



**Memorandum of Understanding**

**between the**

**Financial Supervision Commission**

**and**

**The Treasury**

## I INTRODUCTION

- 1.1 This Memorandum of Understanding sets out the framework for co-operation between the Treasury (the “Treasury”) and the Financial Supervision Commission (the “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 sensitive 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 Commission and Treasury have an established close and co-operative relationship. Both Treasury and the Commission acknowledge the importance for the Island of complying with internationally accepted standards including the Basel Core Principles in prudential regulation of banking institutions, IOSCO’s Objectives and Principles of Securities Regulation and the Financial Action Task Force (FATF) Recommendations on Anti-Money Laundering. Treasury and the Commission acknowledge that it is in the public 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 Mission Statement and within that context share the goal of promoting investor, depositor and policyholder protection and support the continuous development and innovation of regulations and supervision in financial products and activities for the economic and reputational benefit of the Isle of Man.
- 1.5 The Financial Services Act 2008 (“the Act”) provides the legal underpinning for the Commission to act as financial services regulator. The Act sets out the statutory responsibilities for the authorities and certain key accountability measures.
- 1.6 This Memorandum of Understanding, and any amendments to it, will be published.

## 2. RELATIONSHIP BETWEEN THE COMMISSION AND TREASURY

- 2.1 Treasury, as the relevant Department of Isle of Man Government, has a responsibility to ensure that the Island's financial sector is effectively regulated and supervised. The Commission carries out regulation and supervision as an independent body within the

overall policy determined by Treasury. Treasury exercises its powers in generic matters and in the public interest but not in relation to particular cases.

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

- setting the Overriding Regulatory Strategy;
- representing the Commission in Tynwald in respect of questions and other parliamentary matters;
- approving regulatory policy proposals;
- the legal and institutional framework within which regulation is carried out, including the core corporate governance structure of the Commission;
- ensuring the boundaries of the Commission's regulation are correct and prescribing regulated activities;
- directing the Commission on any additional matters to be included in its public Annual Report;
- mounting investigations in cases of possible major regulatory failure; and
- assessing value for money.

2.3 The Commission operates independently from Government under a framework which ensures that the Commission and its Board are properly accountable to Government, Tynwald and the wider public, and that it takes into account the interests of all its stakeholders - licenceholders and consumers alike. The Commission maintains regular dialogue with Treasury on how any remaining impediments, real or perceived, to the independent status of the regulatory body might be removed, to meet international standards and the recommendations of relevant international bodies.

2.4 The Commission is responsible for -

- carrying out its Functions in accordance with its Statutory Objectives taking account of the factors specified in relation to the manner of discharge of functions. The Commission makes its regulatory decisions independently;
- promoting good corporate behaviour and administration through an efficient and effective Companies Registry;
- proposing Regulatory Policy;
- implementing the agreed Regulatory Policy including (subject to consultation and Tynwald oversight) making certain regulations and orders and the detailed regulatory rules.

### **3 THE REGULATORY FUNCTIONS**

3.1 The Commission's functions under the Act 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;
- the operation of registries of commercial entities;
- participation in relevant consultative bodies, working groups and other arrangements;
- the functions conferred upon it under the Act;
- the regulation and supervision of collective investment schemes within the meaning of the Financial Supervision Act 1988; and
- functions conferred on it 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. The regulatory objectives are:

- securing, in co-operation with Treasury, a realistic and appropriate degree of protection for the customers of persons undertaking regulated activities;
- the reduction of financial crime; and
- supporting the Island's economy and its development as an international financial centre.

3.3 In discharging its functions the Commission must 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.

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

#### 4. MECHANISMS OF ACCOUNTABILITY

##### Communication channels

Treasury will wish to be reassured that the Commission is meeting its statutory objectives. To support this, there is regular dialogue between the Commission and Treasury on an as arising basis. In addition:

- the Chief Executive of the Commission attends Treasury Meetings on a quarterly basis to report on the Commission's activities in the period and to discuss any areas of concern;
- the Commission meets 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 meet quarterly;
- the Chairman of the Commission and the Treasury Minister meet at least quarterly;
- ad-hoc meetings are held at officer and Board/Treasury level as required.

Minutes of all such meetings shall be agreed jointly and signed accordingly.

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

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

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

Without in any way compromising the Commission's statutory 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 Board to account. The reports will cover the Commission's performance against its statutory objectives and will set out (subject to any statutory restrictions on disclosure and any market sensitivities) how the Commission has dealt with major regulatory cases, or 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;
- periodically review the statutory instruments which are made under the Act and consider whether the boundaries of regulation (ie which activities are subject to the Commission's jurisdiction) remain appropriately drawn. In doing that, they may want

to take into account stakeholder views on whether there are any problems of scope or powers which are hindering achievement of the statutory objectives.

#### **4.3 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 power to decide, its discretion is not fettered by this consultation requirement and the Commission will make its decisions on the basis of the information to hand, including any views Treasury may have.

### **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 markets, the respective roles of the Authorities are as follows:

- Treasury will ensure that relevant parts of Government are kept up-to-date on 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 the health of institutions that fall within its regulatory remit and ensure, as far as is appropriate in the circumstances, continuing compliance with regulatory standards. The Commission will have specific responsibility for:
  - monitoring permitted persons within the framework of the Commission's statutory objectives where liaison would usually be via normal supervisory contacts;
  - working with permitted persons 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 SENSITIVE INFORMATION.**

6.1 Through the exercise of its statutory responsibilities, the Commission gathers a wide range of information and data on the firms which it authorises and supervises. Restricted

information obtained by the Commission may only be passed to Treasury in compliance with a statutory gateway (under S31 and schedule 5 of the Act). The Commission's gateway with Treasury includes enabling or assisting the Treasury to discharge its functions under the Act or under the enactments relating to companies, insurance companies or insolvency (Schedule 5 2.(1) (d) of the Act). Additionally, the Commission has separate and specific gateways that enable the provision of 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 wants to share 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 a support operation;
  - 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;
  - foreign relations problems might arise; 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 confidential information under the statutory gateway provisions appropriate safeguards should be followed by the Authorities to protect the information from inappropriate disclosure.
- 6.4 Unless agreed otherwise, both Authorities will, to the full extent permitted by law, keep confidential:-
- any request for assistance or information pursuant to this Memorandum of Understanding;
  - any information received pursuant to this Memorandum of Understanding; and
  - any matter arising during the operation of this Memorandum of Understanding, 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 agreement to the release of such information.
- 6.6 Notwithstanding the above, the confidentiality provisions of this Memorandum of Understanding 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 Commission and Treasury will consult with each other on an on-going basis to enhance co-operation between them and to facilitate the operation of the Memorandum of Understanding.
- 7.2 The Commission and Treasury 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. 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 1<sup>st</sup> day of July 2008

**THE FINANCIAL SUPERVISION  
COMMISSION**

**THE TREASURY**

..... *ROPenn...*

..... *ARBell.....*

**Mrs R. Penn – Chairman**

**Hon Allan R. Bell MHK  
Minister for the Treasury**