



**MEMORANDUM OF UNDERSTANDING** between the:

- (1) **Jersey Financial Services Commission**, the independent statutory body established under the Financial Services Commission (Jersey) Law 1998; and
- (2) **Office of the Financial Services Ombudsman**, the independent statutory body established under the Financial Services Ombudsman (Jersey) Law 2014.

**Definitions**

1 In this memorandum:

1.1 'applicable law' means any law (statutory, common or customary) applicable in Jersey to a matter covered by this MoU;

1.2 'CIFO' means the Channel Islands Financial Ombudsman which is the joint operation of the Office of the Financial Services Ombudsman for Jersey and the equivalent body for the Bailiwick of Guernsey;

1.3 'JFSC' means the Jersey Financial Services Commission;

1.4 'licensed providers' means:

- recognized fund functionaries;
- banks;
- insurance companies;
- investment businesses;
- trust company businesses;
- general insurance mediation businesses;
- money service businesses; and
- fund services businesses;

licensed and supervised by JFSC under the regulatory laws and conducting a category of "relevant financial services business" within the meaning of Article 9 of the Ombudsman Law;

1.5 'MoU' means this memorandum of understanding;

1.6 'OFSO' means the Office of the Financial Services Ombudsman for Jersey;

1.7 'Ombudsman Law' means the Financial Services Ombudsman (Jersey) Law 2014;

1.8 'receiving party' means either party when receiving information from the other under this MoU;

- 1.9 'registered providers' means non-licensed providers registered by the JFSC under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 and conducting a category of "relevant financial services business" within the meaning of Article 9 of the Ombudsman Law;
- 1.10 'regulatory laws' means the:
- Collective Investment Funds (Jersey) Law 1988;
  - Banking Business (Jersey) Law 1991;
  - Insurance Business (Jersey) Law 1996; and
  - Financial Services (Jersey) Law 1998;
- 1.11 'sending party' means either party when sending information to the other under this MoU.

## **Functions**

- 2 JFSC's main function is the prudential and conduct-of-business supervision of financial services providers. This includes: licensing and supervising licensed providers under the regulatory laws; and supervising compliance by licensed providers and registered providers with provisions for the prevention of money-laundering and terrorism-financing.
- 3 CIFO's main function is to resolve complaints about financial services independently, in a fair and reasonable manner, effectively, quickly, with minimum formality, and so as to offer a more accessible alternative to court proceedings.

## **This MoU**

- 4 Under Article 23 of the Ombudsman Law, CIFO and JFSC must:
- 4.1 each take such steps as it considers appropriate to co-operate with the other in the exercise of their functions; and
  - 4.2 prepare and maintain a memorandum describing how they intend to co-operate.
- 5 JFSC and CIFO are independent of each other and have distinct statutory functions, but cooperation and exchange of information will benefit both consumers and providers of financial services by contributing to the effective functioning of the statutory systems for regulation and dispute-resolution.
- 6 This MoU:
- 6.1 does not create any enforceable rights;
  - 6.2 does not modify or supersede any applicable law;
  - 6.3 applies only so far as it is consistent with the independent roles of the parties;
  - 6.4 takes effect immediately; and
  - 6.5 may be terminated by 30 days' written notice from one party to the other.
- 7 JFSC and CIFO will publish this MoU on their websites, and CIFO will ensure that an electronic copy is freely available to the public.

## **General cooperation**

- 8 JFSC and CIFO will seek to maintain a strong and constructive relationship. In particular, they will:
  - 8.1 seek to dispel confusions and misunderstandings about their different roles;
  - 8.2 seek to achieve a complementary and consistent approach;
  - 8.3 seek to assist one another with in-house training on their respective roles;
  - 8.4 seek to facilitate direct transfer of relevant phone enquiries from one to the other;
  - 8.5 communicate regularly and meet at least quarterly to discuss matters of mutual interest;
  - 8.6 attend such meetings at appropriate levels of seniority, and equivalent levels of seniority (for example, chief executive to chief executive);
  - 8.7 consult one another at an early stage about any issue or proposal that might have significant implications for the other party;
  - 8.8 share, for comment, at an early stage any draft consultation or other public document that might have significant implications for the other party;
  - 8.9 provide each other with a list of contacts to whom information exchanged under this MoU should be directed; and
  - 8.10 keep under review the operation of this MoU, and consult one another as appropriate on improving its operation and resolving any matters that arise.
- 9 In cases where a persistent, systemic and/or serious pattern of complaints indicates that action by JFSC and/or CIFO may be required to protect consumers of financial services and the action that could be taken by JFSC or CIFO may have an impact on action that could be taken by the other, JFSC and CIFO will liaise with each other to discuss the most appropriate way forward.

## **Provision of information for the ombudsman levy**

- 10 Under Article 20 of the Ombudsman Law:
  - 10.1 CIFO may ask JFSC for details held about registered and licensed providers that are required by CIFO to enable it to calculate or raise a levy; and
  - 10.2 JFSC must provide the details in a timely manner.
- 11 Before making a request under Article 20, CIFO will engage informally with JFSC to discuss:
  - 11.1 the details required;
  - 11.2 the timetable for their supply;
  - 11.3 the format of the details; and
  - 11.4 the method of transmission.

## **Information sharing**

- 12 JFSC and CIFO may only provide information to the other if permitted, or not prevented, under applicable law. Subject to this, they will seek to share information that will enable or assist them to exercise their respective functions. In particular:
  - 12.1 JFSC and CIFO will exchange, at least every six months, information relevant to past, current and potential future financial complaints, including:
    - material changes in the identities of licensed providers (e.g. mergers/takeovers);
    - the standards of complaint-handling in licensed providers;
    - the intent behind actual and proposed rules and guidance;
    - the outcomes of cases resolved by CIFO;
    - trends (by product and type of complaint); and
    - persistent, systemic and/or serious issues.
  - 12.2 On a quarterly basis, CIFO will provide the JFSC with a report showing, by licensed provider:
    - how many complaints have been made to CIFO;
    - the outcomes of cases resolved by CIFO.
  - 12.3 JFSC and CIFO will provide each other, at least two working days before publication, with a copy of any public report or public statement in which the other may reasonably be expected to have a significant interest on account of its functions, including public notice of:
    - regulatory action against a licensed provider by JFSC where it requires the provider to handle complaints in a particular manner or would require it to review generally past sales of a particular product in respect of which CIFO has received complaints); and
    - an ombudsman’s determination against a licensed provider.
  - 12.4 CIFO will notify the JFSC where, in the opinion of CIFO, it may be appropriate for JFSC to consider using any of its regulatory powers – including because of concerns about a licensed provider relating to:
    - its fitness and probity;
    - the fitness and probity of someone connected with it;
    - its complaint-handling;
    - its failure to provide documents or information under Article 19 of the Ombudsman Law;
    - its failure to comply with an ombudsman determination or agreed settlement;
    - its failure to pay any levy or case fee under the Ombudsman Law; or
    - its significant contravention of regulatory laws or a JFSC Code of Practice.

## **Confidentiality**

- 13 All non-public information shared under this MoU will be marked as such by the sending party.
- 14 In respect of any non-public information supplied under this MoU, the receiving party will:
  - 14.1 comply with any restrictions set by the sending party on use of the information that are agreed when the information is provided;

- 14.2 seek the sending party's consent in good time before disclosing the information to any third party;
  - 14.3 not disclose the information to any third party without the prior consent of the sending party in writing (which includes email and fax);
  - 14.4 notify the sending party if it anticipates a legally-enforceable demand for disclosure of the information;
  - 14.5 notify the sending party if any legally-enforceable demand for disclosure of the information is received, unless this is not practicable because of urgency;
  - 14.6 if requested by the sending party in relation to a legally-enforceable demand for disclosure of the information, assert any legal exemptions or privileges against disclosure on behalf of the sending party; and
  - 14.7 if it is not practicable to notify the sending party of the receipt of a legally-enforceable demand for disclosure of the information, assume the sending party will wish to assert any legal exemptions or privileges against disclosure.
- 15 Unless CIFO indicates otherwise in a particular instance, information provided to or shared with the JFSC by CIFO pursuant to this MoU shall be treated as strictly confidential and may only be processed for the purposes detailed herein. Pursuant to Article 22 of the Financial Services Ombudsman (Jersey) Law 2014 such information may not be further processed or disclosed except as authorised by CIFO as permitted in the Article. For the purposes of the Freedom of Information (Jersey) Law 2011 all such information is absolutely exempt by virtue of Article 29 of that Law.
  - 16 Unless JFSC or CIFO indicates otherwise in a particular instance, paragraph 14 does not prevent JFSC or CIFO referring to correspondence between the other and a licensed or registered provider when dealing with the provider concerned.
  - 17 Even if this MoU is terminated, paragraphs 14 and 15 will continue to apply to non-public information supplied under this MoU.

Dated *12 January* 2016

Signed for the JFSC

Signed by CIFO for OFSO

John Harris, Director General

Douglas Melville, Principal Ombudsman