying on a regulated activity;
- reduce financial crime; and
- support the Island's economy and its development as an international financial centre.

1.5 The Financial Services Act 2008 ("the Act") provides for the Commission to regulate financial services. The Act sets out the responsibilities of the Commission, including its objectives and functions. The Act also sets out a number of arrangements between the Authorities.
This Memorandum of Understanding, and any amendments to it, will be published.

2 RELATIONSHIP BETWEEN THE COMMISSION AND TREASURY

2.1 Treasury responsibilities

The Treasury, as the relevant Department of the Isle of Man Government, has a responsibility to ensure that the Island’s financial services sector is regulated and supervised effectively. The Commission carries out regulation and supervision as an independent body subject to relevant policies determined by Treasury.

Treasury, on behalf of the Isle of Man Government, is responsible for:

- setting the national regulatory strategy and any related policies;
- representing the Commission in Tynwald in respect of questions and other parliamentary matters;
- the legal and institutional framework within which regulation is carried out, including the core corporate governance structure of the Commission;
- ensuring that the Commission’s work takes account of national regulatory strategy and any related policies;
- directing the Commission on any additional matters to be included in its public Annual Report; and
- ensuring value for money.

2.2 Commission responsibilities

The Commission is operationally independent of Government, but is ultimately accountable to Government, Tynwald and the wider public; and must take into account the interests of all its stakeholders - licenceholders and consumers alike.

The Commission is responsible for:

- carrying out its functions in accordance with its regulatory objectives and any other factors specified in the Act;
- implementing Anti-money Laundering and Countering the Financing of Terrorism (“AML/CFT”) policy in line with international standards; coordinating the Island’s response to AML/CFT evaluations undertaken by MONEYVAL and other international financial institutions; and ensuring that AML/CFT guidance issued by the Commission is consistent with the international standard and AML/CFT primary and secondary legislation;
- promoting good corporate behaviour and administration;
- proposing regulatory policy;
- implementing Treasury’s regulatory strategy and any related policies; and
• making orders, regulations or the Rule Book under the Act, subject to consultation with -

(a) the Treasury;

(b) such persons or bodies as appear to be representative of interests likely to be affected; and

(c) such other persons or bodies as the Commission may determine..

2.3 Commission finances

The Commission aims to be funded entirely by the firms which it regulates. As at the date of this Memorandum of Understanding, the Commission’s budget includes revenue from licence fees (which are reviewed on a biennial basis), and a subvention from Treasury. The subvention is agreed with Treasury on a rolling three year basis. At the end of each financial year, any budgetary surplus may be transferred to reserves with the agreement of the Treasury.

2.4 Commission resources

In discharging its functions, the Commission is statutorily required to have regard to the need to use its resources in the most efficient and economical way. It does so by deploying resources in line with risk and priorities of work. In the event that a need for additional resources is identified, the Commission will prepare a business case and agree this with Treasury.

2.5 Appointment of Commissioners

Commissioners are appointed by Treasury, subject to the approval of Tynwald, on a rolling five year basis, with different retirement dates in order to facilitate greater continuity of the Members of the Commission.

3 THE REGULATORY FUNCTIONS

3.1 The Commission’s functions include:

• the development and maintenance of the regulatory regime under the Act;

• the regulation and supervision of persons undertaking regulated activities;

• the oversight of directors and persons responsible for the management, administration or affairs of commercial entities, such oversight to include the disqualification of unfit directors and officers of companies under the Company Officers (Disqualification) Act 2009;

• participation in relevant consultative bodies, working groups and other arrangements;

• the regulation and supervision of collective investment schemes within the meaning of the Collective Investment Schemes Act 2008; and
• functions conferred on it under the Act or under any other statutory provision.

3.2 Under the Act, functions must be exercised, so far as is reasonably practicable, in a way that is compatible with the regulatory objectives and in a manner that the Commission considers most appropriate for the purpose of meeting those objectives.

3.3 In discharging its functions the Commission is statutorily obliged to have regard to:

• the need for the regulatory, supervisory and registration regimes to be effective, responsive to commercial developments and proportionate to the benefits which are expected to result from the imposition of any regulatory burden;

• the need to use its resources in the most efficient and economic way;

• the desirability of implementing and applying recognised international standards;

• the desirability of cooperating with governments, regulators and others outside the Island;

• the need to safeguard the reputation of the Island;

• the responsibilities of those who manage the affairs of permitted persons;

• the international character of financial services and markets and the desirability of maintaining the competitive position of the Island;

• the desirability of facilitating the development of the financial services industry; and

• the impact of its decisions on the financial stability of the Island.

3.4 The Commission has a role in explaining the regulatory environment to relevant parties.

4. MECHANISMS OF ACCOUNTABILITY

4.1 Communication channels

Treasury needs to be sure that the Commission continues to meet its statutory objectives. To achieve this, there is dialogue between the Commission and Treasury on a regular basis. In addition:

• the Chief Executive of the Commission attends Treasury meetings quarterly to report on the Commission’s activities in the period and to discuss any areas of concern;

• the Members of the Commission meet with Treasury at least annually to discuss the Commission’s activities and any areas of concern;
• the Chief Executive of the Commission and the Chief Financial Officer of Treasury meet monthly;

• the Chairman of the Commission and the Treasury Minister meet at least every six months;

• ad-hoc meetings are held at officer and Member/Treasury level as required.

The key points of contact at officer level are the Chief Executive of the Commission and the Chief Financial Officer of Treasury.

The key points of contact at Commission and Treasury level are the Chairman of the Commission and the Treasury Minister.

4.2 Directions and guidance

In line with the responsibility of Treasury (as the relevant Department of Isle of Man Government) to ensure that the Island's financial sector is effectively regulated and supervised it is empowered under Schedule 1 to the Act to exercise certain direction and guidance powers after consulting with the Commission.

Specifically, after consulting the Commission, the Treasury may give the Commission—

(a) written guidance of a general character; and

(b) written directions of a general character concerning the policies to be followed by the Commission in relation to the development of and supervision of regulated activities in the Island and the manner in which the Commission is to carry out any of its functions.

However, any guidance or direction —

(a) may be given only in the public interest, and not to influence particular cases;

(b) must not prejudice the operational independence of the Commission by specifying the manner in which the Commission must carry out its functions; and

(c) must be published as soon as reasonably practicable (but may come into operation as soon as it is given).

In carrying out its functions the Commission must take into account any guidance issued by and comply with any directions given by the Treasury.

4.3 Reporting and scrutiny mechanisms (both periodic and ad hoc)

Without in any way compromising the Commission’s operational independence, Treasury may:

• direct the Commission to cover particular issues in its public Annual Report, so that, over time, the Reports will establish an important public information base,
through which Tynwald and others will hold the Commission and its Members to account. The Annual Report - covers the Commission's performance against its regulatory objectives and sets out (subject to any statutory restrictions on disclosure and any market sensitivities) how the Commission has dealt with major regulatory issues, which have arisen during the year;

- take steps to assess whether the Commission is operating in accordance with the Government Financial Regulations and is providing value for money through periodic independent review as necessary.

4.4 Statutory consultation

There is a statutory requirement for the Commission to consult Treasury on certain matters, including the making of regulations, orders and rules under the Act. Where the Commission has been given a statutory power to make decisions, its discretion is not fettered by any consultation requirement and the Commission makes its decisions on the basis of the matter under consideration, as informed by international standards and all information to hand, including any views that Treasury and other interested parties may hold.

5. OPERATIONAL CRISIS MANAGEMENT

5.1 There may be occasions when an incident occurs which could pose a significant threat to the Island and in particular to the financial services sector. In a crisis situation appropriate and effective co-ordination of efforts is vital to ensure that significant risk is managed as effectively as possible in the circumstances. It is therefore important that both Treasury and the Commission have clear responsibilities and communication channels in place to cover such crisis situations.

5.2 In the case of a major operational disruption in the financial markets, the respective roles of the Authorities are as follows:

- Treasury will ensure that relevant parts of Government are kept up-to-date with developments so as to be able to take any necessary key decisions without delay; and to ensure coherence between measures taken in the financial sector and the operation of public sector continuity arrangements. The Treasury will have specific responsibility for liaising with other government departments and authorities, including law enforcement agencies;

- The Commission will monitor and supervise the health of institutions that fall within its regulatory remit and seek, as far as is appropriate in the circumstances, continuing compliance with regulatory requirements. The Commission will have specific responsibility for:
  - monitoring permitted persons within the framework of the Commission’s regulatory objectives where liaison would usually be via normal supervisory contacts;
  - working with permitted persons to aim to resolve any problems that may prevent them from operating normally, or from acting on either their own
or their customers’ behalf, in accordance with usual regulatory requirements;

- liaising with other regulatory bodies on and off the Island to co-ordinate a response as appropriate.

6. PROVISIONS FOR THE CONTROL OF RESTRICTED INFORMATION.

6.1 Through the exercise of its statutory responsibilities, the Commission obtains a wide range of information and data on the firms which it licenses and supervises. Restricted information obtained by the Commission may only be passed to Treasury in compliance with a statutory gateway (under section 31 of and Schedule 5 to the Act). The Commission’s gateway with Treasury includes the ability to share restricted information with Treasury to enable or assist the Treasury to discharge its functions under the Act or under the enactments relating to companies, insurance companies or insolvency (Schedule 5 paragraph 2(1) (d) to the Act). Additionally, the Commission has separate and specific gateways that enable the provision of restricted information in relevant circumstances to other Government departments falling within Treasury’s responsibility.

6.2 There may be circumstances which bear on wider responsibilities which Treasury has, where the Commission wishes to share restricted information, and where it would be appropriate to do so. These circumstances include, but are not limited to, situations where:

- there may be implications for the stability of the Island’s financial system as a whole, or for a particular sector. On occasion, there might be a need for Treasury support;

- it appears that serious regulatory failures or gaps in the regulatory regime allowed events to occur which posed, or could have posed, significant damage to the market confidence or to consumer protection;

- relations with other jurisdictions become problematic; or

- there could be hardship or losses to a significant number of retail customers.

6.3 Where correspondence and discussions require disclosure of market-sensitive or other restricted information under the statutory gateway provisions appropriate safeguards will be followed by the Authorities to protect the information from inappropriate disclosure.

6.4 Unless agreed otherwise, in respect of this Memorandum of Understanding both Authorities will, to the full extent permitted by law, keep confidential:

- any request for assistance or information pursuant to it;

- any information received pursuant to it; and

- any matter arising during its operation, including consultations and unsolicited assistance.
6.5 Where Treasury believes that sharing confidential information provided by the Commission with a third party is necessary, it will seek the Commission's prior agreement before any release of such information.

6.6 Notwithstanding the above, the confidentiality provisions of this MoU will not prevent either Authority from informing the local law enforcement bodies when disclosure is required pursuant to a legally enforceable demand.

7. CONSULTATION

7.1 The Authorities will consult with each other on an on-going basis to enhance cooperation between them and to facilitate the operation of the Memorandum of Understanding.

7.2 The Authorities may, by joint written agreement, amend, relax or waive any of the terms of the Memorandum of Understanding.

8. TERMINATION OF THE MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding will continue in effect for an indefinite period unless terminated by either Authority giving the other thirty days written notice of its intention to terminate the Memorandum of Understanding: unless both parties agree to waive this requirement. If either Authority gives such notice, this Memorandum of Understanding will continue to have effect with respect to all requests for assistance that either Authority had made before the effective date of termination.

9. EFFECTIVE DATE

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

SIGNED on this 4th day of August 2014

THE TREASURY

THE FINANCIAL SUPERVISION COMMISSION

W E Teare

G F Karran

Minister for the Treasury

Chairman